

**General Terms and Conditions of Purchase
of Wienerberger Ltd
March 2015**



1. Definitions

“**Applicable Law**” any statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal), rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body, and/or industry code of conduct or guideline which relates to the Contract and/or the Goods and/or their manufacture, packaging, packing and/or delivery and/or the Services and/or the activities which are comprised in all or some of the Services or the use or application of the output from the Services.

“**Confidential Information**” means the terms of the Contract, the terms of the Order, any enquiry made by Wienerberger, and any information that relates to a party (or any of its Group Companies) and which is disclosed to the other party in connection with the Contract, but excluding information that (a) is at the relevant time in the public domain (other than by virtue of a breach of **Condition 15**, (b) was received by the other party from a third party who did not acquire it in confidence, or (c) is developed by the other party without any breach of the Contract.

“**Control**” in relation to a person, the power (whether direct or indirect) to direct or cause the direction of its affairs, whether by means of holding shares, possessing voting paper, exercising contractual powers or otherwise and “**Controlled**” will be construed accordingly.

“**Delivery**” the time at which delivery of the Goods occurs in accordance with **Condition 6.2**.

“**Goods**” the goods set out in the Order.

“**Group Companies**” in respect of a person, any persons that Control, are Controlled by or are under common Control with that person from time to time.

“**Intellectual Property Rights**” all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in know-how, registered trade marks, registered designs, models, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions.

“**Order**” Wienerberger’s written acceptance of the Supplier’s quotation for the supply of goods and/or services to Wienerberger or other written offer by Wienerberger to purchase goods and/or services from the Supplier.

“**Order Acknowledgement**” the Supplier’s acceptance of the Order.

“**Prices**” the prices for the Goods and/or Services set out in the Order.

“**Services**” the services set out in the Order.

“**Supplier**” the person named as the supplier in the Order.

“**Wienerberger**” Wienerberger AG and any of its Group Companies.

2. Contract Formation

2.1 The Supplier’s quotation will correspond with the requirements, descriptions and/or specifications provided by Wienerberger and will expressly identify in writing any non-conformity (if any) with such requirements, descriptions and/or specifications. The Supplier’s quotation will be made free of charge and Wienerberger will be under no obligation to accept the quotation.

2.2 The Order constitutes an offer by Wienerberger to purchase Goods and/or Services from the Supplier on these Conditions and will be acknowledged by the Supplier in writing within 7 days from and including its date.

2.3 A contract for the supply of Goods and/or Services by the Supplier to Wienerberger on these Conditions (the “**Contract**”) will be formed on the earlier of:

2.3.1 Wienerberger receiving the Order Acknowledgement;

2.3.2 the expiration of the period referred to in **Condition 2.2**, at which point the Order shall be deemed accepted on Wienerberger’s terms unless the Supplier has rejected the Order by written notification; and

2.3.3 Delivery or commencement of performance of the Services.

2.4 Unless explicitly agreed otherwise in the Order, these Conditions are the only terms and conditions on which Wienerberger will purchase goods and/or services from the Supplier and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Supplier purports to apply under any quotation, acknowledgement, acceptance or confirmation of order, delivery note, invoice or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.

3. Orders

3.1 Wienerberger may vary the Order by giving written notice to that effect to the Supplier at any time before Delivery of the Goods and/or performance of the Services.

3.2 Without limiting **Condition 3.1**, any variation of an Order will be acknowledged by the Supplier in writing within 7 days from the date of the notice given under **Condition 3.1**.

4. The Goods

4.1 The quantity and description of the Goods will be as set out in the Order.

4.2 The Supplier will provide all components and ancillary services in accordance with Wienerberger’s requirements which are already included in the Price, even if they are not explicitly stated in the Order.

4.3 The Goods will be in compliance with statements of the Supplier and of the manufacturer made in public, in particular in brochures and product descriptions, including statements of all members of the manufacturing or distribution chain and the public statements of a person who describes himself as a manufacturer by affixing his name, his trademark or any other identification mark on the Goods. The Supplier will ensure that the Goods will:

4.3.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

4.3.2 be fit for any purpose held out by the Supplier or made known to the Supplier expressly or by implication and in this respect Wienerberger relies on the Supplier’s skill and judgement;

4.3.3 correspond with their description;

4.3.4 correspond with any specimen or sample given (if any);

4.3.5 conform to any written technical specification for the Goods set out or referred to in the Order;

4.3.6 be free from defects in design, materials and workmanship;

4.3.7 comply with all relevant Applicable Laws; and

4.3.8 be so formulated, designed, constructed, finished, labelled and packaged as to be safe and without risk to health.

