STANDARD TERMS AND CONDITIONS OF SALE
VOLUMETRIC READY-MIXED CONCRETE

1. Application of terms and conditions

1.1 Unless otherwise agreed in writing, these terms and conditions of sale ("Conditions") apply exclusively to each transaction for the sale and supply of ready-mixed concrete ("Concrete") by any of the following group of companies, namely **Avon Material Supplies Limited** (registered company number 01615220), **Avon Material Supplies (Holdings) Limited** (number 08179185), **Avon Material Supplies (Transport) Limited** (number 07659774), or **Avon Material Supplies (Plant Hire) Limited** (number 03830153) (in each case to be referred to herein as the "Company") to a buyer of Concrete from the Company ("Customer").

1.2 No terms and conditions or contractual provisions specified or stipulated by the Customer at any time, whether prior to or after the Conditions have been brought to the attention of the Customer, shall be binding on the Company.

1.3 Whenever reference is made in these Conditions to an authorised representative of the Company, such authorised representative shall be a director of the Company or a person authorised in writing by a director of the Company.

1.4 The Customer warrants that it is a commercial buyer and is not 'consumer' as defined by the Consumer Rights Act 2015. In the event that the Customer is found to be a 'consumer' (as so defined), nothing in these terms and conditions is intended to or will limit the legal rights of the Customer under any consumer protection legislation.

2. Basis of sale

2.1 Once the Company's quotation has been sent to the Customer, the contract by which the Company shall sell and the Customer shall buy the Concrete ("Contract") shall be formed by the earliest of:

2.1.1 the authorised representatives of each of the parties signing and exchanging a form of contract relating to the sale and purchase of the Concrete; or

2.1.2 the Company acknowledging in writing the order for Concrete submitted by the Customer; or

2.1.3 the delivery of the Concrete; or

2.1.4 the presentation to the Customer of the Company's invoice for the Concrete when done so prior to the delivery of the Concrete.

2.2 No quotation given by the Company to the Customer shall amount to an offer capable of being accepted but shall constitute an invitation to treat.

2.3 The Company's employees or agents are not authorised to make any representations concerning the Concrete outside the normal course of their duties unless confirmed in writing by an authorised representative of the Company.

2.4 Unless otherwise stated in these Conditions, no variation to these Conditions or the Contract shall be binding unless agreed in writing between the authorised representatives of the Company and the Customer.

2.5 Sales literature, price lists and other documents issued by the Company in relation to the Concrete do not constitute offers to sell the Concrete which are capable of acceptance.

2.6 Any typographical or other accidental errors or omissions in any sales literature, quotation, price list, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.

3. Specification

3.1 The specification for the Concrete shall be set out in the Company's sales documentation unless varied expressly in the Contract. The Concrete will only be supplied in the minimum units stated in the Company's sale documentation or in multiples of those units. Orders received for quantities other than these will be adjusted accordingly.

3.2 Illustrations, photographs or descriptions whether in catalogues, price lists or other documents issued by the Company are intended as a guide only and shall not be binding on the Company.

3.3 A reference to strength class for the Concrete is (unless otherwise agreed in writing) a reference to compressive strength assessed:

3.3.1 by making (in accordance with BS EN 12390) cubes from samples taken (in accordance with BS EN 12350) from a delivery at the time of discharge from the vehicle making the delivery;

3.3.2 by carrying out (also in accordance with BS EN 12390) compressive tests on

such cubes;

3.3.3 by interpreting (also in accordance with BS EN 206/BS EN 8500-2) the results of the tests.

A reference to any other property and/or to the constituents of a delivery is a reference to such property and/or constituents as assessed by carrying out a test in accordance with any appropriate BS EN and by interpreting the result on a basis agreed in writing.

3.4 All testing will be carried out at premises selected by the Company. In the event that the Customer requires testing or further testing carried out at the place of discharge, the Company reserves the right to make an additional charge.

3.5 Where the specification for the Concrete is dependent on information supplied by the Customer, the Customer warrants such information is complete and accurate, and the Company shall bear no liability to the Customer and/or the Customer shall be precluded from receiving any refund or reimbursement from the Company in the event that the Concrete fails to meet the Customer's requirements as a consequence of any deficiency or inaccuracy in such information.

