

PPC Ltd – STANDARD TERMS AND CONDITIONS OF SALE



1. DEFINITIONS
- 1.1 In this document, the following terms have the meanings assigned to them below, namely –
- 1.1.1 “Consumer Protection Act” means the Consumer Protection Act 68 of 2008, as amended and any regulations promulgated in respect thereof;
- 1.1.2 “harm” means harm, as described in section 61(5) of the Consumer Protection Act;
- 1.1.3 “protected consumer” means a consumer as defined in section 1 of the Consumer Protection Act and whose annual turnover or assets value falls below the threshold contemplated in section 5 of the Consumer Protection Act and to whom the Act applies; and
- 1.1.4 “PPC” means PPC Ltd.
- 1.2 Unless a contrary intention clearly appears, the terms used in this document shall have the meanings assigned to them in section 1, section 53 or any other section, as the case may be, of the Consumer Protection Act.
2. PURPOSE OF SELLING CONDITIONS
- 2.1 The customer and PPC agree that these terms and conditions shall apply to any contract for the sale of any product or service by PPC, whether that contract arises out of:
- 2.1.1 any offer made by PPC and accepted by the customer; or
- 2.1.2 any offer made by the customer and accepted by PPC, including any such offer made by the customer in response to a quotation from PPC.
- 2.2 The customer and PPC agree that no alteration or variation of these terms and conditions shall apply, either at the time that the contract is concluded or at any time afterwards, unless the alteration or variation in question is expressly agreed to in writing and signed by an authorised representative of PPC at the time in question.
3. PRICE
- The customer and PPC agree that –
- 3.1 Save as may be specified on any quotation form, prices are not subject to any discount and are applicable to deliveries made during normal working hours.
- 3.2 All product is supplied at the prices ruling on the date of despatch from the factory and not in terms of earlier quotations or prices at the date of order, irrespective of method of delivery.
- 3.3 All prices are strictly net and are exclusive of Value Added Tax. In the case of delivery other than delivery at the factory, prices are subject to adjustment in respect of any increase / decrease in the cost of delivery arising directly or indirectly from any one or more causes, in particular:
- 3.3.1 in the case of delivery by rail or road, any increase in Spoornet railage and/or transport rates and/or any other transport costs, including, but not limited to, fuel costs and e-tolling;
- 3.3.2 any statutes or law or regulation, by-law or notice having the effect of law.
- 3.4 PPC is a supplier and shall not be considered to be a contractor or sub-contractor or in any other way be bound by the terms of any other agreement or contractual document to which PPC is not directly a party.
4. ORDERS
- 4.1 The customer accepts responsibility for safe keeping and issuing of its orders and agrees to pay for all orders which should be issued on its behalf and are given effect to in good faith by PPC.
- 4.2 PPC may in its discretion agree to the cancellation, variation or diversion of orders by the customer. If product has already been despatched to the customer, the customer will reimburse PPC for any costs incurred with regard to the cancellation, variation or diversion of any orders.
- 4.3 PPC may cancel any order if the customer breaches any term of this agreement or makes any attempt of compromise, liquidation, sequestration, termination or judgement is recorded against the customer or any of its principals.
5. DELIVERY
- 5.1 General
- 5.1.1 When bulk product is delivered the mass of the product shall be determined by the assized mass meter used by PPC. Queries in regard to weight variances must be made prior to the breaking of seals on bulk tankers.
- 5.1.2 Any claim regarding alleged shortages and quantities delivered must be lodged with PPC immediately and confirmed in writing by endorsing delivery notes to that effect at the time of delivery, failing which the rights of the customer in regard thereto shall be deemed to be waived.
- 5.1.3 The customer must give PPC written notice of any claim based on the existence of any alleged defect in product within in (fourteen) days after delivery, failing which the rights of the customer in regard thereto shall be deemed to be waived. Any claim in this regard shall be limited to a claim for the replacement of the defective product and PPC shall not be liable for consequential damages.
