

**BEATSON'S BUILDING SUPPLIES LIMITED**  
**CONDITIONS OF TRADING**

**1. Definitions**

In these Conditions:

- (a) "the Company" means Beatson's Building Supplies Ltd;
- (b) "the Customer" means the person, firm, company or other entity supplied or to be supplied with Goods by the Company;
- (c) "Goods" means the goods, materials, services and/or other items (whether original or substituted) supplied or to be supplied by the Company to the Customer pursuant to any contract made under these Conditions;
- (d) "the contract" means the contract for the supply of goods, materials, services and/or other items by the Company to the Customer to which these Conditions apply; and
- (e) "industrial property right" means any patent, trade mark, registered design, copyright or any other right or asset registered or protected under statute or any regulations thereunder.

**2. General**

- (a) The contract between the Company and the Customer shall be governed by these Conditions which shall apply to the contract notwithstanding any conditions to the contrary in the Customer's conditions of trading (which so far as inconsistent with these Conditions shall not apply and shall be deemed to be waived).
- (b) All quotations are submitted, all orders are accepted, and all Goods are supplied by the Company subject to these Conditions and all other conditions, warranties and representations, express or implied and statutory or otherwise, except as to title, are hereby excluded. No amendment or alteration to these Conditions shall apply unless specifically agreed to in writing by the Company.

**3. Extra Costs**

- (a) Any price quoted by the Company shall be subject to increase to cover the expenses incurred by the Company as a result of any delay arising from the Customer's instruction or lack thereof.
- (b) Unless the Company has agreed in writing that the price of the Goods shall be fixed, the Company reserves the right to invoice the Goods at the price or prices thereof prevailing at the date of supply or despatch thereof to the Customer or to a nominee of the Customer and, without prejudice to the generality but subject as aforesaid, the Company reserves the right to increase the price of the Goods to cover any increase in the cost of production or supply of the Goods howsoever arising.

**4. Delivery, Title and Risk**

- (a) The Company accepts no liability for failure to meet quoted delivery times which shall be treated as estimates only and any such failure shall not entitle the Customer to cancel or terminate any order or the contract.
- (b) Unless the customer challenges in writing to the company any invoice submitted by the company, within 7 days of its receipt the customer shall be barred from challenging the invoice and shall be deemed conclusively to have accepted that the goods described therein were received and that the sum claimed in the invoice is due.
- (c) Unless the Company shall otherwise agree in writing, the Company shall not be bound to deliver or supply the Goods in one lot, shipment or consignment and the Customer shall be bound to accept split deliveries or delivery or supply of the Goods by instalments.
- (d) The Company shall have no liability in respect of any shortfall or shortweight in the Goods or in respect of the Goods being damaged upon delivery unless the Customer shall have notified the Company in writing of such shortfall, shortweight or damage within three days of the delivery or supply of the Goods to the Customer or to a nominee of the Customer.
- (e) Notwithstanding the delivery or supply of the Goods to the Customer, the property in and title to the Goods shall not pass to the Customer until the price payable by the Customer to the Company for the Goods shall have been paid in full by the Customer and, until such payment in full of the price has been made, the property in and title to the Goods shall remain with the Company.
- (f) The risk of loss or damage to the Goods shall pass to the Customer when the Goods are appropriated to the contract or are delivered or supplied to the Customer or to a nominee of the Customer, whichever shall be the earlier.
- (g) Where the Customer requests that delivery or supply of the Goods be delayed beyond the quoted delivery or supply date, then the Company shall be entitled to invoice the Customer for payment of the Goods as if the Goods had been delivered or supplied to the Customer on the quoted delivery or supply date and the Customer shall reimburse to the Company, on the demand in writing of the Company, all costs and expenses (including storage and insurance costs) incurred by the Company in connection with the Goods from the quoted delivery or supply date of the Goods to the date of actual delivery or supply thereof to the Customer or to a nominee of the Customer.

**5. Price and Payment**

- (a) Subject to Conditions 3 hereof, the price payable by the Customer to the Company for the Goods shall be the price thereof specified by the Company in the quotation made by the Company for the supply of the Goods or, if different, the price for the Goods specified in the order acknowledgment or invoice given by the Company to the Customer.
- (b) Value Added Tax at the applicable rate shall be paid by the Customer to the Company on the price of the Goods at the time of the payment of the price.
- (c) If the quotation made by the Company for the supply of the Goods or the order acknowledgment given by the Company to the Customer does not provide that the price includes the costs of packaging, insuring or delivering the Goods to the Customer, then the costs of packaging, insuring and delivering the Goods (as the case may be), together with Value Added Tax thereon at the applicable rate, shall be added to the price of the Goods and be paid by the Customer to the Company as part of the price of the Goods in accordance with paragraph (d) of this Condition.
- (d) For customers with a credit account facility, payment for the Goods shall be made by the Customer to the Company within 30 days after the month of delivery to the Customer by the Company in respect of the supply of the Goods and time for payment shall be of the essence of the contract.
- (e) Unless otherwise specifically agreed by the Company, accounts are strictly net.
- (f) Interest at the rate of five per centum per annum above the base lending rate from time to time and for the time being of the Bank of Scotland shall be payable on any sum payable by the Customer to the Company and not paid on the due date from the due date for payment thereof until the date of actual payment thereof to the Company and that whether or not after judgment or decree. Such interest shall be calculated on the basis of the actual number of days elapsed.
- (g) Unless the customer in writing ascribes any payments to account to any particular invoices the company shall have the absolute right to ascribe payments to account to any invoices, due and payable as at the date of receipt of the payment of account regardless of the dates of the invoices and of any rule of law to the contrary.

