

Arkil Limited-Terms & Conditions of Trade

1. Definitions

- 1.1 "Arkil Limited" shall mean Arkil Limited its successors and assigns or any person acting on behalf of and with the authority Arkil Limited.
- 1.2 "Client" 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 Client on a principal debtor basis.
- 1.4 "Goods/Services" shall mean Goods/Services supplied by Arkil Limited to the Client (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 Arkil Limited to the Client.
- 1.5 "Services" shall mean all services supplied by Arkil Limited to the Client and includes any advice or recommendations (and where the context so permits shall include any supply of Goods/Services as defined above).
- 1.6 "Price" shall mean the cost of the Goods/Services as agreed between Arkil Limited and the Client subject to clause 3 of this contract.

2. Acceptance

- 2.1 Any instructions received by Arkil Limited from the Client for the supply of Goods/Services and/or the Client's acceptance of Goods/Services supplied by Arkil Limited shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be amended with the written consent of Arkil Limited.
- 2.4 The Client undertakes to give Arkil Limited at least fourteen (14) days notice of any change in the Client's name, address and/or any other change in the Client's details.

3. Price And Payment

- 3.1 At Arkil Limited's sole discretion the Price shall be either;
- (a) as indicated on invoices provided by Arkil Limited to the Client in respect of Goods/Services supplied; or
- (b) Arkil Limited's quoted Price which shall be binding upon Arkil Limited provided that the Client shall accept Arkil Limited's quotation in writing within thirty (30) days.
- (c) The Price quoted in the Arkil Limited tender is related to the costs at the tender date. If there is a rise in such costs between the date of tender and the completion of the contract the price will be adjusted in accordance with the formula which is referred to and enclosed with the tender or in the absence or non-applicability of such formula, by the amount of such rise.
- (d) Arkil limited may require Personal / Bank / Corporate Guarantee forms to be signed by authorised or non authorised account holders.
- 3.2 Arkil Limited May require a 35% deposit and a further 35% of the value at the halfway stage of the complete invoice value as deemed by Arkil Limited for non authorised account holders.
- 3.3 Arkil Limited may require 100% payment to escrow (central fund) with full agreement of all parties directly involved in the commissioning of Goods/Services.
- 3.4 Time for payment for Goods/Services shall be thirty (30) days for authorised account holders from date of invoice.
- 3.5 Payment will be made by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and Arkil Limited.
- 3.6 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/Services

- 4.1 At Arkil Limited's sole discretion delivery of the Goods/Services shall take place when;
- (a) the Client takes possession of the Goods/Services at Arkil Limited's address; or
- (b) the Client takes possession of the Goods/Services at the Client's address (in the event that the Goods/Services are delivered by Arkil Limited or Arkil Limited's nominated carrier); or
- (c) The Client's nominated carrier takes possession of the Goods/Services in which event the carrier shall be deemed to be the Client's reasonability.
- 4.2 At Arkil Limited's sole discretion the costs of delivery are included in the Price.
- 4.3 The Client shall make all arrangements necessary to take delivery of the Goods/Services whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods/Services as arranged then Arkil Limited shall be entitled to charge a reasonable fee for redelivery.
- 4.4 Delivery of the Goods/Services to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 4.5 Arkil Limited may deliver the Goods/Services 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 Client shall take delivery of the Goods/Services 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/Services will be delivered to the kerbside adjacent to the delivery site. If at the Client's request, the delivery vehicle leaves the road and enters the delivery site to unload the Client is responsible for providing suitable and safe access for Arkil Limited's delivery vehicle and agrees to indemnify Arkil Limited 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 Arkil Limited to deliver shall not entitle either party to treat this contract as repudiated.

4.9 Arkil Limited shall not be liable for any loss or damage whatever due to failure by Arkil Limited to deliver the Goods/Services (or any of them) promptly or at all.

5. Risk

5.1 If Arkil Limited retains ownership of the Goods/Services nonetheless, all risk for the Goods/Services passes to the Client on delivery.

5.2 If any of the Goods/Services are damaged or destroyed following delivery but prior to ownership passing to the Client, Arkil Limited is entitled to receive all insurance proceeds payable for the Goods/Services. The production of these terms and conditions by Arkil Limited is sufficient evidence of Arkil Limited's rights to receive the insurance proceeds without the need for any person dealing with Arkil Limited to make further enquiries.

