

Terms & Conditions

Rev. 21.01.2022

Definitions

Conditions: the terms and conditions set out in this document as amended from time to time in accordance with clause 13.5.

Contract: the contract between the Company and the Customer for the sale and purchase of the goods in accordance with these conditions.

Customer: the person or company who purchases the Goods from the Company.

Company: Donal Mac Monagail Agus A Mhic Teoranta trading as 'McMonagle Stone' (registered in Ireland with the company number 128807)

Order: the Customer's verbal or written acceptance of the Company's quote or pricelist as confirmed by the Company's order acknowledgement.

Pricelist: any pricelist issued to the Customer by the Company.

Specification: any Specification for the Goods, including any related plans, drawings, test data, brochure, point of sale material and website provided by the Company that is agreed in writing.

Goods: the Goods (or any part of them) as set out in the Company's brochures, website, point of sale material or any website or point of sale of a third-party Supplier that the Company distributes products from.

Goods Guidelines: the guidelines issued by the Company in respect of the Goods supplied.

Force Majeure Event: an event or circumstance beyond a party's reasonable control including but not without limitation, flood, fire, act of god, exceptional weather, lack of supplies, lack of fuel and any failure by third party delivery partners and suppliers.

Business Day: a day (other than a Saturday, Sunday or public holiday).

Intellectual Property: Intellectual Property patents, rights to inventions and designs, copyright, trademarks, business names, business domains, database rights and the right to use and protect confidential information including know how and all other intellectual property rights, in each case whether registered or unregistered now or in the future in any part of the world.

1. Interpretation: This agreement shall be construed as a whole, according to its fair meaning, and not in favour of or against any party. Sections and section headings contained in this agreement are for reference purposes only, and shall not affect in any manner the meaning or interpretation of this agreement.

2. Basis of contract: 2.1

These conditions apply to the contract to the exclusion of any other terms that the customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Order constitutes an offer by the customer to purchase the Goods in accordance with these Conditions and Goods Guidelines. The customer is responsible for ensuring the terms of the Order and any applicable Specifications are complete and accurate.

2.3 The Order shall only be deemed accepted or to be accepted when the Company issues a written acceptance of the Order, at which point the Contract shall come into existence.

2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.

2.5 Any samples, descriptive or advertising produced by the Company and any descriptions or illustrations contained in the Company's brochures, point of sale material and / or websites are produced for the purpose of giving an approximate idea of the Goods referred to in them. Each sample is only approximating actual colour and external finish and structure. Deviations or patterns typical for the material (colour shades, pores, veins, etc.) are allowed. They shall not form part of the Contract nor have any contractual force.

2.6 Unless previously withdrawn a quotation given by the Company is open for acceptance by the Customer by placing an Order within 30 days of the date of quotation or such longer period as the Company may prescribe. A quotation includes only such Goods stated therein and, where appropriate, to such Specifications.

2.7 Any listed price for the Goods given by the Company shall not constitute an offer. A price list shall be issued annually to existing customers and upon commencement of trade to new customers.

2.8 No Goods supplied to the Customer shall be exported by the Customer without the prior consent of the Company in writing.

3. Goods: 3.1

The Goods are described in the Company's brochure, website or point of sale material as modified by any applicable Specification. Certain deviations on measurements should be accepted and they cannot give cause to any complaint.

3.2 The Company's ability to provide specified sizes will be subject to availability of suitable material at the date of manufacture or supply.

3.3 All site dimensions, sizes, cutting lists, mould templates required for the execution of works, unless otherwise agreed and confirmed in writing by the Company, are to be provided by the Customer.

3.4 All Goods are supplied on the clear understanding that natural stone materials and finished masonry products will be subject to natural geological formation characteristics, variation in colour, markings, texture etc. No guarantee or warranty is given to colour or veining of natural stone. Any samples supplied are merely indicative of the type of material, and will not necessarily show the variation in colour, marking etc. over larger areas of stonework.

3.5 The natural characteristics of all stones may require a treatment of the stone consisting of several stages; the improving of natural deficiencies such as pores, cavities and small quartz-holes by filling them with polyester resins and the like. This procedure is necessary to ensure a perfect production quality; it does not entail a depreciation of the quality of the stone in any way.

