

**CONDITIONS FOR THE SUPPLY OF GOODS AND ASSOCIATED SERVICES BY RED MATERIALS LTD**

TO BE RETAINED BY THE CUSTOMER

- 1 In these conditions, "the Company" means Red Materials Ltd and "the Customer" means the individual, firm, company or other party with whom the Company contracts. "Supply" includes (but is not limited to) any supply under the contract of sale.
- a) No order in pursuance of any quotation or otherwise shall be binding on the Company and the Customer (herein called 'the Contract') shall be subject to these conditions and save as after-mentioned no representative or agent of the Company has the authority to agree any terms or make any representations inconsistent with them or to enter into any contract except on the basis of them; any such term representation or contract will bind the Company only if agreed in writing and signed by a director.
  - b) Unless otherwise agreed in writing by a director of the Company these conditions shall override any terms and conditions stipulated or referred to by the Customer in his order or pre-contract negotiations.
  - c) Any description contained in the Company's catalogues, samples, price lists or other advertising material is intended merely to present a general picture of the goods or services supplied by the Company and shall not form a representation or be part of the Contract. Unless expressly agreed in writing by the Company no sale by sample and the goods sold may not correspond with any sample supplied to the Customer.
  - d) In the event that the Company has not given a written acknowledgement of the Customer's order these conditions, provided the Customer shall have had prior knowledge of them, shall nonetheless apply to the Contract.
  - e) The Company reserves the right to correct any clerical or typographical errors made by its employees at any time.
- 2 The Customer warrants that it will pass on to all third parties to whom it may supply the goods all the information as to the use and safe handling of the goods as may have been passed onto the Customer by the Company.
- 3 Subject to any agreement to the contrary the Company's quotations are provisional and may be altered and to take account of any changes taking place between the date of quotation and the Company's acceptance of the Customer's order in the price of raw materials, rates of wages and other costs or in the Customer's instructions or in the event that the Customer orders parts only of the quantity referred to in any quotation.
- a) The Company shall be entitled to increase its prices at any time to take account of any increase in the cost to the Company of purchasing any goods or materials or working on or supplying any goods or services (including any such increase arising from any error or inadequacy in any instructions provided by the Customer or any modification carried out by the Company at the Customer's request) and such increased prices ruling at the date of dispatch by the Company shall be substituted for the previous Contract price. All prices quoted are exclusive of VAT and the Customer shall pay any and all taxes duties and other government charges payable in the respect of the goods and services.
  - b) Unless otherwise agreed in writing the Contract price only includes delivery during the normal working hours and normal working days of the Company. All deliveries made at the Customer's request (subject to the Company's agreement) on Public holidays, Sundays or Saturdays outside normal working hours will be subject to an additional charge.
  - c) The Company reserves the right to make an additional charge
    - i) If the supply of goods is requested by the Customer in quantities of less than a full load
    - ii) If for any reason (other than the default of the Company or its servants or agents) the delivery vehicle is unable to discharge its load within 15 minutes of arrival at the delivery point. Details of such charges are available on request.
  - d) The contract price is based on safe and easy access for laden vehicles of the Company or its agent and, where in the reasonable opinion of the Company, such access is not provided, the Customer shall be liable for any extra charges incurred by the Company.
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- a) Unless otherwise agreed in writing by the Company the Customer will take delivery of the goods at the nearest convenient unloading point to the Customer's premises or appropriate site and the Customer shall be responsible for notifying the Company of any restriction of access such as weight, width, height or unloading hours. If, at the Customer's request, the Company agrees to deliver the goods to a point off the public road the Customer will indemnify the Company against all losses, costs, expenses, actions and claims incurred by the Company arising from delivery at that point or as a result thereof including, but not limited to, damage to vehicles, kerbs, pipes, manholes, or any other property. The Customer will give the Company all necessary instructions and approvals for delivery. Offloading will be at the Customer's risk and the Customer will give proper assistance to the driver of the delivery lorry in unloading the goods.
  - b) The risk in goods which the Company agrees to supply shall, subject to any agreement in writing by the Company, pass to the Customer on the relevant date as defined in Sub-paragraph 5(a) hereof or the date (if earlier) on which, the goods being ready for delivery, delivery is postponed at the Customer's request.
  - c) The Company shall not be liable for any loss or damage sustained by any goods left with the Company howsoever caused and whether or not attributable to negligence on the part of any servant or agent of the Company.
  - d) Should the Company be delayed in or prevented from supplying the goods or services due to war, governmental or parliamentary restrictions, strikes, lock-outs, fire, floods, explosions, labour disturbances, trade disputes, damage to or destruction of goods, breakdown of machinery, shortage of labour or raw materials or Act of God or due to any other cause whatsoever beyond the control of the Company, the Company shall be at liberty to cancel or suspend the order placed by the Customer without incurring liability for any loss or damage arising therefrom.
