



CREAGH CONCRETE PRODUCTS LIMITED: TERMS AND CONDITIONS FOR THE PURCHASE/HIRE OF LABOUR/ GOODS & MATERIALS

1. DEFINITIONS & INTERPRETATION

- (i). **Definitions:** In these Terms and Conditions, the following definitions apply:

“Purchaser” means Creagh Concrete Products Limited, whose registered office is situated at 38 Blackpark Road, Toomebridge, County Antrim, BT41 3SL (or any Company in the Creagh Concrete Products Limited Group of Companies)

“Supplier” means the person or Company who supplies Goods/ Labour to the Purchaser. For the avoidance of doubt this includes a natural person, corporate or unincorporated body (whether of not having a separate legal personality) and includes its personal representatives, successors or permitted assigns.

“Goods” means any product or item of whatsoever nature (or any part) which the Purchaser buys, hires or has agreed to buy or hire from the Supplier including where the context so requires services provided by the Supplier.

“Labour” means the provision by the Supplier of individuals to carry out certain Works for and on behalf of the Purchaser.

“Works” means the carrying out by Labour provided by the Supplier, certain activities on behalf of the Purchaser; the scope and detail of such activities being more particularly set out in Contract.

“Contract” refers to any contract, subcontract or purchase order between the Purchaser and the Supplier for the purchase or hire of Goods or provision of Labour by the Supplier incorporating in all cases these terms and conditions.

“Site” means any location/ place (including any of the Purchaser’s places of business) where the Works are being carried out.

- (ii) Interpretation and Construction. In these Terms and Conditions, unless otherwise specified or the context otherwise requires:

- (i) words in the singular include the plural and *vice versa*;
- (ii) reference to any statute, statutory provision, enactment, order, regulation or other similar instrument is a reference to it as it is in force from time to time, as amended, replaced, consolidated or re-enacted;
- (iii) reference to a **“person”** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person’s personal representatives, successors or permitted assignees;
- (iv) the words **“other”** and **“otherwise”** are not to be construed *ejusdem generis* with any preceding words where a wider construction is possible;
- (v) any phrase introduced by **“including”**, **“include”**, **“in particular”** or a similar expression is to be construed as illustrative only and not to be construed as limiting the generality of any preceding words.
- (vi) Clause, Schedule and paragraph headings do not affect the interpretation of this Agreement.
- (vii) Words and phrases defined in any part of this Agreement bear the same meanings throughout this Agreement.
- (viii) No variation to these conditions shall be binding unless agreed in writing by a Director of the Purchaser
- (ix) Any typographical, clerical or other error or omission in any documentation issued by the Purchaser shall be subject to correction without any liability on the part of the Purchaser.
- (x) In certain circumstances these standard terms and conditions may be supplemented by additional written terms and conditions in respect of Goods or works or Labour of a specialist nature.

GENERAL

2. The Purchaser shall not be liable for any orders other than those issued or confirmed by a Contract and duly signed on behalf of the Purchaser.
3. These conditions apply to the supply of Goods / Labour to the Purchaser to the exclusion of any other terms that the Supplier seeks to impose /incorporate, or which are implied by trade, custom, practice or course of dealing. The Contract constitutes the entire agreement between the parties. The Supplier has not relied on any statement, promise or representation made or given by/ on behalf of the Purchaser which is not set out in the Contract.
4. No addition, omission or variation to the Contract will be binding on the Purchaser without authorised written confirmation from the Purchaser

