

# **Tarmac Building Products**

## **Terms and Conditions for Suppliers**

[Policy T1-4A - Supply of goods, plant, and materials with services](#)

[Policy T1A - Supply of Goods, Plant and Materials](#)

[Policy T2A - Supply and Installation](#)

[Policy T3A - Minor Works Repair and Modification](#)

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# **TARMAC BUILDING PRODUCTS LIMITED**

**General Conditions**

**of Contract for**

**the purchase and**

**supply of**

**goods, plant, and materials with services  
(UK only)**

**form T/1/4/A**

**Issued by:**

**Tarmac Building Products Limited  
Salisbury House  
2A Tettenhall Road  
Wolverhampton  
WV1 4SA**

**Edition date: 03.08.2015**



prejudice to the generality of the foregoing safety, health and environmental rules, the Tarmac Group Safety and Health Policy Statement; Tarmac Group Environmental Policy Statement; Tarmac Contractor's Health, Safety and Environmental Rules; the Anglo Good Citizenship Policy; Tarmac Golden Rules and Tarmac Energy Policy.

- 1.13 The words "Completion", "Completed" and "Complete" mean when the Services have been performed to the entire satisfaction of Tarmac and in accordance with the Contract.
- 1.14 "Tarmac Building Products Limited Procurement Agreement" means the agreement so named between the Supplier and Tarmac for the provision of Services, Goods and Materials signed by the duly authorised representatives of the Supplier and Tarmac.

## **2. QUALITY OF GOODS AND FITNESS FOR PURPOSE**

The Goods shall be of satisfactory quality and free from defects in material or workmanship or design. If the purpose for which the Goods are required is made known to the Supplier expressly or by implication the Goods shall be fit for that purpose. Unless otherwise agreed the Goods shall conform with any specifications, drawings, descriptions and samples contained or referred to in the Contract and with all relevant British Standards Statutory Requirements and Tarmac Policies and shall not be harmful to Tarmac's property or the environment.

## **3. STANDARD OF SERVICES**

3.1 The Services shall: -

3.1.1 Conform to any specification, quality and description specified or referred to in the Purchase Order;

3.1.2 Conform to any relevant British Standards, Statutory Requirements, Tarmac Policies and best industry practices;

3.1.3 Be performed with the highest care and skill by properly qualified, trained and experienced personnel;

3.1.4 Be performed in accordance with any relevant time or Maintenance schedule or call out requirements specified in the Purchase Order and within such time period or periods as may be required by Tarmac (time being of the essence in respect of the performance of the Supplier's obligations);

3.2 Any Materials shall: -

3.2.1 Be of satisfactory quality and free from defects;

3.2.2 Be fit for the purpose required;

3.2.3 Conform with any specification, samples, quality and description specified or referred to in the Purchase Order;

3.2.4 Conform with any relevant British Standards, Statutory Requirements and Tarmac Policies, and shall not be harmful to the Buyer's property or the environment.

#### **4. DELIVERY DATE AND DATE FOR PERFORMANCE**

4.1 The date of delivery of the Goods and the date for performance of the Services shall be that specified in the Purchase Order unless agreed otherwise between Tarmac and the Supplier. In the absence of any date being specified the Goods shall be delivered and the Services shall be performed as soon as practicable or as soon as required by Tarmac. Time shall be of the essence.

4.2 The Supplier shall furnish such programmes of manufacture and delivery as Tarmac may reasonably require and the Supplier shall give notice to Tarmac as soon as practicable if progress in accordance with such programmes is or is likely to be delayed.

4.3 Tarmac has the right to instruct the Supplier to take such action as is required to bring the Contract to completion in accordance with the terms of the Contract at no extra cost to Tarmac (save where Tarmac has caused the delay) or to reject the Goods or the Services for late delivery or performance.

#### **5. INCORRECT DELIVERY OR PERFORMANCE**

5.1 All Goods and Services must be delivered or performed at the delivery point and within the times specified in the Purchase Order. If Goods or Services are incorrectly delivered or performed, the Supplier shall be responsible for any additional expense incurred in delivering them to their correct destination or in re-performance at such destination.

5.2 Tarmac shall not be responsible for any failure to give notice to carriers of non-delivery, loss, damage, or delay in transit.

#### **6. PASSING OF PROPERTY AND RISK IN GOODS TO BUYER**

6.1 The Goods shall become the property of Tarmac on delivery or payment or part payment (whichever occurs first).

6.2 Where Tarmac pays part of the Price before taking delivery of the Goods or any part thereof then such payments shall be regarded as part payments and not deposits in respect of the Price.

6.3 All risk in the Goods including all risk of loss or damage shall remain with the Supplier until the Goods reach the correct place of delivery and are placed in the possession of Tarmac.

6.4 Tarmac accepts no responsibility for Goods delivered in excess of the Purchase Order requirement.

6.5 All Goods rejected or returned shall be at the risk of the Supplier from 5 days from the date Tarmac gives notice of rejection or return of the Goods and, in any event, during transit back to the Supplier.

- 6.6 Unless otherwise agreed, the Supplier shall be responsible for collecting rejected or returned Goods and all costs incurred in transporting them.

## **7. PURCHASE PRICE AND TERMS OF PAYMENT**

- 7.1 Unless otherwise stated in the Purchase Order, all rates and prices are firm and fixed and the Price shall be inclusive of all services and materials necessary for the performance of the Contract, and all taxes and duties, but excluding value added tax.

- 7.2 The Supplier shall procure that invoices shall include the following particulars as a condition precedent to Tarmac's obligation to pay the Price to the Supplier:

- Tarmac's Purchase Order number;
- Invoice date and number;
- Supplier's name and address;
- Description of the Goods and Services invoiced:
- The location and date of delivery of the Goods invoiced;
- The location and date of performance of the Services invoiced;
- The Price of the Goods and/or Services invoiced;
- Value added tax payable by Tarmac (where applicable to the transaction) stated separately from the Price; and
- The Supplier's VAT number and any other particulars required by law or regulation from time to time,

and an invoice which includes each of the above particulars is hereinafter called a "valid invoice".

- 7.3 The Supplier shall deliver a valid invoice to Tarmac promptly after (but not before) the delivery of the Goods and/or the performance of the Services in accordance with the Contract.

- 7.4 Unless otherwise stated in the Purchase Order, and subject to the delivery of a valid invoice by the Supplier to Tarmac in accordance with Clause 7.3, Tarmac shall pay the Price for the relevant Goods and/or Services together with value added tax (where applicable to the transaction) to the Supplier not later than 60 days after the end of the calendar month during which the valid invoice is received by Tarmac.

- 7.5 If Tarmac shall fail to make payment in accordance with Clause 7.4, the Supplier shall be entitled to simple interest at the rate of 2% per annum above the base lending rate from time to time of Barclays Bank plc calculated on the unpaid sum from the due date for payment until payment is made.

## **8. INCLUSIONS IN PRICE - SERVICES**

- 8.1 The Supplier is deemed to have understood the nature and extent of the Services and to have inspected the Site (including ground conditions and any existing structures). No failure on the part of the Supplier to discover or foresee any site conditions, or any failure to discover or foresee any risks, contingencies or circumstances (whether the same ought reasonably to have been discovered or not) shall entitle the Supplier to claim damages or an additional sum or an extension of time for Completion of the Services. The Supplier shall not be entitled to rely upon any survey, report or other information supplied by or on behalf of Tarmac regarding the Site or any such matter referred to in this clause, or to make any claim against Tarmac in connection therewith. Tarmac shall, on request of the Supplier, grant such access to the Site as may be reasonable for this purpose.

- 8.2 Unless otherwise agreed, the Supplier shall provide all plant, scaffolding, tools, Materials, labour, haulage and other things necessary to complete the Services.
- 8.3 Unless otherwise agreed, the Supplier shall be responsible for obtaining all those consents, licences and permits from any relevant authority which are necessary for the carrying out of the Services including and without prejudice to the generality of the foregoing planning permission and building regulation approval and the Supplier shall comply with the same.

## **9. ACCEPTANCE**

In the case of Goods or Services delivered by the Supplier not conforming with the Contract whether by reason of being of quality or in a quantity or measurement not stipulated or being unfit for the purpose for which they are required or otherwise not in compliance with the Contract Tarmac shall have the right to reject such Goods or Services within a reasonable time of Tarmac discovering the non-conformity and to purchase elsewhere goods or services as near as practicable to the same Contract specifications and conditions as circumstances shall permit but without prejudice to any other right which Tarmac may have against the Supplier. The making of payment and use of the Goods or Services shall not prejudice Tarmac's right of rejection and neither shall the signing of a delivery note notwithstanding anything to the contrary stated therein. Before exercising the said right to purchase elsewhere Tarmac shall give the Supplier a reasonable opportunity to replace or to re-perform rejected Goods or Services with Goods or Services which conform to the Contract save where Tarmac in its absolute discretion determines that the Supplier may not be capable of supplying the Goods or Services in accordance with the Contract and/or within the time required by Tarmac.

## **10. VARIATIONS**

- 10.1 The Supplier shall not alter any of the Goods or Services, except as directed in writing by Tarmac, but Tarmac shall have the right, from time to time during the execution of the Contract, by notice in writing to direct the Supplier to add to or to omit, or otherwise vary, the Goods or Services, and the Supplier shall carry out such variations and be bound by the same conditions, so far as applicable, as though the said variations were stated in the Contract.
- 10.2 Where the Supplier receives any such direction from Tarmac which would occasion an amendment to the Price or the delivery date or (in the case of Services) the performance date the Supplier shall, with all possible speed, advise Tarmac in writing to that effect giving the amount of any such amendment, ascertained and determined at the same level of pricing as that contained in the Supplier's tender, and giving the period of any delay. This revised price must be agreed in writing by Tarmac prior to commencement. If no revised price can be agreed the Supplier shall, subject to the following sub-clause, comply with the direction and a fair and reasonable addition or omission (as the case may be) shall be made to the Price.
- 10.3 If, in the opinion of the Supplier, any such direction is likely to prevent the Supplier from fulfilling any of its obligations under the Contract it shall so notify Tarmac and Tarmac shall decide whether or not the same shall be carried out and shall confirm its instructions and modify the said obligations to such an extent (if at all) as may be justified in the opinion of Tarmac. Until Tarmac so confirms its instructions they shall be deemed not to have been given.

## **11. CANCELLATION OR SUSPENSION**

- 11.1 If Tarmac is for any reason beyond its reasonable control unable to accept delivery of the Goods or performance of the Services at the times stated in the Purchase Order, or at all, then Tarmac may by notice in writing to the Supplier cancel or suspend the delivery of any of the undelivered Goods or the performance of any of the unperformed Services.
- 11.2 If delivery is suspended for more than 8 weeks, then either party may by notice in writing terminate the Contract forthwith. Upon such termination the Supplier shall be entitled to be paid up to but no more than such portion of the Price as fairly represents the work and/or materials carried out and procured up to the time of the suspension.
- 11.3 Upon cancellation the Supplier shall be entitled to be paid up to but no more than such portion of the Price as fairly represents the work and/or materials carried out and procured up to the date of cancellation.

## **12. INTELLECTUAL PROPERTY RIGHTS**

- 12.1 The Supplier shall indemnify Tarmac against any claim for infringement of any patent, design right, registered design, unregistered design, trade mark or copyright or for breach of confidence by the use or sale of any article or material supplied by the Supplier to Tarmac or any Services supplied by the Supplier to Tarmac and against all costs and damages, including legal fees on an indemnity basis, which Tarmac may incur in any action for such infringement or for which Tarmac may become liable in any such action. Provided always that this indemnity is conditional on Tarmac giving to the Supplier notice in writing of any claim being made or action threatened or brought against Tarmac and on Tarmac permitting the Supplier at the Supplier's own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim.
- 12.2 All intellectual property rights in any Services or Materials supplied to Tarmac by the Supplier or specifically commissioned by the Supplier for Tarmac shall vest in Tarmac and the Supplier undertakes to execute all documents required to ensure such ownership.

## **13. ASSIGNMENT AND SUB-LETTING**

- 13.1 The Contract shall not be assigned by the Supplier nor sub-let as a whole or in part without Tarmac's consent.
- 13.2 When Tarmac has consented to the placing of sub-contracts copies of each sub-contract as and when requested shall be sent by the Supplier to Tarmac.
- 13.3 Tarmac may freely assign or charge all or part of the benefit of the Contract.
- 13.4 For the avoidance of doubt, the Supplier shall be and remain primarily and directly responsible to Tarmac for all Goods and/or Services supplied by sub-contractors.



## **14. PROGRESS AND INSPECTION**

Tarmac's representatives shall have the right to inspect all Goods at the Supplier's works and the works of sub-contractors at all reasonable times and to reject Goods that do not comply with the terms of the Contract. The Supplier's sub-contracts shall include this provision. Any inspection, checking, approval or acceptance given on behalf of Tarmac shall not relieve the Supplier from any obligation under the Contract.

## **15. FREE-ISSUE MATERIALS**

- 15.1 Where Tarmac for the purposes of the Contract issues Materials 'free of charge' to the Supplier such Materials shall be and remain the property of Tarmac. The Supplier shall maintain all such Materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. The Supplier shall use such Materials solely in connection with the Contract. Any surplus Materials shall be disposed of at Tarmac's discretion. Waste of such Materials arising from bad workmanship or negligence of the Supplier shall be made good at the Supplier's expense. Without prejudice to any other of the rights of Tarmac, the Supplier shall deliver up such Materials whether further processed or not to Tarmac on demand
- 15.2 If either party requires a record of the quantity and condition of any free issue materials required to be returned to Tarmac, then a suitable record shall be agreed and maintained by both parties.

## **16. SITE REGULATIONS**

- 16.1 The Supplier shall not commence the provision of Services on Site before obtaining the consent of Tarmac.
- 16.2 The Supplier shall comply with Tarmac's current Safety, Health and Environmental Rules for Contractors ('SHE Rules') (available on request) and all other safety requirements applicable to the Site and shall ensure that its employees and sub-contractors so comply.
- 16.3 Tarmac shall have the right to require the removal of any person brought to the Site by the Supplier who has:
- 16.3.1 failed to comply with the SHE Rules, or
  - 16.3.2 has, in the opinion of Tarmac, misconducted himself or been negligent or incompetent.

## **17. SITE WORK BY SUPPLIER**

- 17.1 If any work on Site is to be carried out by the Supplier, then the Supplier shall ensure that no work is covered up until Tarmac has had a reasonable opportunity to inspect it.
- 17.2 The access to and possession of the Site shall not be exclusive to the Supplier but only such as shall enable it to execute the Services, concurrently with the execution of work by other persons.
- 17.3 Without prejudice to any other indemnity provisions herein, the Supplier shall at all times prevent any nuisance or trespass (including, but without limitation, any noisy

working operations, or interference with access or use of public or private roads and/or footpaths) or other interference with the rights of the owner, or any tenant or occupier of the Site or any adjoining land, arising out of the Services, and shall fully indemnify Tarmac in relation to any claims and legal fees (on an indemnity basis) arising out of any failure in performing its obligations and shall assist Tarmac in defending any action or proceedings which may be instituted in relation thereto.

## **18. THINGS FOUND ON SITE**

All minerals, metals, objects and other things found or discovered on, under or around the Site shall as between the Supplier and Tarmac be the property of Tarmac and shall be dealt with as Tarmac may direct.

## **19. NOTIFICATION PROCEDURE**

The Supplier shall give immediate notice in the event of any accident or damage likely to form the subject of a claim under Tarmac's insurance and shall give all the information and assistance in respect thereof that Tarmac's insurers may require, and shall not negotiate, pay, settle, admit or repudiate any claim relating to the same subject matter or to any extent relating to the same subject matter without the written consent of, Tarmac's insurers and shall permit such insurers to take proceedings in the name of the Supplier to recover compensation or secure an indemnity from any third party in respect of any of the matters covered by the said insurance.

## **20. SPECIFICATIONS, PLANS, PROCESS INFORMATION ETC**

- 20.1 Any specifications, plans, drawings, process information, patterns or designs supplied by Tarmac to the Supplier in connection with the Contract shall remain the property of Tarmac, and any information derived therefrom or otherwise communicated to the Supplier in connection with the Contract shall be kept secret and shall not, without the consent in writing of Tarmac, be published or disclosed to any third party, or made use of by the Supplier except for the purpose of implementing the Contract. Any specifications, plans, drawings, process information, patterns or designs supplied by Tarmac must be returned to Tarmac when required.
- 20.2 When the Purchase Order includes manufacture to Tarmac's designs the Supplier agrees to inform Tarmac of any invention or improvement in design or method of manufacture arising out of the performance of the Contract by or on behalf of the Supplier and any such invention or improvement and any patent or registered design rights in respect thereof and copyright in any drawings, documents or specifications relating thereto shall be the property of Tarmac. The Supplier shall give Tarmac at Tarmac's expense all necessary assistance to enable Tarmac to obtain patent, registered design and similar rights throughout the world.
- 20.3 On or before delivery of the Goods (or on termination of the Contract for whatever cause if earlier) the Supplier shall provide to Tarmac at no extra cost all necessary operating and maintenance manuals.
- 20.4 The Supplier accepts entire responsibility for the design of Goods (including any design work prepared before or after the date of the Purchase Order and whether carried out by or on behalf of Tarmac or Supplier) and for any error, mistake, inaccuracy, or discrepancy contained in the same, provided that the Supplier shall not be liable for any design provided by Tarmac if the Supplier objects to it prior to manufacturing the Goods.

## **21. HAZARDOUS GOODS**

- 21.1 Hazardous Goods must be marked by the Supplier with International Danger Symbol(s) and display the name of the material in English. Transport and other documents must also include a declaration of the hazard and name of the material in English. Hazardous Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Supplier shall observe the requirements of UK and international agreements relating to the packing, labelling and carriage of hazardous Goods.
- 21.2 All information held by, or reasonably available to, the Supplier regarding any potential hazards known or believed to exist in relation to the transport, handling or use of the Goods supplied shall be promptly communicated to Tarmac.

## **22. TERMINATION**

- 22.1 Without prejudice to any other rights or remedies of Tarmac, Tarmac may by notice in writing terminate the Contract forthwith if the Supplier: (a) shall go into liquidation whether voluntary or otherwise (except for the purposes of and followed by an amalgamation or reconstruction) or shall become bankrupt or shall cease to trade or threaten to cease to trade or shall have a receiver or administrative receiver of the whole or any part of its assets appointed or shall enter into any composition or arrangement with or for the benefit of its creditors or shall be the subject of an administration order, or (b) shall be in breach of any terms of the Contract. The Supplier shall indemnify Tarmac for all losses suffered by it as a result of such termination.
- 22.2 Tarmac shall have the right to terminate the contract by not less than one month's notice at any time without prejudice to Tarmac's rights and remedies in respect of any antecedent breach of the Contract committed by the Supplier.

