

TERMS AND CONDITIONS

1. DEFINITIONS

- 1.1 "Company" means Litecast Ltd.
- 1.2 "Customer" means the person with whom the Company Contracts.
- 1.3 "Contract" means the Contract between the Company and the Customer for the Contract Works which incorporates the Contract Terms.
- 1.4 "Contract Terms" means these Terms and Conditions together with any other Terms or matters incorporated as provided in Clause 2 hereof or referred to in the Estimate.
- 1.5 "Contract Works" means the supply of materials and services e.g. design or any combination thereof to be supplied or rendered by the Company as described in the Estimate and includes:-
 - (a) any work to be performed by the Company at any place other than the Site.
 - (b) the sale and delivery of goods and materials.
 - (c) any additional work or materials pursuant to the Contract Terms.
- 1.6 "Estimate" means the Company offer to perform the Contract Works whether printed overleaf or elsewhere.
- 1.7 "Price" means the Price specified in the Estimate.
- 1.8 "Site" means the place or places (other than the Company's own premises) where the Company's servants or agents deliver or perform the Contract Works or any part thereof.

2. ACCEPTANCE OF CONTRACTS

- 2.1 The Contract will be subject to and incorporate the Contract Terms to the exclusion save where the context otherwise requires of any other Terms (including any standard Terms and conditions proffered by the Customer) whether or not such other Terms are endorsed upon delivered with or referred to in any purchase order or other document delivered by the Customer to the Company. The foregoing shall not operate to exclude any conditions implied by the statute the exclusion of which would be void. Amendments to the Contract Terms shall only be incorporated into the Contract if expressly accepted by the Company in writing (signed by a Director).
- 2.2 The Contract Terms shall prevail over the Estimate and any other document referred to therein or in the Contract. The Estimate shall prevail over any documents referred to therein other than the Company's drawings so far as referred to in the Estimate. The Customer shall issue instructions for the correction of any inadequacies or inconsistencies in the Estimate and the Contract or any documents or drawings referred to in relation to the Contract Works and any such instruction shall be deemed a variation instruction in accordance with sub-conditions 5.3 and 5.4
- 2.3 We do not sell products for purchase or use by children.
- 2.4 When you communicate with us via email, we will communicate with you by email. For contractual reasons you consent to receive communications that we provide to you and this will satisfy any legal requirement.
- 2.5 If you use any Services via email you are responsible for maintaining the confidentiality of your account and password as well as restricting access to your computer. If you become aware of unauthorised use, you must notify us immediately.

3. ESTIMATES

- 3.1 Each Estimate is given on the basis that no Contract will come into existence between the Customer and the Company until the Company shall dispatch to the Customer an Acknowledgement of Order expressly stipulating:-
 - (i) acceptance of the Customer's order;
 - (ii) that the Contract Terms shall apply to and be incorporated into the Contract.
- 3.2 Where any performance is rendered by the Company of the Contract Works (or any part thereof) described in any Estimates to the Customer or of any obligations arising out of under or pursuant to the Contract Works at any time after the Estimate shall have been delivered to the Customer the said performance shall be deemed to have been rendered pursuant to the Estimate and the Contract Terms shall be deemed to be incorporated into the Contract arising and this shall be so notwithstanding that the Customer has or has purported to respond to the Estimate in a manner seeking or purporting to incorporate the Customer's (or any other) conditions of Contract into the Contract so arising.
- 3.3 The Company shall so far as possible carry out the Contract Works in accordance with the Estimate save as amended by way of variations using the goods or materials of the type described therein so far as procurable.

