

CONDITIONS OF SALE – CONCRETE 1:18

Basis of Quotation	1	This Quotation is a standing offer by the Company (H. Tuckwell & Sons Ltd) referred to as Tuckwell to sell concrete within two years after the date of this Quotation. Contracts will be formed when the Customer orders concrete and agrees either the time of delivery or the way in which such time is to be settled.
Access for deliveries	2	The Customer shall provide and clearly indicate to Tuckwell a safe and proper route from the metalled highway to the discharge point and the Customer shall indemnify Tuckwell (both for itself and as agent and trustee for any other person operating any truck making a delivery) against damage or loss which may result from failure to do so. The Customer will ensure a safe, level, hard standing, with good clear all round access.
Delivery dockets	3	In respect of each delivery the Customer shall ensure that an authorised person will be signing the delivery docket: a) acknowledge that the mix description set out on such delivery docket describes the concrete required by the Customer. b) authorise any addition to the concrete of water or of any other materials by recording it on such delivery docket. c) confirm the times of arrival of such truck on site and of completion of discharge. d) acknowledge receipt of such delivery.
Variation of description	4	Where Tuckwell complies with a request from the Customer or from a person reasonably believed by Tuckwell to be acting on his behalf for a variation in the mix description of a delivery the Customer shall accept any consequential variation in the properties and/or the constituents of such delivery.
Strength	5	A reference to strength is (unless otherwise agreed in writing) a reference to compressive strength assessed:- in accordance with BS 8500.
Express terms	6	The Customer shall not be entitled to rely upon delivery reaching a particular strength or as being fit for a particular purpose unless (in either case) an express term to that effect is set out or referred to in this Quotation.
Breach of contract	7	Where the Customer makes a claim against Tuckwell in respect of a breach of contract made on the terms of this Quotation in relation to any alleged failure of concrete to correspond with the mix description or any variation of it which may have been incorporated into any such contract or in the case of any claim that the volume of a delivery did not correspond with the volume shown on the delivery docket which accompanied it. The Customer shall establish that such a breach has occurred.
Liability	8	Where the Customer does not act in accordance with Clause 7 any claim or right in respect of any such breach of contract shall be deemed to have been waived and to be absolutely barred. Where the Customer does act in accordance with Clause 7, Tuckwell's liability in respect of any such breach shall be limited to the direct costs which would necessarily be incurred by the Customer in the breaking out and in the removal of any concrete in question and to any replacement by Tuckwell of the concrete in question and to any other direct costs which would necessarily be incurred by the Customer in carrying out repair or reinstatement. Tuckwell shall not be liable for indirect or consequential damage or loss in relation to any breach (whether of the type referred to in Clause 7 or otherwise).
Ownership of concrete	9	The ownership of concrete shall pass to the Customer at the moment either of its discharge from the truck making its delivery or of its discharge from Tuckwell's plant into any container provided by the Customer.
Credit	10	Any credit facility allowed to the Customer by Tuckwell may be altered or withdrawn at any time.
Waiting Time	11	Tuckwell reserves the right to make a "waiting time" charge for the time during which a truck making a delivery is held on site in excess of a period of five minutes in respect of each cubic meter (or part thereof) plus an additional period of ten minutes of such delivery.
Part Loads	12	The Customer shall pay a "part load" charge in respect of any unfilled capacity of a truck making a delivery (in relation to full loads as shown on this Quotation).
Returned Goods	13	Tuckwell reserve the right to charge a disposal fee for returned Concrete.
Working hours	14	Tuckwell reserves the right to make a charge equal to the reasonable additional costs incurred as a result of its making deliveries outside its normal working hours.
Quantity	15	This Quotation is based on the sale of the approximate quantity of concrete which the Customer has informed Tuckwell that he will require.
Price increase	16	In the event of an increase in Tuckwell's total costs Tuckwell reserves the right to increase its prices by the same percentage as that of the increase in such costs.
Act of God, etc.	17	Notwithstanding any agreement reached pursuant to Clause 1 Tuckwell shall not be liable for damages or delay in delivery caused by Act of God by force majeure by war by riot by civil commotion by military or usurped power by Government order direction or legislation by fire by accident by strike by industrial action short of a strike by lock-out by adverse weather conditions by delays to transport or by any other matter whatever over which Tuckwell has no control.
Waiver of terms	18	No waiver or variation of these Conditions shall be effective unless confirmed in writing by Tuckwell.
Conflicting terms	19	Any other terms or conditions which the Customer may seek to introduce (whether before or after the date of this Quotation) shall be of no effect and an order for or an acceptance by the Customer of a delivery to which this Quotation refers shall be deemed to be on the terms of this Quotation and not otherwise.
Part of Terms	20	These conditions of sale – concrete 1:18 form part of the Tuckwell's standard Conditions of Sale Terms available upon request.

END

CONDITIONS OF SALE

General.

1. These terms and conditions apply to sales by H Tuckwell and Son Ltd (including its various trading names) here after termed the Company. An official of the Company must confirm any variations or additional terms agreed, in writing.

Quotations.

2. Quotations are applicable to the supply of goods at date of quotation and are subject to increase on a rise and fall basis of costs, and are valid for 30 days from date of issue.
3. Quotations are based upon full loads and additional charges are made for part loads. In addition if the delivery vehicle is unable to discharge its load within thirty minutes of arrival on site then waiting time will be charged at the appropriate rate.

Liability.

4. The Customer indemnifies the Company for any damages incurred whilst delivering goods and indemnifies the driver or mate of any such vehicles for any personal injury incurred by them whilst at the delivery site or any access there to not being a public highway, except to the extent that such damage or injury is due to the negligence of the Company, the driver or mate.
5. The customer, his authorised employee or agent must promptly:
 - (a) accept delivery of the goods when they arrive at his site.
 - (b) inspect the goods before they are discharged.
 - (c) sign the delivery note.
 - (d) sign the record of any delay after arrival of the goods on site, standing time etc.

