



Terms of Trade

1. Terms of Trade

- 1.1 The terms and conditions set out below apply to every supply of Goods and Services made by Bitmac to the Customer. By placing an Order with Bitmac the Customer agrees that it is bound by these Terms of Trade and that the Customer's own terms and conditions do not apply.
- 1.2 Where the Customer has entered into a separate written supply agreement with Bitmac, these Terms shall also apply except to the extent that there is any inconsistency between these Terms and the separate supply agreement, in which case the relevant provisions of supply agreement shall prevail.

2. Definitions

- Credit Account** means the account for purchasing goods on credit held by the Customer with Bitmac.
- Customer** means the person who purchases Goods or Services from Bitmac Ltd, and includes the Customers' employees, contractors, subcontractors and agents. Where the Customer comprises two or more persons, means those persons jointly and severally.
- Goods** means any goods provided and/or manufactured by Bitmac.
- Bitmac** means Bitmac Limited (C-85957).
- Order** means an agreement between Bitmac and the Customer for Bitmac to supply Goods and/or Services to the Customer.
- Quote** means a written offer from Bitmac to the Customer to supply Goods and/or Services for a specified price subject to the terms and conditions of such offer.
- Services** means any service performed by Bitmac.
- Terms** means the terms and conditions of the supply set out in the document, including and variation of these Terms.

3. Orders and Quotes

- 3.1 These Terms apply to all Goods and Services supplied by Bitmac. These Terms may be modified or added to by specific terms specified by Bitmac in a quote or other Order. A Customer's acceptance of a Quote constitutes an agreement to purchase Goods or Services on the terms of that Quote and these Terms.
- 3.2 All Quotes are based on rates and charges in effect at the date of the Quote. Any increase in rates or charges will result in an equivalent increase in the quoted price. A Quote may be withdrawn at any time. A Quote will be valid for the term specified on the Quote. If no term is specified, the Quote is valid for 30 days.
- 3.3 Quotes are prepared in accordance with the information provided to Bitmac by the Customer. Bitmac will not be liable nor will it be bound by the Quote where:
- such information is inaccurate or any information omitted;
 - the Customer makes any variations to the work quoted for.
- 3.4 Bitmac may decline any Orders in its sole discretion.

4. Price

- 4.1 The price of Goods and Services shall be as agreed between Bitmac and the Customer, as specified in Bitmac's price list (as amended from time to time), or in an Order or accepted Quote, as applicable. Unless otherwise stated, prices stated do not include vat, other taxes or levies, transport, or insurance charges.

5. Payments, Discounts and Rebates

- 5.1 Payments for Goods and Services charged to a Credit Account must be made in accordance with this clause 5. If the Customer does not have a Credit Account with Bitmac, payment must be made on placing an Order.
- 5.2 Where the Customer receives a volume based discount on Goods and the Customer fails to purchase the total volume of such Goods, Bitmac reserves the right to withdraw such discount and charge the Customer for the full price of the Goods without applying the discount.
- 5.3 Bitmac reserves the right to suspend any discount or rebate and to restrict or withhold the supply of further Goods and Services to the Customer if the payment terms are not strictly adhered to. If the Customer defaults in making payment Bitmac may:
- charge interest on all overdue invoices at 8% as allowed by the Law;
 - charge the Customer all costs including legal fees (as between solicitor and client), debt collection charges and court costs incurred by Bitmac in recovering outstanding monies; and
 - cancel this agreement and/or the Customer's right to hold a Credit Account.

6. Warranties

- 6.1 To the extent permitted by law, all statutory, express, or implied warranties by Bitmac including, without limitations, implied warranties of merchantability and fitness for any particular purpose are expressly excluded.
- 6.2 Colour and texture variations may occur in Goods due to
- the use of natural materials in the manufacturing process; and
 - normal manufacturing tolerances and processes.
- The Customer agrees that such variations do not constitute a product defect and Bitmac shall not be liable for any loss or damage suffered by the Customer because of such variations.

