

# TERMS & CONDITIONS OF SALE

## 1. DEFINITIONS

1.1 In these terms and conditions, the following definitions apply:-

**"Applicable Law"** shall mean all applicable laws, legislation, statutory instruments, regulations and governmental guidance having binding force whether local or national;

**"Business Day"** shall mean a day other than a Saturday, Sunday or bank or public holiday.

**"Buyer"** shall mean the named party in the Contract which has agreed to purchase the Goods from the Company and whose details are set out in the Order.

**"Company"** shall mean Tectonix Natural Stone Limited, a company incorporated in England under company number 14171285 and whose registered office is at Parkhill Studio, Walton Road, Wetherby, United Kingdom, LS22 5DZ.

**"Conditions"** means the Company's terms and conditions of sale set out in this document.

**"Contract"** shall mean the agreement between the Company and the Buyer for the sale and purchase of the Goods incorporating these Conditions and the Order, and including all its schedules, attachments, annexures and statements of work.

**"Force Majeure"** shall mean an event or sequence of events beyond a party's reasonable control preventing or delaying it from performing its obligations under the Contract including an act of God, fire, flood, lightning, earthquake or other natural disaster, war, riot or civil unrest, interruption or failure of supplies of power, fuel, water, transport, equipment or telecommunications service, or material required for performance of the Contract, strike, lockout or boycott or other industrial action including those involving the Company or its workforce, but excluding the Buyer's inability to pay or circumstances resulting in the Buyer's inability to pay;

**"Group"** shall mean Tectonix Natural Stone Limited and its subsidiary companies whether directly or indirectly owned.

**"Goods"** shall mean the goods and other physical material set out in the Order and to be supplied by the Company to the Buyer in accordance with the Contract.

**"Location"** shall mean the address or addresses for delivery of the Goods as set out in the Order;

**"Order"** shall mean an order for the Goods from the Company placed by the Customer in substantially the same form set out [in the Schedule overleaf OR in the Supplier's sales order form

**"Services"** shall mean the whole or any part of the services which the Company is to supply or carry out under the contract.

## 2. APPLICATION OF THESE CONDITIONS

2.1 These Conditions apply to and form part of the Contract between the Company and the Buyer. They supersede any previously issued terms and conditions of purchase or supply.

2.2 No terms or conditions endorsed on, delivered with, or contained in the Buyer's purchase conditions, order, confirmation of order, specification or other document shall form part of the Contract except to the extent that the Company otherwise agrees in writing.

2.3 No variation of these Conditions or to an Order or to the Contract shall be binding unless expressly agreed in writing and executed by a duly authorised signatory on behalf of each of the Company and the Buyer respectively.

2.4 Each Order by the Buyer to the Company shall be an offer to purchase the Goods subject to the Contract including these Conditions.

- 2.5 If the Company is unable to accept an Order, it shall notify the Buyer as soon as reasonably practicable.
- 2.6 The offer constituted by an Order shall remain in effect and capable of being accepted by the Company for 10 Business Days from the date on which the Buyer submitted the Order, after which time it shall automatically lapse and be withdrawn.
- 2.7 The Company may accept or reject an Order at its discretion. An Order shall not be accepted, and no binding obligation to supply any Goods shall arise, until the earlier of:
- 2.7.1 the Company's written acceptance of the Order; or
  - 2.7.2 the Company dispatching the Goods or notifying the Buyer that they are available for collection (as the case may be).
- 2.8 Rejection by the Company of an Order, including any communication that may accompany such rejection, shall not constitute a counter-offer capable of acceptance by the Buyer.
- 2.9 The Company may issue quotations to the Buyer from time to time. Quotations are invitations to treat only. They are not an offer to supply the Goods and are incapable of being accepted by the Buyer.
- 2.10 Marketing and other promotional material relating to the Goods including but not limited to catalogues, technical circulars, pricelists and other literature or material published on the Company's or any other website and any samples are illustrative only and do not form part of the Contract.

