



A Proudly South African Company

**TRADING TERMS AND CONDITIONS OF SALE
of
CEMCON (PROPRIETARY) LIMITED
(Registration No. 2016/345658/07)**

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TRADING TERMS AND CONDITIONS OF SALE

These Trading Terms and Conditions of Sale, understandings and agreements governing the sale of the Company's product with effect from September 2016.

1. **DEFINITIONS**
CPA means the Consumer Protection Act 68 of 2008, as amended, and any applicable regulations;
The company means Cemcon (Proprietary) Limited, registration number 2016/345658/07,
The customer means anyone who buys the product from, or places orders for the product from the company,
The product will means ready mixed concrete, mortar or plaster.
2. **CONTRACT**
 - 2.1 These Trading Terms and Conditions (**trading terms**) will apply to verbal, written orders or electronic orders placed with the company for the product the delivery of the product and credit applications.
 - 2.2 All sales between the company and the customer will be regulated by these trading terms, and no other terms are applicable unless agreed between the parties in writing and signed by authorised representatives of the parties.
 - 2.3 If the customer is a consumer as defined in the CPA, the provisions of the CPA will prevail where specified in these trading terms. Any customer who is a consumer can request an explanation of any of these trading terms from the company to the extent necessary.
3. **QUOTATIONS**
 - 3.1 The company will, unless otherwise requested by the customer, provide a

written quotation to the customer, which will be valid for a period of 30 (thirty) days from the quotation date only, unless the company agrees to an extended period.

- 3.2 Verbal quotations are not binding and if a customer has obtained more than one quotation from the company for a particular enquiry, the latest quotation will apply.

4. **PLACING OF ORDERS**

- 4.1 When placing an order, the customer must provide detailed instructions regarding when supply is required and the timing of deliveries of ready mixed concrete for the duration of the contract. This is required to allow the company to plan accordingly.

5. **PRICE**

- 5.1 The price to be paid by the customer for the product will be the price reflected on the company's quotation.
- 5.2 The customer will be provided with 30 (thirty) days' notice prior to any price increase. Prices may vary as a result of:
- an increase in transport costs (including all disbursements);
 - an increase in taxation rates applicable to the manufacture and sale of the product; and
 - any change in the order which occurs after the quotation is issued.

6. **PAYMENT TERMS**

- 6.1 If payment is not made in terms of the payment terms, as reflected in the credit application or on the company's written quotation and/or order confirmation in relation to cash sales (as applicable), the concrete will not be despatched until the amount due is paid. Cash sales orders will only be confirmed upon receiving confirmation of payment.

7. **DELIVERY**

- 7.1 The company will deliver the product to the customer at the address specified by the customer (**the delivery site**) within the timeframe agreed between the customer and the company, provided that the delivery site offers adequate and safe access to and from the points of delivery onsite. Deliveries will be made between 07h00 to 17h00 from Monday to Friday, unless the parties have agreed otherwise.
- 7.2 The customer will obtain the prior consent of the company to deliver the product to another delivery site.
- 7.3 The customer will be responsible for off-loading the concrete from the delivery vehicle at the delivery point, placing the concrete at the desired location and following the correct procedures in respect of the handling and placing of the concrete.
- 7.4 The customer will be responsible for:
 - 7.4.1 any deterioration or damage to the concrete after delivery, due to improper handling, placing, curing and lack of precautionary measures taken against weather conditions.
 - 7.4.2 any cost related to its failure to accept delivery or to accept full delivery of the product ordered, unless such failure is due to an error on the part of the company; and
 - 7.4.3 all costs relating to the product being diverted to another delivery site.

DELAYS

7.5 **The company may charge:**

- 7.5.1 a demurrage fee, if the discharge time exceeds the agreed discharge time in the quote.

CANCELLATION FEES

- 7.5.2 cancellation fee for orders cancelled 12 hrs before the day of the scheduled delivery.

