

LAKELAND CONCRETE PRODUCTS LIMITED

TERMS AND CONDITIONS OF SALE (EDITION 2010)

11 CONTRACT

- 11.1 The following terms and conditions ("Conditions") shall be deemed to be incorporated into any contract ("Contract") entered into between Lakeland Concrete Products Limited t/a Lakeland Pavers ("Seller") and any person, firm or company ("Buyer") who purchases goods ("Goods") from the Seller. The Seller is only prepared to accept orders from a Buyer on the Conditions.
- 11.2 No order placed by the Buyer shall be deemed to be accepted by the Seller, and therefore no Contract shall be formed, until a written acknowledgement of order ("Order Acknowledgement") is issued by the Seller or (if earlier) the Seller delivers the Goods to the Buyer.
- 11.3 The Conditions may only be altered by a written agreement signed on behalf of the Seller by one of its authorised personnel and no other action on the part of the Seller shall be construed as an acceptance of any other conditions.
- 11.4 Should any of the Conditions be in conflict with those of the Buyer, the Conditions will prevail to the exclusion of all other terms and conditions (including for the avoidance of any doubt any terms or conditions which the Buyer purports to apply in relation to any purchase from the Seller under any purchase order, confirmation of order, specification or other document or those terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document).
- 11.5 The Conditions apply to all the Seller's sales and any representations about the Goods shall have no effect unless expressly agreed in writing and signed on behalf of the Seller by one of its authorised personnel. The Buyer acknowledges and agrees that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.
- 11.6 Each order or acceptance of a quotation for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to buy Goods subject to these Conditions.
- 11.7 The Buyer shall ensure that the terms of its order and any applicable specification are complete and accurate.
- 11.8 Any quotation given by the Seller is given on the basis that no Contract shall come into existence until the Seller despatches an Order Acknowledgement to the Buyer or (if earlier) the Seller delivers the Goods to the Buyer. Without prejudice to the generality of the foregoing or condition 1.2 any quotation is valid for a period of 30 days only from its date, provided that the Seller has not previously withdrawn it.

12 ESTIMATES OF QUANTITIES AND ADVICE AS TO FITNESS FOR PURPOSE

- 12.1 Any estimate of quantities needed or advice or recommendation as to the suitability or fitness of any Goods for any particular purpose given by the Seller's employees or agents is given without liability on the Seller's part. The Buyer agrees to be entirely responsible for ascertaining the quantities and the suitability and fitness of the Goods for their purpose.

13 PRICE

- 13.1 The contract price for the Goods ("Contract Price") shall be as detailed in the Order Acknowledgement (and includes (where applicable) all costs or charges in relation to packaging, loading, unloading, carriage and insurance and any other costs) or, if no Order Acknowledgement is issued, the Contract Price shall be the price prevailing in the Seller's price list published on the date of delivery or deemed delivery together with all costs or charges in relation to packaging, loading, unloading, carriage and insurance and any other costs.
- 13.2 The Seller reserves the right to increase the Contract Price in respect of increases in all additional costs or charges in relation to packaging, loading, unloading, carriage and insurance and any other costs because of any variation in the costs of materials, labour, overheads or transport incurred since the date of the Order Acknowledgement or, if no Order Acknowledgement is issued, the date of delivery or deemed delivery all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.
- 13.3 The Contract Price is exclusive of value added tax, which shall be additionally payable by the Buyer in full.

14 PAYMENT

- 14.1 If the Goods are supplied on credit (subject to satisfactory references being received by the Seller), payment of all sums due to the Seller under the Contract is to be made in pounds sterling not later than 30 days following the end of the month during which the Goods are delivered or deemed to be delivered to the Buyer or any other person as nominated by the Buyer and detailed in the Order Acknowledgement ("Nominated Person"); otherwise payment of such sums is to be made in full in pounds sterling before the Seller will deliver the Goods.
- 14.2 Time is of the essence for payment. Payment will only be deemed received when the Seller receives cleared funds.
- 14.3 All payments payable to the Seller under the Contract shall become due immediately on its termination despite any other provision.
- 14.4 The Buyer shall make all payments due under the Contract to the Seller in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Seller to the Buyer.
- 14.5 The Seller reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 should the Buyer fail to pay the Seller any sum due pursuant to the Contract.

