

## 1. DEFINITIONS

In these Conditions:

- “the Company” shall mean Sewells Reservoir Construction Ltd t/a SRC Group, SRC Aggregates & SRC Readymix.
- “the Customer” shall mean the party with whom the Company contracts.
- “the Goods” shall mean the goods or where the context permits the services to be supplied by the Company.
- “the Conditions” shall mean the terms set out in this document and any special terms agreed in writing between the Company and the Customer.
- “the Contract” means the contract for the supply of Goods incorporating these Conditions.
- “a Consumer” means a consumer as defined by the Unfair Contract Terms Act 1977 or the Unfair Terms in Consumer Contracts Regulations 1994.

## 2. BASIS OF SALE

- 2.1. The Goods are sold by the Company only under these Conditions, which may not be altered without the written agreement of a Company Director. Any contrary or additional terms unless so agreed are excluded.
- 2.2. Quotations and estimates by the Company are open for acceptance for 30 days from their date and thereafter shall be automatically withdrawn.
- 2.3. Cancellation of the Contract by the Customer will only be accepted at the discretion of the Company and in any case on condition that any costs or expenses incurred by the Company up to the moment of cancellation and all loss or damage resulting to the Company by reason of such cancellation will be paid by the Customer to the Company forthwith.
- 2.4. A charge will be made for any costs incurred by the Company due to suspension or deferment of the Contract by the Customer or in the event that the Customer defaults in collecting, or giving instructions for the delivery of any Goods.
- 2.5. Health and Safety information relating to the Goods is available on request. The Customer warrants that it will pass on to all third parties to whom it may supply the Goods all information as to the use and safe handling of the Goods as may have been passed on to the Customer by the Company

## 3. REPRESENTATIONS

- 3.1. The Company shall not be liable in respect of any misrepresentation made by the Company its servants or agents to the Customer its servants or agents as to the condition of the Goods their fitness for any purpose or as to quantity or measurements unless the representation is:-
  - 3.1.1. made or confirmed in writing by a Company Director; and/or
  - 3.1.2. fraudulent.
- 3.2. Without prejudice to Clause 3.1 of these Conditions while the Company takes every precaution in the preparation of its catalogues technical circulars price lists and other literature these documents are for the Customer’s general guidance only and statements made therein (in the absence of fraud on the part of the Company) shall not constitute representations by the Company and the Company shall not be bound by them. If the Customer requires advice in relation to the Goods a specific request for advice should be made and any advice made or confirmed in writing in response to such a request shall amount to a representation and the Company shall be liable accordingly.
- 3.3. For the avoidance of doubt except where the Goods are supplied to a Customer dealing as a Consumer the Company’s liability for damages for misrepresentation (other than fraudulent) is excluded or limited by Clause 9 of these Conditions. The statutory rights of a Consumer are not affected by these Conditions.

## 4. PRICE

- 4.1. Quoted prices are based on costs prevailing at the time when they are given or agreed and are exclusive of VAT. The Company shall be entitled to adjust the price of the Goods as at the time of delivery of the Goods or each instalment of Goods as the case may be:-
  - 4.1.1. to take account of any direct or indirect price increases sustained by the Company; and/or
  - 4.1.2. if there is any change in the delivery date quantities or specifications for the Goods requested by the Customer or any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

## 5. PAYMENT

- 5.1. Unless the sale is for cash, payment shall be made by the Customer not later than the last day of the month following the date of invoice notwithstanding that the property in the Goods has not passed to the Customer. Time for payment shall be of the essence of the Contract.

- 5.2. The Company reserves the right without incurring any liability whatsoever to refuse to execute the Contract or part thereof if the Customer refuses to accept a price variation under Clause 4 or the arrangements for payments are, or the Customer's credit status is, in the Company's opinion insufficient or not satisfactory and to refuse to perform or continue to perform the Contract with any Customer whose account or part thereof is or becomes overdue for payment.
- 5.3. The Customer shall not be entitled to withhold payment of any amount payable under the Contract by reason of any dispute or claim by the Customer in connection with the Contract or any other ground whatsoever nor shall the Customer be entitled to set-off against any amounts payable to the Company under the Contract any amount which is not then due and payable by the Company to the Customer.
- 5.4. The Company shall be entitled at all times to set-off any debt or claim whatsoever nature which the Company may have against the Customer against sums due by the Company to the Customer.

