

Conditions of Sale

Myers Group – Terms and Conditions of Sale

1. Definitions

In these conditions of sale “we” or “us” means the member company of the Myers Group specified in the contract for the sale of goods to you; “you” means the person, firm or company who purchases the goods from us; and “our” and “your” shall be construed accordingly.

2. Application of Terms

2.1 These terms apply to all sales of goods by us to the exclusion of all other terms (including any which you purport to apply) unless expressly agreed in writing in advance by a Director of the Myers Group.

2.2 Each order or acceptance of a quotation for goods by you shall be deemed to be an offer by you to buy goods subject to these terms. No order or acceptance of a quotation by you shall be deemed to be accepted by us until written confirmation of order is issued by us or (if earlier) we begin to process your order. We shall be entitled to withdraw any quotation at any time.

2.3 Any estimate of quantities needed, advice as to the suitability of any goods for a particular purpose and any plan or measurement given by us is given for guidance only (based on your information) and without liability on our part. No allowance is made by us for additional materials, wastage or installation. You must satisfy yourself that all goods and/or services ordered are correct.

2.4 Any error or clerical omission in any sales literature, quotation, price list or other document issued by us may be corrected without liability on our part.

3. Description of Goods

3.1 The quantity and description of the goods are set out in our quotation or confirmation of order.

3.2 All drawings, descriptive matter, specifications descriptions and illustrations are issued or published for the sole purpose of giving a general idea of the goods described therein and shall not form part of the contract.

3.3 Where fine or special tolerances are required in the goods supplied beyond those generally accepted in the building trade, no liability shall attach to us unless such tolerances are notified in writing to us at the time of order and we have acknowledged in writing that we are prepared to accept such order.

4. Price and Other Charges

4.1 Unless we otherwise agree in writing, the price payable for the goods and/or services shall be the price applicable on the date of delivery or deemed delivery for goods.

4.2 The price for the goods shall be exclusive of any value added tax, which shall be payable by you at the rate applicable.

4.3 We may at any time after acceptance of an order, but prior to delivery, revise the price payable for the goods to take account of increases in costs including, without limitation, costs of any goods or materials, carriage, or the increase or imposition of any tax duty or other levy.

4.4 We may charge for any special packaging to cover the cost of labour and materials. We will charge for pallets, crates and cases. Where we agree to collect such pallets, crates and cases, you shall make such items available for collection on request.

5. Delivery

5.1 Delivery shall occur when you take possession of the goods at our premises or where we agree to deliver, when the goods are ready for unloading at the delivery address.

5.2 Any dates and times we specify for delivery of the goods are an estimate. We shall not be liable to you if we do not deliver on or at any particular date or time. Time for delivery shall not be made of the essence by notice.

5.3 If you fail to accept delivery of any goods when they are ready for delivery, or we are unable to deliver the goods because you have not provided appropriate instructions, documents or consents, we shall be entitled to immediate full payment and risk in the goods shall pass to you. We may store such goods until delivery and you shall be liable for all related costs and expenses arising from such non delivery including transport and storage costs. If you fail to accept delivery of the goods within 3 months of the date of contract, we may sell or dispose of those goods (whether or not you have paid for them). Storage or disposal costs shall be recoverable from you. Any net proceeds of any sale shall be held on trust for you. Demurrage shall

be charged at an appropriate rate where unloading is unduly delayed.

5.4 We will deliver to site provided that there is a suitable road to the point where delivery is requested. If no such road exists, delivery will be made to the nearest point at which, in the driver's opinion, the vehicle can safely and lawfully unload. Except where we use a vehicle-mounted crane/fork truck, you shall be responsible for safely and lawfully unloading the goods and shall provide all necessary labour and equipment. We may charge you an additional fee if you delay in taking delivery of the goods when tendered. If any goods, packaging or container has been delivered and deposited, whether on the public highway or elsewhere, you shall be responsible for all steps that need to be taken for the protection of persons or property in relation to such goods, packaging or containers and shall indemnify us in respect of all or any costs, claims, losses or expenses which we may incur as a result of such delivery.

5.5 We shall not be liable for any shortages in quantity delivered unless you give written notice to us of such shortages within 24 hours of delivery. In any event our liability shall be limited to making good the shortfall or (at our option) issuing a credit note or refund at the pro rata contract rate against any invoice raised for such goods.

5.6 We may deliver the goods by separate instalments. Each instalment shall be a separate contract and cancellation or termination of one instalment shall not entitle you to cancel any other instalment.

5.7 Any query about delivery shall be made as soon as possible and in any event within twenty eight days of the date when the goods would in the ordinary course of events have been delivered else the goods shall be deemed to have been delivered in accordance with the contract.

5.8 We shall not be responsible for taking back any non-chargeable packaging/pallets.

5.9 The cost of any testing of the goods that we deem is necessary whether or not in your presence, will be charged to you, unless prior written agreement has been obtained from us. If you (or your representative) delay in attending such tests, after seven days' notice of the place and time of such tests, the tests will proceed in your absence and shall be deemed to have been carried out in your presence.

