

# Powerday Plc Terms of Trading

## 1. Definitions

In the following Conditions of Powerday Plc is referred to as "the Company" and the person to whom this quotation is made is referred to as "the Customer".

## 2. Amendments to Conditions

Unless otherwise agreed by the Company, in writing, these terms and conditions shall apply to all orders or contracts placed with the Company. Any stipulations or conditions in a Customer's order form which would conflict with any of these terms and conditions, or in any way qualify or negative the same shall be deemed to be inapplicable to any order placed with the Company unless expressly agreed to by the Company in writing when acknowledging the order in question.

## 3. Quotations and Orders

This quotation is open for acceptance by the Customer within 30 days from the date hereof (unless previously cancelled by the Company) and if it has not been accepted within this time, then this quotation shall automatically lapse unless it has been extended in writing by the Company. All orders are accepted subject to the necessary labour materials and transport being available when required at the depot stated in the quotation and offers for delivery from stock are made subject to the goods still being available at the time the contract is concluded. If for any reason whatsoever material is not available, or not available in sufficient quantities the Company does not undertake to deliver at the same price from a more distant depot, nor shall it be liable for any loss sustained by the Customer due to its inability to supply material as quoted. If for any reason whatsoever the Company is obliged to close down or reduce the output of a depot, from which it was intended that supplies would be made available, it does not accept responsibility to supply from any other depot owned by it or from any other source at its original quoted price. Whenever possible it will in such circumstances re-quote to supply similar material which may be available at another of its depots in the area.

## 4. Prices

(i) All prices quoted are exclusive of Value Added Tax. These prices are based on cost (including but without being limited to duty, tax and transport) prevailing at the date of quotation and are subject to alteration without notice. Prices charged will be those current at the date of delivery of each load of material.  
(ii) Unless otherwise stated, prices quoted relate to the supply of materials from the Company's normal stock. Any special type of material required by the Customer and not within the above will be the subject to an extra charge.  
(iii) The price stated on this quotation has been based on the full quantity of goods specified on the enquiry and this quotation is only open for acceptance by the Customer in respect of the said quantity of goods. If the Customer shall require a lesser or greater amount of the goods then the Company shall re-quote on the basis of the revised quantity.

## 5. Payments & Interest

Terms are strictly 30 days from invoice date unless otherwise stated and are then subject to the Customer having an approved account with the Company. Unless agreed otherwise, in writing, payment shall be made within 30 days from invoice date. In default of such payment (without prejudice to any other remedy):-  
(i) The Company may withhold further deliveries both in respect of the Contract or a series of contracts to which the default relates and in respect of any other contract for the delivery of goods to the Customer, and  
(ii) Payment in respect of all goods delivered by the Company to the Customer shall forthwith become due and payable.  
(iii) The Company further reserves the right to charge and the Customer shall be deemed to have agreed to pay interest on the amount overdue from the date of default to the date of payment at the rate of 8% above The Bank of England's base rate.

## 6. Delivery

(i) All times quoted for delivery are estimated times only. They are not to be taken and are not intended to be agreed times, periods or dates imposing any obligations on the Company to deliver within or by such times, periods or dates.  
(ii) Where delivery is to be made to the Customer's site, the Customer shall provide and clearly indicate to the delivery driver a route from the public highway to the site which is safe and reasonable and provides adequate turning space at the point of delivery. The driver may refuse delivery if, in his opinion, the route or the point of unloading is unsafe or likely to cause damage to the delivery vehicle. The Customer shall indemnify the Company (both or itself and as agents for any haulage contractor operating the vehicle) against any damage caused to any such vehicle and against all claims, costs and damage incurred by the Company by reason of a default to the Customer under this condition.  
(iii) The Customer shall unload the said vehicle expeditiously and shall provide all labour for doing so. The Customer shall be responsible for any demurrage or waiting time caused by any delay in unloading.  
(iv) The Company accepts no responsibility for any damage caused by its vehicles to any part of the Customer's site or anything there on.  
(v) The Customer warrants to the Company that in pursuance of the requirements of the Health & Safety Act Works etc., Act 1974 the Customer will provide safe working conditions with the site premises consistent with the Act and will ensure that the Company's personnel are not exposed to any risks to their health or safety.  
(vi) The Customer hereby agrees to indemnify the Company against any liability, loss, damage, expense or proceedings arising out of any claims by any employee of the Company or any of its Contractors pursuant to the above Act or any statutory modifications in respect of any incident or occurrence at the point at or on the road or access to which delivery is made.  
(vii) Delivery will be made during the Company's normal working hours. All materials delivered or made available at the Customer's request on Bank Holidays, Sundays and Saturday afternoon and outside the Company's normal working hours will be subject to an extra charge.  
(viii) The price quoted does not include London's Congestion Charges and the cost will be invoiced to the customer on a separate invoice.