3.6 The Customer agrees that it must only use the Goods strictly in accordance with the Goods Guidelines.

3.7 The Customer acknowledges and understands that it needs to cater for wastage when ordering the Goods and should allow an additional 10% for the area of the Goods ordered.

3.8 Porcelain is supplied on the clear understanding that tiles are manufactured in batches. Colour, texture and sizes may vary from batch to batch. It is recommended to add an extra 3 -5% of overall area to allow for any future replacements. Porcelain ranges or specific batches are not guaranteed at a later date.

4. Claims / Liability: 4.1

It is the responsibility of the Customer to inspect Goods on delivery or collection. Any claim that goods have been delivered damaged, collected by the Customer in a damaged condition, are not of the correct quantity or do not comply with their description, shall be notified by the Customer to the Company within 3 Business Days of delivery or collection.

4.2 Any claim under this condition must be in writing, accompanied by photographs, fully quantified and contain reference numbers any other details to support the claim including details of alleged defects.

4.3 The Company shall be afforded reasonable opportunity and facilities to investigate any claim made under this condition.

4.4 No claim against the Company shall be allowed for any defect arising from any negligence, design, installation or specification provided or made by the Customer or if any adjustments alterations, fair wear and tear or other work has been undertaken on the goods by any person other than the Company.

4.5 In the case of goods which the company agrees are defective, the Company shall be allowed a reasonable time to rectify any defect or supply replacement goods, whichever the Company deems appropriate, at the Company's expense.

4.6 The Company shall have no liability with regard to any claim in respect of which the customer has not complied with the provisions of this or any other condition herein.

5. Delivery and Collections:

5.1 The Company shall ensure that each delivery of Goods is accompanied by a delivery note that shows the date of order, the type and quantity of Goods (including the product code of the Goods, where applicable) and if the Goods are being delivered by installments, the outstanding balance of Goods remaining to be delivered.

5.2 The Company shall deliver the Goods to the location set out in the Order or such other delivery location as the parties may agree at any time after the Company notifies the Customer that the Goods are ready. From the date of ready notification, the Customer is permitted to collect their Goods within Five Business Days from any of the Company's depots should the Goods be in stock at their desired location. The Customer must be able to provide suitable transportation on arrival, the Company reserves the right to refuse collection on arrival should they deem the Customers transportation to be unsuitable. Delivery is completed on the completion of offloading of the Goods at the delivery Location or on completion of loading of the Goods at our premises should the Customer opt to collect their own Goods.

5.3 A maximum offloading period of 30 mins is included on delivery of Goods, any offloading period in excess of this time will be at the Company's discretion and will be subject to an additional charge.

5.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.

5.5 The Company shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide the Company with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

5.6 If the Customer fails to take or accept delivery of the Goods as applicable within five Business Days of the Company notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or the Company's failure to comply with its obligations under the Contract: delivery of the Goods will be deemed to have been completed at 9am on the fifth Business Day after the day on which the Company notified the Customer that the Goods are ready and the Company shall store the Goods until delivery takes place and charge the Customer for all related costs and expenses relating to such storage.

5.7 If ten Business Days after the day on which the Company notified the Customer that the Goods are ready for delivery the Customer has not taken or accepted the Goods, the Company may resell or otherwise dispose of part or all of the Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Goods or charge the Customer for any shortfall below the price of the Goods.

5.8 The Company may deliver the Goods in installments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an installment shall not entitle the Customer to cancel any other installment.

5.9 The Customer shall ensure that at all times it provides all reasonable assistance as the Company may require in respect of facilitating delivery and as defined in the Company's delivery guidelines (Company website). In particular the Customer must ensure that at all times it (or its customers) shall provide free access and appropriate delivery facilities and will comply with the any reasonable instructions of the Company.

6. Returns:

6.1 The Company does not accept returns on excess quantities of over ordered material or where the Customer simply changes their mind.

6.2 We do not accept returns on bulk chippings, McMonagle Stoneer cladding, third party adhesives or grouting products or bespoke architectural products unless there is an error by the Company.

