

Naylor General Conditions of Sale December 2020

### 1. Interpretation

1.1 The definitions and rules of interpretation in this condition apply unless the context requires otherwise:

“**Company**” means **Naylor Drainage Limited** or **Naylor Concrete Products Limited** as appropriate.

“**Customer**” means the company, firm, body, or person who is purchasing the Goods.

“**Contract**” means any contract between the Company and the Customer for the sale and purchase of Goods and/or Services, which shall incorporate these conditions.

“**Goods**” means the subject matter of the contract and one or a number of items whether or not identical or similar.

“**Price**” means the charges due to the Company from the Customer under a Contract in relation to the sale of the Goods and/or the supply of the Services.

“**Services**” means any services agreed in the Contract to be supplied to the Customer by the Company.

“**Delivery Point**” means the place where delivery of the Goods is to take place.

“**Company’s IPR**” means all trademarks, trade names, logos, designs, symbols, emblems, slogans, service marks, copyrights, patents, models, drawings, know-how, information and any other distinguishing material of the Company, whether or not suitable for registration or trademark application.

### 2. Application of Terms

2.1 The Company reserves the right to amend these General Conditions of Sale without prior notice. In any future dealings with the Company, the Customer will be bound by any amended terms upon receipt of a copy of the same.

2.2 No terms of conditions endorsed on, delivered with or contained in the Customers purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all the Company's sales and supply of any services and any variation to these conditions and any representations about the Goods and/or Services shall have no effect unless expressly agreed in writing and signed by a duly authorised person on behalf of the Company. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract. Nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.

2.4 Each order or acceptance of a quotation for Goods and/or Services by the Customer from the Company shall be deemed to be an offer by the Customer to buy Goods and/or Services subject to these conditions.

2.5 The Customer shall ensure that the terms of its order and any applicable specification are complete and accurate.

**3. Terms of Payment**

- 3.1** Unless the Company has agreed otherwise, all invoices must be paid within 30 days EOM. In the event of late payment, any cash discount previously agreed shall be withdrawn.
- 3.2** Notwithstanding these standard terms, the Company reserves the right in any case (without any reason being given) to require a Customer to make payment in full for any order prior to delivery where these or other terms have been agreed between Company and the Customer. Except in the case of the manifest error, all invoices raised by the Company shall be deemed to be correct unless the Customer notifies the Company in writing of any objection within 72 hours of receipt by the Customer of the Company's invoice.
- 3.3** If any payment is not made strictly in accordance with any credit account or other terms agreed by the Company any other invoices which may be unpaid (irrespective as to whether or not they have fallen due in accordance with the said terms) shall become immediately payable in full.
- 3.4** Should any payment not be made strictly in accordance with any credit account or other terms agreed by the Company, the Company reserves the right to cancel any other order or contract (or any part or parts thereof). Any claims of the Company against the Customer in respect of any cancelled orders or contracts or otherwise shall not be prejudiced in any way.
- 3.5** The Company may refuse to accept any order from or deliver any Goods to the Customer where the invoice for those Goods would result in the Customer owing the Company a sum greater than any limit of credit agreed by the Company.
- 3.6** The level of credit provided by the Company to any Customer is entirely within the discretion of the Company which may without prior notice to the Customer reduce or withdraw the level of credit at any time.
- 3.7** The Company's invoices are calculated by computer and net invoice prices are calculated to two decimal places. Interest shall be payable on any account which is not paid in accordance with the terms agreed between the Company and the Customer. Interest shall be calculated from the date of the invoice and be at 4% above the base rate for the time being of the Bank of Scotland Bank PLC.

**4. Delivery of the Goods**

- 4.1** Unless the contract otherwise stipulates, the risk in the Goods passes to the Customer when the Goods are collected from the Company's works or delivered to the Customer's premises or site and the Company accepts no responsibility for any damage thereafter.
- 4.2** Whilst every effort is made to meet collections, delivery arrangements or performance dates these are approximate only and unless otherwise expressly stated, time is not of the essence for delivery or performance and the Company will not be liable in any circumstances for the consequences of any delay in delivery or performance or failure to deliver or perform.
- 4.3** No delay shall entitle the Customer to either refuse to take delivery of or make payment for any order or part of any order or repudiate any contract with the Company.