3.6 It shall be strictly the responsibility of the Customer to advise the Company in writing prior to the formation of the Contract of any special requirements as regards the specification or make-up of the Concrete, and the Customer must advise the Company immediately of any change made in such requirements. The Customer shall not be entitled to rely upon a delivery reaching a particular strength unless such special requirements are set out or referred to on the delivery ticket for the Concrete.

3.7 Where the Customer requires a variation in the mix design of the Concrete, the Company shall bear no responsibility for the quality and effectiveness of the Concrete then delivered. The Customer shall by fully responsible for any consequential variation in the properties and/or constituents of the Concrete that is delivered and for any additional costs incurred.

3.8 The Company reserves the right to make any changes in the specification of the Concrete which are required to conform with any applicable safety or other statutory or regulatory requirements or which do not materially affect their quality or performance.

4. Price

4.1 The price of the Concrete is the Company's quoted price exclusive of VAT and, unless otherwise stated out in the Contract, includes routine testing, carriage and delivery. The price is based on the Customer's estimate of the quantity of Concrete it requires, and an additional cost will be levied where further Concrete is needed in order to fulfil the Customer's actual requirements.

4.2 Where the Company has quoted a price for the Concrete, it shall be valid for 14 days unless otherwise specified in the Company's quotation.

4.3 All payments shall be made to the Company in the manner indicated on the invoice issued by it.

4.4 The Company reserves the right to make:

4.4.1 an additional charge for the time during which a vehicle making a delivery is held on site in excess of a period of thirty minutes; and

4.4.2 a charge equal to the reasonable additional costs incurred as a result of its making deliveries outside its normal working hours (which are: Monday – Friday 07.00am – 5.00pm, Saturday 7.00am – 12.00pm).

4.5 The Company reserves the right by giving written notice to the Customer to increase the price of the Concrete to reflect (i) any increase in the cost to the Company which is due to any factor beyond its control, (ii) any change in delivery dates, quantities or specifications for the Concrete which are requested by the Customer, or (iii) any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate information or instructions.

4.6 Unless the Company has agreed in advance that payment for Concrete shall be on credit terms, delivery of Concrete will be made only after payment in full of the price (plus VAT) has been received by the Company in advance. Where credit terms have been agreed, the Customer will pay the price of the Concrete (plus VAT) within 30 days of the end of the month in which the invoice was raised. Credit terms can be withdrawn by the Company at its own discretion at any time without giving any reason.

5. Delivery

5.1 Delivery of the Concrete shall be made by the Company conveying the Concrete to the place specified in the Contract or, if no place of delivery is specified, to the address that the Customer gave the Company prior to the Contract being formed.

5.2 The delivery date given by the Company is approximate only, and time for delivery shall not be of the essence.

5.3 Where the Concrete is to be delivered in batches, failure by the Company to deliver any one or more of the batches in accordance with these Conditions shall not entitle the Customer to treat the Contract as a whole as repudiated.

5.4 In respect of each delivery, the Customer shall ensure that an authorised person is present to sign the delivery ticket for the Concrete. The signature will confirm:

5.4.1 that the Customer acknowledges that the mix of Concrete depicted on the delivery ticket describes correctly the Concrete required by the Customer;

5.4.2 that the Customer authorises any additions to the Concrete of water or of any other materials considered suitable at the time of delivery; and

5.4.3 the time of the vehicle's arrival on site, the time that the Concrete discharge commences, the time of the completion of the Concrete discharge and the time that the vehicle leaves the site.

5.5 If the Customer fails or is unable to take delivery of the Concrete or any part of it on the delivery date, the Company shall be entitled to use and deliver the Concrete to another customer, and the Customer will be liable to the Company for all costs and expenses arising from the aborted delivery. A further delivery to the Customer will be subject to acceptance by the Customer of those costs and expenses.

5.6 It shall be strictly the responsibility of the Customer to advise the Company in writing prior to the formation of the Contract of any special requirements applying at the location to which the Concrete is to be delivered (including without limitation any requirements as to the time of delivery, a safe and proper route from the metalled highway to the place of discharge of the Concrete, and vehicle size or weight limits), and the Customer must advise the Company immediately of any change in such requirements. The Customer shall indemnify the Company (and any person operating the vehicle making a delivery) against damage or loss which may result from a failure to advise of such requirements or where the route for delivery advised by the Customer results in damage to the delivery vehicle or to third party property or in the vehicle requiring recovery assistance.

