

Terms & Conditions

1. GENERAL

The following conditions issued by Oakdale (Contracts) Ltd ("the Company") apply to any contract of which these conditions form part to the exclusion of any conditions of order or purchase of the Customer or any other standards, specifications, conditions or particulars of, or adopted by, the Customer, unless expressly accepted in writing by the Company as part of the contract.

2. QUOTATIONS

- i. No order placed in response to the Company's quotation will be binding unless and until accepted by the Company in writing.
- ii. Quotations submitted by the Company shall remain open for acceptance for a period of 28 days from the date of the quotation, unless otherwise specified.

3. PRICES

- i. Where the goods are sold by reference to the Company's published price list, the price payable for the goods shall be the ruling price as published in the price list current at the date of acceptance of the Customer's order by the Company.
- ii. In other cases the price quoted or stated in the contract is based on the cost to the Company of materials, fuel and power, royalty payments, subcontractors, transport and labour at the date of the quotation or acceptance of the order (whichever is earlier). If at the date of dispatch of the goods from the Company's premises there has been any increase in all or any of such costs, the price payable for the goods may at the request of the Company be increased accordingly.
- iii. If in cases where Paragraph 3 (ii) above applies, the Company has, as part of its quotation, quoted a price which, upon acceptance of the quotation, is to be fixed for a specific period of time, then the Company shall not exercise the power to increase prices until the fixed period has expired.
- iv. Where the price for the goods is varied in accordance with this condition the price as varied shall be binding on both parties and shall not give either party any option of cancellation.
- v. There shall be added to the price for the goods any value added tax and any other tax or duty relating to the manufacture, transportation, export, import, sale or delivery (where specified in the contract) of the goods.
- vi. All goods are sold "ex works" unless otherwise stated.
- vii. The risk in the goods passes to the Customer when either:
 - (i) the goods are dispatched from the Company's premises; or
 - (ii) the goods are stored by the Company in accordance with condition 11.
- viii. If the goods are uplifted (i.e. customer arranges transport) The Company accepts no responsibility for any damage, shortage or loss in transit. Claims for any damage, shortage or loss in transit should be made on the carrier, and any conditions imposed by the carrier in relation to claims for damage, shortage or loss in transit should be complied with. If the Company arranges or undertakes the carriage, freight, insurance and any other transport costs beyond the point of delivery, such costs shall be for the Customer's account and shall not affect the provisions of the contract as to the passing of risk.

4. TERMS OF PAYMENT

- i. Payments under the contract are due on acceptance of the Customer's order by the Company and the Company shall be under no obligation to commence manufacture or supply until payment in cleared funds is received.
- ii. Subject to sub-clause (iii) below the Company may provide goods on credit and unless otherwise expressly agreed payments under the contract are due not later than 30 days following the Company's invoice date. Payment is due as set out in this sub-clause notwithstanding that the goods have not been delivered to the Customer if the Company has offered to deliver the goods but the Customer has refused to accept delivery of the goods or has requested that delivery be postponed. The Company reserves the right to charge interest on overdue accounts at the rate of 3% per annum above Barclays Bank Plc base rate.
- iii. On submission of a credit application the Company shall make a search with a credit reference agency, which will keep that search and share that information with other businesses. The Company shall notify the Customer of its credit facility for the next 12 month period. No goods will be supplied on credit before the issue of a credit limit, and the Customer's credit shall not exceed the Customer's credit limit. We will monitor and record information relating to trade performance and such records will be made available to credit reference agencies, which will share that information with other businesses in assessing applications for credit and fraud prevention. The Company reserves the right at its absolute discretion to alter the Customer's credit limit or withdraw the Customer's credit facility immediately on written notice.
- iv. Failure to pay for any goods or delivery shall entitle the Company to suspend further deliveries both on the same order and on any other order from the Customer without prejudice to any other right the Company may have, and the Customer shall be liable for all costs and loss of profit incurred/suffered by the Company as a result of non completion of such orders.
- v. Where requested in writing by the Company, the Customer shall pay the Company a deposit before any goods are produced, such deposit to be deducted from the contract price on completion.

