

This Contract is entered into each time the Supplier accepts an order from a Customer in the agreed manner set out below on the following conditions:

## 1. DEFINITIONS AND INTERPRETATION:

**Contract:** the contract between the Supplier and the Customer for the sale and purchase of the Goods in accordance with these Conditions and which prevails over any other express or implied conditions contained or referred to in any correspondence or documentation submitted by the Customer.

**Customer:** the party to the contract who wishes to purchase Goods on the terms and conditions stipulated below.

**Delivery Point:** means the place where delivery occurs in accordance with clause 4.

**Goods:** the goods (or any part of them), to be sold by the Supplier in accordance with these conditions and pursuant to a contract.

**Supplier:** means any subsidiary of the Armstrongs Group including, but not limited to, AMIX (RMC) Plant Limited, UK company number 05531615 and Armstrongs Aggregates Limited, UK company number 02045919, both with a registered office address of Horwich Recycling Centre, Chorley New Road, Horwich, Bolton, Greater Manchester, BL6 5NJ.

A reference to a statute or statutory provision is a reference to such as amended or re-enacted and includes any subordinate legislation made under it also as amended or re-enacted. Words in the singular include the plural and in the plural include the singular. A reference to one gender includes a reference to other genders. 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. A reference to **writing** or **written** includes fax and emails.

## 2. COMMENCEMENT AND TERM.

This Contract shall commence on the Supplier accepting a Customers offer to purchase Goods, and shall continue, unless terminated earlier in accordance with its terms, until the date of full and final settlement in accordance with clause 8 when it shall terminate automatically without notice.

## 3. BASIS OF SALE AND PURCHASE, QUOTATIONS AND ORDERS

3.1 This agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Subject to any variation signed by a Supplier Director in accordance with clause 12.5, the Contract shall be on these conditions to the exclusion of all other terms and conditions. In particular any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order,

specification or other document whether or not annotated on or otherwise endorsed the Supplier. These conditions apply to all the Company's sales and any variation to these conditions and any representations about the Goods shall have no effect unless expressly agreed in writing and signed by a director of the Supplier. The Customer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Supplier which is not set out in this Contract. Nothing in this Contract shall exclude or limit either parties liability for fraud, fraudulent misrepresentation.

3.2 Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Supplier shall be subject to correction without any liability on the part of the Supplier. Any advice or recommendation given by the Supplier or any of its employees or agents to the Customer or its employees or agents as to the strengths or use of the Goods is followed or acted upon entirely at the Customer's own risk.

3.3 The quantity and description of the Goods shall be as set out in the Supplier's quotation or acknowledgement of order. All samples, drawings, descriptive matter, specifications and advertising issued by the Supplier and any descriptions or illustrations contained in the Supplier's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract or have any contractual force and this is not a sale by sample Contract.

3.4 Each order or acceptance of a quotation for Goods by the Customer from the Supplier shall be deemed to be an offer by the Customer to buy Goods subject to this Contract. The Supplier may accept or decline orders at its absolute discretion and no order placed by the Customer shall be deemed to be accepted by the Supplier until a written acknowledgement of order is issued by the Supplier or (if earlier) the Company delivers the Goods to the Customer. The Customer shall ensure its order and any applicable specification are complete and accurate at the point of order.

3.5 Any quotation is given on the basis that no Contract shall come into existence until the Supplier despatches an acknowledgement of order to the Customer. Any quotation is valid for a period of 30 days only from its date, provided that the Company has not previously withdrawn it.

3.6 The Supplier may at its absolute discretion accept an amendment to or cancellation of an order (or any part of an order) by the Customer. The Customer may only amend or cancel an order with the Supplier's prior agreement in writing and provided that the Customer indemnifies the Supplier in full against all losses, costs and cancellation or other charges sustained by the Supplier.

#### **4. DELIVERY AND NON-DELIVERY**

4.1 Unless otherwise agreed in advance in writing by the Supplier, delivery of the Goods shall be deemed to have been completed: **(a)** Where the Goods are delivered at a Delivery Point specified by the Customer, at the delivery address specified by the Customer prior to unloading (unless the Supplier has agreed to unload the Goods in which case delivery shall be effected upon completion of the unloading), or **(b)** Where the Goods are collected by the Customer, at the Supplier's place of business prior to loading.

