

Burslem Memorials Limited

TERMS AND CONDITIONS OF TRADING

1. BASIS OF SALE

- 1) These conditions shall apply to the sale by the company of all goods and services and shall govern the contract to the exclusion of any other terms and conditions introduced or submitted by the customer.
- 2) No variation of these conditions may be given by any of the company's employees unless confirmed in writing by an authorised representative of the company and no collateral or supplemental contract may be made or construed unless confirmed in writing by an authorised representative of the company on the company's official stationery.
- 3) All estimates submitted shall remain valid for the period stated therein, but if no period is specified such tenders and quotations shall be valid for 30 days.
- 4) The company's employees or agents are not authorised to make any representations concerning the goods, services or their supply unless confirmed by an authorised representative of the company. In entering into the contract, the customer acknowledges that it does not rely on any such representations which are not so confirmed; save that nothing in these conditions shall exclude the company liability for fraudulent misrepresentation.
- 5) Any typographical, clerical or other omission in any sales literature, estimate, price acceptance of offer, invoice or other document or information issued by the company shall be subject to correction without any liability on the part of the company.

2. ORDERS AND SPECIFICATION

- 1) The company reserves the right to make changes to the goods: -
Which are required so that the goods conform with any applicable statutory or EU requirement; or
Where such changes to the goods do not materially affect the quality or performance of the goods
- 2) No order which has been accepted by the company may be cancelled by the customer except with the agreement of the company and on terms that the customer shall indemnify the company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used). Damages, charges and expenses incurred by the company as a result of cancellation. For the avoidance of doubt any deposit paid by the customer shall be non-returnable in the event of a cancellation.
- 3) The company will under no circumstances accept the return of goods for credit.

3. NATURAL VARIATION

- 1) All goods are sold on the express understanding that they are of natural stone which is subject to natural formation characteristics, variation, colour, markings and moisture content, and accordingly all conditions and warranties relating to the quality or fitness for any particular purpose of the goods implied by law are hereby excluded except to the extent that such exclusion is prohibited by any rule of law.
- 2) Any samples provided are merely indicative of the type of goods offered and no guarantee or warranty of colour, tolerance or quality is implied. The general quality of surface finish will be in accordance with the representative samples of the product type to be supplied which may be inspected by arrangement or photographs can be supplied.
- 3) All sizes quoted by the company are nominal and the company shall have no liability for reasonable variations.

4. PRICE

- 1) The price for the goods shall be the price specified by the company: -
In the company's estimate
- 2) Unless otherwise stated, prices are expressed:-
Exclusive of value added tax which the customer shall be additionally liable to pay to the company and will be charged at the rate prevailing at the time the invoice is raised.
- 3) The company reserves the right to adjust the price if there is any change in the delivery date, quantities, destination or specification for the goods requested or any delay caused by any instructions of the customer or failure of the customer to give the company adequate information or instructions.

5. PAYMENT TERMS

- 1) The customer shall pay each invoice from the company in accordance with the "terms" set out with the original offer.
- 2) The items of payment of the company's invoices shall be of the essence of the contract.
- 3) If the customer fails to make payment on the due date then, without prejudice to any other right or remedy available to the company:-
- 4) The company shall be entitled to charge the customer the fixed penalty charge under "The Better Payment of Commercial Debts (Interest) Act 1998"
- 5) The company shall be entitled to enter upon the premises of the customer or any third party where the goods are stored and mark identify and reposes the goods.
- 6) Payments under the contract are due on acceptance of the customer's order by the company. Subject to the sub-clause below the company may provide goods or services on credit and unless otherwise expressly agreed payments under the contract are due not later than 14 days from the date of the invoice. The company reserves the right to charge costs and interest on overdue accounts in accordance with The Better Payment of Commercial Debts (interest) Act 1998.
- 7) The company shall be entitled to suspend further deliveries or work both on the same order and any other order from the customer without prejudice to any other right the company may have, and the customer shall be liable for all costs and loss of profit as a result of non-completion of such orders.
- 8) Where requested in writing by the company, the customer shall pay the company a deposit before any goods are produced or works commenced such deposit to be deducted from the contract price on completion.

