

STANDARD TERMS AND CONDITIONS OF SALE INCLUDING THE SUPPLY AND DELIVERY OF READYMIX CONCRETE

- 1. SALE**

Unless specifically amended or excluded in writing by the Company:

 - 1.1 These terms and conditions shall apply to all sales and the sales of readymix concrete ("the Goods") by the Company.
- 2. OFFER AND ACCEPTANCE**
 - 2.1 ORDERS PLACED ON THE COMPANY**

Orders placed on the Company shall not be binding on it unless accepted by the Company in writing. Price lists and other Company publications are for information only and do not constitute offers.
 - 2.2 OFFERS/QUOTATIONS BY THE COMPANY**

Offers or quotations by the Company shall only be valid if made or confirmed in writing and all such offers shall be subject to these terms and conditions. All offers and quotations are subject to the availability of the necessary materials and the Company being able to obtain any necessary authorisation and/or licences and the same remaining valid. Unless otherwise agreed, all offers/quotations including quoted prices by the Company shall be valid for thirty (30) days from date of the written advice of the Company.
- 3. PRICES**
 - 3.1 Unless specifically agreed to in writing, orders are accepted on condition that the prices shall be those ruling on the date of dispatch. Price fluctuations may occur due to an increase or decrease in the price of materials, fuel, labour or transport costs.
 - 3.1.1 The Company reserves the right to endorse the delivery note with the addition that the Customer or any other person has added any substance including water to the Goods prior to and during discharge.
 - 3.1.2 Should the Customer require the delivery of less than six (6) cubic meters of the Goods, the transport constituent of the price for such load shall be agreed to be calculated on the price of six (6) cubic meters.
 - 3.1.3 Any orders of the Customer for less than 50 cubic meters for delivery on Saturdays, Sundays, public holidays or after 19h00 on any day may incur a plant opening fee for which the Customer shall be liable.
 - 3.1.4 The Company reserves the right to charge:
 - 3.1.4.1 A demurrage fee where the discharge time of the Goods exceeds six (6) minutes per cubic meter.
 - 3.1.4.2 A cancellation fee if the Customer cancels an order on the day scheduled for delivery.
 - 3.1.4.3 Orders placed on a "will call" basis for delivery prior to 10h00 shall be confirmed by the Customer by 16h00 on the day prior. Any "will call" order required during normal business hours and not confirmed to the Company ahead of scheduled delivery time shall be treated as a new order and scheduled accordingly.
 - 3.1.4.4 Mix designs may be subject to the Customers' requirements should it be within the Company's ability to produce same and should any modification be required prices shall be adjusted accordingly.
- 4. TERMS OF PAYMENT**
 - 4.1 Unless agreed otherwise in writing, all goods and services supplied by the Company shall be payable in full within thirty (30) days of date of invoice.
 - 4.2 If payment is not made as specified under clause 4.1 above the Company shall be entitled to charge the Customer interest on the amount due at the maximum rate allowed by the Usury Act from time to time. Unless otherwise agreed in writing, the Customer shall not be entitled to any deduction or discount.
 - 4.3 Payment shall only be deemed to have been effected upon a physical cleared receipt of the relevant amount into the bank account of the Company.
 - 4.4 A certificate by one of the Company's Directors showing the amount due and owing by the Customer to the Company at any given time shall be sufficient *prima facie* proof of the facts therein stated for the purpose of all legal proceedings against the Customer for recovering of the said amounts, and as evidence of the prevailing rate of interest chargeable on overdue amounts. The certificate shall be deemed to be of sufficient proof particularly for the purpose of pleading and in any action instituted by the Company against the Customer and in terms of this application or for purposes in enforcing any rights hereunder and shall be valid as a liquid document against the Customer in any competent Court for purpose of obtaining provisional sentence or summary judgment against the Customer.
 - 4.5 Credit facilities may be withdrawn by the Company at any time without prior notice to the Customer and the extent and nature of such facilities shall at all times be at the Company's sole discretion.
- 5. DELIVERY**
 - 5.1 The Company shall use its best endeavours to place the supply where the Customer designates delivery subject to the Customer timeously furnishing the Company with reasonable site delivery instructions and adequate site access and further subject to such ingress and egress being possible for delivery.
 - 5.2 Any damage of whatsoever nature caused by the delivery at or near the delivery address specified by the Customer to pavements, driveways, buildings, shrubbery, trees, low overhead or underground utilities shall be for the Customer's account and it's liability.
 - 5.3 The Customer shall be responsible for providing the Company with a suitable wash down area for the Company's delivery vehicles at or near the place of delivery and where wash out drainage is environmentally contained.
 - 5.4 The Customer shall be liable for any cleaning necessary and resulting from debris or material deposited onto public or private roadways from the vehicles of the Company at or within one kilometer of the place of delivery.
 - 5.5 The delivery note signed by the Customer, his employee, agent or representative shall constitute proof, on it's mere production, that the materials delivered thereunder accorded with the quantity reflected thereon. It is agreed that full delivery in accordance with the Company's records shall be deemed to have been made unless any discrepancy and/or shortfall is specifically recorded on the delivery note or reported by the Customer within forty-eight hours (48) of delivery.
 - 5.6 Under normal conditions the material is delivered at a slump of plus minus one hundred (100) millimeter. The cement used in the production of the material is manufactured by others. Therefore the colour of the cement and the colour consistency of the concrete is not guaranteed by the Company.
- 6. SET OFF PROHIBITION**