4.4 If and to the extent that an Order contains no particular quality requirements, the Goods will at least be of a quality customary in trade and have the properties normally assumed and comply with all Applicable Laws.

4.5 The standards and drawings stated and/or referred to in the Order refer to the issue last published and valid at the date of the Order unless expressly stated otherwise in the Order.

4.6 All requirements of Wienerberger shall be requested by the Supplier unless they have not been made available already.

4.7 All relevant EU directives regarding CE labelling that are applicable to the Goods (and in cases where EU-law is not applicable also all other national and international legal norms to that end which are applicable) shall be observed by the Supplier. The respective declaration of conformity including the relevant documentation (in case of non-EU suppliers) will be enclosed with the delivery.

4.8 Without prejudice to any other rights or remedies of Wienerberger (whether express or implied), if any Goods do not conform with any of the terms of **Condition 4.3** Wienerberger may (whether or not the Goods have been accepted):

4.8.1 terminate the Contract immediately by giving written notice to that effect to the Supplier; or

4.8.2 require the Supplier, at Wienerberger’s option, to promptly repair or replace the relevant Goods free of charge or to refund the Price for the relevant Goods,

and, in either case, Wienerberger will be entitled to recover from the Supplier any and all liabilities, losses, damages, costs and expenses incurred by Wienerberger as a result of the non-conformity of the Goods, including in obtaining substitute goods from another supplier.

4.9 **Condition 4.3** will apply to any repaired or replacement Goods supplied under **Condition 4.8.2**.

4.10 Wienerberger will have the right to inspect and test the Goods at any time prior to Delivery. The Supplier will permit Wienerberger, its officers, employees, agents and sub-contractors to enter upon the Supplier’s premises, and will procure permission for such persons to enter upon any relevant third party premises, to carry out such inspection and testing and will provide Wienerberger with all facilities reasonably required.

4.11 If, following inspection or testing under **Condition 4.10** Wienerberger gives written notice to the Supplier that it is not satisfied that the Goods will comply with **Condition 4.3** the Supplier will at its own cost take all steps necessary to ensure compliance. Any breach of this obligation by the Supplier will be deemed to be a material breach entitling Wienerberger to terminate the Contract under **Condition 17.1**

4.12 No inspection or testing under **Condition 4.10** will reduce or otherwise affect the Supplier’s obligations under the Contract.

4.13 If tests are planned for the Goods, the Supplier shall bear all related costs of material and of his staff. The Supplier shall notify Wienerberger of readiness for testing in writing at least one week in advance and the parties will agree a test date. If the Goods are not presented at that test date, Wienerberger’s staff costs related to the test will be borne by the Supplier.

4.14 If repeated or additional tests are necessary because of identified defects, the Supplier bear all related costs of material and staff.

4.15 For materials verification of feedstock the Supplier shall bear the costs of material and staff.

4.16 If assembly or installation of the Goods, maintenance work, inspections, repairs, and/or other works are carried out in respect of the Goods on Wienerberger’s premises, the Supplier will comply and will procure that its officers, employees, agents and sub-contractors will comply with all health and safety policies, site rules, and the reasonable instructions of Wienerberger.

4.17 The Supplier will maintain and observe quality control and supplier quality assurance standards in respect of the Goods and Services in accordance with the requirements of Wienerberger, relevant British Standards and the requirements of any relevant statutory and regulatory bodies.

4.18 Notwithstanding any act of receipt of delivery, Wienerberger will not be deemed to have accepted any Goods until it has had a reasonable time to inspect the Goods following Delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.

5. Special Provisions for Deliveries of Hardware and Software

5.1 The Supplier guarantees that delivered hardware and software contains no copy protections, expiration dates or similar restrictions of use and is free from rights of third parties. The delivery shall in any case contain comprehensible and complete documentation in the local language of the place of performance and/or at Wienerberger’s request in German or English.

