

FORTERRA BUILDING PRODUCTS LIMITED – FORMPAVE STANDARD CONDITIONS OF SALE



The Buyer's attention is drawn in particular to Condition 5 (Quality and Limit of Liability)

In these conditions, unless the context requires otherwise: "**Buyer**" means the company, firm, body or person purchasing the Goods supplied under this Contract; "**Contract**" means the contract between the Supplier and the Buyer for the sale and purchase of the Goods; "**Goods**" means the subject matter of the contract including (but not limited to) concrete products, materials, finished or semi finished materials or articles; "**Order**" means a purchase order in respect of the Goods and/or Services issued by the Buyer to the Supplier, together with all documents referred to in it; "**Special Products**" means any Goods not routinely manufactured by the Supplier; "**Services**" means work and/or services including design advice to be provided by the Supplier for the Buyer pursuant to or in connection with the Order; "**Supplier**" means Forterra Building Products Limited, registered office at 5 Grange Park Court, Roman Way, Northampton, NN4 5EA and any subsidiary of the Supplier by which the Goods are sold.

1. GENERAL

1.1 Each Order shall be deemed to be an offer by the Buyer to purchase the Goods subject to these Conditions. The Supplier's quotations are not binding on the Supplier and the Contract will only come into being upon the Supplier sending out a written acknowledgment of the Order (unless the Supplier in its absolute discretion waives this requirement) or (if earlier) delivery of the Goods. Where Goods are delivered pursuant to a verbal order the issue of a consignment note importing these conditions shall constitute the Contract.

1.2 The Contract will be subject to these conditions. The Buyer's terms and conditions appearing or referred to in the Order or otherwise shall have no effect. No variation or addition to these Conditions (including the Buyer's own terms) is effective unless expressly confirmed in writing by a director of the Supplier. Acceptance of delivery of the Goods or any quantity of them shall be deemed to be acceptance by the Buyer of these conditions.

1.3 Where Goods are to be supplied from stock, such supply is subject to availability of stocks at the date of delivery.

2. PRICE

2.1 The price stated in the Contract is based on taxes and levies and upon the cost to the Supplier of raw materials, fuel and power, transport and labour and all other costs at the date of acceptance of the Order or quotation (whichever is earlier). If at the date of despatch of the Goods from the Supplier's works or if at the date of carrying out the Services there has been any increase in all or any of such taxes, levies or costs; the Buyer shall pay any such amount as required in the absolute discretion of the Supplier upon the Supplier giving the Buyer written notice (including by email). Quotations in a currency other than sterling are based on the rate of exchange at the time of quoting and, unless otherwise stated, the price may be subject to revision up or down if any different rate of exchange is ruling at the date of invoice.

2.2 Where the price for the Goods or Services is varied in accordance with condition 2.1, the price, as varied, shall be binding on both parties and shall not give either party any option of cancellation. The varied price shall apply to all orders delivered after the date specified in the notice.

2.3 There shall be added to the price for the Goods or Services any value added tax and any other tax or duty relating to the manufacture, transportation, export, import, sale of delivery of the Goods or performance of the Services (whether initially charged on or payable by the Supplier or the Buyer) and the Buyer shall pay any such VAT or any other form of taxation imposed on the Goods.

2.4 The Supplier reserves the right to charge the Buyer where: (i) deliveries are made outside the Supplier's normal working hours; (ii) deliveries are in part loads rather than full loads; (iii) deliveries are made by crane discharge vehicles; (iv) after midday on the day before the due date for delivery the Buyer asks the Supplier to postpone the delivery to another day, and the Supplier in its absolute discretion agrees to postpone the delivery; (v) additional delay occurs after an allowance of 30 minutes being calculated from the time of arrival at the part of a metalled highway nearest to the point of unloading, and the time of completion of the discharge of such load. (vi) deliveries are made on Bank Holidays, Sundays and Saturday afternoons; and/or (vii) the Buyer purchases a materially smaller quantity of Goods than any quantity referred to in the quotation or Order (whichever is earlier).

2.5 All Goods to be supplied under a Contract by the Supplier must be accepted in full unless the Supplier expressly agrees in writing to any deductions or to difference in quantity. If the Buyer varies, cancels or refuses to accept delivery of an Order then the Buyer shall pay all additional costs that may be incurred by the Company.

