

## Terms and Conditions of Purchase

### 1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions unless the context otherwise requires the following words and expressions have the following meanings:

**Applicable Laws** means all laws, rules, regulations and other requirements of relevant regulatory authorities which have the force of law together with any industry codes of practice in effect from time to time;

**Business Day** means any day which is not a Saturday, a Sunday or a bank or public holiday in any part of England;

**Conditions** means these terms and conditions;

**Confidential Information** means the provisions of the Contract and all information which is secret or otherwise not publicly available (in both cases either in its entirety or in part), whether disclosed orally or in writing before or after the date of the Contract;

**Contract** means a contract formed once the Supplier has accepted an Order in accordance with the provisions of these Conditions, incorporating the provisions of these Conditions and the Order;

**Employment Liabilities** means any costs, claims, demands, fines, or expenses (including reasonable legal and other professional expenses) and all losses, damages, compensation and other liabilities including those incurred by or attributed to any New Supplier or sub-contractor of Tarmac (which shall, for the avoidance of doubt, include any incurred as a result of an indemnity or warranty given, or to be given, by Tarmac to a New Supplier or sub-contractor);

**Good Industry Practice** means the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced operator complying with all Applicable Laws engaged in the same type of undertaking as the Supplier;

**Goods** means the goods (including any part or parts of them) which the Supplier is to provide to Tarmac pursuant to the Order;

**Group** means, in relation to any company, that company and every Subsidiary or Holding Company of that company or a Subsidiary or Holding Company of any such Subsidiary or Holding Company from time to time;

**Group Company** means any company within the Group of the relevant company;

**Holding Company** means holding company as defined in Section 1159 Companies Act 2006;

**Incoterms** means the international rules for the interpretation of trade terms of the International Chamber of Commerce 2010 edition;

**Intellectual Property Rights** means any patent, copyright, trade mark, service mark or trade name, right in design, image right, moral right, right relating to passing off, domain name, right in confidential information (including trade secrets) or right of privacy, and all similar or equivalent rights anywhere in the world in each case whether registered or not and including all applications (or rights to apply) for registration of the foregoing;

**New Supplier** means any person that provides services in replacement of any of the Services whether those services are the same as or similar to any or all of the Services;

**Order** means any order from Tarmac to the Supplier for the supply of Goods and/or Services in such form as Tarmac may determine from time to time;

**Price** means the price for the Goods and/or Services as set out in the Order;

**Procurement Agreement** means a written agreement entered into between the Supplier and Tarmac expressly incorporating these Conditions;

**Services** means the services which the Supplier is to provide to Tarmac pursuant to the Order in accordance with these Conditions;

**Site** means any location where the Goods are to be delivered or the Services are to be performed;

**Specification** means Tarmac's specification for the Goods and/or Services referred to or included in the applicable Order or otherwise;

**Subsidiary** means subsidiary as defined in Section 1159 Company Act 2006;

**Supplier** means the person to whom the Order is addressed;

**Supplier Handbook** means Tarmac's supplier handbook as updated from time to time;

**Tarmac** means the Tarmac Group Company, which has placed an Order;

**Tarmac Group Company** means any Group Company of Tarmac Holdings Limited (company number 07533961);

**Tarmac Policies** means all policies and Site rules of Tarmac and/or its Group Companies as notified by Tarmac to Supplier from time to time including the policies set out or referred to in the Supplier Handbook <http://www.tarmac.com/supplier-handbook> and/or (each as updated from time to time);

**Transfer Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2006; and

**VAT** means value added tax charged in accordance with the Value Added Tax Act 1994 (as amended).

### 1.2 Drafting Conventions

- (a) The words "other", "including" and "in particular" shall not limit the generality of any preceding words or be construed as being limited to the same class as any preceding words where a wider construction is possible.
- (b) References to any statute or statutory provision shall include (i) any subordinate legislation made under it, (ii) any provision which it has modified or re-enacted (whether with or without modification), and (iii) any provision which subsequently supersedes it or re-enacts it (whether with or without modification) whether made before or after the date of the Contract.
- (c) References to the "Contract" in these Conditions shall, where these Conditions form part of a Procurement Agreement, be construed to also include reference to that Procurement Agreement and both or either of the "Contract" and "Procurement Agreement" as the context requires (save that this convention shall not apply in respect of such references in: (i) the definition of "Contract" in Condition 1.1, (ii) Condition 9.1(a) and (iii) Condition 18.1).

