

**1. INTERPRETATION**

- Definitions.** In these Conditions, the following definitions apply:
- Business Day:** a day other than Saturday, Sunday or public holiday in England when banks in London are open for business.
- Conditions:** these terms and conditions as amended from time to time by Holcim.
- Contract:** the contract between Holcim and the Supplier for the supply of Waste in accordance with these Conditions.
- Delivery Location:** the location as set out in the Quotation.
- Environment:** the natural and man-made environment including all or any of the following media: air (including air within buildings and other natural or man-made structures above or below the ground), water, land, and any ecological systems and living organisms (including man) supported by those media.
- Environmental Law:** all applicable laws, statutes, regulations, subordinate legislation, bye-laws, common law and other national, international, federal, European Union, state and local laws, judgments, decisions and injunctions of any court or tribunal, and codes of practice and guidance notes to the extent that they relate to or apply to the Environment.
- Holcim:** Holcim UK Limited.
- Permit:** any permit, licence, consent, certificate, registration, notification or other authorisation secured by Holcim under any Environmental Law relating to Waste.
- Pre-Acceptance Documentation:** the documentation issued by the Supplier to Holcim specifying the Waste that it wishes to supply to Holcim.
- Quotation:** Holcim's quotation for the supply to it of Waste, as set out in Holcim's quotation form.
- Supplier:** the person or firm from whom Holcim procures the Waste.
- Waste:** the Waste (or any part of it) set out in the Quotation.
- Waste Transfer Note:** a waste transfer note as defined by Environmental Law.

**1.2 Construction.** In these Conditions, the following rules apply:

- 1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.3 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.4 subject to clause 10.3.3, a reference to **writing** or **written** includes email.

**2. BASIS OF CONTRACT**

- 2.1 The Quotation constitutes an offer by Holcim to procure Waste from the Supplier in accordance with these Conditions.
- 2.2 The Quotation shall be deemed to be accepted on the earlier of the Supplier issuing written acceptance of the Quotation and any act by the Supplier consistent with fulfilling the Quotation, at which point and on which date the Contract shall come into existence.
- 2.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

**3. SUPPLY OF WASTE**

- 3.1 The Supplier shall ensure that:
- 3.1.1 the Waste shall be inert or non hazardous and is accurately described in the Pre-Acceptance Documentation and the Waste Transfer Note;
- 3.1.2 the Waste shall not have any hazardous displaying properties HP1 – HP15 as defined by Environmental Law;
- 3.1.3 the Waste is of the type, character and quantities specified in any Pre-Acceptance Documentation and the Waste Transfer Note;
- 3.1.4 the Supplier shall hold a waste carriers licence, a waste management licence or an environmental permit for waste operations as required under Environmental Law; and
- 3.1.5 the Supplier shall comply with all Environmental Law relating to Waste disposal and/or management.
- 3.2 The Customer shall have the right to inspect, test and take samples of the Waste at any time before, on or after delivery.
- 3.3 The Customer may reject the Waste, or any part of it, if the Waste:
- 3

**3.2**

- 3.3.1 does not conform or is unlikely to comply with the Supplier's undertakings at clauses 3.1.1 to 3.1.3 inclusive;
- 3.3.2 differs from the Pre-Acceptance Documentation or any Waste Transfer Note; or
- 3.3.3 is outside the terms of its Permit; or
- 3.3.4 is unusable by Holcim for any reason,
- and any rejected Waste shall be returnable at the Supplier's risk and expense and Holcim may charge the Supplier for any extra costs incurred by Holcim, including costs relating to chemical analysis, site investigations and risk assessments.
- 3.4 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Waste and any such inspection or testing shall not be deemed to be acceptance of the Waste or reduce or otherwise affect the Supplier's obligations under the Contract.
- 3.5 The Supplier shall ensure that no change in the nature of the Waste shall take place during the Contract, unless notified to Holcim and reassessed and approved by Holcim.
- 3.6 The Supplier shall sign an annual or multiple Waste Transfer Note(s) declaring the Waste type in accordance with Environmental Law.
- 3.7 The Customer reserves the right not to accept any Waste in respect of which a Waste Transfer Note has not been properly completed and signed.

