

PRETORIA PORTLAND CEMENT COMPANY LIMITED - BOTSWANA ("PPC")

STANDARD TERMS AND CONDITIONS OF SALE

PPC
CEMENT



1. PURPOSE OF SELLING CONDITIONS

1.1 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:

- 1.1.1 any offer made by PPC and accepted by the customer; or
- 1.1.2 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.

1.2 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.

2. PRICE

- 2.1 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.
- 2.2 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.
- 2.3 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:
 - 2.3.1 in the case of delivery by rail or road any increase in Spoornet or Botswana Rail and/or transport rates and/or any other transport costs, including fuel costs;
 - 2.3.2 any statutes or law or regulation, by-law or notice having the effect of law.
- 2.4 PPC is a supplier and shall not be considered to be a contractor or subcontractor 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.

3. ORDERS

- 3.1 The customer accepts responsibility for safe keeping and issuing of its orders and agrees to pay for all orders which purport to be issued on its behalf and are given effect to in good faith by PPC.
- 3.2 PPC may in its discretion agree to the cancellation, variation or diversion of orders by the customers. 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.
- 3.3 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.

4. DELIVERY

- 4.1 General
 - 4.1.1 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.
 - 4.1.2 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.
 - 4.1.3 The customer must give PPC written notice of any claim based on the existence of any alleged defect in product within 14 (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.
 - 4.1.4 Clear and unrestricted access must be provided at the delivery point for offloading of the product. 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, Botswana Rail or the road transporter's records shall be prima facie proof of such delivery.
 - 4.1.5 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 of failure to deliver any product or service.
 - 4.1.6 PPC's obligation to deliver the product shall in all cases be subject to the following conditions precedent:
 - 4.1.6.1 the availability to PPC of all products and services required for the manufacture of products where the products in question are manufactured by PPC;
 - 4.1.6.2 the timeous 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;
 - 4.1.6.3 the timeous receipt by PPC of any instructions required by PPC from any customer for the manufacture, purchase or supply of products.
 - 4.1.7 If the delivery is to be made in instalments, then the provisions of this clause 4 shall apply to each instalment.
 - 4.1.8 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 customers account.
 - 4.1.9 It is the obligation of the customer to ensure that any bulk product ordered is offloaded into the correct silo or bin.
 - 4.1.10 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.
 - 4.1.11 Any cost 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.
 - 4.1.12 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.
 - 4.1.13 All sizes, weights and other specifications given by PPC are approximate only, subject to the provisions of the Botswana Weights and Measures Act, CAP. 43:06 date of commencement 1 December 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 customers declared purpose.
 - 4.1.14 Should a customer require abnormal packaging this will be carried out at the customer's cost.
 - 4.1.15 Any delivery note or waybill (copy or original) held by PPC, signed by the customer or a person duly authorized, by the customer, shall be prima facie proof that delivery was made to the customer.
 - 4.1.16 Where the need arises, PPC reserves the right to supply a product conforming to the same specifications (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.

4.2 Delivery by road

- Unless otherwise stipulated on any quotation, orders for delivery by road are subject to the following requirements:
- 4.2.1 Bulk product will be delivered and pumped into a silo provided by the customer to an approved and accessible site.
 - 4.2.2 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 be diverted to another site, the customer will be responsible for any additional transport or any other costs that may be incurred.
 - 4.2.3 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 issue by PPC's representative of a delivery note signed on behalf of PPC. PPC's delivery notes shall for all purposes be deemed to be accurate in all respects and be binding on the customer.
 - 4.2.4 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.

4.3 Delivery by rail

- 4.3.1 Orders for railed product are accepted in full truck loads in accordance with tariffs and conditions laid down by Spoornet or Botswana Rail.
- 4.3.2 In the case of delivery to a unattended rail siding, delivery will take place on arrival of the consignment at the siding, and Spoornet or Botswana Rails records will be prima facie proof of such delivery.
- 4.3.3 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 or Botswana Rail charges or levies will be for the customer's account.
- 4.3.4 All other charges at destination are for the customer's account.
- 4.3.5 All and any demurrage charges levied by Spoornet or Botswana Rail on PPC shall be for the customer's account.

4.4 Delivery at the factory

- 4.4.1 Customers shall make their own arrangements for transport.
 - 4.4.2 Maximum orders will be governed by the relevant statutes. Axle loading and any overloading will be the responsibility of the customer.
 - 4.4.3 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.
 - 4.4.4 Delivery shall be deemed to take place when PPC's representative issues a delivery note signed on behalf of PPC.
 - 4.4.5 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 any 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.
- ### 4.5 Spreading
- 4.5.1 Spreading will be under the direct control of the customer or its representatives.
 - 4.5.2 Full tanker loads (of a minimum of 22 metric tons) only will be supplied.
 - 4.5.3 No guarantee is given as to the tolerance of the spread.
 - 4.5.4 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.
 - 4.5.5 It is the responsibility of the customer or his representatives to break the tanker seals and to ensure that the tanker is fully discharged.
 - 4.5.6 Standing time of 30 (thirty) minutes is permitted, thereafter a standing time charge at the rate specified on any quotation will be levied.