3. PAYMENT

3.1 Subject to credit being approved in writing by the Supplier, accounts are due for payment not later than the 28th day of the month following the month of delivery by the Supplier to the Buyer otherwise payment must be received by the Supplier before delivery. Whether in relation to this Contract or other contracts between the parties, all payments shall be made without any right of (a) deduction, (b) abatement, (c) set off or (d) counterclaim provided that the Buyer having made payment shall be entitled to pursue any claim it may have against the Supplier under the Contract.

3.2 When deliveries are spread over a period, each consignment may be invoiced as despatched and each month's invoices will be treated as a separate account and be payable accordingly. Failure to pay any invoice in accordance with the foregoing terms or other terms specified in the Contract shall entitle the Supplier to suspend further deliveries and work both on the same order and on any other order from the Buyer without prejudice to the supplier's other rights.

3.3 The Supplier also reserves the right to charge interest on overdue accounts, such interest to be calculated on a day to day basis on the amount outstanding at the rate set by the then current Order made in accordance with Section 6 of the Late Payment of Commercial Debts (Interest) Act 1998 as amended from time to time.

3.4 The Supplier reserves the right (under this Contract or other contracts with the Buyer or any of its associated companies), where genuine doubts arise as to a Buyer's financial position or in the case of failure to pay for any Goods or Services or any delivery or instalment as aforesaid, or on the Buyer reaching or exceeding any agreed credit limit, to suspend

delivery or performance of any order or any part or instalment without liability, until payment or satisfactory security for payment has been provided.

3.5 Where Goods are to be delivered outside the United Kingdom, payment must be made against delivery of the Goods or shipping documents FOB UK post unless credit arrangements within the United Kingdom approved by the Supplier in writing have been made.

4. TITLE TO GOODS

4.1 Notwithstanding that risk in the Goods shall pass to the Buyer in accordance with condition 7, ownership of the Goods shall remain with the Supplier until payment in full has been received by the Supplier: (i) for those Goods; (ii) for any other Goods supplied by the Supplier to the Buyer and (iii) of any other monies due from the Buyer to the Supplier on any account.

4.2 If the Buyer fails to pay the contract price by the agreed date and until title to the Goods passes to the Buyer, the Buyer shall: (i) keep the Goods separately and readily identifiable as the property of the Supplier; and (ii) not attach the Goods to real property without the Supplier's consent. Any resale by the Buyer of Goods in which property has not passed to the Buyer shall (as between the Supplier and the Buyer) only be made by the Buyer as agent for the Supplier.

4.3 At any time before title to the Goods passes to the Buyer (whether or not any payment to the Supplier is then overdue or the Buyer is otherwise in breach of any obligation to the Supplier), the Supplier may (without prejudice to any other of its rights): (i) retake possession of all or any part of the Goods and enter any premises for that purpose (or authorise others to do so which the Buyer hereby authorises); or (ii) require delivery up to it of all or any part of the Goods and the Buyer shall indemnify the Supplier against all and any cost incurred in so doing.

4.4 The Supplier may, at any time, appropriate sums received from the Buyer as it thinks fit notwithstanding any purported appropriation by the Buyer.

5. QUALITY AND LIMIT OF LIABILITY

5.1 Subject to the terms herein, the Supplier will at its sole discretion replace or repair any Goods which are proved to be defective or otherwise not in accordance with the Contract ("Defective Goods") or are not of satisfactory quality or are not in accordance with any applicable British Standard or European Standard as accepted by the Supplier. In any event, the Supplier shall not be liable under this condition for any defect or failure in the Goods unless the Buyer notifies the Supplier writing within 10 working days of the Goods being delivered, and that a detailed claim, satisfactory to the Supplier, in writing of the defects is submitted to the Supplier within 28 working days of the Goods being delivered.

5.2 The Supplier will at its sole discretion reimburse the Buyer the reasonable cost of physically removing the Defective Goods as stated always subject to the limitations in conditions 5.1, 5.4 and 5.10 below.

5.3 Save as specified in condition 5.1 the Supplier shall not be under any other liability to the Buyer whether in contract, tort (including negligence or breach of statutory duty) or otherwise for any form of damage, loss, cost or expense, whether direct or indirect, consequential, physical or economic (including but not limited to loss of profit and liquidated and/or unliquidated damages attributable to delay and/or disruption), which arises out of or in connection with the supply of the Goods or their use by the Buyer.

5.4 Without prejudice to the notification requirements set out above (which are conditions precedent to any valid claim under this warranty), no claim may be made against the Supplier in respect of or in connection with any Defective Goods or Services more than 12 months after the Goods were delivered or the Services performed (as the case may be).

