



**LAFARGE INDUSTRIES SOUTH AFRICA (PROPRIETARY) LIMITED**  
(Reg. No. 2005/033309/07)

**LAFARGE MINING SOUTH AFRICA (PROPRIETARY) LIMITED**  
(Reg No. 2005/033162/07)

## CREDIT ASSESSMENT FORM

Application to open or maintain an account with the abovementioned companies

**Full registered name of applicant / customer**

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**Trading name:**

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Please complete the relevant sections:

Type of Business	Sections
JSE Listed companies and State Owned Entities (SOE)	1, 2 and 5
Non Profit Companies (NPC)	1, 2, 3 and 5
Partnership, Joint Venture ,Sole Trader and Trust entities	1, 2, 3, 4 and 5
Private Companies and Close Corporations	1, 2, 3, 4 and 5

**Please complete the relevant attachment as indicated in Section 3**

### Attachments

1. Deed of Suretyship
2. Cross company guarantee
3. Cession of Book Debt

**Cement, Aggregates and Concrete**  
35 Westfield Road  
Longmeadow Business Estate  
Longmeadow, Extension 11, Edenvale  
Private Bag X26, Gallo Manor, 2052  
Telephone (011) 657-0000  
Facsimile (011) 657-1087/2222  
Email : lafarge.applications@lafarge.com

Initial
Date

# CREDIT ASSESSMENT FORM

## SECTION 1

Street address: .....  
 ..... Code: .....

Postal address: .....  
 ..... Code: .....

Telephone No: ..... Fax No: ..... Cell No: .....

Email address: .....

Name of ultimate Holding Company in respect of Proprietary Companies, NPC's and SOE's, if applicable (please provide group organogram if not a listed entity): .....

Annual Turnover: .....

Accounts department contact name and number: .....

Registration No (in respect of companies and close corporations): .....

VAT Registration No: .....

DETAILS OF SOLE PROPRIETOR / PARTNERS / DIRECTORS / MEMBERS / TRUSTEES				
	Full Name	Address	ID Number	Telephone Number
1.				
2.				
3.				
4.				
5.				
6.				

If the above space is not sufficient, please attach a list of directors on a company letterhead

## SECTION 2

TRADE REFERENCES					
	Name of Supplier	Credit Limit	Contact Person	Telephone Number	Years with Supplier
1.					
2.					
3.					
4.					

Name of Banker: ..... Branch: .....

Account Name: ..... Account Number: .....

Details of security held by bank (surety, mortgage bond, cession, etc.): .....

Maximum credit limited required (estimated value of two months purchases incl VAT) R.....

ALLOCATION OF CREDIT LIMIT BY PRODUCT LINE (RAND)		
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<input type="text"/> CEMENT	<input type="text"/> AGG	<input type="text"/> RMX
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Initial Date
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**BUSINESS INFORMATION**

Nature of business? .....  
 Date business commenced? ..... Number of years under present ownership? .....

**SECTION 3**

Are business premises  OWNED  LEASED  RENTED

**DETAILS OF FIXED PROPERTY**

	Registered Name	Year Purchased	Current Market Value	Bond Holder	Bond Value
1.					
2.					
3.					

**PLEASE TICK THE RELEVANT ANSWER**

Has the company / close corporation / directors / members / trustees issued/signed any guarantees in favour of other creditors?  YES  NO

Have the principals ever been directors of a business that was liquidated?  YES  NO

Has the business ever been declared insolvent / entered into an arrangement with creditors / applied for Business Rescue procedures?  YES  NO

Have your book debts been ceded?  YES  NO

If yes to any of the questions above please provide the necessary details and attach to the application.

