

**1. DEFINITIONS AND INTERPRETATION**

The following definitions and rules of interpretation apply to these Conditions:

**1.1 Definitions:**

<b>AED:</b>	United Arab Emirates Dirhams.
<b>Additional Charges:</b>	the additional charges provided for in Clause 5.4 (Additional Charges) and Schedule 1.
<b>Conditions:</b>	these terms and conditions, as may be amended from time to time by the Seller.
<b>Confidential Information:</b>	any confidential or proprietary information, whether of commercial, financial or technical nature, that is disclosed in writing, orally, visually or otherwise by the Seller to the Customer in relation to the Contract, including without limitation, supplier, product, or production related information; samples; information relating to composition, formulation, quality control or specifications of samples, raw materials or products; the results of any testing and/or evaluation, research and development; patent applications; process designs and process models; materials and any Intellectual Property Rights. Confidential Information includes the Contract, all activities conducted under this Agreement and any other information that is confidential or proprietary by nature.
<b>Contract:</b>	the contract between the Seller and the Customer for the supply of Materials in accordance with the Conditions.
<b>Customer:</b>	the person, firm or company who has agreed to purchase the Materials from the Seller as set out on the Order.
<b>Delivery:</b>	the unloading of the Materials at the Destination in accordance with these Conditions in particular Clause 5 (Delivery).
<b>Delivery Ticket:</b>	the proof of delivery/collection ticket, confirming Delivery setting out various details including the Customer's details and a description of the product type and quantity, delivery date and purchase order number.
<b>Destination:</b>	the site, and the point of unloading, to which the Materials are to be delivered as set out in the Order (or such other location as the parties may agree in writing);
<b>Intellectual Property Rights:</b>	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in design, database rights, rights to use, and protect the confidentiality of,

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confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or shall subsist now or in the future in any part of the world.

- Losses:** any losses and/or damages whatsoever whether direct, indirect or consequential (including any liability to any third party, pure economic loss, loss of profits, loss of business and loss of goodwill), costs (including legal costs), charges or expenses.
- Mandatory Policies:** the Seller's business policies and/or codes of conduct issued to the Customer from time to time or set out on the Seller's website (as the case may be) and including, without limitation, the Seller's health and safety policy, the Seller's environmental policy and the Seller's anti-corruption policy.
- Materials:** the goods to be supplied by the Seller as set out in the Order.
- Order:** the Customer's order for the Materials, either as set out in the Customer's purchase order form, in the Customer's written acceptance of the Seller's quotation or overleaf, as the case may be.
- Price:** the amount payable by the Customer to the Seller pursuant to the Contract in respect of the supply of the Materials (as detailed by Clause 3 (Price)).
- RAK:** Ras Al Khaimah, one of the seven Emirates of the UAE.
- Seller:** Raknor LLC, a limited liability company incorporated and registered with the Ras Al Khaimah Department of Economic Development under trade licence number 10363267 and whose address is PO Box 883, RAK, UAE - [www.raknor.com/](http://www.raknor.com/).
- Specification:** any specification for the Materials, including any related plans and drawings that is agreed in writing by the Customer and the Seller.
- UAE:** the United Arab Emirates.

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### 1.2 Interpretation:

- (a) A reference to a particular law is a reference to it as it is in force for the time being (taking account of any amendments, extension, application or re-enactment and including any subordinate legislation for the time being in force made under it).
- (b) These Conditions shall apply to any replacement Materials supplied by the Seller under a Contract.
- (c) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (d) A reference to a party includes its successors and permitted assigns.
- (e) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- (f) A reference to **writing** or **written** includes fax and email.

## 2. FORMATION OF CONTRACT, QUOTATIONS AND ORDERS

2.1 All Materials sold by the Seller shall be subject to these Conditions and any Contract shall be on the basis of these Conditions to the exclusion of all other terms and conditions:

- (a) that the Customer seeks to impose or incorporate; and/or
- (b) to the extent lawfully able to exclude, those which are implied by trade, custom, practice or course of dealing.