The Customer shall not under any circumstances be entitled to deduct any amount from amounts due to Company as indicated in the Company's statements without the prior written authority of the Company.
- 7. DAMAGES**

All Goods sold by the Company are done so on the condition that the Company shall not be liable for any loss or damage, whether direct, indirect or consequential, however caused or incurred, including such loss for damages attributable to the Company's negligence or the negligence of its servants, employees, or subcontractors, or due to any act(s), default or failure.
- 8. DEFECTIVE GOODS/WORKMANSHIP**

The Company shall, at its own option, either repair or replace Goods sold or delivered, the fact and extent of which the Company shall be the sole judge, provided the notice of such defect is received in writing by the Company within forty eight-hours (48) of delivery. After expiration of the relevant period, no claim shall be entertained or liabilities lie against the Company.
- 9. INJURY AND DAMAGE**

The Customer indemnifies the Company for any injury to anyone whomsoever and/or damage to any property whatsoever due to the act or the omission of the Company in relation to the supply and delivery of the Goods.
- 10. PASSING OF OWNERSHIP**

Ownership of Goods shall pass to the Customer only when full payment for the Goods and interest, if applicable and any costs incurred have been recovered by the Company.
- 11. VOETSTOOTS AND NO WARRANTIES**

The Goods are supplied voetstoots, the meaning and effect of which the Customer acknowledges himself to be aware. All warranties or representations not expressly stated in these conditions are excluded.
- 12. SPREADING OF MATERIAL**

Any spreading of the Goods shall be undertaken by and under the direct control of the Customer. The Company does not give any guarantee as to the tolerance or efficacy of the spread.
- 13. PUMPING OF READYMIX CONCRETE**
 - 13.1 Any length of pipes required shall be determined at a site inspection prior to delivery and shall be agreed with the Customer.
 - 13.2 The Company reserves the right to charge the Customer with:
 - 13.2.1 A charge for the supply of suitable pumps.
 - 13.2.2 A concrete dumping charge in the event that the Customer does not have the facility to dump any concrete which exceeds its requirements on site.
 - 13.2.3 An hourly pumping charge in the event that the rate of concrete pumped per hour is less than that quoted and where the delay is caused by the Customer, or in the event that a same day increase in quantity ordered is required which may impact on service levels to other customers of the Company.
 - 13.2.4 A pump cancellation charge where a seventy-two (72) prior hours notice of postponement or cancellation of the order has not been received by the Company.
 - 13.2.5 Overtime charges for time worked outside usual business hours.
 - 13.2.6 Should cement or sand for priming be required such shall be supplied by the Customer or may by agreement be supplied by the Company at the further cost to the Customer.
 - 13.3 Pumping by the Company shall only occur if:
 - 13.3.1 Proper access and egress to the site has been facilitated by the Customer.
 - 13.3.2 A stable platform has been supplied by the Customer so that pumps may be properly established.
 - 13.4 The Customer shall furnish the Company with confirmation that a pump is required for the discharge of the Goods at least seventy-two (72) hours prior to the agreed time of discharge which hours exclude weekends or public holidays.
 - 13.5 The Company reserves the right to charge the Customer with a pipe laying labour charge where more than fifteen (15) meters of pipe are to be used and the Customer fails to provide such labour.
- 14. OVERRIDING EFFECT**