**4. DELIVERY OF WASTE**

- 4.1 The Supplier shall ensure that:
- 4.1.1 the Waste is properly loaded, secured and transferred to the Delivery Location; and
- 4.1.2 each delivery of the Waste is accompanied by a Waste Transfer Note which shows the date of the delivery, the Contract number (if any), a detailed description of the waste, LOW Code, quantity, chemical analysis and data sheets and such other information regarding the Waste (if any).
- 4.2 The Supplier shall deliver the Waste:
- 4.2.1 on the date or dates agreed by Holcim and the Supplier;
- 4.2.2 to the Delivery Location; and
- 4.2.3 during Holcim's normal hours of business or as instructed by Holcim.
- 4.3 Delivery of the Waste shall be completed on the completion of unloading of the Waste at the Delivery Location.
- 4.4 The quantity of the Waste specified at Holcim's weighbridge shall, save for fraud or manifest error, be conclusive proof of the weight of Waste delivered.
- 4.5 The Supplier shall not deliver the Waste in instalments without Holcim's prior written consent. Where it is agreed that the Waste are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Holcim to the remedies set out in clause 5.1.
- 4.6 Title and risk in the Waste shall pass to Holcim on completion of delivery at the Delivery Location.
- 4.7 If Holcim deems site conditions at the Delivery Location as being unsuitable or unsafe it may refuse the Supplier or its agents access to, or to close off any part of, the Delivery Location without liability to the Supplier. The Supplier shall satisfy itself as to the suitability of the access roads to, around and from the Delivery Location and the discharge area and save as prohibited by law, Holcim accepts no liability for any damage or loss caused.

**5. CUSTOMER REMEDIES**

- 5.1 If the Waste does not comply with these Conditions, Holcim shall, without limiting its other rights or remedies, have one or more of the following rights (whether or not it has accepted the Waste):

