

Ballyfeeney Rock Limited– Terms & Conditions of Trade

- 1. Definitions**
 - 1.1 "Seller" shall mean Ballyfeeney Rock Limited its successors and assigns or any person acting on behalf of and with the authority of Ballyfeeney Rock Limited.
 - 1.2 "Customer" shall mean the person or entity described as such on the invoices, application for credit, quotation, work authorisation or any other forms to which these terms and conditions apply, and shall mean any person acting on behalf of and with the authority of such person or entity.
 - 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Customer on a principal debtor basis.
 - 1.4 "Goods" shall mean Goods supplied by the Seller to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Seller to the Customer.
 - 1.5 "Services" shall mean all services supplied by the Seller to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above).
 - 1.6 "Price" shall mean the cost of the Goods as agreed between the Seller and the Customer subject to clause 3 of this contract.
- 2. Acceptance**
 - 2.1 Any instructions received by the Seller from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Seller shall constitute acceptance of the terms and conditions contained herein.
 - 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
 - 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be amended with the written consent of the Seller.
 - 2.4 The Customer undertakes to give the Seller at least fourteen (14) days notice of any change in the Customer's name, address and/or any other change in the Customer's details.
- 3. Price And Payment**
 - 3.1 At the Seller's sole discretion the Price shall be either;
 - a) as indicated on invoices provided by the Seller to the Customer in respect of Goods supplied; or
 - b) the Seller's quoted Price (subject to clause 3.2) which shall be binding upon the Seller provided that the Customer shall accept the Seller's quotation in writing within thirty (30) days.
 - 3.2 The Seller reserves the right to change the Price in the event of a variation to the Seller's quotation.
 - 3.3 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
 - 3.4 At the Seller's sole discretion;
 - a) payment shall be due on delivery of the Goods, or
 - b) payment shall be due before delivery of the Goods, or
 - c) payment for approved Customers shall be made by instalments in accordance with the Seller's payment schedule.
 - 3.5 The Seller's weighbridge is calibrated and sealed and where Goods are charged by weight the printout of the Seller's weighbridge shall be final and binding on the Customer and the Seller's invoice shall be raised according to the tonnage recorded therein. The Seller will not accept, under any circumstances whatsoever, an alternative weigh-in of the Goods from any third party weighbridge.
 - 3.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and the Seller.
 - 3.7 VAT and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4. Delivery Of Goods**
 - 4.1 At the Seller's sole discretion delivery of the Goods shall take place when;
 - a) the Customer takes possession of the Goods at the Customer's address (in the event that the Goods are delivered by the Seller or the Seller's nominated carrier); or
 - b) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent.
 - 4.2 At the Seller's sole discretion the costs of delivery are included in the Price.
 - 4.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Seller shall be entitled to charge a reasonable fee for redelivery.
 - 4.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
 - 4.5 The Seller may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
 - 4.6 The Customer shall take delivery of the Goods tendered notwithstanding that the quantity so delivered shall be either greater or lesser than the quantity purchased provided that;
 - a) such discrepancy in quantity shall not exceed 5%, and
 - b) the Price shall be adjusted pro rata to the discrepancy.
 - 4.7 Goods will be delivered to the kerbside adjacent to the delivery site. If at the Customer's request, the delivery vehicle leaves the road and enters the delivery site to unload the Customer is responsible for providing suitable and safe access for the Seller's delivery vehicle and agrees to indemnify the Seller and its agents for all damage and injury to any person and to any public or private property which may result, including any costs associated with enabling the delivery vehicle to leave the site.
 - 4.8 The failure of the Seller to deliver shall not entitle either party to treat this contract as repudiated.
 - 4.9 The Seller shall not be liable for any loss or damage whatever due to failure by the Seller to deliver the Goods (or any of them) promptly or at all.