  - e) While the Company will endeavour to supply the goods or services by any date or within a period agreed upon, such dates and periods are estimates only given in good faith and the Company will not be liable for any failure to supply by such a date or within such a period. Moreover, the Company shall be entitled to defer supply until any monies due from the Customer have been received.
- 5 For the purposes of this paragraph the goods shall mean the whole or any instalment of the goods which the Company has agreed to supply or to which the Company has agreed to carry out the work and the relevant date shall be the date on which
- i) the Company despatches the goods or
  - ii) the Customer takes delivery of the goods at the Company's premises or
  - iii) the Customer defaults in their obligation under sub-paragraph 4 (a) hereof whichever shall first occur or
  - iv) (in the case of services) the services or any part thereof are completed.
- b) Unless otherwise specified in writing by the Company payment shall be made by the Customer net cash not later than 30 days after the relevant date.
  - c) Time for payment shall be the essence of the Contract. Without prejudice to any other rights of the Company interest will be payable on all overdue amounts at Bank base rate plus 4% and for the purpose of paragraph 6 hereof the full purchase price of goods or services shall include any interest payable hereunder.
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- a) If the Customer shall fail to make any payment when it becomes due or shall enter into any composition or any arrangement with his creditors or if being an incorporated company shall have an administrative receiver or administrator appointed or shall pass a resolution for winding up or a Court shall make any order to that effect or if there shall be any breach by the Customer of any of the terms and conditions hereof the Company may defer or cancel any further deliveries and treat the Contract as determined but without prejudice to its right to the full purchase price of the goods and services supplied and damages for any loss suffered in consequence of such determination.
  - b) Cancellation by the Customer will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the date of cancellation and all loss and damage resulting to the Company by reason of such cancellation will be paid by the Customer to the Company forthwith. Acceptance of such cancellation will only be binding on the company in writing.

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- c) A charge will be made for any costs incurred by the Company due to the suspension or deferment of any order by the Customer or in the event that the Customer defaults in collecting or giving instructions for the delivery of any goods.
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- a) No claim for damage in transit, shortage of delivery or loss of goods will be entertained unless the Customer shall have given to the Company written notice of such damage, shortage or loss within 3 days of receipt of goods or (in the case of total loss) of receipt of the invoice or other notification of despatch. The Company shall have no liability in respect of damage, shortage, or loss occurring while the goods are in the custody of an independent carrier. In any other case, the Company's liability, if any, shall be limited to replacing goods or (in its discretion) crediting the Customer with the Contract price thereof and it shall be a condition precedent to any such liability that the Customer shall if so requested have provided authority for the Company to inspect damaged goods within 14 days of such request. The Company shall have no liability for consequential loss arising out of such damage or loss as aforesaid.
  - b) Save as otherwise provided in these conditions the Company shall have no liability in respect of the state, condition or composition of the goods.
  - c) The Customer must satisfy itself that the goods are suitable for their required purposes and the Company gives no warranty that the goods are suitable for their required purpose.
  - d) In the event that any goods are delivered which either do not comply with an agreed specification or other description or representation or which are defective by reason of any error or failure in any work done by the Company (any such goods being hereafter referred to as "faulty goods") the Company's liability is limited to replacing or (in its discretion) crediting the Customer with the purchase price of the goods within 1 month of delivery to the Customer are found to be faulty goods PROVIDED THAT the Customer shall inspect all goods at the time of delivery and by accepting delivery shall be deemed to accept that the goods are not faulty in any way which such inspection ought to reveal. Conditions precedent to the Company's liability hereunder shall be that as soon as reasonably practical the Customer shall have given to the Company reasonable notice of the respects in which the goods are faulty and shall have provided authority for the Company's servants or agents to inspect them. The Company shall have no other or further liability in respect of any direct or consequential loss or damage sustained by the Customer arising from or in connection with the faulty goods.
  - e) Where the Company agrees to repair or replace goods in accordance with the foregoing provisions of this paragraph any time specified for delivery under the Contract shall be extended for such a period as the Company may reasonably require.
  - f) Save for such terms as may be implied in the Contract by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982, all conditions, warranties and other terms expressed or implied, statutory or otherwise, are expressly excluded, save insofar as contained herein or as expressly agreed by the Company in writing PROVIDED that if and insofar as any legislation or any order made there under shall make or have made it unlawful to exclude or purport to exclude from the Contract any term or shall have made unenforceable any attempt to exclude any such term, the foregoing provisions of this paragraph and the provisions of paragraph 10 will not apply to any such term.