### 2 BASIS OF CONTRACT

- 2.1 The Contract will be subject to these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Supplier purports to apply under any quotation, order acknowledgement or any other document issued by the Supplier).
- 2.2 The Order is an offer made by Tarmac to the Supplier and the Contract shall come into effect upon acceptance of the Order by the Supplier. Unless previously withdrawn by Tarmac, Orders shall be deemed accepted if not rejected by the Supplier by notice in writing within seven days of their date.
- 2.3 No Order shall be capable of acceptance by the Supplier unless it is a Tarmac official purchase order generated by Tarmac's purchase order system and issued to the Supplier in writing. If there is any conflict between the terms of the Order and these Conditions, the terms of the Order shall prevail.
- 2.4 The parties acknowledge and agree that, in entering into any Contract Tarmac:
  - (a) does not give any form of exclusivity or volume guarantee in respect of the purchase of Goods and/or Services;
  - (b) shall not at any time be prohibited or restricted from purchasing similar or equivalent goods and/or services from an alternative supplier which are the same as or similar to the Goods and/or Services to be supplied under this Agreement.

### 3 SUPPLIER REQUIREMENTS

- 3.1 The Supplier agrees to comply with:
  - (a) the Supplier Handbook including the requirements for the Supplier to submit to any third party accreditation procedure;
  - (b) the Tarmac Policies including in relation to the Site(s); and
  - (c) all Applicable Laws relating to health and safety including the Health and Safety at Work Act 1974.

### 4 DELIVERY OF GOODS

- 4.1 Delivery of the Goods shall take place strictly in accordance with Tarmac's delivery instructions (including as to date and location) whether given in the Order or separately. Where no instructions are given, delivery shall be Delivered Duty Paid (DDP) Incoterms 2010.
- 4.2 The Supplier must deliver on the date and to the location specified in the

Order. If no date(s) is specified in the Order the Goods shall be delivered as soon as practicable or as required by Tarmac. Tarmac is not obliged to accept delivery of the Goods before the specified delivery time.

- 4.3** Tarmac can change its delivery instructions at any time, on paying any additional reasonable costs to be incurred by the Supplier as a result of any such change provided such costs are agreed in advance in writing by Tarmac and the Supplier promptly submits proper invoices, vouchers or receipts for such costs to Tarmac. Where Tarmac requires the postponement or suspension of a delivery date, the Supplier shall store the Goods and, with the prior written consent of Tarmac, insure them at Tarmac's cost against damage, destruction or other loss.
- 4.4** A detailed advice note quoting the Order number shall accompany the Goods.
- 4.5** Tarmac is not obliged to accept quantities of the Goods which vary from those specified in the Specification or the Order. Tarmac has no responsibility for Goods delivered or Services performed in excess of the Order.
- 4.6** The Supplier shall properly pack and secure the Goods so as to reach their destination undamaged and in good condition. Tarmac is not obliged to return to the Supplier any packaging materials for the Goods.
- 4.7** The Supplier shall not deliver the Goods in instalments without Tarmac's prior written consent. Failure by the Supplier to deliver any one instalment on time or at all shall entitle Tarmac to the remedies set out at Condition 9 (Remedies).
- 4.8** The Supplier shall immediately notify Tarmac in writing providing all relevant details if it discovers that there is any defect in, or any error or omission in the instructions for the use and/or assembly of, the Goods which have been delivered to Tarmac at any time which causes or may cause any risk of death, injury or damage to property.

