

Kendall Bros. (Portsmouth) Limited

STANDARD CONDITIONS FOR THE SALE OF MATERIALS

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1. Definitions

In these terms and conditions, the following words shall have the following meanings:-

“the company” shall mean Kendall Bros. (Portsmouth) Limited.

“the goods” shall mean the materials to be supplied by the Company in accordance with these conditions.

“the buyer” shall mean the corporate entity firm or person seeking to purchase the Goods from the Company.

2. The Contract

All orders are received and accepted by the Company only on these terms and conditions.

3. Price

- 3.1 Quotations remain open until written acceptance but may be withdrawn if written acceptance has not been received by the Company within 30 days of quotation
- 3.2 Quotations based on all costs applicable to the supply of goods at the date of the quotation. Prices may be adjusted to reflect any increase in any applicable cost occurring after the date of the quotation.
- 3.3 Unless otherwise stated all prices quoted are net ex-works and exclusive of V.A.T.
- 3.4 Unless otherwise stated all prices quoted delivered are for delivery to site or as near thereto as safe roadway permits.
- 3.5 Unless otherwise expressly agreed by the Company in writing, prices cover only delivery and working days and during working hours.
- 3.6 All deliveries made or work done at the buyer's request on Bank Holidays, Sundays, Saturday afternoons, and outside normal working hours will be subject to extra charges.
- 3.7 An extra charge will be made when the buyer requests deliveries to be made in quantities of less than a full load.

4. Payment

- 4.1 Net payment for goods must be received by the Company not later than the last day of the month following the month of supply of goods. Any invoice outstanding beyond this period may be referred to the Company's collection agent Daniels Silverman Ltd. and will be subject to a surcharge of 15% of the invoice value plus VAT to cover the collection costs incurred. This surcharge, together with all other charges and legal fees incurred, will be the responsibility of the Customer and will be legally enforceable.
- 4.2 The Company may at its discretion to execute any further order and/or suspend or discontinuing deliveries of goods or impose such special payment terms and conditions as the Company deems appropriate.
- 4.3 Where any payment for goods has not been received by the Company within the time limit specified above, the Customer shall also pay the Company interest on the net payment due at a rate of 4% per annum above the base rate charged by Barclays Bank Plc from time to time calculated from the date of supply of the goods until the date when payment of the goods has been received by the Company.
- 4.4 The Buyer shall not be entitled to withhold payment of any amount payable to the Company by reason of any dispute or claim by the Buyer and in the case of any incorrect or short delivery shall remain liable to pay the full invoice price of all goods delivered or available for delivery.

5. Availability

All offers to supply materials are made in good faith in accordance with circumstances applying on the date of the quotation all orders are accepted by the Company subject to the materials or goods ordered being available at the quarry or wharf stated in the Company's quotation when required by the Buyer in the quantities needed. If for any reason whatsoever material is not available in sufficient quantities, or if the Company is obliged to close down or reduce output from the quarry or wharf from which it was intended that supplies should be made available, the Company does not undertake to deliver from any other quarry owned by the Company or from any other source nor shall it be liable for any loss sustained by the Buyer due to the Company's inability to supply materials as quoted.

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6. Delivery

- 6.1 Delivery shall be at the delivery address specified in the quotation or order acknowledgement or in the absence of any such address at the Company's depot.
- 6.2 Delivery dates mentioned in any quotation, order acknowledgement or elsewhere are approximate only and not of any contractual effect. The Company shall not have any liability for loss or damage (including loss of profit and consequential loss) to the Buyer in respect of any failure to deliver on any particular date or dates.
- 6.3 Delivery of goods may be totally or partially suspended by the Company during any period in which it is prevented or hindered from such delivery by reason of any circumstances beyond its control (including but not limited to the default of any person firm or company engaged by the customer) and such suspension shall not give rise to any claim by the Buyer against the Company nor shall it give the Buyer the right to terminate any agreement with the Company.
- 6.4 The Company's obligation is to deliver as near to site as a safe hard road permits. If a vehicle used for performing the Company's obligations to the Buyer delivers or collects goods or materials to or from a place on the public road the Buyer is to be solely responsible for any accident in consequence. The Buyer is to provide free of charge any labour necessary for unloading Goods when delivered and the Company's responsibility is limited to continuous tipping off the vehicle at one point of discharge. If the Company's vehicle is kept on site for an unreasonable time or has to return to the depot without completing delivery through lack of assistance an appropriate charge will be made.
- 6.5 If the Buyer does not accept delivery of the goods ordered for any reason then without prejudice of any other right or remedy available to the Company may:-
 - 6.5.1 Store the goods until actual delivery and charge additional costs relating to storage and delivery or
 - 6.5.2 Sell the goods and charge the Buyer for any additional costs incurred.