- 5.1.4 Clear and unrestricted access must be provided at the delivery point for offloading of the product. Save where otherwise stated, delivery will be deemed to have been effected when each delivery vehicle/rail truck arrives at the destination required by the customer and is available for offloading. Spoornet or the road transporters' records shall be prima facie proof of such delivery.
- 5.1.5 Time shall not be of the essence of the contract. Accordingly PPC shall not be liable for any consequential costs or damages arising out of late delivery or the failure to deliver any product or service.
- 5.1.6 PPC's obligation to deliver the product shall in all cases be subject to the following conditions precedent:
- 5.1.6.1 the availability to PPC of all products and services required for the manufacture of products where the products in question are manufactured by PPC;
- 5.1.6.2 the timely availability and receipt by PPC from its own suppliers of goods and services where the goods and/or services in question are being purchased by PPC;
- 5.1.6.3 the timely receipt by PPC of any instructions required by PPC from any customer for the manufacture, purchase or supply of products.
- 5.1.7 If the delivery is to be made in instalments, then the provisions of this clause 5 shall apply to each instalment.
- 5.1.8 PPC reserves the right to decline to permit its vehicles to proceed to the point of delivery if it considers such access to be in conflict with reasonable conditions of safety for its employees and/or its vehicles. Where the purchaser fails to accept, or partially accepts delivery of product ordered, the cost of transport and handling charges incurred in the delivery and/or return, shall be for the customer's account.
- 5.1.9 It is the obligation of the customer to ensure that any bulk product ordered is offloaded into the correct silo or bin.
- 5.1.10 Prior to the offloading of any bulk product the customer shall ensure that the tanker seals are in good order and that the product to be discharged is the product ordered.
- 5.1.11 Any costs incurred in the transport, handling or storage of goods that cannot be delivered or are not accepted for delivery and any connected demurrage charges which have arisen due to PPC being unable to unload its product within a reasonable period will be for the customer's account.
- 5.1.12 Claims for shortages, breakages or water damaged product may be made in respect of deliveries and must comply with PPC's detailed procedures, a copy of which is available on request.
- 5.1.13 All sizes, weights and other specifications given by PPC are approximate only, subject to the provisions of the Trade Metrology Act of 1973. PPC reserves the right to supply products which do not exactly correspond with what it has agreed to supply provided that any differences do not make the goods unsuitable for the customer's intended use.
- 5.1.14 Should a customer require abnormal packaging this will be carried out at the customer's cost.
- 5.1.15 Any delivery note or waybill (copy or original) held by PPC Cement, signed by the customer or a person duly authorized by the customer, shall be prima facie proof that delivery was made to the customer.
- 5.1.16 Where the need arises, PPC reserves the right to supply a product conforming to the same specification (SANS 50197) from any of its factories regardless of geographic location. The customer's selling price will not be affected due to changes in source brought about by PPC. PPC however reserves the right to re-negotiate prices where a request to change the source of supply (regardless of reserves) is received from the customer.
- 5.2 Delivery by road
- Unless otherwise stipulated on any quotation, orders for delivery by road are subject to the following requirements:
- 5.2.1 Bulk product will be delivered and pumped into a silo provided by the customer to an approved and accessible site.
- 5.2.2 Product will be delivered to only one point at the site address indicated on the order and as reflected on the delivery note and scheduled transport will not be diverted without authority or instructions from PPC. Should the customer request that the product to be diverted to another site, the customer will be responsible for any additional transport or any other costs that may be incurred.
- 5.2.3 In the case of bagged product, offloading will be done by the customer. In the case of bulk product and offloading by compressor, offloading will be effected by PPC. The offloading and receipt of product is to be supervised by a responsible person appointed by the customer. Delivery shall be deemed to have taken place upon the signature of the delivery note signed by the customer or a person duly authorized by the customer. PPC's delivery notes shall for all purposes be deemed to be accurate in all respects and be binding on the customer.
- 5.2.4 Should the customer request that the product be returned to the factory the customer will be responsible for any additional transport or any other costs that may be incurred.