4.2 Any dates specified by the Supplier for delivery of the Goods are intended to be an estimate and the time of delivery is not of the essence (nor shall it be capable of being made so by Customer notice). If no dates are so specified, delivery shall be within a reasonable time. The Supplier shall not be liable for any delay in delivery of any Goods that is caused by: **(a)** a Force Majeure Event; or **(b)** the Customer's failure to provide the Supplier with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods. If delivery is delayed for 30 minutes or more due to the Customer's (or any of its employees, subcontractors, other suppliers or agents) act or omission the Supplier reserves the right to make an additional charge for the total waiting time.

4.3 Where the Supplier delivers the Goods to the Customer's premises: **(a)** the Customer shall provide at the Delivery Point and, at its expense, adequate and appropriate equipment and manual labour for unloading the Goods and shall indemnify the Supplier against any loss or damage resulting from the delivery; and **(b)** the Customer will provide and clearly indicate to the driver of the delivery vehicle a proper, safe and secure route from the public highway to the Delivery Point and shall indemnify the Supplier, (for itself and as agent and trustee for any other person operating a vehicle making a delivery) against any loss suffered during unloading, in particular but without limitation, against any damage or loss resulting in the event that the Supplier's delivery driver considers that the access way, approach road or Delivery Point is unsafe or may cause damage to the delivery vehicle; and **(c)** if the delivery driver does not believe, in his sole discretion, that the route provided in accordance with clause 4.3(b) is not adequate for any reason the delivery driver shall be entitled to refuse delivery and the Customer shall indemnify the Supplier against any loss or damage resulting from the non-delivery; and **(d)** in any event the Supplier shall not be liable for any damage caused on delivery save to the event of the Supplier's negligence (and then only to the extent of its contributory negligence).

4.4 The Goods shall be inspected by the Customer on delivery or on collection as the case may be to ensure **(a) type and quality:** the Goods shall be inspected by the Customer on delivery or on collection as the case may be to ensure as far as practically possible that the Goods delivered are the Goods ordered and the Customer will ensure that an authorised person signs the delivery docket in confirmation of this; and **(b) quantity:** the quantity of any consignment of Goods as recorded by the Supplier on dispatch from the Supplier's place of business shall be conclusive evidence of the quantity received by the Customer on delivery unless the Customer can provide conclusive evidence proving to the contrary. The Goods shall be inspected by the Customer on delivery or on collection as the case may be to ensure as far as practically possible that the Goods delivered are the quantity of Goods ordered and the Customer will ensure that an authorised person signs the delivery docket in confirmation of this. Except only where the (a) mis-supply or defects or (b) shortages in relation to the Goods are not apparent upon reasonable inspection at the time of delivery, then the Customer must notify the Supplier in writing of any alleged defects or shortages as soon as reasonably practicable and in any event within 24 hours. Any liability of the Supplier for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or issuing a credit note at the pro rata Contract rate against any Invoice raised for such Goods.

4.5 The Supplier shall not be liable for any non-delivery of Goods (even if caused by the Supplier's negligence) unless the Customer gives written notice to the Supplier of the non-

delivery within [2] days of the date when the Goods would in the ordinary course of events have been received.

4.6 Subject to the other provisions of this Contract, the Supplier shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, loss of or reduction in goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence). Nor shall any delay entitle the Customer to terminate or rescind the Contract unless such delay exceeds 7 days.

4.7 If for any reason the Customer fails to accept delivery of any of the Goods when they are ready for delivery, or the Supplier is unable to deliver the Goods on time because the Customer has not provided appropriate instructions, documents, licences or authorisations: (a) the Goods shall be deemed to have been delivered; and (b) the Company may store until delivery or dispose of the Goods, whereupon the Customer shall be liable for all related costs and expenses (including, without limitation, unloading, reloading, storage, insurance, cleaning of delivery equipment or re-ordering).

4.8 In the event that the Customer requests that any Goods be deposited on a street, public highway and/or public footpath, the Customer shall be responsible for compliance with all statutes and regulations relating to public highways and byways including, without limitation, obtaining all necessary licences, consents and/or orders, and for planning. The Customer shall also be responsible for taking and putting into action all necessary steps which may need to be put in place for the protection and safe enablement at all times of day and night of the public (including, but not limited to; children, teenagers, young adults, elderly and disabled persons) or property. The Customer shall fully indemnify and hold the Supplier harmless in respect of all costs, claims, fines, losses or expenses (including legal and / or court costs, fees) on an indemnity basis (other than in respect of death or personal injury caused by the negligence or breach of duty of the Supplier or its carrier) which the Supplier may incur as a result of a breach of this clause 4.8.

4.9 If the Supplier delivers up to and including 10% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.

4.10 The Supplier may deliver orders by instalments, which shall be invoiced and paid for separately. The Customer may not cancel an instalment because of any delay in delivery or defect in another instalment.

