

MICHELMERSH BRICK UK LIMITED

CONDITIONS OF SALE

1. Formation

These conditions of sale set out the basis upon which we, Michelmersh Brick UK Ltd (reg no. 2527552) registered office: Freshfield Lane, Haywards Heath, Sussex RH17 7HH whether trading as Blockleys, Carlton, Charnwood, Freshfield Lane, Hathern Terra Cotta, Michelmersh or Floren (Belgium) have agreed to sell our products to you. These terms may not be varied unless agreed by us and confirmed in writing.

2. Estimates

2.1. All written estimates provided by us to you are open for acceptance for a period of three months from the date of the quotation unless previously withdrawn by us. If you wish to accept an estimate you must do so in writing. We will not become contractually bound to supply our products to you until we have confirmed your order in writing.

2.2. All Bespoke Product and Select Order Forms accepted by you in accordance with the time period specified in such a document will be binding upon us following receipt.

3. Descriptions

All descriptions and samples of our products provided to or made available to you are approximate only and are intended to serve as a guide only. Samples will be provided from bulk production and it is not possible to guarantee an exact match. No contract entered into by you with us will be a sale by description or sample or both.

4. Price

4.1. Unless otherwise agreed in writing with you the price of our products is

- (a) the price prevailing on the date of despatch of our products to you;
- (b) includes the cost of delivery, packaging and mechanical offload at the agreed delivery address; and
- (c) is exclusive of VAT which shall be paid in addition at the rate in force on the date of invoice

4.2. We reserve the right to increase prices

- (a) in respect of any order placed with us where you require delivery of our products over a period exceeding six months, to our then list price prevailing on the date of despatch of our products;
- (b) at any time prior to delivery of our products where there has been an increase in the cost of (i) raw materials or (ii) labour or service or (iii) currency exchange rates, to reflect any such increases.

5. Payment

5.1. We shall be entitled to invoice you on or any time after delivery of any of our products to you.

5.2. All sums are payable at or by the end of the month following the month in which we issue our invoice.

5.3. If you fail to pay any amounts owing to us on their due date for payment then we reserve the right to charge you interest at the rate of 4% per annum above the base rate from time to time of Barclays Bank plc. Such interest shall accrue on a daily basis from and including the date for payment until the date of actual payment whether before or after judgment.

5.4. If we have to issue proceedings against you for the recovery of all or any monies owing by you to us then in addition to all amounts owing to us including interest, we shall be entitled to claim reimbursement of all legal and other costs incurred by us in taking such action on a full indemnity basis.

5.5. Time for payment of our invoices shall be of the essence of our contract with you.

6. Delivery

6.1. Delivery dates referred to in any estimate/quotation or acknowledgement of order are approximate only and time shall not be of the essence of any contract with you.

6.2. Delivery of an order will be completed

- (a) where we deliver to you, when our products are offloaded at the specified delivery address; or
- (b) where you collect our products from us, when we have loaded our products onto your vehicle.

6.3. We will if requested in writing deliver an order in instalments. Each instalment delivered to you will be deemed to be an independent contract and we shall be entitled to invoice you in respect of every instalment delivered.

6.4. We will give you as much notice as possible of each intended delivery date. Deliveries may be made at any time between 7am and 5pm. It is your responsibility to ensure that your representative is available on site to take delivery of and sign for our products. If you fail to take delivery any of our products we shall return them to our depot and be entitled to recover from you our haulage costs incurred in respect of the wasted journey.

6.5. We shall not be liable to you for any delays in delivering our products to you where

(a) you fail to have a representative at the delivery address to sign for the delivery;

(b) delivery is other than to a location adjacent to a main highway and/or our driver deems it to be unsafe to drive over any access route on or to the site or where to do so could cause damage to our or our haulier's vehicle; or

(c) you wish to collect a delivery from our depot and we consider your vehicle to be unsuitable to transport the ordered products.

6.6. You are under a duty to inspect our products on delivery.

6.7. Any discrepancy with a delivery (i.e. shortages, incorrect or damaged products) should be noted on the delivery ticket and also notified to us in writing within seven days of the delivery date. Any claim received after this time will not be considered.

6.8. In the event that any of our products delivered to you are short or damaged we reserve the right, at our option, to replace the products or to refund the cost of the products to you. We shall not however be under any obligation to replace or refund the cost of damaged products where a delivery has been unpacked and products distributed across your site or where the products have already been wholly or partially incorporated into any works.