5.2 The Supplier grants Wienerberger a transferable right to use and exploit the delivered software which shall be unlimited geographically and in time. The Supplier will provide maintenance services for any hardware and/or software supplied under the Contract and for spare parts for a period of 7 years as of performance in conformity with the contract and will inform Wienerberger of the most recent hardware and software released from time to time.

- 6. Delivery**
- 6.1 The Supplier may not deliver the Goods by separate instalments without Wienerberger's prior written consent. If Wienerberger gives such consent, the Supplier will invoice the Price for each instalment separately in accordance with **Condition 10.3** and Wienerberger will be entitled, at its sole discretion, to exercise its rights and remedies (whether under these Conditions or otherwise) in respect of the relevant instalment or the whole Contract. Unless otherwise stated in the Order, Prices for the Goods shall include all costs and expenses incurred by the Supplier including all packaging, transport, insurance, delivery and unloading costs and shall be free place of performance (DDP).
- 6.2 The Goods will be delivered DDP (as such term is defined in Incoterms 2010) on the date and at the address specified in the Order or, if no address is specified in the Order, the place of delivery will be the registered office of the relevant Wienerberger entity that placed the Order. Delivery of the Goods will occur on the later of (a) when the Supplier completes its delivery obligations under that Incoterm and (b) when the Goods are unloaded at the delivery address by the Supplier.
- 6.3 Wienerberger will be entitled, as an option, to take delivery EXW (as such term is defined in Incoterms 2010), in which case the charges, costs and expenses of export, import, customs permits and carriage of the Goods to the delivery address will be deducted from the Price. If Wienerberger exercises such option, Wienerberger will as soon as reasonably practicable notify the Supplier thereof.
- 6.4 If import or export permits or other official permits or approvals or consents of third parties are required for execution of the Order, the Supplier shall obtain the same on time.
- 6.5 Risk in and ownership of the Goods shall pass to Wienerberger on Delivery and free from any security rights of third parties.
- 6.6 The Supplier will ensure that:
- 6.6.1 a dispatch advice is sent to the relevant receiving Wienerberger entity and department before Delivery;
- 6.6.2 the Goods are packed, marked and dispatched in accordance with Wienerberger's instructions and any Applicable Laws and so as to reach their destination in an undamaged condition;
- 6.6.3 on or before Delivery, Wienerberger is provided with a written list by name and description of any harmful or potentially harmful properties or ingredients in the Goods supplied and information concerning any changes in such properties or ingredients. Wienerberger will rely on the supply of such information from the Supplier in order to satisfy its own obligations under the Health and Safety at Work Act 1974 and any relevant Applicable Laws;
- 6.6.4 on or before Delivery, Wienerberger is supplied with all operating and safety instructions, clearly displayed warning notices and such other information as may be necessary for the proper use, maintenance and repair of the Goods; and
- 6.6.5 if the Supplier requires Wienerberger to return any packaging material for the Goods, that fact is clearly stated on the delivery note and any such packaging material will only be returned at the Supplier's own cost.
- 6.7 The Supplier shall be responsible for compliance with the terms of delivery by his sub-contractors, including carriers commissioned by the Supplier and/or its sub-contractors. All shipments which cannot be accepted shall be stored at the cost and risk of the Supplier. Wienerberger will be entitled to ascertain the contents and the condition of such shipments.
- 6.8 If, during the period between Order and Delivery, the Supplier reduces the Prices for the Goods and/or Services, the prices applicable on the date of Delivery will apply to the Order and the amount of the Supplier's invoice will be reduced accordingly.
- 6.9 Price increases will only be accepted if Wienerberger has agreed to such price increase in writing before receipt of the Supplier's invoice.