## **5 ACCEPTANCE OF GOODS**

- 5.1** Tarmac shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery or after any latent defect has become apparent.
- 5.2** The Supplier shall promptly keep Tarmac informed of any matter of which it is or reasonably should, as supplier of the Goods, be aware relating to the storage, transportation, handling, assembly or use of the Goods by Tarmac.

## **6 TITLE AND RISK IN GOODS**

- 6.1** The Goods shall be at the risk of the Supplier until they are delivered in accordance with the Contract when title to and risk in the Goods shall pass to Tarmac.

## **7 PROVISION OF GOODS**

- 7.1** The Supplier undertakes, represents and warrants to Tarmac that the Goods and their packaging and labelling shall:
- (a) be accompanied with accurate, complete and comprehensible instructions for the treatment, assembly, use and/or storage of the Goods;
  - (b) conform to the Specification and with any instructions of Tarmac, and shall otherwise meet the requirements of the Order and the Contract ;
  - (c) be of satisfactory quality, free from defects in materials and workmanship and fit for their intended purpose (whether such purpose is implied or expressly stated in the Specification, Orders or Contract;
  - (d) be free from design and other inherent defects (save to the extent that the Goods have been supplied in accordance with designs of Tarmac);
  - (e) comply with all Applicable Laws;
  - (f) conform strictly as to quality, quantity and description with any samples provided by the Supplier for the purpose of supply of Goods of that type.
- 7.2** The Supplier shall use its best endeavours to transfer or assign to Tarmac or otherwise obtain for the benefit of Tarmac any guarantee, warranty or other confirmation of quality, title or fitness for purpose given by any manufacturer of the Goods in respect of the Goods (or part thereof) to the extent that the same is capable of such transfer or assignment to Tarmac or otherwise providing such benefit for Tarmac.

## **8 PROVISION OF SERVICES**

- 8.1** If the Contract is for or includes Services then, the Supplier undertakes, represents and warrants to Tarmac that the Supplier shall:
- (a) co-operate with Tarmac and any third parties engaged to provide services to Tarmac, and comply with all reasonable instructions and guidelines of Tarmac and all health and safety rules and regulations and any other security requirements that apply at any of Tarmac's premises including the Site(s);
  - (b) perform the Services with reasonable care and skill and use sufficient numbers of personnel who are suitably skilled and experienced in accordance with Good Industry Practice to

perform the tasks assigned to them in accordance with the Contract;

- (c) ensure that the Services and any deliverables conform with all requirements set out in the Order and the Specification, and that any deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by Tarmac, of satisfactory quality and free from defects in workmanship, installation and design;
- (d) provide all equipment, tools and vehicles and such other items as are required to provide the Services; and
- (e) obtain and maintain all necessary licences and consents, and comply with all Applicable Laws, Tarmac Policies and Good Industry Practice and not do or omit to do anything which may cause Tarmac to lose any licence, authority, consent or permission.

- 8.2** The Services must be provided so as to meet the dates set out in the Order, and if no such date the Services shall be performed as soon as practicable or as required by Tarmac.

## **9 REMEDIES**

- 9.1** Where there is any breach of the Supplier's warranty in Condition 7.1 (Provision of Goods) or Condition 8.1 (Provision of Services), or the Goods or any instalment of the Goods are not delivered at the specified time Tarmac may (without liability to the Supplier arising out of such action), without limiting its other rights or remedies, take one or more of the following actions to:
- (a) cancel the Contract;
  - (b) reject the Goods (in whole or in part) and such Goods shall be at Supplier's cost and risk from date of rejection;
  - (c) refuse to accept any subsequent delivery of the Goods;
  - (d) recover from the Supplier any costs reasonably incurred by Tarmac in obtaining substitute goods or services from another supplier;
  - (e) require the Supplier at its sole cost to replace, repair the Goods or re-execute the Services or to provide a full refund of the Price (if paid);
  - (f) claim such damages as may have been incurred by Tarmac as a result of the Supplier's breach of the Contract.