15 RISK/TITLE

- 15.1 The Goods are at the risk of the Buyer from the time of delivery.
- 15.2 Ownership of the Goods shall not pass to the Buyer until the Seller has received in full (in cash or cleared funds) all sums due in respect of:
- 15.2.1 the Goods; and
 - 15.2.2 all other sums which are or become due to the Seller from the Buyer on any account.
- 15.3 Until ownership of the Goods has passed to the Buyer, the Buyer must:
- 15.3.1 hold the Goods on a fiduciary basis as the Seller's bailee;
 - 15.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 15.3.3 maintain the Goods in satisfactory condition insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller; and
 - 15.3.4 hold the proceeds of the insurance stored in condition 5.3(c) on trust for the Seller and not mix the proceeds with any other money, nor pay the proceeds into an overdraft bank account.
- 15.4 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:-
- 15.4.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
 - 15.4.2 any such sale shall be a sale of the Seller's property on the Buyer's own behalf and the Buyer shall deal as principal while making such sale.
- 15.5 The Buyer's rights to possession of the Goods and resale pursuant to condition 5.4 shall terminate immediately if the Seller could exercise any of its rights under condition 12 and thereupon all payments payable to the Seller under the Contract shall become immediately due despite any other provision in these Conditions or elsewhere.
- 15.6 The Seller shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Seller to the Buyer.
- 15.7 The Buyer grants to the Seller, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 15.8 Where the Seller is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have sold all goods of the kind sold by the Seller to the Buyer in the order in which they were invoiced to the Buyer.
- 15.9 On termination of the Contract, however caused, the Seller's (but not the Buyer's) rights contained in this condition 5 shall remain in effect.

16 MANUFACTURE, DESCRIPTION AND EFFLORESCENCE

- 16.1 The quantity and description of the Goods shall be as set out in the Order Acknowledgement or, if no Order Acknowledgement is issued, as set out on the delivery note. The Seller reserves the right to make any change in the specification of the Goods, which is required to conform with any applicable statutory or EU requirement or which does not materially affect the quality or performance of the Goods.
- 16.2 All samples, drawings, descriptive matter, specifications and advertising issued by the Seller and any descriptions or illustrations contained in the Seller's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and no sale by the Seller shall be a sale by sample.
- 16.3 All Goods are manufactured in accordance with the relevant British and European standards however (in common with other products made with a high cement content) the Goods:
- 16.3.1 may vary in colour, grade, shade and texture from samples or other Goods previously supplied or other Goods supplied pursuant to the Contract; and
 - 16.3.2 may exhibit the temporary surface phenomenon of efflorescence. This may appear as a milky white stain on the face of the Goods or it may appear that the colour has faded from the Goods.
- 16.4 The Buyer acknowledges and agrees that the Seller does not guarantee the consistency of the Goods and has been informed of the possibility and accepts that the colour, shade, grading and texture of the Goods may vary from samples or other Goods previously supplied or other Goods supplied pursuant to the Contract and further accepts that the Goods may also exhibit efflorescence. The Buyer also acknowledges and agrees that the Buyer shall not be able to object to or reject the Goods or any of them in the event of any variance in the colour, shade, grading and texture of the Goods from samples or other Goods previously supplied or other Goods supplied pursuant to the Contract or if the Goods exhibit efflorescence. Any variance in the colour, shade, grading and texture of the Goods from samples or other Goods previously supplied or other Goods supplied pursuant to the Contract or the exhibition of efflorescence shall not be deemed to be a defect for the purposes of condition 11.

17 DELIVERY AND NON-DELIVERY

- 17.1 The Seller will endeavour to deliver the Goods within the agreed delivery period but no guarantee of delivery date is implied and the Seller shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Seller's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 60 days. Any dates specified by the Seller for delivery of the Goods are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time.
- 17.2 Unless otherwise agreed in writing by the Seller or set out in the Order Acknowledgement, delivery of the Goods shall take place at the Seller's place of business.
- 17.3 Where delivery of the Goods is agreed by the Seller to be made to some other location than the Seller's place of business, then the Buyer or, as the case may be, the Nominated Person shall take delivery of the Goods at such location when delivered by the Seller.
- 17.4 If for any reason the Buyer or, as the case may be, the Nominated Person fails to accept delivery of any of the Goods when they are ready for delivery, or the Seller is unable to deliver the Goods on time because the Buyer or, as the case may be, the Nominated Person has not provided appropriate instructions, documents, licences or authorisations or otherwise then:
- 17.4.1 risk in the Goods shall pass to the Buyer;
 - 17.4.2 the Goods shall be deemed to have been delivered; and
 - 17.4.3 the Seller may store the Goods until delivery, whereupon the Buyer shall additionally be liable for all related costs and expenses of the Seller (including, without limitation, storage and insurance and additional carriage costs).
- 17.5 Notwithstanding condition 7.4, where delivery of the Goods is agreed by the Seller to be made to some other location than the Seller's place of business and the Buyer or, as the case may be, the Nominated Person is not present at the agreed location at the time of delivery but the Buyer or, as the case may be, the Nominated Person instructs the Seller to leave the Goods at the agreed location, the Seller shall send written notification to the Buyer that that Goods have been left at the agreed location and such written notification shall be conclusive evidence that the Goods have been delivered. For the avoidance of doubt the Goods shall be at the risk of the Buyer from the time that they are left at the agreed location.

