

CONDITIONS OF SALE (with Technical Assistance)
F. P. McCann Limited

1. Interpretation

1.1 In these Conditions:

"Approval Basis" means (in relation to the provision of Technical Assistance) the provision of Technical Assistance where the Customer and the Company have agreed that the Company will bear Design Responsibility;

"Adoption-Only Basis" means (in relation to the provision of Technical Assistance) the provision of Technical Assistance where the Company bears no Design Responsibility;

"Customer" means a person to whom the Company supplies, or contracts for the supply of goods and the provision of Technical Assistance;

"Company" means F.P. McCann Limited whose Head Office is situated at Knockloughrim Quarry, 3 Drumard Road, Magherafelt, BT45 8QA, Northern Ireland;

"Company's Chief Engineer" means a person nominated as such by the Company from time to time;

"Conditions" means the standard conditions of sale set out in this document and the Contract Schedule and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the parties;

"Contract" means the contract for sale of Goods and supply of Technical Assistance by the Company containing these Conditions;

"Contract Schedule" means the schedule annexed to this document and which forms part of the Contract;

"Design Responsibility" means (but without prejudice to the provisions of clause 4.2) the obligation to ensure that the Goods are designed to satisfy the requirements of the Technical Data;

"Goods" means the goods which the Company is to supply in accordance with these Conditions;

"Intellectual Property Rights" means patents, rights to inventions, copyright and related rights, trade marks and service marks, trade names and domain names, rights in get-up, rights to goodwill and to sue for passing off and unfair competition, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (and rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist, now or in the future, in any part of the world;

“Technical Assistance” means technical assistance to be provided by the Company in relation to the application of Goods either on an “Approval Basis” or alternatively on an “Adoption Only Basis” as set out in these Conditions;

“Technical Data” means all technical data (including without limitation designs, site condition reports, load-bearing calculations, load combinations, geotechnical reports, durability and exposure condition data and interface conditions data) provided by the Customer (or on the Customer’s behalf) to the Company before or during the provision by the Company of Technical Assistance.

1.2 The headings in these Conditions are for convenience only and shall not affect interpretation.

2. Orders

2.1 Orders accepted by the Company are accepted on these Conditions to the exclusion of all other conditions including any the Customer purports to apply to any purchase order, confirmation or order, specification, delivery note or other document or which might otherwise have been relied upon by the Customer whether in negotiation or at any stage in the dealings between the parties in respect of any Goods or Technical Assistance.

2.2 In the event of inconsistency between these Conditions and any other apparent contract term, these Conditions shall apply except where a change to these Conditions is expressly agreed to in writing and signed the Company’s Chief Engineer. Any representations about the Goods or Technical Assistance, shall have no effect unless expressly agreed in writing and signed by the Company’s Chief Engineer.

2.3 Each order placed by the Customer shall be deemed to be an offer by the Customer to purchase Goods and to retain the Company to supply Technical Assistance subject to these Conditions.

2.4 The quantity and description of the Goods shall be those set out in the Customer’s order (if accepted by the Company) provided always that the acceptance by the Company shall only be valid if an order acknowledgment is sent to the Customer.

2.5 No order which has been accepted by the Company may be cancelled by the Customer except with the agreement in writing of the Company and on terms that the Customer shall indemnify the Company in full against all losses (including loss of profit), costs (including cost of all labour and materials used), damages, charges and expenses incurred by the Company as a result of cancellation.

3. Conditions pertaining to the delivery of Goods

3.1 Specifications

- (a) The Company reserves the right to make any changes in specification of Goods required to conform with any applicable safety or other statutory requirements or, where Goods are to be supplied to the Company’s specification, which do not materially affect their quality or performance.

3.2 Delivery

- (a) Any time named by the Company for delivery of Goods shall mean the time of delivery at the Company's works and time required for transit is additional. When Goods are offered for delivery to site the Company's obligation is to deliver to the nearest hard road to site, it is the Customer's responsibility to off-load without any undue delay to the Company's lorry;
- (b) Delivery ex-stock is intended to convey that the Goods are in stock at date of quotation, and such delivery is offered subject to the Goods being available on receipt of the order. Where a period is named for delivery and such period is not extended by mutual consent in writing, the Customer shall take delivery within that period;
- (c) The Customer's signature on any delivery note, or other documentation presented for signature in connection with a delivery, shall be evidence of the receipt by the Customer of the delivery and that the amount of Goods specified on the delivery note have been delivered and the Goods are in good condition and undamaged by transit;
- (d) If the Company delivers to the Customer a quantity of Goods (where such Goods constitute materials delivered in bulk) of up to 10% more or less than the quantity ordered, the Customer shall not be entitled to object to or reject the Goods or any of them by reason of the surplus or shortfall and shall pay for such Goods at the pro rata Contract rate; and
- (e) All illustrations, drawings and other information issued by the Company in catalogues, price lists, advertisements, or any other publications, must be regarded as approximate representations only, except where otherwise specified. Weights, dimensions, measurements, capacities and all other particulars of the Goods are stated by the Company in good faith as being approximately correct and are given as accurately as circumstances permit but are not taken as conclusive. Defects in quality or dimensions in any delivery shall not be a ground for cancellation of the remainder of the order.