5. The price of any Goods/ Labour shall be the price stated on the Contract. Programme/ Delivery dates and times, where stated shall be of the essence. If programme/ delivery dates or times or any other details advised by the Supplier to the Purchaser are unacceptable to the Purchaser; the Purchaser reserves the right to cancel the Contract within 7 days of receipt by the Purchaser of this information, at no cost to the Purchaser. If a lump sum price is agreed; this will be the absolute maximum which the Purchaser shall pay for the Goods/ Labour supplied; unless otherwise agreed in writing by the Purchaser.
6. If the Supplier foresees any potential addition to the price they must notify the Purchaser immediately and provide a cost of the variation within 2 days for acceptance by the Purchaser.
7. For Goods, prices shall be inclusive of all delivery charges, dunnage, pallets, crates, cradles, off loading etc unless otherwise agreed.
8. All invoices issued by the Supplier to the Purchaser are subject to management approval before payment can be processed. Provided that invoices are received in a timely fashion and have been approved by management, payment of invoices shall be made by the Purchaser 30 days from end of month in which invoice was raised, unless otherwise agreed between the parties. Invoices should be sent via hard copy to the Purchaser's Head office for the attention of its account payable department.
9. Where applicable, applications for payment are to be made in accordance any previously agreed schedule of valuation dates. If the Supplier fails to deliver an application for payment in accordance with the Schedule the application for payment will not be considered until the next following valuation date set out in the schedule.
10. All applications/ Valuations must be signed off by the Purchaser's contracts manager and all requested supplemental information provided by the Supplier.
11. The Purchaser may (acting reasonably) question the payments due as referred to in the Supplier's application for payment. In the event of any question being raised, the Purchaser and the Supplier shall seek to agree the issues in question and shall, if considered appropriate by either, meet to discuss any differences between them. Any failure to reach agreement shall be resolved in accordance with the dispute resolution procedure set out in clause 25.
12. Not later than 1 day before the final date for payment (in accordance with the schedule) the Purchaser shall give notice to the Supplier of any amounts, claimed by the Supplier that the Purchaser either objects to and is seeking to withhold or of any amount that the Purchaser is owed by the Supplier (including any amounts previously overpaid to the Supplier) which the Purchaser is seeking to withhold. The notice shall set out the sum or sums proposed to be withheld, the ground(s) for withholding payment and the amount(s) attributable to each ground.
13. The sums due to the Supplier shall become due on the date set out in the payment schedule. All payments shall be treated as being on an 'on account' basis.
14. The purchaser reserves the right to withhold 10% of the price until any outstanding documentation is provided or any snags or defects are completed and signed off to the Purchaser's satisfaction.
15. The Supplier shall be liable for; and shall indemnify the Purchaser against; any expense, loss, liability, claim or proceedings whatsoever, arising under any statute or at common law in respect of the death of, or personal injury to, or illness sustained by any person whomsoever, and/or any injury, loss or damage to any property whatsoever, real or personal arising out of or in the course of or by reason of the carrying out or performance of the Contract.
16. Without prejudice to the Supplier's liability to indemnify the Purchaser under Clause 15 above, the Supplier shall, as when reasonably required to do so by the Purchaser, produce documentary evidence showing that all the insurances required (including but not limited to Employers Liability, Public Liability and Professional Indemnity Insurance) have been taken out and are being maintained by the Supplier.
17. Without prejudice to any other rights or remedies the Purchaser may possess, the Purchaser shall, subject to written notification, quantification, and costing from the Purchaser to the Supplier retain the right to charge, or contra charge any costs incurred by the Purchaser due to any act or omission of the Supplier in respect of the Contract.
18. In accordance with section 6 of the Health and Safety at Work Act 1974, the Purchaser shall receive the Suppliers confirmation that the article or substance to be supplied is, so far as it is reasonably practicable, safe and without risk to health whilst being prepared for use, used, cleaned or maintained. Also, in accordance with the above, details of any tests or examinations carried out and full instruction for the safe use etc of the article or substance are to be supplied by the Supplier
19. The Parties hereby confirm that, notwithstanding any other provision of the Sub-Contract, the Sub-Contract shall not and shall not purport to confer on any third party any right to enforce any term of the Sub-Contract for the purposes of Contracts (Rights of Third Parties) Act 1999.
20. Without prejudice and in addition to any other rights and remedies of the Purchaser, if any sum of money shall be recoverable from or payable by the Supplier or any other member of the Supplier's Group to the Purchaser, it may be deducted by the Purchaser from any sum or sums then due or which at any time thereafter may become due to the Supplier or any other member of the Supplier's Group under or in respect of the Contract, or under or in respect of any other contract between the Supplier / Supplier's Group and the Purchaser.
21. In the event of determination of the Contract Agreement by either party the Supplier will return any and all equipment supplied by the Purchaser.
22. The Purchaser shall be entitled to automatically terminate and cancel the Contract without incurring any further liability to the Supplier upon becoming aware of the insolvency of the Supplier.
23. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office or its principle place of business or such other address as that party may have specified to the other party in writing in accordance with this clause and shall be sent by First Class Post. A notice or other communication shall be deemed to have been received if delivered or sent by first class post on the second Business day after posting.

