

TERMS AND CONDITIONS OF SALE
NEWLAY READYMIX LIMITED

Please read these Conditions carefully as they contain important information about a Customer's legal rights and obligations. In particular they contain:

- for non-Consumer Customers, a limit of liability as set out in clause 11 and for Consumer Customers, a limit of liability as set out in clause 14.7;
- information about how to contact the Supplier as set out in clause 13.7;
- for Consumer Customers, information about the Contract with the Supplier relevant to Consumer Customers in particular a Consumer Customer's right to change his or her mind as set out in clause 14. Where any of the Conditions do not apply to Consumer Customers, this is clearly stated; and
- information about delivery including that the Supplier only makes deliveries where the Delivery Location is within an hour's drive of the Supplier's Depot as set out in clause 6.2.

1 INTERPRETATION

1.1 **Definitions.** In these Conditions, the following definitions apply:

"Business Day" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

"Conditions" means the terms and conditions set out in this document as amended from time to time in accordance with clause 13.3.

"Consumer" means an individual acting for purposes that are wholly or mainly outside that person's business.

"Contract" means the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions.

"Customer" means the person or firm who purchases the Goods from the Supplier.

"Depot" means the Supplier's depot at Thornhill Works, Calder Road, Dewsbury, WF12 9HG.

"Force Majeure Event" has the meaning given in clause 12.

"Goods" means the goods (or any part of them) set out in the Order.

"Order" means the Customer's order for the Goods, which sets out quantity and a description of the Goods.

"Specification" means the Supplier's standard specification for the type of Goods ordered.

"Supplier" means Newlay Readymix Limited (registered in England and Wales with company number 08821662) whose registered office is at Westleigh House, Wakefield Road, Denby Dale, Huddersfield, HD8 8QJ) and whose VAT number is

177671272. The Supplier's trading address is Thornhill Works, Calder Road, Dewsbury, WF12 9HY.

1.2 **Construction.** In these Conditions, the following rules apply:

1.2.1 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors or permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.4 Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.5 A reference to **writing** or **written** includes faxes and emails.

2 **BASIS OF CONTRACT**

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.

2.3 The Order shall only be deemed to be accepted when the Supplier issues a written or verbal acceptance of the Order or the Supplier does any act consistent with fulfilling the Order, at which point the Contract shall come into existence. If the Supplier cannot accept an Order, the Supplier will inform the Customer of this and will not charge the Customer.

2.4 The Contract constitutes the entire agreement between the parties. Except where the Customer is a Consumer, the Customer acknowledges that it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of the Supplier which is not set out in the Contract.

2.5 Any samples, drawings, descriptive matter, or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force.

2.6 A quotation for the Goods given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 30 Business Days from its date of issue.

3 CONSUMER SALES

- 3.1 Where the Customer is a Consumer, the Consumer Information in clause 14 shall prevail over any conflicting provision of these terms.

4 GOODS

- 4.1 The Goods are described in the Specification.
- 4.2 The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 4.3 In relation to Readymix concrete:
- 4.3.1 all sampling of the Goods, the making and testing of samples and interpretation of results must be carried out in accordance with relevant provisions of the current edition of BS 8500-1:2015 and test results interpreted in accordance with BS 8500-1:2015 as such standards are amended or replaced from time to time or in accordance with the relevant provisions of such appropriate British or European Standards (as notified by the Supplier to the Customer) or other specification and, in the absence of any appropriate specification, in accordance with the Supplier's instructions.
- 4.3.2 references to compressive strength in any specification shall, unless otherwise agreed, refer to compressive strength obtained from concrete cubes made, cured and tested in accordance with BS 8500-1:2015 as amended or replaced from time to time. When estimates are required of the in situ strength of concrete the interpretation shall be the estimated potential strength of concrete obtained from cores taken from any relevant information or advice relating to their use which has been communicated to the Customer pursuant to these Conditions.
- 4.3.3 where the consistence of Goods is to be determined by identity criteria for slump or flow, any sample of the Goods shall be a spot sample taken in accordance with BS 8500-1:2015 Annex B, Clause B.2.1 as amended or replaced from time to time and assessed for conformity in accordance with BS 8500-1:2015.
- 4.4 For any other Goods as supplied to other standards or specifications, evaluation of conformity of the Goods with such standards or specifications, including any sampling and testing, shall be carried out in accordance with the relevant procedures set out in those standards or specifications.

