

STANDARD TRADING TERMS

These Standard Trading Terms supercede all previous terms, understandings and agreements governing sales of our products with effect from October 1997.

TRADE REFERENCES:

For Office Use Only:

1. CONTRACT

- a) All business is undertaken by us, strictly and exclusively subject to our standard trading terms as detailed hereunder. The Customer, by accepting any quotation from us or placing any order with us, acknowledges that all business thereafter (whether under that quotation or order or otherwise) shall be so subject, notwithstanding any terms or conditions contained in his orders or otherwise which shall be deemed to be substituted by these terms.
- b) We are entitled to withdraw this offer at any time, failing which the quotation is open for acceptance for 60 (sixty) days from the date thereof whereupon, if unaccepted, it shall lapse.
- c) Should the Customer not place any orders under the contract for a period exceeding 60 (sixty) days, we shall be entitled to consider the agreement terminated.

2. PRICE

- a) Prices quoted are for products as specified. Should the Customer require any variation in such specification, our then ruling price for products of such specification shall be the price payable, if we accept the variation.
- b) The price quoted however will be subject to the following automatic increases from time to time, when the Customer is so notified by the Company, namely that the price will be increased:
 - i) in accordance with price increases generally applied by the Company; should the amount of such increases be disputed by the Customer, such amount shall be determined by a representative of the Auditors of the Company by reference to price increases generally applied by the Company, in the making of which determination the Auditors shall be deemed to be acting as experts and not as arbitrators, and which determination shall, in absence of manifest error, be final and binding and not capable of review or appeal;
or
 - ii) in accordance with increases in cost of production and transport and all costs of producing and delivering the products;
or
 - iii) monthly in accordance with the provisions of the Aggregate Producers Federation of South Africa (AGFED) escalation formula for the aggregate industry as reproduced on the reverse side of these conditions.
- c) Should the Customer require delivery of less than 10 (ten) cubic metres, the transport constituent of the price for such load may be calculated on the basis of 10 cubic metres.
- d) The prices quoted are for deliveries between the hours 6.00a.m. and 5.30p.m. on Mondays to Fridays, excluding public holidays. A surcharge, at our then ruling rate, may be made for deliveries outside such times, should we agree to deliver outside such times.
- e) Prices are based on vehicles being unloaded immediately on arrival at delivery site and we shall be entitled to charge demurrage at our rates then prevailing for any period of delay.
- f) Should we accept return of any of our products (which we are not obliged to do), the cost to us of doing so, plus such charge as we may then determine, shall be payable by the Customer, the mere raising of such an amount on the Customer's account or demand upon the Customer therefore shall constitute proof that such amounts are lawfully due to us in terms hereof and the onus shall be on the Customer to prove the contrary.

3. CREDIT

Unless specifically otherwise agreed to by us in writing, all payments are due in cash before delivery. Ownership of product shall not pass to the purchasers until we have received payment in full.

4. DELIVERY

- a) We will endeavour to effect delivery within the time quoted, but such dates or times shall not be binding on us. The Customer shall not be entitled to cancel or repudiate the contract or refuse delivery or claim damages from us due to late delivery.
- b) Notwithstanding acceptance of any quotations, we shall be entitled to suspend, cut back or determine deliveries, should:
 - i) we be prevented or delayed from doing so for any reason beyond our control including (but without prejudice to the generality of the foregoing), war, civil commotion, strikes, lockouts, fire, weather conditions, transport delays, plant breakdown, accident, unavailability of materials, fuel, etc;
or
 - ii) the Customer's account be overdue for payment or we consider the Customer's credit to be unsatisfactory;
or