- 9.2** If Tarmac exercises any right under these Conditions Tarmac may at its absolute discretion require the Supplier to collect the relevant Goods forthwith or return the Goods to the Supplier at the Supplier's cost.

- 9.3** Tarmac's rights under these Conditions are in addition to any statutory remedies available to Tarmac.

## **10 INTELLECTUAL PROPERTY**

- 10.1** All materials including any Specifications supplied by Tarmac are the exclusive property of Tarmac shall be treated by the Supplier as strictly confidential and shall be returned by the Supplier immediately on request to Tarmac at the Supplier's sole risk and cost.
- 10.2** Any and all Intellectual Property Rights created or acquired in the course of or as a result of any work carried out by the Supplier under or in pursuance of the Contract shall belong exclusively, throughout the world, to Tarmac.
- 10.3** The Supplier shall grant or procure the grant of an adequate licence to Tarmac at no extra cost, of any Intellectual Property Rights which the Supplier does not own, incorporated or utilised in any work done by the Supplier for Tarmac, or Goods or Services provided, in pursuance of the Contract sufficient to enable Tarmac to make full use (including to repair, maintain and update) of such work, Goods or Services.

## **11 PRICES AND PAYMENT**

- 11.1** The Price shall be fixed and shall be inclusive of all packaging, packing, labelling, export or import or other customs duties taxes or licences, insurance and delivery costs and all other costs (including card fees) incurred by the Supplier in relation to the Goods and/or Services and their delivery and/or performance unless otherwise specified in the Order.
- 11.2** All sums payable under the Contract are exclusive of VAT.
- 11.3** The Supplier may only invoice Tarmac on or after delivery of the Goods or completion of the performance of the Services (or if staged payments have been agreed by Tarmac after the agreed stage has been completed to Tarmac's satisfaction in accordance with the Contract) and invoices submitted early shall be deemed received on the date of delivery of the Goods or date of completion of the performance of the Services. Invoices shall be in such form and shall be submitted as Tarmac specifies from time to time including as set out in the Supplier Handbook and such an invoice shall be a "valid invoice".
- 11.4** Unless otherwise stated in the Order, Tarmac shall pay the Price not later than 60 days after the end of the calendar month during which a valid invoice is received by Tarmac such payment to be made in accordance with the Supplier Handbook.
- 11.5** If Tarmac fails to pay any amount properly due and payable by it under the

Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of two per cent per annum above the base rate for the time being of Barclays Bank Plc accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

**11.6** If the Price is stated in the Order to be on a "time and materials" or "cost plus" basis or similar the Supplier shall give Tarmac access to all documents and information in the Supplier's possession or under its control to enable Tarmac to verify the amount charged by the Supplier.

**11.7** The Supplier shall reimburse Tarmac in respect of any rejected Goods rejected together with any additional expenditure above the Price reasonably incurred by Tarmac in for obtaining replacement goods within 14 days of Tarmac's written demand or, at Tarmac's sole option, such monies shall be deducted from the money still to be paid by Tarmac to the Supplier in relation to such Goods.

## **12 INDEMNITY**

**12.1** In addition to any other remedy available to Tarmac, the Supplier shall indemnify, defend and hold harmless Tarmac, Tarmac's Group Companies and their respective directors, officers and employees in full and on demand, from and against any and all direct or indirect liabilities, claims, demands, damages, losses or expenses (including reasonable legal and other professional adviser's fees and disbursements), interest and penalties incurred by them howsoever arising whether wholly or in part resulting directly or indirectly from the matters listed below whether or not such losses or the consequences of the matters listed below were foreseeable at the date of the Contract:

- (a) any claim made against Tarmac by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- (b) any claim made against Tarmac by a third party arising out of, or in connection with, the supply of the Goods or Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors;
- (c) any claim made against Tarmac for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services; and
- (d) any Bribery Offence or other breach by the Supplier of Condition 15, including all of Tarmac's cost of any investigation.