6. DELIVERY/COLLECTION

- 1) Where goods are supplied on a supply only basis collection of the goods shall be deemed to have taken place on completion of inspection and signature of the collection note and prior to loading by the customer.
- 2) Upon delivery the company will sign a delivery note which will be conclusive evidence that delivery of the goods has been made and no liability for damage subsequent or subsequently discovered will be accepted.
- 3) Any delivery charges quoted are based on full loads with delivery being made during the normal working week. Split loads, part loads, mechanical off-loading and weekend or public holiday deliveries will be made where requested by the customer and additional associated costs will be charged to the customer. Current rate demurrage charges will be levied where delivery vehicles are retained on site for a time exceeding one hour for the purpose of unloading.
- 4) Delivery of the goods will only be made on roads or hard standing capable of properly supporting the fully loaded vehicle.
- 5) Where delivery is not possible through no fault of the company the full cost of all time expended in attempting delivery will be invoiced in addition to the contract sum

7. RISK AND TITLE

- 1) Risk of damage to or loss of the goods shall pass to the customer at the time of delivery, or, if the customer fails to take delivery, the time when the company has tendered delivery of the goods.
- 2) Not-with-standing delivery and the passing of risk to the goods, or any other provisions of these conditions, ownership of the goods shall not pass to the customer until the company has received in cash, or cleared funds, payment in full of the price, any additional charges and all other sums due under any other contract which may exist between the parties.
- 3) Where goods are destroyed by an insured risk prior to the same being paid for by the customer, the customer shall receive the proceeds of any such insurance as trustees for the company.

8. WARRANTIES AND LIABILITY

- 1) Subject to the conditions set out below and provided that the company shall be under no liability arising from failure by any person other than the company to follow the company's instructions (whether oral or in writing), any wilful damage, negligence, abnormal working conditions, misuse, alteration or repair of the goods, inappropriate storage improper use, or further treatment of or process to the goods, the company warrants that upon delivery the goods will correspond their approximate description and will be free from physical defects.
- 2) Any descriptions of the goods offered are for guidance only and do not imply suitability for any particular purpose. All descriptions of the goods, including but no limited to descriptions as to quantity, weight, size specifications and packaging are approximate descriptions only and subject to industry tolerances.
- 3) The customer shall be under a duty to inspect the goods on delivery or completion of installation. The customer shall inform the company of any defect which would be apparent on reasonable inspection of the goods at the time of inspection. In the event of a latent defect being discovered, the customer shall inform the company of such defect immediately on discovery of the same. Any claim for breach of warranty by the customer shall not be accepted by the company unless the customer notifies the company in writing of the nature of the claim within 3 working days of delivery / completion of works.
- 4) The customer shall not be entitled to reject the goods where the alleged defect or breach of contract is immediately rectifiable or within standard tolerance.
- 5) Where any valid claim in respect of the goods is made by the customer the company shall be entitled to replace or repair the goods (or the part in question) free of charge or, at the company's sole discretion, refund to the customer the price (or a proportionate part of the price), and the company shall have no further liability to the customer.
- 6) In the event of any claim being made by the customer the customer shall give the company a reasonable opportunity to inspect the goods in the same condition as they were at delivery after discovery of the defect and liability will not be accepted unless this procedure is followed. For the avoidance of doubt, where the alleged defect is one which would have been apparent on reasonable inspection of the goods, liability for such defect will not be accepted.
- 7) In respect of physical damage to or loss of the customer's tangible property to the extent that it results from the wilful default or negligence of the company, it's employees, agents or contractors, the company's liability shall be limited to an amount of £5,000,000 in respect of each incident or series of connected incidents.
- 8) The company's liability in respect of any claim in relation to the goods or works whosoever arising (whether or not involving negligence on the part of the company) shall in all cases be limited to 10% of the contract price except that the company shall not in any circumstances be liable for any consequential loss arising from such claim (save to the extent that such exclusion is prohibited by any rule of law).
- 9) The inclusion and position of all and any joints is wholly the decision of the company.
- 10) The company shall not be liable to the customer nor be deemed to be in breach of contract by reason of any delay in performing, or any failure to perform, any of the company's obligations in relation to the contract, if the delay or failure was due to any cause beyond the company's reasonable control such as (but without limitation) any strike, lock out or other form of industrial action, reduction in or unavailability of power at the company's premises or those of the company suppliers, breakdown of manufacturing or other equipment and unavailability of suitable labour or raw materials.
- 11) The company shall have no liability under the contract or otherwise if the goods have not been paid for by the due date for payment.
- 12) Any claim by the customer under this condition in respect of any goods shall not entitle the customer to withhold or delay payment in respect of any goods (or goods supplied under any other contract which may exist between the parties) in respect of which no such claim has been made whether or not forming part of the same consignment.
- 13) The customer shall not be entitled to make deductions from the final contract sum in respect of delays or other consequential losses which may be attributable to the company unless this is specifically agreed in writing at the point the potential claim first becomes apparent.