- iii) the Customer, in the Company's opinion unjustifiably refuses to accept, or delays delivery.
- c) Save for deliveries envisaged in clause 4(d) & 4(i), we only leave road kerblines at the entrance to the Customer's site. Our responsibility and risk cease there and we only leave the public road and enter the Customer's site on the clear understanding that we do so gratuitously and strictly subject to (i) and (ii) below:
 - i) The Customer shall ensure that our delivery vehicles have full and free access to the desired point of discharge on site and that the routes to and from such point on site are safe and suitable for our vehicles. Discharge shall be made at the nearest safely accessible point to the works as may be determined by our agent or employee charged with the delivery;
 - ii) Our vehicles and their contents leave the public road and enter, and remain on the Customer's buildings sites, at the Customer's sole risk. The Customer shall indemnify us and our agents and employees against any loss or damage or liability sustained or incurred by us or any of our agents or employees arising from any occurrence during such period, howsoever such occurrence may have been caused, including negligence of our employees or agents.
- d) Should the Customer elect to collect products at any of the Company's plants or quarries, the Customer shall pay to the Company a loading fee, being the loading fee ruling at the time of collection, or, if detailed on our quotations, such fee to be subject to automatic increases mutatis mutandis in accordance with the formula referred to in clause 2(b) (iii) applicable to the bin price.
- e) The Company shall be entitled to elect from time to time whether to sell and/or deliver by volume or by mass; should it elect to do so by mass, conversion factors as determined by the South African Bureau of Standards shall be deemed to be acting as experts and not as arbitrators, and which determination shall, in absence of manifest error, be final and binding and not capable of review or appeal.
- f)
 - i) Should the Company elect to sell and/or deliver by volume, the Customer acknowledges that the quantity of each load will be measured in its disturbed state immediately after and at the point of loading and that a certain amount of settling during transport to the point of discharge is inevitable;
 - ii) Should the Company elect to sell and/or deliver by mass, each load of product will be weighed by the Company at the Company's plant in accordance with the Trade Metrology Act 77 of 1973 as amended or substituted, at which weighing the Customer shall be entitled to be represented at the Customer's own expense. The driver of each vehicle will be furnished with a certificate of mass of his vehicle and of the relevant load or other proof of mass of the load, which certificate or other proof shall be final and binding on the Customer and the Company and shall not be capable of review or appeal. Should a dispute arise in regard to the accuracy of the measuring apparatus, the Customer shall have the right to request the testing thereof, which testing shall be undertaken by a competent local firm acceptable to both parties, and in the absence of agreement, appointed by the Chairman for the time being of the Aggregate Producers Federation or by his delegate. Such testing shall be for the Company's account if the final assessment records that the apparatus reflected a mass deviating in excess of 5% from the true value, or otherwise for the account of the Customer.
- g) Whether the Company elects to sell and/or deliver by volume or by mass:
 - i) All risk in and to products shall pass to the Customer on loading at the Company's plant, and delivery shall be deemed to take place on such loading;
 - ii) The Customer shall sign the Company's delivery note in respect of each delivery made unless the Customer disputes that the products delivered accord with the specification or the quantity reflected as loaded thereon, or accord with that ordered;
 - iii) Alleged shortages or discrepancies shall without detraction from the provisions of clause 4(g) (i) and merely for information be notified to the Company before tipping of product on site, and product shall not be tipped until the Company has had an opportunity of verifying the alleged shortage or discrepancy.;
 - iv) The Company's delivery note signed by the Customer or the Customer's employee or agent shall constitute proof, on its mere production that the product off-loaded accorded with the quantity and specification reflected thereon and with that ordered. The onus shall be on the Customer to prove the contrary.

- h) The Company reserves the right in its sole discretion to determine the means and route of transportation in effecting any deliveries.
- i) Without detracting from the provisions of clause 4(h), should it become necessary, or should the Company elect so to do, any or all deliveries will be effected by the South African Transport Service, in which case the following additional provisions shall apply:
 - i) The Company shall use its best endeavours to arrange the necessary railway trucks, but shall not be liable should it not be possible to do so due to unavailability or shortage of trucks, or for any other reason;
 - ii) Notwithstanding anything to the contrary herein contained, the Customer shall be responsible for offloading and stockpiling at the receiving siding, and for transfer from such siding to the Customer's stipulated delivery point;
 - iii) Deliveries shall be to the Customer's siding, or to the siding closest to the Customer's stipulated delivery point;
 - iv) The price quoted by the Company shall be for the product, transporting thereof to the most convenient despatch siding, stockpiling at such siding if necessary, and loading into railway trucks;
 - v) All railage, demurrage, cost of offloading, stockpiling at the receiving siding, and transport from the receiving siding to the Customer's stipulated delivery point, and all and any other costs of and incidental to or consequent to rail delivery shall be for the Customer's account, and shall be settled direct by the Customer with the South African Transport Services; should the Customer fail to pay such cost, the Company shall be entitled but not obliged to pay same and to recover same from the Customer forthwith, together with the interest at the highest overdraft rate charged by the Standard Bank of S.A. Limited, from date of disbursement to date of recovery.
 - vi) All other provisions of these conditions, including but not limited to the provisions of clause 4(g) (i), shall apply mutatis mutandis.

5. WARRANTY

- a) We warrant that the product delivered shall comply with the size and specification as detailed on the delivery note, and failing any specification shall be run of production. Liability for breach of this warranty shall only arise where the Customer establishes, in addition to any other proof ordinarily required in law, that:
 - i) Sampling and testing of specimens and the interpretation of test results were done in strict compliance with the specifications therefor no less stringent than those as prescribed by the South African Bureau of Standards at that time;
 - ii) Within 48 (forty-eight) hours of such results becoming available, we were notified thereof, furnished with a true, full and uncensored copy thereof as well as any report which may have accompanied same;
 - iii) He notified us in writing within 72 (seventy-two) hours of delivery of an alleged nonconformity with specifications and we were afforded every reasonable opportunity immediately on demand to inspect the sample and submit same to our own examination and testing and that immediate remedial measures were taken to our satisfaction;
 - iv) The products have not been misused, neglected, contaminated, improperly handled or altered in any way.
- b) Should, notwithstanding all the provisions of 5(a) above having been satisfied, a dispute still exists as to compliance with specification, we shall be entitled, at our discretion, to nominate an expert (who shall act as such and not as an arbitrator) to finally determine such dispute.
- c)
 - i) Our liability for breach of the foregoing warranty shall be limited to the cost of removal of the offending product and replacement thereof, provided that if the breach could reasonably have been revealed by examination on delivery, our liability shall be limited to the delivery of a fresh load of product.
 - ii) Under no circumstances will we be liable for consequential or general or special damages, howsoever arising, which the Customer may suffer because of a breach of the foregoing warranty or because of a breach of any of the other obligations assumed by us under this contract or which may hereafter be assumed by us in our dealings with the Customer.
 - iii) The above replacement provision (which shall constitute the Customer's sole remedy to the exclusion of all others, including cancellation or specific performance or damages as aforesaid) does not extend to products not quarried or manufactured by us in respect of which no warranty or undertaking whatsoever is given. Customers shall, however, be entitled to the benefit of any warranties given to us in respect thereof and which we are able to cede.