If not submitted with your application, are your latest financial statements available for inspection at your offices?  YES  NO

**PLEASE TICK (✓) WHICH FORM OF SECURITY YOU ARE PREPARED TO PROVIDE LAFARGE WITH**

- Deed of Suretyship where fixed property is recorded in either individual or trading capacity (Note that in a personal capacity a statement of assets and liabilities will be required)
- Bank Guarantee
- Payment/Cross Company guarantee issued by a third party, eg a holding company , fellow subsidiary , insurance company etc
- Notarial Bond registered in Lafarge's name against fixed or moveable property (please note that registration and valuation costs etc are for the applicant's account)
- Cession of Book Debt (To be accompanied by the latest age analysis)
- Cession/letter of undertaking from developer/financial institution
- None of the above

Initial
Date

## SECTION 4

The following documents are required:

Please tick (✓) the appropriate box to indicate which documents have been attached.

- Copy of ID documents (Partnership, Sole Traders, Directors of Private Companies and Close Corporations)
- Copies of company registration documents
- VAT clearance certificate.
- Copy of most recent audited financial statements, if required facility exceeds R500,000.00.
- Personal statement of assets and liabilities of the individual that has indicated willingness to do so in Section 3 above.
- Trust Deed in the case of a Trust
- JV Agreement
- Copy of board resolution authorising the signatory to sign the application (required if all directors/members have not signed below)

## SECTION 5

I/We warrant that the information contained herein is true and correct in every respect. I/We undertake to notify LAFARGE INDUSTRIES SOUTH AFRICA (PTY) LIMITED / LAFARGE MINING SOUTH AFRICA (PTY) LIMITED in writing immediately of any change in this information. I/We am duly authorized to sign this application. I/We acknowledge that I/We have read and understood the terms and conditions attached hereto and agree that such terms and conditions shall be binding upon me/us/the company/close corporation in respect of all transactions entered into between myself/ourselves and LAFARGE INDUSTRIES SOUTH AFRICA (PTY) LIMITED / LAFARGE MINING SOUTH AFRICA (PTY) LIMITED

I/We agreed that LAFARGE INDUSTRIES SOUTH AFRICA (PTY) LIMITED / LAFARGE MINING SOUTH AFRICA (PTY) LIMITED use the services and records of a registered credit bureau and other suppliers for information required in the original and future assessment of credit facilities. I/We agree that LAFARGE INDUSTRIES SOUTH AFRICA (PTY) LIMITED / LAFARGE MINING SOUTH AFRICA (PTY) LIMITED may disclose information regarding the applicant's credit worthiness and conduct of the account to any registered credit bureau and other suppliers to the industry.

Signed at: .....on.....

Name: .....Signature: .....Capacity: .....

and/or

## (Cash and Credit Transactions)

### STANDARD TERMS AND CONDITIONS APPLICABLE TO THE SALE OF GOODS AND THE PROVISION OF SERVICES

The Company's quotation or tender for the sale of Goods and the provision of Services and any contract resulting therefrom shall be subject to the following terms and conditions which shall apply to the exclusion of all other terms and conditions, whether express or implied, unless the Company specifically agrees in writing to accept any variation hereto. The Customer, by accepting delivery of any Goods or the rendition of any Service pursuant hereto, acknowledges that no terms and conditions which the Customer purports to attach to its acceptance, nor any terms and conditions which might have been attached to the Customer's order, shall be binding on the Company and the Customer agrees that all such conditions shall be deemed to have been substituted by these terms and conditions.