2.2 Any samples, drawings, descriptive matter, or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues, brochures or website are produced for the sole purpose of giving an approximate idea of the Materials described in them. They shall not form part of the Contract or be treated as a description of the Materials unless expressly stated in writing as doing so in the Contract. No Materials are sold by sample.

2.3 The Order constitutes an offer by the Customer to purchase the Materials in accordance with these Conditions.

2.4 The Customer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.

2.5 The Order shall be deemed to be accepted, and the Contract shall be deemed to have come into existence, on the earlier of the Seller either:

- (a) issuing a written acceptance of the Order; or
- (b) commencing preparation for delivery of the Materials to the Destination.

2.6 Any quote or estimate issued by the Seller may be withdrawn at any time before acceptance of order and shall be deemed to be withdrawn if an order is not received within 30 days of the date of quote or estimate.

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- 2.7 A quotation or estimate given by the Seller does not constitute an offer to supply.
- 2.8 The Seller may make any changes to any Specifications which are required to meet any applicable law or regulation or other UAE requirements or which do not materially affect their quality and performance.

### **3. PRICE**

- 3.1 The Price is the price set out in the Seller's latest quotation on the date of dispatch or as otherwise agreed between the parties in writing. Prices quoted are not fixed unless agreed in writing by the Seller.
- 3.2 Unless other stated, the Price shall be quoted exclusive of any applicable; valued added tax (**VAT**) or other taxes, toll charges and other such levies, which shall be added to the Price and paid by the Customer as required.
- 3.3 Where any taxable supply for VAT purposes is made under the Contract by the Seller to the Customer, the Customer shall, on receipt of a valid VAT invoice, pay to the Seller such additional amounts in respect of VAT as are chargeable on the supply of the Materials, or any other goods and/or services as the case may be, at the same time as payment is due for the supply of the Materials, or any other goods and/or services, as the case may be.

### **4. PAYMENT**

- 4.1 Subject to Clause 4.5 below, the Seller may invoice the Customer on or at any time after Delivery.
- 4.2 The Customer shall pay the Seller's invoices in Emirati Dirhams and in cleared funds on or before the twenty-eighth (28<sup>th</sup>) day following Delivery.
- 4.3 Time for payment shall be of the essence.
- 4.4 The Customer shall make all payments due under the Contract without deduction for set off, counterclaim, abatement or otherwise.
- 4.5 The Seller reserves the right, in its absolute discretion, at any time to require security for, or advance payment of, the Price.

### **5. DELIVERY**

- 5.1 The Customer shall ensure that the Seller has reasonable prior notice (of at least a minimum of 72 hours) of the required time and date of delivery/collection and, where the Materials are being delivered, that the Seller (or its agent) is given sufficient particulars of the Destination. Delivery will only be to ground level, it is the buyer's responsibility to arrange lifting to any other level than this.
- 5.2 Delivery shall be deemed to have taken place when, at the Seller's option, unless otherwise agreed in writing between the parties:
- (a) the Seller notifies the Customer that the Materials are available for collection;
  - (b) the Materials arrive at the Destination; or
  - (c) delivery of the Materials is attempted by the Seller and the Seller is unable to deliver because the Customer re-directs a delivery, fails to take or provide a suitable or safe environment for a delivery (in whole or in part), fails to give the Seller adequate delivery instructions or fails to obtain appropriate licenses or authorisations.

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- 5.3 The Seller may deliver by installments and tender a separate invoice for each installment. Each delivery shall be a separate contract and failure by the Seller to deliver any one or more of the installments or any claim by the Customer in respect of any one or more installments shall not entitle the Customer to terminate or rescind any individual contract.
- 5.4 Without prejudice to any other rights or remedy available to the Seller, Additional Charges may be incurred by the Customer if:
- (a) the Customer incurs any of the additional charges set out on the relevant Seller quotation;
  - (b) the Customer fails to take delivery of the Materials;
  - (c) the Customer fails to provide a suitable or safe environment for a delivery (in whole or in part);
  - (d) the Customer fails to give the Seller adequate delivery instructions;
  - (e) the Customer fails to obtain any appropriate licenses or authorisations;
  - (f) unloading of the delivery vehicle is delayed for more than 30 minutes after the Seller is ready to unload or in the case of readymix concrete is not completed within 30 minutes of arrival at the Destination;
  - (g) delivery cannot be effected because of unsuitable access at the Destination; and/or
  - (h) unused Materials are returned to the Seller for disposal.