### **3. PRICE**

- 3.1 The price for the Goods shall be as set out in the Order or, where no such provision is set out, shall be calculated in accordance with the Company's scale of charges in force from time to time (the **Price**).
- 3.2 The Prices are exclusive of:
- 3.2.1 Any additional costs over and above material, shipping and delivery which shall be charged in addition at the Company's standard rates, and
  - 3.2.2 VAT (or equivalent sales tax).
- 3.3 The Buyer shall pay any applicable VAT to the Company on receipt of a valid VAT invoice.
- 3.4 The Company may increase the Prices with immediate effect by written notice to the Customer where there is an increase in the direct cost to the Supplier of supplying the relevant Goods and which is due to any factor beyond the control of the Supplier.

### **4. PAYMENT TERMS**

- 4.1 The Company shall invoice the Buyer for the Goods, partially or in full, at any time following acceptance of the Order.
- 4.2 The Buyer shall pay all invoices:
- 4.2.1 in full without deduction or set-off, in cleared funds within Ten Business Days of the date of each invoice or within agreed standard terms otherwise specified; and
  - 4.2.2 to the bank account nominated by the Company.
- 4.3 Time of payment is of the essence. Where sums due under these Conditions are not paid in full by the due date:
- 4.3.1 the Company may, without limiting its other rights, charge interest on such sums at 8% a year above the base rate of the Bank of England from time to time in force, and
  - 4.3.2 interest shall accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.

### **5. DELIVERY**

- 5.1 The Goods shall either be:
- 5.1.1 delivered by the Company, or its nominated carrier, to the Location on the date(s) specified in the Order; or
  - 5.1.2 collected by the Buyer from the Company's premises (as notified to the Buyer by the Company).
- 5.2 The Goods shall be deemed delivered:
- 5.2.1 on arrival only of the Goods at the Location by the Company or its nominated carrier (as the case may be);  
or
  - 5.2.2 upon the Company loading the Goods onto the Buyer's vehicle where the Buyer is collecting from the Company's premises.
- 5.3 The Company may deliver the Goods in instalments. Any delay or defect in an instalment shall not entitle the Buyer to cancel any other instalment.
- 5.4 The Buyer shall not be entitled to reject a delivery of the Goods on the basis that an incorrect volume of the Goods has been supplied.
- 5.5 The Company shall not be liable for any delay in or failure of delivery caused by:
- 5.5.1 the Buyer's failure to make the Location available;
  - 5.5.2 the Buyer's failure to prepare the Location as required for delivery of the Goods;
  - 5.5.3 the Buyer's failure to provide the Company with adequate instructions for delivery or otherwise relating to the Goods;
  - 5.5.4 Force Majeure.
- 5.6 If the Buyer fails to accept or delays delivery of the Goods the Company shall store and insure the Goods pending delivery, and the Buyer shall pay all costs and expenses incurred by the Company in doing so.
- 5.7 If 30 Business Days following the due date for delivery or collection of the Goods, the Buyer has not taken delivery of or collected them, the Company may resell or otherwise dispose of the Goods without any obligation or liability to the Buyer.
- 5.8 Whilst the Company will seek to deliver in accordance with the date agreed for despatch or delivery the Company shall not be liable for any loss whatsoever or howsoever arising caused by its late or non-delivery or by the failure to make Goods ready for collection on the due date. Time of despatch or delivery is not of the essence and a delay in delivery will not entitle the Buyer to treat the contract as repudiated or to any damages.
- 5.9 No cancellation or return of Goods by the Buyer is permitted except where expressly agreed by the Company in writing at the Company's sole discretion and subject to the Company's cancellation and handling fees.

## **6. RISK**

- 6.1 Risk in the Goods shall pass to the Buyer on delivery or collection as the case may be.