## **23. CONDITIONS OF CONTRACT**

- 23.1 No terms and conditions submitted or referred to by the Supplier in any document shall form part of the Contract unless otherwise agreed to in writing by Tarmac.
- 23.2 Tarmac shall not be liable under the Contract unless:
- (a) Tarmac issues an official Purchase Order; and
  - (b) either the Supplier confirms in writing acceptance of it or takes any steps to comply with the Contract without indicating it does not accept the Purchase Order and these Conditions.
- 23.3 Tarmac shall not be bound by any variation, waiver of or addition to the Contract except as agreed in writing and signed by a duly authorised representative.
- 23.4 If the performance of the Contract requires Tarmac to have any permit or licence from any government or other authority, the Contract shall be conditional upon such permit or licence being available at the required time.
- 23.5 Nothing in these Conditions shall prejudice any conditions or warranties (express or implied) or right or remedy to which Tarmac is entitled in relation to the Contract or the Goods or Services supplied by the Supplier to Tarmac by virtue of statute or common law or the laws of the European Union. The rights and remedies conferred

on Tarmac by these Conditions are in addition to and in no way in substitution for any conditions, warranties or any other rights or remedies conferred on Tarmac or implied by the law as aforesaid.

## **24. STATUTORY REQUIREMENTS AND TARMAC POLICIES**

The Supplier shall comply with the Statutory Requirements and the Tarmac Policies in connection with the supply of the Goods and/or the performance of the Services.

## **25. INDEMNITY AND INSURANCE**

25.1 The Supplier shall keep Tarmac indemnified against:

- (i) any liability or claim in respect of loss or damage to any moveable or immovable property of any nature or type whatever of Tarmac or any third party; and
- (ii) any liability or claim in respect of the death or personal injury to any person whether in contract or tort or otherwise arising under common law, statute or otherwise

caused by an act or omission on the part of the Supplier or any of its employees, sub-contractors, assignees or agents and the Supplier shall also indemnify Tarmac in respect of any legal fees incurred by Tarmac in connection therewith.

25.2 The Supplier shall fully indemnify Tarmac against all loss, damages, costs or expense arising out of or connected with any breach of the Contract and the Supplier shall also indemnify Tarmac in respect of any legal fees incurred in connection therewith.

25.3 The Supplier shall take out and/or maintain such types and levels of cover of insurance as Tarmac may require including Public Liability, Employer's Liability, Works and Product Liability insurance. If the Supplier fails to take out and/or maintain any such insurance policies Tarmac may do so and recover the premiums paid from the Supplier as a debt. If so required, the Supplier shall promptly and accurately complete any insurance questionnaire supplied by Tarmac and Tarmac shall be entitled to withhold payment of the Price or part thereof until the questionnaire has been fully and accurately completed and returned to Tarmac.

## **26. ASSIGNMENT OF WARRANTIES TO BUYER**

The Supplier shall pass to Tarmac the benefits of all and any warranties and/or guarantees received by the Supplier from its suppliers.

## **27. SET OFF**

Any debt or claim on the part of Tarmac or any of its subsidiary, associated or holding companies with or against the Supplier, whether arising out of the Contract or otherwise howsoever, and whether liquidated or not, may be set off against any sums due to Supplier hereunder. For the avoidance of doubt, Tarmac shall be entitled to withhold and set off against the Price, any sum owed by the Supplier to Tarmac for any reason. Where the Goods or any part thereof are liable to be returned to the Supplier and/or the Services re-performed by the Supplier for any reason, Tarmac shall be entitled to withhold monies, including any reasonable estimate of the value of

the faulty Goods likely to be returned or Services to be re-performed, otherwise due to the Supplier (under this or any other Contract between Tarmac and the Supplier) by way of set-off against the value of the said Goods or Services. Where any set-off is or is likely to be insufficient to cover the Supplier's liability to Tarmac, Tarmac shall be entitled to invoice the Supplier for any additional sums owing and the Supplier shall make payment of such additional sums owing within 30 days of such invoice being received by the Supplier

## **28. LOCAL CONDITIONS**

Unless otherwise agreed in writing, the Supplier shall be deemed to have full knowledge of any local conditions that may be relevant to the proper performance of its obligations hereunder including without prejudice to the generality of the foregoing all relevant means of access to the Site.

## **29. DISPUTE RESOLUTION**

In the event of any dispute arising between the parties in connection with the Contract, the parties will in good faith seek to resolve that dispute through mediation under the auspices of the ADR Group. The Mediator shall be agreed upon within 21 days of one party requesting mediation, failing which either party may apply to the President of the Law Society to appoint a Mediator. Unless otherwise agreed each party shall share equally the costs of the Mediator, the ADR Group and the President of the Law Society and each party shall bear their own legal and other fees and expenses incurred in relation to the mediation. If the dispute is not resolved within 28 days of the Mediator's appointment, then either party may commence Court proceedings, but provided that nothing in this clause shall prevent either party seeking an injunction or other interim relief at any time if it reasonably believes such action is necessary to prevent irreparable damage.

## **30. THIRD PARTY RIGHTS**

A natural or legal person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Contract. This clause does not alter any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **31. LAW, JURISDICTION AND CONSTRUCTION OF CONTRACT**

- 31.1 The construction, validity and performance of the Contract shall be governed by the law of England and the parties submit to the exclusive jurisdiction of the English Courts.
- 31.2 References to any statute or statutory provision shall be construed as a reference to that statute or provision as from time to time amended, consolidated, extended, re-enacted or replaced.

## **32. NOTICES**

- 32.1 Any notice to be given to a party under the Contract shall be given in writing in the English language and delivered by hand or sent by first class prepaid post or by facsimile to the other party.
- 32.2 Any notice to be given to Tarmac shall be addressed to the Company Secretary and sent to its registered office or such other address as Tarmac may have notified to the Supplier as its proper address for service.
- 32.3 Any notice to be given to the Supplier shall be sent to its registered office or the address of the Supplier stated on the last Purchase order or the last known address or facsimile number notified in writing to Tarmac by the Supplier as being its proper address or facsimile number for service.

- 32.4 Notices given in accordance with this Clause 32 shall be deemed to have been received:
- (i) 48 hours after posting (exclusive of the day of posting) if sent by first class prepaid post;
  - (ii) on the day of delivery if delivered by hand; or
  - (iii) at the time of transmission if sent by facsimile provided that a confirming copy is sent by first class prepaid post to the other party within 24 hours after transmission.

### **33. WAIVER**

No delay or omission by Buyer in exercising any of its rights or remedies under the Contract or under any applicable law on any occasion shall be deemed a waiver of, or bar to, the exercise of such right or remedy or any other right or remedy upon any other occasion.

### **34. HEADINGS**

The headings herein are for ease of reference only and shall not affect the construction of the Contract .

### **35. SEVERANCE**

In the event that any provision of the Contract shall be void or unenforceable by reason of any provision of applicable law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the original intent of the Contract so far as possible.

### **36. CONFIDENTIALITY**

36.1 The Supplier shall treat as confidential and shall not disclose to any third party without the prior written consent of Tarmac the terms of the Contract and any information obtained from Tarmac or otherwise obtained in connection with the Contract ("Confidential Information").

36.2 The Supplier shall not use the Confidential Information for any purpose other than performance of its obligations under the Contract.

36.3 Clauses 36.1 and 36.2 shall not apply to any information to the extent that it:

- (a) is or shall become part of the public domain otherwise than in consequence of any breach of the obligations in this clause or any other duty or obligation of confidence; or
- (b) is already in the Supplier's possession and not under any obligation or duty of confidence.

36.4 The obligations of confidence contained in this clause shall continue after expiry or earlier termination of the Contract.

**37. TARMAC TRADE MARKS**

“Tarmac” and the 'Circle' logo are registered trade marks. The Supplier shall not use “Tarmac”, the 'Circle' logo or any other trade mark (registered or otherwise) belonging to Tarmac or its group companies without the prior written consent of the relevant owning company of such trade mark. Any written consent given shall be deemed to be under licence which may be terminated at any time by giving prior written notice to the Supplier.

**Edition date: 03.08.2015**



**TARMAC BUILDING PRODUCTS LIMITED**

**General Conditions  
of Contract for  
the purchase and  
supply only of  
goods, plant and materials  
(UK only)**

**Form T/1/A**

**Issued by:**

**Tarmac Building Products Limited  
Salisbury House  
2a Tettenhall Road  
Wolverhampton  
WV1 4SA**

**Edition date: 03.08.2015**



## **5 PASSING OF PROPERTY AND RISK TO TARMAC**

- 5.1 The Goods shall become the property of Tarmac on delivery or payment or part payment (whichever occurs first).
- 5.2 Where Tarmac pays part of the Price before taking delivery of the Goods or any part thereof then such payments shall be regarded as part payments and not deposits of the Price.
- 5.3 All risk in the Goods including all risk of loss or damage shall remain with the Supplier until the Goods reach the correct place of delivery and are placed in the possession of Tarmac.
- 5.4 Tarmac accepts no responsibility for Goods delivered in excess of the Purchase Order requirement.
- 5.5 All Goods rejected or returned shall be at the risk of the Supplier from 5 days from the date Tarmac gives notice of rejection or return of the Goods and, in any event, during transit back to the Supplier.
- 5.6 Unless otherwise agreed, the Supplier shall be responsible for collecting the Goods and all costs incurred in transporting them.

## **6. PURCHASE PRICE AND TERMS OF PAYMENT**

- 6.1 Unless otherwise stated in the Purchase Order, all rates and prices are firm and fixed and the Price shall be inclusive of all services and materials necessary for the performance of the Contract by the Supplier, and all taxes and duties, but excluding value added tax.
- 6.2 The Supplier shall procure that invoices shall include the following particulars as a condition precedent to Tarmac's obligation to pay the Price to the Supplier:
  - Tarmac's Purchase Order number;
  - Invoice date and number;
  - Supplier's name and address;
  - Description of the Goods invoiced;
  - The location and date of delivery of the Goods invoiced;
  - The Price of the Goods invoiced;
  - Value added tax payable by Tarmac (where applicable to the transaction) stated separately from the Price; and
  - The Supplier's VAT number and any other particulars required by law or regulation from time to time,and an invoice which includes each of the above particulars is hereinafter called a "valid invoice".
- 6.3 The Supplier shall deliver a valid invoice to Tarmac promptly after (but not before) the delivery of the Goods to Tarmac in accordance with the Contract.
- 6.4 Unless otherwise stated in the Purchase Order, and subject to the delivery of a valid invoice by the Supplier to Tarmac in accordance with Clause 6.3, Tarmac shall pay the Price for the relevant Goods together with value added tax (where applicable to the transaction) to the Supplier not later than 60 days after the end of the calendar month during which the valid invoice is received by Tarmac.
- 6.5 If Tarmac shall fail to make payment in accordance with Clause 6.4, the Supplier shall be entitled to simple interest at the rate of 2% per annum above the base lending rate from time to time of Barclays Bank plc calculated on the unpaid sum from the due date for payment until payment is made.

## **7 ACCEPTANCE**

In the case of Goods delivered by the Supplier not conforming with the Contract whether by reason of being of quality or in a quantity measurement not stipulated or being unfit for the purpose for which they are required Tarmac shall have the right to reject such Goods within a reasonable time of Tarmac discovering the non-conformity and to purchase elsewhere goods as near as practicable to the same Contract specifications and conditions as circumstances shall permit but without prejudice to any other right which Tarmac may have against the Supplier. The making of payment and use of the Goods shall not prejudice Tarmac's right of rejection and neither shall the signing of a delivery note notwithstanding anything to the contrary stated therein. Before exercising the said right to purchase elsewhere Tarmac shall give the Supplier a reasonable opportunity to replace rejected Goods with Goods which conform to the Contract save where Tarmac in its absolute discretion determines that the Supplier may not be capable of supplying the Goods in accordance with the Contract and/or within the time required by Tarmac.

## **8 VARIATIONS**

- 8.1 The Supplier shall not alter any of the Goods, except as directed in writing by Tarmac, but Tarmac shall have the right, from time to time during the execution of the Contract, by notice in writing to direct the Supplier to add to or to omit, or otherwise vary, the Goods, and the Supplier shall carry out such variations and be bound by the same conditions, so far as applicable, as though the said variations were stated in the Contract.
- 8.2 Where the Supplier receives any such direction from Tarmac which would occasion an amendment to the Price or the delivery date the Supplier shall, with all possible speed, advise Tarmac in writing to that effect giving the amount of any such amendment, ascertained and determined at the same level of pricing as that contained in the Supplier's tender and the period of any delay. This revised price must be agreed in writing by Tarmac prior to commencement. If no revised price can be agreed the Supplier shall, subject to the following sub-clause, comply with the direction and a fair and reasonable addition or omission (as the case may be) shall be made to the Price.
- 8.3 If, in the opinion of the Supplier, any such direction is likely to prevent the Supplier from fulfilling any of its obligations under the Contract it shall so notify Tarmac and Tarmac shall decide whether or not the same shall be carried out and shall confirm its instructions and modify the said obligations to such an extent as may be justified. Until Tarmac so confirms its instructions they shall be deemed not to have been given.

## **9 CANCELLATION OR SUSPENSION**

- 9.1 If Tarmac is for any reason beyond its reasonable control unable to accept delivery of the Goods at the times stated in the Purchase Order, or at all, then Tarmac may by notice in writing to the Supplier cancel or suspend the delivery of any of the undelivered Goods.
- 9.2 If delivery is suspended for more than 8 weeks, then either party may by notice in writing terminate the Contract forthwith. Upon such termination the Supplier shall be entitled to be paid up to but no more than such portion of the Price as fairly represents the work and/or materials carried out and procured up to the time of the suspension.
- 9.3 Upon cancellation the Supplier shall be entitled to be paid up to but no more than such portion of the Price as fairly represents the work and/or materials carried out and procured up to the date of cancellation.

## **10 INTELLECTUAL PROPERTY RIGHTS**

The Supplier will indemnify Tarmac against any claim for infringement of any patent, design right, registered design, unregistered design, trade mark or copyright or for breach of confidence by the use or sale of any article or material supplied by the Supplier to Tarmac and against all costs and damages, including legal fees on an indemnity basis, which Tarmac may incur in any action for such infringement or for which Tarmac may become liable in any such action. Provided that this indemnity is conditional on Tarmac giving to the Supplier notice in writing of any claim being made or action threatened or brought against Tarmac and on Tarmac permitting the Supplier at the Supplier's own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim.

## **11 ASSIGNMENT AND SUB-LETTING**

- 11.1 The Contract shall not be assigned by the Supplier nor sub-let as a whole or in part without Tarmac's consent.
- 11.2 When Tarmac has consented to the placing of sub-contracts copies of each sub-order as and when requested shall be sent by the Supplier to Tarmac immediately.
- 11.3 Tarmac may freely assign or charge all or part of the benefit of the Contract.

## **12 PROGRESS AND INSPECTION**

Tarmac's representatives shall have the right to inspect all Goods at the Supplier's works and the works of sub-contractors at all reasonable times and to reject goods that do not comply with the terms of the Contract. The Supplier's sub-contracts shall include this provision. Any inspection, checking, approval or acceptance given on behalf of Tarmac shall not relieve the Supplier or its sub-contractors from any obligation under the Contract.

### **13 SPECIFICATIONS, PLANS, PROCESS INFORMATION ETC**

- 13.1 Any specifications, plans, drawings, process information, patterns or designs supplied by Tarmac to the Supplier in connection with the Contract shall remain the property of Tarmac, and any information derived there from or otherwise communicated to the Supplier in connection with the Contract shall be kept secret and shall not, without the consent in writing of Tarmac, be published or disclosed to any third party, or made use of by the Supplier except for the purpose of implementing the Contract. Any specifications, plans, drawings, process information, patterns or designs supplied by Tarmac must be returned to Tarmac when required.
- 13.2 When the Purchase Order includes manufacture to Tarmac's designs the Supplier agrees to inform Tarmac of any invention or improvement in design or method of manufacture arising out of the performance of the Contract by or on behalf of the Supplier and any such invention or improvement and any patent or registered design rights in respect thereof and copyright in any drawings, documents or specifications relating thereto shall be the property of Tarmac. The Supplier will give Tarmac at Tarmac's expense all necessary assistance to enable Tarmac to obtain patent, registered design and similar rights throughout the world.
- 13.3 On or before delivery of the Goods (or on termination (for whatever cause) if earlier) the Supplier shall provide to Tarmac at no extra cost all necessary operating and maintenance manuals.
- 13.4 The Supplier accepts entire responsibility for the design of Goods (including any design work prepared before or after the date of the Purchase Order and whether carried out by or on behalf of Tarmac or Supplier) and for any error, mistake, inaccuracy, or discrepancy contained in the same, provided that the Supplier shall not be liable for any design provided by Tarmac if the Supplier objects to it prior to manufacturing the Goods.

### **14 HAZARDOUS GOODS**

- 14.1 Hazardous Goods must be marked by the Supplier with International Danger Symbol(s) and display the name of the material in English. Transport and other documents must include a declaration of the hazard and name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Supplier shall observe the requirements of UK and International Agreements relating to the packing, labelling and carriage of hazardous Goods.
- 14.2 All information held by, or reasonably available to, the Supplier regarding any potential hazards known or believed to exist in the transport, handling or use of the Goods supplied shall be promptly communicated to Tarmac.

### **15 TERMINATION**

- 15.1 Without prejudice to any other rights or remedies of Tarmac, Tarmac may by notice in writing terminate the Contract forthwith if the Supplier: (a) shall go into liquidation whether voluntary or otherwise (except for the purposes of and followed by an amalgamation or reconstruction) or shall become bankrupt or shall cease to trade or threaten to cease to trade or shall have a receiver or administrative receiver of the whole or any part of its assets appointed or shall enter into any composition or arrangement with or for the benefit of its creditors or shall be the subject of an administration order, or (b) shall be in breach of any terms of the Contract. The Supplier shall indemnify Tarmac for all losses suffered by it as a consequence of such termination.
- 15.2 Tarmac shall have the right to terminate the contract by not less than one months notice at any time without prejudice to Tarmac's rights and remedies in respect of any antecedent breaching of the Contract committed by the Supplier.

### **16 CONDITIONS OF CONTRACT**

- 16.1 No terms and conditions submitted or referred to by the Supplier in any document shall form part of the Contract unless otherwise agreed to in writing by Tarmac.
- 16.2 Tarmac shall not be liable under the Contract unless: -
- a) Tarmac issues an official Purchase Order; and
  - b) Either the Supplier confirms in writing acceptance of it or takes any steps to comply with the Contract without indicating it does not accept the Purchase Order and these Conditions.

- 16.3 Tarmac shall not be bound by any variation, waiver of or addition to the Contract except as agreed in writing and signed by a duly authorised representative.
- 16.4 If the performance of the Contract requires Tarmac to have any permit or licence from any government or other authority, the Contract shall be conditional upon such permit or licence being available at the required time.
- 16.5 Nothing in these Conditions shall prejudice any conditions or warranties (express or implied) or right or remedy to which Tarmac is entitled in relation to the Contract by virtue of statute or common law. The rights and remedies conferred on Tarmac by these Conditions are in addition to and in no way in substitution for any conditions, warranties or any other rights or remedies conferred on Tarmac or implied by the law.

## **17 STATUTORY REQUIREMENTS AND TARMAC POLICIES**

The Supplier shall comply with the Statutory Requirements and Tarmac Policies in connection with the supply of the Goods including any amendments or modifications thereto made during the performance of the Contract.