- 5. Risk**
 - 5.1 If the Seller retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
 - 5.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Seller is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Seller is sufficient evidence of the Seller's rights to receive the insurance proceeds without the need for any person dealing with the Seller to make further enquiries.
- 6. Title**
 - 6.1 It is the intention of the Seller and agreed by the Customer that ownership of the Goods shall not pass until:
 - a) the Customer has paid all amounts owing for the particular Goods, and
 - b) the Customer has met all other obligations due by the Customer to the Seller in respect of all contracts between the Seller and the Customer.
 - 6.2 Receipt by the Seller of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Seller's ownership or rights in respect of the Goods shall continue.
 - 6.3 It is further agreed that:
 - a) where practicable the Goods shall be kept separate and identifiable until the Seller shall have received payment and all other obligations of the Customer are met; and
 - b) until such time as ownership of the Goods shall pass from the Seller to the Customer the Seller may give notice in writing to the Customer to return the Goods or any of them to the Seller. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
 - c) the Seller shall have the right of stopping the Goods in transit whether or not delivery has been made; and
 - d) the Customer is only a bailee of the Goods and until such time as the Seller has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods on trust for the Seller; and
 - e) the Customer shall not deal with the money of the Seller in any way which may be adverse to the Seller; and
 - f) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Seller; and
 - g) the Seller can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
 - h) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products, the parties agree that the Seller will be the owner of the end products.
- 7. Customer's Disclaimer**
 - 7.1 The Customer hereby disclaims any right to rescind, or cancel the contract or to sue for damages or to claim restitution arising out of any misrepresentation made to the Customer by the Seller and the Customer acknowledges that the Goods are bought relying solely upon the Customer's skill and judgment.
- 8. Seller's Disclaimer**
 - 8.1 Different types and grades of rock have varying inherent properties including flaws which may cause the rock to expand, contract and even split under certain conditions and all Goods supplied by the Seller are not suitable for all applications. It is the Customer's responsibility to familiarise themselves with the properties of the Goods prior to purchase ensuring the chosen Goods are suitable for their purpose. The Seller will not, under any circumstances whatsoever, accept responsibility for any loss or damage whatever caused through incorrect application of the Goods.
 - 8.2 The Seller ensures to have stone chippings regularly tested however it is the Customer's sole responsibility to test the PSV (Polished Stone Value) of chippings purchased from the Seller to ensure the Goods comply with their requirements. The Seller will not, under any circumstances whatsoever, accept responsibility for any loss or damage whatever caused as a result of the use of chippings.
- 8.3 Access to the Seller's plant, offices and/or any part of the Seller's premises is at the Customer or visitor's sole risk. The Seller will accept no responsibility whatsoever for loss or damage caused to the Customer or visitor and/or their property while on the Seller's property howsoever caused including, but not limited to, negligence on behalf of the Seller, their employees, agents or assigns**
- 9. Defects**
 - 9.1 The Customer shall inspect the Goods on delivery and shall within twenty-four (24) hours notify the Seller of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Customer shall afford the Seller an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective in any way. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage. For defective Goods, which the Seller has agreed in writing that the Customer is entitled to reject, the Seller's liability is limited to either (at the Seller's discretion) replacing the Goods.
 - 9.2 Stone is a natural product, colour and shade tone, markings, and veining may vary from colour samples provided. The Seller gives no guarantee (expressed or implied) that colour samples will match the finished Goods. The Seller will make every effort to match colour samples to the finished Goods but will not be liable for any losses in relation to colour samples differing from the finished Goods. Natural variances will not, under any circumstances whatsoever, be accepted as defects.
 - 9.3 No Goods shall be accepted for return except in accordance with 9.1 above.
- 10. Warranty**
 - 10.1 To the extent permitted by statute, no warranty is given by the Seller as to the quality or suitability of the Goods for any purpose and any implied warranty is expressly excluded. The Seller shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 11. Sale of Goods Act 1893 and Sale of Goods and Supply of Services Act 1980**
 - 11.1 This agreement is subject to the provisions of the Sale of Goods Act 1893 and the Sale of Goods and Supply of Services Act 1980 in all cases except where the Customer is contracting within the terms of a trade/business (which cases are specifically excluded).