6. Passing of Risk and Property

6.1 The goods are at your risk from the time of delivery or deemed delivery.

6.2 Ownership of the goods shall not pass to you until we have received in full (in cleared funds) all sums due to us in respect of the goods and all other sums which are or become due to us from you on any account or (if later) the time of delivery.

6.3 Until ownership of the goods has passed to you, you shall hold the goods on a fiduciary basis as our bailee and store the goods (at no cost to us) in satisfactory condition and in such a way that they remain readily identifiable as our property and you shall tell us immediately where the goods are situated.

6.4 Subject to 6.5, you may resell the goods before ownership has passed to you provided that any sale shall be effected in the ordinary course of your business at full market value and you shall deal as principal; you shall hold all proceeds of sale on trust for us and assign to us all rights and claims which you may have against your customer arising from such sales until full payment is made.

6.5 Your right to possession of, and authority to sell, the goods shall terminate immediately (and you shall immediately deliver the goods to us at your cost and risk) if we notify you to such effect or on the happening of any event set out in 9.3 (whichever is earlier) and you shall immediately notify us in writing upon the happening of any such event.

6.6 You grant to us and our agents an irrevocable license at any time to enter any premises (with and without vehicles) where the goods are or may be stored in order to inspect them or, where your right to possession has terminated, to recover them.

6.7 Where we are unable to determine whether any goods are the goods in respect of which your right to possession has terminated, you shall be deemed to have sold all goods of the kind sold by us to you in the order in which they were invoiced to you.

7. Payment

7.1 Payment for goods supplied on a credit account shall be due not later than the last day of the month following the month of delivery or deemed delivery of the goods. If you default in making payment, the entire balance of your account shall be payable immediately and we may charge interest, together with costs and expenses, in accordance with 7.4.

7.2 For non-credit account purchases, payment shall be with the order.

7.3 Time for payment shall be of the essence. You shall make all payments in pounds sterling and in full without any deduction.

7.4 If you fail to pay us any sum due (and whether or not any part of your account is subject to query), we may, in addition to our rights under 9.3, appropriate any payment made by you to such of the goods and/or services (or such goods or services supplied under any other contract between you and us) as we may think fit; and you shall be liable to pay us interest on such sum at the annual rate of 8% above the base lending rate from time to time of the Royal Bank of Scotland Plc, accruing on a daily basis, or, at our option, interest in accordance with the Late Payment of Commercial Debts (Interest) Act 1888 (as amended and supplemented by the Late Payment of Commercial Debts Regulations 2002) from the due date for payment until payment is made in full, whether before or after any judgment, together with all costs and expenses incurred by us in recovering sums due or exercising our rights under this provision, including our debt recovery fees at a rate of 6% of the total amount outstanding.

7.5 Credit accounts may only be opened at our discretion. We may set a maximum amount of credit allowable upon each account and withdraw credit facilities without explanation. You agree that we may obtain, retain, and provide to third parties, references as to your financial standing. Any change in the constitution of your organisation must be notified to our Head Office in writing prior to it occurring in order that credit facilities to the reconstituted organisation may be put in place, subject always to our discretion and our confirmation in writing. Until new credit facilities are agreed, the existing entity and any new entity shall be jointly and severally liable for any debt due to us.

7.6 We shall be entitled at all times to set off any debt or claim of whatever nature which we may have against you against any sum due from us to you.

8. Liability

8.1 If any goods or services are defective due to defective workmanship or material, we shall (at our option) repair or replace such goods (or the defective part) or refund the price of such defective goods provided that:

(a) you give us written notice of the defect within seven days of the date of delivery or, in the case of a defect which is not discoverable upon reasonable examination, within seven days of the time when you discover or ought to have discovered the defect (and in any event within

twelve months from the date of delivery or completion of the services);

(b) we are given a reasonable opportunity after receiving notice to examine such goods and/or services (in situ) and (if asked to do so by us) you return such goods to our place of business for the examination to take place there;

(c) you do not make any further use of such goods after giving such notice;

(d) the defect is not due to willful damage, negligence (other than ours), fair wear and tear, alteration or repair of such goods without our prior written consent or incorrect storage, application, movement, installation, commissioning, use or maintenance of the goods (other than by us); and

(e) the defect is not due to any act or omission of you, your agents or contractors.

8.2 Our entire liability for defective goods and services is set out in 8.1 and in particular we shall not be responsible for either the cost of removing the goods from any place where they are installed or fixed (or making good the place after removal) or for the cost of installing or fixing any repaired or replacement goods unless due to our defective service.

8.3 On request, we will provide information about any manufacturer's guarantee offered and available to you in respect of the goods but we are not legally responsible for any obligation under manufacturer's guarantees. Where the goods contain a warranty or guarantee offered by us please refer to the special conditions applicable on our website or available upon request.

8.4 Save as expressly set out in these terms, all warranties and other terms implied by statute or common law (save for the term implied as to title) are, to the fullest extent permitted by law, excluded from the contract.