5. RETENTION OF TITLE

- i. Notwithstanding delivery and the passing of risk in the goods or any other provision of these Conditions the property in the goods shall not pass to the Customer until the Company has received in cash or cleared funds payment in full of both:
 - a) The price of the goods and
 - b) The price of all other goods agreed to be sold by the Company to the Customer for which payment is then due.
- ii. Until such time as title in the goods has passed to the Customer:
 - a) The Company shall have absolute authority to retake, sell or otherwise deal with or dispose of all or any part of the goods in which title remains vested in the Company;
 - b) For the purpose specified in (a) above, the Company or any of its agents or authorised representatives shall be entitled at any time and without notice to enter upon any premises in which the goods or any part thereof is stored or kept or is reasonably believed so to be;
 - c) The Company shall be entitled to seek a Court Injunction to prevent the Customer from selling, transferring or otherwise disposing of the goods
 - d) The Customer shall store or otherwise denote the goods in respect of which property remains with the Company in such a way that the same can be recognised as the property of the Company.
- iii. The Customer's right to use the goods or to resell them prior to full payment may be terminated forthwith by written notice given by the Company to the Customer and shall automatically terminate with or without such notice if the Customer being an individual becomes bankrupt or insolvent or has an Interim Order made in respect of him or compounds with his creditors or calls any meeting of his creditors for the purpose of approving a Voluntary Arrangement or being a company has a winding up petition presented by any creditor or calls a meeting of creditors for the purposes of approving a Voluntary Arrangement or appointing a Liquidator, becomes insolvent or has a Receiver or Administrator appointed.

6. DELIVERY AND COMPLETION DATES

- i. The delivery or performance dates specified in the quotation and any other contract documents are approximate only and, unless otherwise expressly stated, time is not of the essence for delivery.
- ii. The Company shall use its reasonable endeavours to deliver goods in accordance with the delivery or performance dates referred to at (i) above, but shall otherwise have no liability whatsoever to the Customer in the event that goods are delivered after the delivery or performance date(s).
- iii. The Company will not be liable in any circumstances for the consequences of any delay

in delivery or failure to deliver if the duration of the delay is not substantial or if the delay or failure is due to act of God, fire, inclement or exceptional weather conditions, industrial action (whether at the Company's premises or elsewhere), hostilities, breakdowns, shortage of labour, materials (including without limitation the inability of the Company or its agents to extract stone of the required colour or specification from quarries due to prevailing geological conditions), power or other supplies, late delivery or performance or non-delivery or non-performance by suppliers or subcontractors, governmental order or intervention (whether or not having the force of law) or any other cause whatever beyond the Company's control or of an unexpected or exceptional nature including among other such events accidental damage to goods held in stock by the Company for the Customer.

- iv. No delay shall entitle the Customer to reject any delivery or cancel or repudiate the contract.
- v. The Company cannot undertake to meet any schedule or programme of the Customer's requirements supplied after the date of the contract and will have no liability whatever for delay in meeting or failure to meet all of any of such requirements (howsoever such failure or delay may arise) unless and to the extent that the Company expressly agrees to meet such requirements, in which event paragraphs (i) and (ii) of this Condition shall apply.
- vi. Any failure to take delivery by the Customer may, at the Company's option be treated as a breach of contract by the Customer.

7. DELIVERY CONTRACTS

- i. Any delivery charges quoted are based on full loads with delivery being made during the normal working week. Split loads, part loads, mechanical off-loading and weekend or Public Holiday deliveries will be made where requested by the Customer in writing and will be charged to the Customer as extra. Current rate demurrage charges will be levied where delivery vehicles are retained on site for a time exceeding one hour for the purpose of unloading.
- ii. Unless otherwise expressly agreed, delivery of the goods shall be to the place of installation/fixing which shall be within the Mainland of the United Kingdom and the Customer shall be responsible for the unloading of the goods. The Company shall have no liability in respect of costs arising from the Customer taking delivery or unloading the goods.
- iii. Delivery of the goods will only be made on roads or hardstanding capable of properly supporting the fully loaded vehicle. The Customer shall be liable to pay for the goods and for the costs of delivery (and any subsequent further delivery) if delivery of, or off loading of, the goods is not reasonably practicable to/at the site nominated by the Customer.
- iv. Where the Company delivers the goods, the Customer shall be deemed to have accepted the same unless the Company is notified in writing of any claim for shortages or damages within 5 working days of delivery, and the liability of the Company is hereby excluded in respect of all claims made after this period.
- v. The Company will endeavour to comply with the delivery date or dates stated at the point of order. The Company is not under an absolute obligation so to do and in particular (but without prejudice to the generality of the foregoing) the Company may suspend or deny delivery of the goods or any instalment or part thereof in the event of any cause whatsoever beyond the Company's control.
- vi. If delivery of the goods or any instalment or part thereof made later than the delivery date or dates stated at the point of order, the Buyer shall not be entitled to treat such late delivery as a breach of contract or to claim damages or to rescind the contract in whole or in part, or any other contract between the Company and the Buyer by reason thereof.
- vii. Delivery if undertaken by the Company, is so undertaken on the condition that adequate labour and facilities will be made available by the Buyer at the Buyer's expense to carry out prompt and safe unloading at the place at which delivery is requested by the Buyer. The Buyer is to ensure that all approach roads to the point of delivery are suitable for the purpose. If the Buyer fails to make available the adequate labour and facilities for unloading in a reasonable time, the Buyer shall pay to the Company a sum equal to all costs, charges and expenses incurred by the Company by reason of the Buyer's said failure.
- viii. The Company reserves the right, if delivery cannot reasonably be made by road transport vehicles available to the Company at the place at which delivery is requested by the Buyer, not to deliver in accordance with the Buyer's request, and to require the Buyer to take delivery at the Company's works.