## **7. TITLE**

- 7.1 Title to the Goods shall pass to the Buyer once the Company has received payment in full and cleared funds for the Goods.
- 7.2 Until title to the Goods has passed to the Buyer, the Buyer shall:
- 7.2.1 hold the Goods as bailee for the Company;
  - 7.2.2 store the Goods separately from all other material in the Buyer's possession;

- 7.2.3 take all reasonable care of the Goods and keep them in the condition in which they were delivered;
  - 7.2.4 insure the Goods from the date of delivery: (i) with a reputable insurer (ii) against all risks (iii) for an amount at least equal to their Price (iv) noting the Company's interest on the policy;
  - 7.2.5 ensure that the Goods are clearly identifiable as belonging to the Company;
  - 7.2.6 not remove or alter any mark on or packaging of the Goods;
  - 7.2.7 inform the Company immediately if it becomes subject to any of the events or circumstances set out in clauses 15.1.1 to 15.1.4 or 15.2.1 to 15.2.14; and
  - 7.2.8 on reasonable notice permit the Company to inspect the Goods during the Buyer's normal business hours and provide the Company with such information concerning the Goods as the Company may request from time to time.
- 7.3 If, at any time before title to the Goods has passed to the Buyer, the Buyer informs the Company, or the Company reasonably believes, that the Buyer has or is likely to become subject to any of the events specified in clauses 15.1.1 to 15.1.4 or 15.2.1 to 15.2.14, the Company may:
- 7.3.1 require the Buyer at the Buyer's expense to re-deliver the Goods to the Company; and
  - 7.3.2 if the Buyer fails to do so promptly, enter any premises where the Goods are stored and repossess them.

## **8. INSPECTION/SHORTAGES**

- 8.1 The Company shall have no liability for any damage or shortages that would be apparent on careful inspection by the Buyer unless a written complaint is delivered to the Company within seven days of delivery detailing the alleged damage or shortage and the Company is allowed access to inspect the affected Goods before any use is made of them.
- 8.2 Subject to clause 8.1, the Company shall make good any shortage in the Goods for which it is responsible and where appropriate repair or at its option replace any Goods damaged during loading or unloading by the Company, but otherwise shall be under no liability whatsoever arising from such shortage or damage.

## **9. WARRANTY**

- 9.1 The Company warrants that the Goods shall, for a period of twelve months from delivery (the Warranty Period):
  - 9.1.1 conform in all material respects to the Order; and
  - 9.1.2 be free from material defects excluding workmanship or design
- 9.2 The Buyer warrants that it has provided the Company in writing with all relevant, full and accurate information as to the Buyer's business and needs.
- 9.3 As the Buyer's sole and exclusive remedy, the Company shall, at its option, repair, replace, or refund the Price of any of the Goods that do not comply with clause 9.1, provided that the Buyer:
  - 9.3.1 serves a written notice on Company:
    - 9.3.1.1 during the Warranty Period in the case of defects discoverable by a physical inspection; or
    - 9.3.1.2 in the case of latent defects, within one month from the date on which the Buyer became aware (or should reasonably have become aware) of the defect;
  - 9.3.2 provides the Company with sufficient information as to the nature and extent of the defects and the uses to which the Goods had been put prior to the defect arising;

- 9.3.3 gives the Company a reasonable opportunity to examine the defective Goods; and
  - 9.3.4 returns the defective Goods to the Company at the Company's expense.
- 9.4 The provisions of these Conditions, including the warranties set out in clause 9.1, shall apply to any of the Goods that are repaired or replaced with effect from the date of delivery of the repaired or replaced Goods.
- 9.5 The Company shall not be liable for any failure of the Goods to comply with clause 9.1:
- 9.5.1 where such failure arises by reason of wear and tear, wilful damage, negligence, or could be expected to arise in the normal course of use of the Goods;
  - 9.5.2 to the extent caused by the Buyer's failure to comply with the Company's instructions in relation to the Goods, including any instructions on installation, operation, storage or maintenance;
  - 9.5.3 to the extent caused by the Company following any specification, instruction or requirement of or given by the Buyer in relation to the Goods;
  - 9.5.4 where the Buyer modifies any Goods without the Company's prior [written] consent or, having received such consent, not in accordance with the Company's instructions; or
  - 9.5.5 where the Buyer uses any of the Goods after notifying the Company that they do not comply with clause 9.1.
- 9.6 Except as set out in this clause 9:
- 9.6.1 the Company gives no warranties and makes no representations in relation to the Goods; and
  - 9.6.2 shall have no liability for their failure to comply with the warranty in clause 9.1
- and all warranties and conditions (including the conditions implied by ss 13–15 of the Sale of Goods Act 1979), whether express or implied by statute, common law or otherwise are excluded to the extent permitted by law.