5 HEALTH AND SAFETY

- 5.1 **The attention of the Customer is specifically drawn to the need for care in the handling of the Goods.** Guidance is given in the Supplier's health and safety recommendations some of which are listed below. The Customer can be provided with the Supplier's full health and safety recommendations upon request. If the Customer is not already in possession of the health and safety recommendations or requires any information or advice in connection with the safe use of the Goods the Customer should immediately contact the Supplier.
- 5.2 The Customer undertakes to take such measures as are communicated in writing to it and to take such other steps as are sufficient to ensure, so far as is reasonably practicable, that the Goods will be safe and without risk to health at all times when

they are being used, handled, processed, stored or transported by a person at work and shall not use them or permit them to be used without regard to any relevant information or advice relating to their use which has been communicated to the Customer pursuant to these Conditions.

5.3 **Warnings and precautions**

- 5.3.1 It is essential that proper care and precautions are taken when handling any of the Goods to avoid injury.
- 5.3.2 Direct contact with the Goods and any other materials associated with their delivery can cause serious injury to skin, allergic reactions and burns. Careful consideration should be given as to the most appropriate clothing to wear to protect against contact with skin.
- 5.3.3 Examples of appropriate precautions include: wearing waterproof wellington boots, over trousers, gloves and immediately changing any item of clothing that becomes saturated or leaks.
- 5.3.4 Site safety should be considered in advance to ensure that the Delivery Location (as defined in clause 6.2) is suitable for delivery to avoid risk of injury. In accordance with clause 6.3 of these conditions, if the Supplier assesses the ground to be too weak to withstand the weight of its vehicles or if the Supplier deems any other aspect of the Delivery Location as unsuitable or unsafe to the Supplier or to the Customer, the Supplier may refuse delivery and may charge for the Goods it is unable to deliver.

6 **DELIVERY**

- 6.1 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery ticket which shows the Order number, the date of the delivery, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 6.2 The Supplier shall deliver the Goods to the location set out in the Order (provided that such location is within one hour's drive of the Supplier's Depot ("**Delivery Location**") at any time after the Supplier has accepted the Order. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. This clause 6.2 shall not apply to Consumer Customers and clause 14.1 shall apply to Consumer Customers instead.
- 6.3 The Customer must:
 - 6.3.1 ensure that suitable access and roads exist so the Supplier can deliver the Goods to the Delivery Location;
 - 6.3.2 provide suitable facilities for unloading, reception and storage of the Goods;
 - 6.3.3 ensure that the Delivery Location is safe for the Supplier's staff and vehicles;
 - 6.3.4 ensure that the ground at the Delivery Location is suitable to safely withstand the weight of the Supplier's delivery vehicles; and
 - 6.3.5 ensure that someone is present to accept delivery.

The Supplier may refuse to deliver over roads, over ground or to any premises, or to use any facilities or equipment which it considers are unsuitable or unsafe. If the

Supplier refuses to deliver in accordance with this clause, the Supplier may charge the Customer reasonable compensation for: the Goods (because they are liable to deteriorate or expire rapidly), the cost of any further Goods for which delivery has been rearranged; and any reasonable additional costs so incurred by the Supplier for refusing to deliver the Goods.

- 6.4 Delivery of the Goods shall be completed on the Goods' arrival at the Delivery Location. If the Supplier is unable to deliver because of inadequate instructions, or the Customer wrongly fails to take delivery of the Goods, delivery is deemed to take place at the time when the Supplier has attempted to deliver the Goods.
- 6.5 The Customer shall bear additional costs, as advised by the Supplier from time to time, if:
 - 6.5.1 any additional costs set out in the Order are incurred;
 - 6.5.2 delivery is outside normal working hours or on a bank or public holiday;
 - 6.5.3 the Customer fails to take delivery, fails to give sufficient delivery instructions, fails to obtain appropriate licences or authorisations or where the Customer prevents or delays delivery;
 - 6.5.4 the Customer returns part of the delivery having failed to accept the full ordered quantity of Goods;
 - 6.5.5 the unloading of the delivery vehicle is delayed for more than 30 minutes or in the case of ready mix concrete, is not completed within 30 minutes of arrival at the Delivery Location;
 - 6.5.6 the delivery is aborted due to unsuitable access to the Delivery Location;
 - 6.5.7 the Customer requires delivery of the Goods in quantities less than the Supplier's minimum loads; or
 - 6.5.8 unused Goods are returned to the Supplier for disposal.
- 6.6 The Customer shall provide suitable facilities for unloading, reception and storage of the Goods.
- 6.7 The Supplier shall not be liable for any delay in delivery of the Goods that is caused by an event outside the Supplier's reasonable control or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6.8 If the Supplier fails to deliver the Goods, unless the Customer is a Consumer, the Supplier's liability shall be limited to the costs incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by an event outside the Supplier's reasonable control or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 6.9 The Customer shall not be entitled to reject the Goods if the Supplier delivers up to and including 5% more or less than the quantity of Goods ordered, but a pro rata adjustment shall be made to the Order invoice on receipt of notice from the Customer that the wrong quantity of Goods was delivered.