#### SECTION A: STANDARD TERMS AND CONDITIONS APPLICABLE TO ALL TRANSACTIONS (GOODS AND SERVICES)

	3.	PAYMENT TERMS
<b>1. DEFINITIONS</b>		
1.1. "Agreement" means the Application including the terms and conditions and any additions or amendments to this Agreement;	3.1.	In return for the supply of the Goods and Services the Customer agrees to pay the Company the Price as set out in more detail in the quotation.
1.2. "Application" means the Application by the Customer to purchase Goods on credit or on non credit terms from the Company and that is attached to these terms and conditions;	3.2.	In the event that the Company has granted the Customer credit facilities in writing, the Price shall be paid by the Customer, without deduction or set-off of any claims of the Customer against the Company, within 30 (thirty) days from the date of the Company's statement of account. However, if day 30 falls on Saturday, Sunday or public holiday, payment must be made on or before the preceding business day.
1.3. "COLTO" means the Committee of Land and Transport Officers, a committee established by the Department of Roads and Transport of the Government of the Republic of South Africa;	3.3.	The Company reserves the right to withdraw or amend any credit facilities at any time which may have been granted to the Customer and to require the Customer to furnish guarantees and/or suretyships that are acceptable to the Company for its current or future obligations.
1.4. "Company" means Lafarge Industries South Africa (Proprietary) Limited (Registration No. 2005/033309/07); and/or Lafarge Mining South Africa (Proprietary) Limited (Registration No. 2005/033162/07) as the case may be;	3.4.	The Company may charge the Customer interest on any overdue amount at the prime overdraft rate plus 3% of First National Bank, Division of FirstRand Bank Limited, calculated from the due date. A certificate signed by any manager of the aforesaid bank (whose authority and appointment it shall not be necessary to prove) as to the prime overdraft rate prevailing from time to time shall constitute <i>prima facie</i> proof (sufficient evidence) of that rate.
1.5. "Consumer" means a consumer as defined in the CPA;	3.5.	Should the Customer fail to clearly indicate to the Company which items appearing on the Company's statement it is paying, the Company reserves the right to apply such payment by the Customer to those items in respect of which payment has been overdue for the longest time.
1.6. "CPA" means the Consumer Protection Act 68 of 2008 and any promulgated regulations thereto and as amended from time to time;	3.6.	Payment must be made for the total amount that the Customer owes the Company as set out on the invoice(s) issued to the Customer.
1.7. "Customer" means any person, including a Consumer with whom the Company concludes an Agreement for the sale of any Goods or the provision of any Services;	3.7.	Should any amount not be received by the Company on or before due date, all other amounts payable and due by the Customer to the Company, shall immediately (and without notice to the Customer) become both due and payable.
1.8. "Goods" means any tangible object supplied by the Company to the Customer in terms of this Agreement;	3.8.	The Customer shall not be entitled to withhold payment for any reason whatsoever notwithstanding that any dispute may be pending between the parties nor shall the Customer be entitled to make any deduction from the Price or to set off any alleged claim against the amounts due by the Customer to the Company.
1.9. "NEMA" means the National Environmental Management Waste Act of 2008, as amended from time to time;	3.9.	In addition to the rights of the Company above, if the Customer:
1.10. "NRCS" means the National Regulator for Compulsory Specifications	3.9.1	does not pay the Company on time;
1.11. "Price" means the Price agreed between the Company and the Customer for the Goods and/or the Services, together with value added tax thereon;	3.9.2	commits a material breach of this Agreement;
1.12. "SABS" means the South African Bureau of Standards;	3.9.3	does not pay the required full amount in advance;
1.13. "SANS" means the South African National Standards;		then the Company may suspend any supply of Goods or provision of Services until the Customer has paid or remedied the breach to the satisfaction of the Company.
1.14. "SARMA" means the South African Readymix Association;		
1.15. "Services" means the Services provided by the Company to the Customer in terms of this Agreement.		
1.16. "TCI" means the Concrete Institute NPC.		
<b>2. COMMENCEMENT AND DURATION OF THIS AGREEMENT</b>		
2.1 By placing an order with the Company or making an Application, the Customer agrees to enter into an Agreement with the Company for the supply of Goods and Services. If so, this Agreement will begin and be binding on the Customer when the Company:		
2.1.1 accepts the order or the Application as the case may be; and		
2.1.2 supplies the Goods or Services to the Customer.		
2.2 This Agreement shall, subject to the provisions of clauses 8 continue for an indefinite period.		