**12.2** The Supplier shall provide all facilities, assistance and advice required by Tarmac or its insurers for the purpose of contesting or dealing with any action, claim or matter arising out of the Supplier's performance, or purported performance of, or failure to perform, the Contract.

## **13 INSURANCE**

**13.1** The Supplier shall at its own cost effect and keep in place with reputable insurers such insurance policies as are appropriate and adequate having regard to its obligations and liabilities under the Contract and shall comply with all requirements relating to insurance set out in the Supplier Handbook.

## **14 DATA PROTECTION**

**14.1** Within this Condition 14 "Data Controller", "Data Processor", "Data Subject", "Personal Data" and "Processing" shall have the same meanings as in the Data Protection Legislation and "Processed" and "Process" shall be construed in accordance with the definition of "Processing".

**14.2** "Data Protection Legislation" shall mean all applicable data protection laws, including:

- (a) the Data Protection Act 1998;
- (b) (with effect from 25 May 2018) the General Data Protection Regulation (EU) 2016/679, together with any implementation of the above into the law of England and Wales;
- (c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on privacy and Electronic Communications);

**14.3** To the extent the Supplier Processes any of Tarmac's Personal Data under or in connection with the Contract, the Supplier shall:

- (a) only Process the Personal Data in accordance with the terms of the Contract or otherwise in accordance with the documented instructions of Tarmac from time to time for the purpose of the provision of the Services;
- (b) ensure that all of its personnel engaged in the provision of the Services have entered into a confidentiality agreement or non-disclosure agreement with the Supplier and that such personnel are made aware of and observe the Supplier's obligations under the Contract with regard to the security and protection of Personal Data;
- (c) implement appropriate technical and organisational measures in respect of the protection of Personal Data;
- (d) at no additional cost to Tarmac, assist Tarmac to fulfil its

obligations to respond to requests for the exercise of rights by a Data Subject under the Data Protection Legislation;

(e) at no additional cost to Tarmac, assist Tarmac in complying with its obligations pursuant to Articles 32 to 36 of the GDPR taking into account the nature of the Processing and the information available to the Supplier;

(f) on termination or expiry of the Contract, at Tarmac's option, either return the Personal Data to Tarmac or delete the Personal Data and at Tarmac's request the Supplier shall confirm in writing that this Condition 14.3(f) has been complied with in full. The provisions of this Condition 14.3(f) shall not apply to the extent the Supplier is required by Applicable Laws to retain or store the Personal Data;

(g) make available to Tarmac all information necessary for Tarmac to demonstrate compliance with Tarmac's obligations and the obligations of the Supplier under Article 28 of the GDPR; and

(h) allow for and contribute to audits, including inspections, conducted by Tarmac or another auditor mandated by Tarmac.

**14.4** To the extent Tarmac has given its prior written consent for the Supplier subcontracting any of its obligations under the Contract in accordance with Condition 22.1, the Supplier shall do so only by way of a written agreement with the sub-Processor which imposes the same obligations on the sub-Processor as are imposed on the Supplier under this Condition 14. In any event, the Supplier shall be liable for the acts and omissions of its agents, personnel and sub-Processors as if such acts and omissions were its own.

## **15 ANTI BRIBERY**

**15.1** The Supplier undertakes that it:

- (a) has not committed an offence under Sections 1, 2, 6 or 7 of the Bribery Act 2010 (a "Bribery Offence");
- (b) has not been formally notified that it is subject to an investigation relating to alleged Bribery Offences or prosecution under the Bribery Act 2010;
- (c) is not aware of any circumstances that could give rise to an investigation relating to an alleged Bribery Offence or prosecution under the Bribery Act 2010; and
- (d) will cooperate to the fullest extent with Tarmac and/or any authorities in any investigation into suspected or alleged Bribery Offences and assist Tarmac in complying with any requests from relevant authorities.

