

# TERMS AND CONDITIONS



## 1. GENERAL

The following conditions issued by stoneCIRCLE ('the Company') apply to any contract of which these conditions form part to the exclusion of any conditions of order or purchase of the Customer or any other standards, specifications, conditions or particulars of, or adopted by, the Customer, unless expressly accepted in writing by the Company as part of the contract.

'Customer' means the addressee overleaf, or where the addressee is an architect under a building contract, either the main contractor or the architect's principal.

'goods' means the subject matter of the contract including (but not limited to) raw materials, finished or semi-finished materials or articles etc. and whether one or a number of items, whether or not identical or similar.

'works' means the installation or fixing of the goods on site.

'stoneCIRCLE' is a division of B&V Masonry.

## 2. QUOTATIONS

(1) No order placed in response to the Company's quotation will be binding unless and until accepted by the Company in writing.

(2) Quotations submitted by the Company shall remain open for acceptance for a period of 14 days from the date of the quotation, unless otherwise specified.

## 3. PRICES

(1) Where goods are sold by reference to the Company's published price list, the price payable for the goods shall be the ruling price as published in the price list current at the date of acceptance of the Customer's order by the Company.

(2) In other cases the price quoted or stated in the contract is based on the cost to the Company of materials, fuel and power, transport and labour at the date of the quotation or acceptance of the order (whichever is earlier). If at the date of dispatch of the goods from the Company's premises and/or completion of the works there has been any increase in all or any of such costs, the price payable for the goods or works may at the request of the Company be increased accordingly. Where goods are imported, if at the date of dispatch of the goods from the Company's works there has been any fluctuation in any such costs due to currency exchange rates, the price payable for the goods will be varied accordingly.

(3) Where the price for the goods and/or works is varied in accordance with this condition the price as varied shall be binding on both parties and shall not give either party any option of cancellation.

(4) There shall be added to the price for the goods and/or works any valued added tax and any other tax on duty relating to the manufacture, transportation, export, import, sale or delivery (where specified in the contract) of the goods and any charges of a District Surveyor or Local Authority in respect of the works (whether initially charged on or payable by the Company or the Customer).

(5) All goods are sold 'ex works' unless otherwise stated.

(6) The risk in the goods passes to the Customer when either:

(i) the goods are dispatched from the Company's premises; or

(ii) the goods are stored by the Company in accordance with condition 13.

(7) The Company accepts no responsibility for any damage, shortage or loss in transit. Claims for any damage, shortage or loss in transit should be made on the carrier and any conditions imposed by the carrier in relation to claims for damage, shortage or loss in transit should be complied with. If the Company arranges or undertakes the carriage, freight, insurance and any other transport costs beyond the point of delivery, such costs shall be for the Customer's account and shall not affect the provisions of the contract as to the passing or risk.

## 4. TERMS OF PAYMENT

(1) Prices quoted are net. Payments under the contract are due on acceptance of the Customer's order by the Company. Subject to sub-clause (2) below the Company may provide goods or services on credit and unless otherwise expressly agreed payments under the contract are due not later than 28 days from the date of the invoice. The Company reserves the right to charge interest on overdue accounts at the rate of 4% per annum above National Westminster Bank PLC base rate.

(2) On submission to the Company of two current trade references and a current bank reference, the Company shall notify the Customer of its credit limit for the Company's current accounting period. No goods or works will be supplied on credit before the issue of a credit limit, and in any accounting period the Customer's credit shall not exceed the Customer's credit limit. The Company reserves the right to alter

the Customer's credit limit or withdraw the Customer's credit facility immediately on written notice.

(3) Failure to pay for any goods works or delivery shall entitle the Company to suspend further deliveries or work both on the same order and any other order from the customer without prejudice to any other right the Company may have, and the Customer shall be liable for all costs and loss of profit as a result of non-completion of such orders.

(4) Where requested in writing by the Company, the Customer shall pay the Company a deposit before any goods are produced or works commenced, such deposit to be deducted from the contract price on completion.

## 5. RETENTION OF TITLE

(1) Notwithstanding condition 3(6) above legal and equitable ownership of the goods shall remain with the Company until payment for the goods has been received by the Company in full or until the Customer sells the goods to its customers by way of a bona fide sale at full market value whichever shall first occur.

(2) At any time prior to full payment (whether or not payment is then overdue) the Company may (without prejudice to any of its other rights) retake possession of the goods or any part thereof any may enter on the Customer's site/premises by its employees or agents for that purpose.

(3) Until the time of full payment for the goods the Customer shall be a bailee of the goods on behalf of the Company and shall store the goods in such a way that they are separately identifiable, nevertheless prior to the time of full payment the Customer is entitled to use the goods in the normal course of its business or to sell the goods to third parties in the normal course of its business: the Company shall have the right to trace the proceeds of sale according to the principles in re Hallett's Estate (1880) 13ch D 696.

(4) The Customer's right to use the goods or to resell them prior to full payment may be terminated forthwith by written notice given by the Company to the Customer and shall automatically terminate with or without such notice if the Customer being an individual becomes bankrupt or insolvent or has a receiving Order made against him or compounds with his creditors or being a company is wound up, becomes insolvent or has a Receiver or Administrator appointed.