24. If a dispute arises either party may refer it to adjudication at any time. The appointing body shall be the RICS.
25. If any provision of these conditions is held by any Court or competent authority to be invalid, illegal or unenforceable in whole or in part that provision or part provision shall, to the extent required, be deemed to be deleted and the validity and enforceability of the other provision of the Contract shall not be affected.
26. The Purchaser shall under no circumstances whatsoever be liable to the Supplier, 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.
27. These conditions and the Contract between the Purchaser and the Supplier shall be governed by the laws of Northern Ireland and the parties agree to submit to the non-exclusive jurisdiction of the Courts of Northern Ireland.
28. These Terms and Conditions shall not be withdrawn unless specifically agreed in writing by a Director of the Purchaser.
29. The Supplier shall not without the written consent of the Purchaser assign, transfer or sub let the Works or any part therein

GOODS HIRED / PURCHASED

30. Goods supplied under this order shall be of the nature, quality, specification and substance stated in the Contract or if not so stated then shall conform to at least the minimum standard(s) laid down by the relevant industry standards which are in force from time to time. All Goods should be guaranteed against defects.
31. The Supplier warrants that all Goods, shall be fit for their intended purposes, and shall conform to the requirements of the Contract.
32. Any deficiencies in the Goods and/or services contained in the Contract which render them "not fit for purpose" must be drawn to the attention of the Purchaser before implementation of the Contract. No qualifications or conditions laid down by the Supplier shall limit the liability of the Supplier which would otherwise apply under Common Law.
33. The Purchaser reserves the right to return or replace Goods and/or services which are not up to at least the minimum standard(s), or of the nature, quality, and substance laid down in the Contract, and to recover from the Supplier all costs incurred by the Purchaser resulting in the Supplier's default in this respect.
34. The Purchaser's rights against the Supplier as set out herein shall not be prejudiced if the Goods are not inspected until used.
35. The responsibility for transit to site/the requested delivery address shall remain with the Supplier unless otherwise agreed by the parties.
36. The Supplier shall be liable for all direct and indirect costs and/or consequential loss and/or economic loss and/or damage, howsoever arising, in respect of Goods in transit supplied in accordance with the Contract, and shall indemnify the Purchaser in this regard.
37. The Supplier shall forward a detailed delivery advice note giving full particulars of Goods, nett weight, packaging etc. to the Purchaser's office on date of despatch to site. The delivery advice note should at all times be signed by a representative of the Purchaser. Failure to comply with this clause may cause delay to payment.
38. The Purchaser's title to the Goods shall be effective upon receipt of the Goods to the Purchaser. Where the Purchaser pre-pays for the Goods, ownership of such Goods shall vest in the Purchaser upon such prepayment, even though the goods shall still be in the Supplier's or a third party's hands.
39. The Supplier shall (where applicable) in respect of the Goods ensure that all necessary test documentation and certificates in accordance with the current or subsequently amended construction regulations (or other relevant regulations/standards) is provided.
40. For Goods which are hired from the Supplier; hire durations will commence on the date when all the Goods which form the Contract are delivered complete and in all respects fit for use and their intended purpose. If Goods are short delivered or delivered in such a piecemeal fashion that they are not fit for purpose and intended use; for the avoidance of doubt the hire duration will not commence until the Goods can be used for their intended purpose. The hire duration will immediately cease upon either expiry of any agreed hire period or confirmation from the Purchaser to the Supplier that the Goods are no longer required; whichever is the earlier; in any event from this date the Goods will be treated as being 'off hire'. Hire durations shall automatically cease during any recognised holiday period(s)
41. The Sale of Goods Act (1979) will apply to any Goods supplied under this order.