5.5 Notwithstanding condition 5.1, the following provisions shall apply: (i) the Supplier will not be liable to the Buyer for any losses or costs resulting from unsuitable application, wrongful handling or placing of the Goods adopted by the Buyer; (ii) all testing of Goods or specimens having been carried out in accordance with the relevant clauses of EN1338 (where applicable); (iii) references to strength in the specification shall unless otherwise agreed refer to the strength obtained from Goods made, cured and tested in accordance with EN1338 (where applicable); (iv) the Supplier being given all reasonable facilities to investigate any alleged defect and the Buyer following any reasonable representations made by the Supplier as to any remedial action to be taken;

5.6 The Buyer shall be under a strict duty to mitigate and minimise the adverse consequences, damages, loss, costs and expense arising from the supply of Defective Goods.

5.7 If any Goods are known by the Buyer to be outside of the specification or the terms of any order, under no circumstances shall the Supplier ever be liable for costs or liabilities relating to the continuance of works or further constructions, which shall be at the sole risk of the Buyer.

5.8 Save as set out in condition 5.1, no warranty, condition or guarantee of the quality or performance of the Goods is given and all such warranties and conditions whether express or implied by law or otherwise are, to the fullest extent permitted by law hereby excluded from the Contract (save for the conditions implied by section 12 of the Sale of Goods Act 1979 (as amended)).

5.9 Without prejudice to the generality of the foregoing, the Supplier's knowledge of the purpose for which the Goods or Services are intended to be used does not imply any warranty on the part of the Supplier as to their quality or fitness for that purpose. Save as aforesaid and save as expressly incorporated into the Contract by the quotation, acknowledgement of order or consignment note, no tender, specification, illustration, drawing, brochure, catalogue, or other information sent or made available by the Supplier, or sent or made available by the Buyer, shall have any contractual effect. In so far as the Buyer requires any term or representation contained in any such document or made orally by any of the Supplier's servants or agents to be incorporated into the Contract, express agreement of the Supplier thereto must be obtained in writing. In the absence of any such express agreement, liability for any misrepresentation (save in respect of any fraudulent misrepresentation) is hereby expressly excluded.

5.10 Subject to condition 5.11, the maximum aggregate liability of the Company arising out of condition 5.1 or in connection with the supply of Goods and/or services use by the Buyer shall be limited to three times the price of the Defective Goods. The Buyer acknowledges that it bears the risk of all additional expenses, costs, losses, damages and liabilities which may be incurred. The Buyer acknowledges that it can obtain insurance to cover such potential expenses, costs, losses, damages and liabilities. Should the Buyer wish the Supplier to have a higher limit of liability this must be agreed with the Supplier at the earliest opportunity and expressly agreed by the Supplier in writing.

5.11 Nothing in these conditions shall limit or exclude the liability of the Company for (i) death or personal injury resulting from negligence of the Company, its agents or employees; or (ii) fraud or fraudulent misrepresentations or (iii) any other liability which cannot by law be excluded or limited.

6. DELIVERY AND COMPLETION DATES

Any delivery date, period or time agreed or given by the Supplier is an estimate only and the Supplier shall not be liable for any damages or losses arising out of failure to meet such time, date or period. Buyer must give reasonable notice. For the avoidance of any doubt, the time for collection, or delivery, of Goods, or the performance of the Services by the Supplier shall not be of the essence.

6.1 To Site: (i) the Buyer shall provide and shall clearly indicate to the driver of the Supplier's vehicle, the route between the metalled highway and the point at which the Buyer wishes the Goods to be unloaded from the vehicle which is, and which in the reasonable opinion of the driver, is safe and proper and reasonable for the access, the manoeuvring and the egress of the vehicle. Failure to comply shall entitle the Supplier to refuse to make delivery and to charge the Buyer for any cost incurred; (ii) the Buyer shall indemnify the Supplier (both for itself and as agent and trustee for any haulage contractor operating the vehicle) against any loss, damage or injury caused by the acts and/or omissions of the Buyer, its employees, sub-contractors or agents while the delivery vehicle is present on or accessing the Buyer's site or any damage, loss or injury caused to the Supplier or its agents arising from the Buyer's specified delivery method, except where due to the negligence of the Supplier and/or its agents; (iii) damage, loss or shortfalls: the Supplier will not accept any liability for any damage, shortfall or loss in transit unless it has been reported by the Buyer within 5 working days of a delivery and this notification must be supported by a formal claim in writing to the carrier, and the Supplier, within 20 working days, and the Buyer must also comply with any conditions and notification requirements of the carrier in respect of any such claims. The practice of signing for Goods 'not examined' does not absolve the Buyer from this condition.

