



AGREEMENT FOR THE SUPPLY OF GOODS

The Agreement is entered into pursuant to the Terms and includes and incorporates the following documents which in the event of inconsistency shall prevail in the following order:

1. the Terms;
2. any proposal or quotation issued from time to time;
3. any Sales Order;
4. any other documents attached or otherwise expressly incorporated into the documents listed 1 to 3 above.

OUR TERMS

The customer's attention is drawn in particular to the provisions of clause 9.

1. Interpretation

1.1 **Definitions.**

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| Agreement | the contract between BituChem and the Customer for the supply of goods in accordance with these Terms. |
| Asphalt Goods | all and any of BituChem's range of surfacing products. |
| BituChem | BituChem Building Products Limited incorporated and registered in England and Wales with company number 02047278 and BituChem Asphalt Ltd incorporated and registered in England and Wales with company number 02387763 are members of a group of companies whose holding company is BituChem Holdings Limited registered in England and Wales with company number 02334866 whose registered offices are at Laymore Road, Forest Vale Industrial Estate, Cinderford, Gloucestershire, GL14 2YH. |
| Business Day | a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business. |
| Building Product Goods | all and any of BituChem's range of highway emulsions and surfacing products. |
| Conditions | the terms and conditions set out in this document as amended from time to time in accordance with clause 13.4. |
| Contract | the contract between BituChem and the Customer for the sale and purchase of the Goods in accordance with these Conditions as made in accordance with clauses 2.2 and 2.3. |
| Customer | the person or firm who purchases the Goods from BituChem. |
| Force Majeure Event | an event or circumstance beyond a party's reasonable control. |

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| Goods | Asphalt Goods and/or Building Product Goods (or any part of them) as set out in the Sales Order. |
| Quotation | based on the Customer's initial enquiry. |
| Order | the Customer's verbal or written order for the Goods specified in a Sales Order. |
| Sales Order | the specific details of the Customer's order for the Goods as issued to the Customer.. |
| Specification | any specification for the Goods, including any related plans and drawings, that is agreed in writing. |

1.2 **Interpretation:**

- 1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- 1.2.2 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.2.3 a reference to **writing** or **written** includes faxes and emails.
- 1.2.4 use of any gender includes the other genders.
- 1.2.5 words in the singular include the plural and words in the plural include the singular.

2. **Basis of contract**

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Sales Order and, where submitted by the Customer, any applicable Specification are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when BituChem issues a written acceptance of the Sales Order, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by BituChem and any descriptions or illustrations contained in BituChem's catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.
- 2.6 The Quotation for the Goods given by BituChem shall not constitute an offer. A quotation shall only be valid for a period of 20 Business Days from its date of issue.

3. **Goods**

- 3.1 The Goods are described in the Sales Order.
- 3.2 To the extent that the Goods are to be manufactured in accordance with a Specification supplied by the Customer, the Customer shall indemnify BituChem against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by BituChem in connection with any claim made against BituChem for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with BituChem's use of the

Specification, including but not limited to the manufacture and supply of the Goods. This clause 3.2 shall survive termination of the Contract.

- 3.3 BituChem reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. Delivery

- 4.1 BituChem shall ensure that:

4.1.1 each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the contract number, the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

4.1.2 if BituChem requires the Customer to return any packaging materials to BituChem, that fact is clearly stated on the delivery note. The Customer shall make any such packaging materials available for collection at such times as BituChem shall reasonably request. Returns of packaging materials shall be at BituChem's expense.

- 4.2 BituChem shall deliver the Goods to the location set out in the Sales Order or such other location as the parties may agree (**Delivery Location**) at any time after BituChem notifies the Customer that the Goods are ready.

- 4.3 Delivery is completed on the completion of unloading of the Goods by BituChem, its sub-contractor or the Customer at the Delivery Location.

- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. BituChem shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide BituChem with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.

- 4.5 If BituChem fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods or a maximum of £200,000 whichever is the lesser.