LABOUR

42. The Contract and these Terms and Conditions are supplemental to the Purchaser's Main Contract (contract between Purchaser and its Employer wherein the Purchaser is the Sub-Contractor for certain works) and the Works are therefore to be executed by the Supplier as part of the Main Contract to be executed by the Purchaser as Sub-Contractor under the Main Contract. A copy of the Main Contract (other than the Purchaser's rates and prices) is available for inspection at the Purchaser's Registered Office by prior appointment. The Supplier will be deemed to have full knowledge of all the provisions of the Main Contract (except rates and prices) and to have taken full account of the same (including any risk and or contingences) and to have included for in the price.
43. The Supplier shall carry out and complete the Works and perform its obligations diligently under the Contract and in accordance with any specification provided to the Supplier. At all times the Supplier shall carry out and complete the Works in a timely and workman like manner using good up to date building practices and good quality materials.

44. The Supplier shall provide all labour and management /supervision to carry out the Works which are more particularly detailed in the Contract.
45. Insofar as the Supplier is required to carry out design under the Contract; it will exercise and will continue to exercise all the reasonable care, skill and diligence to be expected of a competent and qualified professional designer experienced in carrying out and completing the design for works of a similar nature, value, complexity and timescale to the Works.
46. The Purchaser shall have power at any time to inspect and examine any part of the Works (wheresoever located). The Purchaser may reject any Works which do not conform with the Contract or the Main Contract, or which, even though conforming, is not of good quality or is not fit for its purpose.
47. Variations, additions and or omissions to the Contract shall not be made by the Supplier unless ordered or confirmed in writing by the Purchaser. The valuation of variations will be in line with Main Contract.
48. The Supplier shall notify the Purchaser in writing of the date when in its opinion, the Works (or any part thereof) are complete. The Purchaser shall inspect the Works within a reasonable period of time and will notify any snags or defects to the Supplier which is requires to be made good within a specified period of time and in accordance with the Main Contract. If the Supplier fails to comply with this Clause the Purchaser may do anything necessary to make good any defects/snags notified to the Supplier. All the costs and expenses incurred by the Purchaser in doing so maybe deducted from any monies due or to become due to the Supplier or shall be recoverable from the Supplier as a debt.
49. The Purchaser may at any time require the Supplier immediately to cease to employ in connection with the Works any person whose continued employment is, in the opinion of the Purchaser undesirable. The Supplier shall replace any such person with a suitably qualified person. Other than for causes outside its control, the Supplier shall not make changes in personnel named in its tender in connection with the Contract without the prior approval of the Purchaser.
50. If and when directed by the Purchaser, the Supplier shall give the Purchaser a list of names and addresses of all persons who are or may be at any time concerned with the Contract or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars as the Purchaser may reasonably require.
51. The Supplier shall comply with rules and regulations notified to it by the Purchaser or the Purchaser's employer during the execution of the Works and shall hold weekly toolbox talks with its employees who are on Site.
52. All Labour must be fully trained and competent and any supervisor provided by the Supplier must hold SMSTS and Crane supervisors card. In addition to standard safety qualifications the Supplier's erectors must hold PASMA, cartridge gun and FASNET.
53. The Supplier is responsible for using competent and trained Labour. They are also responsible for ensuring that all work is carried out safely and in accordance with current health and safety legislation. All Labour sent to site by the Supplier must attend site with qualifications. Failure to do so could result in refusal to site.
54. The Supplier must ensure that all work activities are adequately risk assessed with appropriate safety control measures in place.
55. The Purchaser will not accept costs for damage due to incorrect lifting and placing operations, nor any future damages in respect to incorrect installation. All units should therefore be installed strictly in accordance with our Handling Guide and the relevant codes of practice and Health and Safety regulations.
