

BRANTAL SURFACING LIMITED
STANDARD TERMS AND CONDITIONS

BACKGROUND

These Terms and Conditions shall apply to the provision of paving and resurfacing services by Brantal Surfacing Limited whose registered office is at 96 Castle Lane West, Bournemouth BH 3JU and whose operating address is 19 Tresillian Way, Walkford BH23 5QP ("Company") to customers who contract to purchase its goods and services.

1. Definitions and Interpretation

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Agreement" means the contract into which the Parties will enter on the Customer's acceptance of the Quotation and is conditional upon acceptance of these Terms and Conditions which prevail over all other terms and conditions howsoever presented;

"Agreed Date" means the date on which the rendering of the Works will commence as agreed in writing by the Parties;

"Agreed Times" means the times which the Parties shall agree upon during which the Company shall have access to the Property to render the Works;

"Business Days" means any day (other than Saturday or Sunday) on which ordinary banks are open for normal banking business in London;

"Confidential Information" means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such) including pricing information, designs and information relating to security;

"Customer" means the individual or business that requires the Works subject to these Terms and Conditions and the Agreement;

"Deposit" means the initial payment to be made by the Customer to the Company as referred to in Paragraph 3;

"Total Price" means the total of all sums payable which shall be shown on the invoice issued in accordance with Paragraph 4 of these Terms and Conditions;

"Goods" means stones, sand, gravel, paving slabs, concrete, tarmac or any other items, purchased from third parties and supplied by the Company to the Customer as part of the Works;

"Hazardous Waste" means waste that is considered 'hazardous' under environmental legislation and defined as such by the Environment Agency, including without limitation all forms of asbestos;

"Order" means the Customer's initial request for the Works and the Goods from the Company as set out in Paragraph 2;

"Property" means the Customer's property or premises, as detailed in the Order and the Agreement, at which the Works are to be rendered;

"Quotation" means a quotation detailing proposed prices and services delivered to the Customer in accordance with Paragraph 2;

"Quoted Price" means the price for the Works as referred to in Paragraph 4 which may vary according to the actual work undertaken as set out in Paragraph 4;

"Waste" means non-hazardous waste including inert soils, gravels, concrete and tarmacadam but excluding Hazardous Waste and material such as heavy clays;

"Works" means the Goods and services provided by the Company as detailed in Paragraph 5;

"Work Area" means the part of the Property within which the Works are to be rendered.

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

1.2.1 "writing", and any similar expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 "these Terms and Conditions" is a reference to these Terms and Conditions as amended or supplemented at the relevant time;

1.2.4 a Paragraph is a reference to a numbered provision of these Terms and Conditions;
and

1.2.5 a "Party" or the "Parties" refer to the parties to the Agreement.

- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions or the Agreement.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

2. Orders

- 2.1 The Company accepts Orders for its Works through hand delivery, by post and by email, provided that in the last case the Company has issued an acknowledgement (which may also be by email) that the Order has been received.
- 2.2 When placing an Order, the Customer shall set out, in detail, the scope of the Works required. Details required include the location and size of the Property, the location and size of the Work Area, any restrictions as to access to the Property and/or to the Work Area (including any parking or unloading restrictions on the public highway adjacent to the Property), and the type(s) of work that the Customer wishes the Company to carry out. The Company may provide an order form to the Customer which shall provide prompts for all required information, but this shall not limit the Customer's obligation to supply the details listed above.
- 2.3 Once the Order is complete and submitted, the Company shall prepare and deliver a Quotation to the Customer either by email or first class post which shall set out the specification and/or description of the work that will form the Works, the Deposit and the Quoted Price, detailed in Paragraphs 3 and 4 respectively. Quotations will remain valid for 60 days from the date submitted to the Customer unless the Parties agree otherwise.
- 2.4 The Customer shall be free to make changes to the Order and Quotation prior to acceptance. The Customer may accept the Quotation by telephone, email or first class post.
- 2.5 Upon the Customer accepting the Quotation and the Company agreeing to any changes to the Quotation made by the Customer, the Company will notify the Customer in writing that the Order has been accepted and that the Works will commence at the time and in the manner agreed.
- 2.6 At any time up to it issuing the Company notifying the Customer as per Paragraph

2.5, the Company may decline to proceed, and no Agreement will come into effect.

3. Deposit

3.1 At the time of accepting the Quotation or not more than five Business Days thereafter, the Customer shall be required to pay a Deposit to the Company. The amount of the Deposit shall be stated in the Quotation. Orders shall not be deemed accepted until the Deposit is paid in full.