6.9. Delays in delivery of any order shall not entitle you to refuse to take delivery of any order, claim damages or terminate this contract.

6.10. If you refuse to take delivery of our goods you will be liable to us for any loss we incur arising from your neglect or refusal to take delivery and also for our reasonable charge for the care and custody of our products until delivery can be effected.

7. Risk and Title

- 7.1. Risk in our products shall pass to you on delivery whether delivery is affected by us or where our products are collected by you from our depot.
- 7.2. You are required to keep our products fully insured in their full replacement value against all insurable risks from and including the date of delivery until the date title to the goods passes to you. Until the full price of our products have been paid you will hold in trust for us the policy and proceeds of insurance.
- 7.3. Notwithstanding delivery of our products and risk in them passing to you in accordance with this clause title in the goods shall not pass to you until whichever is the first to occur of the following
- (a) receipt by us of payment in full for our products plus any default interest thereon and no other amounts being outstanding from you to us in respect of other products supplied by us;
 - (b) sale by you of our products to an independent third party and in which case title to the said goods shall be deemed to have passed to you immediately prior to delivery of products to your customer; or
 - (c) us waiving our right in respect of our products in which case title to those products shall forthwith vest in you.
- 7.4. Pending the passing of title in our products to you, you shall
- (a) not dispose of, charge or encumber our products in any way; and
 - (b) store our products separately and mark them so that they may be readily identified as our property.
- 7.5. Until you have paid us in full for all amounts owing under all contracts between us
- (a) you shall hold our products for us upon trust;
 - (b) in the event of the sale of our products by you you shall hold the proceeds of sale on trust for us in a separate bank account opened by you for this purpose; and
 - (c) we shall be entitled to trace all proceeds of sale received by you through any bank account or other account maintained by you.
- 7.6. Before title passes to you under this clause and without prejudice to our other rights we reserve the right to recover or resell our products or any of them and may enter upon your premises for this purpose.
- ## 8. Exclusion of Liability
- 8.1. You acknowledge that you are buying in the course of your business and that you have not relied upon our skill or judgment as to whether our products are fit for your particular purpose even in circumstances where you have explained that purpose to us.
- 8.2. All conditions, warranties and representations implied by common law, statute or otherwise (including without limitation any implied condition, warranty or representation as to correspondence of the goods with any description given, satisfactory quality or fitness for any particular purpose) are excluded or otherwise waived by you.
- 8.3. We shall not be liable to you for any loss or damage whether consequential or indirect and whether arising in contract or tort (including negligence) arising out of or in connection with products supplied to you. Non exhaustive illustrations of consequential or indirect loss would be loss of profits, loss of contracts, damage to your property or that of anyone else or personal injury to you or anyone else (unless the injury is caused by our negligence).
- ## 9. Events of Default

- 9.1. If:
- (a) you fail to pay any or all of our invoices when they fall due for payment or otherwise breach this agreement (and in the case of any breach being remediable fail to remedy it within seven days after receiving written notice to do so);
 - (b) you appear to be unable to pay your debts as they fall due; or
 - (c) steps are taken to propose any composition or arrangement involving you or your creditors, or to obtain an administration order or appoint any administrative or other receiver or manager in relation to or put in force any legal process against you or any of your property or wind up or dissolve you or where you are an individual or partnership you or any partner dies or any steps are taken with a view to making a bankruptcy order against you or any partner or any compromise or voluntary arrangement with your creditors is entered into
- (a) the products are not damaged and are returned to us in good condition in their original packaging;
- (b) you have notified us in writing in advance of the quality and type of products to be returned to us and agreed with us the time and location where the products are to be returned
- 11.2. We will refund to you the price for the returned Products, which we have agreed to accept, less 25% and any haulage costs incurred by us. We will issue a credit note to your account within 30 days of receipt of and acceptance by us of the products.
- 11.3. Unfortunately we cannot accept the return of any bespoke or special shaped bricks or associated products for any reason unless the provisions of clause 6.8 apply.
- 11.4. For the purposes of this clause 11 standard products shall mean any machine made products which are not bespoke or special shaped bricks and associated products.
- 12. Select Order Process**

then we may treat the contract as being at an end. We may require you to return unpaid for products to us (or indemnify us if we have to repossess them ourselves) and we may suspend any further deliveries to you.

10. Force Majeure

We accept no liability for any failure to deliver the goods to you arising from circumstances outside our control.

