



3Q Mahuma Concrete (PTY) LTD Reg nr: 2007/032564/07

22 Waterfall Avenue
Rustenburg
0299
P O Box 20641
Protea Park
0305

Tel: 014 592 2202

STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

1.1.	Applicant:	means the Applicant in terms of the credit application to which this document is attached as an annexure;
1.2.	(PTY) LTD:	means 3Q MAHUMA CONCRETE (PTY) LTD, Registration Number: 2007/032564/07;
1.3.	Goods:	means any products or services offered by the (PTY) LTD and supplied to the Applicant;
1.4.	Agreement/Contract :	means these standard terms of agreement
1.5.	Domicilium citandi et executandi:	means the address for delivery of all notices, pleadings and correspondence

2. THESE TERMS AND CONDITIONS TO PREVAIL

2.1 It is recorded that the only basis upon which the (PTY) LTD is prepared to do business with the Applicant is on the basis that, notwithstanding anything in the Applicant's enquiry, order or other documentation or discussion to the contrary, the terms and conditions contained herein shall constitute the sole terms of the contract between the (PTY) LTD and the Applicant.

2.2 No amendments to these Standard Terms and Conditions, extension of time, waiver, relaxation or suspension shall be binding upon the (PTY) LTD unless recorded in a written document signed by an authorized representative of the (PTY) LTD. Any extension, waiver or relaxation or suspension which is so given or made shall be strictly construed as relating strictly to the matter in respect of which it was made or given.

2.3 Both parties, the applicant and the (PTY) LTD acknowledge that this agreement is not a credit agreement as defined in the National Credit Act 34 of 2005 and is specifically exempted in terms of Section 4(b), (B) of the National Credit Act 34 of 2005.

3. QUOTATIONS

3.1 Any written quotation given by the (PTY) LTD constitutes an offer to the Applicant which shall be open for acceptance by the Applicant for a period of 7 (SEVEN) days after the date thereof, failing which it shall automatically lapse. No acceptance of a quotation by the Applicant shall be valid unless a duplicate copy of the quotation is duly signed by the Applicant and received by the (PTY) LTD within the aforesaid 7 (SEVEN) day period.

3.2 The quotation is based on rates of exchange, freight charges, insurance, railage, costs of labour and material and other charges ruling at the date of quotation. Any variations occurring subsequent to the date of the quotation in any of the aforesaid rates or charges, as the case may be, shall entitle the (PTY) LTD to vary the amount of the quotation accordingly.

3.3 The quotation is based on the quantities, specifications and other information supplied to the (PTY) LTD by or on behalf of the Applicant. If the Applicant requires any modification or addition to any of the foregoing at any time after the quotation is given, the (PTY) LTD shall have the sole and absolute discretion to accept or reject such proposed modification or addition. Any proposed modification or addition by the Applicant must be furnished to the (PTY) LTD in writing.

4. PLACING OF ORDERS

4.1 All orders placed by the Applicant shall be in writing and delivered to the (PTY) LTD offices or e-mail to credman@3qconcrete.co.za

4.2 Orders placed by the Applicant shall not be binding until accepted by the (PTY) LTD.

4.3 If the (PTY) LTD is unable to provide and/or deliver some or all of the goods ordered by the Applicant for any reason beyond the (PTY) LTD's control, including but not limited to lack of instruction from the Applicant, stock shortage, industrial dispute or breakdown, government action, state of war, riot, civil disturbance or any other act of God, the (PTY) LTD may in its sole discretion, cancel the whole or any part of the Applicants order. In the event of such cancellation, the (PTY) LTD shall not be liable to the Applicant for any loss, whether in contract or otherwise caused thereby.

4.4 The (PTY) LTD reserves the right in its sole discretion to suspend further orders by and/or deliveries to the Applicant on credit for as long as the Applicant:

- is in default of its payment obligations or any other term of this contract;
- is unable to pay its debt; or

Initial _____

- seeks to affect any compromise with any of its creditors; or
- is placed under an order of sequestration, judicial management or liquidation (whether provisional or final); or
- is the subject of any resolution passed in order to enable the Applicant to be wound up or dissolved?