3.2 Subject to the provisions of Paragraph 8, the Deposit shall be non-refundable.

4. Price and Payment

4.1 The Quoted Price shall include the price in pounds sterling payable for the Works and for the Goods required to render the Works.

4.2 The Company shall use all reasonable endeavours to use only the Goods required (and quantities thereof) set out in the Quotation and the Agreement. However, if additional sundry parts and other products are required, the Total Price shall be adjusted to reflect this. Any such increases will be kept to a minimum.

4.3 In the event that the prices of Goods or services increase prior to the commencement of the Works or, if later, the actual date of purchase of the Goods or services, the Company shall inform the Customer of such increase and of any change to the Total Price.

4.4 The Customer may be required to pay the Quoted Price, particularly for the Goods, by instalments, in advance of commencement, and if so the amount of the instalments or the manner in which the instalments are to be calculated together with the time for payment of the instalments shall be as set out in the Quotation.

4.5 The Company shall invoice the Customer when the provision of the Works is complete. The invoice shall state the Total Price (being the Quoted Price together with any additions or deductions permitted under the Agreement) and shall give credit for the Deposit and any instalments of the Quoted Price paid by the Customer during the carrying out of the Works.

4.6 The Total Price may be subject to the addition of VAT.

4.7 All invoices must be paid within 14 days of receipt by the Customer or as otherwise agreed in writing.

4.8 Any sums which remain unpaid following the expiry of the time period set out in

Paragraph 4.8 shall incur interest and collection fees at the rate and of the amount respectively as set out in the Late Payment of Commercial Debts (Interest) Act 1998.

5. Works

- 5.1 Prior to the start of the Works, the Company shall carry out an inspection of the Property in order to ensure so far as is possible that the Works are appropriate for the Property, are reasonably practical and can be rendered safely. The Customer shall be liable for instructing a surveyor to ensure that the Works will not cause any harm to the property of any third party and ensuring that any permissions necessary to carry out the Works are provided prior to the Works commencing.
- 5.2 The Works shall be rendered in accordance with the specification set out in the Quotation. Measurements, dimensions and volumes stated in the specification are approximate only and may be varied during the rendering of the Works provided that the overall performance of the Works when completed is not materially affected.
- 5.3 The Company may provide sketches, plans, diagrams or similar documents in advance of the Works. Any such material is intended for illustrative purposes only and is not intended to provide an exact specification of the Works nor to guarantee specific results.
- 5.4 The Company shall ensure that the Works are rendered with reasonable care and skill and to a reasonable standard which is commensurate with reasonable trade practice.
- 5.5 In its Quotation, the Company makes the assumption that all services and utilities contained within the Work Area are adequately identified and/or protected (by way of examples only, by warning tape, sand or shingle). In the event that during the rendering of the Works such services or utilities are damaged due to their being inadequately identified or protected or due to the Company having to remove concrete casings in order to proceed with the Works, the Company shall bear no liability unless the damage was caused through its wilful neglect, and the Company shall be entitled to make additional charges for work undertaken to make such services or utilities safe.
- 5.6 The Company shall ensure that the Goods, including all products, parts, materials and other goods used in rendering the Works are in compliance with any relevant standards and are free of defects at the time of use.
- 5.7 Where in its Quotation the Company has specified a particular brand or type of Goods that subsequently proves to be unavailable either permanently or temporarily, the

Company shall be permitted to substitute alternative Goods provided that the Goods then supplied are of a similar standard and specification to the Goods that are unavailable.

- 5.8 While rendering the Works, the Company shall try and ensure that the surrounding areas adjoining the Work Area that are not the subject of the Works are reasonably protected for the duration of the Works.
- 5.9 The Company shall properly dispose of all Waste that results from its rendering of the Works. In the event that the Company finds that the Work Area contains Hazardous Waste or material such as heavy clay, responsibility for disposal will rest with the Customer unless the Parties agree that the Company will arrange for disposal at an additional cost.
- 5.10 If any damage to the Work Areas is directly caused by the Company during the course of the Works, the Company shall make good that damage prior to completing the Works.
- 5.11 Where any inspections are required following the completion of the Works, it shall be the Company's responsibility to ensure that those inspections are carried out.
- 5.12 Time shall not be of the essence in the rendering of the Works.

6. Defects

- 6.1 Under no circumstances will the Company be responsible for any defects which result from the work of third party contractors or by or on behalf of the Customer over which the Company has no control.
- 6.2 Prior to the completion of the Works, the Company and the Customer will use their reasonable endeavours to work together to produce a snag list identifying any faults or defects in the Company's work which will require rectification prior to completion.