CUSTOMER LIABILITIES

- 7.6 The customer will be liable for any loss or damage, direct or consequential to the company's or the company's contractor's vehicles and or machinery and equipment or the death of or injury to the company's or the contractor's, employees or agents at the delivery site, unless such loss or damage is due to the negligence of the company or its contractors. The customer will in this regard insure that it has sufficient insurance in place.
- 7.7 The company or its contractor may refuse to enter or may leave a delivery site if the conditions of the delivery site can reasonably be considered to be or may become unsafe for any reason.

8. **CONCRETE PRICING, DELIVERY NOTES AND PUMPING**

- 8.1 The price quoted includes transport cost.
- 8.2 The customer will ensure before accepting delivery that:
 - 8.2.1 The drum seal is intact;
 - 8.2.2 The seal number of the drum corresponds with that reflected on the delivery note;
 - 8.2.3 The delivery note signed indicates the addition of any substance including water, to the product before or during discharge.
- 8.3 The transport cost of any load under 4 (four) m³ will be calculated on the basis of 4 (four) m³.
- 8.4 Orders for less than 50 (fifty) m³ for delivery not on working days or after

- 17:00 on working days may incur a plant opening fee.
- 8.5 Mix designs are subject to the customer's consulting engineer's approval and should any modification be required, prices will be adjusted accordingly.
 - 8.6 The company will not test any concrete on behalf of the customer, but may elect to do so for its own control purposes which can be shared with the customer at the customers request.
 - 8.7 the company reserves the right to charge:
 - 8.7.1 a demurrage fee, if the discharge time exceeds 8 (eight) minutes per m3, unless any extension in discharge time is the fault of the company;
 - 8.7.2 In the case of concrete for columns less than 4 (four) meters a maximum time of 60 (sixty) minutes will be allowed;
 - 8.7.3 If a pour is delayed by the customer and cannot be poured on the agreed time, the order will be cancelled and the customer will have to place a new order;
 - 8.7.4 The customer is entirely responsible for the handling, placing, curing and consolidation of any concrete discharged from the delivery vehicle or pump. Accordingly the customer must be aware that the manner in which concrete is handled, placed and consolidated; and the addition of water, aggregate, and additives effects the quality and strength of concrete, mortars and plasters.
 - 8.7 **Pumping of Readymix concrete:**
 - 8.7.1 The lengths of pipes required will be determined at a site inspection before the pour and will be agreed with the customer.
 - 8.7.2 The company may charge:
 - 8.7.2.1 a concrete dumping charge if the customer does not have the facility to dump any concrete exceeding their requirement on site;
 - 8.7.2.2 an hourly pumping charge if the rate of concrete pumped per hour is less than that quoted where the delay is caused by the customer, or if a same day increase in quantity ordered is required which may impact on service levels to other customers;
 - 8.7.2.3 a pump cancellation charge if the customer has not given the company at least 72 (seventy two) hours' notice of the postponement/cancellation of the order;
 - 8.7.2.4 overtime charges for time worked outside of normal working hours, namely 07h00 and 17h00;
 - 8.7.2.5 a pipe laying labour charge where more than 15m of pipe is to be used and the customer is unable to provide the labour.
 - 8.7.3 Cement and sand for priming must be supplied by the customer, or can be supplied by the company at an additional cost.
 - 8.7.4 Quotations are subject to the following conditions being met:
 - 8.7.4.1 access to and exit from the working area has been provided by the customer; and
 - 8.7.4.2 a stable platform has been supplied to set the pump on.
 - 8.7.5 The customer must confirm that the pump is required 3 (three) working days prior to the pour.

9. **DELAYS**

The company aims to deliver without unreasonable delay. However, subject to the CPA where applicable, the company accepts no responsibility for any delay in respect of delivery of the product. Except where the CPA applies, the customer is not entitled to claim damages or set-off payment from the company as a result of such delay or non-delivery.

10. **SUSPENSION OF DELIVERIES**

The company has the right to suspend any delivery if the customer has not paid any amount it owes to the company in respect of any contract between the parties.