8. WARRANTIES, DRAWINGS AND INFORMATION

- i. The customer shall at his own expense provide the Company with all drawings, details, schedules, cutting lists, bills of quantities and all other necessary documents and information to enable the Company to manufacture and/or supply the goods and execute the works and, unless otherwise expressly agreed, the Company shall not be responsible for the provision of drawings for the purpose of design, working, or installation of the goods or otherwise.
- ii. The Customer shall compensate the Company for any expense, damage or loss suffered as a result of any claims or proceedings made against the Company regarding patents, copyright or any other intellectual property rights owned by a third party resulting from the use of any documentation or information supplied by the Customer to the Company.
- iii. The Company is entitled to assume that all drawings, descriptions, specifications and other information supplied by the Customer to the Company, whether written or verbal (which, in the case of the latter, must be confirmed to the Company in writing), is in all respects complete, accurate and entirely suitable for the Customer's requirements.
- iv. The Customer is responsible for ensuring that the goods are suitable for their intended purpose and no warranty condition or representation is given by the Company as to the fitness of the goods for any particular purpose save where otherwise agreed.
- v. Unless otherwise expressly agreed, the Company shall have no responsibility for the performance, suitability or durability of any goods or any materials or workmanship comprised therein to the extent that the same is manufactured in accordance with the Customer's designs, drawings, standards or specifications.
- vi. Any extra work, requirement or modification in relation to the goods which is not expressly specified in the contract or which is expressly excluded by these conditions and which the Customer requests shall be charged extra (including an appropriate allowance for profit) to the extent that such extra work, requirement or modification increases the cost to the Company of performance of the contract.
- vii. All drawings, designs and plans prepared by the Company at the Customer's request are provided for the purposes of calculating the measurements and quantities of goods required and for the purposes of illustration only. It shall be the Customer's duty to check the measurements and quantities shown in the drawings, designs and plans against the physical location where installation/fixing is to take place and to ensure that the same are accurate in all material respects and the Company shall have no liability for any inaccuracies in such documents or losses arising from the same if the Customer has failed to carry out those checks. The Company does not warrant that any designs, drawings and plans produced by it comply with engineering or building requirements or regulations and any liability in that respect is hereby excluded.

9. SAMPLES

- i. Samples of goods, whether manufactured stone or natural stone, provided by the Company are intended as a guide to the general character and substance of the goods and the Company is not liable if the bulk of the goods do not correspond with any samples.
- ii. It is the responsibility of the Customer to determine the quantity of sample which may be necessary and the time of its supply in order to ensure that the sample may be representative.

10. LIABILITY

- i. Any claim by the Customer which is based on any defect in the quality, durability or condition of the Goods or their failure to correspond with specification shall, whether or not delivery is refused by the Customer, be notified to the Company within 5 working days of the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of defect or failure. If delivery is not refused, and the Customer does not notify the Company accordingly, the Customer shall not be entitled to reject the Goods and the Company shall have no liability for such defect or failure, and the Customer shall be bound to pay the price as if the Goods had been delivered in accordance with the Contract.
- ii. The goods are sold on the express understanding that they may comprise of either reconstituted manufactured stone or natural stone which are all subject to natural formation characteristics, variation in colour, texture, markings, efflorescence and moisture content, and accordingly, subject as expressly provided in these Conditions and except where the Goods are supplied to a person dealing as a consumer (within the meaning of the Unfair Contract Terms Act 1977), all Warranties, Conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- iii. Where the Goods are supplied under a consumer transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Customer are not affected by these Conditions.
- iv. Except in respect of death or personal injury caused by the Company's negligence, the Company shall not be liable to the Customer by reason of any representation, or any implied Warranty, Condition or other term or any duty at common law, or under the express terms of the Contract, for any loss or damage, (whether for loss of profit, damage to goodwill, any other economic loss, business interruption, loss of business, contracts and/or opportunity or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Company, its employees or agents or otherwise) which arise out of or in connection with the supply of the Goods or their use or re-sale by the Customer except as expressly provided in these Conditions.
- v. Where any valid claim in respect of any of the goods which is based on any defect in the quality or condition of the goods or their failure to meet specification is notified to the Company in accordance with these conditions, the Company shall be entitled to replace the goods (or the part in question) free of charge or, at the Company's sole discretion, refund to the Customer the price of the goods (or a proportionate part of the price) but the Company shall have no further liability to the Customer.