6. Title

6.1 It is the intention of Arkil Limited and agreed by the Client that ownership of the Goods/Services shall not pass until:

- (a) the Client has paid all amounts owing for the particular Goods/Services, and
- (b) The Client has met all other obligations due by the Client to Arkil Limited in respect of all contracts between Arkil Limited and the Client.

6.2 Receipt by Arkil Limited 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 Arkil Limited's ownership or rights in respect of the Goods/Services shall continue.

6.3 It is further agreed that:

- (a) where practicable the Goods/Services shall be kept separate and identifiable until Arkil Limited shall have received payment and all other obligations of the Client are met; and
- (b) Until such time as ownership of the Goods/Services shall pass from Arkil Limited to the Client Arkil Limited may give notice in writing to the Client to return the Goods/Services or any of them to Arkil Limited. Upon such notice the rights of the Client to obtain ownership or any other interest in the Goods/Services shall cease; and
- (c) Arkil Limited shall have the right of stopping the Goods/Services in transit whether or not delivery has been made; and
- (d) the Client is only a bailee of the Goods/Services and until such time as Arkil Limited has received payment in full for the Goods/Services then the Client shall hold any proceeds from the sale or disposal of the Goods/Services on trust for Arkil Limited; and
- (e) the Client shall not deal with the money of Arkil Limited in any way which may be adverse to Arkil Limited; and
- (f) the Client shall not charge the Goods/Services in any way nor grant nor otherwise give any interest in the Goods/Services while they remain the property of Arkil Limited; and
- (g) Arkil Limited can issue proceedings to recover the Price of the Goods/Services sold notwithstanding that ownership of the Goods/Services may not have passed to the Client; and
- (h) Until such time that ownership in the Goods/Services passes to the Client, if the Goods/Services are converted into other products, the parties agree that Arkil Limited will be the owner of the end products.

7. Client's Disclaimer

7.1 The Client 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 Client by Arkil Limited and the Client acknowledges that the Goods/Services are bought relying solely upon the Client's skill and judgment.

8. Defects

8.1 The Client shall inspect the Goods/Services on delivery and shall within Twenty one (21) days notify Arkil Limited of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Arkil Limited an opportunity to inspect the Goods/Services within a reasonable time following delivery if the Client believes the Goods/Services are defective in any way. If the Client shall fail to comply with these provisions the Goods/Services shall be presumed to be free from any defect or damage. For defective Goods/Services, which Arkil Limited has agreed in writing that the Client is entitled to reject, Arkil Limited's liability is limited to either (at Arkil Limited's discretion) replacing the Goods/Services or repairing the Goods/Services.

9. Warranty

9.1 Extent of warranty. Arkil Limited will repair free of charge any part of the goods manufactured by Arkil Limited which may defective through materials or workmanship. The time line for this as 8.1. This Warranty is extended on the basis of payment as to 3.0 to 3.6 of this document. No warranty is given by Arkil Limited as to the quality or suitability of the Goods/Services for any purpose and any implied warranty is expressly excluded. Arkil Limited shall not be responsible for any loss or damage to