- 6.10 The Supplier may deliver the Goods by instalments, which may be invoiced and paid for separately. Each instalment shall constitute a separate Contract. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

7 QUALITY

- 7.1 This clause 7 shall only apply to non-Consumer Customers.
- 7.2 The Supplier warrants that on delivery the Goods shall:
- 7.2.1 conform in all material respects with the Specification;
 - 7.2.2 be free from material defects in design, material and workmanship; and
 - 7.2.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 7.3 Subject to clause 7.4, if:
- 7.3.1 the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 7.1; and
 - 7.3.2 the Supplier is given a reasonable opportunity of examining such Goods,
- the Supplier shall refund the price of the defective Goods in full.
- 7.4 The Supplier shall not be liable for the Good's failure to comply with the warranty set out in clause 7.1 in any of the following events:
- 7.4.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 7.3; or
 - 7.4.2 the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; or
 - 7.4.3 the Customer alters or repairs such Goods without the written consent of the Supplier or adds anything to them; or
 - 7.4.4 the Supplier, on the instruction of the Customer, adds a quantity of water to the Goods that is in excess of the quantities advised in any relevant specification or by the Supplier, and the Customer confirms such instruction by signature on the delivery ticket; or
 - 7.4.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, abnormal storage or working conditions, the methods of mixing adopted by the Customer or inadequate curing; or
 - 7.4.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements; or
 - 7.4.7 the defect arises as a result of the placing adopted by the Customer, or the effects of frost, heat or inclement weather; or
 - 7.4.8 in relation to any volume change on hardening.

- 7.5 In relation to Readymix concrete:
- 7.5.1 the materials used in the production of the Goods contain naturally occurring inclusions which result in cosmetic blemishes or surface depressions, no liability for such blemishes or depressions can be accepted by the Supplier unless the Customer has expressly indicated that it requires Goods without cosmetic blemishes or surface depressions for use in connection with a specific purpose and the Supplier has accepted this in writing;
 - 7.5.2 for cement based Goods to have resistance to aggressive ground conditions, it is the responsibility of the Customer to specify the appropriate design chemical class in accordance with BS 8500-1, as amended or replaced from time to time. The Supplier can accept no liability whatsoever if the Goods do not exhibit adequate resistance to aggressive ground conditions where no such class or the incorrect class has been specified by the Customer; and
 - 7.5.3 without prejudice to the generality of the foregoing where, in relation to any supply of the Goods, if the Supplier complies with any request by the Customer, its employees or agents for a variation of any of the constituents and/or properties of the Goods as set out in the Specification, and in particular for the addition of water to a concrete which is within the prescribed tolerance (in accordance with BS 8500-1 Annex B, as amended or replaced from time to time), the Customer shall accept any consequential alteration to the remainder of the said constituent materials and/or properties of the Goods and the Supplier shall be under no liability whatsoever for any loss, damage or defect resulting from such variation or addition.
- 7.6 Except as provided in this clause 7, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 7.1.
- 7.7 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.
- 7.8 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 7.9 The Supplier shall have no liability to the Customer for the use of Goods following the expiry of the recommended shelf life or if the Goods are not stored in the recommended conditions as notified by the Supplier to the Customer.

8 TITLE AND RISK

- 8.1 The Customer will be responsible for the Goods from completion of delivery.
- 8.2 The Goods shall not belong to the Customer until the later of:
- 8.2.1 the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer, in which case title to the Goods shall pass at the time of payment of all such sums; and
 - 8.2.2 the delivery of the Goods is completed which shall include, where applicable, the Goods being poured at the Delivery Location.