Details of these Additional Charges are set out in Schedule 1 to these Conditions and/or on the Seller's quotation (as the case may be). The Customer agrees to pay all applicable Additional Charges from time to time.

- 5.5 The Customer must provide convenient and safe access to the Destination and the Seller shall be entitled to refuse to deliver over roads or over ground which it considers unsuitable. The Customer shall be liable for and shall fully indemnify the Seller against any Losses arising from any accident or damage occurring due to unsuitable access.
- 5.6 If the Materials are to be deposited on a street or public highway the Customer is responsible for compliance with all regulations and for all steps which need to be taken for the protection at all times of persons or property and shall fully indemnify the Seller in respect of all Losses which the Seller may incur as a result of such delivery.
- 5.7 Dates and times quoted for delivery are approximate only. The Seller shall not be liable to the Customer for any Losses resulting from any delay in delivery of the Materials or failure to deliver the Materials within three working days of the delivery date whether the Seller or the Customer causes such delay or failure. In the event of such delay or failure to delivery, the Customer may terminate the Contract immediately by written notice at the end of that period of three working days.
- 5.8 Subject to Clause 9.3 (Limitation of Liability), should the Customer not terminate the Contract under Clause 5.7 above then any liability of the Seller for continued non-delivery shall be limited to either (at the Seller's discretion
- (a) replacing the Materials within a reasonable time; or
  - (b) issuing a credit note for a reasonable percentage of the Price.

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**6. INSPECTION AND SHORTAGES**

- 6.1 The Seller shall use reasonable endeavors to supply the quantity of Materials provided for by the Contract.
- 6.2 Subject to Clause 6.5 below, if the Customer has a claim for short delivery it must telephone the Seller as soon as reasonably practicable and shall then advise the Seller in writing within 48 hours of delivery (the **Notice Procedure**) of such a claim.
- 6.3 If the Notice Procedure is not followed the Materials shall be deemed to have been delivered in the quantities shown on the Delivery Ticket or, where there is no Delivery Ticket containing such details, the quantities shown on the consignment note, and the Customer shall not be entitled to make a claim in respect of alleged shortfall in the Materials.
- 6.4 Subject to Clauses 6.2 and 6.3 above and 9.3. (Limitation of Liability), the Seller's liability for any shortfall is limited to either (at its discretion):
  - (a) making good the shortfall within a reasonable time; or
  - (b) issuing a credit note for a reasonable percentage of the Price.
- 6.5 The Customer shall not in any case be entitled to reject the Materials if the Seller delivers up to and including 5% more or less than the quantity of Materials ordered. If the Seller delivers more or less than the quantity of Materials ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Materials.

**7. RISK AND TITLE**

- 7.1 Risk in the Materials shall pass to the Customer on Delivery.
- 7.2 Ownership of the Materials shall not pass to the Customer until the Seller has received payment in cleared funds:
  - (a) of all sums owed by the Customer to the Seller under the Contract; and
  - (b) for any other goods or services that the Seller has supplied to the Customer in respect of which payment has become due.
- 7.3 Until ownership passes to the Customer the Customer shall:
  - (a) hold the Materials as the Seller's fiduciary agent and bailee;
  - (b) keep (at no cost to the Seller) the Materials separately and safely stored, satisfactorily protected and identified as the Seller's property; and
  - (c) only be entitled either to re-sell the Materials at full market value or use the Materials in the ordinary course of its business. For the avoidance of doubt it shall not be considered the "ordinary course of business" for the Customer to trade while subject to any of the matters or events described in Clause 11 (Default).
- 7.4 The Seller shall be entitled to recover payment for the Materials even though the ownership of any of the Materials has not passed from the Seller.