6. Inspection and shortages

6.1 The Customer is under a duty to inspect the Concrete on delivery and will be deemed to have inspected the Concrete where a person who ostensibly is

representing the Customer at the site or location at which the Concrete is being delivered accepts the Concrete.

6.2 The Company shall be under no liability for any shortages that would be apparent on reasonable careful inspection if the provisions of this Condition 6 are not complied with and, in any event, will be under no liability if a written complaint is not delivered to the Company within 24 hours of delivery detailing the alleged shortage.

6.3 In all cases where shortages are complained of, the Company shall be under no liability unless:

6.3.1 the shortage in question exceeds 5% (whether by weight, quantity or volume) of the Concrete delivered; and

6.3.2 an opportunity to verify the shortage is given to the Company before any use is made of the Concrete or any alteration or modification is made to it by the Customer.

6.4 Subject to Conditions 6.2 and 6.3, the Company shall make good any shortage in the Concrete as soon as it is reasonable to do so, but otherwise shall be under no liability whatsoever arising from such shortage.

7. Defective Concrete

7.1 If on delivery the Concrete is defective in any material respect and either the Customer lawfully refuses delivery of the defective Concrete or, if it is signed for on delivery as "condition and contents unknown", the Customer gives written notice of such defect to the Company within 24 hours of such delivery, and provided that the Customer has then given the Company prompt access to the Concrete as delivered in order to test the Concrete and assess what defects (if any) are present, the Company shall at its option:

7.1.1 break out and remove the defective Concrete; and/or

7.1.2 replace the defective Concrete as soon as reasonably practicable; and/or

7.1.3 refund or credit to the Customer the price for the defective Concrete (or part, as appropriate),

but the Company shall have no further liability to the Customer, and the Customer may not reject the Concrete if delivery is not refused or if notice is not given by the Customer as set out above.

7.2 No Concrete may be returned to the Company without the prior agreement in

writing of an authorised representative of the Company.

7.3 The Company shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, the failure to protect the Concrete properly, failure to follow the Company's instructions (whether given orally or in writing), misuse or alteration of the Concrete without the Company's prior approval, or any other act or omission on the part of the Customer, its employees, agents, sub-contractors or any third party.

7.4 Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

7.5 The Customer shall be responsible for ensuring that any use of the Concrete by the Customer (including the Customer's employees, agents or sub-contractors) is in compliance with all applicable statutory requirements and that the handling of the Concrete by the Customer (and the Customer's employees, agents or sub-contractors) is carried out in accordance with directions given by the Company (including instructions contained in the safety data sheet supplied to the Customer at or prior to delivery of Concrete) or any competent governmental or regulatory authority (including the wearing of appropriate protective clothing), and the Customer will indemnify the Company against any liability loss or damage which the Company might suffer as a result a failure to comply with this Condition.

8. Risk and retention of title

8.1 All risk of damage to or loss of the Concrete shall pass to the Customer at the time of delivery or, if the Customer wrongfully fails to take delivery of the Concrete, at the time when the Company has tendered delivery of the Concrete.

8.2 Notwithstanding delivery and the passing of risk in the Concrete, or any other provision of these Conditions, legal and beneficial title of the Concrete shall not pass to the Customer until the Company has received in cleared funds payment in full of the price of the Concrete together with any additional sums to cover VAT, and the Company reserves the right to repossess any Concrete in which it retains title without notice.

8.3 The Customer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Concrete which remains the property of the Company, but, if the Customer does so, all money owing by the Customer to

the Company shall (without prejudice to any other right or remedy of the Company) forthwith become due and payable.

9. Customer's default

9.1 If the Customer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:

9.1.1 cancel the order or suspend any further deliveries to the Customer; and/or

9.1.2 levy interest and other charges to which it is entitled on all unpaid amounts under Late Payment of Commercial Debts (Interest) Act 1998 (as amended); and/or

9.1.3 withdraw all credit facilities extended and require immediate payment of all outstanding invoices issued whether or not they were due for payment.