## 5. **QUALITY AND FITNESS FOR PURPOSE**

5.1 The Supplier warrants that, subject to the other provisions of this Contract, upon delivery the Goods shall be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).

5.2 Subject to clause 5.3, if: **(a)** the Customer gives notice in writing to the Supplier in accordance with clause 4.4 that some or all of the Goods do not comply with the warranty set out in clause 5.1; and **(b)** the Supplier is given a reasonable opportunity of examining such Goods; and **(c)** the Customer (if asked to do so by the Supplier) returns such Goods to the Supplier's place of business at the Supplier's cost, then the Supplier shall replace such Goods (or any part thereof) that are found to be defective. The terms of the Contract shall apply to any replacement Goods supplied by the Supplier.

5.3 The Supplier shall not be liable for Goods' failure to comply with the warranty set out in clause 5.1 if: **(a)** the Customer makes any further use of such Goods after giving notice of defects in accordance with clause 5.2; or **(b)** the defect arises because the Customer failed to follow the Supplier's oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; or **(c)** the defect arises as a result of the Supplier following any drawing, design or specification supplied by the Customer; or **(d)** the Customer alters or repairs such Goods without the written consent of the Supplier; or **(e)** the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or **(f)** the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 The Supplier's only liability to the Customer if the Goods fail to comply with the warranties set out in clause 5.1 is as set out in this clause 5. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979, and any representation as to fitness for purpose or a use in particular, are, to the fullest extent permitted by law, excluded from the Contract.

## 6. TITLE AND RISK

6.1 Risk in Goods shall pass to the Customer on completion of delivery of the Goods as set out in clause 4.1.

6.2 Title to Goods shall only pass to the Customer once the Supplier receives payment in full (in cash or cleared funds) for them. The Supplier shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Supplier.

6.3 Until title to the Goods has passed to the Customer, the Customer shall: **(a)** hold the Goods on a fiduciary basis as the Supplier's bailee; and **(b)** if possible, store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as the Supplier's property; and **(c)** not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and **(d)** maintain the Goods in satisfactory condition and keep them insured on the Supplier's behalf against all risks for their full price from the date of delivery; and **(e)** notify the Supplier immediately if it becomes subject to any of the events listed in clause 11.1(b) (c) and / or (d); and **(f)** give the Supplier such information relating to the Goods as the Supplier may require from time to time.

6.4 The Supplier may recover Goods in which title has not passed to the Customer. The Customer irrevocably licenses the Supplier, its officers, employees and agents, to enter any

premises of the Customer (including with vehicles), in order to satisfy itself that the Customer is complying with the obligations in clause 6.3, and to recover any Goods in which property has not passed to the Customer.

6.5 The Supplier may at any time after delivery elect to transfer title in the Goods to the Customer, in which case the Customer shall immediately pay the Price to the Seller.

## 7. PRODUCT RECALL

If the Customer is the subject of a request, court order or other directive of a governmental or regulatory authority to withdraw any Goods from the market, it shall immediately notify the Supplier in writing enclosing a copy of the recall notice. Unless required by law, the Customer may not undertake any recall or withdrawal without the written permission of the Supplier and in strict compliance with the Supplier's instructions as to the process of implementing the withdrawal.

## 8. PRICE AND PAYMENT

The Customer shall pay for Goods in accordance with this clause 8. Time for payment shall be of the essence in the Contract. The Supplier hereby expressly includes a right to take a lien over the Customers goods in accordance with Section 41, Sale of Goods Act 1979, in addition the Supplier shall expressly have additional rights to: a) put any goods over which it has a lien into a saleable state; b) sell such goods upon such terms as the Supplier sees fit and c) retain from the proceeds of sale sufficient to pay all monies due from the Customer to the Supplier (including any legal costs and fees, other recovery costs or fees, costs incurred in putting the goods into a saleable state and the expenses of the sale).

8.1 The Price **includes** [the cost of raw materials, extraction, labour, manufacture and the current aggregates levy (any increase in the aggregate levies imposed at the date of delivery or deemed delivery may be added to the price by the Supplier)] less any credit note (duly authorised and determined by the Supplier) but **excludes:** **(a)** the costs of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer in addition to the Price; **(b)** the costs of any waiting time in accordance with clause 4.2 or part load charge (such amount to be determined by the Supplier, where the Customer orders less than a full load (details of load capacities can be obtained from the Supplier upon request); or any uplift levy for (i) emergency orders or (ii) deliveries requested outside normal working hours or normal working days (in each case accepted in writing by the Supplier in its sole discretion) each of which shall be invoiced to the Customer in addition to the Price; and **(c)** amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to the receipt of a valid VAT invoice.