- 4.6 If the Customer fails to take delivery of Building Product Goods within three Business Days of BituChem notifying the Customer that the Building Product Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or BituChem's failure to comply with its obligations under the Contract:

4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the third Business Day after the day on which BituChem notified the Customer that the Goods were ready; and

4.6.2 BituChem shall store the Goods until delivery takes place, and charge the Customer for all related costs and expenses (including insurance).

- 4.7 If three Business Days after the day on which BituChem notified the Customer that the Goods were ready for delivery the Customer has not taken delivery of them, BituChem may resell or otherwise dispose of part or all of the Building Product Goods and, after deducting reasonable storage and selling costs, account to the Customer for any excess over the price of the Building Product Goods or charge the Customer for any shortfall below the price of the Building Product Goods.

- 4.8 If the Customer fails to take delivery of Asphalt Goods on the agreed Delivery Date then the Customer will be liable to a penalty and to cover any of BituChem's unrecoverable costs.

- 4.9 If BituChem delivers up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them[, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.

- 4.10 BituChem may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality

5.1 BituChem warrants that on delivery and, the Goods shall:

5.1.1 conform with their description and any applicable Specification; and

5.1.2 be free from material defects in design, material and workmanship.

5.2 Subject to clause 5.3, if:

5.2.1 the Customer gives notice in writing to BituChem during a period of 12 months from the date of delivery (**warranty period**) within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;

5.2.2 BituChem is given a reasonable opportunity of examining such Goods; and

5.2.3 the Customer (if asked to do so by BituChem) returns such Goods to BituChem's place of business at the BituChem's cost,

5.2.4 the Customer (if asked to do so by BituChem) allows BituChem to investigate (allowing access to the Customers premises and product samples)

then provide that BituChem accepts that there is a breach of the warranty in clause 5.1 it shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

5.3 BituChem shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:

5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.2;

5.3.2 the defect arises because the Customer failed to follow BituChem's oral or written instructions as to the storage, , installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;

5.3.3 the defect arises as a result of BituChem following any Specification supplied by the Customer;

5.3.4 the Customer alters or repairs such Goods without the written consent of BituChem;

5.3.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

5.3.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

5.4 Except as provided in this clause 0, BituChem shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.

5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

5.6 These Conditions shall apply to any repaired or replacement Goods supplied by BituChem.

6. Title and risk

6.1 The risk in the Goods shall pass to the Customer on completion of delivery.

6.2 Title to the Goods shall not pass to the Customer as specified in the Sales Order until the earlier of:

6.2.1 BituChem receives payment in full (in cash or cleared funds) for the Goods and any other goods that BituChem has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and

6.2.2 the Customer resells the Goods, in which case title to the Goods shall pass to the Customer at the time specified in clause 6.4.

- 6.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as BituChem's property;
 - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 6.3.4 notify BituChem immediately if it becomes subject to any of the events listed in clause 8.1; and
 - 6.3.5 give BituChem such information relating to the Goods as BituChem may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before BituChem receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 6.4.1 it does so as principal and not as BituChem's agent; and
 - 6.4.2 title to the Goods shall pass from BituChem to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 8.1, then, without limiting any other right or remedy BituChem may have:
- 6.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - 6.5.2 BituChem may at any time:
 - 6.5.2.1 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and
 - 6.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Price and payment

- 7.1 The price of the Goods shall be the price set out in the Sales Order, or, if no price is quoted, the price set out in BituChem's published price list in force as at the date of delivery.
- 7.2 The Customer will pay BituChem in cash or in cleared funds prior to delivery, unless the Customer has an approved credit account.
- 7.3 If the Customer has an approved credit account, payment is due no later than 30 days after the date of invoice unless otherwise agreed in writing.
- 7.4 BituChem may, by giving notice to the Customer at any time up to seven Business Days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 7.4.1 any factor beyond BituChem's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 7.4.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - 7.4.3 any delay caused by any instructions of the Customer or failure of the Customer to give BituChem adequate or accurate information or instructions.
- 7.5 The price of the Goods:
- 7.5.1 excludes amounts in respect of value added tax (**VAT**), which the Customer shall additionally be liable to pay to BituChem at the prevailing rate, subject to the receipt of a valid VAT invoice; and

- 7.5.2 may include the costs and charges of packaging, insurance and transport of the Goods, which shall be invoiced to the Customer.
- 7.6 If the Customer fails to make any payment due to BituChem under the Contract by the due date for payment, then BituChem reserves the right to charge the Customer interest on the overdue amount at the rate of 4% per annum above Barclays Bank's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.
- 7.7 The Customer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). BituChem may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Customer against any amount payable by BituChem to the Customer.