6.3 In the event that the Company is willing to accept a return the Goods must meet the following conditions;

6.3.1 The Company will apply a 15% restocking charge to any credit note raised as a result of the return which the Customer shall pay in full in accordance with the payment terms set out in these conditions.

6.3.2 The Customer must return the Goods unused and in the same resalable condition in which they were delivered to the Customer. If we find that the product has not been returned to us in full resalable condition, we reserve the right to refuse a refund on the item, or deduct up to 20% of the original selling price from the refund amount.

6.3.3 The Customer must return the Goods to the Company within 7 days of delivery. Any returns received outside this time frame may be considered at the sole discretion of the Company and may only be refunded as credit against a future purchase.

6.3.4 The Customer shall have full responsibility for returning the Goods to the Company's place of business at its own cost. The Company may, at its sole option and discretion, offer a collection service to the customer for a charge, such charge to be notified to the Customer in advance of any return.

6.3.5 The Company shall issue a credit note for the value of the Goods at its sole option and discretion, less the 15% restocking fee described at condition 6.3.1 above following the Company's inspection of the returned Goods at the Company's place of business.

7. Risk and Title

7.1 The risk in the Goods shall pass to the Customer when the goods are delivered or collected by the Customer or its representative.

7.2 Notwithstanding the earlier passing of risk to the Customer, property and ownership of any Goods supplied will remain the property of the Company and title in the goods shall not pass to the Customer until any amounts due are paid and received in full.

7.3 Until the title passes the Customer shall hold the Goods as bailee for the Company, shall insure the Goods against all reasonably insurable perils and shall store and mark the Goods so they can at all times be identified as property of the Company.

7.4 If the Customer fails to comply with the payment conditions, the Company shall be entitled at any time, until the property of the Goods passes to the Customer, to require the Customer to deliver up the Goods to the Company, and if the Customer fails to do so forthwith, to enter upon any premises of the Customer of any third party where the Goods are stored and repossess the Goods.

8. Price and Payment:

8.1 The price of the Goods shall be the price set out in the quotation or price list provided. All rates and prices are strictly Net and exclude VAT, contractors discount, retention and future increases.

8.2 The Company's rates and prices are based on the specification, quantities and programme provided at the date of quotation / tender. The Customer will be invoiced the actual quantities, design details and programme required by the Customer. In the event of significant variation to either the specification, quantities, details or programme the Company reserves the right to amend the rates accordingly, which needs not necessarily be on a pro rata basis, but may at the Company's discretion.

8.3 In the case of architectural Goods, the Customer is required to pay up to 50% deposit on Order prior to production commencement. No Order that has been acknowledged in writing by the Company may be cancelled by the Customer except with the written agreement of the Company and on the terms that the Customer shall indemnify the Company in full against all loss, including but not limited to loss of profit, costs, charges and expenses incurred by the Company as a result of the cancellation.

8.4 The Company may, by giving notice to the Customer at any time up to 3 Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to;

8.4.1 Any factor beyond the Company's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs)

8.4.2 Any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or **8.4.3** Any delay caused by any instructions of the Customer or failure of the Customer to give the Company adequate or accurate information or instructions.

8.5 The price of the Goods:

8.5.1 Excludes amounts in respect to value added tax (VAT), which the customer shall additionally be liable to pay to the Company at the prevailing rate, subject to the receipt of a valid VAT invoice; and

8.5.2 Excludes the costs and charges of transport and offloading of the Goods, which shall be invoiced to the Customer.

8.6 Payment for goods and services is required in full prior to delivery of goods, except where the Company at its discretion offers the Customer a credit facility. Where the Customer fails to pay the proforma invoice by due date, all deliveries and manufacture will be suspended on this and all other contracts with the Company, until the invoice and any additional costs incurred under clause 8.3 have been paid.

8.7 All overdue accounts are automatically and routinely referred to a Credit Management Company for collection. NB: If this referral becomes necessary, a collection of costs will be applied to this account.

9. Termination: 9.1 The Company may, without prejudice to its other rights in law, suspend or cancel further manufacturer, deliveries or services under this or any other contract between the parties hereto and debit the Customer with any losses incurred if;

9.1.1 The Customer shall fail to make payment in full of any sum owing by the date due

9.1.2 The Customer makes any voluntary arrangement with its creditors or becomes subject to an administration order or becomes bankrupt or goes into liquidation or an encumbrance takes possession, or a receiver or administrative receiver is appointed.

