

**The Customer's attention is drawn in particular to the provisions of clause 5 (quality) and 9 (Limitation of Liability)**

- 1. Interpretation**  
**Definitions: Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business. **Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 11.4. **Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods and Services in accordance with these Conditions. **Customer:** the person or firm who purchases the Goods and Services from the Supplier. **Force Majeure Event:** means events outside the control of the Supplier. **Goods:** means the goods which the Supplier is to supply under this contract in accordance with these Conditions. **Specification:** any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Customer and the Supplier. **Consumer:** means an individual acting for purposes that are wholly or mainly outside that individual's trade, business, craft or profession in accordance with section 2(3) of the Consumer Rights Act 2015 and shall not include a Trader. **Trader:** means a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the Trader's name or on the Trader's behalf in accordance with section 2(2) of the Consumer Rights Act 2015 and shall not include a Consumer. **Supplier:** EastMix Concrete Limited (registered in England and Wales with company number **05291150**). **Services:** means mixing of the Goods by a volumetric truck at the Customer or Trader or Consumer site
- 2. Basis of contract**  
 2.1. These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.  
 2.2. The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.  
 2.3. Any samples, drawings, descriptive matter or advertising produced by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.  
 2.4. A quotation for the Goods and Services given by the Supplier shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.  
 2.5. The Supplier reserves the right to charge the Customer an additional charge where (i) the delivery of the Goods and Services is outside the Supplier's normal working hours; (ii) delivery of the Goods is required in part loads rather than full loads; (iii) for any reason, the delivery vehicle is unable to discharge its load within 30 minutes of arrival at the Customer's site and (iv) the Customer purchases quantities of Goods which are substantially different from any quantity specified in the quotation.  
 2.6. Any cancellation, rejection or delay of a delivery by any Customer dealing as a Consumer shall be made within 14 days of the date of delivery, and if made after 3pm on the working day before the delivery is due to be fulfilled shall be subject to a cancellation charge.
- 3. Goods and Services**  
 3.1. Each order for the Goods and Services by the Customer to the Supplier shall be deemed to be an offer by the Customer to purchase the Goods and Services subject to these Conditions and shall be accepted by the Supplier either issuing an acknowledgement of order or (if earlier) delivering the Goods and Services. Any quotation is given by the Supplier on the basis that no contract will come into existence until the Supplier accepts the order by either sending an acknowledgement of order to the Customer or (if earlier) delivering the Goods and Services.  
 3.2. To the extent that the Goods to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify the Supplier against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other professional costs and expenses) suffered or incurred by the Supplier in connection with any claim made against the Supplier for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the Supplier's use of the Specification. This clause 3.2 shall survive termination of the Contract.  
 3.3. The Supplier reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.
- 4. Delivery**  
 4.1. Delivery of the Goods and Services shall take place either on discharge into the Customer's vehicle at the Supplier's premises or on discharge from the Supplier's vehicle at the Customer's site or as otherwise agreed by the parties. Customer shall comply with the Supplier's site policies.  
 4.2. The Customer must provide safe and adequate access to the point of discharge of the Goods and Services, including adequate manoeuvring space for the delivery vehicle and ensuring the Supplier's employees and/or agents are safe on the Customer's site. Failure to comply shall entitle the Supplier to refuse to make delivery and to charge the Customer for any costs and/or losses incurred  
 4.3. The Customer shall indemnify the Supplier and its employees, drivers and agents against any damage or injury caused by the acts and/or omissions of the Customer, its employees, sub-contractors or agents while the delivery vehicle is present on or accessing the Customer's site or while the Customer is collecting the Goods from the Supplier's site.  
 4.4. On any delivery (howsoever effected), the Customer must (i) satisfy itself as to the condition of the Goods; (ii) allow unhindered delivery of the Goods and Services; (iii) sign the delivery note; (iv) sign any record produced by the Supplier or its drivers in respect of any delay after the arrival of the Goods at the Customer's site, including standing time, or other records.  
 4.5. Where the Customer fails to comply with any of the conditions contained in Condition 4.5, or the Supplier is unable to deliver the Goods on time because of the Customer's default then (i) the Goods will be deemed to have been delivered; and (ii) the Supplier may store the Goods until delivery whereupon the Customer will be liable for all related costs and expenses (including without limitation storage and insurance).  
 4.6. Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. The Supplier shall not be liable for any delay in delivery of the Goods and Services that is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods and Services. For any Customer who is a Consumer a reasonable time for delivery shall mean 30 calendar days (or any other period agreed by the parties from time to time), in accordance with the Consumer Rights Act 2015.  
 4.7. Subject to condition 4.8 the Supplier shall not be liable to any Customer acting as a Trader (whether in contract, tort, negligence, breach of statutory duty or otherwise) for any damages whether direct, indirect or consequential (including but not limited to any loss of profits) resulting from any delay in delivery or failure to deliver within an agreed time period or as a result of the Customer not providing sufficient notice to cancel or vary an order under condition 2.6.  