- 4.4** Where delivery is made by the Company to the Customer, the Company will only consider a claim by the Customer in respect of loss or damage in transit if the Customer:
- 4.4.1** Gives written notice to the Company within 72 hours of non-delivery or within 72 hours of delivery of the Goods in any other case.
  - 4.4.2** Complies in all respects with the freight carrier's conditions of carriage for notifying claims for loss or damage in transit where the Goods are transported by an independent freight carrier.
  - 4.4.3** Offers to deliver Goods for delivery by motor lorry to a good hard road with reasonable access nearest to the site where the Goods are to be used or stored on the mainland of Britain.
- 4.5** Without prejudice to any other rights of the Company, if for any reason the Customer is unable to accept delivery of the Goods when the Goods are due and ready for delivery, the Company may arrange storage of the Goods at the Customer's risk and the Customer shall be liable to the Company for the reasonable costs (including insurance) of such storage.
- 4.6** On the arrival of the Company's delivery vehicle at the delivery address, the Customer shall be responsible for the unloading of the Goods which they will do promptly. The Customer shall be responsible for any damage during unloading and for all costs occasioned by the undue delay in commencing or carrying out this work or by the failure to unload.
- 4.7** The Company's fold fork unloading service may be requested at the time that the original order is placed. Although the Company endeavours to fulfil Customer requests, no guarantee can be given that this service will be available for any delivery. When products are unloaded by the Company's fold fork, firm ground and sufficient space for manoeuvring are required. Where these conditions are met, the Company will normally take responsibility for the safe unloading of such Goods. However, the driver is entitled to refuse to drive over ground which they consider unsuitable.
- 4.8** The Customer will be responsible for all loss or damage to the Goods or the vehicle or equipment of the Company resulting from the nature of the ground where that ground is or proves to be unsafe or suspect, whether the Customer was aware of the condition of the ground or not.
- 4.9** Should any injury be caused to any employee of the Company whilst unloading the Goods, the Customer agrees to indemnify the Company in respect of all such claims that may be made against the Company.

**5. Returns**

- 5.1** Without prejudice to Clause 5 the Company will not be responsible to accept the return of Goods duly supplied in pursuance of the Customer's order. In any case, where the Company agrees to accept the return of Goods so supplied, this will in the absence of agreement to the contrary be subject to the Company's normal haulage and restocking charges at the time.

**6. Right of Rejection**

- 6.1** Notwithstanding clause 4 if, for any reason the Customer purports to accept only a proportion of the Goods supplied, they shall be deemed to have accepted the whole of the Goods.
- 6.2** The Customer will thereafter not be entitled to reject the remainder of the Goods.

**7. Performance of Service**

- 7.1** The Company shall use reasonable endeavours to perform the Services set out in the Company's order in all material respects.
- 7.2** The Company shall use reasonable endeavours to meet any performance dates specified in the contract, but time of performance shall not be of the essence.
- 7.3** The Company warrants that the service shall be performed with reasonable care and skill by suitably skilled, competent, and trained personnel.
- 7.4** The Customer shall, provide the Company, its employees, agents, consultants, subcontractors, with access to the Customers premises, office accommodation and other facilities as reasonably required by the Company in order to perform the Services.
- 7.5** Provide the Company with such information and materials as the Company may reasonably require in order to supply the Services and ensure that such information is accurate in all material respects.
- 7.6** The Customer shall co-operate with the Company in all matters relating to the Services.

**8. Retention of Title**

- 8.1** Risk in the Goods passes to the Customer as from delivery.
- 8.2** Title in the Goods shall remain with the Company and shall not pass to the Customer until:
- 8.2.1** The amount due under the invoice for them including any interest has been paid in full.
- 8.2.2** No other sums whatever shall be due from the Customer to the Company
- 8.3** Until title in the Goods passes to the Customer, the Customer shall hold the Goods on a fiduciary basis as bailee for the Company. The Customer shall store the Goods (at no cost to the Company) separately from all other Goods and mark the Goods, so that they are clearly identified as the property of the Company. The Customer agrees not to incorporate the Goods into any structure or building until they are paid for.
- 8.4** The Customer shall insure the Goods for the full price against all risks to the reasonable satisfaction of the Company and the Customer will produce a copy of the policy of insurance whenever requested by the Company until title in the Goods passes to the Customer.
- 8.5** The Company may at any time before title passes repossess and dismantle and use or sell all or any of the Goods and by doing so terminate the Customer's right to use, sell or otherwise deal in them
- 8.6** For that purpose or determining what if any Goods are held by the Customer and inspecting them, enter any premises owned occupied or controlled by the Customer.
- 8.7** Notwithstanding that the Goods remain the property of the Company, the Customer may sell the Goods in the ordinary course of business at full market value for the account of the Company.
- 8.8** Any such sale will be a sale of the Company's property by the Customer on the Customers own behalf and the Customer will deal as principal when making such sales.