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7.5 The Seller shall be entitled at any time to inspect or recover any or all of the Materials in the Customer's possession to which the Seller has title and for that purpose the Customer permits the Seller or its servants or agents to enter upon any premises occupied by the Customer or to which the Customer has access and where the Materials may be, or are believed to be, situated.

7.6 On termination of the Contract the Seller's rights in this Clause 7 shall remain in full force and effect.

**8. QUALITY**

8.1 The Seller warrants that (subject to the other provisions of these Conditions) upon delivery the Materials shall:

- (a) be of satisfactory quality;
- (b) be reasonably fit for the purpose for which they are normally used; and
- (c) be reasonably fit for any particular purpose for which the Materials are being bought if the Customer had made known that purpose to the Seller in writing and the Seller has confirmed in writing that it is reasonable for the Customer to rely on the skill and judgment of the Seller.

8.2 The Seller agrees to manufacture the Materials in accordance with any applicable British or ASTM (American) Standards and Materials covered by harmonised European Standards shall carry CE Marking or other relevant industry standards ("**Industry Standards**") and Materials shall be marked with any relevant Industry Standard marks (for example GSO, ISO or CE) where applicable to the extent this is practicable.

8.3 Whilst every effort is made to maintain consistency in the characteristics of the Materials some variation is unavoidable and the Seller shall not be liable in respect thereof.

8.4 If the Customer can establish to the reasonable satisfaction of the Seller that:

- (a) there is a defect in the workmanship of the Seller in relation to the Materials; or
- (b) the Materials are not in accordance with the quality or Specification contained in the Contract; or
- (c) there is some other failure by the Seller in relation to the Materials to comply with the Contract;

then subject to the conditions set out in Clause 8.5 below, any liability of the Seller shall be limited to (at the Seller's sole discretion) either:

- (d) replacing the Materials within a reasonable time; or
- (e) issuing a credit note for a reasonable percentage of the Price.

8.5 Subject to Clause 9.3 (Limitation of Liability), in the case of a defect that is apparent on reasonable inspection or shortly after use, the Seller shall not be liable under Clause 8.4 above unless:

- (a) the Customer gives written notice of the defect to the Seller within 30 days of Delivery; and
- (b) the Seller is thereafter given a reasonable opportunity to examine the Materials before they are further used or in any way interfered with.

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8.6 Subject to Clause 9.3 (Limitation of Liability), if the Seller either replaces the Materials or issues a credit note under Clause 8.4 then it shall have no further liability for a breach of Clauses 8.1 or 8.2. This Clause does not affect any other rights or claims of the Customer arising out of any other provision of the Contract.

### **9. LIMITATION OF LIABILITY**

9.1 Save for where the Contract provides specific remedies to the Customer in respect of delay or failure of Delivery under Clause 5 (Delivery), short delivery under Clause 6 (Inspection and Shortages) and/or defective Materials under Clause 8 (Quality), the following provisions set out the total liability of the Seller (including any liability for the acts or omissions of its employees, agents and contractors) for other loss and damage suffered by the Customer in respect of:

- (a) any breach of the Contract;
- (b) any use made or resale by the Customer of the Materials, or any products incorporating the Materials; and/or
- (c) any representation, statement or tortuous act or omission (including negligence) arising under or in connection with the Contract or the supply of the Materials.

9.2 All warranties, conditions and other terms implied by statute or common law which may be excluded by law are, to the fullest extent permitted by law, excluded from the Contract.

9.3 Nothing in these Conditions shall exclude or restrict the Seller's liability:

- (a) for death or personal injury resulting from the Seller's negligence;
- (b) for any matter which it would be unlawful for the Seller to exclude or attempt to exclude its liability; or
- (c) for fraud or fraudulent misrepresentation.