## **10. INDEMNITY & INSURANCE**

- 10.1 The Buyer shall indemnify the Company from and against any losses, damages, liability, costs (including legal fees) and expenses which the Company may suffer or incur directly or indirectly from the Buyer's breach of any of its obligations under the Contract.
- 10.2 The Buyer shall have in place contracts of insurance with reputable insurers incorporated in the United Kingdom to cover its obligations under the Contract. On request, the Buyer shall supply (so far as is reasonable) evidence of the maintenance of the insurance and all of its terms from time to time applicable.

## **11. LIABILITY**

- 11.1 The extent of the parties' liability under or in connection with the Contract (regardless of whether such liability arises in tort, contract or in any other way and whether or not caused by negligence or misrepresentation) shall be as set out in this clause 11.
- 11.2 Subject to clauses 11.5 and 11.5, the Company's total liability shall not exceed the Price.
- 11.3 Subject to clauses 11.5 and 11.5, the Company shall not be liable for consequential, indirect or special losses.

11.4 Subject to clauses 11.5 and 11.5, the Company shall not be liable for any of the following (whether direct or indirect):

- 11.4.1 loss of profit;
- 11.4.2 loss of revenue;
- 11.4.3 loss or corruption of data;
- 11.4.4 loss or corruption of software or systems;
- 11.4.5 loss or damage to equipment;
- 11.4.6 loss of use;
- 11.4.7 loss of production;
- 11.4.8 loss of contract;
- 11.4.9 loss of commercial opportunity;
- 11.4.10 loss of savings, discount or rebate (whether actual or anticipated);
- 11.4.11 harm to reputation or loss of goodwill; and/or
- 11.4.12 wasted expenditure.

11.5 Notwithstanding any other provision of the Contract, the liability of the parties shall not be limited in any way in respect of the following:

- 11.5.1 death or personal injury caused by negligence;
- 11.5.2 fraud or fraudulent misrepresentation;
- 11.5.3 any other losses which cannot be excluded or limited by Applicable Law;
- 11.5.4 any losses caused by wilful misconduct.

## **12. FORCE MAJEURE**

12.1 Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays or failures in performance of the Contract which result from Force Majeure. The party subject to the Force Majeure event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the Force Majeure event continues for a continuous period of more than 180 days, either party may terminate the Contract by written notice to the other party.

## **13. INTERNATIONAL WARFARE**

13.1 Neither party shall have any liability under or be deemed to be in breach of the Contract for any delays, costs or failures in performance of the Contract which result from International warfare. The party subject to the warfare impact event shall promptly notify the other party in writing when such the event causes a delay or failure in performance and when it ceases to do so. If the warfare event continues for a continuous period of more than 180 days, either party may terminate the Contract by written notice to the other party.

#### **14. PACKAGING & HANDLING**

- 14.1 Any packaging supplied is intended for delivery to the Buyer and is not intended for onward transportation purposes and the Buyer is responsible for any subsequent movement of the Goods and any necessary packaging in that regard. If the Buyer supplies packaging materials to the Company it shall be solely responsible for the suitability and safety of such packaging and shall be responsible for any loss or damage arising out of the Company's use of such packaging.
- 14.2 Goods will, unless otherwise agreed in writing between the Company and the Buyer, be packaged in a manner that the Company deems reasonably suitable for the method of delivery to be adopted. The Buyer will not be entitled to reject Goods on the basis of defective or inadequate packaging.