## **6. DELIVERY**

- 6.1. Delivery dates are given in good faith but are estimates only.
- 6.2. Time for delivery shall not be of the essence of the Contract.
- 6.3. For the avoidance of doubt and without derogation from any other provision of these Conditions the Company shall not be liable for any damages whatsoever whether direct or indirect (including for the avoidance of doubt any liability to any third party) resulting from any delay in delivery of the Goods or failure to deliver the Goods within a reasonable time whether such delay or failure is caused by the Company's negligence or otherwise howsoever.
- 6.4. The Company reserves the right to make delivery by instalments and tender a separate invoice for each instalment. Each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Customer in respect of any one or more instalments shall not entitle the Customer to treat the Contract as a whole as repudiated.
- 6.5. The price of the Goods is based on:-
  - 6.5.1. the Customer requiring delivery during the Company's normal working hours or days (such hours or days are available on request). If the Customer requires delivery at any other time then the Customer shall give at least seven working days notice in writing to the Company and, if the Company agrees to such delivery, the Customer shall pay all additional expenses as determined by the Company occasioned by such delivery; and
  - 6.5.2. delivery being made in loads of twenty tonnes or more. Delivery in loads of lesser quantity shall be subject to a premium on haulage. Details of such premium are available upon request.
- 6.6. It is a condition of the Contract that proper assistance is given by the Customer to the driver of the delivery lorry in unloading the Goods and that the Company's delivery vehicles or those of its agents will be held on site for not more than twenty minutes. Any period in excess of these times will be charged as waiting time to the Customer at the rate determined by the Company and such rate is available from the Company upon request.
- 6.7. Delivery by the Company's road vehicles shall be made on the nearest good hard road to site with adequate turning space at the point of delivery. The truck driver is empowered to refuse delivery if, in his opinion, the point of unloading is unsafe or is likely to prove dangerous to a vehicle. If the delivery vehicle is required to deliver at any point off a public road, the Customer will be responsible for any damage to vehicles, pipes, manholes or any other property of any sort resulting there-from and hereby indemnifies the Company against any loss, damage, claims, costs, including legal costs on an indemnity basis or demands which the Company may incur as a result of such delivery.
- 6.8. In the event that the Customer requests that any Goods be deposited on a street or public highway the Customer shall be responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons or property and shall indemnify the Company in respect of all costs, claims, losses or expenses including legal costs on an indemnity basis which the Company may incur as a result of such delivery.

## **7. INSPECTIONS AND SHORTAGES**

- 7.1. The Customer shall inspect the Goods at the place and time of unloading but nothing in these Conditions shall require the Customer to break packaging and/or unpack Goods which are intended to be stored before use.
- 7.2.
  - 7.2.1. The Customer must inform the Company by telephone or facsimile as soon as reasonably practical and in any event must give the Company written notice within two working days of unloading of any claim for short delivery.
  - 7.2.2. If the Customer does not give the Company that written notice within that time the Goods will be deemed to have been delivered in the quantities shown in the delivery documents.

7.2.3. The Customer shall not be entitled and irrevocably and unconditionally waives any right to reject the Goods or claim any damages whatsoever for short delivery howsoever caused.

7.2.4. The Company's liability for short delivery is limited to making good the shortage.

7.3.

7.3.1. Where it is or would have been apparent on a reasonable inspection that the Goods are not in conformity with the Contract or (if the Contract is a contract for sale by sample) that the bulk does not compare with the sample the Customer must inform the Company by telephone or facsimile as soon as reasonably practical and in any event must give the Company written notice within two working days of unloading of any claim to that effect.

7.3.2. If the Customer (not being a Consumer) fails to give the Company that written notice within that time the Goods will be deemed to have been accepted and the Customer shall not be entitled and irrevocably and unconditionally waives any right to reject the Goods.

7.3.3. If the Customer (not being a Consumer) fails to give the Company that written notice within that time Clause 9 shall have effect.

## **8. RISK AND TITLE**

8.1. The risk in the Goods shall pass to the Customer upon delivery.

8.2. Until the Company has received in cash or cleared funds payment of all sums owed by the Customer to the Company on any account whatsoever the ownership of the Goods shall remain with the Company.

8.3. Until such time as the property in the Goods passes to the Customer the Customer shall hold the Goods as the Company's fiduciary agent and bailee and shall keep the Goods separately stored, protected, insured and identified as the Company's property. Until that time the Customer shall be entitled to re-sell or use the Goods in the ordinary course of his business but at the direction of the Company shall account to the Company for the proceeds of sale or insurance proceeds related to the Goods.