- 6.10 If the Supplier delivers a quantity of Goods which is more than or less than the quantity set out in the Contract, Wienerberger will be entitled to reject the Goods delivered or (where applicable) the excess Goods and the rejected Goods will be returnable at the Supplier's risk and expense. If Wienerberger accepts delivery of a quantity of Goods which is more or less than the quantity set out in the Contract the sum invoiced by the Supplier under **Condition 10.3** will be adjusted on a pro rata basis to take account of the over or under delivery.
- 7. Documentation on Delivery**
- 7.1 The Supplier will ensure that each delivery is accompanied by a delivery note which shows the Order number, date of Order, type and quantity of Goods, code numbers of Goods (if applicable), any special storage instructions and, where delivery by instalments is permitted, the outstanding balance of Goods remaining to be delivered. In case of carriage by sea the shipping documents and invoices shall state the name of the shipping company and of the vessel.
- 7.2 Upon Wienerberger's request, the Supplier shall be obliged to send a certificate of preferential origin in relation to the Goods. Deliveries from non-EU countries shall be in compliance with preferential origin rules as provided in the relevant EU preference agreement.
- 7.3 The Supplier shall enclose with the Goods all documents, instructions, drawings and other documentation necessary for use, installation, application of the Goods in accordance with its purpose which Wienerberger requires for use, setting-up, assembly, processing, storage, operation, maintenance, inspection and repair of the Goods, without request and completely. In addition, the Supplier shall immediately advise Wienerberger of the name of the relevant manufacturer, importer or upstream supplier of the Goods upon request.
- 7.4 The Supplier shall at its own cost deliver lists of spare parts in the local language of the place of performance and at Wienerberger's request provide additional lists of spare parts in the German and English language not later than the time of Delivery.
- 8. Delivery Period and Default in Delivery**
- 8.1 If a delivery period has been agreed, such period shall commence on the date the Order is placed (mailing date). Delivery dates or completion dates required by Wienerberger and/or agreed shall be fixed dates and mean that the Goods must be available to Wienerberger at the delivery date stated and at the delivery address stated during normal local business hours.
- 8.2 As soon as the Supplier anticipates that he will not be able to effect Delivery on time, he shall give immediate written notice thereof to Wienerberger together with a statement of the reasons and of the expected period of delay.
- 8.3 If Supplier fails to deliver the Goods on the date specified in **Condition 6.2**, without prejudice to any of Wienerberger's other rights or remedies (whether express or implied), Wienerberger may:
- 8.3.1 terminate the Contract immediately by giving written notice to that effect to the Supplier, in which case:
- 8.3.1.1 the Supplier will refund any monies already paid by Wienerberger under the Contract in relation to the Goods that have not been delivered; and
- 8.3.1.2 Wienerberger will be entitled to recover from the Supplier any and all liabilities, losses, damages, costs and expenses incurred by us as a result of the Supplier's failure to supply Goods and Services, including in obtaining substitute goods and/or services from another supplier; or
- 8.3.2 require the Supplier to pay to Wienerberger on demand in cleared funds liquidated damages of a sum equal to 0.3% of the total Price of the Order for each week (pro rata for any part week) by which delivery of the Goods is delayed, up to a maximum sum equal to 10% of the total Price of the Order. In addition, Wienerberger will be entitled to rescind the Contract in case of default in delivery, after having granted a grace period of 14 days and without prejudice to Wienerberger's other rights and remedies (whether express or implied). The Parties agree that the liquidated damages are a genuine pre-estimate of the loss that Wienerberger will suffer as a result of delay in delivery of the Goods and will not be regarded as penalty provisions. The Supplier waives any right to claim that the liquidated damages are penalty provisions.