**15.2** The Supplier agrees that it:

- (a) has in place, and shall maintain until termination of the Contract, adequate documented procedures designed to prevent persons associated with the Supplier (including an employee, sub-contractor or agent or other third party working on behalf of the Supplier or any Group Company) (an "Associated Person") from committing a Bribery Offence (including the provision of anti-bribery and anti-corruption training);
- (b) shall comply with the Bribery Act 2010 and shall not, and shall procure that no Associated Person shall, commit any Bribery Offence or any act which would constitute a Bribery Offence;
- (c) shall not do or permit anything to be done which would cause Tarmac or any of Tarmac's employees, sub-contractors or agents to commit a Bribery Offence or incur any liability in relation to the Bribery Act;
- (d) shall notify Tarmac immediately in writing if it becomes aware or has reason to believe that it has, or any of its Associated Persons have, breached or potentially breached any of the Supplier's obligations under this Condition 15. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations; and
- (e) allow for and contribute to audits, including inspections, conducted by Tarmac or another auditor mandated by Tarmac.

**15.3** The Supplier acknowledges and agrees that any breach of the provisions of this Condition 15 shall be a material breach of the Contract which is incapable of remedy and without prejudice to Tarmac's right to immediately terminate the Contract in accordance with Condition 18.3(a) and any other right or remedy Tarmac may have, Tarmac may immediately cease all payments to the Supplier.

**15.4** The Supplier agrees to comply with the anti-bribery policy in the Supplier Code of Conduct (as notified by Tarmac to Supplier from time to time in writing).

## **16 MODERN SLAVERY**

**16.1** The Supplier warrants and undertakes:

- (a) that neither it nor any of its Associated Persons:
  - (i) has committed an offence under the Modern Slavery Act 2015;
  - (ii) has been notified that it is subject to prosecution

under or an investigation relating to an alleged offence under the Modern Slavery Act 2015; or

- (iii) is aware of any circumstances within any part of its own business or supply chains which could give rise to prosecution under or an investigation relating to the alleged commission of an offence under the Modern Slavery Act 2015; and
- (iv) it has appropriate controls in place to ensure that no offences under the Modern Slavery Act 2015 (or equivalent behaviours) are taking place in any of its supply chains or in any part of its own business and that it shall notify Tarmac immediately in writing (with full details) if it becomes aware or has reason to believe that it has, or any of its Associated Persons have, breached or potentially breached any of the Supplier's obligations under this Condition 16; and

- (b) to comply with Tarmac's Supplier Code of Conduct (as amended from time to time) and any other reasonable requirements of Tarmac including in relation to Modern Slavery.

## 17 FORCE MAJEURE

**17.1** For the purposes of this Condition 17 "Force Majeure" shall mean any event outside the reasonable control of either party affecting its ability to perform any of its obligations (other than payment) under the Contract including Act of God, fire, flood, lightning, compliance with any law or governmental order, rule, regulation or direction war, revolution, act of terrorism, riot or civil commotion, but excluding strikes whether of the affected party's own employees or otherwise failure of supplies of power, fuel, transport, equipment, raw materials or other goods or services.

### 17.2 Force Majeure

- (a) A party will not be in breach of the Contract nor liable for any failure or delay in performance of any obligations under the Contract (and the date for performance of the obligations affected will be extended accordingly) as a result of Force Majeure, provided that such party complies with the obligations set out in this Condition 17.2 Save as provided in Condition 17.2(f), a Force Majeure will not entitle either party to terminate the Contract.
- (b) The party affected by Force Majeure shall immediately notify the other in writing of the matters constituting the Force Majeure and shall keep that party fully informed of their continuance and of any relevant change of circumstances whilst such Force Majeure continues.
- (c) The party affected by Force Majeure shall take all reasonable steps available to it to minimise its effects on the performance of its obligations under the Contract.
- (d) The party affected by Force Majeure will not be entitled to payment from the other party in respect of extra costs and expenses incurred by virtue of the Force Majeure.
- (e) If an event of Force Majeure results in the suspension of the provision of the Goods and/or the Services, then if the Supplier is the affected party Tarmac shall not be obliged to pay the Price until such time as the event of Force Majeure shall have ceased to have effect. If the provision of the Goods and/or Services are partly suspended a pro rata amount of the Price shall be forfeit.
- (f) If Force Majeure continues for longer than one month Tarmac may, whilst the Force Majeure continues terminate the Contract on a date to be specified in that notice by notice in writing to the Supplier.