8. Termination

- 8.1 Without limiting its other rights or remedies, BituChem may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 8.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within seven days of that party being notified in writing to do so;
- 8.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 8.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 8.1.4 the Customer's financial position deteriorates to such an extent that in BituChem's opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 8.2 Without limiting its other rights or remedies, BituChem may suspend provision of the Goods under the Contract or any other contract between the Customer and BituChem and/or withdraw any credit terms afforded to the Customer if the Customer becomes subject to any of the events listed in clause 8.1.1 to clause 8.1.4, or BituChem reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract or any other contract with BituChem on the due date for payment.
- 8.3 Without limiting its other rights or remedies, BituChem may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment and remains in default not less than seven days after being notified in writing to make such payment.
- 8.4 On termination of the Contract for any reason and /or the withdrawal of any credit terms afforded to the Customer by BituChem the Customer shall immediately pay to BituChem all of BituChem's outstanding unpaid invoices and interest.
- 8.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.
- 8.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

9. Returns

- 9.1 BituChem will accept return of goods from the Customer only:
- 9.1.1 by prior arrangement (confirmed in writing);
 - 9.1.2 on payment of an agreed handling charge (unless the goods were defective when delivered); and
 - 9.1.3 where the goods are as fit for sale on their return as they were on delivery.

10. Cancellation

- 10.1 The Customer may not cancel the order unless BituChem agree in writing.
- 10.2 The Customer will be liable to a penalty and to cover any of BituChem's unrecoverable costs for any cancellation that is made after 12pm the day prior to the agreed delivery as set out in clause 4.8.
- 10.3 If the order is cancelled the Customer will be liable to pay BituChem for all stock that BituChem hold for the order.
- 10.4 BituChem may suspend or cancel the order by written notice if the Customer:
- 10.4.1 Fails to pay BituChem any money when due;
 - 10.4.2 Becomes insolvent; or
 - 10.4.3 Fails to honour their obligations under these terms.

11. Limitation of liability

- 11.1 Nothing in these Conditions shall limit or exclude BituChem's liability for:
- 11.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 11.1.2 fraud or fraudulent misrepresentation;
 - 11.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 11.1.4 any matter in respect of which it would be unlawful for BituChem to exclude or restrict liability.
- 11.2 Subject to clause 11.1:
- 11.2.1 BituChem shall under no circumstances whatsoever be liable to the Customer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the Contract; and
 - 11.2.2 BituChem's total liability to the Customer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed the price of the Goods.

12. Force majeure

Force majeure. Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the period of delay or non-performance continues for 30 days, the party not affected may terminate this Contract by giving 30 days written notice to the affected party.

13. **General**

13.1 **Assignment and other dealings.**

13.1.1 BituChem may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.

13.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of BituChem.

13.2 **Confidentiality.**

13.2.1 Each party undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs.

13.2.2 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this agreement.

13.3 **Entire agreement.**

13.3.1 This Contract constitutes the entire agreement between the parties in relation to its subject matter and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

13.3.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation [or negligent misstatement] based on any statement in this agreement.

13.4 **Variation.** No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

13.5 **Waiver.** A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

13.5.1 waive that or any other right or remedy; nor

13.5.2 prevent or restrict the further exercise of that or any other right or remedy.

13.6 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

13.7 **Notices.**

13.7.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or fax or email.

13.7.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in *clause 13.7.1*; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

13.7.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

13.8 **Third party rights.** No one other than a party to this Contract and their permitted assignees shall have any right to enforce any of its terms.

- 13.9 **Governing law.** The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the law of England and Wales.
- 13.10 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.