

## Willis & Ainsworth Ltd Terms and Conditions

### **1. DEFINITIONS**

"The Company" means Willis and Ainsworth Ltd (company number 7563552) "the Customer" means the party with whom the Company contracts; "Contract" means any contract between the Company and the Customer; "Goods" means the goods the Customer buys from the Company (including but not limited to sand, gravel, aggregates, stone, screed, topsoil and concrete); "Services" means the services to be provided by the Company to the Customer.

### **2. GENERAL**

- (a) These Conditions shall apply to the exclusion of all other terms and conditions issued by the Customer.
- (b) The Conditions may not be varied except in writing by the Company's company directors.
- (c) All descriptions and specifications of the Goods and Services given to the Customer and statements made by the Company regarding the availability of Goods and Services are approximate and do not form part of the Contract.
- (d) Any quotation given by the Company to the Customer is an invitation to the Customer to make an offer to contract with the Company, within the period stated in the quotation (and, if no period is stated, within 28 days from the date of the quotation).
- (e) No order placed by the Customer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods, or begins to provide the Services, to the Customer.
- (f) The Customer shall co-operate with the Company in all matters relating to the Services and Goods.

### **3. PRICE**

- (a) Unless otherwise agreed in writing by the Company, the prices for the Goods and Services shall be those in the Company's price list published on the date of the dispatch of the Goods or the commencement of the performance of the Services.
- (b) The Company may increase the prices in its price list at any time.
- (c) The Company's prices are exclusive of value added tax.

### **4. PAYMENT**

- (a) Payment for the Goods is due by the last working day of the month following the month of delivery, unless agreed in writing by a Director of the Company.
- (b) Time for payment is of the essence. Payment must be made in full without any deduction or withholding of any kind. No payment shall be deemed to have been received until the Company has received cleared funds.
- (c) Late payment, for whatever reason, shall entitle the Company to charge interest on the full outstanding amount from the due date for payment at the monthly rate of 2.5 % above the base lending rate from time to time of National Westminster Bank Plc accruing on a daily basis until payment is made.
- (d) The Company reserves the right to suspend, withdraw or cancel Services, and suspend delivery of Goods, in the event of late payment by the Customer.

## **5. DELIVERY**

(a) Any dates specified by the Company for delivery of Goods are estimates. Failure by the Company to make delivery by any stated date shall not entitle the Customer to rescind or terminate the Contract.

(b) The Company will notify the Customer of the estimated delivery date and the Customer must take delivery on such date or such other date as the Company shall indicate to the Customer. Failure to take delivery (in whole or in part) when notified by the Company will require the Customer to pay storage charges, or (at the Company's option) returned load charges, which shall be added to the agreed price. The Company may withhold delivery of Goods until such charges have been paid.

(c) When the Company delivers Goods, or makes arrangements for Goods to be delivered, the Customer shall ensure that delivery vehicles are not obstructed or delayed in any way. The Company and its agents may refuse to make delivery if access to the agreed place of delivery is unsuitable or unsafe for such delivery and to charge the Customer accordingly.

(d) The delivery of Goods is made by the Company on the condition that adequate facilities and, if necessary, labour, will be made available by the Customer, at the Customer's expense, at the agreed place of delivery.

(e) The Company may require the Customer to take delivery at the Company's depot, if the delivery of Goods to the agreed place of delivery, is not reasonably accessible by road vehicles available to the Company.

(f) Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more instalment shall not entitle the Customer to treat the contract as a whole as repudiated.

(g) The Company may deliver from 7 am until 6pm on delivery days. It is the customer's responsibility to ensure there is someone on site to accept the goods.

(h) Cancellation of the Goods while in transit will incur return load and re-stocking charges these will be processed before any refund can be issued.

(i) Any cancellation or delay of an order by the Customer on or after 2:30pm on the working day before the order is due to be fulfilled, or if the Company cannot deliver an order due to a failure of the Customer to comply with its obligations pursuant to Condition 3.2 or 3.5, is subject to payment by the Customer of:

- (i) The Cancellation Charge of 50% of the total cost per goods; and
- (ii) The Returned Materials Charge

(j) All orders must be altered or cancelled by telephone the following are not accepted:

- (i) Email
- (ii) Text
- (iii) Instant Message
- (iv) Letter

(k) Waiting time is charged after 20 minutes on site unless otherwise agreed in writing. Waiting time is charged at £72 per hour plus VAT.

- (l) Proof of delivery is taken in 3 ways:
- (i) Signed tickets by a person on site
  - (ii) Vehicle GPS data where a signature is not available
  - (iii) A photograph of goods on site

## **6. RETURN OF GOODS**

Goods returned for credit by the Customer will not be accepted by the Company unless by prior written agreement.

## **7. RISK AND TITLE IN THE GOODS**

- (a) Risk in the Goods shall pass to the Customer upon delivery of the Goods to the Customer.
- (b) Title in the Goods shall remain in the Company until payment of the price in full.
- (c) The Company and its agents, may at any time after the Customer's right to possession has terminated, enter the place where the Goods are stored to repossess them.
- (d) The Company may maintain an action against the Customer for payment of the price notwithstanding that title in the Goods has not passed to the Customer.
- (e) If any of the Goods are resold or otherwise disposed of by the Customer before payment has been made in full, the Company may trace the proceeds of such sale or disposal and recover the proceeds of sale.