- 8.4 In the event of early Delivery Wienerberger reserves the right to charge to the Supplier resulting additional costs, charges and expenses incurred by Wienerberger as a result of early Delivery (including without limitation costs of storage).
- 9. Services**
- 9.1 The Supplier will, in performing the Services:
- 9.1.1 use the degree of skill, care, prudence, supervision, diligence, foresight, quality control and quality management which would be adopted by a leading professional provider of the Services;
- 9.1.2 use appropriately qualified, trained and experienced personnel;
- 9.1.3 fulfil all requirements set out in the Order and any written technical specifications for the Services set out or referred to in the Order;
- 9.1.4 perform the Services in accordance with any agreed service levels;
- 9.1.5 conduct itself in a safe manner which is free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner;
- 9.1.6 fully co-operate with Wienerberger's agents, representatives and contractors;
- 9.1.7 ensure that it has and maintains all licences, permissions and consents required from time to time; and
- 9.1.8 comply with all relevant Applicable Laws, British Standards, requirements of any relevant statutory and regulatory bodies and health and safety and security policies that apply Wienerberger's premises and all lawful and reasonable directions of Wienerberger.
- 9.2 The Supplier will perform the Services on the performance date(s) set out in the Order. Time for provision of the Services will be of the essence of the Contract.
- 9.3 Without prejudice to Wienerberger's other rights or remedies (whether express or implied), if the Supplier has failed to perform the whole or any part of the Services in accordance with the Contract, Wienerberger may:
- 9.3.1 give the Supplier a notice specifying that its performance falls short of the requirements of the Contract or is otherwise unsatisfactory; and
- 9.3.2 suspend payments to the Supplier, in such amount as Wienerberger deems appropriate, until the Supplier has rectified the defective performance of the Services to Wienerberger's satisfaction.
- 9.4 Any notice served by Wienerberger pursuant to **Condition 9.3** may require the Supplier to re-schedule and re-perform the Services to Wienerberger's satisfaction and at the Supplier's own expense, including where necessary, the correction or re-execution of any Services already carried out within such period as may be specified in the notice (or where no such period is specified, as soon as reasonably practicable).
- 9.5 Any failure by the Supplier to comply with a notice given under **Condition 9.3** will be deemed to be a material breach entitling Wienerberger to terminate the Contract under **Condition 17.1**.
- 10. Price and Payment**
- 10.1 Subject to the Supplier performing its obligations in accordance with the terms of the Contract, Wienerberger will pay the Prices in accordance with this **Condition 10**.
- 10.2 The only monies to be paid by Wienerberger in connection with the supply of the Goods and the performance of the Services are the Prices which will be inclusive of all costs and expenses incurred by the Supplier including all packaging, insurance, carriage, delivery and unloading costs and all travel, accommodation and subsistence expenses.
- 10.3 The Supplier may invoice Wienerberger for the Prices for the Goods following Delivery and provision of the documentation as set out in **Condition 7**.
- 10.4 The Supplier may invoice Wienerberger for the Prices for the Services following completion of performance of the Services.
- 10.5 Invoices shall not be enclosed with the shipment. The Supplier will send invoices to the address specified in the Order. The Supplier's invoice will quote the Order number and correspond to the Order as regards language, order of the text, items and prices and extra goods and/or services or shortfalls in goods and/or services shall be stated separately in the invoice.
- 10.6 In case of shipments within the EU every invoice will contain the harmonised tariff schedule (HTS) number and the commodity's net weight as well as the VAT numbers of the contracting parties.
- 10.7 In the event that the Supplier's invoice does not comply with **Conditions 10.5** and **10.6**, Wienerberger may demand that the invoice be re-issued in conformity with **Conditions 10.5** and **10.6**.