 4.8. If delivery is not effected within a reasonable time under condition 4.6, any Customer dealing as a Consumer shall be entitled to rely upon the statutory remedies set out in the Consumer Rights Act 2015.  
 4.9. If the Supplier fails to deliver the Goods and Services, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods and Services. The Supplier shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods and Services.  
 4.10. The Supplier may deliver the Goods and Services by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.  
 4.11. The Supplier warrants that the Services will be provided using reasonable care and skill. The Supplier reserves the right to amend the Services if necessary, to comply with any applicable law or regulatory requirement, or if the amendment will not materially affect the nature or quality of the Services and the Supplier shall notify the Customer in any such event.
- 5. Quality**  
 5.1. The Supplier warrants that on delivery the Goods shall:  
 (a) conform with the Specification; and  
 (b) be free from material defects in design, material and workmanship.  
 (c) However, the Supplier shall have no liability in respect of any minor deviation from the Specification if the Goods are still compliant with the applicable regulations or an independent expert has opined that the Goods are still suitable for uses approximate with such Specification.  
 5.2. Condition 5.1 shall not apply to any Customer dealing as a Consumer to the extent that the Customer has made known to the Supplier (whether expressly or by implication) any particular purpose for purchasing the Goods and Services.  
 5.3. Subject to clause 5.1, if:  
 (a) the Customer gives notice in writing to the Supplier within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;  
 (b) the Supplier is given a reasonable opportunity of examining such Goods; and  
 (c) the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier place of business at the Customer's cost, the Supplier shall, at its option, subject to clause 9, replace the defective Goods, or refund the price of the defective Goods in full. The Customer shall be under a strict duty to mitigate and minimise the adverse consequences, damage, loss, costs and expense arising from the supply of defective Goods.  
 (d) where a Customer is dealing as a Consumer, issue a price reduction for the Goods, if the above remedy cannot be offered to the Customer by the Supplier within a reasonable time  
 5.4. The Supplier shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:  
 (a) the Customer makes any further use of such Goods after giving notice in accordance with clause 5.1;  
 (b) the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;  
 (c) the defect arises as a result of the Supplier following any drawing, design or Specification supplied by the Customer;  
 (d) the Customer alters or replaces such Goods without the written consent of the Supplier;  
 (e) the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or  
 (f) the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.  
 (Except as provided in this clause 5, the Supplier shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1 (to the extent permitted under any statutory provisions) and shall be the Customer's sole and exclusive remedy.  
 5.5. The terms implied by the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract between the Customer and the Supplier, either the Contract or any other contract between the Customer and the Supplier.  
 5.6. Any sampling and testing shall be carried out in accordance with such British Standard or European Standard or specification as is accepted by the Supplier to be appropriate. Compliance with such standard or specification shall be discharged by the Supplier at the Customer's cost at the time of supply of the Goods and Services to the Customer and on the basis that the Supplier is the supplier and not the user of the Goods Services. No liability is accepted by the Supplier for surface finish.  
 5.7. The Supplier shall not be liable to the Customer for any losses or costs resulting from unsuitable application, wrongful handling or placing of the Goods and Services or inclement weather.  
 5.8. These Conditions shall apply to any replacement Goods and Services supplied by the Supplier.
- 6. Title and risk**  
 6.1. The risk in the Goods shall pass to the Customer on completion of delivery.  
 6.2. Title to the Goods shall not pass to the Customer until the Supplier receives payment in full (in cash or cleared funds) for the Goods and any other goods that the Supplier has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.  
 6.3. Until title to the Goods has passed to the Customer, the Supplier shall be entitled to enter the Customer's site to recover the Goods and the Customer shall indemnify the Supplier against all and any cost incurred in doing so.  
 6.4. If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, then, without limiting any other right or remedy the Supplier may have:  
 (a) the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and  
 (b) the Supplier may at any time:  
 (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and  
 (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.
- 7. Price and payment**  
 7.1. The price of the Goods and Services shall be the price stated in the quotation, or, if no price is quoted, the price set out in the Supplier's applicable prices in force as at the date of delivery.  
 7.2. The Supplier may, by giving notice to the Customer at any time before delivery, increase the price of the Goods and Services to reflect any increase in the cost of the Goods and Services that is due to:  
 (a) any factor beyond the Supplier's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);  
 (b) any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or  
 (c) any delay caused by any instructions of the Customer or failure of the Customer to give the Supplier adequate or accurate information or instructions.  
 7.3. The price of the Goods and Services excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice  
 7.4. The Supplier may invoice the Customer for the Goods and Services on or at any time after the completion of delivery.  