## 6. DELIVERY AND COMPETITION DATES

(1) The delivery of performance dates specified in the quotation or contract are approximate only and unless otherwise expressly stated, time is not of the essence for delivery. The Company will not be liable in any circumstances for the consequences of any delay in delivery or failure to deliver if the duration of the delay is not substantial or if the delay or failure is due to an act of God, fire, inclement or exceptional weather conditions, industrial action (whether at the Company's premises or elsewhere), hostilities, breakdown, shortages of labour, materials, power or other supplies, late delivery or performance or non delivery or non-performance by suppliers or sub-contractors, governmental order or intervention (whether or not having the force of law) or any other cause whatever beyond the Company's control or of an unexpected or exceptional nature.

(2) No delay shall entitle the Customer to reject any delivery or cancel or repudiate the contract.

(3) The Company cannot undertake to meet any schedule of Customer's requirements supplied after the date of the contract and will have no liability whatever for the delay in meeting or failure to meet all of any of such requirements, (howsoever such failure or delay may arise) unless and to the extent that the Company expressly agrees to meet such requirements, in which event paragraph (1) of this Condition shall apply.

## 7. DELIVERY CONTRACTS

(1) Any delivery charges quoted are based on full loads with delivery being made during the normal working week. Split loads, part loads, mechanical off-loading and weekend or Public Holiday deliveries will be made where requested by the Customer in writing and will be charged to the Customer extra. Current rate demurrage charges will be levied where delivery vehicles are retained on site for a time exceeding one hour for the purpose of unloading.

(2) Unless otherwise expressly agreed, delivery of the goods shall be to the place of installation/fixing and the Customer shall be responsible for the unloading of the goods. The company shall have no liability in respect of costs arising from the Customer taking delivery or unloading the goods.

(3) Delivery of the goods will only be made on roads or hard standing capable of properly supporting the fully loaded vehicle.

(4) Where the Company delivers the goods, the Customer shall be de-

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emed to have accepted the same unless the Company is notified in writing of any claim for shortages or damages within 3 working days of delivery, and the liability of the Company is hereby excluded in respect of all claims made after this period.

## **8. INSTALLATION AND WORK ON SITE**

- (1) The contract does not include the installation of any goods or equipment unless specified in the contract.
- (2) Where installation is included in the contract, prior to commencement of works on site it is the responsibility of the Customer to advise the Company of prevailing site conditions and ensure that all base lines or commencement points for installing the goods are true level and clean to allow for a standard bed joint and that the structures into which the goods are to be fitted are true and plumb so as to enable fixing without 'backing off' or any adjustment or packing of fixing cramps.
- (3) The Company shall certify in writing that the site conditions are fit and proper for the works to proceed and the Customer shall be liable for and indemnify the Company in respect of all costs arising from or incidental to the Customer's instructions to commence the works on a qualified certification or without such certification.
- (4) The Customer will at its own expense make available on site clean sand, cement, lime, water, cement mixers, diamond masonry blades, secure storage space, welfare and mess facilities for the Company's employees, use of a telephone, a 230/240 volt or 110 volt electrical supply with a point suitable for portable electrical tools within 10 metres of each work area, all necessary scaffolding and such other facilities and materials as the Company shall reasonably require and be responsible for the clearance of all rubbish in the installation area during continuance of the works. If the Customer does not provide any of these facilities, services or materials at its own expense, the cost thereof the Company (including an appropriate allowance for profit) will be charged extra to the Customer. The Customer shall ensure that the work can be carried out uninterrupted during normal working hours, and that no work is carried out except by the Company's employees within the scaffolding area. Any overtime or additional costs caused by any interruption or delay not attributable to the Company or its employees shall be charged extra to the Customer.
- (5) The Customer shall be responsible for providing a safe and healthy working environment for the Company's employees and the Company's sub-contractors and their employees and shall bear (or reimburse the Company against) any loss, damage or compensation due to any person in relation to any death or personal injury or destruction or damage to property except to the extent that the same is due to the negligence of the company and the Customer shall except as aforesaid keep the Company fully indemnified in respect thereof.
- (6) All reasonable care will be taken by the Company during the execution of the contract but the Company shall not in any circumstances be liable to the Customer for, or to indemnify the Customer against, any damages, compensation, costs, expenses or losses or other liabilities whether direct or consequential, and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by law.

## **9. DRAWINGS AND INFORMATION**

- (1) The customer shall at his own expense provide the Company with all drawings, details, schedules, cutting lists, bills of quantities and all other necessary documents & information to enable the Company to manufacture the goods and execute the works and, unless otherwise expressly agreed, the Company shall not be responsible for the provision of drawings for the purpose of design, working, or installation of the goods or otherwise.
- (2) The Company is entitled to assume that all drawings, description, specifications and other information supplied by the Customer to the Company; whether written or verbal, is in all respects complete, accurate and entirely suitable for the Customer's requirements.
- (3) Unless otherwise expressly agreed, the Company shall have no responsibility for the performance, suitability or durability of any goods or any materials or workmanship comprised therein to the extent that the same is manufactured fitted or installed in accordance with the Customer's designs, drawings, standards or specifications.
- (4) Unless the quotation or contract expressly provides for the installation of the goods, the Company shall not be responsible for installation work or the supervision thereof.
- (5) Any extra work, requirement or modification in relation to the goods or their installation which is not expressly specified in the contract or which is expressly excluded by these conditions and which the Customer requests shall be charged extra (including an appropriate allowance for profit) to the extent that such extra work, requirement or modification increases the cost to the Company of performance of the contract.