6.2 Goods supplied ex works: (i) where prices are quoted 'ex works' the Goods will be loaded onto the Buyer's vehicle at a suitable delivery point at the Supplier's works as directed by the Supplier's Works Manager or his appointed deputy. Where practicable, reasonable advance notice shall be given by the Buyer of the date and time when the Buyer's vehicle will collect the Goods; (ii) the Buyer's vehicle will be loaded with all reasonable dispatch but the Supplier shall not be liable for any delay in the loading of Goods onto the Buyer's vehicle or any loss consequent thereon; (iii) the Buyer's driver must advise the Supplier of the acknowledgement of order number on arrival at the Supplier's works, and the Supplier will not accept any liability arising out of any delay caused by a failure to provide this number; (iv) the Buyer will be responsible for the condition of the vehicle in which it collects the Goods (whether owned or hired) and the Supplier shall not be liable in any way for loss or contamination of Goods resulting from the condition of such vehicles. The Buyer shall indemnify the Supplier for any loss or damage to the Supplier, its plant and equipment caused by the Buyer's vehicles or the condition thereof; (v) the Supplier accepts no responsibility for any damage to or loss of the Goods of any kind after the Buyer has left the Supplier's works; (vi) it is the Buyer's responsibility to ensure that once the collecting vehicle is loaded it is roped and relied in a safe and secure manner; (vii) Buyer's collection from the site must fully observe the Supplier's Health and Safety Policy and all other relevant policies from time to time, copies of which are available on request.

6.3 The supply of Goods or Services may be totally or partially suspended during any period in which the Supplier may be prevented or hindered from manufacturing, supplying, delivery or providing them due to any event of force majeure (Force Majeure). The Supplier will use reasonable endeavours to inform the Buyer should such a Force Majeure event occur but shall be under no liability to the Buyer through its failure to perform its obligations during a Force Majeure event and for such time after it ceases as is necessary for the Supplier to recommence operations. If the Supplier is prevented from performing its obligations for a continuous period in excess of 3 months either party may terminate the Contract by notice and neither party shall have any liability to the other except for those rights and liabilities which accrued prior to such termination.

7. RISK

7.1 Unless the Contract provides for delivery by the Supplier, the risk in the Goods passes to the Buyer when the Goods are despatched from the Supplier's works and the Supplier accepts no responsibility for any damage or loss in transit. Where the Contract provides for delivery by the Supplier, risk will pass at the point of delivery to the Buyer's site.

7.2 Goods returned which were supplied in accordance with the Buyer's purchase order will only be credited on the condition that the Supplier's written agreement to the return of such Goods has first been obtained in all instances. Risk in the Goods will remain with the Buyer until they have been safely delivered back to the Supplier. All returned Goods are subject to a delivery and handling charge. No credit will be given in respect of Goods returned to a damaged condition.

8. ACCEPTANCE

8.1 The Buyer, or his duly authorised agent, shall ensure that he will in respect of each load (whether delivered or collected) by the appropriate counter signature against the relevant details on a copy of the consignment note and by returning the same to the Supplier's authorised representative: (i) acknowledge receipt of the delivery of the Goods; (ii) confirm the times of arrival and of completion of unloading. The Buyer shall be bound by the counter signature of such consignment note unless the Buyer has previously notified the Supplier in writing that only specified persons are so authorised. The Supplier reserves the right to charge for the provision of any copy consignment notes subsequently required by the Buyer as proof of delivery. If the Buyer refuses or neglects to sign such a note, the note will be deemed to have been signed without endorsement.

8.3 If for any reason the Buyer is unable to accept delivery of the Goods when the Goods are due and ready for delivery, the Supplier may arrange storage of the Goods at the Buyer's risk and the Buyer shall be liable to the Supplier for all related costs (including insurance) of such storage. This provision is without prejudice to any other right which the Supplier may have in respect of the Buyer's failure to take delivery of the Goods or pay for them in accordance with the Contract.

9. SPECIAL PRODUCTS

9.1 Without prejudice to its rights at common law or otherwise, the Supplier reserves the right to charge the Buyer the full purchase price of Special Products where the Buyer cancels an order, or reduces the quantity of Special Products to be supplied, and the Special Products have been purchased or manufactured by the Supplier at the time of the cancellation or variation. If the Buyer asks for more Special Products than initially ordered, the Supplier may charge £500 for the setting up costs of the production line in addition to any price quoted for the Special Products.