- 4. QUOTATIONS**
- 4.1. Any quotation by the Company is open for acceptance for a period of 30 days from the date appearing on the quotation, unless revoked earlier in terms of written notice to the Customer or otherwise agreed to in writing between the Company and the Customer.
- 4.2. The Price quoted for the Company's Goods or Services will, upon acceptance by the Customer, whether such acceptance is tacit or written, constitute the Price.
- 4.3. The Price quoted by the Company is based on the site location as provided by the Customer. The Company reserves the right to amend the Price quoted should the site location be different from the initial site location provided by the Customer.
- 5. CERTIFICATE**
- The Customer acknowledges that a certificate signed by any senior manager of the Company (whose authority and appointment shall not be necessary to prove) shall be *prima facie* proof (sufficient evidence) of the amount of such indebtedness to the Company. Such certificate shall be sufficient proof of the Customer's indebtedness for the purposes of provisional sentence and/or summary judgment proceedings against the Customer, or for any other purpose whatsoever.
- 6. FINANCIAL CENTRE INTELLIGENCE ACT**
- 6.1. The Customer acknowledges that in terms of Section 29 (1) of the Financial Centre Intelligence Act, No 38 of 2001 ("FICA") businesses are required to report any suspicious or unusual transaction or series of transactions to the Financial Intelligence Centre and in particular where the Company has received, or is about to receive, the proceeds of suspected unlawful activities in payment of the Customer's indebtedness to the Company.
- 6.2. The Customer indemnifies or holds the Company harmless against any claim of whatsoever nature instituted against the Company for any damage or harm suffered by the Customer or a third party arising from any action taken by the Company in discharging its obligations in terms of FICA.
- 7. SAFEKEEPING OF CUSTOMER'S ORDERS**
- The Customer accepts responsibility for the safekeeping and issue of its orders and agrees to pay for orders issued on its behalf and given effect to in good faith by the Company.
- 8. BREACH AND CANCELLATION OF THE AGREEMENT**
- 8.1. If the Customer does not pay any and/or all amounts due to the Company on or before the due date for payment, then, subject to the provisions of clause 8.2, the Company reserves the right to, on notice to the Customer:
- 8.1.1 charge interest on the overdue amount at the interest rate referred to in clause 3.5 calculated from the due date of payment to the date that the actual payment is credited;
- 8.1.2 take action in terms of clause 8.2 of this Agreement;
- 8.1.3 inform any reputable credit bureau (s) of payment default; and
- 8.1.4 suspend the supply of the Goods or provision of Services.
- 8.2. If the Customer commits a breach or if there is a failure by the Customer to comply with any of the terms and conditions of this Agreement and the Customer remains in breach for a period of 7 (seven) working days in the case of a Customer who is not a Consumer and 20 (twenty) working days in the case of a Customer who is a Consumer, after delivery of a written notice to the Customer by the Company requesting the Customer to remedy the breach:
- 8.2.1 the Company will be entitled to immediately cancel this Agreement;
- 8.2.2 the Company will be entitled to immediately charge the Customer for the use of the Goods or Services up to the date of cancellation; and
- 8.2.3 the full outstanding amount shall immediately become due and payable.
- 8.3. In addition to the above remedies and any other rights that the Company has in terms of law, in the event that the Customer does not remedy such breach, the Company shall be entitled to claim damages from the Customer that it may have suffered due to the Customer's breach of the terms and conditions of this Agreement.
- 8.4. Despite the provisions above, either party may cancel this Agreement immediately by giving each written notice to that effect.
- 9. USE OF CUSTOMER'S INFORMATION**
- 9.1. The Customer warrants and guarantees that all information supplied to the Company by the Customer in the Application and in terms of this Agreement is true and correct.
- 9.2. The Customer agrees to inform the Company immediately should there be any change of whatsoever nature in any of its information, including its physical address, previously supplied to the Company.
- 9.3. As and when necessary, the Customer consents to the Company obtaining and/or disclosing the Customer's information supplied to the Company as follows:
- 9.3.1 to either credit grantors and/or credit bureaux and/or banks and/or other financial institutions in order to ascertain information relating to the Customer's creditworthiness (before acceptance of this Agreement) and for fraud prevention purposes in order to process any payment transactions necessary for and relative to this Agreement;
- 9.3.2 to attorneys and/or debt collection agencies in the event that the Customer is in breach of this Agreement;
- 9.3.3 to the Company's agents or trade partners and/or consultants and or service providers but only to the extent necessary and in order to allow the supply of the Goods and/or provision of the Services;
- 9.3.4 to the Company's affiliates and or beneficiaries but only to the extent necessary and in order to allow the supply of any goods and or product and or services to the Customer by such affiliates;
- 9.3.5 to consumer research institutions for the purposes of conducting research on improving our Goods and Services offered to the Customer in terms of this Agreement; and
- 9.3.6 for purposes of the Company publishing a directory containing the name, address, details and contact numbers of its Customers.
- 9.3.7 The Customer may share Confidential or Personal Information with other Lafarge affiliates or beneficiaries where necessary in connection with these terms and conditions
- 9.4. The Company will not disclose the Customer's information to any other person or institution other than as stated under clause 9.3 or if the Company is compelled to do so in terms of law and/or a court of law. The Company hereby undertakes that it will only disclose such information as is required in terms of any law and or a court of law.
- 9.5. The Company shall only collect, use, store or process the information received from the Customer:
- 9.6.1.in compliance with the legislation applicable within the Republic of South Africa (RSA);
- 9.6.2.as is necessary for the purposes of these terms and conditions; and
- 9.6.3.in accordance with the lawful and reasonable instructions of the Customer.
- 9.6. The Company hereby confirms that it shall comply with the security and data protection obligations equivalent to those imposed on it in terms of the applicable data protection legislation in RSA , and failing such legislation, it shall take, implement and maintain all such technical and organisational security procedures and measures necessary or appropriate to preserve the security and confidentiality of the Customer's information in its possession and to protect such information against unauthorised or unlawful disclosure, access or processing, accidental loss, destruction or damage.