## **8. CONDITIONS AND WARRANTIES RELATING TO GOODS**

- (a) No representation or warranty given by the Company or its agents on its behalf shall be incorporated into any Contract unless expressly referred to in the Company's quotation.
- (b) All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) to the fullest extent permitted by law are excluded from the Contract.
- (c) The Company does not warrant that the Goods are fit for any particular purpose, save insofar as written advice is given by an authorised employee of the Company as to the fitness of the Goods for a particular purpose made known to the Company by the Customer. Willis & Ainsworth Ltd - CONDITIONS OF BUSINESS
- (d) Any samples submitted by the Company are from current production at the time of submission of such sample. The Goods supplied in bulk may not conform to the original sample. Goods that are a natural product will vary.
- (e) If the Customer is dealing as a consumer nothing in these Conditions shall exclude the provisions of sections 13 to 15 inclusive of the Sale of Goods Act 1979.
- (f) The company will not accept liability if good become unavailable at anytime, the customer will be offered an alternative product which may incur extra costs or entitled to a refund.

## **9. LIABILITY**

- a) This clause 9 sets out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

- (i) any breach of these conditions;
  - (ii) the Goods and Services, and any use made or resale by the Customer of any of the Goods, or of any product incorporating any of the Goods; and
  - (iii) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- (b) Nothing in the Contract limits or excludes the liability of the Company
- (i) for death or personal injury resulting from negligence;
  - (ii) for fraud or fraudulent misrepresentation;
  - (iii) under Part 1 of the Consumer Protection Act 1987; or
  - (iv) breach by the Company of the condition as to title or the warranty as to quiet possession implied by section 2 of the Supply of Goods and Services Act 1982.
- (c) The Company shall not be liable for any damage, loss, act or omission caused as a result of any circumstances outside the Company's control.
- (d) The Company's obligations shall be limited to the repair or replacement (at the Company's discretion) of defective Goods, together with damages (if adjudged to be payable) not exceeding £2,000,000. The Company shall not be liable for any of the following types of loss (whether direct or indirect):
- (i) loss of profit;
  - (ii) loss of business;
  - (iii) depletion of goodwill;
  - (iv) personal injury (so far as not caused by the Company's negligence); or
  - (v) indirect, consequential or pure economic loss, costs, damages, charges or expenses.
- (e) The Customer must inspect the Goods upon receipt and must notify the Company in writing within two working days of any apparent defect becoming apparent to the Customer. No complaint or claim made after such period shall give the Customer any right to reject the Goods.
- (f) Samples of any Goods claimed to be defective must be returned to the Company forthwith where that is possible and where the Company so demands.
- (g) The Customer must notify the Company in writing within ten days of the anticipated delivery date of any claims for non-delivery of Goods.
- (h) The Customer shall indemnify the Company against all actions, claims or demands by third parties against the Company, whether arising directly or indirectly as a result of the Goods or the Contract.

## **10. TERMINATION**

On termination of the Contract for any reason:

- (a) the Customer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest and, in respect of Services supplied but for which no invoice has been submitted, the Company may submit an invoice, which shall be payable immediately on receipt;
- (b) the Customer shall, within a reasonable time, return any Goods for which payment in full has not been received. If the Customer fails to do so, then the Company and its agents may enter the Customer's premises and take possession of them. Until they have been returned or repossessed, the Customer shall be solely responsible for their safe keeping; and
- (c) the accrued rights and liabilities of the parties as at termination and the continuation of any

provision expressly stated to survive or implicitly surviving termination, shall not be affected.

#### **11. BREACH AND INSOLVENCY**

The Customer's right to possession of the Goods, and performance of the Services, shall terminate immediately, and the Company may terminate a Contract, if:

- (a) the Customer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Customer or notice of intention to appoint an administrator is given by the Customer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding-up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or
- (b) the Customer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe or perform any of his/its obligations under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Customer ceases to trade.

#### **12. MATERIAL COLOUR**

- (a) All materials are naturally occurring products and can vary depending on the quarries operation and location of the dig at the time it is processed.
- (b) We have no control over the colour of material or location of digs within quarries. They are independently owned by 3<sup>rd</sup> party operations.
- (c) Colours may vary from any samples or previously delivered materials. To ensure that the delivery matches the sample or previous delivery, we suggest you get these as close together as possible. Blending the material may be required to help the materials match each other.

#### **13. GENERAL**

- (a) The Company may assign the Contract or any part of it to any person, firm or company.
- (b) The Customer shall not be entitled to assign the Contract or any part of it.
- (c) A waiver by the Company of any right under the Contract
  - (i) is only effective if it is in writing and
  - (ii) shall not be deemed a waiver of any subsequent breach.
- (d) If any provision of the Contract is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable that provision shall, to the extent required, be deemed not to form part of the Contract and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (e) This Contract is governed by English Law. The parties submit to the exclusive jurisdiction of the English courts.

#### **14. TRANSFER OF TITLE**

(a) The ownership of the goods shall remain with us until payment in full for all the goods has been received by us in accordance with our terms of payment, (section 4) together with payment of all other sums which may be due or owing by you to us. If such payment is overdue in the whole or in part we may (without prejudice to any other right of ours) recover or resell the goods. We reserve the right to enter upon your premises or the premises of delivery with or without our servants or agents for purpose of recovery.

The customer hereby confirms that all goods sold by Willis and Ainsworth Ltd are sold on it's standard Terms and Conditions of sale.