



## MCFADYENS CONTRACTORS (CAMPBELTOWN) LIMITED STANDARD TERMS AND CONDITIONS FOR SUPPLY OF MATERIALS



In these terms and conditions "the Company" shall mean McFadyens Contractors (Campbeltown) Limited, or such of its subsidiary or associated companies as may be supplying materials or goods subject to these terms and conditions and "the Customer" shall mean the person or other legal entity being or to be supplied with such materials or goods.

### **1. Terms of Supply**

(a) It is an essential term of the Company delivering materials or allowing collection of materials that the Company's standard terms and conditions, as set out herein, shall apply to all commercial transactions undertaken by the Company. Accordingly, the Company's standard terms and conditions, as set out herein, are incorporated into any contract arising from any quotation given by or on behalf of the Company, including quotations not given in writing. The Company shall not be bound by any term or condition, other than those contained within these standard terms and conditions, unless the Company has agreed in writing to be so bound.

(b) The Customer shall not assign the contract without the written consent of an Officer of the Company

### **2. Price**

(a) The price(s) quoted by the Company are the Company's price(s) current at the date of quotation based upon the cost of materials, labour, equipment and operations at the time of the Company's last price review and excluding VAT. All contracts are subject to the conditions that deliveries shall be made at the Company's price(s) ruling at the date of dispatch and in the event of variation in any such costs the Company shall be entitled, at its absolute discretion, to increase prices accordingly.

(b) Where the Company gives prices in respect of specific quantities, in the event of the amount delivered being less than the specified quantity, the Company shall be entitled to increase its price in light of the reduced quantities.

(c) The Company's quotation is based upon the tax contribution or levies in force at the date of the Company's quotation. In the event of any increase in the Company's tax or levies burden in connection with the Company's quotation prior to delivery to the Customer the Company shall be entitled to recover the increased burden from the Customer.

(d) The Company's quotation includes for delivery or collection during normal working hours. Any deliveries or collections made on public holidays, Sundays or Saturday afternoons or otherwise outside normal working hours shall be subject to a price increase unless the Company's quotation expressly states for delivery or collection outwith normal working hours at no extra charge. It shall be the Customer's obligation to establish the normal working hours of all the Company's facilities likely to affect delivery or collection.

(e) The Company shall be entitled to charge waiting time where the Company's appointed delivery vehicle has been held on site for longer than one-quarter hour when delivering dry materials, longer than one half hour when delivering coated materials or three quarters of an hour in respect of ready mix concrete.

(f) The Company's quotation is based upon the Customer making satisfactory arrangements for payment prior to the Customer ordering materials or goods from the Company. Notwithstanding any other term or condition contained herein or whether or not any materials or goods have been supplied by the Company, the Company shall have no obligation towards the Customer until satisfactory arrangements for payment are put in place by the Customer.

### **3. Acceptance**

The Company's quotation shall remain open for acceptance for one calendar month from the date of the quotation, thereafter it shall be incapable of acceptance save at the Company's sole discretion which shall at all times be confirmed in writing. Any written acceptance or formal order will be acknowledged in writing by the Company affirming the terms and conditions of the contract. In the event that materials are delivered or collected prior to a written agreement being in place, the Company's terms and conditions shall apply and any other terms or conditions shall be of no effect.

### **4. Delivery**

The Company's quotation is based upon safe and easy access for delivery and collection of goods using the Company's usual road vehicles. In the event that, in the Company's opinion, such access is not available or that any road or ground over which the Company's vehicles would have to travel is unsafe / unsuitable, the Company shall have the right to effect delivery or collection at the location determined by the Company as being the closest to the Customer's requirements. Should the Company incur extra costs in making a delivery to or collection from an unsatisfactory access or over an unsuitable road or ground, the Company shall be entitled to recover the extra costs from the Customer. The Company shall have no obligation to make further deliveries or collections until the Customer has met the extra costs.

### **5. Delays**

Unless expressly agreed otherwise, all delivery times given by the Company shall be considered approximate and shall be flexible and may be subject to change without notice. The Company shall not be responsible for any consequences arising out of its failure to deliver or, where the Customer will collect materials, for its delay in supplying any materials or goods. The Company's responsibility following any missed delivery or collection shall be limited to effecting delivery or collection at the earliest opportunity after the missed delivery or collection.

### **6. Quality of Materials**

(a) If any materials or goods supplied by the Company are proved to be not in accordance with the quality or specification noted in the Company's quotation, the Company shall supply materials or goods to replace the materials or goods if, by not conforming with the quality or specification, such materials are proved to be defective and unsuitable for the purpose to which they are being put. The Company shall only be liable to supply replacement materials or goods if the Customer has notified the Company in writing of a complaint upon receipt or no later than 48 hours after having received the materials or goods.

(b) It is the Customer's responsibility to ensure that the materials and goods meet the Customer's requirements. In giving a quotation for materials or goods, the Company accepts no responsibility whatsoever that the materials referred to within the Company's quotation shall be suitable for the purpose the Customer intends.

(c) The Company shall have no liability to the Customer or other third parties in respect of any direct, consequential or indirect loss or damage howsoever arising and howsoever caused in respect of the Company's materials or goods.

(d) The Company's liability to the Customer or others in respect of the Company's materials or goods shall, in any circumstance, be limited to supplying replacement materials or goods. The Customer shall have no other right in contract, delict or otherwise and all and any conditions, terms and representations (whether express, implied, statutory or otherwise) are by agreement excluded.

### **7. Payment**

Unless otherwise expressly stated in the Company's quotation, the Company shall be entitled to payment in accordance with the Company's standard terms and conditions as set out herein. The Company shall be entitled to stage or part payments. The Company shall render invoices to the Customer at such intervals as the Company shall consider appropriate. The Company shall be entitled to receive payment of the full invoice amount not later than 30 days from the invoice date shown. The terms of the Late Payment of Commercial Debts (Interest) Act 1998 are deemed incorporated into the Company's standard terms and conditions. Although compensation and interest shall not be payable unless payment is received from the Customer beyond 30 days from date of invoice, for the purpose of calculating the amount of interest due to the Company on any payment made late or not at all, the payment shall be considered due (or overdue) as of the date shown on the invoice and the period of credit shall not be considered in calculating the amount of interest due from the Customer.

The Company's right to interest in respect of late or non-payment shall be in addition to the Company's right to suspend further performance of its obligations under the contract without notice, upon any invoice being unpaid upon the expiration of the agreed 30 days from date of invoice. The Company shall be under no obligation to resume performance of its obligations until all invoices rendered to the Customer have been paid in full and the Company has received satisfactory assurances that future invoices will be paid on time.

Ownership of the Company's materials or goods shall not pass to the Customer until the Company has received payment in full for all materials supplied to the Customer by the Company. The Customer shall assume the risk and responsibility for damage to the Company's materials or goods upon delivery.

### **8. Law**

The Contract shall be governed by and interpreted in accordance with Scottish Law.