4. TERMS OF PAYMENT

- 4.1 The Company shall be entitled to submit to the Customer at such interval as the Company shall determine invoices for part payment of the Price including the value (in the Company's opinion) of the Contract Works performed (including off Site work and goods and materials purchased or manufactured by the Company but not delivered to Site).
- 4.2 The Company shall be entitled to submit a final invoice to the Customer after delivery.
- 4.3 Subject to sub-condition 4.4 all invoices shall be paid in full by the Customer strictly within 30 days of the date of the relevant invoice.
- 4.4 If within 10 calendar days of the date of the invoice the Customer shall give notice in writing to the Company that the value applied for is disputed and stating both the amount disputed and the amount accepted the latter amount shall be paid in accordance with sub-condition 4.3 in substitution for the amount invoiced. In the event of such dispute the Company shall have an unfettered right (exercisable within 10 calendar days of the receipt of the Customer's notice) either to terminate the Contract (in which case the Company shall have license to re-enter the Site to remove all materials thereupon and to recover from the Customer a reasonable sum for work and materials performed, provided and purchased in relation to the Contract Works) or to proceed with the Contract Works without prejudice to its entitlement to payment.
- 4.5 If the Customer shall fail to pay any application or invoice or undisputed amount under clause 4.4 strictly within 30 days as provided in sub-condition 4.3 hereof the Customer shall forfeit its entitlement to the net price which may have been agreed and the Customer shall pay to the Company interest on the amount payable at a rate of 5% per annum above the LIBOR rate compounded at quarterly intervals.
- 4.6 Where the Customer not later than 10 calendar after the date of invoice (whichever is the earlier) delivers (by recorded delivery) to the Company written notice specifying the intention to make deductions from the Price by way of set off of damages for alleged breach of the Contract the Customer shall be entitled to deduct the amount of such loss and damage actually incurred at the date of the said notice provided the loss and damage is quantified in detail in the said notice and provided the notice specifies the breach(es) alleged and is accompanied by all documents necessary to support the quantification of the alleged loss and damage.
- 4.7 The Customer's right of set off are fully set out in sub-condition 4.6 and no other entitlement to set off shall arise pursuant to the Contract, common law or otherwise. Nothing in this condition shall prevent the Customer from pursuing by legal proceedings any claims against the Company arising out of the Contract.
- 4.8 Where the Contract Works include materials to be made assembled or purchased by the Company the value of such items may be included in invoices and where delivery cannot be made due to any of the reasons specified in sub-condition 7.1 payment shall be made in accordance with sub-conditions 4.1 – 4.3 as though the goods or materials had been delivered.
- 4.9 Without prejudice to any other rights or remedies of the Company if payment is not made in accordance with this condition the Company shall (without prejudice to any other rights it may have) upon written notice to the Customer be entitled forthwith to suspend all further performance of the Contract Works and to remove materials (and at the Company's absolute discretion to re-site the same) and to enter the Site for this purpose and the Company shall not be liable or responsible for any delay to the progress or completion of the Contract Works thereby occasioned. In the event that the Customer shall pay all sums due after such suspension the Company shall recommence performance of the Contract Works subject to a reasonable re-mobilisation period and the Company shall be entitled to a reasonable sum in respect of any work involved in the removal from Site and re-commencement of the Contract Works. In the event of work being so suspended for a period exceeding 14 days the Company may by notice in writing terminate the Contract without prejudice to the Company's antecedent or accrued rights under the Contract.