9.4 The Seller shall have no liability for any defect in the Materials to the extent that the Losses suffered by the Customer or any third-party results from:

- (a) fair wear and tear;
- (b) willful damage, negligence, abnormal working conditions, mis-use, alteration or repair of the Materials, failure to follow any relevant Industry or British Standard (as the case may be), the Seller's or industry instructions relevant to the Materials, or storage of the Materials in unsuitable conditions (but this sub clause shall not apply to any act or omission of the Seller);
- (c) use of Materials following the expiry of the recommended shelf life; or
- (d) in respect of readymix concrete:
  - (i) water or any other spoiling material or contamination being added to the Materials without written agreement by the Seller; or
  - (ii) the Materials not being sampled and tested in accordance with the relevant Industry or British Standard (as the case may be) specification or other standard agreed in writing by the Seller.



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9.5 Subject to Clauses 9.1, 9.2, 9.3 and 9.4 above:

- (a) The Seller's total liability in contract, tort, misrepresentation, restitution or otherwise, arising in connection with the performance of or contemplated performance of the Contract and the supply of the Materials shall be limited an amount equal to 25% of the Price.
- (b) The Seller shall under no circumstances whatever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise for any of the following arising under or in connection with the Contract;
  - (i) pure economic loss;
  - (ii) loss of profits;
  - (iii) loss of business;
  - (iv) loss of goodwill; and
  - (v) any additional costs, charges or expenses (including legal costs).

9.6 If the Materials are manufactured, processed or mixed by the Seller to the specification of the Customer or its agents the Customer fully indemnifies the Seller against all Losses awarded against, incurred by, paid or agreed to be paid by the Seller in settlement of any claim for infringement of any industrial or intellectual property rights of any other person.

9.7 The Customer fully indemnifies the Seller against all Losses awarded against, incurred by, paid or agreed to be paid by the Seller in settlement of any other claim arising from any such manufacturing, processing or mixing described in Clause 9.6 above. The indemnity shall be reduced in proportion to the extent that such Losses are due to the negligence of the Seller.

9.8 The legal rights of a Customer dealing as a consumer are not affected by these Conditions.

## **10. FORCE MAJEURE**

10.1 The Seller may defer delivery, terminate the Contract (by notice and without the need of a Court order or arbitral award) or reduce the volume of Materials delivered to the Customer and shall not be liable to the Customer or be deemed to be in breach of the Contract by reason of the aforesaid delay, termination or reduced delivery or any failure to perform any of the Seller's obligations where it was due to a Force Majeure Event (as defined in Clause 10.3 below).

10.2 If the Force Majeure Event in question continues for a continuous period in excess of 90 days, the Customer may give notice in writing to the Seller terminating the Contract.

10.3 For the purposes of Clauses 10.1 and 10.2, a **Force Majeure Event** includes, without limitation, war (declared or undeclared), national emergency, inadequate transportation facilities, machinery or equipment failure, fire, flood, windstorm or other act of God, strike, lockout or other labour dispute, order or act of any government, whether foreign, national or local, whether valid or invalid, or any other cause of like or different kind beyond the reasonable control of the Seller.

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**11. DEFAULT**

11.1 If the Customer:

- (a) fails to make any payment to the Seller on the due date;
- (b) suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability to pay its debts;
- (c) exceeds any credit limit assigned to the Customer from time to time by the Seller;
- (d) commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts;
- (e) has a petition filed, notice given, resolution passed, or order made, for or in connection with its winding up or bankruptcy;
- (f) is the subject of an application to court or order for the appointment of an administrator;
- (g) has a receiver or an administrative receiver or an administrator appointed over any of its assets;
- (h) fails to provide any required security in accordance with Clause 4.5; or
- (i) is in breach of any term of the Contract and (where such breach is capable of remedy) fails to remedy such breach within seven (7) days of being so requested to do so,

(each of the matters in Clauses 11.1 (a) to (i) being an **Act of Default**), then the full balance outstanding on any account between the Seller and the Customer shall become immediately payable and the Seller shall be entitled to instigate (at its sole discretion) any or all of the remedies (without prejudice to any other right or remedy it may have) under Clause 11.2 below.