- 10.8 Payment periods shall commence at the date fixed, but not earlier than upon receipt of the Goods and/or completion of the performance of the Services and receipt of invoices in conformity with **Conditions 10.5 and 10.6**, and fulfilment of the conditions on CE labelling and declaration of conformity as per **Condition 4.7**. In case of complaints or if Wienerberger disputes any part of an amount invoiced by the Supplier, the payment period shall commence only after complete settlement of the same. Unless otherwise agreed, the payment period must equal 60 days after the end of the month of the date of the invoice..
- 10.9 Assigning of invoice amounts shall only be possible upon Wienerberger's prior written consent.
- 10.10 No payment made by Wienerberger shall constitute acceptance or approval by Wienerberger of the Goods or Services or any amount invoiced by the Supplier or otherwise prejudice any rights or remedies which Wienerberger may have against the Supplier including the right to recover any amount overpaid or wrongfully paid to the Supplier.
- 10.11 If Wienerberger is in default of payment, the parties agree on default interest in a maximum amount of 5% p.a. from the due date.

11. Warranty and Indemnity

- 11.1 Without prejudice to Wienerberger's other rights or remedies (whether express or implied), the warranty period for movable items shall be not less than 2 years or shall be such longer period as may be offered by the Supplier and/or as may be agreed between the parties in writing (the "**Warranty Period**") and shall commence on the day on which the Delivery Item is finally accepted by Wienerberger. In any case, final acceptance shall only be effected if the conditions regarding CE labelling and/or otherwise labelling requirements and declaration of conformity as per **Condition 4.7** have been fulfilled. If Wienerberger is held liable for warranty by its customer, Wienerberger shall be entitled to assert warranty claims against the Supplier also after expiration of Warranty Period within 6 months of fulfilment of the warranty claims on its part.
- 11.2 For the duration of the Warranty Period Wienerberger may retain 10% of the total Order value as liability cover amount, which shall not bear interest.
- 11.3 Without prejudice to Wienerberger's other rights or remedies (whether express or implied), Wienerberger may repair a defect itself or may have it repaired by third parties and claim reimbursement of the necessary expenses after fruitless expiration of a reasonable period for subsequent performance. Wienerberger shall have this right also if subsequent performance failed or if the Supplier seriously and finally refuses repair of the defect; if repair of the defect is not effected or cannot be effected at a date agreed or within a certain period; or if special circumstances exist which, when weighing the mutual interests, justify immediate self-performance. Wienerberger may request from the Supplier an advance payment for expenses necessarily to be incurred for the repair of the defect. The Supplier's warranty for deliveries where defects that have occurred are repaired by Wienerberger or third parties shall continue to exist.
- 11.4 The Supplier will indemnify Wienerberger against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that Wienerberger does or will incur or suffer, all claims or proceedings made, brought or threatened against Wienerberger by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis), damages and expenses that Wienerberger does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with:
- 11.4.1 any breach by the Supplier of any of its obligations under the Contract (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations; and
- 11.4.2 any claim made against Wienerberger by a third party for death, personal injury or damage to and/or loss or destruction of property arising out of, or in connection with defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
- This **Condition 11.4** will also not apply to any failure by the Supplier to deliver the Goods on the date specified in **Condition 6.2** if Wienerberger has been paid liquidated damages by the Supplier under **Condition 8.3.2** in respect of that failure.
- 11.5 Without prejudice to **Condition 11.4**, if any person claims that the possession and/or use and/or sale of the Goods by Wienerberger and/or its customers, officers, employees, agents or sub-contractors infringes the intellectual property rights of that or any other person ("**IPR Claim**"), the Supplier will indemnify Wienerberger, its customers, officers, employees, agents and sub-contractors against all losses (including all direct, indirect and consequential losses), liabilities, costs, damages and expenses that Wienerberger, its customers, officers, employees, agents or sub-contractors do or will incur or suffer, all claims or proceedings made, brought or threatened against us, our customers, officers, employees, agents or sub-contractors by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis), damages and expenses Wienerberger, its customers, officers, employees, agents or sub-contractors do or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, in each case arising out of or in connection with that IPR Claim.

12. Product liability and Insurance

- 12.1 If the Supplier becomes aware of facts which might lead to product liability claims (including liability for death, personal injury, damage to and/or loss or destruction of property caused by the Goods or any part of the Goods), the Supplier shall be obliged to report the same to Wienerberger immediately.
- 12.2 If any third party makes a claim, or notifies an intention to make a claim, against Wienerberger which may be considered likely to give rise to liability under **Condition 11.4.2**, the Supplier will hand over all expedient means of evidence to Wienerberger on time, provide such access to the Supplier's premises and its employees, agents and sub-contractors as may be necessary, and use best endeavours to support and cooperate with Wienerberger in respect of such claim.
- 12.3 Wienerberger shall not be liable to the Supplier in respect of any delayed, defective or non-provision however arising (including from Wienerberger's negligence) of any service or resource required to be provided by it to enable the Supplier to perform the Supplier's obligations save that in the case of delayed, defective or non-provision of any such service or resource as Wienerberger has agreed to provide, Wienerberger shall if requested by the Supplier permit such extension of time to the Supplier as Wienerberger shall (acting reasonably) consider to be necessary and appropriate in the circumstances.
- 12.4 The Supplier shall take out and maintain in force sufficient liability insurance at his cost for damage caused by himself, his staff or agents in connection with the Goods and Services. The Supplier will

provide Wienerberger with copies of the insurance policy and details of the amount of coverage per event of damage upon request by Wienerberger.

- 12.5 Liability of Wienerberger for loss of or damage to machines, equipment, tools, etc. provided by Wienerberger to the Supplier shall be excluded except in cases of wilful intent or gross negligence.

13. Wienerberger's Property

- 13.1 Exclusive title to materials, equipment, tools, films, printing models, moulds and other facilities exclusively produced or obtained by the Supplier for execution of the Order shall pass to Wienerberger not later than upon payment even if they remain in the possession of the Supplier. Such items shall be delivered to Wienerberger upon request.
- 13.2 All documents and facilities which are made available to the Supplier by Wienerberger for the purpose of manufacturing the Goods or providing the Services will at all times be and remain the exclusive property of Wienerberger and shall not be used or reproduced by the Supplier otherwise than for the performance of its obligations under the Contract or made available to any third parties by the Supplier without the prior written consent of Wienerberger. Such documents and facilities (together with all copies and reproductions of the same) will be returned to Wienerberger upon request.