5. PRICE

- 5.1 The Price shall be the sum specified in the Estimate or otherwise agreed but in any event shall be adjusted in accordance with this condition and shall be payable in accordance with condition 4.
- 5.2 The Price/Prices referred to in the Estimate are based upon the cost of materials at date of Estimate and on deliveries being carried out Monday to Friday between the hours 8.30am to 4.30pm (although the Company shall not be obliged to work these hours) and include for overheads and profit and exclude bank and public holidays and the Company's holiday shutdown periods. The Company shall be entitled to increase the Price/Prices to take account of any increase in the costs of alteration to the above requirements or any of them or the imposition of any new or increased taxes or duties occurring from whatever cause between the date of the Estimate and completion of the Contract Works.
- 5.3 The Customer shall in addition pay for:-
 - 5.3.1 work carried out by the Company outside the hours referred to in sub-condition 5.2 (but this shall not obligate the Company to work outside these hours) at the rate specified in the Estimate or in default thereof at the overtime rates paid by the Company or at such other sum as the parties shall agree in advance;
 - 5.3.2 work carried out by the Company additional to or by way of variation of the work specified in the Estimate;
 - 5.3.3 work carried out by the Company which is additional to work indicated in the Estimate or in any drawings prepared by the Company and approved by the Customer or resulting from any addition, alteration or revision to the Estimate or any such drawing or drawings;
 - 5.3.4 any cost of expense incurred by the Company as a result of any interference, interruption or obstruction of the Company's programme of Works or progress caused by the Customer its other sub-Contractors servants or agents or any architect/engineer/supervising officer or like person or any person having an interest whether beneficial or otherwise in the Contract Works;
 - 5.3.5 work costs or expenses arising from any inadequate inaccurate or inconsistent or impossible requirements of any instructions or drawings or information provided to the Company by the Customer its other sub-Contractors servants or agents or any architect/engineer/supervising officer or like person or any person having an interest whether beneficial or otherwise in the Contract Works;
 - 5.3.6 any statutory charge or fee incurred by or to the Company in connection with the Contract Works or any cost or expense payable by the Company to any gas, electric or water utility or any government body, agency or local authority.
- 5.4 The Customer shall as a result of the matters specified in sub-condition 5.3.1 to 5.3.5 or any other additional or varied work ordered or approved by or on behalf of the Customer pay to the Company an adjustment to the Price calculated (together with a percentage addition in respect of overheads and profit of 40%) on the cost to the Company of goods materials labour sub-Contracts transport duties and taxes or, alternatively, at the Company's option at the rates (if any) specified or derived from the Estimate.
- 5.5 In all cases the price referred to with the estimate is exclusive of VAT which shall be due at the rate ruling on the date of a VAT invoice.
- 5.6 Cancellation of orders. Should the customer cancel the order after receipt of the acknowledgement of order, we reserve the right to charge for costs incurred. In the case of drawing work, this represents 10% of the order value.

6. OWNERSHIP AND RISK

- 6.1 The property in goods or materials fixed or unfixed supplied under the Contract shall not pass to the Customer until the Price (and any other sums due from the Customer under the Contract) has been paid in full and the Company shall be entitled to remove from the Site any materials at any time before payment is so made.
- 6.2 Where materials (whether comprised in the Contract Works or not) delivered to the Site or into the possession of the Customer its sub-Contractors servants agents or nominees the said materials shall be stored separately from the other property of the Customer or any other person and shall be clearly marked by the Customer as the property of the Customer.

- 6.3 The Contract Works shall be at the sole risk of the Customer. If the Customer requests, the Company may (but shall not be obliged to) reinstatement the Contract Works or any part thereof which may be lost damaged or destroyed from whatever cause howsoever arising (other than the negligence of the Company or its servants) before completion of the Contract Works and such reinstatement shall be deemed a variation and paid for in accordance with the provisions of sub-condition 5.3 and 5.4.

7. DELIVERY AND COMPLETION

- 7.1 The Company will endeavour to deliver and/or complete (as the Contract requires) the Contract Works within the time specified in the Contract or where no time for delivery or completion is specified within a reasonable time. Time shall not be of the essence.
- 7.2 Without prejudice to clause 7.1 the Company's liability for loss of whatever kind arising from any failure to deliver in accordance with sub-condition 7.1 shall not in any event exceed a maximum of 5% of the Price.
- 7.3 The Company shall be entitled at its discretion to make deliver of goods or materials by instalments.
- 7.4 In the case of supply only Contracts the Company shall only be obliged to deliver to the entrance to the Site. The Customer is responsible for unloading the goods and materials upon delivery. **A maximum period of 2 hours from arrival at Site is allowed for the purposes of unloading each delivery vehicle. In the event of vehicles being on Site beyond this period, the Customer shall pay demurrage charges at the cost to the Company of £75/hour.** The Customer shall inspect the goods and materials upon delivery and the signature by the Customer or anyone on its behalf of the Company's delivery note shall be deemed to be conclusive evidence that the goods or materials comprise therein have been delivered to the Customer in an undamaged condition.
- 7.5 Deliveries are scheduled as untimed for between 8am & 5pm Monday to Friday. The suitability of the site for access/offloading will be assessed on arrival and will be at the sole discretion of the litecast driver.
- 7.6 Without prejudice to any other rights of the Company if by reason of any act omission of default of the Customer its servants or agents (including for the avoidance of doubt the ordering of any varied or additional work) or any event beyond the control of the Company the regular progress of the Contract Works shall be materially affected the Customer shall pay and reimburse the Company for any loss and expense thereby incurred by the Company except in so far as the Company's reimbursed therefor under any other provision under the Contract.