- 17.6 Where delivery of the Goods is agreed by the Seller to be made to some other location than the Seller's place of business:-
- 17.6.1 the Buyer or, as the case may be, the Nominated Person must provide the Seller with a safe means of access to the place of delivery and the Seller is not obliged to use an unmade road or access way to deliver the Goods to the Buyer or, as the case may be, the Nominated Person; and
 - 17.6.2 except where agreed otherwise by the Seller, the Buyer or, as the case may be, the Nominated Person shall provide at its expense adequate and appropriate equipment and manual labour for unloading the Goods. If the Buyer or, as the case may be, the Nominated Person takes longer than 30 minutes to unload the Goods, the Buyer must pay the Seller's waiting charge.
- 17.7 If the Seller agrees to use an unmade road or access way to deliver the Goods to the Buyer or, as the case may be, the Nominated Person, the Buyer is responsible for and indemnifies the Seller against the loss of or any damage caused to the Goods and/or the delivery vehicle as a result of using that road or access way.
- 17.8 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract. The Goods may be delivered by the Seller in advance of the quoted delivery date on giving reasonable notice to the Buyer.
- 17.9 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- 17.10 The quantity of any consignment of Goods as recorded by the Seller upon despatch from the Seller's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.
- 17.11 The Seller shall not be liable for any non-delivery of Goods (even if caused by the Seller's negligence) unless the Buyer gives written notice to the Seller of the non-delivery within 2 days of the date when the Goods would in the ordinary course of events have been received.
- 17.12 Any liability of the Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Contract Price against any invoice raised for such Goods.

18 WASTE

- 18.1 The Buyer shall be solely responsible for the disposal of any waste arising from the Goods and will comply with all applicable laws, regulations and waste management licences relating to such waste. The Buyer agrees to indemnify the Seller against all costs, claims, liabilities and expenses incurred by the Seller arising from or in connection with any breach of this condition 8.1.

19 INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS

- 19.1 The Buyer shall fully indemnify the Seller and keep it indemnified at all times against all claims, damages, penalties or losses (including consequential loss) and all interest and legal and other professional costs and expenses incurred by the Seller or to which the Seller may become liable to pay with respect to any intellectual property infringement claim or other claim relating to Goods supplied by the Seller (including but not limited to unregistered or registered design rights, patents, copyrights or trademarks) arising from the Seller supplying the Goods to the specifications, designs or in accordance with the instructions of the Buyer.
- 19.2 If a payment due from the Buyer under condition 9.1 is subject to tax (whether by way of direct assessment or withholding at its source), the Seller shall be entitled to receive from the Buyer such amounts as will ensure that the net receipt, after tax, to the Seller in respect of the payment is the same as it would have been were the payment not subject to tax.

20 LIMITATION OF LIABILITY

- 20.1 Subject to conditions 11, the following provisions of this condition 10 set out the entire financial liability of the Seller (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- 20.1.1 any breach of these Conditions;
 - 20.1.2 any use made or resale by the Buyer of any of the Goods, or of any product incorporating any of the Goods; and
 - 20.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 20.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 20.3 Nothing in these Conditions excludes or limits the liability of the Seller:
- 20.3.1 for death or personal injury caused by the Seller's negligence; or
 - 20.3.2 under section 2(3), Consumer Protection Act 1987; or
 - 20.3.3 for any matter which it would be illegal for the Seller to exclude or attempt to exclude its liability; or
 - 20.3.4 for fraud or fraudulent misrepresentation.
- 20.4 Subject to condition 20.2 and condition 20.3:
- 20.4.1 the Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the sum of £2,000,000; and
- 20.4.2 the Seller shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract; and
- 20.4.3 the Seller shall not be liable to the Buyer as a result of or relating to efflorescence or variation in colour, shade, grading and texture of the Goods from samples or other Goods previously supplied or other Goods supplied pursuant to the Contract.