- 14) Where the company is instructed to carry out works to a customer's existing memorial, for example removal for additional burial or inscription, whilst every effort will be made to take the utmost care should goods not belonging to the company be damaged during the works the company will accept no liability for such damage and reserves the right to charge for the carrying out of repairs or replacement.

9. DELIVERY AND COMPLETION DATES

- 1) The delivery or completion date specified in the contract is approximate only and, unless otherwise expressly stated, time is not of the essence for delivery. The company will not be liable in any circumstances for the consequences of any delay in delivery or failure to deliver if the duration of the delay is not substantial or if the delay or failure is due to an act of God, fire, inclement or exceptional weather conditions, industrial action (whether the company's premises or elsewhere) hostilities, breakdown, shortages of labour, materials, power or other supplies, late delivery or performance or non-delivery or non-performance by suppliers or sub-contractors, governmental order or intervention (whether or not having the force of law) or any other cause whatever beyond the company's control or of an unexpected or exceptional nature.
- 2) The company cannot undertake to meet any schedule of customers requirements supplied after the date of the contract and will have no liability whatever for the delay in meeting or failure to meet all of any of such requirements, how-so-ever such failure or delay may arise.

10. INSTALLATION AND WORK ON SITE

- (1) The contract does not include the installation of any goods or equipment unless specified in the contract.
- (2) Where installation is included in the contract, prior to commencement of works on site it is the responsibility of the customer to advise the company of the exact position or plot number for installation which in the case of church yard memorials will necessitate the marking of the grave space.
- (3) The customer shall ensure that the work can be carried out uninterrupted during normal working hours, and that no work is carried out except by the company's employees within the works area. Any overtime or additional costs caused by an interruption or delay not attributable to the company or its employees shall be charged extra to the customer.

11. DRAWINGS AND INFORMATION

- 1) The company is entitled to assume that all drawings, description, specifications and other information supplied by the customer to the company; whether written or verbal is in all respects complete, accurate and entirely suitable for the customer's requirements.
- 2) The company will, upon written request from the customer at the point of order, supply an inscription layout for the inscriptions to new memorial stones only. Where additional inscriptions to existing memorials are required the layout of the new inscription will be entirely at the discretion of the company's masons.
- 3) Where additional inscriptions are machine cut the company will exercise its best endeavour to ensure the new font matches the old but accepts no liability where old and new fonts differ.
- 4) Any extra work, requirement or modification in relation to the goods or their installation which is not expressly specified in the contract or which is expressly excluded by these conditions and which the customer requests shall be charged extra (including an appropriate allowance for overhead and profit) to the extent that such extra work, requirement, or modification increases the cost to the company of performance of the contract.

13. STATUTORY APPROVALS

The customer shall ensure that permits in accordance with Churchyard and Cemetery regulations and any other necessary approvals have been obtained and are valid and subsisting and that any conditions to which such permissions or approvals are subject have been complied with and that the structure of the building or site concerned is suitable for the works.

14. SUB-CONTRACTING

The company reserves the right to sub-contract the whole of any part of a contract including delivery.

15. DELAYED ACCEPTANCE

If for any reason the customer is unable or refuses to accept delivery of the goods when the goods are due and ready for delivery the company may arrange storage of the goods and the customer shall be liable to the company for the reasonable costs, including insurance, of such storage. This provision is without prejudice to any other right which the company may have in respect of the customer's failure to take delivery of the goods or to pay for them in accordance with the contract.

16. INSURANCE

Copy documents are available on request.

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