**10. JURISDICTION**

Save for any disputes to which clause 25 applies, the Customer hereby consents, in terms of Section 45 of the Magistrate’s Court Act No. 32 of 1944 as amended, to the jurisdiction of the Magistrate’s Court having territorial jurisdiction in respect of any action instituted against the Customer by the Company for the recovery of monies or for legal action in terms hereof. It shall nevertheless be entirely within the discretion of the Company as to whether to proceed against the Customer in such Magistrate’s Court or any other court having jurisdiction.

**11. WHOLE AGREEMENT**

This Agreement constitutes the whole Agreement between the parties and no variation, alteration, deletion of or addition to these terms will bind the parties unless it is stipulated in writing and agreed to by both parties.

**12. EXTENSION OF TIME (ALSO REFERRED TO AS AN INDULGENCE)**

No leeway, extension of time or other lenience which the Company may offer to the Customer will in any way prevent the Company from enforcing any of its rights in the future, without notice, by requiring the customer’s strict and timely compliance with each term and condition of this Agreement.

**13. LEGAL COSTS NOTICES**

To the extent permitted by law, should the Company elect to take any legal action against the Customer arising from breach of any terms and conditions of this Agreement where the Company hired the Services of an attorney and/or advocate and/or debt collector and/or tracing agent then the Customer will be liable for all the relevant legal cost and/ or expenses incurred on the appropriate scale.

**14. NOTICES**

The parties choose their physical addresses as reflected on the Application forms as their respective *domicilium citandi et executandi* (physical address) for service upon it of all notices and process. The parties undertake to notify the other expeditiously of any change to its address.

**15. CESSION (TRANSFER) AND DELEGATION (HANDING OVER)**

15.1 The Customer shall not be entitled to transfer any of its rights to any other entity or person (this is known as ceding any of your rights) or transfer any of the Customers obligations or responsibilities to any other entity or person (this is known as delegating or handing over any of your obligations or responsibilities, in terms of this Agreement without the prior written consent of the Company.

15.2 The Company undertakes not to withhold its consent unreasonably.

**16. APPLICABLE LAW**

The terms and conditions of this Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.