9 PRICE AND PAYMENT

- 9.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price as advised by the Supplier verbally, or, if the Customer was not advised by the Supplier verbally of the price, shall be the price set out in the Supplier's standard price list in effect as at the date of the Order.
- 9.2 The Supplier may, by giving notice to a Customer who is not a Consumer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 9.2.1 any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs); or
 - 9.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered; or
 - 9.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.
- 9.3 Unless otherwise stated the price of the Goods is inclusive of the costs and charges of insurance and transport of the Goods, which shall be invoiced to the Customer.
- 9.4 The price of the Goods is exclusive of amounts in respect of value added tax ("VAT"). The Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods.
- 9.5 The Supplier may issue an invoice prior to delivery of the Goods and the Customer shall pay the Supplier the full price of the Goods due under the Order in advance of the delivery unless otherwise agreed with the Supplier. This clause 9.5 does not apply to Consumer Customers and clause 14.3 applies instead.
- 9.6 Unless the Customer has been granted a credit account, the price of the Goods means that the Customer's account exceeds the agreed credit limit, or the Supplier notifies the Customer that payment is required in advance the Customer shall pay the invoice in advance of delivery. Payment shall be made to the bank account nominated in writing by the Supplier.
- 9.7 Where the Customer has been granted a credit account, the price of the Goods is within the credit limit granted, and the Supplier has not notified the Customer that payment is required in advance, the Customer shall pay the invoice within 30 days of the date of invoice. Time of payment is of the essence.
- 9.8 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the rate of 4% per annum above HSBC plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.

10 TERMINATION AND SUSPENSION

- 10.1 If the Customer becomes subject to any of the events listed in clause 10.2, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer.
- 10.2 For the purposes of clause 10.1, the relevant events are:
- 10.2.1 the Customer suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts, or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
 - 10.2.2 the Customer commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where the Customer is a company) where these events take place for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - 10.2.3 (being a company) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer, other than for the sole purpose of a scheme for a solvent amalgamation of the Customer with one or more other companies or the solvent reconstruction of the Customer;
 - 10.2.4 (being a company) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Customer;
 - 10.2.5 (being a company) the holder of a qualifying floating charge over the Customer's assets has become entitled to appoint or has appointed an administrative receiver;
 - 10.2.6 a person becomes entitled to appoint a receiver over the Customer's assets or a receiver is appointed over the Customer's assets;
 - 10.2.7 (being an individual) the Customer is the subject of a bankruptcy petition or order;
 - 10.2.8 a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
 - 10.2.9 any event occurs, or proceeding is taken, with respect to the Customer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.2.1 to clause 10.2.6 (inclusive);
 - 10.2.10 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business;

- 10.2.11 the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and
- 10.2.12 (being an individual) the Customer dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 10.3 Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 10.2.1 to clause 10.2.9, or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.
- 10.5 Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations and liabilities that have accrued as at termination.
- 10.6 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

11 LIMITATION OF LIABILITY

- 11.1 Nothing in these Conditions shall limit or exclude the Supplier's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); or
 - 11.1.2 fraud or fraudulent misrepresentation; or
 - 11.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 11.1.4 defective products under the Consumer Protection Act 1987; or
 - 11.1.5 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 11.2 **This clause 11.2 does not apply to Consumers and clause 14.7 shall apply instead.** Subject to clause 11.1:
- 11.2.1 the Supplier shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 11.2.2 the Supplier's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

12 FORCE MAJEURE

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a Force Majeure Event. A

“Force Majeure Event” means any event beyond a party's reasonable control, which by its nature could not have been foreseen, or, if it could have been foreseen, was unavoidable, including strikes, lock-outs or other industrial disputes (whether involving its own workforce or a third party's), failure of energy sources or transport network, acts of God, war, terrorism, riot, civil commotion, interference by civil or military authorities, national or international calamity, armed conflict, malicious damage, breakdown of plant or machinery, nuclear, chemical or biological contamination, sonic boom, explosions, collapse of building structures, fires, floods, storms, earthquakes, loss at sea, epidemics or similar events, natural disasters or extreme adverse weather conditions, or default of suppliers or subcontractors.

13 GENERAL

13.1 **Data Protection.** The Supplier will use the personal information the Customer provides to it:

13.1.1 to supply the Goods to the Customer;

13.1.2 to process the Customer's payment for the Goods; and

13.1.3 if the Customer agreed to this during the ordering process, to inform the Customer about similar products that the Supplier provides, but the Customer may stop receiving these communications at any time by contacting the Supplier.

13.2 **Assignment and other dealings.**

13.2.1 The Supplier may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

13.2.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier.

13.3 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the Supplier.

13.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

13.5 **Severance.**

13.5.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.5.2 If one party gives notice to the other of the possibility that any provision or part-provision of this Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

13.6 Notices.

13.6.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, fax or email.