3.3 Notification of rejection, partial loss, damage etc.

- (a) The Company must be notified in writing of any claim to reject the Goods within three days of such goods being delivered if such claim is to be considered;
- (b) The Company (and where appropriate the carrier) must be notified in writing of a claim for damage to or partial loss of the Goods within three days of delivery; and
- (c) Goods supplied by the Company will only be replaced if the Company is satisfied that they were defective in material or workmanship upon delivery.

3.4 Return of Goods

- (a) Goods shall not be returned to the Company's works unless an arrangement has been made with the Company to that effect and receipt by the Company at its works or sales office or returned goods shall not be deemed to be evidence of any agreement to cancel an order nor an admission of any defect in such

goods. Goods will only be exchanged or credited (where agreed by the Company) subject to a handling charge, if in good, clean and saleable condition, and returned to the Company carriage paid giving date of invoice or purchase. A further charge will be made for cleaning where necessary. Specially-made goods cannot be credited in any circumstances.

3.5 Passing of Property

- (a) Ownership of the Goods shall not pass to the Customer until the Company has received in full (in cash or cleared funds) all sums due it in respect of the Goods and all other sums which are or which become due to the Company from the Customer on any account:-
 - (i) until ownership of the Goods has passed to the Customer, the Customer must:-
 - (A) hold the Goods on a fiduciary basis as the Company's bailee;
 - (B) store the Goods (at no cost to the Company) separately from all other goods of the Customer or any third party in such a way that they remain readily identifiable as the Company's property;
 - (C) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - (D) maintain the Goods in satisfactory condition insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Customer shall produce the policy of insurance to the Company; and
 - (E) hold the proceeds of the insurance referred to in this condition on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account
- (b) The Customer may resell the Goods before ownership has passed to it solely on the conditions that any sale shall be effected in the ordinary course of the Customer's business at full market value and any such sale shall be a sale of the Company's property on the Customer's own behalf and the Customer shall deal as principal when making such a sale;
- (c) The Customer's right to possession of the Goods shall terminate immediately if:-
 - (i) the Customer has a bankruptcy order made against it or makes an arrangement or composition with its creditors, or otherwise takes the benefit of any Act for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed (either in court or otherwise) of its undertaking or any part thereof, or a

resolution is passed or a petition presented to any court for the winding up of the Customer or for the granting of an administration order in respect of the Customer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Customer; or

- (ii) the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against the Customer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, or fails to observe/perform any of its obligation under the Contract or any other contract between the Company and the Customer, or is unable to pay its debts as defined by the Insolvency (Northern Ireland) Order 1989 (or any equivalent legislation applicable to the Customer)

and the Customer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where Goods are or may be stored in order to inspect them, or, where the Customer's right to possession has terminated, to recover them.

4. Conditions pertaining to the provision of Technical Assistance

- 4.1 The provision by the Company of Technical Assistance shall be deemed to be exclusively on an Adoption-Only Basis unless otherwise stated in the Contract Schedule (and the Customer recognises and agrees that the Company will bear no Design Responsibility where Technical Assistance is provided on an Adoption-Only Basis).
- 4.2 The Company shall in the provision of Technical Assistance be entitled to assume the accuracy and adequacy of the Technical Data supplied to it by the Customer (or any third party retained on the Customer's behalf) and the Company shall be under no liability to the Customer in respect of any failure (or alleged failure) to provide Technical Assistance with reasonable skill and care and/or in breach of the Contract where such failure (or alleged failure) is as a consequence of the inaccuracy or inadequacy of the Technical Data.

5. Prices

- 5.1 The price of Goods (which shall for the purposes of this clause 5 include the provision of Technical Assistance) shall be the Company's quoted price or where no price has been quoted (or a quoted price is no longer valid), the Company's current price or hourly rate at the date of dispatch of the order.
- 5.2 If at any time after the acceptance of an order any duty or tax of any kind whatsoever shall be levied by the Government or other authority, or any duty or tax in existence at the date of acceptance of the order shall be increased and such duty or tax or increased duty or tax shall be payable by the Company, the amount of such duty or tax or the increase in duty or tax, as the case may be, shall be borne by the Customer and shall be repaid by the Customer to the Company as an increase in the price.
- 5.3 The price is exclusive of any applicable insurance, customs and Value Added Tax and other duties which the Customer shall be additionally liable to pay to the Company.