## 7. Collected Materials

Where prices are quoted ex-depot the materials will be loaded into the Customer's vehicle at a suitable loading point at the depot as directed by the Depot Manager or Loading Supervisor. Where practicable, notice should be given of the date and time when the Customer's vehicle will collect the materials. The Customer's vehicle will be loaded with the utmost dispatch but the Company shall not in the event be liable for any delay in delivery of materials into the Customer's vehicle or any loss consequent thereon. Customers will be responsible for the condition and safety of the vehicles in which they collect materials whether owned or hired and the Company shall not be liable in any way for loss or contamination of material resulting from the condition of such vehicles.

## 8. Samples

All samples submitted by the Company are from current production at the time of submission of such samples. Due to the variation in the seams/strata in supplying quarries the material eventually supplied in bulk may not conform to the original sample but the Company will supply material to conform to the relevant British Standard Specification, if suitable.

## 9. Shortage, Loss & Damage

(i) Notice of any claim relating to shortage shall be made as soon as possible to the Company confirmed in writing within 48 hours on receipt of the goods.  
(ii) The Company will consider claims only if the above conditions are met and the claim is signed by the Customer and accompanied by full particulars giving the invoice and Company's order number and, as the case may be, a copy of the delivery note in respect of the goods.

## 10. Cancellations and Returns

(i) An order accepted by the Company may be cancelled only with the written agreement of the Company and where such written agreement is obtained the Company will specify the amount of the cancellation charge (if any) that the Company will require.  
(ii) Should loads or part loads have to be returned to the Company the transport costs to and from the site and other incidental costs will be payable as an extra by the Customer.

## 11. Liability of the Company

(i) The Company's liability hereunder in respect of any shortage, loss or damage shall be limited to the proportion of the price attributable to the goods lost or damaged and in no event shall the Company, its servants or agents be liable (otherwise than as provided under these terms of sale) for any injury, loss or damage (including consequential loss or damage) loss of profits, economic loss or expenses of any kind whatsoever caused in connection with goods supplied by the Company (other than death or personal injury due to the negligence of the Company).  
(ii) The Company's liability in respect of any defective goods or services supplied or provided by it shall be limited to the free replacement by the Company of such goods or services.

## 12. Force Majeure

The Company will not be liable for any loss, damage or expenses incurred and the Customer shall not be entitled to terminate the contract in the event of:-

- (i) Act of God, war hostilities (whether war is declared or not)
- (ii) Riots, civil commotion, invasion, military or usurped power
- (iii) Any Act of Parliament statutory instrument and any Bye Law or Regulations of any Local Authority or any statutory undertaking which comes into effect after the date of this quotation.
- (iv) Any strikes or lock-outs or industrial action (official or otherwise)
- (v) Any breakdown of plant or equipment used in production or delivery
- (vi) Any shortage of labour or plant and equipment
- (vii) Any cause or circumstances beyond the control of the Company, its subsidiaries or suppliers.