11. DELAYED ACCEPTANCE

If for any reason the Customer is unable to, or refuses to, accept delivery of the goods when the goods are due and ready for delivery the Company may at its absolute discretion, subject to payment by the Customer for the goods in accordance with Condition 4 (ii), arrange storage of the goods and the Customer shall be liable to the Company for the reasonable costs (including insurance) of such storage, such costs being £25.00 per week per pallet but subject to periodic review. This provision is without prejudice to any other right which the Company may have in respect of the Customer's failure to take delivery of the goods or to pay for them in accordance with the contract. Where delivery is delayed with the agreement of the Company at the Customer's request, then the Customer shall be responsible for arranging collection and storage at its own expense and the Company shall have no further obligation in relation to delivery and storage.

12. COMPLAINTS AND CLAIMS

- i. All complaints and claims in respect of goods or parts of goods sold by the Company to the Buyer shall be notified in writing to the Company at its registered office no later than 5 days after delivery. In no circumstance shall any complaint or claim after such period as aforesaid or not made in writing give rise to any right in the Buyer against the Company.
- ii. If the Buyer, having previously notified a complaint or claim in the manner described above, subsequently proves that any goods or part thereof were at the time of delivery not of merchantable quality or fit for any purpose previously notified in writing by the Buyer to the Company, or were not in accordance with the contract description stated on the face of the Company's Offer or were delivered short, then the company shall at its own expenses either (at its option) replace or repair the goods or make good any shortfall. The provisions of these Conditions shall apply mutatis mutandis to any goods replaced by the Company in accordance with this sub-clause.
- iii. The Company shall have no liability whatsoever under this condition:-
 - (a) For any claim or complaint notified in accordance with sub-clause above in respect of which legal proceedings have not been issued and served within six months after delivery of the relevant goods;
 - (b) In respect of any defect in the goods arising from any drawing, design or specification supplied by the Buyer.
 - (c) In respect of any defect arising from wilful damage, negligence or any act on the part of the Buyer or any third party, failure to follow the Company's instructions or misuse or alteration of the goods without the Company's approval.

13. FORCE MAJEURE

- i. The Company shall not be liable to the Buyer under these Conditions or otherwise to the extent that the fulfilment of its obligations hereunder has been prevented hindered delayed or otherwise prejudiced by an act, event, occurrence or circumstances of force majeure as hereinafter defined. For the purposes of this condition force majeure shall mean any act, event, occurrence or circumstance beyond the reasonable control of the Company and shall include (without restricting the generality of the foregoing) war (whether declared or a rebellion, riot, insurrection national or international emergency, civil commotion, fire, flooding, explosion, breakdown of machinery or equipment, labour disturbances, strikes, lock-outs or other labour disputes, mobilisation or extended military activities, seizure, requisitions, restrictions in foreign exchange the introduction or enactment of legislation by government restricting or prohibiting the manufacture supply or sale of goods similar to the goods restrictions or shortages of fuel power equipment materials supplies or labour destruction or loss or damage due to materials causes of any kind whatsoever the Company shall be entitled upon any such act, event, occurrence or circumstances to rescind the contract and all its obligations towards the Buyer thereunder and the Buyer shall not be entitled to receive any compensation payment or damages as a result thereof.
- ii. Where the act, event, occurrence or circumstance of force majeure referred to above continues for a period of six months then subject to the payment by the Buyer to the Company of an amount equal to the costs incurred by the Company in complying with its obligations under the contract the Buyer shall be entitled to rescind the contract.

14. INSURANCES

The Company is covered by employer's liability and public liability insurances. The extent of cover available will be disclosed on the written request of the Customer.

15. FOREIGN CURRENCY EXCHANGE RATE FLUCTUATIONS (FX)

The Company reserves the right to apply a Currency Adjustment factor in relation to Import/Export orders. Quotations and contract rates are based on current market conditions and currency rates and thus are subjected to change. Any adjustment therein will be charged to customer without prior notification.

16. VARIATIONS

No variations to the Contract will be binding unless and until accepted by the Company in writing.

17. APPLICABLE LAW AND ARBITRATION

The contract shall in all respects be governed by and construed in accordance with English Law and the Customer hereby submits to the non-exclusive jurisdiction of the English Courts