## **18 INDEMNITY AND INSURANCE**

- 18.1 The Supplier shall keep Tarmac indemnified against:
- (i) any liability or claim in respect of loss or damage to any moveable or immovable property of any nature or type whatever of Tarmac or any third party; and
  - (ii) any liability or claim in respect of the death or personal injury to any person whether in contract or tort or otherwise arising under common law, statute or otherwise
- caused by an act or omission on the part of the Supplier or any of its employees, sub-contractors, assignees or agents and the Supplier shall also indemnify Tarmac in respect of any legal fees incurred by Tarmac in connection therewith.
- 18.2 The Supplier shall fully indemnify Tarmac against all loss, damages, costs or expense arising out of or connected with any breach of the Contract and the Supplier shall also indemnify Tarmac in respect of any legal fees incurred in connection therewith.
- 18.3 The Supplier shall take out and/or maintain such types and levels of cover of insurance as Tarmac may require including Public Liability and Product Liability insurance. If the Supplier fails to take out and/or maintain any such insurance policies Tarmac may do so and recover the premiums paid from the Supplier as a debt. If so required, the Supplier shall promptly and accurately complete any insurance questionnaire supplied by Tarmac and Tarmac shall be entitled to withhold payment of the Price or part thereof until the questionnaire has been fully and accurately completed and returned to Tarmac.

## **19 WARRANTY**

Unless otherwise agreed, the Supplier warrants that the Goods shall remain fit for purpose and comply with clause 2 hereof for 12 months from the date of the delivery of the Goods or 12 months after the Goods are first used by Tarmac, whichever period shall expire last but provided that this warranty shall expire no later than 18 months after delivery and provided that the Supplier's liability shall be reduced or extinguished (as the case may be) to the extent that any defects or failure in the Goods results from damage suffered by the Goods after delivery, fair wear and tear, failure by Tarmac to maintain the Goods in accordance with any recommendations of the Supplier made known to Tarmac, or negligent use made of the Goods by Tarmac.

## **20 SET OFF**

Any debt or claim on the part of Tarmac or any of its subsidiary, associated or holding companies with or against the Supplier, whether arising out of the Contract or otherwise howsoever, and whether liquidated or not, may be set off against any sums due to the Supplier hereunder. For the avoidance of doubt, Tarmac shall be entitled to withhold and set off against the Price, any sum owed by the Supplier to Tarmac for any reason. Where the Goods or any part thereof are liable to be returned to the Supplier for any reason, Tarmac shall be entitled to withhold monies, including any reasonable estimate of the value of the faulty Goods likely to be returned, otherwise due to the Supplier (under this or any other Contract between Tarmac and the Supplier) by way of set-off against the value of the said Goods. Where any set-off is or is likely to be insufficient to cover the Supplier's liability to Tarmac, Tarmac shall be entitled to invoice the Supplier for any additional sums owing

and the Supplier shall make payment of such additional sums owing within 30 days of such invoice being received by the Supplier

## **21 LOCAL CONDITIONS**

Unless otherwise agreed in writing, the Supplier shall be deemed to have full knowledge of any local conditions that may be relevant to the proper performance of its obligations hereunder including without prejudice to the generality of the foregoing all relevant means of access.

## **22 DISPUTE RESOLUTION**

In the event of any dispute arising between the parties in connection with the Contract, the parties will in good faith seek to resolve that dispute through mediation under the auspices of the ADR Group. The Mediator shall be agreed upon within 21 days of one party requesting mediation, failing which either party may apply to the President of the Law Society to appoint a Mediator. Unless otherwise agreed each party shall share equally the costs of the Mediator, the ADR Group and the President of the Law Society and each party shall bear their own legal and other fees and expenses incurred in relation to the mediation. If the dispute is not resolved within 28 days of the Mediator's appointment, then either party may commence Court proceedings, but provided that nothing in this clause shall prevent either party seeking an injunction or other interim relief at any time if it reasonably believes such action is necessary to prevent irreparable damage.

## **23 THIRD PARTY RIGHTS**

A natural or legal person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Contract. This clause does not alter any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **24 CONSTRUCTION OF CONTRACT**

24.1 The construction, validity and performance of the Contract shall be governed by the law of England and the parties submit to the exclusive jurisdiction of the English Courts.

24.2 References to any statute or statutory provision shall be construed as a reference to that statute or provision as from time to time amended, consolidated, extended, re-enacted or replaced.

## **25 NOTICES**

25.1 Any notice to be given to a party under the Contract shall be given in writing in the English language and delivered by hand or sent by first class prepaid post or by facsimile to the other party.

25.2 Any notice to be given to Tarmac shall be addressed to the Company Secretary and sent to its registered office or such other address as Tarmac may have notified to the Supplier as its proper address for service.

25.3 Any notice to be given to the Supplier shall be sent to its registered office or the address of the Supplier stated on the last Purchase order or the last known address or facsimile number notified in writing to Tarmac by the Supplier as being its proper address or facsimile number for service.

25.4 Notices given in accordance with this Clause 25 shall be deemed to have been received:

- (i) 48 hours after posting (exclusive of the day of posting) if sent by first class prepaid post;
- (ii) on the day of delivery if delivered by hand; or
- (iii) at the time of transmission if sent by facsimile provided that a confirming copy is sent by first class prepaid post to the other party within 24 hours after transmission.









- 1.16 'CIS' means the Construction Industry Scheme.
- 1.17 'SWMP Regulations' means the Site Waste Management Plans Regulations 2008 and 'SWMP' means a site waste management plan issued and updated in accordance with the SWMP Regulations.

## **2 QUALITY AND FITNESS FOR PURPOSE**

- 2.1 The Works shall be of satisfactory quality and free from defects in material or workmanship or design. If the purpose for which the Works are required is made known to the Supplier expressly or by implication the Works shall be fit for that purpose. Unless otherwise agreed the Works shall conform with any specifications, drawings, descriptions and samples contained or referred to in the Contract and with all relevant British Standards and Statutory Requirements.
- 2.2 The Supplier shall complete the Works in accordance with all Statutory Requirements and Tarmac Policies (including any amendment or modification thereto made during the performance of the Contract) and with Tarmac's instructions and programme as set out in the Contract.

## **3 COMPLETION DATE**

- 3.1 The date of Completion of the Works shall be that specified in the Purchase Order unless agreed otherwise between Tarmac and the Supplier. In the absence of any date being specified, the Works shall be completed as soon as practicable. Time shall be of the essence. The Supplier shall furnish such programmes of manufacture, delivery and installation as Tarmac may reasonably require and the Supplier shall give notice to Tarmac as soon as practicable if progress in accordance with such programmes is or is likely to be delayed. Tarmac has the right to instruct the Supplier to take such action as is required to complete the Works on time at no extra cost to Tarmac save where Tarmac has caused the delay.
- 3.2 If the Works includes tests the same shall not be deemed to be Completed until such tests have been passed to the reasonable satisfaction of Tarmac.

## **4 TERMS OF PAYMENT**

- 4.1 Unless otherwise stated in the Purchase Order, all rates and prices are firm and fixed and the Price shall be inclusive of all services and materials necessary for the performance of the Contract by the Supplier, and all taxes and duties, but excluding value added tax.
- 4.2 The Supplier shall procure that invoices shall include the following particulars as a condition precedent to Tarmac's obligation to pay the Price to the Supplier:
- Tarmac's Purchase Order number;
  - Invoice date and number;
  - Supplier's name and address;
  - Description of the Works invoiced;
  - The location and date of execution of the Works invoiced;
  - The Price of the Works invoiced;
  - Value added tax payable by Tarmac (where applicable to the transaction) stated separately from the Price; and
  - The Supplier's VAT number and any other particulars required by law or regulation from time to time,

and an invoice which includes each of the above particulars is hereinafter called a "valid invoice".

- 4.3 The Supplier shall deliver a valid invoice to Tarmac promptly after (but not before) the Works are Completed or (where stage payments are agreed) after the agreed stage is Completed in each case in accordance with the Contract.
- 4.4 Subject to Clauses 4.5, 4.6 and 4.7 (where applicable), unless otherwise stated in the Purchase Order, and subject to the delivery of a valid invoice by the Supplier to Tarmac in accordance with Clause 4.3, Tarmac shall pay the Price for the relevant Works together with value added tax (where applicable to the transaction) to the Supplier not later than 60 days after the end of the calendar month during which the valid invoice is received by Tarmac.

4.5 Where the Contract is a Construction Contract:

- (a) The due date for payment is 45 days after the end of the calendar month during which a valid invoice is received by Tarmac;
- (b) The final date for payment is 60 days after the end of the calendar month during which a valid invoice is received by Tarmac;
- (c) Any notice of payment due shall be given 5 days after the due date and any notice to withhold payment shall be given no later than 1 day before the final date for payment.

For the avoidance of doubt, any failure by Tarmac to give notices under Section 110 or Section 111 of the Construction Act shall not necessarily mean the amount invoiced by the Supplier is due.

4.6 Where Tarmac is a "contractor" for the purpose of the CIS or if at any time up to the date the final payment is to be made under the Contract Tarmac becomes such a "contractor", the obligation of Tarmac to make any payment under the Contract is subject to the provisions of the CIS.

4.7 Without prejudice to clause 4.6, it is a condition precedent to any payment (or further payment, as the case may be) by Tarmac that the Supplier confirms its payment status and notifies Tarmac of any changes thereto and also provides all information required by Tarmac in order for Tarmac to verify the Supplier's payment status for the purpose of the CIS.

4.8 In the event that Tarmac fails to make any statutory deductions under the CIS which ought to have been made due to a failure by the Supplier to provide information, or due to the provision of false or inaccurate information by the Supplier, or due to the payment status of the Supplier being different to that stated by the Supplier or assessed by Tarmac, then the Supplier shall fully indemnify Tarmac in respect of any liability it incurs including to HMRC as a result thereof.

4.9 If Tarmac shall fail to make payment in accordance with Clause 4.4 or 4.5, the Supplier shall be entitled to simple interest at the rate of 2% per annum above the base lending rate from time to time of Barclays Bank plc calculated on the unpaid sum from the date payment should have been made until payment is made.

## 5 INCLUSIONS IN PRICE

5.1 The Supplier is deemed to have understood the nature and extent of the work and to have visited and inspected the Site (including ground conditions and any existing structures). No failure on the part of the Supplier to discover or foresee any site conditions, or any risks, contingencies or circumstances (whether the same ought reasonably to have been discovered or not) shall entitle the Supplier to claim damages or an additional sum or an extension of time for Completion of the Works. The Supplier shall not be entitled to rely upon any survey, report or other information supplied by or on behalf of Tarmac regarding any such matter referred to in this clause, or to make any claim against Tarmac in connection therewith. Tarmac shall, on request of the Supplier, grant such access as may be reasonable for this purpose.

5.2 Unless otherwise specified, the Supplier shall provide all plant, scaffolding, tools, material, labour, haulage and other things necessary to complete the Works.

5.3 Unless otherwise agreed, the Supplier shall be responsible for obtaining all those consents, licences and permits from any relevant authority which are necessary for the carrying out of the Works including and without prejudice to the generality of the foregoing planning permission and building regulation approval and the Supplier shall comply with the same.

## 6 INCORRECT DELIVERY

6.1 All Equipment must be delivered at the delivery point and within the times specified in the Purchase Order. If any Equipment is incorrectly delivered, the Supplier shall be responsible for any additional expense incurred in delivering it to the correct delivery point.

6.2 Tarmac will not be responsible for any failure to give notice to carriers of non-delivery, loss, damage, delay, detention or transit.

## **7 PASSING OF PROPERTY AND RISK TO TARMAC**

- 7.1 The Equipment shall become the property of Tarmac immediately on delivery or payment or part payment (whichever occurs first).
- 7.2 Where Tarmac pays part of the said Price before taking delivery of the Equipment or any part thereof then such payments shall be regarded as part payments and not deposits of the Price.
- 7.3 All risk in the Equipment including all risk of loss or damage shall remain with the Supplier until Completion of the Works.
- 7.4 Tarmac accepts no responsibility for Equipment delivered in excess of the Purchase Order requirement.
- 7.5 Any Equipment rejected or returned shall be at the risk of the Supplier from 5 days of the date Tarmac gives notice of rejection or return and in any event during transit back to the Supplier. Unless otherwise agreed, the Supplier shall be responsible for collecting the Equipment and all costs incurred in transporting it.

## **8 PROTECTION**

The Supplier shall protect the Equipment and the Works until Completion.

## **9 REJECTION**

If at any time before the Works are taken over under Clause 29 (Tests and Take-Over) Tarmac shall decide that any of the Equipment or Works are not in accordance with the Contract or is otherwise defective (all such matters being hereinafter in this clause called 'Defects'), then as soon as reasonably practicable it shall give to the Supplier notice in writing of the said decision specifying particulars of the Defects alleged and of where the same are alleged to exist or to have occurred, and so far as may be necessary place the Equipment or Works at the Supplier's disposal, and then Tarmac may reject the Equipment or the relevant part of the Works and the Supplier shall at its own expense and with all speed make good the Defects so specified. If the Supplier shall fail so to do Tarmac may, provided it does so without undue delay, take, at the cost of the Supplier, such steps as may in all the circumstances be reasonable to make good such Defects. All equipment provided by Tarmac to replace defective Equipment shall if practicable comply with the Contract and Tarmac shall be entitled to charge the Supplier the cost thereof. The Supplier shall be entitled to remove and retain all Equipment that Tarmac may have replaced at the Supplier's cost. The making of any payment shall not prejudice Tarmac's right of rejection hereunder.

## **10 INTELLECTUAL PROPERTY RIGHTS**

- 10.1 The Supplier will indemnify Tarmac against any claim for infringement of any patent, design right, registered design, unregistered design, trade mark or copyright or breach of confidence arising out of the Works or by the use or sale of the Equipment and against all costs and damages and legal fees (on an indemnity basis) which Tarmac may incur in any action for such infringement or for which Tarmac may become liable in such action. Provided that this indemnity is conditional on Tarmac giving to the Supplier notice in writing of any claim being made or action threatened or brought against Tarmac and on Tarmac permitting the Supplier at the Supplier's own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim.
- 10.2 All intellectual property rights in works, goods or materials produced for Tarmac by the Supplier or specifically commissioned by the Supplier for Tarmac shall vest in Tarmac and the Supplier undertakes to execute all documents required to ensure such ownership.

## **11 CANCELLATION OR SUSPENSION**

- 11.1 If Tarmac is for any reason beyond its reasonable control unable to proceed with the Contract then Tarmac may by notice in writing to the Supplier cancel or suspend the Contract.
- 11.2 If the Contract is suspended for more than 8 weeks, then either party may by notice in writing terminate the Contract forthwith. Upon such termination the Supplier shall be entitled to be paid up to but no more than such portion of the Price as fairly represents the work and/or materials carried out and procured up to the time of the suspension.

- 11.3 Upon cancellation the Supplier shall be entitled to be paid up to but no more than such portion of the Price as fairly represents the work and/or materials carried out and procured up to the date of cancellation.

## **12 PROGRESS AND INSPECTION**

Tarmac shall have the right to inspect the Equipment at the Supplier's Works and the works of the Supplier's sub-Suppliers at all reasonable times and to reject any part thereof that does not comply with the terms of the Contract. The Supplier's sub-contracts shall be made accordingly. Any inspection, checking, approval or acceptance given on behalf of Tarmac shall not relieve the Supplier or its sub-Suppliers from any obligation under the Contract.

## **13 SPECIFICATIONS, PLANS, DRAWINGS, PATTERNS ETC**

- 13.1 Any specifications, plans, drawings, patterns or designs supplied by Tarmac to the Supplier in connection with the Contract shall remain the property of Tarmac, and any information derived there from or otherwise communicated to the Supplier in connection with the Contract shall be held by the Supplier as secret and confidential and shall not, without the consent in writing of Tarmac, be published or disclosed to any third party, or made use of by the Supplier except for the purpose of implementing the Contract.
- 13.2 When the Purchase Order includes manufacture to Tarmac's designs the Supplier agrees to inform Tarmac of any invention or improvement in design or method of manufacture arising out of the performance of the Contract by or on behalf of the Supplier and any such invention or improvement and any patent or registered design rights in respect thereof and copyright in any drawings, documents or specifications relating thereto shall be the property of Tarmac. The Supplier will give Tarmac at Tarmac's expense all necessary assistance to enable Tarmac to obtain patent, registered design and similar rights throughout the world.
- 13.3 On or before Completion (or on termination (for whatever cause) if earlier) the Supplier shall provide to Tarmac at no extra cost operating and maintenance manuals and as-built drawings.

## **14 RESPONSIBILITY FOR DESIGN**

The Supplier accepts entire responsibility for the design of the Works (including any design work prepared before or after the date of the Purchase Order and whether carried out by or on behalf of Tarmac or the Supplier) and for any error, mistake, inaccuracy or discrepancy contained in the same, provided that the Supplier shall not be liable for any design provided by Tarmac if the Supplier objects to it prior to carrying out the Works.

## **15 THINGS FOUND ON THE SITE**

All minerals, metals, objects and other things found or discovered on, under or around the Site shall as between the Supplier and Tarmac be the property of Tarmac and shall be dealt with as Tarmac may direct.

## **16 FREE-ISSUE MATERIALS**

Where Tarmac for the purpose of the Contract issues materials 'free of charge' to the Supplier such materials shall be and remain the property of Tarmac. The Supplier shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. The Supplier shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at Tarmac's discretion. Waste of such materials arising from bad workmanship or negligence of the Supplier shall be made good at the Supplier's expense. Without prejudice to any other of the rights of Tarmac, the Supplier shall deliver up such materials whether further processed or not to Tarmac on demand.

## **17 HAZARDOUS GOODS**

- 17.1.1 Hazardous goods must be marked by the Supplier with International Danger Symbols and display the name of the material in English. Transport and other documents must include a declaration of the hazard and name of the material in English. Goods must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Supplier shall observe the requirements of UK and International Agreements relating to the packing, labelling and carriage of hazardous goods.

- 17.1.2 All information held by, or reasonably available to, the Supplier regarding any potential hazards known or believed to exist in the transport, handling or use of the goods supplied shall be promptly communicated to Tarmac.

## **18 LOAN OF TARMAC' S PLANT AND EQUIPMENT**

(The inclusion of this condition does not imply that Tarmac assumes any obligations to provide 'Loaned Plant' which means plant or equipment owned or hired by Tarmac and used by or on behalf of the Supplier by agreement.)

- 18.1 Where Loaned Plant is operated by a servant of Tarmac:
- a) The operator shall not become the servant of the Supplier but shall carry out with the Loaned Plant such work as he may be directed to do by the Supplier.
  - b) The Supplier shall be liable for any damage to the Loaned Plant caused by misdirection or misuse of it due to negligence on the part of the Supplier, its servants or agents.
  - c) Tarmac shall be liable for any damage to the Loaned Plant caused by a defect in or faulty operation of the Loaned Plant.
- 18.2 Where Loaned Plant is operated by a servant of the Supplier or an independent Supplier, the Supplier shall be liable for all damage to the Loaned Plant unless it can show that it was caused by a defect in the plant existing at the commencement of the loan and it shall be liable for any loss (including loss by theft) of the Loaned Plant.
- 18.3 Tarmac shall have the right to withdraw Loaned Plant at any time and shall be under no liability whatever in connection with Tarmac failing to lend plant at any time.
- 18.4 The Supplier shall satisfy itself that any Loaned Plant is suitable for the purpose intended.