**6. Description**

- (a) The descriptions, illustrations, weights and material contained in any catalogues, price lists, brochures, leaflets or other descriptive matter prepared, issued or circulated by or on behalf of the Company represent the general nature of the items described therein but neither they nor any verbal statement shall form any part of any order or of the contract or amount to any representation or warranty.

- (b) The Goods are supplied on the basis that the Goods may differ from samples thereof seen by the Customer.
- (c) The Company does not accept liability for loss or damage arising from the use of any advice or information supplied by the Company.
- (d) The Customer shall be deemed to have satisfied itself that the Goods are suitable for the Customer's purpose.

**7. Warranties**

- (a) Save as provided in Section 12 of the Sale of Goods Act 1979, the Company gives no warranty and makes no representation whether express or implied as to any matter whatsoever including (without limitation) condition, merchantability or fitness for any purpose.
- (b) The Company accepts no liability for any loss or damage suffered by the Customer or any third party as a result of or caused by the use of the Goods for a use or purpose for which the Goods were not designed.
- (c) The Company shall incur no liability in respect of any defect or fault in the Goods unless:
  - (i) details of the defect or fault in the Goods are notified in writing by the Customer to the Company forthwith (and not later than three days) following the delivery or supply of the Goods to the Customer or to a nominee of the Customer~
  - (ii) the Customer gives the Company such opportunity as the Company may reasonably require to examine or inspect the defective or faulty Goods at the premises of the Customer;
  - (iii) the Customer forthwith upon the discovery of such defect or fault by the Customer ceases to use the defective or faulty Goods unless otherwise authorised by the Company in writing; and
  - (iv) the Customer, unless otherwise authorised by the Company in writing, returns the defective or faulty Goods to the Company within seven days following the discovery of the defect or fault by the Customer.
- (d) The liability of the Company under this Condition shall be limited to replacing, repairing or making good the defective or faulty Goods or, at the option of the Company, giving credit or reimbursing to the Customer the price (whether in whole or in part) paid by the Customer to the Company for the defective or faulty Goods.

**8. Consequential loss and damage**

Save as herein expressly provided and except as provided in Section 16 of the Unfair Contract Terms Act 1977 (liability for death or personal injury resulting from breach of duty), the Company shall not be liable to the Customer or to any third party for any loss or damage (whether direct or consequential) suffered in respect of the Goods or arising from or caused by any defect or fault in the Goods and the Company shall be indemnified by the Customer against all third party claims made in respect of the Goods.

**9. Customer's Specification**

- (a) If the Customer requires the Goods to be manufactured or supplied to the Customer's design, the Customer must provide to the Company a detailed design and/or specification of the Customer's requirements when the Customer orders the Goods. The Company shall not be liable for any defect or fault in the Goods resulting from the Goods being manufactured or supplied in accordance with the Customer's design and/or specification of the Goods.
- (b) The Customer shall indemnify and so free and relieve the Company from and against any claim, cost, charge or expense in respect of the infringement or breach of any industrial property right as a result of or caused by the manufacture or supply of the Goods by the Company in accordance with the Customer's design or specification.

**10. Financial Condition**

If the Company shall consider that the Customer's financial condition does not at any time justify the agreed terms of payment, the Company may, having given notice in writing to the Customer, cancel any unfulfilled order or the contract unless the Customer shall forthwith make payment to the Company for the Goods already delivered or supplied by the Company to the Customer or to a nominee of the Customer or shall make prior payment for the Goods ordered but non-delivered or supplied, or both, at the Customer's option. The Company shall be entitled to cancel without penalty by notice in writing to the Customer any unfulfilled order or the contract if the Customer becomes insolvent, goes into liquidation, enters into a composition with its creditors or has a receiver appointed over the whole or any part of its property and undertaking.

**11. Force Majeure**

The Company shall not be liable or responsible for any failure to perform in whole or in part for any delay in performing any of its obligations under these Conditions caused by act of God, war, insurrection, government regulations, embargoes, strikes or walk-outs, illness, flood, fire, equipment breakdown or any other cause beyond the control of the Company. Should any such event occur, the Company at its option may cancel or suspend (or both) the contract without incurring any liability whatsoever for any loss or damage thereby occasioned.

**12. Set Off**

The Customer hereby waives any and all existing or future claims for compensation or set off against any payments due by the Customer to the Company under the contract and the Customer shall pay to the Company the amounts payable to the Company under the contract on the due date or dates for payment thereof regardless of any compensation, set off or counter claim on the part of the Customer against the Company.

**13. Remedies**

Any remedies conferred on the company by these conditions shall be without prejudice to any other remedies available to the company.

**14. Invalidity**

If any provision of the Conditions is or becomes invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions of these Conditions or of the contract shall not in any way be affected or impaired.

**15. Headings**

The headings used in these Conditions are for ease of reference only and shall not in any way affect the construction or interpretation of these Conditions.

**16. Legal Construction**

These Conditions and the contract and the validity and performance thereof shall in all respects be governed by and interpreted in accordance with the law of Scotland and the Company and the Customer prorate to non-exclusive jurisdiction of the Scottish Courts.

**17. Plant Hire - Insurance**

All plant is hired under the Scottish Plant Owners Association (S. P.O.A.) Conditions of Hire. It is the responsibility of the Hirer to ensure that they are covered for those risks which by operation of law or by virtue of this agreement devolve on him in this respect. It should be noted that the Owner accepts no responsibility for loss or damage to property including the hired plant or loss or injury to workmen or third parties arising out of the operation of the plant or the negligence of workmen the liability for which in common law or by virtue of this agreement by statutory enactment would ordinarily fall on the Hirer.