 - 11.2 Notwithstanding clause 11.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods Act 1893 (in particular sections 12-15), or the Sale of Goods and Supply of Services Act 1980, or any laws or legislation governing the rights of consumers, except to the extent permitted by those Acts laws or legislation.
 - 11.3 In particular where the Customer buys Goods as a consumer the provisions of Clauses 9 and 10 above shall be subject to any laws or legislation governing the rights of consumers.
- 12. Default & Consequences of Default**
 - 12.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
 - 12.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Seller from and against all costs and disbursements incurred by the Seller in pursuing the debt including legal costs on a solicitor and own client basis and the Seller's collection agency costs.
 - 12.3 Without prejudice to any other remedies the Seller may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Seller may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Seller will not be liable to the Customer for any loss or damage the Customer suffers because the Seller exercised its rights under this clause.
 - 12.4 If any account remains overdue after thirty (30) days then an amount of the greater of €20.00 or 10.00% of the amount overdue (up to a maximum of €200) shall be levied for administration fees which sum shall become immediately due and payable.
 - 12.5 Without prejudice to the Seller's other remedies at law the Seller shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Seller shall, whether or not due for payment, become immediately payable in the event that:
 - a) any money payable to the Seller becomes overdue, or in the Seller's opinion the Customer will be unable to meet its payments as they fall due; or
 - b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 13. Security and Charge**
 - 13.1 Despite anything to the contrary contained herein or any other rights which the Seller may have howsoever:
 - a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Seller or the Seller's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Seller (or the Seller's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
 - b) should the Seller elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Seller from and against all the Seller's costs and disbursements including legal costs on a solicitor and own client basis.
 - c) The Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Seller or the Seller's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 13.1.
- 14. Cancellation**
 - 14.1 The Seller may cancel these terms and conditions or cancel delivery of Goods at any time before the Goods are delivered by giving written notice. On giving such notice the Seller shall repay to the Customer any sums paid in respect of the Price. The Seller shall not be liable for any loss or damage whatever arising from such cancellation.
 - 14.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Seller (including, but not limited to, any loss of profits) up to the time of cancellation.
- 15. Data Protection Act 1988 & Data Protection Act 2003**
 - 15.1 The Customer and the Guarantor/s (if separate to the Customer) authorises the Seller to:
 - a) collect, retain and use any information about the Customer, for the purpose of assessing the Customer's creditworthiness or marketing products and services to the Customer; and
 - b) to disclose information about the Customer, whether collected by the Seller from the Customer directly or obtained by the Seller from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or of listing (whether before or after judgement) a default by the Customer on publicly accessible credit reporting databases.
 - 15.2 Where the Customer is an individual the authorities under (clause 15.1) are authorities or consents for the purposes of the Data Protection Act 1988 & Data Protection Act 2003.
 - 15.3 The Customer shall have the right to request the Seller for a copy of the information about the Customer retained by the Seller and the right to request the Seller to correct any incorrect information about the Customer held by the Seller.
- 16. General**
 - 16.1 Each clause of this contract is severable and distinct from the others. If any provision of these terms and conditions is or becomes invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 16.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Ireland and are subject to the jurisdiction of the courts of Ireland.
 - 16.3 The Seller shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Seller of these terms and conditions.
 - 16.4 In the event of any breach of this contract by the Seller the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Seller exceed the Price of the Goods.
 - 16.5 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Seller.
 - 16.6 The Seller may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
 - 16.7 The Seller reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Seller notifies the Customer of such change. Except where the Seller supplies further Goods to the Customer and the Customer accepts such Goods, the Customer shall be under no obligation to accept such changes.
 - 16.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.