

CARLTON MANUFACTURING

TERMS AND CONDITIONS OF SALE

1. DEFINITIONS

- 1.1. In these Terms and Conditions: "Acknowledgement" means a written acknowledgement of an Order, which is issued by the Seller. "Buyer" means the party who purchases Goods from the Seller. "Delivery Note" means the document supplied to the Buyer with the Goods confirming the nature and quantity of the Goods. "Contract" means the contract between the Buyer and Seller created in accordance with clause 2.3. "Contract Documents" means these Terms and Conditions, the Order and the terms of any Acknowledgement (and any documents referred to in the Acknowledgement). "Goods" means the goods sold by the Seller to the Buyer in accordance with the Contract. "Order" means the Buyer's order for the Goods, whether made orally or in writing, including any acceptance of a Quote (but in each case excluding any terms and conditions of purchase purported to be incorporated by the Buyer). "Price" means the price of the Goods as calculated in accordance with clause 6.1. "Quote" means a quote issued by the Seller. "Seller" means CPI Mortars Ltd T/A Carlton Manufacturing (Company Number 3291462) or its group, subsidiary or associated companies where appropriate.
- 1.2. These Terms and Conditions do not apply to consumers (a consumer being an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession). If you are a consumer please contact the Seller before placing your Order.
- 1.3. The Buyer should read and understand these Terms and Conditions before submitting an Order for or accepting Goods from the Seller. The Buyer will be bound by these Terms and Conditions once its Order is accepted by the Seller in accordance with clause 2.3. In the event that the Buyer wishes to open a credit account with the Seller, the Buyer will also be required to sign an account opening form and return the same to the Seller which, for the avoidance of any doubt, will constitute confirmation by the Buyer that all purchases of Goods by it from the Seller will be made subject to these Terms and Conditions.

2. GENERAL

- 2.1. The terms of the Contract Documents will apply to all sales. Any variation or addition to or departure from these Terms and Conditions in respect of a Contract (including without limitation the incorporation of any terms and conditions on any purchase order, acceptance of a Quote, confirmation of order, or otherwise or the inclusion of any additional conditions in the Acceptance or other Contract Documents) shall be effective only if such variation, addition or departure is recorded in writing and signed by the Seller's Chief Executive. No employee, agent, manager or director of the Seller (other than the Chief Executive) has authority to vary, add or depart from the Terms and Conditions in respect of a Contract or make any representation about the Goods or the Contract and any such purported variation, addition or departure made by any such person shall be null and void.
- 2.2. The Seller may issue a Quote upon request by the Buyer. The Quote does not constitute an offer that is capable of acceptance by the Buyer. Alternatively in the absence of any Quote, the Buyer may issue an Order to the Seller either verbally or in writing to purchase Goods. Each Order shall be deemed to be an offer by the Buyer to purchase Goods from the Seller subject to these Terms and Conditions.
- 2.3. The Order will not be accepted, and the Contract for the sale of the Goods will not be formed, until either:
 - 2.3.1. the Seller issues an Acknowledgement of the Order to the Buyer, or (if earlier)
 - 2.3.2. delivery of the Goods by the Seller, in accordance with clause 4.1, or deemed delivery of the Goods in accordance with clause 4.4,
 whereupon a Contract for the sale of the Goods to the Buyer will be formed, upon the terms of the Contract Documents.
- 2.4. The Buyer should check that the details in any Acknowledgement or Delivery Note are complete and accurate.
- 2.5. Quotes are provided on the basis that no contract will come into existence otherwise than in accordance with these Terms and Conditions. Quotes are valid for a period of 30 days from their date, provided that the Seller has not previously withdrawn it.
- 2.6. In the event of any inconsistency between the terms of the Contract Documents, the following order of priority will apply: (i) these Terms and Conditions (ii) the Acknowledgement, (iii) any documents referred to in the Acknowledgement (iv) the Order.
- 2.7. Any samples, drawings, descriptions or advertising issued by the Seller, and any descriptions or illustrations contained in the Seller's catalogues or brochures, are issued or published solely to provide the Buyer with an approximate idea of the Goods they describe. They do not form part of the Contract between Buyer and Seller for the sale of the Goods and do not constitute an offer to the Buyer to purchase the Goods that is capable of acceptance.
- 2.8. The Seller reserves the right to amend the Goods or their specification if required by any applicable statutory or regulatory requirements.