8.2 The Supplier may invoice the Customer for the price of Goods plus VAT at the prevailing rate (if applicable) on or at any time after it confirms the relevant order to the Customer. The Supplier shall ensure that the invoice includes the date of the order, the invoice number, the contract number, the Customer's order number, the Supplier's VAT registration number, and any supporting documentation that the Customer may reasonably require.

8.3 The Customer shall pay invoices in full in cleared funds by the end of the month following the month of invoice. Payment shall be made to the bank account nominated in writing by the Supplier.

8.4 If the Customer fails to make any payment due to the Supplier under the Contract by the due date for payment, then, without limiting the Supplier's remedies under clause [11]: **(a)** the Customer 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 actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount; and **(b)** the Supplier may suspend all further deliveries of Goods until payment has been made in full; and **(c)** the Supplier may in its absolute discretion alter or withdraw any and all credit facilities given to the Customer at any time.

8.5 The Customer shall pay all amounts due under the contract in full without set-off, counterclaim, deduction, abatement, or withholding (except for any deduction or withholding required by law). The Supplier may at any time, without limiting any of its other rights or remedies, set off any amount owing to it against any amount payable by the Supplier to the Customer.

8.6 The Directors of the Customer shall act as guarantor as principal obligor and (as a separate and independent obligation and liability from the Customer's corporate obligations and liabilities under this Contract) agrees to indemnify and keep indemnified the Supplier in full and on demand from and against all and any losses, costs, fees, legal costs, recovery costs, claims, liabilities, damages, demands and expenses suffered or incurred by the Supplier arising out of, or in connection with, the Contract not being carried out or monies being recoverable for any reason or any failure of the Customer to perform or discharge any of its obligations or liabilities in respect of the Contract.

## 9. LIMITATION OF LIABILITY

9.1 Nothing in this Contract shall limit or exclude the Supplier's liability for: **(a)** death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable); **(b)** fraud or fraudulent misrepresentation; **(c)** breach of the terms implied by section 12 of the Sale of Goods Act 1979; or **(d)** any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.

9.2 Subject to clause 9.1: **(a)** the Supplier shall not be liable to the Customer, 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; and **(b)** the Supplier's total liability to the Customer for all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall be limited to the contract value together with the cost of remediating any defective goods.

**10. COMPLIANCE WITH RELEVANT LAWS AND POLICIES**

10.1 In performing its obligations under the Contract, the Supplier shall comply with all applicable laws, statutes, regulations and codes from time to time in force.

**11. TERMINATION**

11.1 Without limiting its other rights or remedies, either party may terminate this Contract with immediate effect by giving written notice to the other party if:

- (a) the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 7 days of that party being notified in writing to do so;
- (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
- (d) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

11.2 Without limiting its other rights or remedies, the Supplier may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment.

11.3 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

**12. GENERAL**

12.1 **Force majeure.** Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from an event, circumstance or cause beyond a party's reasonable control.

12.2 **Assignment and other dealings.** **(a)** The Customer shall not assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Supplier. **(b)** The Supplier may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this agreement.

12.3 **Confidentiality.** Each party undertakes that it shall not at any time during this agreement, and for a period of two years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party except as required by a court. No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

12.4 **Entire agreement.** **(a)** This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. **(b)** Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

12.5 **Variation.** It is a strict condition of this Contract that no variation of this Contract shall be effective unless it is in writing entitled "*Variation Order*" and signed by both a Director of the Supplier (or their authorised representatives) and a Director of the Customer.

12.6 **Waiver.** A waiver of any right or remedy is only effective if given in writing [and shall not be deemed a waiver of any subsequent breach or default]. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not: **(a)** waive that or any other right or remedy; nor **(b)** prevent or restrict the further exercise of that or any other right or remedy.

12.7 **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.

12.8 **Notices.** **(a)** 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 such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service, commercial courier, [fax or] email. **(b)** A notice or other communication shall be deemed to have been received: if delivered personally, when left at the registered office address; if sent by pre-paid first class post or other next working day delivery service, at [9.00 am] on the [second] business day after posting; 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 or] email, one business day after transmission. **(c)** The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

12.9 **Third party rights.** No one other than a party to this Contract shall have any right to enforce any of its terms. The parties to the Contract do not intend that any 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.

12.10 **Governing law and Jurisdiction.** This 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 the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).