11. **DELIVERY NOTES**

11.1 On delivery to the delivery site the customer, its employee or agent will sign the delivery note.

11.2 Unless the contrary is proven, the delivery note is proof of:

11.2.1 the strength of concrete delivered;

11.2.2 the quantity of concrete delivered;

11.2.4 that the drum seal, is intact;

11.2.4 whether water or any other foreign material has been added to the concrete; and

11.2.5 arrival and discharge times.

11.3 In the event of a dispute arising in respect of any statement recorded on the delivery note signed by the customer or its agent, the customer is responsible for disproving any of the statements recorded on such note.

12. **Warranty/Liability**

12.1 The company warrants that the product delivered complies with the following requirements:

12.1.1 the details shown on the delivery note;

12.1.2 the South African National Standards SANS 50197 ("SABS specifications"), as amended from time to time.

12.1.3 the applicable specifications for Ready Mixed Concrete-SANS 878

12.1.4 the appropriate SABS specifications and/or Codes of Practice for concrete, or the specifications as prescribed by the customer in writing and agreed on between the parties.

12.2 Subject to the CPA, liability for breach of the warranty set out in clause 12.1.3 will only arise where the customer has established, in addition to any other proof required by law, that:

12.2.1 the customer has inspected the product before use in accordance with the trading terms;

12.2.2 inspection, sampling methods and interpretation of test results have been carried out in strict compliance with applicable specifications, these being no less stringent than those prescribed by the SABS

12.2.3 the customer has notified the company verbally within 48 (forty eight) hours of its tests revealing an alleged non-conformity with specification, provided that written notification was given within a maximum of 7 (seven) days after the tests revealing an alleged non-conformity;

12.2.4 the company was afforded every reasonable opportunity to inspect the product or any sample taken and to submit the product or sample to an independent accredited laboratory for testing;

12.2.5 all records relating to the handling, sampling, curing and testing of the product and the interpretation of any tests in respect were made available to the company for inspection; and

12.3 Under no circumstances will the company be liable for direct, consequential, general or special damages arising out of:

12.3.1 the use by the customer of the product in any manner that is contrary to the instructions, company procedures or warnings provided by the company;

- 12.3.2 any circumstances beyond the reasonable control of the company; or
- 12.3.3 subject to the CPA, any harm caused by the company's negligence (unless the customer can prove that the company's conduct was grossly negligent);
- 12.3.4 and the customer hereby indemnifies the company against all such claims which may be made against the company arising from the use by any person of the product under these circumstances.
- 12.4 Despite the provisions of 12.2 and to the extent permitted by the CPA, the company's only liability in respect of the supply of defective products will, in any event, and in its absolute discretion be strictly limited to:
 - 12.4.1 the repair or removal and replacement of such defective product; or
 - 12.4.2 the refund to the customer of the cost at which the customer purchased such defective product.
- 12.5 Subject to the CPA, the company offers no warranty, express or implied in respect of the product, its colour, consistency or its suitability for a particular purpose even if such purpose is communicated to the company, save that it will be manufactured in accordance with its specification.
- 13. **EXCLUSION OF LIABILITY**
 - 13.1 Subject to the CPA, the warranty given by the company in clause 12.1.3 is given in place of any common law warranty.
 - 13.2 In addition to the exclusions set out in 12, and subject to the CPA, all and any liability in respect of the following is excluded:
 - 13.2.1 warranties implied in law in respect of latent defects;
 - 13.2.2 warranties in respect of suitability of the product for the purpose;
 - 13.2.3 any loss including consequential loss and loss of profits, whether in contract or in delict, including any loss or damage arising from any negligent act and omission of the company, its servants, agents or contractors;
 - 13.2.4 any injury or death arising from any negligent act or omission of the company, its servants, agents, or contractors.
- 14. **FORCE MAJEURE**
 - 14.1 If a party is prevented or restricted directly or indirectly from carrying out its obligations in the trading terms by reason of strike, lock-out, fire, explosion, floods, riot, war, accident, act of God, embargo, legislation, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbances, cessation of labour, government interference or control, or any other reason beyond the control of that party, the affected party will be relieved of its obligations during the period that such event and its consequences continue to the extent that it is prevented from fulfilling its obligations.
 - 14.2 Neither party will be liable for any delay or failure in the performance of any obligations or loss or damages either general, special or consequential which the other party may suffer due such delay or failure, provided that written notice was given to the affected party of any inability to perform.
 - 14.3 The party invoking force majeure must give written notice to the other party when the event giving rise to its inability to perform has ceased.
 - 14.4 Should such force majeure continue for a period of more than 90 (ninety) days then either party will be entitled to cancel this contract in respect of any obligations still to be performed by that party under the contract.
- 15. **GOVERNING LAW AND JURISDICTION**
 - 15.1 These trading terms will be interpreted and governed in all respects by the laws of the Republic of South Africa.
 - 15.2 The customer unconditionally consents and submits to the non-exclusive jurisdiction of the Magistrate's Court in regard to all matters arising from these trading terms, but the company will not be obliged to institute action in the Magistrate's Court.