5. PRICE AND PAYMENT

5.1 Orders, other than those in respect of which a written quotation is given and duly accepted, are accepted by the (PTY) LTD only on the basis that the prices charged will be those ruling at the date of delivery of the goods, unless otherwise expressly stated.

5.2 The price shall be paid in cash, free of exchange, deduction or set-off within 30 (THIRTY) days after statement date.

5.3 Unless otherwise expressly stated, prices are exclusive of value-added tax which shall be for the account of the Applicant. The Applicant shall pay or refund to the (PTY) LTD the amount of the value-added tax simultaneously with the price.

5.4 The Applicant shall be obliged to pay to the (PTY) LTD in addition to the purchase price:

- the amount of any tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of, whatsoever nature which comes into force on a date after the date on which any price charged is determined; and
- any other additional costs of any nature whatsoever arising due to factors beyond the control of the (PTY) LTD.

5.5 The Applicant shall be responsible for the costs for delivery of the goods to the designated premises at the (PTY) LTD rate ruling at the date of delivery, unless otherwise expressly stated.

5.6 Any expenses incurred by the (PTY) LTD at the instance of the Applicant in modifying or otherwise altering or making additions to the quantities or specifications of the goods, and any expenses arising as a result of suspension of work by the (PTY) LTD due to instructions given, or a failure to give instructions by the Applicant, shall be added to the price.

5.7 A certificate issued by any director or manager of the (PTY) LTD reflecting the amount due by the Applicant to the (PTY) LTD at any given time, shall be prima facie evidence of the amount due by the Applicant to the (PTY) LTD and such certificate shall be sufficient for judgment, provisional sentence or any other legal proceedings.

5.8 The Applicant may not exceed the credit amount granted by the (PTY) LTD without prior arrangements being made with an authorized representative of the (PTY) LTD and confirmed in writing.

5.9 Returns, if accepted by the (PTY) LTD, at its sole discretion and upon such terms as the (PTY) LTD may prescribe, shall be credited less a minimum of 10% (TEN PERCENT) as a handling charge, subject to the goods being in a marketable condition and provided further that the Applicant shall be liable for all costs of delivery to the Applicant's designated site.

6. DELIVERY

6.1 Delivery in terms of orders and accepted quotations shall only be effected on payment in full or approval of the credit facilities.

6.2 Any delivery date indicated by the (PTY) LTD, whether in the quotation or otherwise shall merely be regarded as the estimated date of delivery and shall not bind the (PTY) LTD to effect delivery on or near such date.

6.3 The Applicant shall accept delivery whenever delivery is tendered and shall not be entitled to step back from the contract nor to withhold or hold back any payment nor to a reduction in price nor to any other right or remedy against the (PTY) LTD, its agents or any other person for whom it is liable in law whether for losses, costs, damages, expenses, interest or otherwise on account of delays in effecting delivery, partial delivery or non-delivery whether occasioned by any negligent act or omission on the part of the (PTY) LTD, its employees, agents or any other persons for whom it is liable in law, or not.

6.4 The Applicant shall be liable for all costs and losses to the (PTY) LTD caused by its failure or refusal to take timeous delivery of the goods from the (PTY) LTD

6.5 The Applicant shall be obliged to procure that the designated site for delivery shall be easily accessible to road transport vehicles

6.6 The (PTY) LTD vehicles will only leave the public road and enter the designated site if the designated site is safe and easily accessible

6.7 If the Applicant fails or refuses to furnish the information necessary to enable delivery to be effected, or if it fails or refuses to take delivery, the goods shall be deemed to have been delivered to the Applicant upon notification by the (PTY) LTD to the Applicant to that effect.

6.8 A delivery note signed by the Applicant, its employee, agent or representative shall constitute proof, on its mere production, that the goods delivered thereunder accorded with the quality and quantity reflected on the delivery note.