14. Anti-Corruption

- 14.1 The Supplier will, and will procure that its employees agents and sub-contractors will:
- 14.1.1 not commit any act or omission which causes or could cause Wienerberger or the Supplier (or that person) to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;
- 14.1.2 keep accurate and up to date records showing all payments and all other advantages given and received in connection with the Contract and the steps taken to comply with this **Condition 14**, and permit Wienerberger to inspect those records as required;
- 14.1.3 promptly notify Wienerberger of:
- 14.1.3.1 any request or demand for any financial or other advantage received by the Supplier (or that person); and
- 14.1.3.2 any financial or other advantage the Supplier (or that person) gives or intends to give,
- 14.1.3.3 whether directly or indirectly in connection with the Contract; and
- 14.1.4 promptly notify Wienerberger of any breach of this **Condition 14.1**.
- 14.2 Wienerberger may terminate the Contract immediately by giving written notice to that effect to the Supplier if the Supplier is in breach of this **Condition 14**.

15. Confidentiality

- 15.1 The Supplier undertakes to maintain the secrecy, safety and security of Wienerberger's Confidential Information and the Supplier will only use Wienerberger's Confidential Information for the purpose of performing its obligations under the Contract and will not disclose Wienerberger's Confidential Information to any other person.
- 15.2 The Supplier may disclose Wienerberger's Confidential Information to those of its employees, agents and sub-contractors who need access to that Confidential Information so that it can perform its obligations under the Contract. The Supplier will procure that each person to whom it discloses that Confidential Information will not do or omit to do anything which if done or omitted to be done by that party would be a breach of this **Condition 15**.
- 15.3 The Supplier shall also maintain the secrecy, safety and security of drawings, samples, models, moulds and other production documents and aids handed over to the Supplier by Wienerberger, in which all rights, title, interest and Intellectual Property Rights will be owned by Wienerberger. No licence or right to use any patent, copyright, registered design, trademark, trade name or similar right or any right to use any Confidential Information or trade secrets is granted by Wienerberger.
- 15.4 The Supplier's data from the relevant Contract shall, in principle, only be processed automatically for purposes of completion of the Contract, in particular for administrative and accounting purposes. However, the Supplier agrees that data relating to the Order may be processed by Wienerberger and transmitted within Wienerberger's Group Companies.
- 15.5 The Supplier acknowledges and agrees that damages alone would not be an adequate remedy for breach of this **Condition 15**. Accordingly, Wienerberger will be entitled, without having to prove special damages, to equitable relief (including injunction and specific performance) for any breach or threatened breach of this **Condition 15** by the Supplier.
- 15.6 This **Condition 15** shall survive complete performance of the Contract and termination of the Contract and termination of all contractual relationships between Wienerberger and the Supplier.

16. Advertising Material / Announcements

- The Supplier will not make (or permit to be made) any announcement, or any reference to the business relationship between the Supplier and Wienerberger in any advertising material or other communication without the prior written consent of Wienerberger, except if and to the extent required by Applicable Law or by any governmental or regulatory authority in which case the Supplier will promptly give written notice of such requirement to Wienerberger.

17. Termination of Contract

- 17.1 Wienerberger may terminate the Contract in whole or in part immediately by giving written notice to that effect to the Supplier at least 21 days before the delivery date set out in the Order. If Wienerberger exercises its right of termination under this **Condition 17.1** Wienerberger's sole liability will be to pay to the Supplier fair and reasonable compensation for work in progress at the time of termination but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any consequential loss.