## 18 CANCELLATION, SUSPENSION AND TERMINATION

**18.1** If Tarmac is for any reason unable to accept delivery of the Goods or performance of the Services at the dates and/or times stated in the Order, or at all, then Tarmac may by notice in writing to the Supplier cancel or suspend the delivery of any of the undelivered Goods or the performance of any of the unperformed Services. If Tarmac cancels the Contract, the Supplier shall be entitled to be paid up to but no more than such portion of the price as fairly represents the work carried out and/or procured up to the date of cancellation.

**18.2** Tarmac may terminate the Contract for convenience at any time on 30 days' prior notice in writing.

**18.3** Each party may immediately terminate the Contract by giving notice in writing to the other party if:

- (a) the other party commits a material breach of any of its obligations under the Contract which is incapable of remedy;
- (b) the other party commits a breach of its obligations under the Contract which is capable of remedy and fails to remedy it or persists in such breach after 30 days of having been required in writing to remedy or desist;
- (c) the other party:
  - (i) suspends, or threatens to suspend, payment of its debts (whether principal or interest) or is deemed to

be unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;

- (ii) calls a meeting, gives a notice, passes a resolution or files a petition, or an order is made, in connection with the winding up of that party (save for the sole purpose of a solvent voluntary reconstruction or amalgamation);

- (iii) has an application to appoint an administrator made or a notice of intention to appoint an administrator filed or an administrator is appointed in respect of it or all or any part of its assets;

- (iv) has a receiver or administrative receiver appointed over all or any part of its assets or a person becomes entitled to appoint a receiver or administrative receiver over such assets;

- (v) takes any steps in connection with proposing a company voluntary arrangement or a company voluntary arrangement is passed in relation to it, or it commences negotiations with all or any of its creditors with a view to rescheduling any of its debts;

- (vi) has any steps taken by a secured lender to obtain possession of the property on which it has security or otherwise to enforce its security;

- (vii) has any distress, execution or sequestration or other such process levied or enforced on any of its assets which is not discharged within 14 days of it being levied; and/or

- (viii) has any proceeding taken, with respect to it in any jurisdiction to which it is subject, or any event happens in such jurisdiction that has an effect equivalent or similar to any of the events in this Condition 18.3(c).

## 19 CONSEQUENCES OF TERMINATION

**19.1** The termination of the Contract shall be without prejudice to the rights and remedies of either party which may have accrued up to the date of termination.

**19.2** Upon termination of the Contract for any reason whatsoever:

- (a) subject to Condition 19.1 the relationship of the parties shall cease save as (and to the extent) expressly provided for in this Condition 19;
- (b) any provision which expressly or by implication is intended to come into or remain in force on or after termination will continue in full force and effect;
- (c) save to the extent otherwise required by Applicable Laws, the Supplier shall make no further use of and immediately return to Tarmac (or if Tarmac so requests by notice in writing, destroy) all of Tarmac's property in its possession at the date of termination including all Confidential Information, together with all copies of such Confidential Information.

## 20 TRANSFER REGULATIONS

**20.1** It is the parties' intention that neither the commencement nor the termination of the Contract or of any of the Services will give rise to a relevant transfer pursuant to the Transfer Regulations.

**20.2** In addition to any other remedy available to Tarmac, the Supplier shall indemnify, defend and hold harmless Tarmac, Tarmac's Group Companies and any New Supplier and their respective directors, officers and employees in full and on demand, from and against any and all Employment Liabilities howsoever arising whether wholly or in part arising directly or indirectly foreseeable or not, which are or which may be incurred, suffered or paid by Tarmac, any of Tarmac's Group Companies or any New Supplier in relation to any individual who claims that their employment or liabilities in connection with their employment transfer to Tarmac, any of Tarmac's Group Companies or a New Supplier under the Transfer Regulations including any Employment Liabilities relating to the termination of employment of any such individual.