11.2 In the event of an Act of Default (under Clause 11.1 above), the Seller (at its sole discretion) may, upon written notice to the Customer:

- (a) require payment in cash or cleared funds in advance of delivery of any undelivered Materials;
- (b) terminate the Contract (without the need of any court order or arbitral award);
- (c) cancel or suspend any further delivery to the Customer under any contract;
- (d) sell or otherwise dispose of any Materials which are the subject of any contract with the Customer; and/or
- (e) charge the Customer default interest on the balance of monies due to the Seller at the rate of 8% per annum from the date the payment became due until actual payment (whether before or after judgment).

**12. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

12.1 Intellectual Property Rights: All Intellectual Property Rights in the Materials are and remain the property of the Seller or are operated under license by the Seller, and the Customer agrees that it shall not make use of such Intellectual Property Rights in any way. The Customer shall not directly or indirectly, acquire or appropriate any right to or interest in any Intellectual Property Rights in the Materials and shall not claim any legal right thereto. The Contract shall not be construed as granting or confirming any rights, licenses or other relationships on or in connection with any Intellectual Property Rights in the Materials other than a licence for the Customer to use or sell the Materials as reasonably expected. Any goodwill arising out of the activities of the Customer shall accrue solely to the Seller and the Customer shall do such acts and execute such documents as is necessary to vest such goodwill in the Seller.

12.2 Confidentiality:

- (a) The Seller may disclose such Confidential Information to the Customer as the Seller in its sole discretion deems necessary or helpful for the purposes of the Contract.
- (b) Subject to the following provisions of this Clause 12.2, the Customer shall:
  - (i) not use any Confidential Information for any purpose other than the performance of its obligations and the exercise of its rights under the Contract;
  - (ii) treat all Confidential Information with at least the same degree of care as it would use in respect of its own confidential information of similar importance, but in any event no less than a reasonable level of care;
  - (iii) not disclose, disseminate or make accessible any part of the Confidential Information, in any way or form, to any third party without the written consent of the Seller;
  - (iv) only disclose Confidential Information to its employees on a strict need-to-know basis;
  - (v) take no copies of any part of the Confidential Information other than as strictly required for the performance of the Contract or the exercise of rights under the Contract; and
  - (vi) not analyse, reverse-engineer, disassemble, decompose or re-formulate any Confidential Information, including any samples.
- (c) The restrictions and obligations in Clause 12.2 (b) shall not apply to Confidential Information which:
  - (i) is required to be disclosed by law or regulation provided that the Customer shall, if lawfully permitted, first inform the Seller in writing of such requirement and reasonably assist the Seller to limit or seek protection against such requirement;
  - (ii) which in proven to have been known prior to the time of disclosure, or been generally available to the public other than as a result of an unauthorised disclosure by the Customer (or any of its employees); which in proven to have been received by the Customer from a third party without any obligation of secrecy or non-use; or
  - (iii) which in proven to have been known by the Customer prior to disclosure or was developed independently from such Confidential Information by persons who had no knowledge of or access to the Confidential Information.
- (d) The obligations under Clause 12.2 shall, notwithstanding the expiry or termination of the Contract, shall continue in force for five (5) years thereafter.

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**13. COMPLIANCE WITH LAWS AND POLICIES**

13.1 The Customer shall at all times comply with all relevant legislation, rules, regulations, codes of practice, guidance and statutory requirements that from time to time come into force that relate to competition law, anti-corruption or bribery and/or export controls and sanctions relating to the exercise of its rights and the performance of its obligations under the Contract.

13.2 The Customer shall at all times, at its own expense, obtain and maintain all certifications, authorisations, licenses and permits materially necessary to conduct its business relating to the exercise of its rights and the performance of its obligations under the Contract.

13.3 If requested by the Seller, the Customer promptly shall execute the RAKNOR Business Partner Code of Conduct (the **Code**). The Seller shall comply at all times with the Code (if any) and all Mandatory Policies and shall, at the written request of the Seller, provide such information or access to its records and site as may be reasonably required by the Seller to verify compliance with the obligations under Clauses 13.1 to 13.3 (inclusive).