6. Terms of Payment

- 6.1 Unless otherwise agreed, accounts are strictly nett and payment in full must be made within 30 days from the date of invoice notwithstanding that (in respect of the delivery of Goods) where delivery is on a consignment basis full delivery may not have taken place and property in the Goods has not passed to the Customer. Settlement discount, where agreed by the Company, may be deducted only where the account is paid within 30 days of the date of invoice irrespective of whether the total order has been executed or not. Accounts are due and should be paid to F.P. McCann Ltd, Knockloughrim Quarry, 3 Drumard Road, Magherafelt, BT45 8QA, Northern Ireland.
- 6.2 If the Customer fails to make a payment on a due date then without prejudice to any other right or remedy available to the Company, the Company shall be entitled to:-
- (a) cancel the Contract or suspend any further deliveries or the provision of further services to the Customer;
 - (b) appropriate any payment made by the Customer to such of the Goods for goods or services supplied under any other contract between the Customer and the Company as the Company may think fit (notwithstanding any purported appropriation by the Customer);
 - (c) charge interest on overdue accounts at the rate of 3% above the Bank of England Base Rate for sales in Pounds Sterling or 3% above the Euro Repo Rate for sales in Euros; and
 - (d) use any legal means deemed appropriate to recover any amounts owing by the Customer and then recoup the costs associated therewith from the Customer.
- 6.3 The Customer shall make all payments to the Company without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

7. Limitation of Liability

- 7.1 The following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer in respect of both any breach of these Conditions and any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 7.2 The Company warrants subject to clause 7.4 below to the Customer:-
- (a) that the Goods comply with the specification applicable to the Goods published by the Company (if any);
 - (b) that the Goods will be of satisfactory quality (within the meaning of the Sale of Goods Act 1979);
 - (c) that the Goods will be fit for any purpose held out for such Goods by the Company (if any);
 - (d) that the Goods will comply with all applicable statutory regulations of application to the Goods at the date of the Contract; and
 - (e) that Technical Assistance will be supplied with reasonable skill and care.

7.3 Save as:-

- (a) set out in clause 7.2; and
- (b) implied by section 12 of the Sale of Goods Act 1979

and subject to clause 7.4 below all other warranties, conditions and terms implied by statute or by common law are, to the fullest extent permitted by law, excluded from the Contract.

7.4 Nothing in these conditions excludes or limits the liability of the Company:

- (a) for death or personal injury caused by the Company's negligence; or
- (b) under section 2(3), Consumer Protection Act 1987; or
- (c) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (d) for fraud or fraudulent misrepresentation.

7.5 Subject to condition 7.4

- (a) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with any actual or alleged defect in Goods shall be limited to the direct cost of replacement of such of the Goods as are defective (but for the avoidance of doubt the direct cost shall not include removal, recovery or extraction of the defective Goods or the relaying and/or installation of the replacement Goods); and
- (b) the Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with any actual or alleged failure on the part of the Company to provide Technical Assistance with reasonable skill and care giving rise to any direct or reasonably foreseeable loss shall:-
 - (i) where Technical Assistance is provided on an Approval Basis be limited to the amount of the Company's professional indemnity insurance coverage referred to in the Contract Schedule (or where no amount is referred to in the Contract Schedule the sum of £1m), or
 - (ii) where Technical Assistance is provided on an Adoption Only Basis be limited to the aggregate amount paid by the Customer under the Contract or £1m (whichever is the lesser); and
- (c) the Company shall not in any event be liable to the Customer for any pure economic loss, loss of profit, loss of business, depletion of goodwill or otherwise, indirect or consequential losses, or any claims for consequential

compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

- 7.6 The Company shall not be liable for any breach by it of these Conditions (which breach will be subject to the limitation of liability provisions in these Conditions) unless the Customer notifies the Company within 7 days of the date on which it became aware, or ought upon diligent enquiry to have become aware, of such breach and unless after receiving such notice the Company is given a reasonable opportunity of remedying the alleged breach.
- 7.7 The Company shall not be liable to the Customer for any loss (including loss of profit), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods or the provision of Technical Assistance, nor will the Company be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform any of the Company's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Company's reasonable control.
- 7.8 Without prejudice to the generality of the foregoing, the following shall be regarded as causes beyond the Company's reasonable control:
- (a) act of God, explosion, flood, tempest, fire or accident;
 - (b) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
 - (c) acts, restrictions, bye-laws, prohibitions or measures of any kind on the part of government, parliamentary or local authority;
 - (d) import or export regulations or embargoes;
 - (e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Company or a third party);
 - (f) difficulties in obtaining raw material, labour, fuel, part of machinery; and
 - (g) power failure or breakdown of machinery.
- 7.9 The Company shall be under no liability in respect of any defect in the Goods or any claim arising from:-
- (a) any application of the Goods for a purpose other than that held out by the Company as being a purpose for which the Goods are fit (whether or not such intended application was made known to the Company at the time of the Customer's order) unless the Goods have been certified in writing prior to the Contract as being fit for such application by the Company's Chief Engineer.
 - (b) any installation or attempted installation of the Goods in a manner not consistent with the installation guidelines published by the Company from time to time.
 - (c) any alteration or attempted alteration of the Goods after delivery (unless the nature of such alteration has been certified in writing as not being detrimental or

potentially detrimental to the performance of the Goods by the Company's Chief Engineer).

- (d) any repair or attempted repair of the Goods after delivery (unless the nature of such repair has been certified in writing as not being detrimental or potentially detrimental to the performance of the Goods by the Company's Chief Engineer).

8. Intellectual Property Rights

- 8.1 Unless otherwise expressly agreed in writing between the Customer and the Company (acting by the Company's Chief Engineer) ownership of all Intellectual Property Rights created by the Company in the case of the manufacturer of the Goods and/or the delivery of Technical Assistance and all Intellectual Property Rights subsisting in the Goods or any deliverable produced by the Company in the case of the provision of Technical Assistance shall at all times remain vested absolutely in the Company.

9. Insolvency of Customer

- 9.1 Without prejudice to common law and statutory rights relating to stoppage in transit, and rights in respect of any antecedent breaches, if the Customer fails or is unable to comply with, or perform any of the terms of the Contract, or commits any act of bankruptcy, or shall suffer any execution or distress to be levied on his goods or being a company shall enter into liquidation whether compulsory or voluntary (save for the purposes of reconstruction or amalgamation) or administration or shall have a Receiver appointed over all or any part of its assets, then the Company shall have the right forthwith to determine the Contract.

10. Assignment

- 10.1 The Customer shall not be entitled to assign the Contract or any part of it without the Company's prior written consent.
- 10.2 The Company may assign the Contract or any part of it to any person, firm or company.

11. Notice

- 11.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to that other party at its principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice.

12. Waiver

- 12.1 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

13. Third Party Rights

13.1 Neither the Company nor the Customer intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

13.2 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby. Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

14. Dispute Resolution

14.1 Any dispute or difference arising out of or in connection with a contract for the supply of Goods or the provision of Technical Assistance by the Company, (whether in relation to Goods, on a supply-only basis or not), may be referred to adjudication as a construction contract in accordance with the provisions of the Construction Contracts (Northern Ireland) Order 1997.

14.2 If any difference or dispute arising out of or in connection with a contract for the supply of Goods or the provisions of Technical Assistance by the Company cannot be finally resolved under the adjudication procedure referred to in Clause 14.1, it shall be referred for final settlement by a single arbitrator sitting in Northern Ireland under the Rules of the Chartered Institute of Arbitrators. Such arbitrator shall be appointed (in default of agreement) by the President for the time being of the Chartered Institute of Arbitrators, and such reference shall be deemed a submission to Arbitration in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force.

15. Applicable Law and Jurisdiction

15.1 These Conditions shall be governed by and construed in accordance with the law of Northern Ireland and the Northern Ireland Courts shall have exclusive jurisdiction over all differences and disputes which shall arise between the Company and the Customer.

16. Entire Agreement

16.1 These Conditions together with the Company's order acknowledgement contain the entire agreement between the parties in respect of the supply of Goods and/or the provision of Technical Assistance and supersede any previous agreements, arrangements, undertakings or proposals, written or oral between the parties. In agreeing to these Conditions, the customer confirms that he has not relied on any representation other than those expressly stated and agrees that he shall have no remedy in respect of any misrepresentation that has not been made expressly in these Conditions.

CONDITIONS OF SALE (with Technical Assistance)
F. P. McCann Limited

Contract Schedule

Contract Reference	
Customer	
Project	
Scope of supply	
Basis of Technical Assistance	(Adoption-Only unless stated otherwise)
Limit of Professional Indemnity Insurance.	(£1m aggregate unless stated otherwise)