 7.5. The Customer shall pay all the invoice in full and in cleared funds within 30 Business Days of the date of the invoice unless otherwise agreed between the parties. Payment shall be made to the bank account nominated in writing by the Supplier. Time for payment is of the essence.  
 7.6. If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then the Customer shall pay interest on the overdue amount at the Late Payment of Commercial Debts (Interest) Act 1998 (or any re-enactment thereof) rate. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.  
 7.7. The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by the Supplier to the Customer.
- 8. Termination**  
 8.1. Without limiting its other rights or remedies, the Supplier may terminate this Contract with immediate effect by giving written notice to the Customer if:  
 (a) the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 Business Days of that party being notified in writing to do so;  
 (b) the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or being an individual, is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case within the meaning of section 268 of the Insolvency Act 1986;  
 (c) the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or  
 (d) the Customer's financial position deteriorates to such an extent that in the Supplier's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.  
 8.2. Without limiting its other rights or remedies, the Supplier may suspend provision of the Goods and Services under the Contract or any other contract between the Customer and the Supplier if the Customer becomes subject to any of the events listed in clause 8.1(a) to clause 8.1(d), or the Supplier reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.  
 8.3. Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.  
 8.4. On termination of the Contract for any reason the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest.  
 8.5. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.  
 8.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.
- 9. Limitation of liability**  
 9.1. If the Customer deals as a Consumer, any provision of these Conditions which is not enforceable under the Consumer Rights Act 2015 or the Unfair Contract Terms Act 1977 shall not apply. The statutory rights of a Customer dealing as a Consumer are not affected by these Conditions.  
 9.2. Nothing in these Conditions shall limit or exclude the Supplier's liability for:  
 (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);  
 (b) fraud or fraudulent misrepresentation;  
 (c) breach of the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);  
 (d) defective products under the Consumer Protection Act 1987; or  
 (e) any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.  
 9.3. Subject to clause 9.2:  
 (a) the Supplier shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and  
 (b) the maximum aggregate liability of the Supplier to the Customer arising out of Condition 5.1 or in connection with the supply of the Goods and Services or their use by the Customer (including any refund made pursuant to Condition 5.3 above and/or reimbursement made pursuant to Condition 5.3 shall be limited to three times the price of the defective Goods, save that in the event that such sum is less than the cost of physical removal provided for in Condition 5.3 above, the Supplier shall be liable for the additional cost of physical removal of the defective Goods up to a maximum of a further sum of £50,000 in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise.  
 (c) The Suppliers maximum aggregate liability for all other matters in relation to this Contract (but excluding in respect of defective Goods), shall be limited to £50,000.
- 9.4. The Customer acknowledges it bears the risk of all additional expenses, costs, losses, damages and liabilities which are incurred. The Customer acknowledges it can obtain insurance to cover such potential expenses, costs, losses, damages and liabilities. Should the Customer wish the Supplier to have a higher limit of liability this must be raised with the Supplier at the earliest opportunity and expressly agreed by the Supplier in writing.  
 9.5. The Supplier will use reasonable endeavours to inform the Customer if the Supplier is prevented or hindered from manufacturing, supplying or delivering the Goods and Services due to breakdown of plant, non-availability of material, labour disputes, fire, accident or inclement weather, transport difficulties, delays or any circumstances outside the Supplier's control but shall have no liability to the Customer for failure to deliver in such circumstances.  
 9.6. The Customer irrevocably and unconditionally agrees to indemnify the Supplier, its employees, sub-contractors and agents in full and on demand and keep them so indemnified against all claims, demands, actions, proceedings and all damages, losses, costs and expenses (including without limitation legal and other professional advisers' fees and all consequential and economic loss (including without limitation loss of profit, future revenue, reputation or goodwill and anticipated savings)) whether direct or indirect made against or incurred or suffered by any of them directly or indirectly and whether wholly or in part resulting from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the Contract:  
 (a) the manufacture and sale of the Goods by the Supplier in accordance with the Customer's specifications or other data or information furnished, or instructions given by the Customer; and/or  
 (b) any breach by the Customer of its obligations under the Contract; and/or  
 (c) any breach by the Supplier of its obligations under the Contract or any other act or omission (including, without limitation, negligence) of the Supplier, its employees and agents in excess of the liability of the Supplier under the Contract
- 10. Force Majeure**  
 Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract is such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 3 months, the party not affected may terminate this Contract by giving 30 days written notice to the affected party
- 11. General**  
 11.1. This Contract may not be assigned by the Customer but is fully assignable by the Supplier. A person who is not a party to this Contract shall not have any rights to enforce its terms.  
 11.2. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).  
 11.3. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.  
 11.4. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.  
 11.5. Any notice to be given by either party to the other shall be in writing addressed to the party's registered office or principal place of business or such other address as may be notified to the other party from time to time  
 11.6. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.