- 8.9** Until property in the Goods passes from the Company to the Customer the proceeds of sale relating to the Goods shall be held in trust for the Company and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the money of the Company. The Company shall remain legally and beneficially entitled to the proceeds of sale.
- 8.10** To enable the company to exercise its rights to Goods which have not been paid for the Customer hereby grants a right of entry to and rights of way and/or access to all parts of any property owned or occupied by the Customer upon which the Goods are situated.
- 8.11** The Company may maintain an action for the price of the Goods, plus VAT notwithstanding that title in them has not passed to the Customer.
- 8.12** If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid or unenforceable then such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

**9. Price**

- 9.1** All quotations, tenders and price lists are subject to withdrawal at any time by the Company without prior notice.
- 9.2** Any acceptance of any quotation, tender or price list will not affect a binding contract unless and until confirmed by the Company in writing or by delivery of the goods whichever is the earlier and the following conditions shall be deemed to be incorporated in the contract.
- 9.3** The contract will be subject to these conditions. Any terms and conditions appearing in or referred to in any order of the Customer or otherwise stipulated by the Customer shall not be binding on the Company unless expressly agreed by the Company in writing.
- 9.4** Any variation by us or the Customer of the contract must be confirmed in writing by the Company prior to the despatch of the Goods from the Company's works.
- 9.5** Notwithstanding any offer, quotation, tender or price list, orders are accepted only subject to the condition that the Goods will be invoiced at the prices ruling at the date of their despatch from the Company's works.
- 9.6** The price stated in the contract is based on the cost to the Company at the date of acceptance of the order or quotation and may be increased at the request of the Company if there has been an increase in the cost to the Company at the date of despatch. Such increase will be limited to the increase in cost to the Company and will be payable by the Customer.
- 9.7** The contract price and all prices shown in quotations, tenders and price lists are "ex works" prices and exclude value added tax, and any other tax or duty which will be paid by the Customer to the Company at the rate ruling on the date that Goods are despatched from the Company's works.

**10. Description of Goods and Services**

- 10.1** Unless otherwise stated, sizes and weights on contracts, price lists quotations, tenders or literature are approximate only, as variations in manufacture and materials cannot be avoided.

**10.2** The Customer agrees that the Company shall be entitled to assume that all drawings, descriptions, specifications and other information supplied by the Customer to the Company whether verbal or written are in all respects complete, accurate and entirely suitable for the Customer's requirements.

**10.3** The Customer shall indemnify the Company in respect of all costs which the Company incurs through no fault of the Company as a result of any change in the requirements after the contract.

## **11. Quality of Goods**

**11.1** It shall be the responsibility of the Customer to:

**11.1.1** Carefully inspect and check the Goods or work which the Company supplies as soon as practicable after receipt thereof to ensure that they are in accordance with the order placed by the Customer. This should preferably be done before signature of the Company's delivery note or failing that within 72 hours of receipt of the Goods or execution of the said work after which period the Customer shall be deemed to have accepted the Goods or work. The Customer agrees that such a period is reasonable (the "Requisite Time"). The Customer's rights of acceptance and/or rejection of the Goods shall be construed in all respects in accordance with this clause and any other rights of the Customer in respect of acceptance and/or rejection whether statutory or otherwise are hereby excluded.

**11.1.2** Take all steps which are reasonably practicable to mitigate any loss in respect of any Goods which are defective and the Company shall not be responsible for any loss which would have been avoided if such steps had been taken.

**11.2** The Company warrants that it will (at the Company's choice) repair or replace any Goods which are accepted by the Company as being defective or not in accordance with the contract within a period of three months from the date of despatch of such Goods from the company's works ("The Warranty Period") with the Company to be the sole arbiter as to whether the Goods are defective, The Company will require a reasonable period of time to repair or replace the Goods. This warranty does not extend to any Goods not manufactured by the Company or to second-hand or reconditioned Goods.

**11.3** Certain bought in products in the Company's price list are not manufactured in the Company's factories and consequently are not covered by the Company's BS registration. These products are subject to the Company's full documented purchase and control procedures which are monitored by the BSI.

**11.4** Where seconds quality Goods are offered, these are made by the same processes as best quality Goods but during manufacture have become faulty. Orders for seconds quality Goods will not be accepted subject to a condition that such Goods are subject to any specification or approval by any person after delivery.

## **12. Limitation of Liability**

**12.1** Unless otherwise expressly agreed, the Company shall have no responsibility for the performance, suitability or durability of any Goods or any materials or workmanship comprised therein to the extent the same is manufactured in accordance with the Customer's designs, drawings, standards or specifications.

**12.2** Offers to supply Goods from stock on or within a given time or period are made subject to the availability of the Goods at a given time.