6.9 Full delivery in accordance with the (PTY) LTD records shall be deemed to have been made unless any discrepancy and/or shortfall is specifically recorded on the delivery note and reported to the (PTY) LTD in writing within 48 (FORTY-EIGHT HOURS) after delivery.

7. WARRANTIES

7.1 No warranties or representations, express or implied or tacit, which are not set forth in this agreement shall be binding on the (PTY) LTD.

7.2 We warrant that the concrete delivered shall comply with the specifications stated. Liability for breach of this warranty shall only arise where the customer establishes, in addition to any other proof ordinarily required in law, that:

- The driver is not authorised to add water to the truck mixer without the customer's instructions. If water is added to the concrete on site to increase the slump above that specified, we shall not be responsible for the strength of the concrete adhering to the specification.
- All sampling, making, curing and testing of specimens and the interpretation of test results were done in strict compliance with the specification thereof as prescribed by the South African Bureau of Standards at the time.
- Within 48 hours of such results becoming available, we were notified thereof, in writing, furnished with a true, full and uncensored copy thereof as also of any report which may have accompanied same.
- We were afforded every reasonable opportunity immediately on demand to inspect the sample and submit same to our own examination and testing and remedial action was immediately taken to our satisfaction.

Initial _____

7.3 Our liability for breach of the foregoing warranty shall be limited to the cost of removal of the offending concrete 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 supply of concrete. Under no circumstances will we be liable for consequential or general or special damages, howsoever arising, which the customer may suffer because of 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.

7.4 CONCRETE PRICE

The **Price** for concrete, mortar or plaster is based on the goods, as specified, measured in cubic metres in the wet form.

7.5 CONCRETE DELIVERIES

- Part loads and deliveries outside normal working hours will be subject to an extra charge at the (PTY) LTD's ruling rates from time to time.
- Where the delivery vehicles of (PTY) LTD are delayed on site for any reason whatsoever by the Customer, an extra charge may be raised at the (PTY) LTD's ruling rates from time to time.
- Due to the nature of concrete (i.e. it changes from a liquid or wet state to a solid or hard state within a relatively short period of time), the product is not returnable.
- The **Customer** must inform the (PTY) LTD within a period of 24 hours if it alleges short delivery or incorrect delivery of goods or for any queries and or claims relating to specification and performance. This will enable the Company to conduct a proper investigation of the claim and to ensure a speedy resolution to the matter.

7.6 CONCRETE WARRANTIES

- Notwithstanding the provisions of the clause 7.2, the Company warrants that the concrete supplied complies with the details shown on the delivery note and with the Company's standard specification or the acceptance criteria for strength test results as per Section 14.3.3 of SANS 10100 – 2 SOUTH AFRICAN STANDARD, Code of practice, The structural use of concrete, Part 2: Materials and execution of works, for such concrete.
- The onus shall be on the Customer to ensure, by examination before use that the Goods delivered is within the agreed specification. In the case of concrete this limited to the general consistency and workability as determined by the slump test.
- The Company shall incur no liability whatsoever for the handling, placing, curing and consolidation of any concrete supplied by the Company to the Customer, subject to discharge from the delivery vehicle, which action shall be the sole responsibility of the Customer. The Customer acknowledges that it is aware that:
 - The manner in which concrete handled, placed and consolidated; and
 - The addition of water, aggregate and additives, can and will affect the quality and strength of the concrete, mortars and plasters and that specialised concrete mixes require special skills and experience in handling, placing, compacting and consolidating if a satisfactory final product is to be achieved.

8. OWNERSHIP

Ownership of the goods shall not pass to the Applicant until the price has been paid in full. The provisions hereof shall apply notwithstanding the delivery of the goods or that the goods may be incorporated into or form part of other goods or change their essential character. All goods whether fixed to immovable property or not, shall be deemed to remain movable property and deemed to be severable without damage to either property.