#### **15. TERMINATION**

- 15.1 The Company may terminate the Contract or any other contract which it has with the Buyer at any time by giving notice in writing to the Buyer if:
- 15.1.1 the Buyer commits a material breach of the Contract and such breach is not remediable;
  - 15.1.2 the Buyer commits a material breach of the Contract which is not remedied within 14 Business Days of receiving written notice of such breach;
  - 15.1.3 the Buyer has failed to pay any amount due under the Contract on the due date and such amount remains unpaid 30 days after the date that the Company has given notification to the Buyer that the payment is overdue; or
  - 15.1.4 any consent, licence or authorisation held by the Buyer is revoked or modified such that the Buyer is no longer able to comply with its obligations under the Contract or receive any benefit to which it is entitled.
- 15.2 The Company may terminate the Contract at any time by giving notice in writing to the Buyer if the Buyer:
- 15.2.1 stops carrying on all or a significant part of its business, or indicates in any way that it intends to do so;
  - 15.2.2 is unable to pay its debts either within the meaning of section 123 of the Insolvency Act 1986 or if the Company reasonably believes that to be the case;
  - 15.2.3 becomes the subject of a company voluntary arrangement under the Insolvency Act 1986;
  - 15.2.4 becomes subject to a moratorium under Part A1 of the Insolvency Act 1986;
  - 15.2.5 becomes subject to a restructuring plan under Part 26A of the Companies Act 2006;
  - 15.2.6 becomes subject to a scheme of arrangement under Part 26 of the Companies Act 2006;
  - 15.2.7 has a receiver, manager, administrator or administrative receiver appointed over all or any part of its undertaking, assets or income;
  - 15.2.8 has a resolution passed for its winding up;
  - 15.2.9 has a petition presented to any court for its winding up or an application is made for an administration order, or any winding-up or administration order is made against it;
  - 15.2.10 is subject to any procedure for the taking control of its goods that is not withdrawn or discharged within seven days of that procedure being commenced;
  - 15.2.11 has a freezing order made against it;

15.2.12 is subject to any recovery or attempted recovery of items supplied to it by a Company retaining title to those items;

15.2.13 is subject to any events or circumstances analogous to those in clauses 15.2.1 to 15.2.12 in any jurisdiction; or

15.2.14 takes any steps in anticipation of, or has no realistic prospect of avoiding, any of the events or procedures described in clauses 15.2.1 to 15.2.13 including giving notice for the convening of any meeting of creditors, issuing an application at court or filing any notice at court, receiving any demand for repayment of lending facilities, or passing any board resolution authorising any steps to be taken to enter into an insolvency process.

15.3 If the Buyer becomes aware that any event has occurred, or circumstances exist, which may entitle the Company to terminate the Contract under this clause 15, it shall immediately notify the Company in writing.

15.4 Termination or expiry of the Contract shall not affect any accrued rights and liabilities of the Company at any time up to the date of termination.

## **16. NOTICES**

16.1 Any notice to be given under any contract shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its registered office address or such other address as the party may from time to time notify in writing in accordance with this clause 16.1 and shall be deemed to have been served, if sent by post, 48 hours after posting. If there is no registered office or notified address for the Buyer then the Company may serve notice to any address where the Buyer has corresponded from.

## **17. CUMULATIVE REMEDIES**

17.1 The rights and remedies provided in the Contract for the Company only are cumulative and not exclusive of any rights and remedies provided by law.

## **18. TIME**

18.1 Unless stated otherwise, time is of the essence of any date or period specified in the Contract in relation to the Buyer's obligations only.

## **19. FURTHER ASSURANCE**

19.1 The Buyer shall at the request of the Company, and at the Buyer's own cost, do all acts and execute all documents which are necessary to give full effect to the Contract.

## **20. ENTIRE AGREEMENT**

20.1 The parties agree that the Contract constitutes the entire agreement between them and supersedes all previous agreements, understandings and arrangements between them, whether in writing or oral in respect of its subject matter.