- 5.1.1 to reject the Waste (in whole or in part) whether or not title has passed and to return it to the Supplier, or require the Supplier to collect it, at the Supplier's own risk and expense;
- 5.1.2 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 5.1.3 to refuse to accept any subsequent delivery of the Waste which the Supplier attempts to make;
- 5.1.4 to claim damages for any additional costs, loss or expenses incurred by Holcim which are in any way attributable to the Supplier's failure to meet such dates or to supply Waste in accordance with these Conditions.
- 5.2 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.
- 6. CHARGES AND PAYMENT**
- 6.1 The price for the Waste:
- 6.1.1 shall be the price set out in the Quotation; and
- 6.1.2 shall be exclusive of VAT but inclusive of the costs of insurance and carriage of the Waste, unless otherwise agreed in writing by Holcim. No extra charges shall be effective unless agreed in writing by Holcim.
- 6.2 The Customer shall invoice the Supplier on or at any time after completion of delivery.
- 6.3 The Supplier shall pay the invoiced amounts in full and in cleared funds by the end of the month following the month the invoice was dated to a bank account nominated in writing by Holcim. Time of payment is of the essence.
- 6.4 The Supplier shall, on receipt of a valid VAT invoice from Holcim, pay to Holcim such additional amounts in respect of VAT as are chargeable.
- 6.5 If the Supplier fails to make payment of all or part of the price then the price and any payment due on any account between the Supplier and Holcim shall become immediately payable by the Supplier and Holcim shall be entitled to do one or more of the following (without prejudice to any other right or remedy it may have):
- 6.5.1 require payment in cleared funds in advance of delivery of undelivered Waste;
- 6.5.2 cancel or suspend any further delivery of Waste to Holcim under any Contract; or
- 6.5.3 retain and/or dispose of any Waste which is the subject of any Contract with the Supplier.
- 6.6 If the Supplier fails to make any payment due to Holcim under the Contract by the due date for payment, then the Supplier shall pay interest on the overdue amount at the rate of 4% per annum above National Westminster Bank plc's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The Supplier shall pay the interest together with the overdue amount.
- 6.7 The Supplier 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).
- 7. INDEMNITY**
- 7.1 The Supplier shall keep Holcim indemnified in full against all liabilities, costs, expenses, damages and losses (whether direct or indirect losses), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Holcim as a result of or in connection with:
- 7.1.1 any claim made against Holcim by a third party for death, personal injury or damage to property arising out of, or in connection with, the supply of the Waste by the Supplier; and/or
- 7.1.2 any claim made against Holcim by a third party including the Environment Agency, Natural Resources Wales, the Health and Safety Executive or the relevant local authority for a breach, or alleged breach, of the Permit or any revocation, suspension, variation or non-renewal of the Permit, arising out of, or in connection with, the supply of the Waste, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and/or
- 7.1.3 any enforcement, prohibition, stop, remediation, improvement or any other notice suffered by Holcim from, or any civil sanction imposed by, any enforcement authority, including the Environment Agency, Natural Resources Wales, the Health and Safety Executive or the relevant local authority, with regard to any breach of Environmental Law to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.
- 7.2 For the duration of the Contract and for a period of 6 years thereafter, the Supplier shall maintain in force, with a reputable insurance company, public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on Holcim's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 7.3 This clause 7 shall survive termination of the Contract.
- 8. TERMINATION**
- 8.1 Without limiting its other rights or remedies, Holcim may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 8.1.1 the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within 28 days of receipt of notice in writing of the breach;
- 8.1.2 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 8.1.3 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 8.1.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 8.1.5 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 8.1.6 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Supplier;
- 8.1.7 a floating charge holder over the assets of the Supplier has become entitled to appoint or has appointed an administrative receiver;
- 8.1.8 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- 8.1.9 the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or
- 8.1.10 the Supplier breaches, or Holcim has reasonable grounds to suspect that the Supplier has breached, any of the provisions of clause 9.
- 8.2 On termination of the Contract or any part of it for any reason:
- 8.2.1 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and
- 8.2.2 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

**9. COMPLIANCE**

9.1 The Supplier shall:

- 9.1.1 conduct its business in a manner that is in compliance with the LafargeHolcim Code of Business Conduct for Suppliers;
- 9.1.2 where required by Holcim, register on its supplier pre-qualification assessment and registration system and maintain a "green-flagged" status on such system; and
- 9.1.3 comply with Holcim's group and local site based policies, rules and regulations in force from time to time (including health, safety and environmental policies and drug and alcohol policy) whilst at the Delivery Location. The Customer reserves the right to exclude any person from the site if Holcim has reason to believe that such person is acting in breach of such policies, rules and regulations or is a risk to the safety or preservation of persons on or at the Delivery Location.

9.2 The Supplier shall indemnify Holcim against any losses, liabilities, damages, costs (including legal fees) and expenses incurred by, or awarded against, Holcim as a result of any breach of the provisions of clause 9.1.

**10. GENERAL**

10.1 **Force majeure:** Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from supplying the Waste for more than 4 weeks, Holcim shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

10.2 **Assignment and subcontracting:**

- 10.2.1 The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Holcim.
- 10.2.2 The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract.

10.3 **Notices:**

- 10.3.1 Any notice required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office or sent by fax to the other party's main fax number.
- 10.3.2 Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to in clause 10.3.1 or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission.
- 10.3.3 Notice given under this Contract shall not be validly served if sent by e-mail.

10.4 **Waiver and cumulative remedies:** A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

10.5 **Severance:** 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.

10.6 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.

10.7 **Variation:** Except as set out in these Conditions, any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by Holcim.

10.8 **Governing law and jurisdiction:** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.