3. TRANSFER OF OWNERSHIP

- 3.1. The full legal and beneficial title to the ownership of the Goods shall remain with the Seller until the Buyer has paid the Seller in full in respect of such Goods and all other sums due by the Buyer to the Seller whether under the Contract or otherwise.

- 3.2. If the Buyer sells or otherwise disposes of the Goods before payment in full as aforesaid has been made to the Seller, the Buyer will in such case hold all monies received by it from such sale or disposal in trust for the Seller.
- 3.3. So long as the property in the Goods remains in the Seller, the Buyer will hold the Goods as bailee for the Seller and:
 - 3.3.1. the Buyer will store the Goods so as to clearly show them to be the property of the Seller;
 - 3.3.2. the Buyer will insure and keep insured the Goods on the Seller's behalf in an amount at least equal to the Price;
 - 3.3.3. the Buyer will hold upon trust for the Seller absolutely all proceeds of such insurance and the Buyer shall not place such proceeds with any other money nor pay the proceeds into an overdrawn bank account;
 - 3.3.4. the Seller will have the right, without prejudice to the obligations of the Buyer to purchase the Goods, to re-take possession of the Goods (and for that purpose to go upon any premises occupied by the Buyer).
- 3.4. Nothing in this clause will confer any right upon the Buyer to return the Goods that it would not otherwise have. The Seller may maintain an action for the Price notwithstanding that property in the Goods has not vested in the Buyer.
- 3.5. For as long as the money is due by the Buyer to the Seller, the Seller shall be entitled to enter any premises where the Goods are located to take possession of and to resell same and for this purpose, the Buyer hereby grants the Seller an irrevocable right and licence to enter any such premises. This right shall continue notwithstanding termination of any contract between the Seller and the Buyer for any reason and shall be without prejudice to any accrued right of the Seller. In the event of the Seller recovering the Goods, it shall retain all payments made, if any, for the Goods as damages for breach of contract.

4. DELIVERY

- 4.1. Delivery of Goods will be deemed to occur upon signature by or on behalf of the Buyer of the Delivery Note presented to the Buyer with the Goods, confirming physical delivery of the Goods. The Goods will be delivered to the Buyer's premises (or other address agreed between the parties). The Seller and the Buyer may agree that the Buyer will collect the Goods from the Seller's premises, in which case the Buyer will be entirely responsible for loading the Goods onto its nominated form of transport, and for transporting the Goods to its premises, at its own expense.
- 4.2. Any times quoted for delivery are estimates only. The Seller will not be liable for failure to deliver within the time quoted and the Seller will not be entitled to reject the Goods because of delivery outside of the time quoted.
- 4.3. The Seller will be entitled to make partial deliveries or deliveries by instalments, and these Terms and Conditions will apply to each partial delivery or instalment. Any delay or defect in one partial delivery or instalment shall not entitle the Buyer to cancel any other partial delivery or instalment.
- 4.4. Where the Buyer is unable or unwilling to accept delivery of any of the Goods when the Seller attempts to deliver them or (if applicable) when the Seller has notified the Buyer that they are ready for delivery or collection (as applicable) or if the Seller is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations then:
 - 4.4.1. all risk in the Goods shall pass to the Buyer at the time of attempted delivery or notification (as applicable);
 - 4.4.2. the Goods will be deemed delivered with effect from such time; and
 - 4.4.3. thereafter the Seller may store the Goods itself or, at the Seller's option, store them with a third party until acceptance of delivery by the Buyer and the Seller will be entitled to charge the Buyer for all related costs and expenses, including without limitation storage and insurance costs (the "Non-acceptance Costs"). Non-acceptance Costs can be invoiced to the Buyer at any time after they have begun to be incurred by the Seller, and will be paid by the Buyer within 30 days of the relevant invoice date.
- 4.5. If the Buyer has not taken delivery of the Goods within two weeks of the Seller notifying the Buyer that the Goods have been placed into storage as described in clause 4.4, the Seller may after giving the Buyer reasonable notice in writing, re-sell or otherwise dispose of part or all of the Goods. Where the Buyer has already paid the Seller for the Goods, the Seller will refund the Price actually paid by the Buyer for the Goods (but only to the extent that such Price has been recovered by the Seller from a subsequent sale of the Goods, and after deduction from such Price of the Non-acceptance Costs).
- 4.6. No claim for damages, shortages, losses, credit or exchange will be considered unless the Seller is advised of the same in writing within 7 days of the date of delivery.