20.2 Each party acknowledges that it has not entered into the Contract in reliance on, and shall have no remedies in respect of, any representation or warranty that is not expressly set out in the Contract. No party shall have any claim for innocent or negligent misrepresentation on the basis of any statement in the Contract.

20.3 Nothing in these Conditions purports to limit or exclude any liability for fraud.

## **21. VARIATION**

21.1 No variation of the Contract shall be valid or effective unless it is in writing, refers to the Contract and these Conditions and is duly signed or executed by, or on behalf of, each party.

## **22. ASSIGNMENT**



22.1 The Buyer may not assign, subcontract or encumber any right or obligation under the Contract, in whole or in part, without the Company's prior written consent, which it may withhold or delay at its absolute discretion.

### **23. SET-OFF**

23.1 The Company shall be entitled to set-off under the Contract any liability which it has or any sums which it owes to the Buyer under the Contract or under any other contract which the Company has with the Buyer.

23.2 The Buyer shall pay all sums that it owes to the Company under the Contract without any set-off, counterclaim, deduction or withholding of any kind, save as may be required by law.

### **24. NO PARTNERSHIP OR AGENCY**

24.1 The parties are independent persons and are not partners, principal and agent or employer and employee and the Contract does not establish any joint venture, trust, fiduciary or other relationship between them, other than the contractual relationship expressly provided for in it. None of the parties shall have, nor shall represent that they have, any authority to make any commitments on the other party's behalf.

### **25. EQUITABLE RELIEF**

25.1 The Buyer recognises that any breach or threatened breach of the Contract may cause the Company irreparable harm for which damages may not be an adequate remedy. Accordingly, in addition to any other remedies and damages available to the Company, the Buyer acknowledges and agrees that the Company is entitled to the remedies of specific performance, injunction and other equitable relief without proof of special damages.

### **26. SEVERANCE**

26.1 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable, the legality, validity and enforceability of any other provision of the Contract shall not be affected.

26.2 If any provision of the Contract (or part of any provision) is or becomes illegal, invalid or unenforceable but would be legal, valid and enforceable if some part of it was deleted or modified, the provision or part-provision in question shall apply with the minimum such deletions or modifications as may be necessary to make the provision legal, valid and enforceable. In the event of such deletion or modification, the parties shall negotiate in good faith in order to agree the terms of a mutually acceptable alternative provision.

### **27. WAIVER**

27.1 No failure, delay or omission by the Company in exercising any right, power or remedy provided by law or under the Contract shall operate as a waiver of that right, power or remedy, nor shall it preclude or restrict any future exercise of that or any other right, power or remedy.

27.2 No single or partial exercise of any right, power or remedy provided by law or under the Contract by the Company shall prevent any future exercise of it or the exercise of any other right, power or remedy by the Company.

### **28. COMPLIANCE WITH LAW**

28.1 The Buyer shall comply with Applicable Law and shall maintain such licences, authorisations and all other approvals, permits and authorities as are required from time to time to perform its obligations under or in connection with the Contract.

### **29. CONFLICTS WITHIN CONTRACT**

29.1 If there is a conflict between the terms contained in the Conditions and the terms of the Order, schedules, appendices or annexes to the Contract, the terms of the Conditions shall prevail to the extent of the conflict.

### **30. COSTS AND EXPENSES**

30.1 The Buyer shall pay its own costs and expenses incurred in connection with the negotiation, preparation, signature and performance of the Contract (and any documents referred to in it).

**31. THIRD PARTY RIGHTS**

31.1 Except as expressly provided for in clause 32, a person who is not a party to the Contract shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the provisions of the Contract.

**32. GOVERNING LAW**

32.1 The Contract and any dispute or claim arising out of, or in connection with, it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England and Wales.

**33. JURISDICTION**

The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of, or in connection with, the Contract, its subject matter or formation (including non-contractual disputes or claims).

Date: 26 January 2024