11. Product Returns

- 11.1. We may, at our sole discretion, permit you to return any standard products to us within [three months] of the date of delivery of those products to you, if those standard products are surplus to your requirements provided

- 12.1. The Select Order Process allows the products ordered by an Approved Distributor only to be stored by us at our premises pending delivery in accordance with a pre-agreed delivery schedule (the Call Off Schedule). Products will be delivered to you when required in accordance with the Call Off Schedule. The provisions of this clause 12 shall apply to all orders using the Select Order Process.
- 12.2. The Call Off Schedule will be set out in our estimate. If no Call Off Schedule is pre-agreed with us you shall be entitled to request delivery of up to such quantity of products that can be delivered on one articulated vehicle per week to your designated site by notice in writing. The Call Off Schedule will specify:

- (a) the quantity of products to be delivered by us to your designated site;
 - (b) the frequency of deliveries (i.e. weekly/monthly or on demand);
 - (c) the latest date by which delivery of all products forming part of your Select Order Process order is to be made (Longstop Date);
 - (d) if no Longstop Date is agreed we shall be entitled to deliver the balance of products held by us for you for each Select Order Process order no later than six months after acceptance of your Select Order Process order by us.
- 12.3. To accept an estimate for the supply and delivery of our products using the Select Order Process you must confirm your order in writing and pay a deposit equal to the cost of 10,000 bricks of the ordered brick type or such other deposit specified in our estimate.
- 12.4. Payment of the deposit does not constitute acceptance of your order and we will not become contractually bound to supply our products to you until we have confirmed receipt of your order and deposit in writing.
- 12.5. Once your order has been accepted we will retain the deposit paid and offset this against our final invoice for the relevant Select Order Process order. If we do not accept your order your deposit will be refunded.
- 12.6. The provisions of clauses 6.1-6.5 above shall apply to the delivery of our products ordered using the SOP.
- 12.7. Once your order has been accepted by us in writing in accordance with clause 12.4 we will notify you when the products have been manufactured and are available for inspection. You will have seven working

days from the date of written notification that the products are available for inspection. If you do not inspect and accept the products within this time period you will be deemed to have accepted them.

The provisions of clauses 6.6-6.10 above will apply to each batch of products delivered to you in accordance with the Call Off Schedule.

12.8. Fees and Payment

- (a) We shall be entitled to invoice you on or any time after delivery of any products delivered to you in accordance with the Call Off Schedule.
- (b) The provisions of clauses 5.2-5.5 shall apply to all orders made and accepted using our Select Order Process.
- (c) Any deposit held by us will be retained and set off against the last invoice raised by us for products ordered using the Select Order Process.
- (d) As part of the order process we will have agreed a fixed price with you for the products. No variation to that price will be made save as provided in clause 12.9. The provisions of clause 4.1 and 4.2(a) shall not apply to orders using the Select Order Process.

12.9. Latest Drawdown

If we are still holding any products for you on the Longstop Date we will at our discretion (but without any obligation so to do):-

- (a) either agree in writing with you to retain the balance of products held by us for a Select Order Process order at our premises for such time as may be agreed with you (and where appropriate revisions to the Call Off Schedule) and during any

extended storage period you will pay us such fee as we shall agree for the continued storage costs; or

- (b) deliver to you the balance of products held by us. Such charges are payable monthly in advance plus VAT.

If any monies are owing to us by you at any time we reserve the right:

- (c) to suspend delivery of any products in accordance with the Call Off Schedule;
- (d) to deliver the balance of products held by us to you immediately;
- (e) to demand immediate payment of all amounts owing to us.

12.10. Suspension

If you fail to pay any invoice on the due date for payment we reserve the right to suspend delivery of any products in respect of all orders placed with us using our Select Order Process.

12.11. Termination of Select Order Process Order

If an event of default arises as described in clause 9 above then we reserve the right at our discretion to:

- (a) either deliver the remaining products held by us under each Select Order Process order in place with you immediately and to raise an invoice for the same; or
- (b) cancel the Select Order Process order or orders in which case we will be relieved of our obligation to deliver any further products to you

Upon termination for any reason the deposit paid to us will be set off against all invoices owing to us and any balance will be retained by us. In addition all outstanding invoices on the date for payment will fall due for immediate payment without further notice.

13. Governing Law

This contract is governed by and shall be interpreted in accordance with the laws of England.