7. Customer's Obligations

- 7.1 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the Customer's responsibility to obtain the same in advance of the commencement of the Works.
- 7.2 The Customer shall ensure that the Company can access the Property and the Work Area at the Agreed Times to render the Works.
- 7.3 The Customer shall have the option of giving the Company a set of keys to the Property

or being present at the Agreed Times to give the Company access. The Company warrants that all keys will be kept safely and securely and returned once the Works are completed.

- 7.4 The Customer shall ensure that the Company has access to electrical outlets and a supply of hot and cold running water.
- 7.5 The Customer shall ensure that the Work Area is kept clear of all items, fixtures and fittings and out of use for the duration of the Works unless otherwise directed by the Company.
- 7.6 If the Customer does access the Work Area at any time during the course of the Works, they must observe all relevant health and safety rules and must comply with any additional instructions given to them by the Company.

8. Cancellation

- 8.1 The Customer may cancel or reschedule the Works at any time before the Agreed Date. The following shall apply to cancellation or rescheduling:
 - 8.1.1 If the Customer cancels the Works more than 28 days before the Agreed Date, the Company shall issue a full refund of all sums paid, including the Deposit.
 - 8.1.2 If the Customer reschedules the Works more than 28 days before the Agreed Date, the Company shall retain all sums paid, including the Deposit and shall deduct all such sums from any related balance payable on the rescheduled Works.
 - 8.1.3 If the Customer cancels the Works less than 28 days but more than 14 days before the Agreed Date, the Company shall refund any sums paid less the Deposit.
 - 8.1.4 If the Customer reschedules the Works less than 28 days but more than 14 days before the Agreed Date, the Company shall retain any sums paid including the Deposit and shall deduct all such sums (excluding the Deposit) from any balance payable on the rescheduled Works. A new Deposit may be payable on the rescheduled Works, if required by the Company.
 - 8.1.5 If the Customer cancels the Works less than 14 days before the Agreed Date, the Company shall retain all sums paid and any outstanding balance of the Total Price shall become immediately payable. No refunds shall be issued.
 - 8.1.6 If the Customer reschedules the Works less than 14 days before the Agreed Date, the Company shall retain all sums paid and any outstanding balance of sums due under the schedule of payment shall become immediately payable, and the Company shall

be entitled to recover from the Customer, in addition to the Total Price, its losses suffered up to a maximum of £500 per day. No refunds shall be issued, and no sums paid will count toward the fees and Deposit payable on the rescheduled Works.

8.2 Where the Customer cancels the Works irrespective of the timing of such cancellation and the Company has paid fees to a third party such as a local authority or utility company in order to procure permission to carry out the Works, the Customer shall on demand refund the fees in full to the Company.

8.3 The Company may cancel the Works at any time before the Agreed Date and shall refund all sums paid, including the Deposit.

9. Liability, Indemnity and Insurance

9.1 The Company shall ensure that it has in place at all times suitable and valid insurance which shall include public liability insurance.

9.2 The Company's total liability for any loss or damage caused as a result of its negligence or breach of these Terms and Conditions or of the Agreement shall be limited to refunding to the Customer the total of all sums paid to the Company under the Agreement.

9.3 The Company shall not be liable for any loss or damage suffered by the Customer which results from the Customer's failure to follow any instructions given by the Company, both during the course of the Works and after the Works have been completed.

9.4 The Company shall not be liable or responsible to the Customer for any loss of revenue, business contracts, anticipated savings, profits, or use of facilities or for any special, indirect or consequential loss howsoever arising.

9.5 Nothing in these Terms and Conditions shall limit or exclude the Company's liability for death or personal injury.

9.6 The Customer shall indemnify the Company against any costs, liability, damages, loss, claims or proceedings arising out of the Customer's failure to meet any of its obligations or any other breach of these Terms and Conditions.

10. Guarantee

10.1 The Company guarantees that the product of all Works provided shall be free from any and all defects for a period of 12 months following completion of the Works.

- 10.2 If any defects in the product of the Works appear during the guarantee period set out in Paragraph 10.1, the Company shall rectify any and all such defects at no cost to the Customer.
- 10.3 The guarantee does not cover (i) conditions (such as efflorescence) that occur naturally in certain products or materials or (ii) frost damage to items purchased from third parties at the direction of the Customer.
- 10.4 The guarantee does not cover any defects that arise as a result of fair wear and tear, misuse by the Customer or the Customer's failure to follow any instructions or manuals relating to the Works and supplied by the Company.