## 13. Customers Credit, Liquidation or Bankruptcy

(i) The Company reserves the right at any time to refuse to execute an order or contract if the arrangements for payment or the Customer's credit are not satisfactory to it.  
(ii) In the case of non-payment of the account when due or in the case of death, incapacity, bankruptcy or insolvency of the Customer or when the Customer is a limited company, in the case of liquidation or the appointment of a receiver, then the purchase price of all materials invoiced and/or supplied by the Company to the Customer to date shall immediately become due and payable from the Customer to it, and in addition the Company shall have the right to cancel every contract made with the Customer or to continue or to suspend the supply of materials at its option without prejudice to its right to recover any loss sustained.

## 14. Disputes

In the event of any disputes arising concerning the quality of any of the material supplied, a representative sample shall be drawn in the manner prescribed by the British Standards Specification in presence of the Company or its authorised representatives and referred for examination to some recognised testing expert to be mutually agreed upon or failing agreement to be nominated by the President of the Institute of Civil Engineers. The report of such expert shall be binding on all parties. The expert's fee shall be paid by the Company if the material fails to comply with the British Standard Specification and in all other cases by the Customer.

## 15. Sub-Contracting

If this quotation relates to the provisions by the Company of a service (as opposed merely to the supply of goods) as a sub-contractor to a main contract placed with the Government, any Government Department, Local Authority, Nationalised Industry or any other Body whatsoever whose contract shall contain the Governments Contracts Control Inflation Conditions then the Customer warrants to the Company that it and any other sub-contractor will comply with their Conditions and further agrees to fully indemnify the Company should either itself or any other sub-contractor be in breach thereof. The Customer shall not be entitled to assign the Contract any part of it without the Company's prior written consent. The Company may assign the Contract or any part of it to any person, firm or Company.

## 16. Miscellaneous

(i) In the case of orders given by the Customer verbally, whether by telephone or otherwise, the record made by the Company of such orders shall be conclusive and binding.  
(ii) The Company acts only as a supplier of materials to the order of the Customer and knowledge of the purpose for which the materials are intended to be used does not imply any warranty on the part of the Company as to the quality or fitness for that purpose of the materials supplied.  
(iii) In addition to the condition of sale as set out, this quotation is also subject to the conditions which appear on the face of this quotation and if there is any inconsistency between such conditions and the conditions appearing above then the conditions on the face will apply. All conditions, whether printed on the face or the reverse hereof will be applicable.  
(iv) All rights that would otherwise arise pursuant to the Contract (Rights of Third Parties) Act 1999 are excluded except where expressly stated in relation to a specific clause or where a person is a permitted successor or assignee to the rights of a party to this Contract.

## 17. General

(i) The ownership of the goods shall remain with the Company, which reserve the right to dispose of the goods until payment in full for all the goods has been received by it in accordance with the terms of this contract or until such time as true Customer sells the material to its customer by way of bona-fide sale at full market value. If such payment is overdue in whole or in part the Company may (without prejudice to any of its rights) recover or resell the goods or any of it and may enter upon the Customer's premises by its servants or agents for that purpose. Such payments shall become due immediately upon the commencement of any act or proceeding in which the Customer's solvency is involved. If any of the goods are incorporated in or used as material for other goods before such payment the property in the whole of such goods shall be and remain with the Company until such payment has been made, or the other goods shall have been sold as aforesaid, and all the Company's rights hereunder in the material shall extend to those other goods.  
(ii) Until the Company is paid in full for all the products the relationship of the Customer to the Company shall be fiduciary in respect of the products or other goods in which they are incorporated or used and if the same are sold by the Customer the Company shall have the right to trace the proceeds thereof according to the principles in "Re Mallet's Estate (1880)" 13ChD696, (1874-80) All ER Rep 793. A like right for the Company shall apply where the Customer uses the products in any way so as to be entitled to payment from a third party.  
(iii) Upon delivery the goods shall be at the risk of the Customers.  
(iv) The invalidity, in whole or in part, of any terms of this agreement does not affect the validity of the remainder of the agreement.  
(v) Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract. Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Customer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.

## 19. Governing Law

These conditions and any contract to which they apply shall be governed and construed by the laws of England.