- 5.3 Delivery by rail
- 5.3.1 Orders for railed product are accepted in full truck loads in accordance with tariffs and conditions laid down by Spoornet
- 5.3.2 In the case of delivery to a rail siding, delivery will take place on arrival of the consignment at the siding, and Spoornet's records will be prima facie proof of such delivery.
- 5.3.3 PPC's selling prices for delivery by rail include delivery to approved stations but any charges for road transport and handling, siding charges, and other ancillary Spoornet charges or levies will be for the customer's account.
- 5.3.4 All other charges at destination are for the customer's account.
- 5.3.5 All and any demurrage charges levied by Spoornet on PPC shall be for the customer's account.
- 5.4 Delivery at the factory
- 5.4.1 Customers shall make their own arrangements for transport.
- 5.4.2 Maximum carrying mass will be governed by the relevant standards. Where the customer appoints his own road transporter to collect the product at the factory, axle loading and any overloading will be the responsibility of the customer.
- 5.4.3 Where the customer appoints his own road transporter to collect the product at the factory, PPC's responsibility for providing proof of delivery will be limited to proving that the product was accepted by the road transporter at the factory.
- 5.4.4 Delivery shall be deemed to take place when PPC's representative issues a delivery note signed on behalf of PPC.
- 5.4.5 PPC reserves the right to search any customer's vehicles and any vehicle of a road transporter appointed by the customer before it enters or leaves PPC's premises, and in addition reserves the right to search and customer's personnel or those of any sub-contractor appointed by the customer. It shall be the responsibility of the customer to ensure that such persons are aware of this provision.
- 5.5 Spreading
- 5.5.1 Spreading will be under the direct control of the customer or its representatives.
- 5.5.2 Full tanker loads (with a minimum of 22 metric tons) only will be supplied.
- 5.5.3 No guarantee is given as to the tolerance of the spread.
- 5.5.4 Scales and canvasses will be issued with each contract. The customer or his representative will be held responsible for their safekeeping until the contract is complete.
- 5.5.5 It is the responsibility of the customer or his representatives to break the tanker seals and to ensure that the tanker is fully discharged.
- 5.5.6 Standing time of 30 (thirty) minutes is permitted, thereafter a standing time charge at the rate specified on any quotation will be levied
6. OWNERSHIP AND RISK
- 6.1 Subject to clause 5 the risk in the product shall pass on delivery.
- 6.2 Notwithstanding the delivery of product or the passing of risk to the customer, ownership thereof shall remain vested in PPC until the product has been paid for in full.
7. PPC'S SILOS
- The customer shall enter into a separate equipment loan agreement with PPC prior to the placement of any silo or other equipment.
8. PAYMENT
- 8.1 Unless agreed otherwise in writing, terms are payment with order, or payment received by PPC before product is despatched. In the event that credit terms have otherwise been agreed between the parties, those terms shall govern. PPC reserves the right at its own discretion to amend or withdraw credit facilities granted.
- 8.2 The issuing of a quotation for the supply of any product/service does not imply an obligation on the part of PPC to grant credit facilities. In this connection it should be noted that although credit terms may be granted, the product/service required within this period could possibly exceed the agreed credit limit and the customer must ensure that it will have sufficient resources to provide for interim payments to allow for continuity of the required rate of supply, failing which PPC shall have the right to suspend supply.
- 8.3 It is a condition of supply that the customer's liability for payment becomes irrevocable against proof of delivery by signature on PPC's delivery note or on the delivery note or consignment notes of any carrier acting as an agent for PPC as stated in clause 5.1.15.
- 8.4 The contract price shall be paid by the customer-
- 8.4.1 in South African currency free from bank and other charges at such address in South Africa as PPC may require;
- 8.4.2 without any deduction or set off on presentation of invoice.
9. GOVERNING LAW
- These terms and conditions shall be governed by and interpreted in accordance with the law of South Africa in all respects.
