

Conditions of hire

1. In these conditions ('Conditions')
 - (a) "Company" means Tarmac Building Products Limited
 - (b) "Hirer" shall mean the firm or person entering into this hiring contract with the Company.
 - (c) "Equipment" shall mean the equipment hired by the Hirer together with any accessories, replacements, renewals and additions thereto.
- 2.1 These Conditions form part of each contract for the hire of the Equipment by the Company to the Hirer ('Contract') and prevail over any inconsistent terms or conditions contained in or referred to in the Hirer's order or in correspondence elsewhere and all or any conditions or stipulations contrary to these are hereby excluded and extinguished. No employee has authority to vary or add to or depart from these terms or make any representations about the Equipment or the Contract.
- 2.2 The Company reserves the right to inspect the site or the part of it at which the Hirer requires the Equipment to be installed ("Location") to assess its suitability for the installation of and access to the Equipment and to require the Hirer at the Hirer's expense to carry out works of preparation at the Location which may include the construction of an appropriate standing area for the Equipment and/or installation of bolting down facilities.
- 2.3 The Hirer is responsible for obtaining all necessary consents, permissions and approvals for the installation of the Equipment at the Location.
3. Any quotation of which these Conditions form part will remain open for acceptance for a period of 30 days from the date hereof.
- 4.1 Subject to Condition 4.2 no offer, obligation or agreement relating to the hire of the Equipment is binding on the Company unless and until it is accepted by the issue of the Company's order acknowledgement.
- 4.2 Delivery of the Equipment to the Location by the Company consequent upon an oral order shall be deemed to be pursuant to a Contract and the individual firm or company named on the consignment note or invoice accompanying such delivery shall be the Hirer for the purposes of the Contract. The Company reserves the right to record all orders and enquiries received by telephone.
5. The period of hire is deemed to commence on the date ("Commencement Date") when the Equipment is delivered to the Location and unless otherwise terminated by these Conditions shall terminate on the date when possession of the Equipment is returned to the Company ("Termination Date").
6. Hire charges ("Rent") shall be at the daily rate given on the Company's quotation and commencing on the Commencement Date. VAT and any other tax or duty payable by the Hirer shall be added to the said daily rate at the rate applicable at the relevant tax point
- 7.1 The Hirer shall make payment of the Rent to the Company upon presentation of a pro forma invoice. As a concession, which may be withdrawn at any time without notice, the Company may allow payment to be made upon credit terms which are net 28 days. If the concession is withdrawn, all sums owed by the Hirer to the Company under the Contract will then be immediately due for payment.
- 7.2 If any payment under the Contract becomes overdue (and without prejudice to any other right the Company may have) the Company shall be entitled to charge interest at the rate of four per cent per annum over Barclays Bank plc base rate prevailing from time to time to run from the due date for payment thereof until receipt by the Company of the full amount whether before or after judgment.
- 8.1 The Hirer's acceptance of delivery of the Equipment shall be conclusive evidence that the Hirer has examined the Equipment and found it to be complete in accordance with the description on the Contract and in good order and condition and fit for any purpose for which it maybe required.
- 8.2 When initially delivered the Equipment will contain a quantity of material which is sold by the Company to the Hirer pursuant to a separate contract ("Material Contract").
- 9.1 Subject to Condition 9.2 and 9.3 below:
 - 9.1.1 the Company is not a specialist silo manufacturer or engineer and any recommendations, advice or training given by the Company regarding the site requirements, locations, placement or use of the Equipment is for guidance only. No reliance shall be placed by the Hirer on any such recommendation, advice or training. The Hirer shall consult with its relevant specialists in order to deal with and verify such requirements;
 - 9.1.2 the Company shall not be liable for any loss or damage including but not limited to that arising from:
 - (a) any such recommendation, advice or training given by the Company, its employees, sub-contractors or agents;
 - (b) incorrect information being provided by, or any failure by the Hirer, its employees, sub contractors or agents to follow the Company's or manufacturer's or their adviser's instructions, recommendations, advice or training in relation to the Equipment or any failure by the same to inform the Company about any changes to relevant site information;
 - (c) any events, circumstances or causes beyond the Company's reasonable control;
 - (d) any delay in delivery arising from or in connection with the Equipment or any part thereof;
 - (e) any defect in the Equipment;
 - (f) or as a result of the Company following any design or specification supplied by the Hirer; or
 - (g) any defect due to fair wear and tear, wilful damage, negligence or abnormal location conditions;
 - 9.1.3 the Company shall not be liable for any:
 - (a) loss of profit;
 - (b) loss of revenue;
 - (c) loss of business; or
 - (d) indirect or consequential loss or damage.