9. RISK

Notwithstanding that the ownership in the goods shall not pass to the Applicant until payment of the entire price in respect of the goods in question has been effected, the goods shall be at the risk of the Applicant who shall be responsible for all loss or damage thereto howsoever arising, upon the goods leaving the (PTY) LTD premises.

10. BREACH

10.1 Subject to clause 10.2, if the Applicant:

- breaches any of the terms or conditions hereof or any other agreement with the (PTY) LTD; or
- fails to pay any amount payable by it on due date; or
- commits any act of insolvency or endeavours to compromise generally with its creditors; or
- does or causes to be done anything which may prejudice the (PTY) LTD rights hereunder or at all; or
- allows any judgment against it to remain unsatisfied for 7 (SEVEN) days; or
- is placed into provisional or final liquidation or judicial management or under provisional or final sequestration or if his estate is voluntarily surrendered;

the (PTY) LTD shall have the right, without prejudice to any other right which it may have against the Applicant, to treat as immediately due and payable all outstanding amounts which would otherwise become due and payable in due course and to claim such amounts as well as any other amounts in arrears and to cease performance of its obligations hereunder as well as under any other contract with the Applicant.

10.2 The (PTY) LTD shall not be obliged to comply with its obligations hereunder in any respect whatsoever for so long as the Applicant is indebted to the (PTY) LTD in any amount whatsoever in respect of any cause whatsoever or fails to comply with any other obligations to the (PTY) LTD, whether arising out of this contract or otherwise. In particular, without limiting the generality of the foregoing, if delivery of any particular order is to take place in stages, the (PTY) LTD shall not be obliged to deliver any part of the order until the price which is due in respect of the part of the order which has already been delivered has been paid.

11. SECURITY FOR OBLIGATIONS

The (PTY) LTD reserves the right to require, at any time, satisfactory security from the Applicant for the due performance of any of the Applicants obligations hereunder. If the (PTY) LTD so requires, the Applicant shall deliver to the (PTY) LTD prior to the (PTY) LTD complying with any of its obligations hereunder, such security acceptable to the (PTY) LTD. If such security is not furnished within 7 (SEVEN) days after any such demand, the (PTY) LTD shall be entitled to withdraw any credit facility granted to the Applicant in whole or in part.

12. GENERAL

12.1 The Applicant shall not be entitled to cede or assign any rights and/or obligations which it may have in terms of this contract to any third party.

12.2 The (PTY) LTD may cede or assign any rights and/or obligations which it may have in terms of this contract, at its sole discretion, to any third party without giving any notice to the Applicant.

12.3 The Applicant shall be liable for all costs incurred by the (PTY) LTD in the recovery of any amounts or the enforcement of any rights which it has hereunder, including collection charges and costs on an attorney and own client scale whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.

12.4 Regardless of the place of execution, performance or domicile of the parties, this contract and all modifications and amendments shall be governed by or construed under and in accordance with the laws of South Africa.

12.5 Should the Applicant be in default of any of the terms contained in the contract, the (PTY) LTD shall be entitled in its sole discretion to institute action against the Applicant in any competent court of law and the Applicant hereby consents to the jurisdiction of the Magistrate's Court in terms of Section 45 of Act 32 of 1944 as amended.

12.6 Address under number 3 on page 1 will serve as the address where delivery of all notices, pleadings and correspondence will be accepted.

12.7 I consent to instruct a tracer if necessary and consent that the Creditor may compile and/or request a credit profile from any credit bureau as well as a bank report from any financial institution.

12.8 By signature of this document, the Applicant warrants the truth and accuracy of the information given above and acknowledges that he/she has read and understood the Standard Terms and Conditions and agree that the Standard Terms and Conditions shall apply to all dealings between the parties.

12.9 All the provisions of this agreement is severable and no provision shall be effected by the invalidity of any other provision of this agreement.

SIGNATURE: _____

APPLICANT (DULY REPRESENTED)

Initial _____