7. Limitations of Liability

- 7.1 The liability of Bitmac in respect of all claims for loss, damage or injury arising from a breach of any of Bitmac's obligations under these Terms or from an act or omission of Bitmac is limited, in each case, to the lesser of:
- replacement or repair of the affected Goods;
 - payment of the actual cost of replacing or repairing the affected Goods; or

- c) the price of the affected Goods or Services.
- 7.2 Bitmac shall not be liable for any direct or indirect loss or damage (including without limitation loss of profits or savings or for any indirect or consequential loss or damage), however caused, arising out of or in connection with the supply of Goods or Services by Bitmac, except as set out in clause 8.1
- 7.3 No action arising out of the supply of Goods or Services by Bitmac, regardless of form, may be brought more than one week after the Customer becomes aware, or reasonably ought to have become aware, of the circumstances giving rise to the action.
8. **Intellectual Property**
- 8.1 All intellectual property rights in the Goods or arising out of the performance of the Services are and shall remain the property of Bitmac. The Customer warrants that any design or drawing provided by it does not infringe any intellectual property rights of any other person.
9. **Risk**
- 9.1 Risk in the Goods shall pass to the Customer upon collection or delivery as set out in clause 10.2
- 9.2 Delivery of Goods shall be deemed to occur at the point specified in an Order or Quote, or if no delivery point is specified, then:
- a) when the Goods arrive at the address specified by the Customer (whether or not the Customer is present to acknowledge receipt), or
- b) when the Customer takes possession of the Goods, whichever occurs first.
- 9.3 Bitmac may deliver Goods by instalments. If the Customer fails to pay for an instalment on the due date Bitmac may suspend deliveries of future instalments.
- 9.4 Where Bitmac delivers the Goods, the Customer shall:
- a) ensure Bitmac has all-weather access to the site, to enable Bitmac to deliver the Goods safely;
- b) obtain all necessary consents from the relevant authority and inform Bitmac of all matters relating to such consents;
- c) locate, mark and advise Bitmac of all pipes, cabling and other utilities that are on, or near, or adjacent to the delivery point, and of any actual or possible hazard on the land where Goods are to be delivered; and
- d) indemnify Bitmac against any costs, claims and damages incurred in the delivery of the Goods any including cleaning, repairing damage to the site or delivery equipment and returning the delivery vehicle to the road, provided Bitmac has acted with reasonable care and skill.
- 9.5 The final decision on entry onto any site will be at Bitmac's discretion. Failure to deliver pursuant to this clause will not be deemed to be a breach of contract by Bitmac.
- 9.6 If the Customer collects the Goods from Bitmac, the Customer agrees that it shall comply with Bitmac's rules applicable to the health and safety at Bitmac's site, including ensuring that they are inducted to an appropriate induction standard at the site. The Customer shall also assist Bitmac to provide and maintain a safe and healthy workplace where all hazards, unsafe acts and/or conditions are identified and analysed before being controlled by elimination/isolation or minimization of the risk of harm
- 9.7 The Customer must make any claims for short delivery within 48 hours of delivery of Goods by Bitmac and must state the date of the delivery of the Goods and the delivery or invoice number.
- 9.8 The delivery note, or invoice will set out the specifications of the Goods ordered by the Customer. The Customer shall be responsible for signing the delivery note or invoice and for checking that such specifications are correct prior to the discharge of the Goods from Bitmac's truck.
- 9.9 If the Customer refuses all or part of any Order upon delivery at the Customer's site, the Customer shall be bound to make full payment for the Goods, together with all disposal costs in respect of the returned Order.
10. **Returns and Cancellations**
- 10.1 Bitmac is under no obligation to accept the cancellation of any Order or the return of Goods, which must be agreed to in writing by Bitmac. A failure or refusal to sign a delivery note or invoice shall not be evidence of rejection of any Goods or cancellation of any Order, such rejections or cancellation to be notified in writing at least two hours prior delivery.
- 10.2 In case were Bitmac decides to accept returns, the Customer must do so within a maximum of 15 days from delivery note or invoice date and on presentation of the delivery note or invoice provided that:
- a) Goods are in the original condition and packaging as supplied;
- b) any discounts given on the original sale will be withheld when the material is returned
- c) returns that were originally paid by credit or debit card will have a 3% deducted due to bank charges.
- 10.3 Goods which are damaged before delivery to the Customer may be returned for replacement or credit by quoting the date of the delivery and the delivery note or invoice number provided that the Goods are in the original condition and packaging as supplied.
11. **Force Majeure**
- 11.1 No claims or liability will arise against Bitmac under these Terms or any order or Quote, if and to the extent that Bitmac's failure or omission to carry out or observe any provisions of these Terms or any Order or Quote arises by reason of Force Majeure. "Force Majeure" means any event outside the reasonable control of Bitmac.
12. **Termination**
- 12.1 All outstanding monies shall become immediately due and payable from the Customer, and Bitmac reserves the right to immediately cancel any Order and/or the Customer's right to hold a Credit Account, if the Customer:
- a) ceases or threatens to cease carrying on business;
- b) becomes unable to pay its debts as they fall due or otherwise becomes insolvent or bankrupt;
- c) has a receiver or a receiver and manager appointed in relation to all or part of its assets, commences liquidation or is placed in statutory management; or
- d) breaches any of these Terms and fails to remedy the breach with ten days of written notice required for the breach to be remedied.
13. **Privacy**
- 13.1 The Customer authorises Bitmac to collect, retain and use personal information about the Customer for the following purposes:
- a) assessing the Customer's creditworthiness;
- b) administering the Customers' Orders;
- c) receiving information from one or more credit reference agencies, concerning the credit history of the Customer;
- d) disclosing credit-related information to, and using the credit services of, one or more credit reference agencies, on a continuing basis at any time and entirely at its discretion concerning the Customer's credit worthiness.