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- the Goods/Services, or caused by the Goods/Services, or any part thereof however arising.
- 10. Sale of Goods/Services Act 1893 and Sale of Goods/Services and Supply of Services Act 1980**
- 10.1 This agreement is subject to the provisions of the Sale of Goods/Services Act 1893 and the Sale of Goods/Services and Supply of Services Act 1980 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 10.2 Notwithstanding clause 10.1 nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Sale of Goods/Services Act 1893 (in particular sections 12-15), or the Sale of Goods/Services 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.
- 10.3 In particular where the Client buys Goods/Services as a consumer the provisions of Clauses 8 and 9 above shall be subject to any laws or legislation governing the rights of consumers.
- 11. Default & Consequences of Default**
- 11.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 11.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify Arkil Limited from and against all costs and disbursements incurred by Arkil Limited in pursuing the debt including legal costs on a solicitor and own client basis and Arkil Limited's collection agency costs.
- 11.3 Without prejudice to any other remedies Arkil Limited may have, if at any time the Client is in breach of any obligation (including those relating to payment); Arkil Limited may suspend or terminate the supply of Goods/Services to the Client and any of its other obligations under the terms and conditions. Arkil Limited will not be liable to the Client for any loss or damage the Client suffers because Arkil Limited exercised its rights under this clause.
- 11.4 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.
- 11.5 Without prejudice to Arkil Limited's other remedies at law Arkil Limited shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to Arkil Limited shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to Arkil Limited becomes overdue, or in Arkil Limited's opinion the Client will be unable to meet its payments as they fall due; or
 - the Client 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
 - A receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 12. Security and Charge**
- 12.1 Despite anything to the contrary contained herein or any other rights which Arkil Limited may have howsoever:
- where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client 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 Arkil Limited or Arkil Limited's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that Arkil Limited (or Arkil Limited'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.
 - should Arkil Limited elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Arkil Limited from and against all Arkil Limited's costs and disbursements including legal costs on a solicitor and own client basis.
 - The Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Arkil Limited or Arkil Limited's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause .
- 13. Cancellation**
- 13.1 Arkil Limited may cancel these terms and conditions or cancel delivery of Goods/Services at any time before the Goods/Services are delivered by giving written notice. On giving such notice Arkil Limited shall repay to the Client any sums paid in respect of the Price. Arkil Limited shall not be liable for any loss or damage whatever arising from such cancellation.
- 13.2 In the event that the Client cancels delivery of Goods/Services the Client shall be liable for any loss incurred by Arkil Limited (including, but not limited to, any loss of profits) up to the time of cancellation.
- 14. Data Protection Act 1988 & Data Protection Act 2003**
- 14.1 The Client and the Guarantor/s (if separate to the Client) authorises Arkil Limited to:
- collect, retain and use any information about the Client, for the purpose of assessing the Client's creditworthiness or marketing products and services to the Client; and
 - to disclose information about the Client, whether collected by Arkil Limited from the Client directly or obtained by Arkil Limited 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 Client on publicly accessible credit reporting databases.
- 14.2 Where the Client 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.
- 14.3 The Client shall have the right to request Arkil Limited for a copy of the information about the Client retained by Arkil Limited and the right to request Arkil Limited to correct any incorrect information about the Client held by Arkil Limited.
- 15. Literature**
- 15.1 All literature, samples, specifications, dimensions and weights submitted with Arkil Limited's quotation are approximate only and the data and descriptions contained in catalogues and other advertising material while being as accurate as possible may not necessarily be identical with products and services Arkil Limited supplies, and Arkil Limited reserves the right to supply products that have minor modifications in specifications as Arkil Limited sees fit.
- 15.2 The descriptions, illustrations and performances contained in catalogues, other advertising material and price lists do not form part of the contract of sale of the products.
- 16. Client's responsibility**
- 16.1 It is the Clients responsibility to;
- accept the recommended specifications of Arkil Limited; and
 - ensure there is adequate access at the delivery point to accept the Goods/Services; and
 - Make the working site available on the agreed date and time. Should delivery be delayed or interrupted by the failure of the Client to adhere to the delivery schedule agreed to between Arkil Limited and the Client then any additional costs will be invoiced to the Client as an extra; and
 - Have all areas clean, clear and prepared to enable scheduled work to be completed in accordance with the agreed schedule. Delays to the working process caused by the Client, their employees or Arkil Limited will result in chargeable downtime; and
 - Provide adequate and safe access to the site for all workmen and equipment. Delays in gaining access to, or from, the site will attract chargeable downtime; and
 - fully disclose any information that may effect Arkil Limited's working procedures; and
 - ensure that adequate lighting is provided in the working area; and
 - Arkil Limited will not accept any responsibility for cleaning or repair costs attributed to dust or damage caused by the works; and
 - provide a suitable power supply to within five (5) metres of the working site; and
 - provide suitable and adequate waste disposal facilities unless otherwise agreed with Arkil Limited
- 17. General**
- 17.1 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.
- 17.2 Arkil Limited may supply ready mixed concrete other than as part of the construction contract. Arkil Limited shall be responsible only for the supply of the concrete and not its proper placement. This is the client's responsibility.
- 17.3 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.
- 17.4 Arkil Limited shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Arkil Limited of these terms and conditions.
- 17.5 In the event of any breach of this contract by Arkil Limited the remedies of the Client shall be limited to damages. Under no circumstances shall the liability of Arkil Limited exceed the Price of the Goods/Services.
- 17.6 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by Arkil Limited.
- 17.7 Arkil Limited may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 17.8 Arkil Limited 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 Arkil Limited notifies the Client of such change. Except where Arkil Limited supplies further Goods/Services to the Client and the Client accepts such Goods/Services, the Client shall be under no obligation to accept such changes.
- 17.9 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.