**17. AMENDMENTS**

The Company is entitled on written notice to the Customer, to amend and/or vary the terms and conditions of this Agreement as a result of any new and/or amended law(s), tax (es) and regulation(s). If Company amends and/or vary the terms and conditions, the Company will notify the Customer at its chosen address of such amended terms and conditions.

**18. UNENFORCEABLE PROVISIONS**

If any of the terms and conditions of this Agreement are unenforceable, illegal, void, or contrary to public policy then

they will be considered to be legally separated from the rest of this Agreement. The rest of the provisions of this Agreement will, however, remain binding and enforceable and in full force and effect.

**19. AUTHORITY AND INDEMNITY**

The person signing this Agreement warrants that he or she has the necessary authority to enter into this Agreement and hereby indemnifies the Company against any liability, claim, damage or loss that a third party might have arising out of this Agreement.

**20. FORCE MAJEURE (Act of God)**

- 20.1. If the Company or the Customer or the Consumer (“the party” is prevented or restricted directly or indirectly from carrying out all or any of its obligations under this agreement 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 cause or contingency beyond the control of the party, the party so affected will be relieved of its obligations hereunder during the period that such event and its consequences continue but only to the extent so prevented and will not be liable for any delay or failure in the performance of any obligations hereunder or loss or damages either general, special or consequential which the other part may suffer due to or resulting from such delay or failure, provided always that written notice will forthwith be given of any such inability to perform by the affected party.
- 20.2. The party invoking force majeure will upon termination of such event giving rise thereto forthwith give written notice thereof to the other party.
- 20.3. Should such force majeure continue for a period of more than 90 (ninety) days then either party will be entitled forthwith to cancel this agreement in respect of any obligations still to be performed hereunder.

**SECTION B: CONDITIONS APPLICABLE TO THE SALE OF GOODS**

**NB: The terms and conditions set out hereunder are in addition to the “Standard Terms and Conditions Applicable to both Sales and Services transactions” set out in Section A.**

**21. PRICE**

- 21.1. Unless otherwise agreed in writing, the Goods will be supplied at the ruling price on the date of dispatch from the factory, depot, quarry, plant or branch.
- 21.2. Prices are subject to adjustment for any increases in the cost of Goods on and/or delivery that may arise between the date of quotation and the delivery of the Goods, arising directly or indirectly from any cause whatsoever, whether statutory or otherwise.

**22. DELIVERY OF GOODS**

- 22.1. Deliveries of Goods will take place between normal working hours of 07h00 to 17h00 Monday to Friday, excluding public holidays. Deliveries outside normal working hours could be subject to an extra charge.
- 22.2. The Company shall endeavour to effect delivery of the Goods on the agreed date and time to the Customer at the Customer’s premises or the Customer’s nominated delivery site address, provided that the Company receives a minimum of 48 hours notice of the intended delivery date if the agreed date has changed or if no date has been previously agreed.
- 22.3. The Company shall not be responsible for delays in delivery or non-delivery of Goods whatsoever due to causes beyond the Company’s control (eg. adverse weather conditions, road congestion, labour-related actions, shortage of stock, delays on the part of subcontracted transport Services), nor will the Company accept liability for damages or for any loss the Customer may suffer pursuant thereto, of whatsoever nature arising from the late delivery or non-delivery of Goods.
- 22.4. Subject to the provisions of clause 22.3 the Customer shall not be entitled to cancel or repudiate any order/s and/or purchase/s and/or refuse delivery and/or claim damages