5. RISK OF LOSS OR DAMAGE

- 5.1. The Buyer will carry all risk of loss of and damage to the Goods from the time of delivery (or deemed delivery) of the Goods to the Buyer or (if applicable) collection of the Goods by the Buyer or its agent.

6. PRICES

- 6.1. Unless otherwise agreed in writing, all prices will be based on the Seller's price list as in force at the date of submission of the Order. The Seller's price list is liable to change at any time (but any changes will not affect Orders that have already been submitted to the Seller). The Price will be confirmed in the relevant Acknowledgement or Delivery Note. Unless otherwise stated, all such Prices shall exclude VAT and delivery.

6.2. The Seller reserves the right at any time prior to delivery of the Goods to adjust the price to take account of market rates and any increase in the costs to it of materials, labour, freight and services or of any currency or currency fluctuations which increase its costs of sale in relation to the Goods.

6.3. If the Seller arranges for the delivery of the Goods to any location and/or arranges insurance for the Goods and/or incurs packing costs, the cost thereof will be added to and will form part of the Price of the Goods. Such costs will be notified to the Buyer prior to acceptance of the Buyer's Order.

7. TERMS OF PAYMENT

7.1. Payment shall be made by the Buyer to the Seller in Euro or Sterling as specified on the relevant Acknowledgement or Delivery Note. Unless the Seller has agreed in accordance with clause 7.5 to provide the Buyer with a credit account, the Seller will invoice the Buyer following acceptance of the Order and the Buyer shall make payment in accordance with the invoice and in any event prior to delivery of the Goods.

7.2. If the Buyer has failed to pay for Goods received by it in accordance with clause 7.1, the Seller reserves the right to cease further deliveries of Goods to the Buyer (whether under the Contract or any other contract between the Seller and the Buyer) without liability and without prejudice to any other rights or remedies that the Seller may have until the Buyer has made full payment in respect of Goods already supplied to it.

7.3. The Buyer shall pay to the Seller interest on overdue amounts or balances outstanding and accruing on a daily basis from the due date for payment until payment is made in full. The rate of interest will be the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998.

7.4. Any monies received from the Buyer shall first be applied to settle outstanding interest charges and shall then be applied at the Seller's discretion to any unpaid invoice.

7.5. The Seller may (but shall not be obliged to) open a credit account for transactions with the Buyer upon completion of a credit account application form and the receipt of two trading references from the Buyer that the Seller considers satisfactory in its sole discretion. In the event that the Seller has agreed to provide the Buyer with a credit account, the Seller will invoice the Buyer following acceptance of the Order and payment for Goods will be made by the Buyer in full, cleared funds on or before the last working day of the month following the month of issue of the relevant invoice. The Seller may withdraw or suspend account facilities at its discretion upon the giving of written notice to the Buyer and thereafter the Buyer shall pay for the Goods in accordance with clause 7.1.

7.6. Nothing in this clause will be taken as limiting any of the Seller's other rights and/or remedies pursuant to the Contract.

7.7. The Seller reserves the right to charge the Buyer any legal or other expenses incurred in the collection of overdue accounts. If the Buyer shall fail to make any payments as becomes due or shall enter into any composition or arrangement with its creditors or being an incorporated company shall have a receiver appointed or shall pass a resolution for winding up or a Court shall make an Order to that effect or if there shall be any breach by the Buyer of any of the terms and conditions the Seller may without prejudice to its other rights and remedies defer or cancel any further deliveries or sales under the provisions of this contract or any other contract with the Buyer and/or exercise its rights to retake possession of Goods in accordance with clause 3.

8. REMEDIES FOR ANY DEFECTS

8.1. The Seller warrants that on delivery the Goods shall:

- 8.1.1. Conform in all material respects with the Seller's applicable specification;
- 8.1.2. Be of satisfactory quality; and
- 8.1.3. Be reasonably fit for any purpose for which Goods of the kind are commonly supplied.

8.2. The Seller shall not be liable under the warranties above to the extent that any defect in the Goods arises from fair wear and tear, wilful damage, accident, negligence by the Buyer or any third party, the Buyer's failure to follow the Seller's written or oral instructions (or, if none, good industry practice), or any alteration or repair the Buyer carries out without the Seller's prior written approval.