7. Warranty

- 7.1 The Company warrants that it has title to and the unencumbered right to sell the goods.
- 7.2 The Goods are natural marine and quarried materials and as such are liable to variation and the presence of other matter.
- 7.3 No representation or warranty is given as to the suitability of fitness of the Goods for any particular purpose and the Buyer shall satisfy itself that the Goods are fit for the purpose for which they will be used and shall be totally responsible therefore.
- 7.4 The Buyer is under a duty to:-
 - (i) Specify the quality and properties of the Goods required at the time the order is placed and in any event before delivery is due; and
 - (ii) Inspect the Goods on delivery or on collection as the case may be to ensure that the Goods are fit for their intended use.

8. Title and Risk

- 8.1 Risk in the Goods shall pass to the Buyer when the Goods are delivered to, or collected by the Buyer or the Buyer's agent.
- 8.2 Notwithstanding delivery and passing of the risk, the ownership of the Goods shall remain with the Company until the Company has received in cash or cleared funds payment in full of the price of the Goods.
- 8.3 Until the ownership of the Goods passes, the Buyer shall store the Goods in such a way that they are readily capable of being identified as the Company's property.
- 8.4 The Company shall have the right at any time to repossess the Goods to which title shall not have passed. The Buyer shall for that purpose give the Company access and the Company shall be entitled to enter any premises in the occupation of the Buyer or to which the Buyer has access and where the Goods or materials may then be situated.
- 8.5 In the event that the Company repossesses the Goods it shall be absolutely entitled to resell the same or use them in its business as it may think fit. If the Company resells the same it shall be absolutely entitled to the proceeds of re-sale.

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8.6 If the Company repossesses the Goods the Buyer's liability in respect of the purchase price shall be extinguished without prejudice to any claim which it might have in respect of transport storage of handling charges or in respect of damages of any kind.

9. Liability

- 9.1 Nothing in the clause 9 shall exclude or restrict the Company's liability for death or personal injury resulting from negligence.
- 9.2 Each of the sub-clauses in this clause 9 is to be treated as separate and independent and capable of severance.
- 9.3 The Company shall be under no liability for any defects or shortages which would be apparent on careful inspection. If the terms of this clause are not complied with, and, in any event the Company will be under no liability if a written complaint is not made to the Company within thirty days of delivery setting out details of the alleged defect or shortage.
- 9.4 The Company agrees that if any defect is discovered in the Goods the Company will in its absolute discretion either replace the goods or refund the purchase price.
- 9.5 The Buyer cannot claim the benefit of this clause 9 unless:-
- 9.5.1 the defect is discovered during the period of six months commencing with the date of dispatch.
 - 9.5.2 it informs the Company of the relevant defect within thirty working days of discovering it and
 - 9.5.3 it returns the goods to the Company at his own expense.
- 9.6 The Company shall not be liable for any consequential loss or indirect loss suffered by the Buyer or any customer of or purchaser from the Buyer as to which the Buyer shall hold the Company fully and effectually indemnified whether this loss arises from breach of a duty in contract or tort or in any other way (including loss arising from the company's negligence). Without prejudice to the generality of the foregoing consequential loss and indirect loss shall include loss of profits, loss of contracts, damage to property of the Buyer or anyone else, and personal injury to the Buyer or anyone else (except so far as such injury is attributable to the Company's negligence).
- 9.7 Without prejudice to any other provision in these conditions in any event the Company's total liability for any one claim or for default of the Company (whether arising from the Company's negligence or otherwise) shall not exceed the contract price of goods.
10. Subject as expressly provided in these conditions and except where the goods are sold to a person dealing as a Consumer (within the meaning of the Unfair Contract Terms Act, 1977) all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
11. Where the goods are sold under a consumer transaction (as defined by the Consumer Transaction (Restriction on Statements, Order 1976) the statutory rights of the Buyer are not affected by these conditions.