- 9.2 Without prejudice to Condition 9.1 the Company's maximum aggregate liability, whether arising in contract, tort (including negligence), misrepresentation or otherwise shall in no circumstances exceed the greater of (i) the rental payments made by the Hirer plus the rental payments due for the period of hire; and (ii) £5,000 (five thousand pounds).
- 9.3 Nothing in this agreement shall exclude or in any way limit:
 - (a) either party's liability for death or personal injury caused by its own negligence;
 - (b) either party's liability for fraud or fraudulent misrepresentation; or
 - (c) any other liability which cannot be excluded by law.
- 9.4 The Hirer shall fully and completely indemnify the Company in respect of all claims in connection with or arising out of the use of the Equipment (other than death or personal injury resulting from the negligence of the Company its employees or agents) and in respect of all costs and charges in connection therewith whether such claims arise under statute common law or otherwise. The Hirer shall effect the necessary insurance to support such indemnities and produce evidence thereof to the Company if required to do so.
- 10.1 (a) The Company, its employees and/or agents shall at all reasonable times have access to the Equipment for the purposes of inspecting it and testing its condition.
 - (b) If the Company is dissatisfied with the condition of the Equipment it may carry out repairs and replacement to the Equipment pursuant to Condition 13.
 - (c) If the Company is dissatisfied with the condition of the Location it may:
 - i. require the Hirer to make good the condition of the Location (at the Hirer's expense); or
 - ii. at its discretion move the Equipment (at the Hirer's expense) to another part of the Location on which it may require the construction by the Hirer of an appropriate standing area for the Equipment and/or installation of bolting down facilities.
 - (d) If the Hirer does not comply with the Company's requirements under Condition 10.1 (b) or (c) the Company may forthwith serve on the Hirer a notice of dissatisfaction.

- 10.2 The Hirer shall not without prior written consent of the Company make any alterations, additions or improvements to the Equipment nor remove or interfere with any identification marks or plates attached to the Equipment
11. No condition or warranty whatsoever of any kind has omit or is given or made by or on behalf of the Company in relation to the quality of the Equipment or its fitness for any particular purpose.
12. (a) The Hirer shall immediately notify the Company of and shall indemnify the Company against any loss or damage to the Equipment.
- (b) No loss or damage to the Equipment or any part thereof shall affect or impair the obligations of the Hirer under the Contract which shall continue in full force and effect.
13. Any repairs or replacements to the Equipment shall be carried out by the Company and except where the repair or replacement arises from negligence on the part of the Company its employees or agents the Hirer shall upon demand reimburse to the Company the cost thereof.
14. (a) The Hirer shall have no right of property in the Equipment except the right to use the Equipment as a Hirer on the terms and conditions of the Contract.
- (b) The Hirer shall not sell, assign, let on hire, mortgage, pledge, charge, suffer any diligence, distraint or execution to be made upon or in any way dispose or part with possession of, or deal with the Equipment or any part thereof or allow any lien to be created thereon. The benefit of the Contract is not capable of assignment by the Hirer.
- (c) The Hirer may use the Equipment only at the Location and shall not itself move the Equipment within or from the Location but the Company may on being so requested by the Hirer at any time during the period of hire move the Equipment subject to Conditions 11.1 (b) and 3.2 and otherwise at the Hirer's expense within the Location or to another Location.
15. (a) If the Hirer shall fail to pay any Rent or other sum payable under the Contract within seven days of it becoming due (whether demanded of not) or fail to observe or perform any of the terms and conditions of the Contract whether expressed or implied or shall do or allow to be done any act or thing which in the opinion of the Company may jeopardise the Company's rights in the Equipment or any part thereof, or cause the Company or the Hirer to incur any liability to any third party, then in each and every such case the Company may by notice in writing sent to the Hirer forthwith or at any time within 14 days thereafter for all purposes terminate the Contract.