## **19 SITE REGULATIONS**

- 19.1 The Supplier shall make no delivery nor commence work on Site before obtaining the consent of Tarmac.
- 19.2 The Supplier shall comply with Tarmac's current Safety, Health and Environmental Rules for Suppliers ('SHE Rules') (available on request) and all other safety requirements applicable to the Site and shall ensure that its employees and sub-Suppliers so comply.
- 19.3 Tarmac shall have the right to require the removal of any person brought to the Site by the Supplier who has:
- a) Failed to comply with the SHE Rules, or
  - b) Has, in the opinion of Tarmac, misconducted himself or been negligent or incompetent.

## **20 CDM REGULATIONS**

- 20.1 Where the CDM Regulations apply to the Contract, the Supplier shall if so stated in the Contract or as otherwise agreed, be the 'Principal Contractor' and/or the 'CDM Co-ordinator', as defined in the CDM Regulations.
- 20.2 Where the Supplier is and while it remains the CDM Co-ordinator, it shall comply with all the duties of a CDM Co-ordinator and shall without charge prepare and deliver to Tarmac the health and safety file.
- 20.3 Where the Supplier is and while it remains the Principal Contractor, it shall comply with all the duties of a Principal Contractor and it shall ensure that the construction phase plan as developed by it is received by Tarmac before construction work under this Contract is commenced, and that any subsequent amendment to it by the Supplier is notified to Tarmac and the CDM Co-ordinator, and the Supplier shall ensure that welfare facilities complying with Schedule 2 of the CDM Regulations are provided from the commencement of construction work until the end of the construction phase.
- 20.4 The Supplier warrants that it and any design consultants and sub-contractors it engages are fully aware of their obligations under the CDM Regulations and will comply with them and possess the requisite degree of competence and level of resources to meet those obligations.

- 20.5 The Supplier shall indemnify Tarmac against any loss, claim, action, liability or proceedings arising under or in connection with the CDM Regulations caused in whole or in part by any error of the Supplier.
- 20.6 Where the Supplier is not or ceases to be the Principal Contractor it shall promptly inform the Principal Contractor of the identity of each sub-contractor that it appoints and shall comply with all the reasonable requirements of the Principal Contractor to the extent that such requirements are necessary for compliance with the CDM Regulations.
- 20.7 Where the Supplier is not or ceases to be the CDM Co-ordinator it shall provide and shall ensure that any sub-contractors of the Supplier provide within the time reasonably required by the CDM Co-ordinator such information relating to the design and construction of the Works as is reasonably required for the preparation of the health and safety file required by the CDM Regulations.
- 20.8 Notwithstanding any other provisions of the Contract, the Supplier shall not be entitled to an extension of time or any additional sum for complying with the CDM Regulations and the reasonable requirements of the Principal Contractor and the CDM Co-ordinator.

## **21 TIMESHEETS**

Tarmac may require the Supplier to submit to it weekly timesheets for each of the Supplier's employees, agents or sub-Suppliers engaged in the performance of the Works.

## **22 ASSIGNMENT AND SUB-LETTING**

- 22.1 The Contract shall not be assigned by the Supplier nor shall the Works be sub-let as a whole. The Supplier shall not sub-let any part of the Works without Tarmac's written consent, which shall not be unreasonably withheld, but the restriction contained in this clause shall not apply to sub-contracts for materials, for minor details, or for any part of which the makers are named in the Contract. The Supplier shall be responsible for all work done and goods supplied by all sub-Suppliers.
- 22.2 When Tarmac has consented to the placing of sub-contracts if requested copies of each sub-order shall be sent by the Supplier to Tarmac immediately it is issued.
- 22.3 Tarmac may freely assign or charge all or part of the benefit of the Contract.

## **23 VARIATIONS**

- 23.1 The Supplier shall not alter any of the Equipment or the Works, except as directed in writing by Tarmac, but Tarmac shall have the right, from time to time during the execution of the Contract, by notice in writing to direct the Supplier to add to or omit, or otherwise vary, the Equipment or the Works (hereinafter a 'Variation' and 'Variation Order'), and the Supplier shall carry out such Variation Order and be bound by the same conditions, so far as applicable, as though the said Variations were stated in the Contract.
- 23.2 Where the Supplier receives any Variation Order from Tarmac which would occasion an amendment to the Price or delay the Works, the Supplier shall, with all possible speed, advise Tarmac in writing to that effect giving the amount of any such amendment, ascertained and determined at the same level of pricing as that contained in the Supplier's tender, and of any period of delay. The amended Price must be agreed with Tarmac prior to executing the Variation Order. If no amended Price can be agreed the Supplier shall, subject to sub-clause 3 hereof, comply with the Variation Order and a fair and reasonable addition or omission (as the case may be) shall be made to the Price.
- 23.3 If, in the opinion of the Supplier, any such Variation Order is likely to prevent the Supplier from fulfilling any of its obligations under the Contract it shall so notify Tarmac and Tarmac shall decide whether or not the same shall be carried out and shall confirm its instructions and modify the said obligations to such an extent as may be justified. Until Tarmac so confirms its instructions they shall be deemed not to have been given.



## **24 SITE WORK BY SUPPLIER**

- 24.1 If any work on Site is to be carried out by the Supplier other than the supervision of erection and/or commissioning, then the Supplier shall ensure that no work is covered up until Tarmac has had a reasonable opportunity to inspect it.
- 24.2 The access to and possession of the Site shall not be exclusive to the Supplier but only such as shall enable it to execute the Works, concurrently with the execution of work by other persons.
- 24.3 Without prejudice to any other indemnity provisions herein, the Supplier shall at all times prevent any nuisance or trespass (including, but without limitation, any noisy working operations, or interference with access or use of public or private roads and/or footpaths) or other interference with the rights of the owner, or any tenant or occupier of the Site or any adjoining land, arising out of the Works, and shall fully indemnify Tarmac in relation to any claims and legal fees (on an indemnity basis) arising out of any failure in performing its obligations and shall assist Tarmac in defending any action or proceedings which may be instituted in relation thereto.
- 24.4 Where the SWMP Regulations apply to the Works then, unless otherwise agreed, the Supplier shall fulfil the role of and comply with the obligations imposed upon a principal contractor under the SWMP Regulations.
- 24.5 Without prejudice to the Supplier's obligations under clause 24.4 the Supplier shall assist Tarmac in complying with its obligations as a client under the SWMP Regulations including the preparation of a SWMP before the Works commence on the Site.
- 24.6 The Supplier shall be responsible for updating and keeping the SWMP in accordance with the SWMP Regulations and shall ensure that sufficient site security measures are in place to prevent the illegal disposal of waste from the Site.
- 24.7 The Supplier shall not deviate from the SWMP without Tarmac's consent and shall provide a copy of the latest version of the SWMP to Tarmac as soon as practicable after Completion.
- 24.8 The Supplier shall indemnify Tarmac against any loss, claim, action, liability or proceedings arising under or in connection with the SWMP Regulations caused in whole or in part by an error of the Supplier.

## **25 CONFIDENTIALITY**

- 25.1 The Supplier shall treat as confidential and shall not disclose to any third party without the prior written consent of Tarmac the terms of the Contract and any information obtained from Tarmac or otherwise obtained in connection with the Contract ("Confidential Information").
- 25.2 The Supplier shall not use the Confidential Information for any purpose other than performance of its obligations under the Contract.
- 25.3 Clauses 25.1 and 25.2 shall not apply to any information to the extent that it:
- (a) is or shall become part of the public domain otherwise than in consequence of any breach of the obligations in this clause or any other duty or obligation of confidence; or
  - (b) is already in the Supplier's possession and not under any obligation or duty of confidence.
- 25.4 The obligations of confidence contained in this clause shall continue after expiry or earlier termination of the Contract.

## **26 INDEMNITY AND INSURANCE**

- 26.1 The Supplier shall keep Tarmac indemnified against:
- (i) any liability or claim in respect of loss or damage to any moveable or immovable property of any nature or type whatever of Tarmac or any third party; and
  - (ii) any liability or claim in respect of the death or personal injury to any person whether in contract or tort or otherwise arising under common law, statute or otherwise

caused by an act or omission on the part of the Supplier or any of its employees, sub-contractors, assignees or agents and the Supplier shall also indemnify Tarmac in respect of any legal fees incurred by Tarmac in connection therewith.

- 26.2 The Supplier shall fully indemnify Tarmac against all loss, damages, costs or expense arising out of or connected with any breach of the Contract and the Supplier shall also indemnify Tarmac in respect of any legal fees incurred in connection therewith.
- 26.3 The Supplier shall take out and/or maintain such types and levels of cover of insurance as Tarmac may require including Public Liability, Employer's Liability, Works, Professional Indemnity and Product Liability insurance. If the Supplier fails to take out and/or maintain any such insurance policies Tarmac may do so and recover the premiums paid from the Supplier as a debt. If so required, the Supplier shall promptly and accurately complete any insurance questionnaire supplied by Tarmac and Tarmac shall be entitled to withhold payment of the Price or part thereof until the questionnaire has been fully and accurately completed and returned to Tarmac.

## **27 WARRANTY**

Unless otherwise agreed, the Supplier warrants that the Equipment shall remain fit for purpose and comply with clause 2 hereof for 12 months from the date of Completion provided that the Supplier's liability shall be reduced or extinguished (as the case may be) to the extent that any defects or failure in the Equipment results from damage suffered by the Equipment after Completion, fair wear and tear, failure by Tarmac to maintain the Equipment in accordance with any recommendations of the Supplier made known to Tarmac, or negligent use made of the Equipment by Tarmac.

## **28 NOTIFICATION PROCEDURE**

- 28.1 The Supplier shall give advance notice of any performance test or plant start-up to be carried out solely by the Supplier or its sub-Suppliers.
- 28.2 The Supplier shall give immediate notice in the event of any accident or damage likely to form the subject of a claim under Tarmac's insurance and shall give all the information and assistance in respect thereof that Tarmac's insurers may require, and shall not negotiate, pay, settle, admit or repudiate any claim without their written consent, and shall permit the insurers to take proceedings in the name of the Supplier to recover compensation or secure an indemnity from any third party in respect of any of the matters covered by the said insurance.

## **29 TESTS AND TAKE-OVER**

- 29.1 Any Completion tests required in accordance with the provisions of the Contract, shall be made at a time to be agreed with Tarmac. The Supplier shall give Tarmac 14 days' notice of the date after which it will be ready to carry out the tests.
- 29.2 When the erection of the Equipment is complete and all tests to be made by the Supplier have been passed to the reasonable satisfaction of Tarmac, Tarmac shall forthwith Take-Over the Equipment and shall certify Completion accordingly.
- 29.3 Tarmac may Take-Over any part of the Equipment whether or not it has passed all its tests and shall certify accordingly in respect of that part.
- 29.4 Tarmac shall be responsible for the care and operation of any part of the Equipment certified as taken-over.
- 29.5 In the event of the Equipment or any part of it failing to meet the tests specified in the Contract, Tarmac will notify the Supplier accordingly. The Supplier shall take all reasonable action forthwith to rectify the same but in the event of continuing failure of the Equipment to meet the specified tests Tarmac may:
- a) Assist in the rectification at the Supplier's expense or,
  - b) Take over the Equipment conditional upon the Supplier accepting a reduction in the Price, or
  - c) Reject the Equipment and in such event the Supplier shall refund any moneys paid by Tarmac in respect of the Equipment concerned (including the appropriate proportion of erection and/or supervision charges where applicable) and shall pay or allow Tarmac any sum by which the

expenditure reasonably incurred by Tarmac in replacing the rejected Equipment, including the cost of the replacement equipment and all labour, materials and other expenses incidental to such replacement, exceeds the amount of the moneys refunded. Such right of rejection shall remain available to Tarmac even though assistance has been rendered hereunder. The Supplier shall be entitled to remove and retain all items that Tarmac may have replaced at the Supplier's cost.

### **30 TERMINATION**

- 30.1 Without prejudice to any other rights or remedies which Tarmac may have against the Supplier, Tarmac shall be at liberty by notice in writing to terminate the Contract forthwith if the Supplier: (a) shall go into liquidation whether voluntary or otherwise (except for the purposes of and followed by an amalgamation or reconstruction) or shall become bankrupt or shall cease to trade or threaten to cease to trade or shall have a receiver or administrative receiver of the whole or any part of its assets appointed or shall enter into any composition or arrangement with or for the benefit of its creditors or shall be the subject of an administration order, or (b) shall be in breach of any term of the Contract. The Supplier shall indemnify Tarmac for all losses suffered by it as a consequence of such termination.
- 30.2 The Buyer shall have the right to terminate the contract by not less than one months notice at any time without prejudice to the buyers rights and remedies in respect of any antecedent breaching of the Contract committed by the Seller.

### **31 THIRD PARTY RIGHTS**

A legal or natural person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause does not affect any right or remedies of any person or body, which exists or is available otherwise than pursuant to that Act.

### **32 CONDITIONS OF CONTRACT**

- 32.1 No conditions submitted or referred to by the Supplier in any document shall form part of the Contract unless otherwise agreed to in writing by Tarmac.
- 32.2 Tarmac shall not be liable under the Contract unless: -
- a) Tarmac issues an official Purchase Order; and
  - b) Either the Supplier confirms in writing acceptance of it or takes any steps to comply with the Contract without indicating it does not accept the Purchase Order and these conditions.
- 32.3 Tarmac shall not be bound by any variation, waiver of or addition to the Contract except as agreed in writing and signed by a duly authorised representative.
- 32.4 If the performance of the Contract requires Tarmac to have any permit or licence from any government or other authority, the Contract shall be conditional upon such permit or licence being available at the required time.
- 32.5 Nothing in these Conditions shall prejudice any conditions or warranties (express or implied) or right or remedy to which Tarmac is entitled in relation to the Contract by virtue of statute or common law. The rights and remedies conferred on Tarmac by these Conditions are in addition to and in no way in substitution for any conditions, warranties or any other rights or remedies conferred on Tarmac or implied by the law.

### **33 SET OFF**

Any debt or claim on the part of Tarmac or any of its subsidiary, associated or holding companies with or against the Supplier, whether arising out of the Contract or otherwise howsoever, and whether liquidated or not, may be set off against any sum due to the Supplier hereunder. For the avoidance of doubt, Tarmac shall be entitled to withhold and set off against the Price, any sum owed by the Supplier to Tarmac for any reason. Where the Equipment or any part thereof is liable to be returned to the Supplier and/or the Works re-performed by the Supplier for any reason, Tarmac shall be entitled to withhold monies, including any reasonable estimate of the value of the faulty Equipment likely to be returned or Works to be re-performed, otherwise due to the Supplier (under this or any other Contract between Tarmac and the Supplier) by way of set-off against the value of the said Equipment or Works. Where any set-off is or is likely to be insufficient to

cover the Supplier's liability to Tarmac, Tarmac shall be entitled to invoice the Supplier for any additional sums owing and the Supplier shall make payment of such additional sums owing within 30 days of such invoice being received by the Supplier

### **34 CONSTRUCTION OF CONTRACT**

34.1 The construction, validity and performance of the Contract shall be governed by the laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts.

34.2 References to any statute or statutory provision shall be construed as a reference to that statute or provision as from time to time amended, consolidated, extended, re-enacted or replaced.

### **35 DISPUTE RESOLUTION**

#### **35.1 Mediation**

In the event of any dispute arising between the parties in connection with the Contract, the parties will in good faith seek to resolve that dispute through mediation under the auspices of the ADR Group. The Mediator shall be agreed upon within 21 days of one party requesting mediation, failing which either party may apply to the President of the Law Society to appoint a Mediator. Unless otherwise agreed each party shall share equally the costs of the Mediator, the ADR Group and the President of the Law Society and each party shall bear their own legal and other fees and expenses incurred in relation to the mediation. If the dispute is not resolved within 28 days of the Mediator's appointment, then either party may commence Court proceedings, but provided that nothing in this clause shall prevent either party seeking an injunction or other interim relief at any time if it reasonably believes such action is necessary to prevent irreparable damage.

#### **35.2 Adjudication**

Where the Contract is a Construction Contract Tarmac and the Supplier each has the right to refer any dispute under the Contract to Adjudication and either party may at any time give notice in writing (hereinafter called the Notice of Adjudication) to the other of its intention to refer the dispute to Adjudication. Any dispute referred to Adjudication shall be conducted in accordance with the TeCSA Adjudication Rules current at the time of the Notice of Adjudication. The Chairman of TeCSA shall nominate an Adjudicator, in default of agreement between the parties. The decision of the Adjudicator shall be binding until the dispute is finally determined by Court proceedings.

### **36 NOTICES**

36.1 Any notice to be given to a party under the Contract shall be given in writing in the English language and delivered by hand or sent by first class prepaid post or by facsimile to the other party.

36.2 Any notice to be given to Tarmac shall be addressed to the Company Secretary and sent to its registered office or such other address as Tarmac may have notified to the Supplier as its proper address for service.

36.3 Any notice to be given to the Supplier shall be sent to its registered office or the address of the Supplier stated on the last Purchase order or the last known address or facsimile number notified in writing to Tarmac by the Supplier as being its proper address or facsimile number for service.

36.4 Notices given in accordance with this Clause 36 shall be deemed to have been received:

- (i) 48 hours after posting (exclusive of the day of posting) if sent by first class prepaid post;
- (ii) on the day of delivery if delivered by hand; or
- (iii) at the time of transmission if sent by facsimile provided that a confirming copy is sent by first class prepaid post to the other party within 24 hours after transmission.

### **37 WAIVER**

No delay or omission by Tarmac in exercising any of its rights or remedies under the Contract or under any applicable law on any occasion shall be deemed a waiver of, or bar to, the exercise of such right or remedy or any other right or remedy upon any other occasion.



# **TARMAC BUILDING PRODUCTS LIMITED**

**General Conditions  
of Contract  
for a) Minor Works, or  
b) Repair or Modification  
of Equipment (UK only)**

**Form T/3/A**

**Issued by:**

**Tarmac Building Products Limited  
Salisbury House  
2a Tettenhall Road  
Wolverhampton  
WV1 4SA**

**Edition date: 03.08.2015**



## **2 QUALITY AND FITNESS FOR PURPOSE**

- 2.1 The Works shall be of satisfactory quality and free from defects in material or workmanship or design. If the purpose for which the Works are required is made known to the Supplier expressly or by implication the Works shall be fit for that purpose. Unless otherwise agreed the Works shall conform with any specifications, drawings, descriptions and samples contained or referred to in the Contract and with all relevant British Standards and Statutory Requirements.
- 2.2 The Supplier shall complete the Works in accordance with all Statutory Requirements and Tarmac Policies (including any amendment or modification thereto made during the performance of the Contract) and with Tarmac's instructions and programme.

## **3 COMPLETION DATE**

- 3.1 The date of Completion of the Works shall be that specified in the Purchase Order unless agreed otherwise between Tarmac and the Supplier. In the absence of any date being specified, the Works shall be completed as soon as practicable. Time shall be of the essence. The Supplier shall furnish such programmes for the carrying out of the Works as Tarmac may reasonably require and the Supplier shall give notice to Tarmac as soon as practicable if progress in accordance with such programmes is or is likely to be delayed. Tarmac has the right to instruct the Supplier to take such action as is required to Complete the Works on time at no extra cost to Tarmac save where Tarmac has caused the delay.
- 3.2 If the Works include tests the same shall not be deemed to be Completed until such tests have been passed to the reasonable satisfaction of Tarmac.