13.6.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.6.1; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

13.6.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.7 Contact details. Subject to clause 13.6,

13.7.1 a Customer can contact the Supplier by telephone on 01924 482630 or by post at Thornhill Works, Calder Road, Dewsbury, WF12 9HY.

13.7.2 the Supplier can contact a Customer using the details the Customer has provided the Supplier with when placing an Order.

13.8 Third parties. A person who is not a party to the Contract shall not have any rights to enforce its terms.

13.9 Governing law. The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.

13.10 Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

14 CONSUMER INFORMATION – THIS CLAUSE 14 ONLY APPLIES TO CONSUMER CUSTOMERS.

Delivery

14.1 The Supplier will agree an estimated delivery date with the Customer verbally. If the Supplier's delivery of the Goods is delayed by an event outside its control then the Supplier will contact the Customer as soon as possible to let the Customer know and the Supplier will take steps to minimise the effect of the delay. Provided the Supplier does this it will not be liable for delays caused by the event, but if there is a risk of

substantial delay the Customer may contact the Supplier to end the contract and receive a refund for any Goods the Customer has paid for but not received.

- 14.2 The Supplier shall ensure that each delivery of the Goods is accompanied by a delivery ticket as set out in clause 6.1, as well as these Conditions.

Payment method

- 14.3 The Supplier accepts payment by credit or credit card, bank transfer or cash. The Supplier will confirm the price including taxes and delivery charges before the Customer places its Order. By placing the Order the Customer agrees to pay for the Goods and the Supplier requires payment before the Goods are delivered.

Information about the Goods and Health and Safety

- 14.4 The Supplier may need to amend the specification of the Goods to comply with changes in laws and regulatory requirements.
- 14.5 Clause 5 of these Conditions sets out important information relating to health and safety. The Customer should read this and any other health and safety information carefully and if the Customer has any queries or require further information it should contact the Supplier.

If there is a problem with the Goods

- 14.6 Consumer Customers have legal rights in relation to the Goods supplied by the Supplier. They must be as described, fit for purpose and of satisfactory quality. However, the nature of the Goods means that they may have cosmetic blemishes and must be used in the correct way. Clause 7.5 sets out some important information about Readymix concrete. The Customer should also follow any storage or use instructions the Supplier provides it with. Damage caused by incorrect storage or use is not a fault in the Goods.

Summary of a Consumer's key legal rights

This is a summary of a Consumer's key legal rights. These are subject to certain exceptions. For detailed information please visit the Citizens Advice website www.adviceguide.org.uk or call 03454 04 05 06.

The Consumer Rights Act 2015 says goods must be as described, fit for purpose and of satisfactory quality. During the expected life of a Consumer's product the Consumer's legal rights entitle him / her to the following:

- up to 30 days: if his / her item is faulty, then the Consumer can get a refund.
- up to six months: if his / her faulty item cannot be repaired or replaced, then the Consumer is entitled to a full refund, in most cases.
- up to six years: if the item can be expected to last up to six years the Consumer may be entitled to a repair or replacement, or, if that does not work, some of the Consumer's money back.

If the Customer wishes to exercise its right to reject Goods the Customer must contact the Supplier. The Supplier will discuss with the Customer whether it is possible for the Customer to return the Goods. Any return will be at the Supplier's

cost but the Customer must make the Goods available for collection if the Supplier asks the Customer to.

The Supplier's liability

- 14.7 The Supplier is responsible for foreseeable loss and damage caused by the Supplier. If the Supplier fails to comply with these Conditions, it is responsible for loss or damage that the Customer suffers that is a foreseeable result of the Supplier breaking this Contract or its failing to use reasonable care and skill, but the Supplier is not responsible for any loss or damage that is not foreseeable. Loss or damage is foreseeable if either it is obvious that it will happen or if, at the time the Contract was made, both the Supplier and the Customer knew it might happen, for example, if the Customer was discussing with the Supplier during the ordering process.
- 14.8 The Supplier does not exclude or limit in any way its liability to the Customer where it would be unlawful to do so. This is set out in clause 11.1.

Cancellation Rights

- 14.9 The Customer may cancel its Order at any time before the Goods are prepared for delivery. The Supplier will refund any sums paid by the Customer for Goods which have not been provided. Because the Goods are liable to deteriorate or expire rapidly, the Supplier is unable to accept cancellations once they have been prepared for delivery although if the Goods do not comply with the Customer's rights under this Contract the Supplier will refund or replace the Goods at no additional cost to the Customer as set out above.
- 14.10 For any Goods which are prepared to the Customer's specification and not to the Specification, the Customer shall have no right to cancel the Order at any time.