9.2 If:

9.2.1 the Customer fails to perform or observe any of its obligations hereunder or is otherwise in breach of the Contract; or

9.2.2 the Customer becomes subject to an administration order or enters into a voluntary arrangement under Parts I or VIII of the Insolvency Act 1986 or the Insolvent Partnerships Order 1994 (as amended) or becomes bankrupt or goes into liquidation or is subject to similar legislation in any other jurisdiction; or

9.2.3 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Customer; or

9.2.4 the Customer ceases, or threatens to cease, to carry on business; or

9.2.5 the Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Customer and notifies the Customer accordingly,

then, without prejudice to any other right or remedy available to the Company, the Company shall be entitled to cancel the Contract or suspend any further deliveries under the Contract without any liability to the Customer, and, if the Concrete has been delivered but not paid for, the price of the Concrete (including VAT) shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

10. Limitation of liability

10.1 The following provisions set out the entire liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of:

10.1.1 any breach of these Conditions or the Contract;

10.1.2 any use made by the Customer of the Concrete; and

10.1.3 any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.

10.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.

10.3 Nothing in these Conditions excludes or limits the liability of the Company:

10.3.1 for death or personal injury caused by the Company's negligence;

10.3.2 for any matter where it would be illegal for the Company to exclude or attempt to exclude its liability; or

10.3.3 for fraud or fraudulent misrepresentation.

10.4 Subject to Conditions 10.2 and 10.3:

10.4.1 the Company's total liability in contract, tort, misrepresentation, restitution or otherwise, arising in connection with the Contract shall be limited to the price of the Concrete; and

10.4.2 the Company shall not be liable to the Customer howsoever arising for any direct or consequential loss or damage sustained by the Customer (including without limitation loss of profit or indirect or special loss), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Company, its servants or agents or otherwise) which arise out of or in connection with the supply of the Concrete or its use by the Customer.

11. Confidentiality

11.1 The Customer will regard as confidential the Contract and will not use or disclose to any third party the terms of the Contract without the Company's prior written consent, provided that this undertaking shall not apply to information which is in the public domain other than by reason of the Customer's default.

11.2 The Customer will not use, or permit the use of, any name, trademark, emblem or symbol which the Company owns or is licensed to use upon any premises,

advertisement, note paper or other printed matter or in any other manner whatsoever unless such use shall have been previously authorised in writing by the Company.

11.3 The Customer will use its reasonable endeavours to ensure compliance with this Condition 11 by its employees, servants and agents.

11.4 The provisions of this Condition 11 shall survive the termination of the Contract.

12. Communications

12.1 All notices under these Conditions and under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the party giving the notice.

12.2 Notices shall be deemed to have been duly given:

12.2.1 when delivered, if delivered by courier or other messenger (including registered mail) during the normal business hours of the recipient; or

12.2.2 on the second business day following mailing, if mailed by national ordinary mail, postage prepaid; or

12.2.3 on the seventh business day following mailing, if mailed by airmail, postage prepaid.

12.3 All notices under the Contract shall be addressed to the most recent address notified to the other party.

12.4 Email is not permissible as a means of giving a notice under the Contract.

13. Force majeure

Neither party shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the party in question.

14. Waiver

The parties agree that no failure by either party to enforce the performance of any provision in these Conditions or under the Contract shall constitute a waiver of the right to subsequently enforce that provision or any other provision. Such failure shall not be

deemed to be a waiver of any preceding or subsequent breach and shall not constitute a continuing waiver.

15. Severance

The parties agree that, in the event that one or more of the provisions of these Conditions or the Contract are found to be unlawful, invalid or otherwise unenforceable, the provision in question shall be deemed severed from the remainder of these Conditions (and, by extension, the Contract). The remainder of these Conditions and the Contract shall be valid and enforceable.

16. Third party rights

Save where otherwise stated in these Conditions, the parties agree that a person who is not a party to the Contract shall have no rights under the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

17. Disputes

17.1 In the event of any dispute arising between the parties, the matter will be referred to a director of each of the Company and the Customer who shall endeavour to resolve the dispute in good faith within 28 days of one party having given notice to the other party that a dispute has arisen.

17.2 Any dispute which cannot be resolved in accordance with Condition 17.1 shall be submitted to mediation pursuant to the mediation rules of the ADR Group.

17.3 In the case of the non-payment by the Customer of any part of the price of the Concrete (including VAT), the Company may elect at its discretion to take appropriate recovery action without first raising the matter as a dispute.

18. Law and jurisdiction

18.1 These Conditions and the Contract (including any non-contractual matters and obligations) shall be governed by, and construed in accordance with, the laws of England and Wales.

18.2 Any dispute or claim between the parties (including any non-contractual claim) which has not been capable of resolution under Condition 17 shall fall within the exclusive jurisdiction of the courts of England and Wales.