## **4 TERMS OF PAYMENT**

- 4.1 Unless otherwise stated in the Purchase Order, all rates and prices are firm and fixed and the Price shall be inclusive of all services and materials necessary for the performance of the Contract by the Supplier and all taxes and duties, but excluding value added tax.
- 4.2 The Supplier shall procure that invoices shall include the following particulars as a condition precedent to Tarmac's obligation to pay the Price to the Supplier:
- Tarmac's Purchase Order number;
  - Invoice date and number;
  - Supplier's name and address;
  - Description of the Works invoiced;
  - The location and date of execution of the Works invoiced;
  - The Price of the Works invoiced;
  - Value added tax payable by Tarmac (where applicable to the transaction) stated separately from the Price; and
  - The Supplier's VAT number and any other particulars required by law or regulation from time to time,

and an invoice which includes each of the above particulars is hereinafter called a "valid invoice".

- 4.3 The Supplier shall deliver a valid invoice to Tarmac promptly after (but not before) the Works are Completed in accordance with the Contract.
- 4.4 Unless otherwise stated in the Purchase Order, and subject to the delivery of a valid invoice by the Supplier to Tarmac in accordance with Clause 4.3, Tarmac shall pay the Price for the relevant Works together with value added tax (where applicable to the transaction) to the Supplier not later than 60 days after the end of the calendar month during which the valid invoice is received by Tarmac.
- 4.5 If Tarmac shall fail to make payment in accordance with Clause 4.4, the Supplier shall be entitled to simple interest at the rate of 2% per annum above the base lending rate from time to time of Barclays Bank plc calculated on the unpaid sum from the due date for payment until payment is made.



## **5 INCLUSIONS IN PRICE**

- 5.1 The Supplier is deemed to have understood the nature and extent of the Works and to have inspected the Equipment and the Site (including ground conditions and any existing structures). No failure on the part of the Supplier to discover or foresee any site conditions, or in the case of Equipment to be Repaired, any failure to appreciate or foresee work required to carry out the Repair which is not included in the Price, or any failure to discover or foresee any risks, contingencies or circumstances (whether the same ought reasonably to have been discovered or not) shall entitle the Supplier to claim damages or an additional sum or an extension of time for Completion of the Works. The Supplier shall not be entitled to rely upon any survey, report or other information supplied by or on behalf of Tarmac regarding the Equipment or any such matter referred to in this clause, or to make any claim against Tarmac in connection therewith. Tarmac shall, on request of the Supplier, grant such access as may be reasonable for this purpose.
- 5.2 Unless otherwise specified, the Supplier shall provide all plant, scaffolding, tools, material, labour, haulage and other things necessary to complete the Works.
- 5.3 Unless otherwise agreed, the Supplier shall be responsible for obtaining all those consents, licences and permits from any relevant authority which are necessary for the carrying out of the Works including and without prejudice to the generality of the foregoing planning permission and building regulation approval and the Supplier shall comply with the same.

## **6 PROTECTION**

The Supplier shall take good care of and shall protect any Equipment, any Repaired Equipment and the Works until Completion.

## **7 DEFECTS**

- 7.1 If at any time before Completion Tarmac shall decide that any Repaired Equipment or Works or Goods are not in accordance with the Contract or are otherwise defective (all such matters being hereinafter in this clause called 'Defects'), Tarmac shall as soon as reasonably practicable give to the Supplier notice in writing of the said decision specifying particulars of the Defects alleged and of where the same are alleged to exist or to have occurred, and so far as may be necessary require the Supplier to Repair the Equipment or rectify the Works or replace the Goods.
- 7.2 If the Supplier shall fail to Repair or rectify the Equipment or rectify the Works within a reasonable time Tarmac may, provided it does so without undue delay, take, at the cost of the Supplier, such steps as may in all the circumstances be reasonable to make good such Defects and Tarmac shall be entitled to charge the Supplier the cost thereof. This clause is without prejudice to any other rights or remedies of Tarmac.

## **8 CANCELLATION OR SUSPENSION**

- 8.1 If Tarmac is for any reason beyond its reasonable control unable to proceed with the Contract then Tarmac may by notice in writing to the Supplier cancel or suspend the Contract.
- 8.2 If the Contract is suspended for more than 8 weeks, then either party may by notice in writing terminate the Contract forthwith. Upon such termination the Supplier shall be entitled to be paid up to but no more than such portion of the Price as fairly represents the work carried out and Goods procured up to the time of the suspension.
- 8.3 Upon cancellation the Supplier shall be entitled to be paid up to but no more than such portion of the Price as fairly represents the work carried out and Goods procured up to the date of cancellation.

## **9 INSPECTION**

Any inspection, checking, approval or acceptance given on behalf of Tarmac shall not relieve the Supplier or its sub-Suppliers from any obligation under the Contract.

## **10 SPECIFICATIONS, PLANS, DRAWINGS, PATTERNS ETC**

- 10.1 Any specifications, plans, drawings, patterns or designs supplied by Tarmac to the Supplier in connection with the Contract shall remain the property of Tarmac, and any information derived there from or otherwise communicated to the Supplier in connection with the Contract shall be held by the Supplier as secret and confidential and shall not, without the consent in writing of Tarmac, be published or disclosed to any third party, or made use of by the Supplier except for the purpose of implementing the Contract.
- 10.2 When the Purchase Order includes Repairs in accordance with Tarmac's designs the Supplier agrees to inform Tarmac of any invention or improvement in any design or method of manufacture arising out of the performance of the Contract by or on behalf of the Supplier and any such invention or improvement and any patent or registered design rights in respect thereof and copyright in any drawings, documents or specifications relating thereto shall be the property of Tarmac. The Supplier will give Tarmac at Tarmac's expense all necessary assistance to enable Tarmac to obtain patent, registered design and similar rights throughout the world.
- 10.3 On or before Completion (or on termination (for whatever cause) if earlier) the Supplier shall provide to Tarmac at no extra cost any operating and maintenance manuals and as-built drawings as Tarmac may reasonably require.

## **11 RESPONSIBILITY FOR DESIGN**

The Supplier accepts entire responsibility for the design of the Works (including any design work prepared before or after the date of the Purchase Order and whether carried out by or on behalf of Tarmac or the Supplier) and for any error, mistake, inaccuracy or discrepancy contained in the same, provided that the Supplier shall not be liable for any design provided by Tarmac if the Supplier objects to it prior to carrying out the Works.

## **12 THINGS FOUND ON THE SITE**

All minerals, metals, objects and other things found or discovered on, under or around the Site shall as between the Supplier and Tarmac be the property of Tarmac and shall be dealt with as Tarmac may direct.

## **13 FREE-ISSUE MATERIALS**

Where Tarmac for the purpose of the Contract issues materials 'free of charge' to the Supplier such materials shall be and remain the property of Tarmac. The Supplier shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. The Supplier shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at Tarmac's discretion. Waste of such materials arising from bad workmanship or negligence of the Supplier shall be made good at the Supplier's expense. Without prejudice to any other of the rights of Tarmac, the Supplier shall deliver up such materials whether further processed or not to Tarmac on demand.

## **14 LOAN OF TARMAC' S PLANT AND EQUIPMENT**

(The inclusion of this condition does not imply that Tarmac assumes any obligations to provide 'Loaned Plant' which means plant or equipment owned or hired by Tarmac and used by or on behalf of the Supplier by agreement.)

- 14.1 Where Loaned Plant is operated by a servant of Tarmac:
- a) The operator shall not become the servant of the Supplier but shall carry out with the Loaned Plant such work as he may be directed to do by the Supplier.
  - b) The Supplier shall be liable for any damage to the Loaned Plant caused by misdirection or misuse of it due to negligence on the part of the Supplier, its servants or agents.
  - c) Tarmac shall be liable for any damage to the Loaned Plant caused by a defect in or faulty operation of the Loaned Plant.

- 14.2 Where Loaned Plant is operated by a servant of the Supplier or an independent Supplier, the Supplier shall be liable for all damage to the Loaned Plant unless it can show that it was caused by a defect in the plant existing at the commencement of the loan and it shall be liable for any loss (including loss by theft) of the Loaned Plant.
- 14.3 Tarmac shall have the right to withdraw Loaned Plant at any time and shall be under no liability whatever in connection with Tarmac failing to lend plant at any time.
- 14.4 The Supplier shall satisfy itself that any Loaned Plant is suitable for the purpose intended.

## **15 SITE REGULATIONS**

- 15.1 The Supplier shall not commence work on Site before obtaining the consent of Tarmac.
- 15.2 The Supplier shall comply with Tarmac's current Safety, Health and Environmental Rules for Suppliers ('SHE Rules') (available on request) and all other safety requirements applicable to the Site and shall ensure that its employees and sub-Suppliers so comply.
- 15.3 Tarmac shall have the right to require the removal of any person brought to the Site by the Supplier who has:
- a) Failed to comply with the SHE Rules, or
  - b) Has, in the opinion of Tarmac, misconducted himself or been negligent or incompetent.

## **16 ASSIGNMENT AND SUB-LETTING**

- 16.1 The Contract shall not be assigned by the Supplier nor shall the Works be sub-let as a whole. The Supplier shall not sub-let any part of the Works without Tarmac's written consent, which shall not be unreasonably withheld, but the restriction contained in this clause shall not apply to sub-contracts for materials, for minor details, or for any part of which the makers are named in the Contract. The Supplier shall be responsible for all work done and goods supplied by all sub-Suppliers.
- 16.2 When Tarmac has consented to the placing of sub-contracts, if requested copies of each sub-order shall be sent by the Supplier to Tarmac immediately it is issued.
- 16.3 Tarmac may freely assign or charge all or part of the benefit of the Contract.

## **17 VARIATIONS**

- 17.1 The Supplier shall not alter the Works, except as directed in writing by Tarmac, but Tarmac shall have the right, from time to time during the execution of the Contract, by notice in writing to direct the Supplier to add to or omit, or otherwise vary, the Works (hereinafter a 'Variation' and a 'Variation Order'), and the Supplier shall carry out such Variation Order and be bound by the same conditions, so far as applicable, as though the Variations were stated in the Contract.
- 17.2 Where the Supplier receives any Variation Order from Tarmac which would occasion an amendment to the Price or delay the Works, the Supplier shall, with all possible speed, advise Tarmac in writing to that effect giving the amount of any such amendment, ascertained and determined at the same level of pricing as that contained in the Supplier's tender, and of any period of delay. The amended Price must be agreed with Tarmac prior to executing the Variation Order. If no amended Price can be agreed the Supplier shall, subject to sub-clause 3 hereof, comply with the Variation Order and a fair and reasonable addition or omission (as the case may be) shall be made to the Price.
- 17.3 If, in the opinion of the Supplier, any such Variation is likely to prevent the Supplier from fulfilling any of its obligations under the Contract it shall so notify Tarmac and Tarmac shall decide whether or not the same shall be carried out and shall confirm its instructions and modify the said obligations to such an extent as may be justified. Until Tarmac so confirms its instructions they shall be deemed not to have been given.

## **18 SITE WORK BY SUPPLIER**

- 18.1 If any work on Site is to be carried out by the Supplier, then the Supplier shall ensure that no work is covered up until Tarmac has had a reasonable opportunity to inspect it.
- 18.2 The access to and possession of the Site shall not be exclusive to the Supplier but only such as shall enable it to execute the Works, concurrently with execution of work by other persons.
- 18.3 Without prejudice to any other indemnity provisions herein, the Supplier shall at all times prevent any nuisance or trespass (including, but without limitation, any noisy working operations, or interference with access or use of public or private roads and/or footpaths) or other interference with the rights of the owner, or any tenant or occupier of the Site or any adjoining land, arising out of the Works, and shall fully indemnify Tarmac in relation to any claims and legal fees (on an indemnity basis) arising out of any failure in performing its obligations and shall assist Tarmac in defending any action or proceedings which may be instituted in relation thereto.

## **19 INDEPENDENT SUPPLIER**

- 19.1 Tarmac and the Supplier agree and declare that the Supplier (which shall be deemed to include its employees, agents and sub-Suppliers) is an independent Supplier and not an employee or partner of Tarmac.
- 19.2 The Supplier undertakes to pay all national insurance and tax under PAYE regulations, and all remuneration due (including sick pay and holiday pay) to its employees engaged in the performance of this Contract.
- 19.3 The Supplier shall fully indemnify Tarmac against all and any claims made by any of its employees against Tarmac arising out of any allegation by them that they are employees of Tarmac including (without prejudice to the generality of the foregoing) any claims for unfair dismissal and/or redundancy arising out of the termination of this Contract, and shall indemnify Tarmac for any legal fees incurred in defending such claims on an indemnity basis.

## **20 CONFIDENTIALITY**

- 20.1 The Supplier shall treat as confidential and shall not disclose to any third party without the prior written consent of Tarmac the terms of the Contract and any information obtained from Tarmac or otherwise obtained in connection with the Contract ("Confidential Information").
- 20.2 The Supplier shall not use the Confidential Information for any purpose other than performance of its obligations under the Contract.
- 20.3 Clauses 20.1 and 20.2 shall not apply to any information to the extent that it:
  - (a) is or shall become part of the public domain otherwise than in consequence of any breach of the obligations in this clause or any other duty or obligation of confidence; or
  - (b) is already in the Supplier's possession and not under any obligation or duty of confidence.
- 20.4 The obligations of confidence contained in this clause shall continue after expiry or earlier termination of the Contract.

## **21 INDEMNITY AND INSURANCE**

- 21.1 The Supplier shall keep Tarmac indemnified against:
  - (i) any liability or claim in respect of loss or damage to any moveable or immovable property of any nature or type whatever of Tarmac or any third party; and
  - (ii) any liability or claim in respect of the death or personal injury to any person whether in contract or tort or otherwise arising under common law, statute or otherwise

caused by an act or omission on the part of the Supplier or any of its employees, sub-contractors, assignees or agents and the Supplier shall also indemnify Tarmac in respect of any legal fees incurred by Tarmac in connection therewith.

21.2 The Supplier shall fully indemnify Tarmac against all loss, damages, costs or expense arising out of or connected with any breach of the Contract and the Supplier shall also indemnify Tarmac in respect of any legal fees incurred in connection therewith.

22.2 The Supplier shall take out and/or maintain such types and levels of cover of insurance as Tarmac may require including Employer's Liability, Works, Professional Indemnity, Public Liability and Product Liability insurance. If the Supplier fails to take out and/or maintain any such insurance policies Tarmac may do so and recover the premiums paid from the Supplier as a debt. If so required, the Supplier shall promptly and accurately complete any insurance questionnaire supplied by Tarmac and Tarmac shall be entitled to withhold payment of the Price or part thereof until the questionnaire has been fully and accurately completed and returned to Tarmac.

## **22 WARRANTY**

Unless otherwise agreed, the Supplier warrants that any Goods and any Repaired Equipment shall remain fit for purpose and comply with clause 2 hereof for 12 months from the date of Completion provided that the Supplier's liability shall be reduced or extinguished (as the case may be) to the extent that any defects or failure in the Works and/or Repaired Equipment results from damage suffered after Completion, fair wear and tear, failure by Tarmac to maintain the Works or Repaired Equipment in accordance with any recommendations of the Supplier made known to Tarmac, or negligent use.

## **23 NOTIFICATION PROCEDURE**

23.1 The Supplier shall give advance notice of any performance test or plant start-up to be carried out solely by the Supplier or its sub-Suppliers.

23.2 The Supplier shall give immediate notice in the event of any accident or damage likely to form the subject of a claim under Tarmac's insurance and shall give all the information and assistance in respect thereof that Tarmac's insurers may require, and shall not negotiate, pay, settle, admit or repudiate any claim without their written consent, and shall permit the insurers to take proceedings in the name of the Supplier to recover compensation or secure an indemnity from any third party in respect of any of the matters covered by the said insurance.

## **24 TERMINATION**

24.1 Without prejudice to any other rights or remedies which Tarmac may have against the Supplier, Tarmac shall be at liberty by notice in writing to terminate the Contract forthwith if the Supplier: (a) shall go into liquidation whether voluntary or otherwise (except for the purposes of and followed by an amalgamation or reconstruction) or shall become bankrupt or shall cease to trade or threaten to cease to trade or shall have a receiver or administrative receiver of the whole or any part of its assets appointed or shall enter into any composition or arrangement with or for the benefit of its creditors or shall be the subject of an administration order, or (b) shall be in breach of any term of the Contract. The Supplier shall indemnify Tarmac for all losses suffered by it as a consequence of such termination.

24.2 The Buyer shall have the right to terminate the contract by not less than one months notice at any time without prejudice to the buyers rights and remedies in respect of any antecedent breaching of the Contract committed by the Seller.

## **25 THIRD PARTY RIGHTS**

A legal or natural person which is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause does not affect any right or remedies of any person or body which exists or is available otherwise than pursuant to that Act.

## 26 CONDITIONS OF CONTRACT

- 26.1 No conditions submitted or referred to by the Supplier in any document shall form part of the Contract unless otherwise agreed to in writing by Tarmac.
- 26.2 Tarmac shall not be liable under the Contract unless: -
- a) Tarmac issues an official Purchase Order; and
  - b) Either the Supplier confirms in writing acceptance of it or takes any steps to comply with the Contract without indicating it does not accept the Purchase Order and these conditions.
- 26.3 Tarmac shall not be bound by any variation, waiver of or addition to the Contract except as agreed in writing and signed by a duly authorised representative of Tarmac.
- 26.4 If the performance of the Contract requires Tarmac to have any permit or licence from any government or other authority, the Contract shall be conditional upon such permit or licence being available at the required time.
- 26.5 Nothing in these Conditions shall prejudice any conditions or warranties (express or implied) or right or remedy to which Tarmac is entitled in relation to the Contract by virtue of statute or common law. The rights and remedies conferred on Tarmac by these Conditions are in addition to and in no way in substitution for any conditions, warranties or any other rights or remedies conferred on Tarmac or implied by the law.

## 27 SET OFF

Any debt or claim against the Supplier on the part of Tarmac or any of its subsidiary, associated or holding companies with or against the Supplier, whether arising out of the Contract or otherwise howsoever, and whether liquidated or not, may be set off against any sum due to the Supplier hereunder. For the avoidance of doubt, Tarmac shall be entitled to withhold and set off against the Price, any sum owed by the Supplier to Tarmac for any reason. Where the Goods or any part thereof are liable to be returned to the Supplier and/or the Works re-performed or defects in the Repaired Equipment are to be rectified by the Supplier, for any reason, Tarmac shall be entitled to withhold monies, including any reasonable estimate of the value of the faulty Goods likely to be returned or Works to be re-performed, or rectification defects in the Repaired Equipment, otherwise due to the Supplier (under this or any other Contract between Tarmac and the Supplier) by way of set-off against the value of the said Goods, Works or rectification works to the Repaired Equipment. Where any set-off is or is likely to be insufficient to cover the Supplier's liability to Tarmac, Tarmac shall be entitled to invoice the Supplier for any additional sums owing and the Supplier shall make payment of such additional sums owing within 30 days of such invoice being received by the Supplier

## 28 CONSTRUCTION OF CONTRACT

- 28.1 The construction, validity and performance of the Contract shall be governed by the laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts.
- 28.2 References to any statute or statutory provision shall be construed as a reference to that statute or provision as from time to time amended, consolidated, extended, re-enacted or replaced.