11. Data Protection

The Company will not share the Customer's personal data with any third parties for any reasons without the prior consent of the Customer. Such data will only be collected, processed and held in accordance with the Company's rights and obligations arising under the provisions and principles of the Data Protection Act 1998 and the General Data Protection Regulation..

12. Confidentiality

- 12.1 Except as provided by Paragraph 12.2 or as authorised in writing by the other Party, each Party shall, at all times during the continuance of the Agreement and for five years after its termination:
- 12.1.1 keep confidential all Confidential Information;
 - 12.1.2 not disclose any Confidential Information to any other party;
 - 12.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;
 - 12.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 12.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of Paragraphs 12.1.1 to 12.1.4 above.
- 12.2 Either Party may:
- 12.2.1 disclose any Confidential Information to:
 - 12.2.1.1 any sub-contractor or supplier of that Party;

- 12.1.1.2 any governmental or other authority or regulatory body; or
- 12.1.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies,

to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Works), or as required by law; and

- 12.1.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information which is not public knowledge.

- 12.3 The provisions of this Paragraph 12 shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement.

13. Force Majeure

- 13.1 No Party to the Agreement will be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.

- 13.2 In the event that a Party to the Agreement cannot perform their obligations thereunder as a result of force majeure for a continuous period of six months, the other Party may at its discretion terminate the Agreement by written notice at the end of that period. In the event of such termination, the Parties shall agree upon a fair and reasonable payment for all Works completed up to the date of termination. Such payment shall take into account any prior contractual commitments entered into in reliance on the performance of the Agreement.

14. Termination

- 14.1 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:

- 14.1.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within 20 Business Days of the due date for payment;

- 14.1.2 the other Party commits any other breach of any of the provisions of the Agreement

and, if the breach is capable of remedy, fails to remedy it within 20 Business Days after being given written notice thereof;

14.1.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;

14.1.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

14.1.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);

14.1.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party; or

14.1.7 that other Party ceases, or threatens to cease, to carry on business.

14.2 For the purposes of Paragraph 14.1.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.

14.3 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

15. Effects of Termination

Upon the termination of the Agreement for any reason:

15.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;

15.2 all Paragraphs which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;

15.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which exist at or before the date of termination;

15.4 subject as provided in this Paragraph 15 and except in respect of any accrued rights, neither Party shall be under any further obligation to the other; and

15.5 each Party shall (except to the extent referred to in Paragraph 12) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

16. No Waiver

No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

17. Further Assurance

Each Party shall execute and do all such further documents and things as may be necessary to put the provisions of the Agreement into full effect.

18. Costs

Subject to any provisions to the contrary, each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.

19. Set-Off

Neither Party shall be entitled to set-off any sums in any manner from any payments which are due or sums which have been received in respect of any claim under the Agreement or any other agreement at any time.

20. Assignment and Sub-Contracting

20.1 The Customer may not assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of their rights under the Agreement.

20.2 The Company may assign any of its rights under the Agreement to any third party and shall be entitled to perform any of the obligations undertaken by it through any other member of its group or through suitably qualified and skilled sub-contractors. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, be deemed to be an act or omission of the Company.

21. Time

The Parties agree that the times and dates referred to in the Agreement are for guidance only and are not of the essence of the Agreement and may be varied by

mutual agreement between the Parties.

22. Relationship of the Parties

Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.

23. Third Party Rights

No part of the Agreement is intended to confer rights on any third parties, and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.

24. Notices

24.1 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.

24.2 Notices shall be deemed to have been duly given:

24.1.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or

24.1.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or

24.1.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or

24.1.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

24.3 In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.

25. Entire Agreement

25.1 The Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.

25.2 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

26. Counterparts

The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.

27. Severance

In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.

28. Dispute Resolution

28.1 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.

28.2 If negotiations under Paragraph 28.1 do not resolve the matter within 28 days of receipt of a written invitation to negotiate, the Parties will attempt to resolve the dispute in good faith through a recognised commercial mediation procedure. In the event the parties fail to agree a mediator, the President for the time being of the Law Society of England and Wales shall appoint a mediator and the costs shall be borne equally by the Parties.

28.3 Nothing in this Paragraph 28 shall prohibit either Party or its affiliates from applying to a court for interim injunctive relief or prevent the Company from pursuing through the courts the collection of unpaid sums due from the Customer.

29. Law and Jurisdiction

29.1 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.

29.2 Subject to the provisions of Paragraph 28, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.