- d) The warranty set forth in 5(a) and 5(b) preceding is in lieu of all other warranties, guarantees or representations, expressed or implied, which but for this provision may have been applicable in favour of the Customer, all of which are expressly excluded, particularly, but without prejudice to the generality of the foregoing, any representation that the product is fit for any particular purpose. We supply in accordance with such specification and the onus of establishing whether such specification is fit for the intended purpose rests entirely on the Customer.

6. GENERAL

- a) The Customer shall not be entitled to set off any amount which he may allege is claimable by him from us against any amount which may be payable to us. Moreover, so long as the Customer is in breach of any of his obligations to us, his rights under this Agreement shall be suspended and enforceable.
- b) The Customer acknowledges that:
 - i) Save as detailed hereon, there are no terms and conditions, rights and liabilities between him and us and no warranties or representations have been made by us on our behalf which may have had the effect of inducing him to conclude this Agreement or at all, and such terms, conditions, rights, liabilities, warranties or representations are hereby expressly excluded and the rights thereunder waived and abandoned and these terms supercede all previous terms, understandings or agreements;
 - ii) No agreement between us governed hereby shall be capable of being varied or our rights thereunder waived unless such variation or waiver is reduced to writing and signed by us. This shall not, however, be construed to prevent us from correcting clerical errors and omissions on our part;
 - iii) No relaxation or indulgence which we may afford him shall in any way prejudice our rights, nor shall we be estopped from exercising such rights by reason thereof.
- c) Should the Customer or any of its employees or agents, officers or contractors visit any of our plants for any reason:
 - i) The Customer shall be liable for all loss or damage to our property or injury to or death of any person/s arising from such presence of irrespective of the presence or absence of negligence on our part;
 - ii) We shall not be liable for any loss of or damage to the Customer's property or injury to or death of the Customer or his employees, agents, officers or contractors arising from such presence, irrespective of the presence of negligence on our part;
 - iii) The Customer moreover indemnifies us against all claims which may be made against us for any loss, damage or injury or death arising out of such presence, whether or not negligence is involved. Should any demand be made upon us by any claimant arising from a claim contemplated in this paragraph, the Customer shall be obliged, irrespective of the merits of such claim, forthwith to lodge with us security for such claim to our satisfaction.
- d) The Customer elects his address to which his accounts are usually sent or to which any quotation are sent as his domicilium citandi et executandi for all purposes between him and us hereafter and acknowledges that any notice which he may give to us hereafter shall be deemed not to have been given to and received by us unless it is delivered to a director on our board at our address as indicated hereon.
- e) Should we hereafter wish to institute action against the Customer, we may, at our election do so:
 - i) In any Division of the Supreme Court of South Africa as we may choose;
 - ii) In the Magistrate's Court, to the jurisdiction of which the Customer hereby expressly consents;
 - iii) By way of referring the matter or dispute to the arbitration of the practising Senior Counsel nominated by us and whose decision shall be final and binding on both parties and not be subject to appeal; Should we elect arbitration:
 - iv) Such arbitration shall be conducted informally and summarily so as to dispose of the disputes expeditiously, economically, confidently, and in a business-like, efficient and practical manner, and to that end, the provisions of the Arbitration Act (or any other law applicable), pleadings, discovery, legal rules of procedure and/or legal rules of evidence and/or precedent, shall be dispensed with;
 - v) We shall be entitled to nominate an Engineer to sit jointly with the Arbitrator and to assist him in matters of a technical nature;

- vi) These provisions shall not in any way be construed or given effect to in such a way as to prejudice to any degree whatsoever the rights and benefits secured to us by these Standard Trading Terms.
- f) All expenses and costs which we may incur in enforcing or protecting our rights against the Customer, whether hereunder or otherwise, shall be borne by the Customer. As to legal costs and collection charges, as between attorney and client; and as to sampling, examining, testing, obtaining reports on products or any other action we may take, such as we may incur, also to be borne by the Customer.
- g) All rights and obligations between the parties, whether arising hereunder or otherwise, shall be governed exclusively by the laws of the Republic of South Africa, to the jurisdiction of those Courts (or Arbitrators) the parties submit themselves to the exclusion of all others.
- h) No rights which the Customer may have or hereafter acquire (whether arising from this quotation, its contract if accepted, or any future contracts or dealings with us, all of which as hereinbefore provided, shall be governed by these terms) shall be capable of cession, and the Customer shall have no right to do so. This provision shall not apply to us, who shall be entitled also to assign contracts at our discretion.