8. CUSTOMER'S OBLIGATIONS

- 8.1 The Customer shall provide free of costs to the Company the following:-
 - 8.1.1 at whatever place on Site the Company may require adequate and appropriate equipment and manual assistance for loading and off-loading materials together with safe and secure storage for the same and;
 - 8.1.2 convenient access to and about the Site on roads or surfaces satisfactory for transporting the weight of goods materials involved
 - 8.1.3 Insurance against "all risks" in respect of any damage injury or loss whatsoever to the Company's materials whilst on Site such insurance to be in the joint names of the Company and the Customer and to cover (inter alia) the full cost of replacement of the materials of the Company.
 - 8.1.4 Fully accurate and comprehensive dimensioned drawings, information and Site plans. The Company's Price does not include for taking any Site dimensions.
- 8.2 Installation is to be in accordance with the Code for Practice for:- **The safe installation of precast concrete flooring and associated components 2013 and its revisions.**

9. GUARANTEE

- 9.1 Save as otherwise provided in these Conditions the Company's liability in respect of any defect in the Contract Works shall subject to the Company's receiving notice of such alleged defects within 6 months of substantial completion of the Contract Works be limited to replacing or repairing (at the Company's sole discretion) or alternatively (at the Company's sole discretion) paying for the repair or the replacement (whichever shall be the lesser) of the Contract Works (or any constituent part thereof as shall be defective) by reason of defective design (including selection of materials) or workmanship or materials for which the Company is responsible but the Company shall not be liable for any other losses whatsoever or however caused as a result of defects in design or workmanship or materials. The Customer shall accept full responsibility for any design provided by or on its behalf and for all instructions affecting the Contract Works.
- 9.2 The Company will not be liable to the Customer as specified in 9.1 or at all where:-
 - 9.2.1 the Contract Works or any goods, materials or equipment comprised therein have not been properly protected in accordance with the Company's recommended procedures or have been subjected to greater loads than those to which the Company's design was based or where alterations have been made to the premises into which the Contract Works have been installed
 - 9.2.2 damage resulting from frost or other extremities of weather or temperature
- 9.3 Notwithstanding sub-condition 9.1 the Company shall have no liability whatsoever to the Customer in respect of any goods materials or equipment comprised in the Contract Works that are not manufactured by the Company save that so far as the Company reasonably can it will assign to the Customer the benefit of any guarantee warranty free service or maintenance commitment given to the Company by the manufacturer or supplier or any rights of action in respect of such goods materials or equipment and to the extent that the Company is entitled to assign such rights the Customer shall accept such assignment (whenever made) and the Company shall have no further liability to the Customer in respect of the said goods materials and equipment.
- 9.4 Subject to sub-condition 9.1 and save as otherwise provided in the Contract Terms the Company's liability for defective work and materials shall be limited to the cost of repairing or (at the discretion of the Company) replacing the same but excluding any work cost or expense consequential thereon.

10. LIABILITIES

- 10.1 Save as otherwise expressly provided in the Contract Terms the Company its servants agents or sub-Contractors shall not be liable for any loss of whatever kind and howsoever arising incurred by the Customer (except personal injury or death resulting from the Company's or its servant's negligence) by virtue of any breach of Contract or negligence on the Company's part or on the part of its servants agents or sub-Contractors and all warranties and conditions express or implied statutory or otherwise to contrary effect are hereby expressly excluded (to the extent that such exclusion is permissible by law).
- 10.2 Without prejudice to any other of the Contract Terms the Customer shall indemnify the Company against all costs claims proceedings demands liabilities or damages whatsoever and howsoever incurred by or made against the Company.
 - 10.2.1 which arise from the Contract Works and which result directly or indirectly partially or wholly from any act or omission (including any negligence) of the Customer or any other person;
 - 10.2.2 arising or resulting from the death of or injury to any of the Company's servants agents or sub-Contractors while on Site howsoever caused otherwise than through the negligence of the Company its servants agents or sub-Contractors.