10. JURISDICTION
- 10.1 If the customer is a resident or carries on business in South Africa, then PPC shall be entitled to institute any proceeding against the customer arising out of the contract, in any High Court having jurisdiction over the customer, even if the cause of action in question exceeds the jurisdiction of the court.
- 10.2 Subject to 10.3 if the purchaser is not a resident of and does not carry on business in South Africa, then the customer consents and submits to the jurisdiction of the Witwatersrand Local Division of the High Court of South Africa, and all courts of Appeal therefrom for all purposes arising out of the contract.
- 10.3 If the customer is a resident or carries on business in Botswana, Swaziland, Namibia, Mozambique, Zimbabwe or Lesotho, PPC shall be entitled to institute legal proceedings against the customer arising out of the contract in any court of such countries having jurisdiction over the customer, even if the cause of action in question exceeds the jurisdiction of the court.
11. FORCE MAJEURE
- If PPC is prevented or restricted directly or indirectly from carrying out any of its obligations under this agreement by any cause beyond the reasonable control of PPC, including but not restricted to war, civil commotion, riot, insurrection, strikes, lockouts, explosion, flood, earthquake, bad weather, acts of God and acts of State, PPC shall be relieved of such obligations during the period that such cause continues, whether directly or indirectly.
12. SUSPENSION OF PPC'S OBLIGATIONS
- 12.1 If any amount owed by the customer to PPC by any cause whatever, whether under the contract or not, is not paid on due date, then without prejudice to any other right which it may have PPC may-
- 12.1.1 require that all amounts then owed to it by the customer from any cause whatever, shall immediately become due and payable;
- 12.1.2 until the amount is paid, suspend the carrying out of any of its then uncompleted obligations to the customer from any cause whatsoever; the carrying out of any of its then uncompleted obligations to the customer from any cause whatsoever;
- 12.1.3 terminate any credit facilities granted to the customer, under the contract or not.
13. CANCELLATION
- 13.1 PPC may cancel the contract or uncompleted part of it forthwith, if the customer-
- 13.1.1 commits, or permits a commission of a breach of any of the terms or conditions of the contract; or
- 13.1.2 being an individual, dies or is provisionally or finally sequestered or surrenders his estate; or
- 13.1.3 being a partnership, the partnership is terminated; or
- 13.1.4 being a company or close corporation is placed under provisional or final order of liquidation or judicial management; or
- 13.1.5 comprises or attempts to compromise generally with any of its creditors.
- 13.2 PPC's rights in terms of point 13.1 above shall not be exhaustive and shall be in addition to any other rights it may have whether under the agreement or otherwise.
- 13.3 Upon termination of the contract for any reason whatever –
- 13.3.1 all amounts then owed by the customer to PPC, in terms of the contract, shall become due and payable forthwith;
- 13.3.2 PPC may retake possession of any product in respect of which ownership has not passed.
14. WARRANTIES
- 14.1 PPC warrants that at the time of any sale, unless otherwise stipulated on any quotation, the product will comply with the relevant specifications of the South African Bureau of Standards but gives no other warranties, expressed or implied, and makes no other representations.
- 14.2 No warranty is given by PPC with regard to colour consistency of product.
- 14.3 If the product is required for a special purpose communicated to PPC no warranty is given that the product will be suitable for that purpose. The customer will be deemed to have satisfied himself as to the suitability of the product ordered, by virtue of the fact that he has placed the order.
- 14.4 PPC shall not be liable under any circumstances whatsoever for any damages, loss of profit, demurrage, whether direct or indirect, consequential or otherwise alleged to be sustained by the customer as a result of or attributed to:
- 14.4.1 product supplied by PPC being defective or incorrectly used and/or used in conjunction with materials not supplied by PPC;
- 14.4.2 any delay in the manufacture or delivery of the product in acts or omissions or negligence (gross or otherwise) of any of PPC's employees or agents or servants or any other person for whose acts or omissions PPC is liable.
- 14.5 In the event that any product does not comply with any of PPC's warranty undertakings it shall replace the product as soon as reasonably possible after the defect has been brought to its attention, subject to 5.1.3.