8.5 Our 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 contract price.

8.6 We shall not be liable to you for any pure economic loss, loss of profit, loss of business, depletion of goodwill or loss of anticipated savings, in each case whether direct, indirect or consequential, or any other indirect losses whatsoever and howsoever caused.

8.7 Nothing in these terms excludes or limits our liability for (a) death or personal injury caused by our negligence, (b) fraud or fraudulent

misrepresentation; and (c) any other matter which it would be illegal for us to exclude.

8.8 Where goods are manufactured in compliance with any designs, specifications or drawings supplied by you or your customer, you shall indemnify us against all proceedings, costs, claims, losses or demands in respect of any infringement or alleged infringement of any intellectual property rights whatsoever of third parties in any part of the world.

9. Cancellations and Returns

9.1 We may, at our discretion, accept or reject the return of any goods not required. Any such return shall be on such terms as we specify (minimum 25% for product supplied by Johnsons Wellfield Quarries) and in particular we may charge you a handling fee and all costs incurred on cancelled orders.

9.2 Where you are a “consumer” under a “distance contract” (both as defined in the Consumer Contracts (Information, Cancellation & Additional Charges) Regulations 2013) you may cancel a contract within fourteen days after the date the goods are delivered. You must return the goods to the branch from which they were delivered or request us to collect the goods, at your cost. This term shall not apply to any goods specially obtained or made for you or which are liable to deteriorate or expire rapidly. Any refund will only include standard delivery charges (where relevant).

9.3 We shall be entitled to cancel or suspend a contract if you fail to pay us any sum due pursuant to the contract (whether or not any part of your account is subject to query) or any of the following events occurs or we believe is likely to occur:

- (a) you have a bankruptcy order made against you or make an arrangement or composition with your creditors, or otherwise take a benefit for the relief of insolvent debtors; or
- (b) you convene a meeting of creditors or enter into liquidation; or
- (c) you have a receiver and/or manager, administrator or administrative receiver appointed over your undertakings or any part; or
- (d) a resolution is passed or a petition presented to any court for your winding-up or for the granting of an administration order in your respect, or any proceedings are commenced relating to your insolvency or possible insolvency; or
- (e) you suffer or allow any execution, whether legal or equitable, to be levied on your property or obtained against you, or
- (f) you are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1876

or you cease to trade; or

- (g) any event similar to the above occurs; or
- (h) you fail to observe or perform any of your obligations under the contract or any other contract between us and you; or
- (i) you encumber or in any way charge any of the goods.

10. Health and Safety

Certain goods supplied by us could, if incorrectly used, give rise to risks to health and safety. Safety information in respect of such goods is available and it is the responsibility of the customer to bring this to the attention of the user of the goods. Prior to delivery the customer shall take all necessary precautions and steps to ensure that upon delivery the products being delivered can be handled competently and safely. The customer will indemnify the Company against all claims of whatsoever kind and form whomsoever arising out of any use of the goods by the customer, its staff, agents, contractors or any general member of the public.

11. Waste

You will be responsible for the disposal of any waste arising from the goods and will comply with all applicable laws, regulations and waste management licenses relating to such waste. You will indemnify us against all costs, claims, liabilities and expenses arising from any breach by you of this provision.

12. Force Majeure

If the performance of the contract by the company shall be delayed by any circumstances or conditions beyond the control of the company (including the acts or omissions of our suppliers and subcontractors), then we may defer the date of delivery, cancel the contract or reduce the volume of the goods until such time as the cause of the delay shall no longer be present.

13. Compliance with Bribery Legislation

You agree that you will not, in connection with the goods or services to be supplied under this contract, bribe or attempt to bribe us, or any of our employees, agents or affiliates nor cause us to be in violation of any applicable bribery or anti money laundering laws. We may terminate the contract in the event of your breach of this clause. You shall indemnify us against all liabilities, costs, expenses, damages, claims, demands and losses suffered or incurred by us arising out of or in connection with any breach of this clause, whether or not the contract has been terminated.

14. Data protection

The company gathers and processes personal information in compliance with the General Data Protection Regulation (GDPR) as well as other relevant data protection regulations and laws. This is gathered and processed in accordance with our Privacy Notice which can be found on our website.

15. General

15.1 Any notices given pursuant to or in relation to the contract shall be in writing and addressed to the party concerned at its principal place of business or last known address. Any notice shall be deemed delivered two days after posting.

15.2 Any provision of the contract found to be invalid or unenforceable shall, to such extent, be deemed severable and the remaining provisions of the contract shall continue in full force and effect.

15.3 Failure or delay by us in enforcing any contract term shall not be construed as a waiver of any of our rights under the contract.

15.4 You shall not be entitled to assign or subcontract any of your rights or obligations under the contract.

15.5 Any dispute or claim arising in connection with the contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts, save that if you are domiciled in Scotland (within the meaning of the Civil Jurisdiction and Judgments Act 1872) then the contract shall be construed in accordance with Scottish law and shall be subject to the exclusive jurisdiction of the Scottish courts.