10. TERMINATION

If the Buyer enters into a deed of arrangement or commits an act of bankruptcy or compounds with his creditors or if a receiving order is made against him or (being a company) it shall pass a resolution or the court shall make an order that the Buyer shall be wound up (otherwise than for the purposes of amalgamation or reconstruction or if a receiver (including an administrative receiver) shall be appointed of any of the assets or undertaking of the Buyer or if the Buyer suffers the appointment of the presentation of a petition for the appointment of an administrator or if circumstances shall arise which entitle the court or a creditor to appoint a receiver (including an administrative receiver) or a manager or which entitle the court to make a winding up order or if the Buyer shall, in the opinion of the Supplier, become impaired or if the Buyer shall commit any breach of any part of the Contract, the Supplier may, without prejudice to its rights and remedies under these conditions, stop all Goods in transit and suspend further deliveries suspend, withdraw or terminate any discount or rebate agreement between the parties and by notice to the Buyer may terminate the Contract immediately, whereupon all outstanding sums due from the Buyer to the Supplier should due and payable.

11. TOLERANCES AND TESTS

11.1 Gauges, weights, chemical composition and analysis, quantities, sizes and colour will, so far as possible, be adhered to by the Buyer but reasonable excesses, deficiencies or variations thereof shall be accepted by the Buyer, who shall not be entitled to reject any Goods or to require replacement of any Goods on such grounds.

11.2 Unless otherwise specifically agreed, all tests, test pieces and inspections whatever required by the Buyer will be charged in addition. All tests and inspections (whether or not being tests of chemical composition) shall: (i) take place under the Supplier's standard testing arrangements, and such tests (ii) shall be final (iii) subject to analytical tolerances.

12. INTELLECTUAL PROPERTY RIGHTS

The Buyer shall indemnify the Supplier against all actions, costs (including the cost of defending any legal proceedings), loss, claims, proceedings, accounts and damages in respect of any infringement or alleged infringement of any patent, registered design, unregistered design, design right, copyright, trade mark or other industrial or intellectual property rights (hereinafter "Intellectual Property Rights") resulting (i) from compliance by the Supplier with the Buyer's instructions, whether express or implied or (ii) from the Buyer's infringement of the Supplier's Intellectual Property Rights.

13. INDEMNITY

The Buyer agrees, upon demand, to indemnify the Supplier against all losses, damages, injury, costs and expenses of whatever nature suffered by the Supplier to the extent that the same are caused by or related to: (i) designs, drawings or specifications given to the Supplier by the Buyer in respect of the Goods; (ii) the improper incorporation, assembly, use, processing, storage or handling of Goods by the Buyer; or (iii) any breach of the Contract by the Buyer.

14. ASSIGNMENT AND SUBCONTRACTING

None of the rights, benefits or obligations of the Buyer under the Contract may be assigned or transferred in whole or in part without the prior written consent of the Supplier. The Supplier shall be entitled to assign, charge or subcontract in whole or in part any of its rights or obligations under the Contract without the Buyer's consent.

15. HEALTH AND SAFETY

The Buyer agrees to pay due regard to any information or any revised information whenever supplied by the Supplier (and is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods and/or services are designed or have been tested or concerning conditions necessary to ensure that they will be safe and without risk to health at all times. The Buyer undertakes to take such steps as may be specified by the above information to ensure that as far as reasonably practicable, the Goods will be safe and without risk to health at all times as mentioned above. For those purposes, the Buyer is deemed to have been given a reasonable opportunity to test and examine the Goods before delivery.

16. GENERAL

16.1 Any notice or other communication to be given under these conditions must be in writing and may be delivered or sent by prepaid first class letter post. Any notice or document shall be deemed served: if delivered at the time of delivery; if posted, 48 hours after posting. The invalidity, illegality or unenforceability of any provision of these conditions shall not affect the other conditions. A person who is not a party to this Contract shall not have any rights to enforce its terms.

16.2 The Contract (and any proceedings whereby one party might be entitled to join the other as a third party) shall be governed by and construed in accordance with English law and the parties hereby submit to the exclusive jurisdiction of the English courts.

16.3 If some or all of the Goods and/or Services provided under the Contract amount to construction operations within the meaning of the Housing Grants, Construction and Regeneration Act 1996, the Supplier and the Buyer hereby agree that both parties shall have the right to refer any dispute to adjudication in accordance with the Scheme for construction contracts as in force at the date of the contract and the nominating body shall be TeCSA.

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