Initial
Date

- and/or set-off payment from the Company due to late and/or defective delivery. The Company's responsibility shall be to notify the Customer expeditiously of the events giving rise to the delay in delivery or non-delivery in circumstances where such delay of delivery or non-delivery is expected to extend beyond one day after the time/date of the agreed delivery schedule.
- 22.5. The provisions of clause 22.4 shall not apply to a Consumer.
- 22.6. Should adverse weather conditions or site problems necessitate a change in the agreed delivery date of the Goods, the Customer shall advise the Company as soon as possible thereof. The Customer shall, in any event, be liable for the Price of any Goods already batched prior to notification of the delay.
- 22.7. The Customer accepts responsibility and liability for whatever means or method it chooses to adopt for the handling, placing, storage and consolidation of the Goods after discharge from the delivery vehicle. Furthermore, the Customer accepts responsibility and liability for any lack of quality, fault or failure of the Goods resulting from such handling, placing, storage or consolidation of the Goods.
- 22.8. The Customer shall ensure that routes to and from the points of delivery of Goods on site are safe and suitable for the delivery vehicles, and that full and free access is available for the delivery vehicles of the Company or its transport service providers.
- 22.9. The Customer shall ensure that the delivery vehicles of the Company or its transport service providers offload the Goods at the Customer's desired point on the site. In the event of the Goods being offloaded at an incorrect point due to a fault on the part of the Customer, the Company shall not be liable for any loss arising there from, whether direct, consequential, special or general.
- 22.10. The Parties hereby indemnify each other, their agents and employees and holds them harmless against any loss, damage or liability sustained or incurred by either party, agents or employees arising from any cause whatsoever while on the Customer's site, provided the loss, damage liability was not occasioned by negligence of the other party.
- 22.11. The Customer, its employees or agents shall sign the Company's delivery note and this shall constitute *prima facie* proof (sufficient evidence) that the type and quantity of Goods recorded thereon was delivered and accepted by the Customer. In the event of a dispute regarding the delivery of the Goods and/or the quantity or quality, the onus of proving that the Goods was not delivered and/or that the quantity or quality thereof was not in accordance with the Customer's order, shall rest with the Customer.
- 22.12. Should the Customer decide to utilise its own transport vehicles and or any third party, it shall not hold the Company liable for any damages including lost time as a result of the use of such transport.
- 22.13. If the Company has any reason in its absolute discretion to be concerned about the creditworthiness of the Customer, the Company shall have the right to suspend and/or withhold deliveries of Goods to the Customer.
- 22.14. Subject to any provision to the contrary herein contained, the Customer shall be entitled to cancel the order or return the Goods (excluding readymix concrete) but the Company shall be entitled to charge a cancellation fee or a reasonable fee for the return of the Goods.
- 22.15. The Customer is in terms of the delivery of goods regarded as the owner and generator of any residue returned to the Company, and as such has in terms the NEMA the obligation to ensure the residue is disposed of at an appropriately permitted facility.
- 23. OWNERSHIP AND RISK**
- 23.1. Notwithstanding the delivery of any Goods to the Customer, ownership of the Goods shall not pass until the Company has received payment in full in respect of the Price of such Goods. In the event of payment not being timeously effected, the Company reserves the right to recover possession of such Goods immediately, without notice and without the necessity to first cancel the Agreement of sale in respect of such Goods.
- 23.2. Risk in the Goods shall pass to the Customer at the point of delivery of the Goods (i.e. where signed acceptance of the Goods takes place, or in the case of collection of the Goods, on despatch from the Company's premises).
- 23.3. Where the Customer has appointed its own transport service provider to effect delivery of the Goods, the Company's responsibility for providing proof of delivery of Goods will be limited to proving that the Goods were accepted by a person purporting to be the transport service provider. In this case, risk shall pass to the Customer on delivery of the Goods to the transport service provider.
- 23.4. The Company reserves the right to refuse to enter the Customer's site if in the Company's view the Customer's site is unsafe.
- 23.5. In the case of delivery of Goods to any unattended rail siding, risk in the Goods shall pass to the Customer on arrival of the consignment at the siding and Transnet's records will constitute *prima facie* proof of such delivery.
- 23.6. Until the Price of the Goods sold and delivered has been paid in full, the Customer shall ensure that the Goods are adequately insured against all appropriate risks.
- 24. WARRANTIES FOR A CUSTOMER**
- This clause shall not apply to a Consumer:
- 24.1. The Company warrants that the Goods delivered complies with the details shown on the delivery note or Service invoice and complies with the Company's standard specification or strength mix for such Goods.
- 24.2. The onus shall be on the Customer to ensure by examination before use that the Goods delivered is within specification.
- 24.3. Liability for breach of the warranty set out in clauses 24.1 and
- 24.3.1 shall only arise where the Customer has established, in addition to any other proof required by law, that:
- 24.3.2 the Customer has inspected the Goods before use;
- 24.3.3 the Goods has not been worked or processed since delivery;
- 24.3.4 inspection, sampling methods and interpretation of test results were done in strict compliance with the specifications therefore, these being no less stringent than those prescribed by the SABS and NRCS;
- 24.3.5 the Customer notified the Company verbally within 48 hours of its tests having revealed an alleged non-conformity with specification, provided that written notification shall be given by the Customer within a maximum of 10 days from date of delivery;
- 24.3.6 the Company was afforded every reasonable opportunity to inspect the Goods or any sample taken there from, and to submit the Goods or sample to its own examination and testing;
- 24.3.7 all records of handling, sampling, curing and testing and the interpretation of any tests were made available to the Company for inspection;
- 24.3.8 the Goods was not misused, neglected, contaminated, improperly handled or altered in any way and that no foreign material was added to the Goods.
- 24.4. Save as set out in 24.5 below, the Company shall not under any circumstances be liable for any loss or damage, whether special or general, direct or consequential, arising out of the sale of the Goods by the Company to the Customer, or from any other cause whatsoever. The Customer hereby indemnifies the Company against all claims of whatsoever nature that may be made against the Company arising from the use by any person of the Goods supplied by the Company.
- 24.5. The Company's sole liability in respect of defective Goods shall, in the Company's sole discretion, be to replace such Goods or to refund to the Customer the Price of such defective Goods.
- 25. WARRANTIES FOR A CONSUMER**
- This clause only applies to a Consumer
- 25.1. The Company warrants that the Goods delivered complies with the details shown on the delivery note or Service invoice and complies with the Company's standard specification or strength mix for such Goods.
- 25.2. Liability for breach of the warranty set out in clause 25.1 shall only arise where the Consumer has established, in addition to any other proof required by law, that:
- 25.2.1 the Consumer has inspected the Goods before use;