- 17.2 Without limiting its other rights or remedies (whether express or implied), Wienerberger shall be entitled to terminate the Contract immediately by giving written notice to that effect to the Supplier, in particular if:
- 17.2.1 the Supplier commits a material breach of the Contract; or
 - 17.2.2 circumstances have occurred which obviously render further proper performance of the Contract impossible.
- 17.3 Wienerberger may terminate the Contract immediately by giving written notice to that effect to the Supplier if the Supplier:
- 17.3.1 has a receiver, administrator or provisional liquidator appointed;
 - 17.3.2 is subject to a notice of intention to appoint an administrator;
 - 17.3.3 passes a resolution for its winding-up (save for the purpose of a solvent restructuring);
 - 17.3.4 has a winding up order made by a court in respect of it;
 - 17.3.5 enters into any composition or arrangement with creditors (other than relating to a solvent restructuring);
 - 17.3.6 ceases to carry on business;
 - 17.3.7 is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction;
 - 17.3.8 is the subject of any proceeding in any Member State of the European Union which is capable of recognition under the EC Regulation on Insolvency Proceedings (EC 1346/2000); or
 - 17.3.9 is the subject of an application for the recognition of a foreign insolvency proceeding under the Cross-Border Insolvency Regulations 2006 (SI 2006/1030),
- and the Supplier will notify Wienerberger immediately upon the occurrence of any such event or circumstance.
- 17.4 In the event of termination of the Contract, Wienerberger may, at its sole discretion, either retain Goods already delivered and/or Services already performed against payment of the pro-rata price or in the case of Goods send them back to the Supplier at the Supplier's own cost. In the event of termination of the Contract due to the Supplier's fault the Supplier shall also reimburse Wienerberger such additional costs and expenses which result from the fact that the Order has to be passed on to a third party, if applicable. Following expiry or termination of the Contract any Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract will continue in force and all other rights and obligations will immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.
- 17.5 Promptly after the date of expiry or termination of the Contract the Supplier will, subject to the exception set out in **Condition 17.6**, return to Wienerberger and cease to use all of Wienerberger's Confidential Information (including all copies and extracts) in its possession or control.
- 17.6 The Supplier may retain any of Wienerberger's Confidential Information to the extent required to comply with any Applicable Law. The provisions of **Condition 15** will continue to apply to retained Confidential Information.
- 18. General**
- 18.1 The Supplier will not sub-contract any of its obligations under the Contract without the prior written consent of Wienerberger. Any sub-contracting will not relieve the Supplier from its liabilities to Wienerberger under the Contract. The Supplier will be liable to Wienerberger for the acts and omissions of its sub-contractors in relation to the Contract.
- 18.2 Wienerberger's customers, officers, employees, agents and sub-contractors will be entitled to enforce **Condition 11.5** subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999 and the terms of the Contract.
- 18.3 The parties may vary or rescind the Contract without the consent of Wienerberger's customers, officers, employees, agents and sub-contractors
- 18.4 Save as provided in **Condition 18.2** the parties do not intend that any term of the Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person.
- 18.5 Wienerberger's rights and remedies set out in these Conditions are in addition to and not exclusive of any rights and remedies provided by law.
- 18.6 If any term of the Contract is found by any court or body or authority of competent jurisdiction to be illegal, unlawful, void or unenforceable, such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.
- 18.7 The Supplier acknowledges that Wienerberger is working towards an ISO50001 accreditation and that any procurement of products from the Supplier (in particular, those products that have or may have an impact on significant energy use) will be evaluated by Wienerberger on the basis of energy performance. The Supplier will at all times be proactive in offering energy efficient products to Wienerberger where these are available.
- 19. Applicable Law**
- The Contract and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.
- 20. Legal Venue**
- 20.1 Subject to **Conditions 20.2** and **20.3**, the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).
- 20.2 If the Supplier's registered office is situated outside the EU, Wienerberger retains the right to refer (at its sole option) all disputes arising out of or in connection with the Contract or referring to violation, termination or nullity of the same to be finally settled according to the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber (Vienna Rules) by three arbitrators appointed in accordance with the said Rules.
- 20.3 Either party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.
- 20.4 The Supplier waives any objection to, and agrees to submit to, the jurisdiction of the court referred to in **Condition 20.1** and (where applicable) the arbitral institution under its designated set of Rules referred to in **Condition 20.2**. The Supplier agrees that (a) a judgment or order of the court referred to in **Condition 20.1** is binding upon it and may be enforced against it in the courts of any other jurisdiction and (b) a judgment on the award rendered by the arbitrators referred to in **Condition 20.2** may be entered in any court having jurisdiction thereof.
- 20.5 This **Condition 20** will be governed by the law of England and Wales.