- (b) Notwithstanding the generality of Clause 15(a) above if any one or more of the following events occurs or in the opinion of the Company is reasonably likely to occur:
- (i) the Hirer commits any breach of the Contract the Material Contract or any other contract between the Hirer and the Company; or
- (ii) any distress diligence or execution is levied upon any of the goods or property of the Hirer and is not paid out within 7 days; or
- (iii) the Hirer (or, where the Hirer is part of a partnership, a partner thereof) offers to make any arrangements with or for the benefit of its or his creditors generally or a petition to appoint an administrator or has an administrative receiver, receiver and manager, receiver or judicial factor appointed of or over the whole or any part of its business undertaking, property or assets; or
- (iv) if it shall be deemed by virtue of Section 123 of the Insolvency Act 1986 to be unable to pay its debts; or
- (v) loss of or damage to the Equipment
- (vi) on inspection of the Equipment or the Location pursuant to clause 10.1 (a) if the Company is dissatisfied with the condition of the Equipment or the condition of that part of the Location upon which the Equipment is erected and shall let the Hirer have written notice of dissatisfaction then in each and every case the Contract shall automatically and without notice be terminated and no payment subsequently accepted by the Company with knowledge of such automatic termination shall in any way prejudice or affect the operation of this sub clause.
- (c) If the Contract is terminated under sub-clause (a) or (b) of this Condition the Hirer shall thereafter no longer be in possession of the Equipment with the Company's consent and the Company may without notice retake possession of the Equipment and for that purpose enter upon the Location or any other premises where the Equipment or any part thereof may be belonging to or in the occupation or control of the Hirer and the Hirer shall upon such termination pay the Company:
- (i) all Rent due under clause 6 and
- (ii) the cost of all repairs required as at the Termination Date to render the Equipment in good and substantial working order (fair wear and tear excepted) and
- (iii) all costs, charges and expenses incurred by the Company in retaking possession of the Equipment and removing it from the Location and
- (iv) as agreed compensation for loss suffered by the Company as a result of such termination such as is fairly and reasonably determined by the Company having regard to all relevant circumstances.
- (d) The termination of the Contract under sub-clause (a) or (b) of this Condition shall not prejudice any rights of the Company or liabilities of the Hirer subsisting at the Termination Date.
- 16.1 Upon the expiry of the period of hire, the Company shall have the right without notice to enter upon the Location or any other premises where the Equipment or any part thereof may be and take possession of the same (without prejudice to the right of the Company to retake possession earlier if the Contract is terminated by virtue of clause 15).
- 16.2 The Equipment will be removed upon expiry of the period of hire by the Company free of charge provided that:
- (a) any material contained in the Equipment will be dealt with in accordance with the Material Contract
- (b) it will be the Hirer's responsibility at its own cost to reduce the quantity of material in the Equipment to such weight as will enable the Equipment to be legally transported from the Location
- (c) the Company will be the sole judge as to the ability of the Equipment and material to be so transported
- (d) notwithstanding Condition 6 the period of hire will continue until such time as the equipment is removed from the location
17. The Hirer shall pay to the Company on demand all expenses, costs and charges whatsoever incurred by or with the authority of the Company or its agent in ascertaining the whereabouts of the Hirer and of the Equipment or any part thereof or in taking possession of the Equipment. The Hirer will also repay to the Company all costs, charges and expenses incurred by reason of any breach of the Contract by the Hirer.
18. No forbearance or indulgence shown or granted by the Company to the Hirer (in any regard whatsoever) shall constitute a waiver of any covenant or condition to be performed by the Hirer or in any way affect, diminish, restrict or prejudice the rights and powers of the Company.
19. Time is of the essence of the Contract and each and all of its provisions.
- 20.1 The formation, construction and performance of the Contract shall be governed in all respects by English law unless the Contract is a Scottish Contract when its formation construction and performance shall be governed in all respects by Scots Law.
- 20.2 "Scottish Contract" means a Contract where the Hirer, being a company, is incorporated in Scotland or, being an individual or firm, has his or its residence or place of business in Scotland but excludes any such Contract where the Company elects to bring or defend court proceedings relating to such Contract in the Courts of England.
21. The parties agree that the Courts of England shall have exclusive jurisdiction (other than in respect of any Scottish Contracts where the Scottish Courts shall have exclusive jurisdiction) to settle any dispute which arises in connection with the Contract save that, having regard to the fact that this Condition conferring jurisdiction is for the benefit of the Company only, the Company shall retain the right to bring proceedings against the Hirer in any other court which has jurisdiction.
22. The Company hereby agrees and declares that the contractual rights (if any) which the Hirer enjoys by virtue of the Sale of Goods and Supply of Services Act 1980 are in no way prejudiced by any of the provisions of the Contract.
23. The Site Survey & Silo Requisition Form and the Dry Mortar Silo - Site Requirements document form part of and are to be read in conjunction with these Conditions of Hire.