## 29 DISPUTE RESOLUTION

### Mediation

In the event of any dispute arising between the parties in connection with the Contract, the parties will in good faith seek to resolve that dispute through mediation under the auspices of the ADR Group. The Mediator shall be agreed upon within 21 days of one party requesting mediation, failing which either party may apply to the President of the Law Society to appoint a Mediator. Unless otherwise agreed each party shall share equally the costs of the Mediator, the ADR Group and the President of the Law Society and each party shall bear their own legal and other fees and expenses incurred in relation to the mediation. If the dispute is not resolved

within 28 days of the Mediator's appointment, then either party may commence Court proceedings but provided that nothing in this clause shall prevent either party seeking an injunction or other interim relief at any time if it reasonably believes such action is necessary to prevent irreparable damage.

### **30 NOTICES**

- 30.1 Any notice to be given to a party under the Contract shall be given in writing in the English language and delivered by hand or sent by first class prepaid post or by facsimile to the other party.
- 30.2 Any notice to be given to Tarmac shall be addressed to the Company Secretary and sent to its registered office or such other address as Tarmac may have notified to the Supplier as its proper address for service.
- 30.3 Any notice to be given to the Supplier shall be sent to its registered office or the address of the Supplier stated on the last Purchase order or the last known address or facsimile number notified in writing to Tarmac by the Supplier as being its proper address or facsimile number for service.
- 30.4 Notices given in accordance with this Clause 30 shall be deemed to have been received:
- (i) 48 hours after posting (exclusive of the day of posting) if sent by first class prepaid post;
  - (ii) on the day of delivery if delivered by hand; or
  - (iii) at the time of transmission if sent by facsimile provided that a confirming copy is sent by first class prepaid post to the other party within 24 hours after transmission.

### **31 WAIVER**

No delay or omission by Tarmac in exercising any of its rights or remedies under the Contract or under any applicable law on any occasion shall be deemed a waiver of, or bar to, the exercise of such right or remedy or any other right or remedy upon any other occasion.

### **32 HEADINGS**

The headings herein are for ease of reference only and shall not affect the construction thereof.

### **33 SEVERANCE**

In the event that any provision of the Contract shall be void or unenforceable by reason of any provision of applicable law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the spirit of the Contract so far as possible.

### **34 TARMAC TRADE MARKS**

"Tarmac" and the 'Circle' logo are registered trade marks. The Supplier shall not use "Tarmac", the 'Circle' logo or any other trade mark (registered or otherwise) belonging to Tarmac or its group companies without the prior written consent of the relevant owning company of such trade mark. Any written consent given shall be deemed to be under licence which may be terminated at any time by giving prior written notice to the Supplier.

**Edition date: 03.08.2015**





# **TARMAC BUILDING PRODUCTS LIMITED**

**General Conditions  
of contract  
for the supply of  
services including  
labour only contracts  
and maintenance contracts (UK only)**

**Form T/4/A**

**Issued by:**

**Tarmac Building Products Limited  
Salisbury House  
2a Tettenhall Road  
Wolverhampton  
WV1 4SA**

**Edition date: 03.08.2015**

# **GENERAL CONDITIONS OF CONTRACT (FOR USE WITH OR WITHOUT TARMAC BUILDING PRODUCTS LIMITED PROCUREMENT AGREEMENT) FOR THE SUPPLY OF SERVICES**

## **1. DEFINITIONS**

- 1.1. The term 'Tarmac' shall mean Tarmac Building Products Limited (Company number 4026569) whose registered office is situated at Salisbury House, 2a Tettenhall Road, Wolverhampton, WV1 4SA.
- 1.2. The term 'Supplier' shall mean the person, firm or company to whom the Purchase Order is issued.
- 1.3. The word 'Services' includes all services, labour and workmanship used in the performance of the services required by or to be inferred from the Purchase Order.
- 1.4. The word 'Materials' means any materials or goods used in the performance of the Services.
- 1.5. The term 'Purchase Order' shall mean Tarmac's Purchase Order.
- 1.6. The term "Price" shall mean the price or rates specified in the Purchase Order.
- 1.7. The 'Contract' shall mean the contract between Tarmac and the Supplier consisting of the Tarmac Building Products Limited Procurement Agreement (where used), the Purchase Order, these conditions and any other documents (or parts thereof) specified in the Purchase Order. Should there be any inconsistency between the documents comprising the Contract, they shall have precedence in the order herein listed.
- 1.8. "Statutory Requirements" shall mean each and every obligation imposed by law relevant to the Contract including without prejudice to the generality of the foregoing all statutes, statutory instruments, regulations and by-laws and any requirements of any statutory bodies or local authorities.
- 1.9. "Tarmac Policies" shall mean all relevant policies and site rules of Tarmac Holdings Limited, its subsidiaries and associated companies including without prejudice to the generality of the foregoing safety, health and environmental rules (available on request).
- 1.10. 'The Site' shall mean the location(s) where the Services are to be performed.
- 1.11. 'The Construction Act' means part II of the Housing Grants, Construction and Regeneration Act 1996.
- 1.12. 'Construction Contract' means a construction contract within the meaning of the Construction Act.
- 1.13. 'CDM Regulations' means the Construction (Design and Management) Regulations 2007.
- 1.14. 'Maintenance' includes both corrective and preventative maintenance of any building, structure, plant, equipment, machinery or article of Tarmac.
- 1.15. 'Completion', 'Completed' and 'Complete' means when the Services have been performed to the entire satisfaction of Tarmac and in accordance with the Contract.
- 1.16. "Tarmac Building Products Limited Procurement Agreement" means the agreement so named between the Supplier and Tarmac for the provision of Services and Materials signed by duly authorised representatives of the Supplier and Tarmac.
- 1.17. 'Works' means the Services.
- 1.18. 'CIS' means the Construction Industry Scheme.

- 1.19. 'SWMP Regulations' means the Site Waste Management Plans Regulations 2008 and 'SWMP' means a site waste management plan issued and updated in accordance with the SWMP Regulations.

## 2. STANDARD OF SERVICE

### 2.1. The Services shall: -

- 2.1.1. Conform to any specification, quality and description specified or referred to in the Purchase Order;
- 2.1.2. Conform to any relevant British Standards, Statutory Requirements, Tarmac Policies (including any amendment or modification made thereto during the performance of the Contract), and best industry practices;
- 2.1.3. Be performed with the highest care and skill by properly qualified, trained and experienced personnel;
- 2.1.4. Be performed in accordance with any relevant time or Maintenance schedule or call out requirements specified in the Purchase Order and within such time period or periods as may be required by Tarmac (time being of the essence in respect of the performance of the Supplier's obligations).

### 2.2. Any Materials shall: -

- 2.2.1. Be of satisfactory quality and free from defects;
- 2.2.2. Be fit for the purpose required;
- 2.2.3. Conform with any specification, samples, quality and description specified or referred to in the Purchase Order;
- 2.2.4. Conform with any relevant British Standards, Statutory Requirements, Tarmac Policies (including any amendment or modification made thereto during the performance of the Contract), and shall not be harmful to Tarmac's property or the environment.

## 3. PRICE AND TERMS OF PAYMENT

- 3.1 Unless otherwise stated in the Purchase Order, all rates and prices are firm and fixed and the Price shall be inclusive of all services and materials necessary for the performance of the Contract by the Supplier and all taxes and duties, but excluding value added tax.

- 3.2 The Supplier shall procure that invoices shall include the following particulars as a condition precedent to Tarmac's obligation to pay the Price to the Supplier:

- Tarmac's Purchase Order number;
- Invoice date and number;
- Supplier's name and address;
- Description of the Works invoiced;
- The location and date of execution of the Works invoiced;
- The Price of the Works invoiced;
- Value added tax payable by Tarmac (where applicable to the transaction) stated separately from the Price; and
- The Supplier's VAT number and any other particulars required by law or regulation from time to time,

and an invoice which includes each of the above particulars is hereinafter called a "valid invoice".

- 3.3 The Supplier shall deliver a valid invoice to Tarmac promptly after (but not before) the Works are Completed or (where stage payments are agreed) after the agreed stage is Completed in each case in accordance with the Contract.
- 3.4 Subject to Clauses 3.5, 3.6 and 3.7 (where applicable), unless otherwise stated in the Purchase Order, and subject to the delivery of a valid invoice by the Supplier to Tarmac in accordance with

Clause 3.3, Tarmac shall pay the Price for the relevant Works together with value added tax (where applicable to the transaction) to the Supplier not later than 60 days after the end of the calendar month during which the valid invoice is received by Tarmac.

3.5 Where the Contract is a Construction Contract:

- (a) The due date for payment is 45 days after the end of the calendar month during which a valid invoice is received by Tarmac;
- (b) The final date for payment is 60 days after the end of the calendar month during which a valid invoice is received by Tarmac;
- (c) Any notice of payment due shall be given 5 days after the due date and any notice to withhold payment shall be given no later than 1 day before the final date for payment.

For the avoidance of doubt, any failure by Tarmac to give notices under Section 110 or Section 111 of the Construction Act shall not necessarily mean the amount invoiced by the Supplier is due.

3.6 Where Tarmac is a "contractor" for the purpose of the CIS or if at any time up to the date the final payment is to be made under the Contract Tarmac becomes such a "contractor", the obligation of Tarmac to make any payment under the Contract is subject to the provisions of the CIS.

3.7 Without prejudice to clause 3.6, it is a condition precedent to any payment (or further payment, as the case may be) by Tarmac that the Supplier confirms its payment status and notifies Tarmac of any changes thereto and also provides all information required by Tarmac in order for Tarmac to verify the Supplier's payment status for the purpose of the CIS.

3.8 In the event that Tarmac fails to make any statutory deductions under the CIS which ought to have been made due to a failure by the Supplier to provide information, or due to the provision of false or inaccurate information by the Supplier, or due to the payment status of the Supplier being different to that stated by the Supplier or assessed by Tarmac, then the Supplier shall fully indemnify Tarmac in respect of any liability it incurs including to HMRC as a result thereof.

3.9 If Tarmac shall fail to make payment in accordance with Clause 3.4, the Supplier shall be entitled to simple interest at the rate of 2% per annum above the base lending rate from time to time of Barclays Bank plc calculated on the unpaid sum from the date payment should have been made until payment is made.

#### **4. INCLUSIONS IN PRICE**

4.1. The Supplier is deemed to have understood the nature and extent of the Services and to have inspected the Site (including ground conditions and any existing structures). No failure on the part of the Supplier to discover or foresee any site conditions, or any failure to discover or foresee any risks, contingencies or circumstances (whether the same ought reasonably to have been discovered or not) shall entitle the Supplier to claim damages or an additional sum or an extension of time for Completion of the Services. The Supplier shall not be entitled to rely upon any survey, report or other information supplied by or on behalf of Tarmac regarding the Site or any such matter referred to in this clause, or to make any claim against Tarmac in connection therewith. Tarmac shall, on request of the Supplier, grant such access as may be reasonable for this purpose.

4.2. Unless otherwise specified, the Supplier shall provide all plant, scaffolding, tools, Materials, labour, haulage and other things necessary to complete the Services.

4.3. Unless otherwise agreed, the Supplier shall be responsible for obtaining all those consents, licences and permits from any relevant authority which are necessary for the carrying out of the Services including and without prejudice to the generality of the foregoing planning permission and building regulation approval and the Supplier shall comply with the same.

#### **5. ACCEPTANCE**

5.1. In the case of Services and/or Materials delivered by the Supplier not conforming with the Contract, Tarmac shall have the right to reject such Services and/or Materials within a reasonable time of Tarmac discovering the non-conformity and to obtain elsewhere as near as practicable to the same Contract specifications and conditions as circumstances shall permit the Services or Materials or any part

thereof but without prejudice to any other right which Tarmac may have against the Supplier. The making of payment shall not prejudice Tarmac's right of rejection.

## **6. VARIATIONS**

- 6.1. The Supplier shall not alter any of the Services, except as directed in writing by Tarmac, but Tarmac shall have the right, from time to time during the execution of the Contract, by notice in writing to direct the Supplier to add to or to omit, or otherwise vary, the Services, (hereinafter a 'Variation' and a 'Variation Order') and the Supplier shall carry out such Variation Orders and be bound by the same conditions, so far as applicable, as though the Variations were stated in the Contract.
- 6.2. Where the Supplier receives any Variation Order from Tarmac which would occasion an amendment to the Price or delay the Services the Supplier shall, with all possible speed, advise Tarmac in writing to that effect giving the amount of any such amendment, ascertained and determined at the same level of pricing as that contained in the Supplier's tender, and of any period of any delay. This revised price must be agreed in writing by Tarmac prior to commencement. If no revised price can be agreed the Supplier shall, subject to sub-clause 3, comply with the Variation Order and a fair and reasonable addition or omission (as the case may be) shall be made to the Price.
- 6.3. If, in the opinion of the Supplier, any such Variation is likely to prevent the Supplier from fulfilling any of its obligations under the Contract it shall so notify Tarmac and Tarmac shall decide whether or not the same shall be carried out and shall confirm its instructions and modify the said obligations to such an extent as may be justified. Until Tarmac so confirms its instructions they shall be deemed not to have been given.

## **7. INTELLECTUAL PROPERTY RIGHTS**

- 7.1. The Supplier will indemnify Tarmac against any claim for infringement of any patent, design right, registered design, unregistered design, trade mark or copyright or breach of confidence by the use of any design or the use of any Materials by the Supplier in performance of the Contract and against all costs and damages, including legal fees on an indemnity basis, which Tarmac may incur in any action for such infringement or for which Tarmac may become liable in any such action. Provided that this indemnity is conditional on Tarmac giving to the Supplier notice in writing of any claim being made or action threatened or brought against Tarmac and on Tarmac permitting the Supplier at the Supplier's own expense to conduct any litigation that may ensue and all negotiations for a settlement of the claim.
- 7.2. All intellectual property rights in any Services or Materials provided for Tarmac by the Supplier or specifically commissioned by the Supplier for Tarmac shall vest in Tarmac and the Supplier undertakes to execute all documents required to ensure such ownership.

## **8. CANCELLATION OR SUSPENSION**

- 8.1. If Tarmac is for any reason beyond its reasonable control unable to accept the Services at the times stated in the Purchase Order, or at all, then Tarmac may by notice in writing to the Supplier cancel or suspend the provision of any of the unperformed Services.
- 8.2. If the provision of the Services is suspended for more than 8 weeks, then either party may by notice in writing terminate the Contract forthwith. Upon such termination the Supplier shall be entitled to be paid up to but no more than such portion of the Price as fairly represents the Services carried out up to the time of the suspension.
- 8.3. Upon cancellation the Supplier shall be entitled to be paid up to but no more than such portion of the Price as fairly represents the Services carried out up to the date of cancellation.

## **9. ASSIGNMENT AND SUB-LETTING**

- 9.1. The Contract shall not be assigned by the Supplier nor sub-let as a whole. The Supplier shall not sub-let any part of the Services without Tarmac's written consent, which shall not be unreasonably withheld. The Supplier shall be responsible for all Services supplied by all sub-Suppliers.
- 9.2. When Tarmac has consented to the placing of sub-contracts copies of each sub-order as and when requested shall be sent by the Supplier to Tarmac immediately.
- 9.3. Tarmac may freely assign or charge all or part of the benefit of the Contract.

## **10. SPECIFICATIONS, PLANS, PROCESS INFORMATION ETC**

- 10.1. Any specifications, plans, drawings, process information, patterns or designs supplied by Tarmac to the Supplier in connection with the Contract shall remain the property of Tarmac, and any information derived there from or otherwise communicated to the Supplier in connection with the Contract shall be kept secret and shall not, without the consent in writing of Tarmac, be published or disclosed to any third party, or made use of by the Supplier except for the purpose of implementing the Contract. Any specifications, plans, drawings, process information, patterns or designs supplied by Tarmac must be returned to Tarmac when required.
- 10.2. The Supplier accepts entire responsibility for any design in connection with the provision of the Services (including any design work prepared before or after the date of the Purchase Order and whether carried out by or on behalf of Tarmac or Supplier) and for any error, mistake, inaccuracy, or discrepancy contained in the same, provided that the Supplier shall not be liable for any design provided by Tarmac if the Supplier objects to it prior to performing the Services.

## **11. FREE-ISSUE MATERIALS**

- 11.1. Where Tarmac for the purposes of the Contract issues Materials 'free of charge' to the Supplier such Materials shall be and remain the property of Tarmac. The Supplier shall maintain all such Materials in good order and condition subject, in the case of tooling, patterns and the like, to fair wear and tear. The Supplier shall use such materials solely in connection with the Contract. Any surplus materials shall be disposed of at Tarmac's discretion. Waste of such materials arising from bad workmanship or negligence of the Supplier shall be made good at the Supplier's expense. Without prejudice to any other of the rights of Tarmac, the Supplier shall deliver up such materials whether further processed or not to Tarmac on demand.

## **12. HAZARDOUS MATERIALS**

- 12.1. Hazardous Materials must be marked by the Supplier with International Danger Symbol(s) and display the name of the material in English. Transport and other documents must include a declaration of the hazard and name of the material in English. Materials must be accompanied by emergency information in English in the form of written instructions, labels or markings. The Supplier shall observe the requirements of UK and International Agreements relating to the packing, labelling and carriage of hazardous Materials.
- 12.2. All information held by, or reasonably available to, the Supplier regarding any potential hazards known or believed to exist in the transport, handling or use of the Materials supplied shall be promptly communicated to Tarmac.

## **13. TERMINATION**

- 13.1. Without prejudice to any other rights or remedies of Tarmac, Tarmac may by notice in writing terminate the Contract forthwith if the Supplier: (a) shall go into liquidation whether voluntary or otherwise (except for the purposes of and followed by an amalgamation or reconstruction) or shall become bankrupt or shall cease to trade or threaten to cease to trade or shall have a receiver or administrative receiver of the whole or any part of its assets appointed or shall enter into any composition or arrangement with or for the benefit of its creditors or shall be the subject of an administration order, or (b) shall be in breach of any term of the Contract. The Supplier shall indemnify Tarmac for all losses suffered by it as a consequence of such termination.
- 13.2. Tarmac shall have the right to terminate the contract by not less than one month's notice at any time without prejudice to Tarmac's rights and remedies in respect of any breach of the Contract committed by the Supplier.