9.1.3 The Customer ceases or threatens to cease to carry on business.

9.1.4 The Customer has any distress or execution levied on its goods.

9.1.5 The company reasonably apprehends that any of the events mentioned in 9.1.1 to 9.1.5 above is about to occur in relation to the Customer and notifies the Customer in writing accordingly.

9.1.6 The value of goods manufactured but not paid for exceeds or if manufactured would exceed the Customer's credit limit with the Company.

10. Limitation of Liability:

10.1 Nothing in these Conditions shall limit or exclude the Company's liability for:

10.1.1 Death or personal injury caused by negligence, or the negligence of its employees, agents or subcontractors (as applicable);

10.1.2 Fraud or fraudulent misrepresentation;

10.1.3 Breach of the terms implied by the Sales of Goods Act 1980 or a defective product under the Consumer Protection Act 2007 or **10.1.4** Any matter in respect of which it would be unlawful for the Company to exclude or restrict liability.

10.2 Subject to Clause 10.1;

10.2.1 The Company shall under no circumstances whatsoever 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

10.2.2 The Company's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in Contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the price of the Goods.

11. Intellectual Property Rights:

11.1 The customer acknowledges that all intellectual property rights in the Goods and any brand of the Company shall best in the Company absolutely and that no rights are granted to the Customer by virtue of this Contract.

12. Force Majeure:

12.1 Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure result from an event, circumstances or cause beyond its reasonable control (Force Majeure Event).

12.2 The Company shall use all reasonable endeavors to mitigate the effect of a Force Majeure Event on the performance of its obligations.

12.3 If a Force Majeure Event prevents, hinders or delays the Company's performance of its obligations for a continuous period of more than 3 months, the Customer may terminate the Contract immediately by giving written notice to the Company.

13. General: 13.1 Assignment and other dealings: 13.1.1

The Company may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the contract.

13.1.2 The Customer may not assign, transfer, mortgage, 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 Company.

13.2 Confidentiality

13.2.1 Each party undertakes that it shall not at any time during this agreement, and for a period of five years after termination of this agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or supplier of the other party or any member of the group to which the other party belongs, except as permitted by clause 1.2.2 for the purposes of this clause, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a hold company of that party.

13.2.2 Each party may disclose the other party's confidential information: (a) to its employees, officers, representative or advisors who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisors to whom it discloses the other party's confidential information comply with the clause 13.2 and (b) as may be required by law, a court of competent jurisdiction or any government or regulatory authority.

13.2.3 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.

13.3 The Customer's customers

13.3.1 The Customer acknowledges that the Company will have no responsibility or liability or input or control over or enter any contractual arrangement that the Customer may seek to agree with its customers in respect to Goods.

13.3.2 The Customer acknowledges its responsibility for ensuring that its customer is made aware of the Company's Goods Guidelines.

13.4 Entire agreement:

13.4.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representation and understanding between them, where written or oral, relating to its subject matter.

13.4.2 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.

13.5 Variation. No Variation of this contract shall be effective unless it is in writing and signed by the parties (or their authorized representatives).

13.6 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by Law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any right or remedy.

13.7 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 enforceable of the rest of the Contract.

13.8 Notices: **13.8.1** 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 (if it is a company) or its principal place of business (in any other case) 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, sent by pre-paid first class post or other next working delivery service, commercial courier or email.

13.8.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 13.8.1 if sent by pre-paid first class post or other next working day delivery service, at 9am 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 email, one Business Day after the transmission.

13.8.3 The provision of this clause shall not apply to the services of any proceedings or other documents in any legal action.

13.9 Third Party Rights. No one other than a party to this Contract shall have any right to enforce any of its terms.

13.10 Governing Law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of its subject matter or formation, shall be governed by and construed in accordance with the law of Ireland.

13.11 Jurisdiction. Each party irrevocably agrees that the courts of Ireland shall have non-exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.

The above terms and conditions have been prepared and presented by McMonagle Stone. They can also be viewed on our company website. Please see header for contact details should you have any queries relating to our terms and conditions.