Complaints.

6. Where there is a complaint about the quality of the goods the Customer must:
 - (a) phone the Company on the day of delivery.
 - (b) confirm the complaint in writing to the Company's office within 7 days.
- (c) allow the Company all reasonable facilities to enable it to investigate any such complaints promptly and to advise the customer of any remedial action which may be appropriate.
- (d) any invoice showing on the monthly statement that is disputed must be queried in writing within 14 days of statement date.

Title of Goods.

7. The risk in the goods shall pass to the Customer at the moment of discharge from the delivery vehicle at the Customer's site, or on loading the goods into the Customer's vehicle.

Cancellations.

8. The customer should give sufficient reasonable notice of his requirements:
 - (a) where goods are cancelled and additional cost incurred then such costs will be the liability of the Customer.
 - (b) where goods are cancelled after the vehicle has left the depot the Customer will be responsible for the full haulage costs and any other costs incurred.

Standards.

9. Goods sold by the Company shall be of the type/specification described on the delivery note or quotation submitted. No warranty is given that the goods are suitable for any particular purpose unless the Customer shall first have advised the Company of all relevant factors relating to the particular purpose and the Customer has confirmed in writing that the goods are suitable for that purpose.
10. Where goods supplied by the Company are proved to be defective the Company will replace the goods as promptly as possible without charge and will only reimburse the Customer for expenses proven to have been directly incurred by the Customer which is not due to:
 - (a) delays not caused by the Company.
 - (b) the goods being used for a purpose for which they are not suitable.
 - (c) the goods wrongly handled or placed.
 - (d) any defect in the design or specification of the Customer.

Payment

11.
 - (a) Net payment for goods must be received by Company no later than end of month following month of invoice unless otherwise agreed in writing by the Company.
 - (b) The Company reserve the right at its discretion to refuse to deliver any further goods or suspend supplies or impose such special terms of payment the Company deems appropriate.
 - (c) Payments received will firstly be allocated first against late payment charges then against the oldest invoice first.
 - (d) Should the account remain unpaid to the extent that charges and interest may become due then the due date of outstanding invoices shall be amended to the latter of:
 - i) Due date of oldest invoice
 - ii) Date of invoice
 - iii) Date credit limit was exceeded.

Ownership.

12. Property of the goods shall pass to the Customer when the Company has received actual payment for the goods.
13. The Customer shall not withhold payment properly due to the Company in the event of any dispute within the Company.

Aggregate Levy.

14. Unless otherwise stated, government aggregate levy is included at the rate applicable on the date of quotation. The Company reserves the right to amend prices to include the levy at the applicable rate at the time of delivery/collection.
15. Any claims for exemption from aggregate levy should be made at time of ordering goods.

Invoices

16. The Company reserves the right to impose a minimum invoice value of £10.00 per transaction.

Concrete Specific terms.

17. Ready mixed concrete is supplied subject to additional terms as detailed in "Conditions of Sale – Concrete 1:18" available on request

Quality.

18. The Company warrants that the quality of the Goods shall be in accordance with the specification quoted by the Company; however the Company shall have no liability in respect of any minor deviations from any specification if the Goods are still compliant with applicable regulations or an independent expert has opined that the Goods are still suitable for uses appropriate with such specification. Subject to Conditions 18 a and 19, where Goods supplied by the Company are proved to be defective or otherwise not in accordance with the Contract ("Defective Goods"): ((a)) the Company will at its sole discretion either (i) replace the Defective Goods as promptly as practicable; or (ii) refund the price paid for the Defective Goods; and ((b)) the Company shall reimburse the Buyer the cost of physically removing the Defective Goods, subject always to the limitations on liability in Conditions 18 a and 19 below. 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.
- a) In any event, the Company shall not be liable under Condition 18 for any defect or failure in the Goods unless the Buyer (i) notifies the Company in writing of the alleged defect or failure within 14 days of delivery, or where the defect or failure was not apparent on reasonable inspection at the time of delivery, within 14 days of the time when the defect or failure ought reasonably to have been discovered; and (ii) allows the Company all reasonable facilities to investigate any such defect or failure promptly and to advise the Buyer of any remedial action which may be appropriate; and (iii) follows any reasonable remedial action recommended to it by the Company; and (iv) provides documentary evidence satisfactory to the Company that the Goods do not meet the applicable specification. If any Goods are known by the Buyer to be outside of specification or the terms of any order, under no circumstances shall the Company ever be liable for costs or liabilities relating to the continuance of works or further constructions, any such works or constructions are at the sole risk of the Buyer.

Limitation of Liability

- 19 a) Nothing in these Conditions shall limit or exclude the liability of the Company for death or personal injury resulting from the negligence of the Company, its employees or agents or for fraudulent misrepresentation. Save as specified in Condition 18, the Company shall not be liable whether in contract, tort (including negligence or breach of statutory duty), or otherwise to the Buyer for any form of damage, loss, cost or expense, whether direct, 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.
- b) The maximum aggregate liability of the Company arising out of Condition 18 or in connection with the supply of Goods or their use by the Buyer (including any refund made pursuant to Condition 18 (ii) above and/or any reimbursement made pursuant to Condition 18(b)) shall be limited to three times the price of the Defective Goods, save that in the event that such sum is less than the cost of physical removal provided for in Condition 7.1 above, the Company shall be liable for the additional cost of physical removal of the Defective Goods up to a maximum of a further sum of £25,000.00.
- c) The Company's maximum aggregate liability for all other matters arising under, out of, or in relation to this Contract (but excluding in respect of Defective Goods), shall be limited to £50,000.