**12.3** The Company will not be liable in any circumstances (whether the fault be that of the Company or not) for the consequences of any delay in delivery or performance or failure to deliver or perform for whatever reason.

**12.3.1** Unless non-standard lengths of pipe are specifically required, standard lengths will normally be supplied. The Company reserves the right to supply lengths of pipe at the Company's convenience but in any such case, these will be supplied at the same rate per metre run as standard lengths.

**12.3.2** Tenders shall remain open for acceptance for a period of 30 days from the date of the tender unless in the tender some other period is specified or accepted.

**13. Assignment and Subcontracting**

**13.1** The Company may assign or subcontract the Contract or any part of it to any person, firm, or company at the Company's sole discretion.

**13.2** The Customer shall not be entitled to assign the Contract or any part of it without prior written consent of the Company.

**14. EDI Agreement**

**14.1** The Company has adopted the Standard Electronic Data Interchange Agreement of the EDI Association. Where relevant in dealing with the Customer the Company will observe the terms of that Agreement and the Customer will be obliged also to observe its terms in dealings with the Company.

**14.2** A copy of the Agreement is available on application to the Company or the EDI Association.

**15. Intellectual Property Rights**

**15.1** All intellectual property rights in respect of the Goods and/or Services shall remain with or be vested in the Company, and the Customer shall not obtain any right in the Company's IPR. The Company grants to the Customer a limited, revocable, non-exclusive, non-transferable licence to use the Company's IPR solely for the purposes of the use or resale of the Goods, and the Company's IPR may not be used, copied or made available to third parties by the Customer for any other purpose without the Company's express prior written consent.

**15.2** The Customer shall indemnify the Company against all third-party claims on account of any (alleged) infringement of an industrial or intellectual property right relating to the manufacture, supply or use of Goods or performance of Services that have been produced or carried out in accordance with the Customer's specification or materials, drawings, models, instructions, etc., made available by the Customer. In such event, the Company shall be entitled to suspend the execution of the Contract, or to immediately terminate the Contract, without the Customer being entitled to claim any compensation on that account.

**15.3** The Customer shall inform the Company immediately and in full of any actual, expected, or envisaged infringement of the Company's IPR that comes to the Customer's attention.

**15.4** To the best of the Company's knowledge, the Goods and Services do not infringe the intellectual property rights of third parties. However, the Company shall not be liable for any loss, damage, costs, claims, expenses (in each case whether direct or indirect, and even if foreseeable) if the Goods or Services do infringe the intellectual property rights of third parties.

**16. Ethics**

- 16.1** Nothing in these conditions or any Contract is intended, and nothing herein should be interpreted or construed, to induce or require either party to act in any manner which is inconsistent with, penalized or prohibited under any applicable laws, regulations or decrees applicable to such party which relate to foreign trade control, export controls, sanctions, embargos or international boycotts of any type.
- 16.2** The Customer shall not export, re-export, re-sell or transfer any Goods to any individual, entity or location subject to UN, US, UK or EU sanctions, embargos or other trade restrictions and shall otherwise comply in all respects with all such sanctions, embargos and trade restrictions.
- 16.3** Without prejudice to the Company's rights under the Contract or pursuant to law, the Company shall have the right to terminate, without any obligation to send any notice of default, the Contract if the Company reasonably that the Customer is involved in any fraud, corruption, dishonesty or conduct tending to bring them or the Company into disrepute.

**17. Confidentiality**

- 17.1** Except with the consent of the disclosing party or as required by law, a court order, the rules of any relevant stock exchange or by any relevant regulatory or government authority or to the extent that information has come into the public domain through no fault of the receiving party, each party shall treat as strictly confidential all commercial and technical information relating to the other party received or obtained as a result of entering into or performing the Contract (including but not limited to information which relates to the provisions or subject matter of the Contract) and shall not disclose such information to any third party.

**18. Communications**

- 18.1** Use the telephone and emails listed on the Naylor Drainage website for orders and enquiries. Identify your individual Naylor contacts internally.
- 18.2** Communications addressed to the Company shall be marked for the attention of Customer Services.
- 18.3** Place orders in carriage paid load sizes by email and include the following information: Clear product descriptions including Naylor item code. Indicate prices for each product and show a net order value and give your name and contact details.
- 18.4** Clearly indicate whether pipe quantity order is per metre or pipe length.
- 18.5** Indicate Customer purchase order and give full Delivery address along with post code, deliveries to site must also include site contact.
- 18.6** Indicate any special delivery instruction i.e. Site access, restrictions etc. Date of delivery required if necessary, orders will be given a delivery by date.