8.3. If the Goods do not comply with any of the warranties in clause 8.1, the Seller will at its option either replace the Goods or issue credit to the Buyer to the value of the Goods, provided that:

- 8.3.1. the Seller is notified in writing within 7 days of the discovery of any such defects by the Buyer and in any event not later than 14 days after purchase;
- 8.3.2. the relevant Goods are returned to the Seller at the cost of the Buyer, in their original packaging and in good condition;
- 8.3.3. the Buyer will pay to the Seller the cost (as stated by the Seller) of any examination of the Goods as a result of which the Seller (in its reasonable opinion) does not admit liability;
- 8.3.4. the Seller will not replace or issue credit in relation to Goods made to the Buyer's specification.

8.4. The provisions of clause 8.3 provide the Buyer's full remedy for breach of any of the warranties in clause 8.1.

8.5. These Terms and Conditions will apply to any replacement Goods supplied by the Seller.

8.6. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

9. LIMITATION OF LIABILITY

9.1. Nothing in these Terms and Conditions will operate to limit or exclude the liability of either party for (i) death or personal injury resulting from negligence, (ii) fraud or fraudulent misrepresentation, (iii) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or (iv) any other liability that cannot lawfully be excluded.

9.2. Subject always to clauses 9.1 and 9.3 the Buyer acknowledges that it can benefit from the availability of commercial insurance and, as such, the Seller's liability for any claim, whether in contract, tort (including without limitation in negligence) or otherwise in connection with the contract will be limited to the greater of (i) the Price actually paid by the Buyer for the Goods, or (ii) £100,000.

9.3. Save in respect of the Buyer's obligation to pay the Price and subject to clause 9.1, in no event will either party be liable to the other whether in contract, tort (including without limitation in negligence) or otherwise in connection with the contract for:

- 9.3.1. Loss of income or revenue;
- 9.3.2. Loss of profits;
- 9.3.3. Loss of business;
- 9.3.4. Loss of anticipated savings;
- 9.3.5. Loss of data; or
- 9.3.6. Any indirect or consequential losses.

10. INFRINGEMENT

10.1. The Buyer will indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable as a result of work done or the supply of Goods in accordance with the Buyer's specifications where such specifications involve the infringement of any patent, registered design, copyright, trademark, confidential information or any other industrial or intellectual property rights.

10.2. For the avoidance of doubt, unless otherwise agreed in writing all intellectual property rights in all plans, designs, drawings, samples and specifications relating to the Goods belong to the Seller and/or upon creation will vest absolutely in the Seller.

11. FORCE MAJEURE

11.1. The Seller will not be under any liability of whatever kind for non-performance in whole or in part of its obligations under the Contract due to causes beyond the reasonable control of the Seller including, but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, failure or delay in transportation, acts of any Government or any agency or sub-division thereof, Government regulations, judicial actions, labour disputes, strikes, embargoes, illness, accident, fire, explosion, flood, tempest or other acts of God, delay in delivery to the Seller or the Seller's suppliers or shortage of labour, electricity, fuel, raw materials or machinery.

12. ASSIGNMENT

12.1. The Buyer will not assign or transfer or purport to assign or transfer to any other person the Contract or the benefit thereof or the benefit of any condition, warranty or guarantee or other term or condition (express or implied) forming part thereof or relating to the Goods without prior written consent of the Seller. The Seller may sub-contract, assign or transfer the Contract (or any of its obligations under the Contract) or the benefit thereof to any third party.

13. HEADINGS

13.1. The headings of these Terms and Conditions are for convenience only and shall have no effect on the interpretation of the Terms and Conditions.

14. SEVERANCE

14.1. If any court or competent authority decides that any of the provisions of the Contract are invalid, unlawful or unenforceable to any extent, the term will, to that extent only, be severed from the remaining terms, which will continue to be valid to the fullest extent permitted by law.

15. DATA PROTECTION

15.1. The Buyer shall (and shall procure that its employees and agents shall) consent to the processing of its or their personal data in connection with the provision of the Goods in accordance with the provisions of the Seller's privacy notice.

16. GOVERNING LAW

16.1. The Contract and these Terms and Conditions shall be governed by English Law and the parties hereby submit to the non-exclusive jurisdiction of the English Courts.

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