## 21 CONFIDENTIALITY

Each party shall keep and procure to be kept secret and confidential all Confidential Information belonging to the other party disclosed or obtained as a result of the relationship of the parties under the Contract and shall not use nor disclose the same save for the purposes of the proper performance of the Contract or with the prior written consent of the other party.

## 22 GENERAL

**22.1** The Contract is personal to the Supplier. The Supplier shall not assign, sub-contract, transfer or charge any aspect of the Contract without the prior written consent of Tarmac.

**22.2** Subject to Condition 22.3 no third party has any rights (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise) to enforce any provision of the Contract.

**22.3** All Tarmac Group Companies may enforce the provisions of the Contract

subject to and in accordance with Condition 22.4.

**22.4** The rights of the parties to terminate, rescind or agree any variation, waiver or settlement under the Contract are not subject to the consent of any third party.

**22.5** The Supplier shall not pledge the credit of Tarmac (or any Tarmac Group Company) nor represent itself as being Tarmac (or any Tarmac Group Company) nor an agent, partner, employee or representative of Tarmac (or any Tarmac Group Company) and the Supplier shall not hold itself out as such nor as having any power or authority to incur any obligation of any nature, express or implied, on behalf of Tarmac (or any Tarmac Group Company). Nothing in the Contract and no action taken by the parties pursuant to the Contract creates, or is deemed to create, a partnership or joint venture or relationship of employer and employee or principal and agent between the parties.

**22.6** The Supplier shall not exercise any right of lien, over any Goods, any materials relating to the Services or otherwise, in respect of any sums owed by Tarmac to the Supplier under the Contract or otherwise.

**22.7** The Supplier shall immediately notify Tarmac upon the occurrence of a change of Control of the Supplier. For the purposes of this sub-Condition, "**Control**" shall mean that a person possesses, directly or indirectly, the power to direct or cause the direction of affairs and policies of the other person (whether through ownership or share capital, possession of voting power, ability to appoint directors, contract or otherwise).

**22.8** Severability of Provisions

If at any time any part of the Contract is held to be or becomes void or otherwise unenforceable for any reason under any Applicable Law, the same shall be deemed omitted from the Contract and the validity and/or enforceability of the remaining provisions of the Contract shall not in any way be affected or impaired as a result of that omission.

**22.9** Waiver

Any waiver of any breach of the Contract shall be in writing. Any failure by either party to enforce or exercise any of its rights and remedies in respect of the Contract shall not be construed as a waiver of that party's right to enforce or exercise that right in future or other rights and remedies under the Contract.

**22.10** Variation

No amendment to the Contract shall be effective unless it is in writing and is signed by a duly authorised representative of each of the parties to the Contract

**22.11** Notices

(a) Any notices sent under the Contract must be in writing.

(b) Notices may be served in the ways set out in the table below at the relevant party's registered office (if it is a company) or its principal place of business (in any other case) or at such other address as the relevant party may give notice to the other party for the purpose of service of notices under the Contract and, the following table sets out the respective deemed time and proof of service:

Manner of Delivery	Deemed time of delivery	Proof of Service
Personal delivery	On delivery provided delivery is between 9.00am and 5.00pm on a Business Day	properly addressed and delivered
Prepaid first class domestic postal service	9.00am on the second Business Day after posting;	properly addressed prepaid and posted

## **23 LAW AND JURISDICTION**

**23.1** The Contract, these Conditions and any issues, disputes or claims arising out of, or in connection with it (whether contractual or non-contractual in nature such as claims in tort, from breach of statute or regulation or otherwise) shall be governed by, and construed in accordance with, the laws of England and Wales.

**23.2** All disputes or claims arising out of or relating to the Contract shall be subject to the exclusive jurisdiction of the English and Welsh Courts to which the parties irrevocably submit.