16. **COSTS**

- 16.1 All costs, expenses and charges, including legal costs and collection commission incurred by the company in enforcing its rights against the customer will be paid by the customer even if legal proceedings are not commenced.
- 16.2 Legal costs will be as agreed between the company or the customer and its attorneys. If there is no agreement or any agreement is not enforceable, legal costs will be calculated on attorney and own client scale.

17. **ARBITRATION**

Unless otherwise set out in the trading terms, all disputes regarding the trading terms including disputes as to the meaning or interpretation of any provision or the effect of any such provision or the quantification or determination of any amount or thing required to be determined or quantified in terms of or pursuant of these trading terms, will be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa Limited (or its successors), as amended from time to time, by an arbitrator or arbitrators appointed by the Foundation.

18. **PROTECTION OF PERSONAL INFORMATION ACT, 2013**

- 18.1 The customer acknowledges that, when requesting a quotation or completing a credit application, the company will require certain Personal Information as defined in the Protection of Personal Information Act, 2013 ("POPI") from the customer.
- 18.2 The customer agrees that the company requires such Personal Information for purposes of:
- 18.2.1 processing the customer's credit application, if applicable;
 - 18.2.2 verifying the customer's credit record, with a view to possibly supplying product to the Customer on credit;
 - 18.2.3 monitoring the customer's adherence with the terms of the customer's credit application, if applicable, or with the trading terms;
 - 18.2.4 providing a written quotation to the customer;
 - 18.2.5 processing the customer's order;
 - 18.2.6 confirming the customer's order; and
 - 18.2.7 effecting delivery of the product to the customer.
- 18.3 By placing an order, and by completing the credit application (if applicable) the customer consents to:
- 18.3.1 The company processing the customer's Personal Information for the purposes set out above, as applicable;
 - 18.3.2 The company's use of third party credit bureaus or any other Operator, as defined in POPI, to process the customer's Personal Information, which processing will be in line with the purpose for which it was collected, as set out above; and
 - 18.3.3 The company processing its Personal Information for direct marketing and promotional purposes.
- 18.4 The customer's failure to supply the Personal Information requested by the company will result in the relevant credit application being denied or the company being unable to process the customer's order.
- 18.5 The customer will have the right to:
- 18.5.1 access any Personal Information pertaining to it that the Company has in its possession;
 - 18.5.2 rectify or correct any such Personal Information in the event that it, at any stage, becomes outdated or incorrect for whatever reason;
 - 18.5.3 request the destruction or deletion of its Personal Information by the company;
 - 18.5.4 be informed by the company in the event that its Personal Information has been accessed or acquired by an unauthorised person;
 - 18.5.5 object to the processing of its Personal Information by the company on

any reasonable grounds. On receipt of such objection, the company will no longer process the customer's Personal Information, which will unfortunately result in your credit application being denied, if applicable, and the company being unable to process the customer's orders;

18.5.6 object to the processing of its Personal Information at any time for purposes of direct marketing;

18.5.7 to submit a complaint to the Regulator regarding an alleged interference with the protection of the customer's Personal Information or to submit a complaint to the Regulator in respect of a determination of an adjudicator as provided for in POPI; and

18.5.8 to institute civil proceedings regarding the alleged interference with the protection of its Personal Information as provided for in POPI.