56. Supplier to provide all labour, PPE, PPE consumables, small tools, small tools consumables, leads, hoses and task lighting and any other items more specifically set out in the Contract.
57. The Supplier shall clear away to a skip or other place provided on the Site all rubbish resulting from its execution of the Works and shall keep access to the Works clear at all times.
58. The Supplier upon completion of the Works or any part of them, shall properly clear up and leave the Works and all areas made available to it clean and tidy to the reasonable satisfaction of the Purchaser.
59. The Purchaser shall provide, free of charge to the Supplier, the items of attendance detailed in the Contract.
60. The Supplier shall be deemed to have inspected and examined the site and its surroundings and to have satisfied himself before commencing the Works as to the nature of the ground, the sub-surface conditions; the form and nature of the Site; the extent, nature and difficulty of the Works, and materials necessary for the completion of the Works; the restrictions of access to the Site on which the Works are to be carried out; and in general to have obtained for himself all necessary information as to risks, contingencies and all other circumstances influencing or affecting Works.
61. The Supplier shall not be entitled to any extension of time or to any additional payment, damages, or direct loss and/or expense on the grounds of any misunderstanding or misinterpretation of any matter set out in the aforementioned clause or his failure to discover or foresee any risk, contingency or other circumstance (including, without limitation, the existence of any adverse physical conditions or artificial obstructions) influencing or affecting the Works. The Supplier shall not be released from any of the risks accepted or obligation undertaken by him under the Contract on the ground that he did not or could not have foreseen any matter which might affect or have affected the execution of the Works.
62. It is the responsibility of the Supplier to be familiar with the day to day requirements of the programme and on site sequencing and ensure Works progress in accordance with the programme. The Supplier should allow for all number of visits necessary for the Works. At all times the Works to proceed in accordance with programme provided by the Purchaser to the Supplier. No charges will be accepted for weather delays or stoppage charges. Any dates and times for delivery are approximate only no claims for waiting time by the Supplier's site operatives etc will be accepted. The Supplier should allow for working with and around others to ensure progress of the Works at no additional cost to the Purchaser. The Supplier should satisfy itself of times and durations when submitting its price.
63. No day rates will be paid by the Purchaser unless previously agreed.

64. If the Supplier fails to progress the Works in accordance with the programme or with the reasonable directions of the Purchaser; it will be liable for any liquidated and ascertained damages which the Purchaser incurs under its Main Contract in addition to any unliquidated damages which the Purchaser incurs.
65. It is essential that all work activities are undertaken with Health & Safety considerations paramount. Each operative has a high degree of responsibility for himself and for all those around him. If any risk has not been adequately assessed or the correct preventative actions have not been put in place work must not begin. In the event of an accident or near miss an immediate report shall be compiled and forwarded to the Purchaser. At all times the Supplier will observe and comply with both statutory requirements and the Purchaser's Company Safety Statement. Failure to attend site at the correct time for inductions could result in delays or refusal to start. The Supplier shall comply with all provisions required and as defined in Construction (Design & Management) regulations 1996.
66. The Purchaser may at any time terminate the Contract if in its reasonable opinion the Supplier has failed to proceed regularly and diligently with the Works or has committed a breach of Contract (including these Terms and Conditions) Upon termination the Supplier should immediately vacate the Site. The Purchaser within a reasonable period of time following the termination shall value the Suppliers account and send a Payment Notice showing what (if any) payment is due to the Supplier.
67. The Construction Act (as amended) will apply to any Labour supplied under the Order and to any Order for the supply of Labour and Goods.