8.4. The Company shall be entitled at any time to recover any or all of the Goods in the Customer's possession to which the Company has title and for that purpose the Company, its servants or agents may with transport as is necessary enter upon any premises occupied by the Customer or to which the Customer has access and where the Goods may be or are believed to be situated.

## **9. LIABILITIES**

9.1. In these Conditions "Defect" shall mean the condition and/or any attribute of the Goods and/or any other circumstances which but for the effect of these Conditions would have entitled the Customer to damages.

9.2. Nothing in these Conditions shall exclude or restrict the Company's liability for death or personal injury resulting from its negligence or the Company's liability for fraudulent misrepresentation.

9.3. If the Customer deals as a Consumer any provision of these Conditions which is of no effect shall not apply. The statutory rights of a Customer dealing as a Consumer are not affected by these terms.

9.4. Subject to Clauses 9.2 and 9.3 of these Conditions the Company shall not be liable by reason of any misrepresentation (unless fraudulent) or any breach of warranty condition or other term express or implied or any breach of duty (common law or statutory) or negligence for any damages whatsoever. Instead of liability in damages the Company undertakes liability under Clause 9.5 below.

9.5. Where but for the effect of Clause 9.4 of these Conditions a Customer would have been entitled to damages against the Company the Company shall not be liable to pay damages but subject to the conditions set out in Clause 9.6 below shall in its sole discretion repair the Goods at its own expense or supply replacement Goods free of charge or refund all (or where appropriate part) of the price for the relevant Goods.

9.6. The Company will not be liable under Clause 9.5:-

9.6.1. if the Defect arises from fair wear and tear; and/or

9.6.2. if the Defect arises from wilful damage negligence abnormal working conditions mis-use alteration or repair of the Goods failure to follow British Standard or industry instructions relevant to the Goods or storage of the Goods in unsuitable conditions (but this sub-Clause shall not apply to any act or omission of the Company); and/or

9.6.3. unless after discovery of the Defect the Company is given a reasonable opportunity to inspect the Goods before they are used or in any way interfered with. For the avoidance of doubt the Company acknowledges that the costs of suspending works are relevant to the determination of what is a reasonable opportunity and this sub-Clause shall not apply to any works affecting the Goods which it may be reasonably necessary to carry out in the interests of safety and/or as emergency measures.

9.7. Subject to Clauses 9.2 and 9.3 of these Conditions the Company shall not be liable by reason of any misrepresentation (unless fraudulent) or any breach of warranty condition or other term express or implied or any

breach of duty (common law or statutory) or negligence for any damages howsoever arising (if notwithstanding Clause 9.4 of these Conditions the Customer is entitled to recover any) nor shall the Company be liable under Clause 9.5 of these Conditions unless:-

9.7.1. if the Defect would have been apparent on a reasonable inspection under Clause 7.1 of these Conditions at the time of unloading written notice of any claim is given to the Company within two working days of the time of unloading; or in any other case

9.7.2. the Defect is discovered within 2 months from the date of delivery and the Company is given written notice of the Defect within 7 working days of it being discovered.

9.8. If the Goods are manufactured processed or mixed by the Company to the design quantity measurement or specification of the Customer or its agents then:-

9.8.1. Subject to Clauses 9.2 and 9.3 of these Conditions the Company shall not be under any liability for damages howsoever arising or under Clause 9.5 of these Conditions as the case may be except in the event of:

- fraudulent misrepresentation;
- misrepresentation where the representation was made or confirmed in writing by a Company Director;
- non-compliance with such design quantity measurement or specification;
- breach of a written warranty by the Company that the Goods are fit for that purpose; or
- a claim maintainable against the Company pursuant to Clauses 9.2 or 9.3 of these Conditions.

9.8.2. The Customer will unconditionally fully and effectively indemnify the Company against all loss damages costs on an indemnity basis and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim for infringement of any patents copyright design trademark or any other industrial or intellectual property rights of any other person.

9.8.3. The Customer will further unconditionally fully and effectively indemnify the Company against all loss damages costs on an indemnity basis and expenses awarded or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any other claim arising from any such manufacturing processing or mixing including but not limited to any Defect in the Goods. This indemnity will be reduced in proportion to the extent that such loss damages costs and expenses are due to the negligence of the Company.