21 DEFECTS

- 21.1 The Seller shall not be liable for any defect in the Goods unless:
- 21.1.1 the Buyer gives written notice of the defect to the Seller within four days of the time when the Buyer discovers or ought to have discovered the defect;
 - 21.1.2 the Seller is given a reasonable opportunity after receiving notice pursuant to condition 11.1(a) of examining such Goods and the Buyer (if asked to do so by the Seller) returns such Goods to the Seller's place of business at the Seller's cost for an examination by the Seller to take place there. The Buyer shall not return the Goods to the Seller without the prior agreement of the Seller.
- 21.2 The Seller shall not be liable for any defect in the Goods if:
- 21.2.1 the Buyer makes any further use of such Goods after giving notice pursuant to condition 11.1(a);
 - 21.2.2 the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, use or maintenance of the Goods or (if there are none) good trade practice; or
 - 21.2.3 the Buyer alters such Goods, including without limitation, sealing the Goods, without the written consent of the Seller.
- 22.2 Subject to condition 11.1 and condition 11.2, should any Goods contain defects the Seller shall, at its option, repair or replace such Goods or refund the price for such Goods at pro rata the Contract Price.

23 BUYER'S INSOLVENCY OR BREACH

- 23.1 The Seller shall have the right to suspend or cancel further deliveries or end the Contract, if the Buyer
- 23.1.1 is dissolved, becomes insolvent, fails or is unable or admits in writing its inability to pay debts, or has instituted against it proceedings seeking a judgment of insolvency; or
 - 23.1.2 has a resolution passed for its winding up or liquidation; or
 - 23.1.3 seeks, or becomes the subject of the appointment of an administrator, receiver, administrative receiver or similar official in respect of its assets; or
 - 23.1.4 suffers similar proceedings in any jurisdiction; or
 - 23.1.5 becomes the subject of, or makes an application for, any bankruptcy proceedings or any individual voluntary arrangement in respect of the Buyer or enters into any composition with its creditors or any of them; or
 - 23.1.6 fails to make due payment in the time and manner specified by Contract; or
 - 23.1.7 fails to observe or perform any of its other obligations under the Contract or any other contract between the Seller and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade; or
 - 23.1.8 the Buyer encumbers or in any way charges any of the Goods.

24 CANCELLATION

- 24.1 Subject to condition 13.2, where the Buyer is a "consumer" and the Contract is a "distance contract" for the purposes of, and as defined in, the Consumer Protection (Distance Selling) Regulations 2000, the order for the Goods may be cancelled within 7 working days after the day the Goods are delivered. The Goods must either then be returned to the Seller's place of business, at the Buyer's expense, or requested to be collected; in the later case the Buyer will be liable to pay the Seller's cost of collection.
- 24.2 No right to cancel exists under condition 13.1 where the Goods are made to the Buyer's specification or are personalised or where the Buyer has altered the Goods, including, without limitation, sealing the Goods.

25 GOVERNING LAW

- 25.1 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English Law, and save where the Seller elects otherwise shall be subject to the exclusive jurisdiction of the Courts of England.

26 FORCE MAJEURE

- 26.1 The Seller reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the carrying on of its business due to circumstances beyond the reasonable control of the Seller including, without limitation, acts of God, Government actions, war or national emergency, riot, civil disputes (whether or not relating to either party's workforce), or restraint or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials provided that, if the event in question continues for a continuous period in excess of 120 days, the Buyer shall be entitled to give notice in writing to the Seller to terminate the Contract.

27 GENERAL

- 27.1 Any notices required or permitted to be given by the other party under the Conditions shall be in writing addressed to the party at its registered office or principal place of business or such other address as may have been notified to the other party giving them notice or, if sent by fax, to such fax number as may have been notified to the other party.
- 27.2 If the Buyer provides to the Seller an e-mail address for communication purposes the Seller reserves the right to communicate with the Buyer by e-mail and the Buyer agrees that all agreements, notices and other information supplied by this means shall satisfy any legal requirements regarding the need for such communications to be in writing.
- 27.3 Communications shall be deemed to have been received:
- 27.3.1 if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
 - 27.3.2 if delivered by hand, on the day of delivery; or
 - 27.3.3 if sent by fax or e-mail on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 27.4 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
- 27.5 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 27.6 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a justification of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 27.7 Any provision of the Contract (including these Conditions) is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 27.8 The Buyer may not assign the Contract. The Seller may assign the Contract or any part of it to any person, firm or company.
- 27.9 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 27.10 Words in the singular include the plural and in the plural include the singular.
- 27.11 Condition headings do not affect the interpretation of these Conditions.
- 27.12 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.