These terms and conditions shall override all terms and conditions stipulated, incorporated or referred to by the Customer in any order or negotiations and shall be the only terms and conditions binding on the parties.
- 15. GOVERNING LAW**

The rights and obligations of the Company and its customers shall be governed by the law of the Republic of South Africa and the Customer agrees to submit to the jurisdiction of the Courts of the Republic of South Africa for determination of all disputes.
- 16. LEGAL COSTS**

The expression "costs" herein shall include, without limiting the generality of the foregoing, all costs relating to legal expenses incurred in enforcing the Company's rights and recovering any amounts due. These costs will include attorneys' fees, collection commission and tracing agent's fees.
- 17. VARIATION**

No amendment or variation of these conditions of sale shall be of any force or effect unless recorded in writing and signed on behalf of the Company by an authorised signatory.
- 18. RELAXATION NOT WAIVER**

No relaxation or indulgence of these conditions by the Company in favour of the Customer shall be construed as a waiver of the Company's rights.
- 19. SECURITY**

Without affecting any of the above terms and conditions, the Company shall be entitled to call for a bank guarantee, suretyship or suitable form of security to be provided by the Customer at any time and the Customer shall be obliged to do so, failing which the Customer shall be entitled to act in terms of Clause 21.
- 20. DOMICILIUM**

The Customer chooses the address appearing on the face of this document as his *domicilium citandi et executandi* for all purposes, including the giving of all notices and serving of all Court processes. The Company chooses as its *domicilium citandi et executandi* for all purposes the address of the Company appearing on the face of this document.
- 21. BREACH**
 - 21.1 Should the Customer fail to effect payment or breach any of the terms and conditions of this agreement, the Company shall be entitled, at its sole option and without prejudice to any other remedies or rights it may have:
 - 21.1.1 To cancel this agreement forthwith and to retain all amounts paid as rouwkoop and/or liquidated damages; and
 - 21.1.2 Claim its right of ownership; and
 - 21.1.3 Claim payment of the full amount owing, including costs and interest on overdue amounts to date, plus any damages which it may have suffered, e.g. penalties for late completion, standing time, transport etc. The Company shall be entitled to apply any amount paid, in the reduction of interest accrued or overdue payment, or to any costs incurred.
 - 21.1.4 Should the Customer at any stage change the form of legal entity or the name or ownership under which the account and credit facilities are being used the Customer undertakes to notify the Company accordingly in writing by registered post within seven (7) days as from the date when the change takes effect. The Customer furthermore indemnifies the Company against any loss or damage which may result from such change or from any failure on the part of the Customer to notify the Company of such change.
- 22. FORCE MAJEURE**

Should the Company be delayed in or prevented from making a delivery and/or rendering a service and/or executing a contract owing to force majeure, act of God or any cause whatsoever beyond the Company's control, the Company shall not be liable for any loss or damage resulting therefrom.
- 23. EXPORT / IMPORT PERMITS**
 - 23.1 In the case of export sales, the Customer shall maintain in force all necessary permits:
 - 23.1.1 To enable the goods to be exported by the Company into the Country of destination; and
 - 23.1.2 To enable payment of be effected in accordance with these terms and conditions of sale.
- 24.** The Company may perform a credit information search on the Customer at a credit information bureau of the Company's choice and monitor the Customer's payment behaviour by researching the Customer's record at one or more credit information bureaux and use new information and data obtained from a credit information bureau in respect of the Customer's future credit applications. The Company may record the existence of the Customer's account with any credit information bureau, record and transmit details of how the Customer has performed in terms of this agreement reflecting how the account has been conducted by the Customer and how it has met its obligations in terms of this account.