## **14. LOAN OF EMPLOYER' S PLANT AND EQUIPMENT**

- 14.1. (The inclusion of this condition does not imply that Tarmac assumes any obligations to provide 'Loaned Plant' which means plant or equipment owned or hired by Tarmac and used by or on behalf of the Supplier by agreement.)
- 14.2. Where Loaned Plant is operated by a servant of Tarmac:

- 14.3. The operator shall not become the servant of the Supplier but shall carry out with the Loaned Plant such work as he may be directed to do by the Supplier.
- 14.4. The Supplier shall be liable for any damage to the Loaned Plant caused by misdirection or misuse of it due to negligence on the part of the Supplier, its servants or agents.
- 14.5. Tarmac shall be liable for any damage to the Loaned Plant caused by a defect in or faulty operation of the Loaned Plant.
- 14.6. Where Loaned Plant is operated by a servant of the Supplier or an independent Supplier, the Supplier shall be liable for all damage to the Loaned Plant unless it can show that it was caused by a defect in the plant existing at the commencement of the loan and it shall be liable for any loss (including loss by theft) of the Loaned Plant.
- 14.7. Tarmac shall have the right to withdraw Loaned Plant at any time and shall be under no liability whatever in connection with Tarmac failing to lend plant at any time.
- 14.8. The Supplier shall satisfy itself that any Loaned Plant is suitable for the purpose intended.

## **15. CONDITIONS OF CONTRACT**

- 15.1. No terms and conditions submitted or referred to by the Supplier in any document shall form part of the Contract unless otherwise agreed to in writing by Tarmac.
- 15.2. Tarmac shall not be liable under the Contract unless: -
- 15.3. Tarmac issues an official Purchase Order; and
- 15.4. Either the Supplier confirms in writing acceptance of it or takes any steps to comply with the Contract without indicating it does not accept the Purchase Order and these conditions.
- 15.5. Tarmac shall not be bound by any variation, waiver of or addition to the Contract except as agreed in writing and signed by a duly authorised representative.
- 15.6. If the performance of the Contract requires Tarmac to have any permit or licence from any government or other authority, the Contract shall be conditional upon such permit or licence being available at the required time.
- 15.7. Nothing in these Conditions shall prejudice any conditions or warranties (express or implied) or right or remedy to which Tarmac is entitled in relation to the Contract by virtue of statute or common law. The rights and remedies conferred on Tarmac by these Conditions are in addition to and in no way in substitution for any conditions, warranties or any other rights or remedies conferred on Tarmac or implied by the law.

## **16. SITE REGULATIONS**

- 16.1. The Supplier shall not commence the provision of Services on Site before obtaining the consent of Tarmac.
- 16.2. The Supplier shall comply with Tarmac's current Safety, Health and Environmental Rules for Suppliers ('SHE Rules') (available on request) and all other safety requirements applicable to the Site and shall ensure that its employees and sub-Suppliers so comply.
- 16.3. Tarmac shall have the right to require the removal of any person brought to the Site by the Supplier who has:
- 16.4. Failed to comply with the SHE Rules, or
- 16.5. Has, in the opinion of Tarmac, misconducted himself or been negligent or incompetent.

## **17. CDM REGULATIONS**

- 17.1. Where the CDM Regulations apply to the Contract, the Supplier shall if so stated in the Contract or as otherwise agreed, be the 'Principal Contractor' and/or the 'CDM Co-ordinator', as defined in the CDM Regulations.
- 17.2. Where the Supplier is and while it remains the CDM Co-ordinator, it shall comply with all the duties of a CDM Co-ordinator and shall without charge prepare and deliver to Tarmac the health and safety file.
- 17.3. Where the Supplier is and while it remains the Principal Contractor, it shall comply with all the duties of a Principal Contractor and it shall ensure that the construction phase plan as developed by it is received by Tarmac before construction work under this Contract is commenced, and that any subsequent amendment to it by the Supplier is notified to Tarmac and the CDM Co-ordinator, and the Supplier shall ensure that welfare facilities complying with Schedule 2 of the CDM Regulations are provided from the commencement of construction work until the end of the construction phase.
- 17.4. The Supplier warrants that it and any design consultants and sub-contractors it engages are fully aware of their obligations under the CDM Regulations and will comply with them and possess the requisite degree of competence and level of resources to meet those obligations.
- 17.5. The Supplier shall indemnify Tarmac against any loss, claim, action, liability or proceedings arising under or in connection with the CDM Regulations caused in whole or in part by any error of the Supplier.
- 17.6. Where the Supplier is not or ceases to be the Principal Contractor it shall promptly inform the Principal Contractor of the identity of each sub-contractor that it appoints and shall comply with all the reasonable requirements of the Principal Contractor to the extent that such requirements are necessary for compliance with the CDM Regulations.
- 17.7. Where the Supplier is not or ceases to be the CDM Co-ordinator it shall provide and shall ensure that any sub-contractors of the Supplier provide within the time reasonably required by the CDM Co-ordinator such information relating to the design and construction of the Works as is reasonably required for the preparation of the health and safety file required by the CDM Regulations.
- 17.8. Notwithstanding any other provisions of the Contract, the Supplier shall not be entitled to an extension of time or any additional sum for complying with the CDM Regulations and the reasonable requirements of the Principal Contractor and the CDM Co-ordinator.

## **18. SITE WORK BY SUPPLIER**

- 18.1. If any work on Site is to be carried out by the Supplier, then the Supplier shall ensure that no work is covered up until Tarmac has had a reasonable opportunity to inspect it.
- 18.2. The access to and possession of the Site shall not be exclusive to the Supplier but only such as shall enable it to execute the Services, concurrently with the execution of work by other persons.
- 18.3. Without prejudice to any other indemnity provisions herein, the Supplier shall at all times prevent any nuisance or trespass (including, but without limitation, any noisy working operations, or interference with access or use of public or private roads and/or footpaths) or other interference with the rights of the owner, or any tenant or occupier of the Site or any adjoining land, arising out of the Services, and shall fully indemnify Tarmac in relation to any claims and legal fees (on an indemnity basis) arising out of any failure in performing its obligations and shall assist Tarmac in defending any action or proceedings which may be instituted in relation thereto.
- 18.4. Where the SWMP Regulations apply to the Works then, unless otherwise agreed, the Supplier shall fulfil the role of and comply with the obligations imposed upon a principal contractor under the SWMP Regulations.
- 18.5. Without prejudice to the Supplier's obligations under clause 18.4 the Supplier shall assist Tarmac in complying with its obligations as a client under the SWMP Regulations including the preparation of a SWMP before the Works commence on the Site.



- 18.6. The Supplier shall be responsible for updating and keeping the SWMP in accordance with the SWMP Regulations and shall ensure that sufficient site security measures are in place to prevent the illegal disposal of waste from the Site.
- 18.7. The Supplier shall not deviate from the SWMP without Tarmac's consent and shall provide a copy of the latest version of the SWMP to Tarmac as soon as practicable after Completion.
- 18.8. The Supplier shall indemnify Tarmac against any loss, claim, action, liability or proceedings arising under or in connection with the SWMP Regulations caused in whole or in part by an error of the Supplier.

## **19. THINGS FOUND ON SITE**

- 19.1. All minerals, metals, objects and other things found or discovered on, under or around the Site shall as between the Supplier and Tarmac be the property of Tarmac and shall be dealt with as Tarmac may direct.

## **20. TIMESHEETS**

- 20.1. Tarmac may require the Supplier to submit to it weekly timesheets for each of the Supplier's employees, agents or sub-Suppliers engaged in the performance of the Services.

## **21. INDEPENDENT SUPPLIER**

- 21.1. Tarmac and the Supplier agree and declare that the Supplier (which shall be deemed to include its employees, agents and sub-Suppliers) is an independent Supplier and not an employee or partner of Tarmac.
- 21.2. The Supplier undertakes to pay all national insurance and tax under PAYE regulations, and all remuneration due (including sick pay and holiday pay) to its employees engaged in the performance of this Contract.
- 21.3. The Supplier shall fully indemnify Tarmac against all and any claims made by any of its employees against Tarmac arising out of any allegation by them that they are employees of Tarmac including (without prejudice to the generality of the foregoing) any claims for unfair dismissal and/or redundancy arising out of the termination of this Contract, and shall indemnify Tarmac for any legal fees incurred in defending such claims on an indemnity basis.

## **22. INDEMNITY AND INSURANCE**

- 22.1 The Supplier shall keep Tarmac indemnified against:

- (i) any liability or claim in respect of loss or damage to any moveable or immovable property of any nature or type whatever of Tarmac or any third party; and
- (ii) any liability or claim in respect of the death or personal injury to any person whether in contract or tort or otherwise arising under common law, statute or otherwise

caused by an act or omission on the part of the Supplier or any of its employees, sub-contractors, assignees or agents and the Supplier shall also indemnify Tarmac in respect of any legal fees incurred by Tarmac in connection therewith.

- 22.2 The Supplier shall fully indemnify Tarmac against all loss, damages, costs or expense arising out of or connected with any breach of the Contract and the Supplier shall also indemnify Tarmac in respect of any legal fees incurred in connection therewith.
- 22.3 The Supplier shall take out and/or maintain such types and levels of cover of insurance as Tarmac may require including Public Liability, Employers Liability, Works, Professional Indemnity and Product Liability insurance. If the Supplier fails to take out and/or maintain any such insurance policies Tarmac may do so and recover the premiums paid from the Supplier as a debt. If so required, the Supplier shall promptly and accurately complete any insurance questionnaire supplied by Tarmac and Tarmac shall be entitled to withhold payment of the Price or part thereof until the questionnaire has been fully and accurately completed and returned to Tarmac.

## **23. NOTIFICATION PROCEDURE**

- 23.1. The Supplier shall give immediate notice in the event of any accident or damage likely to form the subject of a claim under Tarmac's insurance and shall give all the information and assistance in respect thereof that Tarmac's insurers may require, and shall not negotiate, pay, settle, admit or repudiate any claim without their written consent, and shall permit the insurers to take proceedings in the name of the Supplier to recover compensation or secure an indemnity from any third party in respect of any of the matters covered by the said insurance.

## **24. SET OFF**

- 24.1. Any debt or claim against the Supplier on the part of Tarmac or any of its subsidiary, associated or holding companies with or against the Supplier, whether arising out of the Contract or otherwise howsoever, and whether liquidated or not, may be set off against any sums due to the Supplier hereunder. For the avoidance of doubt, Tarmac shall be entitled to withhold and set off against the Price, any sum owed by the Supplier to Tarmac for any reason. Where the Services are liable to be re-performed by the Supplier for any reason, Tarmac shall be entitled to withhold monies, including any reasonable estimate of the value of the Services to be re-performed, otherwise due to the Supplier (under this or any other Contract between Tarmac and the Supplier) by way of set-off against the value of the said Services. Where any set-off is or is likely to be insufficient to cover the Supplier's liability to Tarmac, Tarmac shall be entitled to invoice the Supplier for any additional sums owing and the Supplier shall make payment of such additional sums owing within 30 days of such invoice being received by the Supplier.

## **25. DISPUTE RESOLUTION**

### **25.1. Mediation**

- 25.1.1. In the event of any dispute arising between the parties in connection with the Contract, the parties will in good faith seek to resolve that dispute through mediation under the auspices of the ADR Group. The Mediator shall be agreed upon within 21 days of one party requesting mediation, failing which either party may apply to the President of the Law Society to appoint a Mediator. Unless otherwise agreed each party shall share equally the costs of the Mediator, the ADR Group and the President of the Law Society and each party shall bear their own legal and other fees and expenses incurred in relation to the mediation. If the dispute is not resolved within 28 days of the Mediator's appointment, then either party may commence Court proceedings, but provided that nothing in this clause shall prevent either party seeking an injunction or other interim relief at any time if it reasonably believes such action is necessary to prevent irreparable damage.

### **25.2. Adjudication**

- 25.2.1. Where the Contract is a Construction Contract Tarmac and the Supplier each has the right to refer any dispute under the Contract to Adjudication and either party may at any time give notice in writing (hereinafter called the Notice of Adjudication) to the other of its intention to refer the dispute to Adjudication. Any dispute referred to Adjudication shall be conducted in accordance with the TeCSA Adjudication Rules current at the time of the Notice of Adjudication. The Chairman of TeCSA shall nominate an Adjudicator in default of agreement between the parties. The decision of the Adjudicator shall be binding until the dispute is finally determined by Court proceedings.

## **26. THIRD PARTY RIGHTS**

- 26.1. A natural or legal person who is not a party to the Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Contract. This clause does not alter any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **27. CONSTRUCTION OF CONTRACT**

- 27.1. The construction, validity and performance of the Contract shall be governed by the law of England and the parties submit to the exclusive jurisdiction of the English Courts.
- 27.2. References to any statute or statutory provision shall be construed as a reference to that statute or provision as from time to time amended, consolidated, extended, re-enacted or replaced.

## **28. NOTICES**

- 28.1 Any notice to be given to a party under the Contract shall be given in writing in the English language and delivered by hand or sent by first class prepaid post or by facsimile to the other party.
- 28.2 Any notice to be given to Tarmac shall be addressed to the Company Secretary and sent to its registered office or such other address as Tarmac may have notified to the Supplier as its proper address for service.
- 28.3 Any notice to be given to the Supplier shall be sent to its registered office or the address of the Supplier stated on the last Purchase order or the last known address or facsimile number notified in writing to Tarmac by the Supplier as being its proper address or facsimile number for service.
- 28.4 Notices given in accordance with this Clause 28 shall be deemed to have been received:
- (i) 48 hours after posting (exclusive of the day of posting) if sent by first class prepaid post;
  - (ii) on the day of delivery if delivered by hand; or
  - (iii) at the time of transmission if sent by facsimile provided that a confirming copy is sent by first class prepaid post to the other party within 24 hours after transmission.

## **29. WAIVER**

- 29.1. No delay or omission by Employer in exercising any of its rights or remedies under the Contract or under any applicable law on any occasion shall be deemed a waiver of, or bar to, the exercise of such right or remedy or any other right or remedy upon any other occasion.

## **30. HEADINGS**

- 30.1. The headings herein are for ease of reference only and shall not affect the construction thereof.

## **31. SEVERANCE**

- 31.1. In the event that any provision of the Contract shall be void or unenforceable by reason of any provision of applicable law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the spirit of the Contract so far as possible.

## **32. CONFIDENTIALITY**

- 32.1 The Supplier shall treat as confidential and shall not disclose to any third party without the prior written consent of Tarmac the terms of the Contract and any information obtained from Tarmac or otherwise obtained in connection with the Contract ("Confidential Information").
- 32.2 The Supplier shall not use the Confidential Information for any purpose other than performance of its obligations under the Contract.
- 32.3 Clauses 32.1 and 32.2 shall not apply to any information to the extent that it:
- (a) is or shall become part of the public domain otherwise than in consequence of any breach of the obligations in this clause or any other duty or obligation of confidence; or
  - (b) is already in the Supplier's possession and not under any obligation or duty of confidence.
- 32.4 The obligations of confidence contained in this clause shall continue after expiry or earlier termination of the Contract.

## **33. TARMAC TRADE MARKS**

“Tarmac” and the 'Circle' logo are registered trade marks. The Supplier shall not use “Tarmac”, the 'Circle' logo or any other trade mark (registered or otherwise) belonging to Tarmac or its group companies without the prior written consent of the relevant owning company of such trade mark. Any written consent given shall be deemed to be under licence which may be terminated at any time by giving prior written notice to the Supplier.

**Edition date: 03.08.2015**

**TARMAC BUILDING PRODUCTS LIMITED**

**Conditions of Contract  
for the hire of plant  
(supplied with or without operator)  
(UK only)**

**Form T/5/A**

**Issued by:**

**Tarmac Building Products Limited**

**Salisbury House**

**2a Tettenhall Road**

**Wolverhampton**

**WV14SA**

**Edition date: 03.08.2015**

**GENERAL CONDITIONS OF CONTRACT  
(FOR USE WITH OR WITHOUT TARMAC BUILDING PRODUCTS LIMITED  
PROCUREMENT AGREEMENT)  
FOR THE HIRE OF PLANT (SUPPLIED WITH OR WITHOUT OPERATOR)**

**1 DEFINITIONS**

- 1.1 'Tarmac' shall mean Tarmac Building Products Limited (Company number 4026569) whose registered office is situated at Salisbury House, 2a Tettenhall Road, Wolverhampton, WV1 4SA.
- 1.2 The 'Supplier' shall mean the person, firm or company to whom Tarmac's order is issued.
- 1.3 The 'Plant' shall mean the equipment specified in Tarmac's Order and any replacement or replacements thereof, together with such accessories for the same as let by the Supplier to Tarmac.
- 1.4 The 'Contract' shall mean the contract between Tarmac and the Supplier consisting of the Tarmac Building Products Limited Procurement Agreement (where used), Tarmac's Order, these conditions and any other documents (or parts thereof) specified in Tarmac's Order. Should there be any inconsistency between the documents comprising the Contract they shall have precedence in the order herein listed.
- 1.5 'Hire Charges' shall mean the Supplier's rate, price or charge for the hire of the Plant (and operator where one is to be supplied)
- 1.6 The 'Site' shall mean the place or places specified at which the Plant is to be employed for the purposes of the Contract.
- 1.7 The 'Period of Hire' shall mean the period commencing when the Plant arrives on the Site and ending on the date when Tarmac gives verbal or written notice that the Plant is to be removed from the Site.
- 1.8 'Hirer's Order' or 'Order' shall mean Tarmac's order for the Plant.
- 1.9 'Statutory Requirements' shall mean each and every obligation imposed by law relevant to the Contract including without prejudice to the generality of the foregoing all statutes, statutory instruments, regulations and by-laws and any requirements of any statutory bodies or local authorities.
- 1.10 "Tarmac Policies" shall mean all relevant policies and site rules of Tarmac Holdings Limited, its subsidiaries and associated companies including without prejudice to the generality of the foregoing safety, health and environmental rules (available on request).
- 1.11 'The Construction Act' means part II of the Housing Grants, Construction and Regeneration Act 1996.
- 1.12 'Construction Contract' means a construction contract within the meaning of the Construction Act.
- 1.13 The 'Operator' shall mean the person or persons in the employment of the Supplier who are assigned to the Plant for the purpose of the Contract if so required by Tarmac.
- 1.14 'Underground Services' shall mean all types of cables, pipes, fuel lines, tunnels and any other service media or property whether or not owned by Tarmac which are below the surface of the Site.
- 1.15 "Tarmac Building Products Limited Procurement Agreement" means the agreement so named between the Supplier and Tarmac for the hire of Plant signed by duly authorised representatives of the Supplier and Tarmac.

## **2 INSPECTION OF SITE**

The Supplier shall be deemed to have visited and inspected the Site (including ground conditions) and methods of access and to have understood the nature and extent of the work for which the Plant is to be employed and to have willingly accepted all the risk therein. Tarmac shall grant such access as may be reasonable for this purpose. The Supplier shall take all reasonable precautions to ensure that the ground is in a satisfactory condition to take the weight of the Plant and shall, where necessary, supply and lay suitable timbers or equivalents for mobile Plant to travel over at no extra cost to Tarmac.

## **3 DELIVERY OF PLANT**

- 3.1 The date of delivery of the Plant shall be that specified in the Order unless otherwise agreed in writing between Tarmac and the Supplier and time shall be of the essence in this respect.
- 3.2 If the Plant is incorrectly delivered, the Supplier shall be responsible for any additional expense incurred in delivering it to the correct destination.