5. OWNERSHIP AND RISK

- 5.1 Subject to clause 4 the risk in the product shall pass on delivery.
- 5.2 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.

6. PPC'S SILOS

- 6.1 The customer shall enter into a separate equipment loan agreement with PPC prior to the placement of any silo or other equipment.

7. PAYMENT

- 7.1 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.
- 7.2 The customer agrees that interest shall be paid at the maximum legal interest rate on any moneys past the due date to PPC and that interest shall be calculated daily and compounded monthly from the date of acceptance of the order.
- 7.3 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.
- 7.4 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 note of any carrier acting as an agent for PPC as stated in clause 4.1.15.
- 7.5 The contract price shall be paid by the customer:
 - 7.5.1 in Botswana currency free from bank and other charges at such address in Botswana as PPC may require;
 - 7.5.2 without any deduction or set off on presentation of invoice.

8. GOVERNING LAW

These terms and conditions shall be governed by and interpreted in accordance with the law of Botswana in all respects.

9. JURISDICTION

- 9.1 If the customer is a resident or carries on business in Botswana, then PPC shall be entitled to institute any proceeding against the customer arising out of the contract, in any Magistrates Court having jurisdiction over the customer, even if the cause of action in question exceeds the jurisdiction of the court.

- 9.2 Subject to 9.3 if the purchaser is not a resident of and does not carry on business in Botswana, then the customer consents and submits to the jurisdiction of the Supreme Court of Botswana, and all courts of Appeal there from for all purposes arising out of the contract.
 - 9.3 If the customer is a resident or carries on business in South Africa, 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.
- ### 10. 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, fire, 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.
- ### 11. SUSPENSION OF PPC'S OBLIGATIONS
- 11.1 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:
 - 11.1.1 require that all amounts then owed to it by the customer from any cause whatever, shall immediately become due and payable;
 - 11.1.2 until the payment is made, suspend the carrying out of any of its then uncompleted obligations to the customer from any cause whatsoever;
 - 11.1.3 terminate any credit facilities granted to the customer, whether under the contract or not.
- ### 12. CANCELLATION
- 12.1 PPC may cancel the contract or uncompleted part of it forthwith, if the customer:
 - 12.1.1 commits, or permits a commission of a breach of any of the terms or conditions of the contract; or
 - 12.1.2 being an individual, dies or is provisionally or finally sequestrated or surrenders his estate; or
 - 12.1.3 being a partnership, the partnership is terminated; or
 - 12.1.4 being a company or close corporation is placed under provisional or final order of liquidation or judicial management; or
 - 12.1.5 comprises or attempts to compromise generally with any of its creditors.
 - 12.2 PPC's rights in terms of point 12.1 above shall not be exhaustive and shall be in addition to any other rights it may have whether under the agreement or otherwise
 - 12.3 Upon termination of the contract for any reason whatever -
 - 12.3.1 all amounts then owed by the customer to PPC, in terms of the contract, shall become due and payable forthwith;
 - 12.3.2 PPC may retake possession of any product in respect of which ownership has not passed.
- ### 13. WARRANTIES
- 13.1 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.
 - 13.2 No warranty is given by PPC with regard to colour consistency of product.
 - 13.3 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.
 - 13.4 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
 - 13.4.1 product supplied by PPC being defective or incorrectly used and/or used in conjunction with materials not supplied by PPC;
 - 13.4.2 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.
 - 13.5 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 4.1.3
 - 13.6 The warranty given by PPC in 13.1 is given in lieu of any common law liability, and accordingly all and any liability for:
 - 13.6.1 warranties implied by law in respect of latent defects; or
 - 13.6.2 the fitness of the products for the customer's purpose (in respect of which the customer must satisfy itself); or
 - 13.6.3 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
 - 13.6.4 any representations or warranties as to the goods given by any of PPC's servants or agents is hereby excluded.
- ### 14. INTERPRETATION
- 14.1 In these conditions, unless the context requires otherwise -
 - 14.1.1 words importing any one gender shall include the other two genders;
 - 14.1.2 the singular shall include the plural and vice versa;
 - 14.1.3 a reference to natural persons shall include created entities (corporate or unincorporate) and vice versa.
 - 14.2 In these conditions, the headings have been inserted for convenience only and shall not be used for nor assist or affect their interpretation.
- ### 15. GENERAL
- 15.1 This document contains the entire agreement between the parties.
 - 15.2 No party shall have any claim or right of action arising from any undertaking, representation or warranty not included in this document.
 - 15.3 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.
 - 15.4 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.
 - 15.5 No party may cede any of its rights or delegate any of its obligations under these conditions.
 - 15.6 The customer warrants that it is acting as a principal and not as an agent for an undisclosed principal.
 - 15.7 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.