9.9. If the Goods are not manufactured by the Company or have been processed by a third party whether or not at the request of the Company or the Customer the Company's liability in respect of any defect in workmanship or materials of the Goods will be limited to such rights against the manufacturer or the third party as the Company may have in respect of those Goods. The Company will on written request provide details of its rights against the manufacturer or third party and any other terms and conditions imposed by the manufacturer or the third party and so far as possible will on request assign to the Customer any such rights.

9.10. Except where the Customer deals as a Consumer the Customer will unconditionally fully and effectively indemnify the Company against all loss damages costs on an indemnity basis and expenses awarded against or incurred by the Company in connection with or paid or agreed to be paid by the Company in settlement of any claim by any third party arising from the supply or use of the Goods including loss arising from the Company's negligence.

9.11. Subject to Clauses 9.2 and 9.3 of these Conditions the Company shall not be liable for misrepresentation (unless fraudulent) or in contract, tort (including negligence or breach of statutory duty) or otherwise howsoever arising and whatever the cause for:

9.12. (a) any financial loss or any liability the Customer may have to a third party or any loss of profit, business, contracts, revenues or anticipated savings; and/or

9.13. b) any special indirect or consequential damage of any nature whatsoever.

9.14. Without prejudice to any other provisions in these Conditions in any event the Company's total liability for any one claim or for the total of all claims arising from any one act of default of the Company (whether arising from the Company's negligence or otherwise) shall not exceed the purchase price of the Goods the subject matter of any claim.

## 10. DEFAULT

10.1. "insolvent" shall mean the Customer becoming unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986; the levying or the threat of execution or distress on any property of the Customer; the appointment of a receiver or administrative receiver over all or any part of the Customer's property; a proposal for a voluntary arrangement or com-promise between the Customer and its creditors whether pursuant to the Insolvency Act 1986 or otherwise; the passing of a resolution for voluntary winding up or summoning a meeting to pass such a resolution otherwise than for the purposes of a bona fide amalgamation or reconstruction; the

presentation of a petition for winding up of a Customer or for an administration order in relation to the Customer; the Customer ceasing or threatening to cease to carry on its business.

- 10.2. If the Customer fails to pay the Company for any Goods on the due date or the Customer becomes Insolvent or if the Customer is in breach of any Condition of this Contract and fails to remedy such breach after being so requested to do the full balance outstanding on any account between the Company and the Customer shall become immediately payable and the Company shall be entitled to do one or more of the following (without prejudice to any other rights or remedy it may have):-
- 10.3. require payment in cash or cleared funds in advance of delivery of undelivered Goods;
- 10.4. cancel or suspend any further delivery to the Customer under any contract;
- 10.5. sell or otherwise dispose of any Goods which are the subject of any contract with the Customer;
- 10.6. charge the Customer interest on the balance of monies overdue, such interest to accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment, in accordance with the Late Payment of Commercial Debts (Interest) Act 1998;
- 10.7. without prejudice to the generality of Clause 8 of these Conditions exercise the powers there set out.
- 10.8. The Customer shall reimburse the Company's costs including legal costs on an indemnity basis which the Company incurs in enforcing its rights under this Contract including but not limited to recovery of any sums due. Such sums shall be paid in addition to the statutory compensation payable by the Customer under the Late Payment of Commercial Debts Regulations 2002.

#### **11. DATA PROTECTION**

- 11.1. If the Customer is an individual or group of individuals the Customer agrees that the Company may process the Customer's personal data in accordance with the Company's Data Protection Policy – copy available on request.
- 11.2. The Company reserves the right to make credit reference agency checks against a Customer and its principals and, if the Customer is a limited company, against its directors and may keep a record of that enquiry and share that information with other businesses.
- 11.3. The Company reserves the right to monitor and record information relating to the Customer's trade credit performance and to make available such records to other organisations to assess applications for credit.

#### **12. CALL RECORDING**

The Company reserves the right to record or monitor telephone calls for training or security.

#### **13. GENERAL**

- 13.1. The construction validity and performance of these Conditions and this Contract shall be governed by English Law.
- 13.2. The headings of these Conditions are for convenience only and shall have no effect on interpretation.
- 13.3. The Company shall not be liable for any delay or failure to perform any of its obligations in relation to the Goods due to any cause beyond its reasonable control including industrial action.
- 13.4. If any Clause or sub-Clause of these Conditions is held by any court or other competent authority to be void or unenforceable the validity of the other Clauses or sub-Clauses of these Conditions shall not be affected and they shall remain in full force and effect.
- 13.5. The waiver by the Company of any breach or default of these Conditions shall not be construed as a continued waiver of that breach nor as a waiver of any subsequent breach of the same or any other provision.
- 13.6. Nothing in these Conditions or this Contract is intended to or will create any benefit for or right to enforce any of these Conditions on a third party.
- 13.7. Termination of this Contract shall not effect the rights and obligations whatsoever accrued at the time of termination.