**13.5 Export Control Compliance**

(a) The Customer agrees to comply and procure that its officers, employees, agents, subcontractors and any other persons who perform services for or on behalf of the Customer related to the Contract shall comply with all economic sanctions and export control laws and regulations, insofar as applicable to the Seller, the Materials, the Contract or any business to be conducted under the Contract, including without limitation:

- (i) the laws and regulations administered and/or maintained by the United States (**U.S.**) Department of State or the U.S. Department of Commerce;
- (ii) the economic sanctions laws and regulations of the United States;
- (iii) the export control laws and regulations issued by the European Union (**EU**) and any national laws and regulations of EU Member States implementing those;
- (iv) the economic sanctions issued by the EU as well as any national laws and regulations of EU Member States implementing those and any economic sanctions issued by EU Member States;
- (v) the economic sanctions issued by the United Nations;
- (vi) the economic sanctions and/or export control laws and regulations issued by the UAE and/or any GCC Member State;

all as they may be amended and supplemented from time to time (the **Export Control Laws and Regulations**).

(b) Without limiting Clause 13.5 (a), the Customer shall not use any Materials on or for any items that are to be made available in any way, whether directly or indirectly, to any Sanctioned Party. For purposes of this Agreement, a **Sanctioned Party** means any person, entity or body:

- (i) designated by the U.S. as a Specially Designated National & Blocked Person (SDN);
- (ii) designated under any economic sanctions issued by the EU or any of its Member States;
- (iii) designated under any economic sanctions issued by the UAE and/or any GCC Member State;

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- (iv) otherwise subject to any economic sanctions issued by the U.S., the EU or any of its Member States, or the United Nations, or the UAE and/or any GCC Member State which would prohibit the Seller to make available the Materials to such person, entity or body;
  - (v) owned 50% or more, or controlled, by any party or parties referred to under any of (i) through (iv) (individually or in combination); or
  - (vi) subject to any other applicable economic sanctions; or
  - (vii) affiliated with, or acting on behalf of any party or parties referred to under any of (i) through (vi).
- (c) In addition, and without limiting Clause 13.5 (a), the Customer shall not use any Materials on or for any items that are destined for any destination, activity or end-use restricted by the Export Control Laws and Regulations without first obtaining all required government authorizations.
- (d) The Customer hereby certifies and represents that neither the Customer, nor any of its shareholders, its ultimate beneficial owners, its affiliates, principals, directors, officers, or to the best of the Customer's knowledge after due diligence, any employees, agents, other representatives, nor any of the other parties controlling it or acting on its behalf is a Sanctioned Party or is affiliated with, or acting on behalf of any Sanctioned Party and that no such party has or shall have any interest of any nature whatsoever (present, future, contingent, direct, or indirect) or be involved, whether directly or indirectly, in any way in this Agreement or any business to be conducted under this Agreement. The Customer shall notify the Seller as soon as reasonably practicable in the event that the above representation ceases to be accurate.
- (e) Upon the request of the Seller, the Customer shall provide the Seller with a statement in a format specified by the Seller, declaring (i) that the Customer is the end-user of the Materials, (ii) the end-use
- (f) that the Customer shall make of the Materials, and (iii) that the Customer shall not directly or indirectly export, re-export, transfer, sell, re-sell, divert, loan, lease, consign, or otherwise provide, make available or dispose of any Materials to another party without first obtaining all required government authorizations. The Customer shall, at the request of the Seller, provide such information or access to its records and site as may be reasonably required by the Seller to verify compliance with the obligations under this Clause 13.5 throughout the duration of the Contract and for period of five (5) years thereafter. The Customer shall promptly notify the Seller if it becomes aware or suspects that any Materials have been used or disposed of in a manner contrary to the Export Control Laws and Regulations or in violation of this Clause 13.5.
- (g) In the event that the Seller determines in its sole discretion, or is otherwise directed by any competent government authority, that any performance under the Contract would cause the Customer, the Seller or any of its or their affiliates to violate the Export Control Laws and Regulations, the Seller shall be excused of such performance upon notice to the Customer without any liability on the side of the Seller. If the relevant restriction continues to apply or is reasonably expected to continue to apply for more than two (2) months, either Party may choose to terminate this Agreement, without liability on the part of either Party (and without the need of a court order or arbitral award), by giving not less than seven (7) days prior written notice of termination to the other Party, provided, however, that the restriction has not ceased to apply prior to the date of termination stated in such notice.
- (h) The Customer shall indemnify and hold harmless the Seller and its affiliates from any Losses arising from the breach of any obligation or representation of the Customer in this clause 13.5 or incurred by the Seller or any of its affiliates resulting from violations, charges, investigations or enforcement actions concerning the Export Control Laws and Regulations, to the extent such Losses resulted from actions (direct or indirect) of the Customer.