- 14.6 The warranty given by PPC in 14.1 is given in lieu of any common law liability, and accordingly all and any liability for:
- 14.6.1 warranties implied by law in respect of latent defects; or
- 14.6.2 the fitness of the products for the customer's purpose (in respect of which the customer must satisfy itself); or
- 14.6.3 any loss or injury arising from the supply of the products, including any loss attributable to any negligent act of PPC or its servants or agents; or
- 14.6.4 any representations or warranties as to the goods given by any of PPC's servants or agents is hereby excluded.
15. INDEMNITY
- 15.1 The parties acknowledge that in terms of section 61 of Consumer Protection Act, the producer, importer, distributor, retailer, and/or supplier, may be jointly and severally liable for any harm caused wholly or partly as a consequence of-
- 15.1.1 supplying unsafe goods;
- 15.1.2 a products failure, defect or hazard in any goods; or
- 15.1.3 inadequate instructions or warning provided to the consumer pertaining to any hazard arising from or associated with the use of any goods, irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor, retailer or supplier, as the case may be.
- 15.2 In respect of 15.1 above, each party ("indemnifying party") hereby indemnifies and holds harmless the other party from and against any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by such other party as a result of or arising out of any harm alleged or proven by a consumer himself or herself, or other person contemplated in section 4(1) of the Consumer Protection Act, to the extent that such harm is attributable to the conduct of the indemnifying party or any contravention by the indemnifying party of any applicable law.
- 15.3 It is recorded that signature of this document by the customer is without prejudice to any rights or defences which PPC may have under and in terms of the Consumer Protection Act or at law in respect of any claims made or brought against it by the customer and/or any protected consumer or purchaser of any goods supplied by PPC.
16. PROTECTED CONSUMERS
- 16.1 To the extent that the customer is a protected consumer –
- 16.1.1 clauses 4.3 and 13.1 shall be read in conjunction with the provisions of section 14 of the Consumer Protection Act;
- 16.1.2 the period referred to in clause 5.1.3 shall be 6 (six) months;
- 16.1.3 clauses 5.1.4, 5.1.5 and 5.1.13 shall not apply insofar as they contravene section 19 of the Consumer Protection Act;
- 16.1.4 clauses 5.1.11 and 8.4.2 shall not apply insofar as they contravene section 48 of the Consumer Protection Act;
- 16.1.5 clauses 5.2.4 and 14.1 shall not apply insofar as they contravene sections 55 and 56 of the Consumer Protection Act;
- 16.1.6 clause 11 shall be read in conjunction with section 19 of the Consumer Protection Act;
- 16.1.7 clauses 14.4, 14.6 and 15 shall not apply.
17. INTERPRETATION
- 17.1 In these conditions, unless the context requires otherwise –
- 17.1.1 words importing any one gender shall include the other two genders;
- 17.1.2 the singular shall include the plural and vice versa;
- 17.1.3 a reference to natural persons shall include created entities (corporate or unincorporate) and vice versa.
- 17.2 In these conditions, the headings have been inserted for convenience only and shall not be used for nor assist or affect their interpretation.
18. GENERAL
- 18.1 This document contains the entire agreement between the parties.
- 18.2 No party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this document.
- 18.3 No failure by a party to enforce any provision of these conditions shall constitute a waiver of such provision or affect in any way a party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.
- 18.4 No agreement to vary, add to or cancel these conditions shall be of any force or effect unless reduced to writing and signed by or on behalf of the parties to this agreement.
- 18.5 No party may cede any of its rights or delegate any of its obligations under these conditions.
- 18.6 The customer warrants that it is acting as a principal and not as an agent for an undisclosed principal.
- 18.7 These standard terms and conditions shall override any standard terms and conditions of purchase which the customer purports to impose and in the event of any conflict these terms and conditions shall prevail.
- 18.8 Should any provision in these conditions be found to be in contravention with the Consumer Protection Act, such provision shall be deemed to be severable from these standard terms and conditions.