11. DESIGN

- 11.1 The Company warrants that the materials manufactured and supplied by it will be capable of supporting the load or loads specified by the Company in its Estimate. Save as to this the Company shall not be liable for nor shall it give or be deemed to have given any warranty guarantee or representation to such design or the practicability of construction the efficiency sufficiency safety fitness for purpose or otherwise of any design drawings specification or the resultant Contract Works or the Works into which they are incorporated and the Company shall be under no duty to warn or advise as to such matters or any of them.
- 11.2 Save as provided in sub-condition 11.1 and subject to condition 9 in so far as the Company design the Contract Works or any part thereof or in so far as the Company selects goods materials or equipment as part of the Contract Works the Company warrants that it will use reasonable skill and care in so doing and the Company's liability to the Customer for any breach of this warranty or the warranty given in sub-condition 11.1 shall be limited to the Company carrying out at its own expense such re-design as is necessary and the execution of any work consequential thereon. The Company shall not in such circumstances be liable for any other costs claims loss damage or expense incurred directly or indirectly by the Customer as result of such breach.
- 11.3 The Company shall be under no liability whatsoever to the Customer;
 - 11.3.1 where any of the Company's suppliers varies the specification of goods or materials forming the whole or part of the Contract Works and the Company supplies to the Customer goods or materials as so varied (which the Customer shall be obliged to accept)
 - 11.3.2 where any goods or materials comprised in the Contract Works are no longer available and as a result the Company supplies to the Customer goods or materials (which the Customer shall be obliged to accept) similar to but not the same as the goods and materials specified in the Contract.

12. TERMINATION

- 12.1 Without prejudice to any other rights of the Company this Contract will terminate immediately upon:-
 - 12.1.1 the Customer being adjudged bankrupt or making any voluntary arrangement or composition with its creditors or suffering or allowing any execution whether legal or equitable to be levied against its property or convenes a meeting of its creditors (whether formal or informal) or having a Liquidator Receiver or Administrator or any of them appointed in respect of its undertaking or assets or any part thereof;
 - 12.1.2 the Customer failing to observe or perform any of its obligations under the Contract 7 days after the notice of any action in writing given by or on behalf of the Company to the Customer specifying the said failure and requiring the same to be remedied;
 - 12.1.3 the carrying out of the Contract Works or any substantial part thereof being prevented or rendered impracticable for a continuous period of ninety days by reason of accidental damage of any kind whatsoever and however arising or by the act or default of any person other than the Company but including the Customer.
 - 12.1.4 any assault (verbal or physical) on any of our staff or delivery drivers - we operate a zero tolerance policy.
- 12.2 Termination of this Contract in any way whatsoever will be without prejudice to the rights obligations and liabilities of either party accrued prior to termination.
- 12.3 Without prejudice to any other rights of the Company on termination of the Contract under sub-condition 13 the Customer shall pay to and indemnify the Company against any loss damage cost or expense incurred by the Company in connection with the Contract including but not limited to the cost of any work labour goods materials or Constructional Plant supplied used acquired or manufactured in connection with the Contract plus a 40% addition in respect of overheads and profit.

13. ASSIGNMENT

The Company will be entitled to assign the benefit and/or the burden of the Contract or any part thereof.

14. WAIVER

No indulgence or forbearance extended to the Customer shall limit or prejudice any right or claim available to the Company under the Contract.

15. MISREPRESENTATION

No warranty express or implied is given by the Company as to the accuracy or completeness of information supplied by the Company (whether that information is contained in the Estimate or otherwise) and the Company shall have no liability for any loss damage cost claims or expenses (whether the same shall result from the negligence of the Company its employees agents or others for whom it may in law be responsible or otherwise) which may be incurred by the Customer as a result of inaccurate information or any representation made by or on behalf of the Company.

16. ENGLISH LAW

This contract shall be governed and interpreted according to the law of England and Wales.