## **4 DELIVERY IN GOOD ORDER**

The Supplier shall ensure that the Plant is of sound construction and condition, has been properly maintained, and is in good working order at the commencement of the Period of Hire. In particular the Supplier shall ensure that all Statutory Requirements, British Standards and Codes of Practice (where applicable) concerning transportation, construction, maintenance, testing and inspection applicable to the Plant have been complied with and:

- a) Shall produce to Tarmac, if so requested, the current certificate of inspection required under any Statutory Requirements, and
- b) Shall indemnify Tarmac from liability for any kind of breach of any such Statutory Requirements.

## **5 LOADING AND OFF-LOADING ARRANGEMENTS**

The Supplier shall be responsible for the proper and safe loading and off-loading of the Plant at Tarmac's Site and for the provision of all equipment and personnel necessary for this purpose.

## **6 REMOVAL OF PLANT, TERMINATION AND SUSPENSION**

- 6.1 The Supplier shall remove the Plant from the Site as soon as possible on receipt of Tarmac's instructions to such effect. In the event that the Supplier fails to remove the Plant from the Site within 24 hours of the removal date given in such instructions then the Plant shall thereupon become the Supplier's own risk and expense. If the Supplier fails to remove the Plant within 24 hours of the end of the Period of Hire, Tarmac may, if it so chooses, return the Plant to the Supplier, and the Supplier shall be liable for any costs incurred by Tarmac in removing and returning the Plant.
- 6.2 Where the Supplier is obliged to supply the Operator, and the Operator does not attend Site, the Period of Hire shall be deemed to be suspended until the Operator arrives on Site and no Hire Charges shall be payable during this period of suspension. If such suspension shall last for one working day Tarmac shall be entitled to terminate the Period of Hire and the Plant shall thereupon become the Supplier's own risk and expense.

## 7 IDENTIFICATION

The Plant shall at all times remain the property of the Supplier and it shall mark it in such a manner as to make it easily identifiable. Such identification shall not be removed, defaced or covered up by Tarmac.

## 8 ASSIGNMENT AND SUB-LETTING

- 8.1 Tarmac shall not transfer possession of or lend the Plant or any of the accessories or equipment supplied therewith to any third party unless the Supplier's prior written consent has been obtained (such consent not to be unreasonably withheld).
- 8.2 The Contract shall not be assigned by the Supplier. The Supplier shall not sub-let any portion of the Contract without the consent in writing of Tarmac, but such consent shall not relieve the Supplier from any obligations under the Contract.
- 8.3 Where Tarmac has consented to the placing of sub-contracts, a copy of each sub-order shall be sent to Tarmac immediately on request.
- 8.4 Tarmac may freely assign or charge all or part of the benefit of the Contract.

## 9 PAYMENT

- 9.1 Unless otherwise stated in Tarmac's Order, all Hire Charges are firm and fixed and the Hire Charges shall be inclusive of all services and materials necessary for the performance of the Contract by the Supplier, and all taxes and duties, but excluding value added tax.
- 9.2 The Supplier shall procure that invoices shall include the following particulars as a condition precedent to Tarmac's obligation to pay the Hire Charges to the Supplier:
  - Tarmac's Order number;
  - Invoice date and number;
  - Supplier's name and address;
  - The name of the Site;
  - The period to which the Hire Charges invoiced relate;
  - The Plant to which the Hire Charges invoiced relate;
  - The Hire Charges the subject of the invoice;
  - Value added tax payable by Tarmac (where applicable to the transaction) stated separately from the Hire Charges; and
  - The Supplier's VAT number and any other particulars required by law or regulation from time to time,

and an invoice which includes each of the above particulars is hereinafter called a "valid invoice".

- 9.3 The Supplier shall deliver a valid invoice for the Hire Charges promptly after (but not before) the end of each calendar month for all items of Plant on hire during that month less any adjustments to the Hire Charges required in accordance with Clauses 6.2 and 13.3.
- 9.4 Subject to Clause 9.5, unless otherwise stated in Tarmac's Order, and subject to the delivery of a valid invoice by the Supplier to Tarmac in accordance with Clause 9.3, Tarmac shall pay the Hire Charges for the relevant Plant together with value added tax (where applicable to the transaction) to the Supplier not later than 60 days after the end of the calendar month during which the valid invoice is received by Tarmac.
- 9.5 Where the Contract is a Construction Contract:
  - (a) The due date for payment is 45 days after the end of the calendar month during which a valid invoice is received by Tarmac;
  - (b) The final date for payment is 60 days after the end of the calendar month during which a valid invoice is received by Tarmac;



- (c) Any notice of payment due shall be given 5 days after the due date and any notice to withhold payment shall be given no later than 1 day before the final date for payment.

For the avoidance of doubt, any failure by Tarmac to give notices under Section 110 or Section 111 of the Construction Act shall not necessarily mean the amount invoiced by the Supplier is due.

- 9.6 If Tarmac shall fail to make payment in accordance with Clause 9.4 or 9.5, the Supplier shall be entitled to simple interest at the rate of 2% per annum above the base lending rate from time to time of Barclays Bank plc calculated on the unpaid sum from the due date for payment until payment is made.

## **10. STATUTORY DUTIES AND SAFETY WHERE SUPPLIER SUPPLIES OPERATOR**

- 10.1 Where the Plant is to be operated by the Operator, the Supplier shall ensure that such Operator is fully trained, qualified and competent to operate the Plant. The Supplier shall be responsible for the payment of all wages, national insurance and other outgoings usually payable by a plant hire company to or on behalf of an employee in respect of the Operator.
- 10.2 All work shall be carried out with proper regard to safety. The Supplier shall observe and conform to all Statutory Requirements applicable to the work and to the Site where the work is carried out, the cost of compliance being deemed to be included in the Hire Charges. No additional expenses incurred by the Supplier in conforming with any such Statutory Requirement made subsequently to the Supplier's tender shall be added to the Hire Charges.

## **11 SITE REGULATIONS**

- 11.1 The Supplier shall not commence work on Site before obtaining the consent of Tarmac.
- 11.2 The Supplier shall comply with the Tarmac Policies and Tarmac's current Safety, Health and Environmental Rules for Suppliers ('SHE Rules') (available on request) and all other safety requirements applicable to the Site and shall ensure that its employees and sub-Suppliers so comply.
- 11.3 Tarmac shall have the right to require the removal of any person brought to the Site by the Supplier who has:
- a) Failed to comply with the SHE Rules, or
  - b) Has, in the opinion of Tarmac, misconducted himself or been negligent or incompetent.

## **12 THINGS FOUND ON THE SITE**

All minerals, metals, objects and other things found or discovered on, under or around the Site shall as between the Supplier and Tarmac be the property of Tarmac and shall be dealt with as Tarmac may direct.

## **13 REPAIRS AND ADJUSTMENTS**

- 13.1 If at any time during the Period of Hire the Supplier is of the opinion that the Plant is in need of repair or adjustment the Supplier may stop the use of the said Plant until repairs or adjustments have been made on the Site or, at the Supplier's own expense, supply with all reasonable speed such replacement Plant as is necessary for the purposes of the Contract.
- 13.2 If at any time during the Period of Hire Tarmac is of the opinion that the Plant is in need of repair or adjustment, Tarmac shall advise the Supplier and may suspend the operation of the Contract until the Supplier has carried out such repairs or adjustments on the Site or has, at the Supplier's own expense, supplied such replacement Plant as is necessary for the purposes of the Contract.

- 13.3 The Hire Charges shall be reduced in proportion to the time lost due to any stoppage or suspension of use of the Plant during the Period of Hire, under the provisions of clauses 13.1 or 13.2 above and the Supplier shall indemnify Tarmac for any losses suffered as a result of such suspension or stoppage.
- 13.4 No adjustment to the Hire Charges can be claimed where damage to the Plant is due to the neglect or default of Tarmac, its servants or agents. However, if the Plant or an item thereof is agreed to be beyond repair the Supplier shall with all reasonable speed provide such replacement as is necessary for the purposes of the Contract.
- 13.5 Tarmac shall at all reasonable times permit the Supplier, its servants, agents or insurers, to have access to the Plant for the purpose of inspecting, testing, adjusting, repairing or replacing the same. Similarly, Tarmac shall permit the Supplier to inspect the work being carried out by the Operator. So far as is reasonably practicable any such inspection etc shall be carried out at times convenient to Tarmac.

#### **14 LOSS OR DAMAGE TO PLANT**

- 14.1 Tarmac shall notify the Supplier immediately in the event of any accident, breakdown of, loss of or damage to the Plant, howsoever caused, for which an adjustment to the Hire Charges might be claimed in accordance with Clause 13. Such notification shall be confirmed in writing to the Supplier.
- 14.2 Where, during the Period of Hire, such loss or damage occurs and is due to the neglect or default of Tarmac, its servants or agents, Tarmac shall pay all reasonable costs incurred by the Supplier in effecting the necessary repairs or, where the Plant or item thereof is agreed by the parties to be beyond repair, shall compensate the Supplier with an amount which in default of agreement shall in no case exceed the market value current at the time for Plant or items thereof of like age and condition.
- 14.3 Save as aforesaid and save in respect of any claim for personal injury or death (but subject to Clause 15.1), Tarmac shall be under no other liability to the Supplier including for any consequential loss suffered by the Supplier resulting from any accident or damage, howsoever caused.

#### **15 INDEMNITY AND INSURANCE**

- 15.1 The Supplier shall keep Tarmac indemnified against:
- (i) any liability or claim in respect of loss or damage to any moveable or immovable property of any nature or type whatever of Tarmac or any third party; and
  - (ii) any liability or claim in respect of the death or personal injury to any person whether in contract or tort or otherwise arising under common law, statute or otherwise
- caused by an act or omission on the part of the Supplier or any of its employees, sub-contractors, assignees or agents and the Supplier shall also indemnify Tarmac in respect of any legal fees incurred by Tarmac in connection therewith.
- 15.2 The Supplier shall fully indemnify Tarmac against all loss, damages, costs or expense arising out of or connected with any breach of the Contract and the Supplier shall also indemnify Tarmac in respect of any legal fees incurred in connection therewith.

#### **16 INSURANCES**

- 16.1 The Supplier shall have in force and shall require any sub-Supplier employed by the Supplier to have in force the following Insurances which shall extend to indemnify Tarmac against any claim for which the Supplier or sub-Supplier may be legally liable under the Contract:
- a) Employer's Liability Insurance with an indemnity of not less than £10million, and
  - b) Public Liability (Third Party) Insurance for not less than £5million for any one accident; and
  - c) Third Party Motor Insurance (if appropriate) as may be legally required.

- 16.2 Tarmac shall maintain Employer's Liability and Public Liability Insurance in respect of its own liabilities.
- 16.3 The Supplier shall, if so required, promptly and accurately complete any insurance questionnaire of Tarmac, and Tarmac shall be entitled to withhold payment of all or part of the Hire Charges until it has been fully and accurately completed and returned to Tarmac.

## **17 NOTIFICATION OF ACCIDENTS**

If the Plant is involved in any accident or other occurrence resulting in injury, loss or damage to persons or property, the parties shall give prompt notification thereof to the other.

## **18 TRANSPORTATION OF THE PLANT TO AND FROM SITE**

- 18.1 The Supplier shall use every reasonable means to prevent any loss or damage in respect of the highways or bridges communicating with or on the routes to the Site. In particular it shall select routes and use vehicles and restrict and distribute loads so that no loss or damage may result from the use of such highways and bridges.
- 18.2 The Supplier shall indemnify Tarmac against all claims for loss or damage in respect of any highway or bridge caused by the transportation of the Plant to and from the Site including, without limitation, such claims as may be made by any competent authority directly against Tarmac pursuant to any Statutory Requirements.
- 18.3 If, notwithstanding clause 18.1 above, any loss or damage shall occur in respect of any highway or bridge arising from the transportation of the Plant, the Supplier shall notify Tarmac as soon as it becomes aware of such loss or damage or receives any claim in respect thereof.

## **19 CONFIDENTIALITY**

- 19.1 The Supplier shall treat as confidential and shall not disclose to any third party without the prior written consent of Tarmac the terms of the Contract and any information obtained from Tarmac or otherwise obtained in connection with the Contract ("Confidential Information").
- 19.2 The Supplier shall not use the Confidential Information for any purpose other than performance of its obligations under the Contract.
- 19.3 Clauses 19.1 and 19.2 shall not apply to any information to the extent that it:
- (a) is or shall become part of the public domain otherwise than in consequence of any breach of the obligations in this clause or any other duty or obligation of confidence; or
  - (b) is already in the Supplier's possession and not under any obligation or duty of confidence.
- 19.4 The obligations of confidence contained in this clause shall continue after expiry or earlier termination of the Contract.

## **20 TERMINATION**

- 20.1 Without prejudice to any other rights or remedies of Tarmac, Tarmac may by notice in writing terminate the Contract forthwith if the Supplier: (a) shall go into liquidation whether voluntary or otherwise (except for the purposes of and followed by an amalgamation or reconstruction) or shall become bankrupt or shall cease to trade or threaten to cease to trade or shall have a receiver or administrative receiver of the whole or any part of its assets appointed or shall enter into any composition or arrangement with or for the benefit of its creditors or shall be the subject of an administration order, or (b) shall be in breach of any term of the Contract. The Supplier shall indemnify Tarmac for all losses suffered by it as a consequence of such termination.

- 20.2 The Buyer shall have the right to terminate the contract by not less than one months notice at any time without prejudice to the buyers rights and remedies in respect of any antecedent breaching of the Contract committed by the Seller.

## 21 CONDITIONS OF CONTRACT

- 20.3 No conditions submitted or referred to by the Supplier in any document shall form part of the Contract unless otherwise agreed to in writing by Tarmac.
- 20.4 Tarmac shall not be liable under the Contract unless:-
- a) Tarmac has issued an official Order; and
  - b) Either the Supplier confirms in writing acceptance of it or takes any steps to comply with the Contract without indicating it does not accept the Order and these conditions.
- 20.5 Tarmac shall not be bound by any variation, waiver of or addition to the Contract except as agreed in writing and signed by a duly authorised representative of Tarmac.
- 20.6 If the performance of the Contract requires Tarmac to have any permit or licence from any government or other authority, the Contract shall be conditional upon such permit or licence being available at the required time.
- 20.7 Nothing in these Conditions shall prejudice any conditions or warranties (express or implied) or right or remedy to which Tarmac is entitled in relation to the Contract by virtue of statute or common law. The rights and remedies conferred on Tarmac by these Conditions are in addition to and in no way in substitution for any conditions, warranties or any other rights or remedies conferred on Tarmac or implied by the law.

## 22 CONSTRUCTION OF CONTRACT

- 22.1 The construction, validity and performance of the Contract shall be governed by the laws of England and the parties agree to submit to the exclusive jurisdiction of the English Courts.
- 22.2 Reference to any statute or statutory provision shall be construed as a reference to that statute or provision as from time to time amended, consolidated, extended, re-enacted or replaced.

## 23 DISPUTE RESOLUTION

### 23.1 Mediation

In the event of any dispute arising between the parties in connection with the Contract, the parties will in good faith seek to resolve that dispute through mediation under the auspices of the ADR Group. The Mediator shall be agreed upon within 21 days of one party requesting mediation, failing which either party may apply to the President of the Law Society to appoint a Mediator. Unless otherwise agreed each party shall share equally the costs of the Mediator, the ADR Group and the President of the Law Society and each party shall bear their own legal and other fees and expenses incurred in relation to the mediation. If the dispute is not resolved within 28 days of the Mediator's appointment, then either party may commence Court proceedings, but provided that nothing in this clause shall prevent either party seeking an injunction or other interim relief at any time if it reasonably believes such action is necessary to prevent irreparable damage.

### 23.2 Adjudication

Where the Contract is a Construction Contract Tarmac and the Supplier each has the right to refer any dispute under the Contract to Adjudication and either party may at any time give notice in writing (hereinafter called the Notice of Adjudication) to the other of its intention to refer the dispute to

Adjudication. Any dispute referred to Adjudication shall be conducted in accordance with the TeCSA Adjudication Rules current at the time of the Notice of Adjudication. The Chairman of TeCSA shall nominate an Adjudicator in default of agreement between the parties. The decision of the Adjudicator shall be binding until the dispute is finally determined by Court proceedings.

## **24 THIRD PARTY RIGHTS**

A legal or natural person which is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract. This clause does not affect any right or remedies of any person or body which exists or is available otherwise than pursuant to that Act.

## **25 SET OFF**

Any debt or claim against the Supplier on the part of Tarmac or any of its subsidiary, associated or holding companies with or against the Supplier, whether arising out of the Contract or otherwise howsoever, and whether liquidated or not, may be set off against any sum due to the Supplier hereunder. For the avoidance of doubt, Tarmac shall be entitled to withhold and set off against the Price, any sum owed by the Supplier to Tarmac for any reason. Where the Plant or any part thereof is liable to be returned to the Supplier and/or new Plant sent out for hire in its place by the Supplier for any reason, Tarmac shall be entitled to withhold monies, including any reasonable estimate of the value of the faulty Plant likely to be returned or the Hire Charges for such Plant, otherwise due to the Supplier (under this or any other Contract between Tarmac and the Supplier) by way of set-off against the value of the Hire Charges. Where any set-off is or is likely to be insufficient to cover the Supplier's liability to Tarmac, Tarmac shall be entitled to invoice the Supplier for any additional sums owing and the Supplier shall make payment of such additional sums owing within 30 days of such invoice being received by the Supplier.

## **26 NOTICES**

- 26.1 Any notice to be given to a party under the Contract shall be given in writing in the English language and delivered by hand or sent by first class prepaid post or by facsimile to the other party.
- 26.2 Any notice to be given to Tarmac shall be addressed to the Company Secretary and sent to its registered office or such other address as Tarmac may have notified to the Supplier as its proper address for service.
- 26.3 Any notice to be given to the Supplier shall be sent to its registered office or the address of the Supplier stated on the last Purchase order or the last known address or facsimile number notified in writing to Tarmac by the Supplier as being its proper address or facsimile number for service.
- 26.4 Notices given in accordance with this Clause 26 shall be deemed to have been received:
- (i) 48 hours after posting (exclusive of the day of posting) if sent by first class prepaid post;
  - (ii) on the day of delivery if delivered by hand; or
  - (iii) at the time of transmission if sent by facsimile provided that a confirming copy is sent by first class prepaid post to the other party within 24 hours after transmission.

## **27 WAIVER**

No delay or omission by Tarmac in exercising any of its rights or remedies under the Contract or under any applicable law on any occasion shall be deemed a waiver of, or bar to, the exercise of such right or remedy or any other right or remedy upon any other occasion.

## **28 HEADINGS**

The headings herein are for ease of reference only and shall not affect the construction thereof.

## **29 SEVERANCE**

In the event that any provision of the Contract shall be void or unenforceable by reason of any provision of applicable law, it shall be deleted and the remaining provisions hereof shall continue in full force and effect and, if necessary, be so amended as shall be necessary to give effect to the spirit of the Contract so far as possible.

### **30 TARMAC TRADE MARKS**

“Tarmac” and the 'Circle' logo are registered trade marks. The Supplier shall not use “Tarmac”, the 'Circle' logo or any other trade mark (registered or otherwise) belonging to Tarmac or its group companies without the prior written consent of the relevant owning company of such trade mark. Any written consent given shall be deemed to be under licence which may be terminated at any time by giving prior written notice to the Supplier.

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