**19. General**

- 19.1** Neither party is liable for any breach of the contract caused by matters beyond its reasonable control including acts of God, fire, lightning, explosion, war, disorder, flood, industrial disputes, weather of exceptional severity, unavoidable hardware or software failures, or acts of local or central government or other authorities.
- 19.2** Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.



- 19.3** If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 19.4** Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver or any of its rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer shall not be deemed a waiver of any subsequent breach or default and shall in no way effect the other terms of the Contract.
- 19.5** No term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

**20. Indemnities**

- 20.1** The Company shall not be liable to the Customer for pure economic loss, loss of profits, loss of contracts, loss of business, depletion of goodwill and similar loss in each case whether direct, indirect or consequential, and even if foreseeable by the Company or any claims for consequential compensation whatsoever (however caused) which arise out of or in connection with the Contract.
- 20.2** The Customer's remedies in respect of any claim under the forgoing express warranty or any claim under any condition or warranty implied by law or any other claim in respect of the Goods or any workmanship in relation thereto (whether or not due to or caused by the negligence of the Company) shall be limited to the replacement or repair of the Goods at the election of the Company. Any condition or warranty implied by law shall cease to apply as from expiry of the Warranty Period.
- 20.3** The Company's liability in respect of any loss whether direct or consequential for any reason whether under the warranty or any condition or warranty implied by law shall in all cases be limited in value to the total of the Company's invoice in respect of the said Goods or work.
- 20.4** The Company will not be liable for any claim in respect of any Goods either manufactured or supplied by the Company after such Goods have been laid, erected, subjected to any process or processes or otherwise used by the Customer or others beyond the Company's control in a manner contrary to the Company's recommendation or to good practice.
- 20.5** Except as provided for in clauses in these conditions, the Company shall not in any circumstances (whether caused by the negligence of the Company or not) be liable for any damages, compensation, costs, expenses, losses or other liabilities whether direct or consequential and any other remedy which would otherwise be available in law is hereby excluded except to the extent that such exclusion is prohibited by any rule of law.
- 20.6** No liability will be accepted in respect of any error or omission in any layout drawing, plan, schedule, or recommendation which the Company may submit to the use of any Goods which the Company may supply.

**21. Health and Safety**

- 21.1** The Customer agrees to provide sufficient instruction and equipment to those who use the Goods to ensure their safety. The Customer agrees to indemnify the Company for loss or damage caused by any breach of this clause.

**21.2** The Customer agrees to pay due regard to any information or any revised information whenever supplied by the Company or where the Goods are supplied direct from the manufacturer, supplied by the manufacturer (and it is deemed to have been given adequate information and to have read and understood it) relating to the use for which the Goods are designed or have been tested or concerning the conditions necessary to ensure that they will be safe and without risk to health at all times when they are being set, used, cleaned or maintained by any person at work or when they are dismantled or disposed of.

**21.3** The Customer undertakes to take such steps as may be specified by the above information to ensure that as far as reasonably practicable, the Goods will always be safe and without risk to health as mentioned above.

**21.4** For these purposes, the Customer is deemed to have been given a reasonable opportunity to test and examine the Goods before delivery.

**22. GDPR - General Data Protection Regulation**

**22.1** The policy sets out the different areas where user privacy is concerned and outlines the obligations & requirements of the Customers. Furthermore, the way the Company processes, stores and protects user data and information will also be detailed within this policy.

**22.2** Privacy/Legal the Company takes every effort to ensure that the information published is accurate. However, the Company cannot accept any liability for the accuracy or content. Visitors who rely on this information do so at their own risk.

**22.3** The Company are committed to maintaining the security of your data as a priority and is committed to respecting your privacy rights. In particular, the Company will not sell, rent, or trade email lists with other companies and businesses.

**22.4** In this Privacy Policy, the Company provided lots of detailed information on when and why your personal information will be collected, how it is use, the limited conditions under which the Company may disclose it to others and how the Company keeps it secure.

**22.5** The Company will not retain Customers data for longer than necessary for the purposes set out in this Policy. Different retention periods apply for different types of data, however the longest the Company will normally hold any personal data is 6 years.

**22.6** The Company is registered in England and Wales. Company Registration Number 342010, VAT Registration Number 183 8089 30. The registered head office is Naylor House, Valley Road, Wombwell, Barnsley, South Yorkshire S73 0BS.

**23. Jurisdiction**

**23.1** The construction, formation, existence, performance, validity and all other aspects arising out of or in connection with the Contract shall be governed by the laws of England and Wales, unless expressly agreed to the contrary and the parties hereby submit to the exclusive jurisdiction to the Courts of England and Wales.