14. **Guarantee and Indemnity**

- 14.1 The Guarantor/s of the Customer jointly and severally unconditionally guarantee to Bitmac the due and punctual payment by the Customer of all outstanding monies and agree to keep Bitmac fully indemnified against all damages, losses, costs and expenses arising from any failure of the Customer to pay the monies hereby guaranteed.
- 14.2 As between the Guarantor/s and Bitmac the liability of the Guarantor/s shall be deemed to be that of principal debtor. This guarantee is in addition to and not in substitution for any other security or right which Bitmac may have in respect to the Customer's indebtedness and may be enforced against the Guarantor/s without first having recourse to any such securities or right and without taking steps or proceedings against the Customer.
- 14.3 The liability of the Guarantor/s shall not be affected by the granting of time, credit or any indulgence or other concession to the Customer or to any person giving any similar guarantee.
- 14.4 The guarantee and indemnity in the clause 17 is an irrevocable and continuing guarantee and indemnity and shall remain in full force until all obligations under the Customer's credit account have been fully paid, satisfied, or performed.

15. **General**

- 15.1 **Waiver:** Bitmac's failure or delay to exercise or enforce any right it has under these Terms shall not operate as a waiver of Bitmac's right to exercise or enforce such right or any other right in the future.
- 15.2 **Severance:** Should any part of these Terms be unenforceable such part shall be severed and the remainder of these Terms shall remain binding
- 15.3 **Confidentiality:** Except as required by law both parties shall preserve as confidential any information of a confidential nature that they acquire in relation of other.
- 15.4 **Variation:** Bitmac may at any time and in its sole discretion vary these Terms with immediate effect, by posting the revised Terms of Trade on Bitmac's website at www.bitmac.mt provided that Bitmac shall not make any variation to the nature or extent of the security interest granted by the Customer under clause 6 without the written agreement of the Customer. Bitmac may notify the Customer by delivering the Customer an invoice with a notice of amendment and receipt of that invoice will be deemed acceptance by the Customer of these Terms as amended.
- 15.5 **No Partnership:** Notwithstanding any provision of these Terms, the parties agree that the relationship between them is not and shall not be construed to be a partnership.
- 15.6 **Further Acts:** The Customer shall execute all documents and do all acts and things as may reasonably be required by Holcim to carry into effect the matters contemplated by these Terms.
- 15.7 **Entire Agreement:** Except as otherwise agreed in writing, including in accordance with clause 1.2, these Terms constitute the entire agreement between the parties.
- 15.8 **Notice:** Any letter or notice given under these Terms will be validly and sufficiently given if sent by pre-paid post, facsimile or electronic mail to the address details notified by one party to the other from time to time. A notice sent by post shall be deemed to have been received on the third working day following the day of posting. A notice sent by facsimile or electronic mail shall be deemed to have been received on the date specified on the facsimile transmission receipt or email delivery receipt.
- 15.9 **Jurisdiction:** These Terms are governed by the laws of Malta and the parties submit to the exclusive jurisdiction of the Maltese court.