## **10. STATUTORY APPROVALS**

- (1) The Customer shall ensure that planning permission, building regulations and any other necessary approvals have been obtained and are valid and subsisting and that any conditions to which such permissions or approvals are subject have been complied with and that the structure of the building or site concerned is suitable for the works.
- (2) The Company is entitled to assume that the Customer has complied with sub-clause (1) of this condition, and Company may require the Customer to confirm this in writing before the works commence.

## **11. QUALITY AND STANDARDS: LIMIT OF RESPONSIBILITY**

- (1) Any descriptions of finish in relation to the goods are deemed to be those in British

Standard 5390 1976. Where goods are ordered by size, a tolerance of plus or minus 6mm shall be deemed acceptable unless the specification states otherwise. For invoice purposes all fractions are charged as a full unit of measurement.

- (2) The goods are sold on the express understanding that they are of natural stone which is subject to natural formation characteristics, variation, colour, markings and moisture content, and accordingly all conditions and warranties relating to the quality or fitness for any particular purpose of the goods implied by law are hereby excluded except to the extent that such exclusion is prohibited by any rule of law. In some instances industry standard techniques may be used to fill or glue certain marbles to improve the stability and quality of the product.
- (3) The Company accepts no liability in respect of claims in relation to the goods, which have not been notified by the Customer in writing to the Company within 3 working days of delivery at the installation site.
- (4) The Company's liability in respect of any claim in relation to the goods or works howsoever arising (whether or not involving negligence on the part of the Company) shall in all cases be limited to 10% of the contract price except that the Company shall not in any circumstances be liable for any consequential loss arising from such claim (save to the extent that such exclusion is prohibited by any rule of law).
- (5) The inclusion and position of all and any joints is wholly the decision of the Company.

## **12. SUB-CONTRACTING**

- (1) the Company will enter into sub-contracts with the Customer on the standard forms of building sub-contract (unamended) as sub-contractors to a main contractor for works forming part of a main contract PROVIDED THAT these terms and conditions shall be incorporated into such sub-contracts and shall prevail over the terms of such sub-contract where the terms are inconsistent or silent on any matter.
- (2) Prior to entering into a sub contract the Customer shall provide the Company with a schedule detailing duration, start and finish dates, all attendances, price, nature and extent of the sub-contract works. The Company shall not commence the works and shall not be liable for any costs whatsoever on the basis of a letter of intent from the Customer.
- (3) The Company reserves the right to sub-contract the whole of any part of the contract including delivery (if applicable).

## **13. DELAYED ACCEPTANCE**

If for any reason the Customer is unable or refuses to accept delivery of the goods when the goods are due and ready of delivery the Company may arrange storage of the goods and the Customer shall be liable to the Company for the reasonable costs (including insurance) of such storage. This provision is without prejudice to any other right which the Company may have in respect of the Customer's failure to take delivery of the goods or to pay for them in accordance with the contract.

## **14. TILES AND ACCESSORY ITEMS.**

- (1) Information  
All drawings, specifications, descriptions and catalogues, samples etc supplied by The Company are intended merely to give a general description of goods and should not be relied upon as being a fact or warranty of the goods. We advise that all tiles should be mixed prior to installation in order to obtain the best possible harmony.
- (2) Replacements  
Any defect in goods can result in nothing more than a replacement. Replaced goods become the property of The Company
- (3) Returned Goods  
All goods that are returned are subject to the prior approval of The Company and must be common stock items and undamaged. If agreed, a credit note for 75% of the material order value will be approved.
- (4) Liability  
The Company cannot be held responsible for tiles/accessories once they have been installed or exposed to heat or frost.

## **15. INSURANCES**

The Company is covered by employer's liability and public liability insurances. The extent of cover available will be disclosed on the written request of the Customer.

## **16. VARIATIONS**

No variations to the Contract will be binding unless and until accepted by the Company in writing.

## **17. APPLICABLE LAW AND ARBITRATION**

- (1) The contract shall in all respects be governed by and construed in accordance with English law and the Customer hereby submits to the non-exclusive jurisdiction of the English Courts.
- (2) The Company shall have the option, on giving written notice to the Customer to require any dispute arising out of the contract to be submitted to a single arbitrator in accordance with the provisions of the Arbitration Act 1950, as amended by the Arbitration Act 1979, such arbitrator to be appointed jointly by the Company and Customer or failing agreement within 14 days of a written request to agree such an arbitrator from either party, to be appointed by the President or Vice President for the time being of the Royal Institute of Chartered Surveyors on the written request of either party.