#### **14. ADDITIONAL TERMS OF SALE RELATING TO READY MIX CONCRETE**

- 14.1. These Additional Terms relate only to the supply of readymix concrete by the company and apply in conjunction with the Standard Terms of Sale ("The Standard Terms") 1. In these additional Terms: "concrete" means readymix concrete supplied in a fresh condition. Reference to "goods" in the Standard Terms shall be read as reference to Concrete. "BS EN 206" & "BS 8500" means the European & British Standard, covering the methods of specifying and producing Concrete as amended from time to time. "BS EN 12390" means the European & British Standard on testing Concrete as amended from time to time.
- 14.2. Unless agreed in writing all quotations for the supply of Concrete by the Company are based on BS EN 206 & BS 8500.
- 14.3. Subject to Clauses 6.1 to 6.3 of the Standard Terms, the Customer shall specify the time as well as the date of delivery and shall have facilities prepared for the acceptance of the Concrete. The Customer shall provide and

clearly indicate to the Company a safe route where the discharge is away from the made up road and the Customer shall indemnify the Company against any damage or loss, which shall result in a failure to do so.

- 14.4. The Customer shall ensure in respect of each delivery of Concrete that a person authorised by the Customer shall sign the delivery ticket which will contain the minimum of information as set out in BS EN 206 part 1 & BS 8500 part 2. That authorised person will also acknowledge and record in writing on the said ticket:
- That the mix description set out on the ticket describes the Concrete required by the Customer; and
  - The authorisation of any addition to the Concrete of water or any other materials, after it has been declared by the Company representative as being ready for acceptance.
- 14.5. The Company shall ensure that the Concrete delivered complies with the specification ordered provided always that the order is made in writing and fully in accordance with BS EN 206 & BS 8500. In any other event the Company cannot warrant that the Concrete delivered will comply in all respects with the specification order.
- 14.6. any Concrete mix referred to in any quotation or delivery ticket as a designed mix shall be interpreted as being a Concrete grade having a 28- day characteristic strength of the value stated as defined in BS EN 206 & BS 8500. Any reference to strength shall be interpreted as being reference to the compressive strength obtained from Concrete cubes, made, cured and tested in accordance with BS EN 12390.
- 14.7. A Concrete grade referred to in any quotation or delivery ticket as a prescribed mix or nominal mix or standard mix, shall be interpreted as being one in which strength testing will not be used to judge compliance with the specification.
- 14.8. Subject to clause 3 and clause 9 of the Standard Terms the Company does not warrant that the specification of the Concrete quoted or ordered by the Customer will be suitable for any particular purpose, even if the Company has knowledge of that particular purpose.
- 14.9. In addition and without limitation to Clause 9 the Company shall not be liable under Clause 9.5:
- 14.9.1. unless the company is notified by telephone or email as soon as reasonably practical after discovery of any Defect and in any event within 20 days of the date of delivery such notification to be confirmed forthwith in writing;
  - 14.9.2. unless the Company is given a reasonable time to investigate any alleged defect as it sees fit, subject to the Company's acknowledgement in clause 9.6.3;
  - 14.9.3. if loss of workability or change in air content (where applicable) of the Concrete is caused by reasons outside the control of the Company;
  - 14.9.4. if additional water or any other material has been added to the Concrete after it has been declared by the Company representative as being ready for acceptance;
  - 14.9.5. if the Concrete is tested unless:
    - any sample for testing has been taken during discharge from the Company mixer in accordance with the relevant provisions of BS EN 206 & BS 8500 within one hour of loading unless a longer time has been agreed in writing;
    - testing of fresh concrete and the making curing and testing of Concrete cubes has been carried out in accordance with relevant provisions of BS EN 12390, BS EN 206 & BS 8500;
    - test results have been interpreted in accordance with the relevant provisions of BS EN 206 & BS 8500 unless an alternative compliance has been agreed in writing.
- 14.10. In the event of the Customer requesting the Company to remove any surplus Concrete a charge for disposing of the surplus Concrete may be made by the Company.