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### 14. GENERAL

- 14.1 No agency or partnership: Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.
- 14.2 Variation: Except as set out in these Conditions, any amendment or variation to the Contract or these Conditions shall have no effect unless expressly agreed in writing and signed by an authorised employee of the Seller.
- 14.3 Entire Agreement: The Contract constitutes the entire agreement between the parties and supersedes and extinguishes any previous arrangement, understanding or agreement between them relating to the subject matter of the Contract. The Customer acknowledges that it has not relied on any warranty, statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.
- 14.4 Safety Data Sheets: The Seller is required to produce health and safety/hazard data sheets for some of the products it sells. These sheets are available on request. These sheets are for information purposes only and do not form part of the Contract and the Customer agrees that the Seller shall have no liability in respect of them.
- 14.5 Severance: If any Clause or sub clause of these Conditions is held by any court or other authority of competent jurisdiction to be wholly or partly void or unenforceable the validity of the other Clauses or subclasses of these Conditions shall not be affected and they shall remain in full force and effect. If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.
- 14.6 Assignment: The Seller may at any time assign, transfer, charge, subcontract, encumber or deal in any other manner with all or any of its rights or obligations under the Contract. The Customer may not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Seller.
- 14.7 Waiver: A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. 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 preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.
- 14.8 Termination: Termination of the Contract, however arising, shall not affect any rights or remedies of either party which have accrued prior to the date of termination; and termination of the Contract shall not affect the continuing force and effect of any provision of the Contract which, whether expressly or by implication, is to survive termination of the Contract.
- 14.9 Third Party Rights:
- (a) Subject to Clause 14.9 (b), the parties to the Contract do not intend that any term of the Contract shall be enforceable by any person that is not party to it.

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- (b) As interested third parties, the Government of RAK and/or any affiliated entity of the Seller may enforce any term of the Contract, as if it were a party to the Contract, as necessary.
  
- 14.10 Notice: Any notice by either party to the other shall be in writing addressed to that other party at its registered office or principal place of business or such other address as notified to the party giving the notice. Notices shall be deemed to have been received 48 hours after posting (exclusive of the day of posting) if sent by post; on the day of delivery by hand; or at the time of transmission if sent by facsimile or e-mail.
  
- 14.11 Governing law and jurisdiction: The 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 laws of RAK and the parties submit to the exclusive jurisdiction of the courts of RAK.

**Schedule 1  
Additional Charges**

Failure by the Customer to take delivery of the Materials	<b>Charges as set out in any quotation</b>
Failure by the Customer to provide a suitable or safe environment for a delivery (in whole or in part)	<b>Charges as set out in any quotation</b>
Failure by the Customer to give the Seller adequate delivery instructions	<b>Charges as set out in any quotation</b>
Failure by the Customer to obtain any appropriate licenses or authorisations;	<b>Charges as set out in any quotation</b>
If the unloading of the delivery vehicle is delayed for more than 30 minutes after the Seller is ready to unload or in the case of readymix concrete is not completed within 30 minutes of arrival at the Destination	<b>Charges as set out in any quotation</b>
If Delivery cannot be effected because of unsuitable access at the Destination	<b>Charges as set out in any quotation</b>
If any unused Materials are returned to the Seller for disposal	<b>Charges as set out in any quotation</b>