- 8 No right of set-off shall exist in respect of any claims by the Customer against the Company unless such claims are agreed by the Company in writing and the Customer will not withhold any part of the payment which has become due to the Company for goods or services.
- 9 The following provisions shall apply to all contracts under which the Company agrees to carry out muck away services:
- a) Payment shall be made at the contract rate agreed prior to collection and confirmed on the Company's quotation for material taken away and it is a condition of the Contract that the Customer shall in all cases sign a conveyance note in respect of each vehicle at the time of loading.
  - b) In the event of the loading time in respect of the vehicle exceeds 15 minutes the Company shall be entitled to make an additional charge based on current day-work rates.
- 10 The following provisions shall apply to all Contracts under which the Company agrees to carry out haulage services on a day-work basis:
- a) In calculating the period of working time for which the payment is due the travelling time to and from the site (or, if greater, a period of 30 minutes for each journey) shall be included
  - b) If a vehicle is supplied and not used the working time (excluding travelling time) shall be deemed to be 4 hours.
  - c) If the vehicle is supplied and is only used for part of the day, the working time (excluding travelling time) shall be deemed to be 8 hours
  - d) The agreed hourly rate shall apply to all periods of overtime other than working on a Sunday, for which an additional rate may be charged.
  - e) The Company may add to the Contract price a reasonable charge for the mileage costs incurred in travelling to and from the site.
- 11 In the case of any Contract to which either paragraph 9 or 10 applies the Company shall indemnify the Customer in respect of direct damage to his property caused by any negligence on the part of the Company or negligence or wilful default on the part of any driver in the employment of the Company in the carrying out of the service PROVIDED THAT the Company's liability hereunder shall not exceed the total price payable under the Contract. Save as aforesaid or as otherwise provided in these Conditions the Company shall have no liability in respect of any direct or consequential loss or damage sustained by the Customer arising from or in connection with any default or failure in the performance of the Contract
- 12 The Customer warrants and undertakes that all waste will conform in all respects with the Particulars
- a) If so requested by the Customer or if the Company considers it appropriate, the Company shall take samples of waste for analysis prior to disposal. The Company reserves the right to charge the Customer for the analysis of such samples of waste. The results of any analysis undertaken by the Company shall not negate the responsibilities of the Customer to comply with condition a.
  - b) If upon analysis of a sample or receipt of waste, it is found not to conform with the particulars or to be of a kind the receiving site or the Company is not permitted by any licence, permit or exemption to accept, then the Company shall be entitled to refuse to accept the waste at the site without further liability or may accept the waste subject to approval by the licensing authorities and place upon such further conditions or charges as the Company may deem fit.
  - c) In the event of any explosion, fire, escape of noxious fumes or other harmful or untoward consequences occurring by reason of the transportation of the waste to or the disposal of the waste at the site, or in the event of the deposit of waste for which the Company is not permitted to accept by any Licence, Permit or Exemption or which is incorrectly deposited, the Customer shall bear and be liable for all costs, damages, costs and expenses of whatsoever kind, and shall indemnify and keep indemnified the Company against all loss and damage claims, demands, suits and liabilities suffered by and incurred by the Company in respect thereof to the extent that such occurrence was attributable to waste not conforming with the particulars of the Customer omitting to properly inform the Company of all information it is reasonable to assume would be relevant to the performance of services, or any other act of omission by the Customer in breach of its obligations under or in connection with the contract.
  - d) The Customer shall accept responsibility for any items (including Personal Effects) deposited by the Customer or third parties in the Waste prior to its final disposal at the site and shall fully indemnify the Company for any damage or loss caused by or to such items being deposited in the Wastes.
  - e) Title to the waste shall pass to the company at such time as it is discharged from the Customer, or its representatives', vehicle(s) at such locations within the receiving site as are designated by the Company, provided that there shall not have been any breach of the Customers obligations, undertakings or warranties in relation to the waste
- 13 Save as herein before provided and subject to the provisions of section 2 (j) of the Unfair Contract Terms Act 1977 the Company shall not be liable to the Customer for any damage or for any direct or consequential loss incurred by the Customer in consequence of any negligence on the part of the Company or negligence or wilful default on the part of the servants or agents in or in connection with the supply of any goods or the design or manufacture thereof or in the carrying out of any work or the provision of any information
- 14 The proper law of all contracts with the Company shall be English Law which shall govern in all respects the construction and effect of such contracts and these Conditions. The Customer agrees that in the event of any dispute arising out of the Contract or the performance thereof they will submit to the jurisdiction of the English Courts.