- 25.2.2 the Goods have not been worked or processed since delivery;
- 25.2.3 the Goods were not misused, neglected, contaminated, improperly handled, stored or altered in any way contrary to instructions and that no foreign or additional material was added to the Goods after leaving the control of the Company, retailer, distributor.

- 25.3. The Consumer warrants that it is a consumer as defined in the CPA.
- 25.4. The Consumer shall inform the Company immediately when its status as a Consumer has changed. When the status of a Consumer has changed then the provisions applicable to a Consumer in terms of these terms and conditions shall no longer apply to the Consumer.
- 25.5. The Company shall be entitled to conduct its own investigations to verify whether or not a Consumer is still a Consumer. In this regard the Consumer shall on request provide the Company with all the relevant information, including audited financial statements, to enable the Company to verify the status of the Consumer.

**26. RESOLUTION OF TECHNICAL DISPUTES**

- 26.1. In the event of a dispute arising between the Company and the Customer regarding the quality, quantity or performance of the Goods supplied by the Company, such dispute shall initially be referred to the Company's local plant manager and the Customer's site manager, who shall, within 7 days after such referral, meet and use commercially reasonable endeavours to resolve such dispute.
- 26.2. If they are unable to resolve the dispute then the matter shall be referred to the Company's and the Customer's Area Managers, who shall likewise meet within 7 days after such referral and use commercially reasonable endeavours to resolve the dispute.
- 26.3. If the dispute still remains unresolved, then the parties may refer the matter to:
  - 26.3.1 a suitably qualified, independent expert appointed by the TCI ; or
  - 26.3.2 arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa; or
  - 26.3.3 proceed directly to the jurisdiction of the courts in terms of Clause 5.
- 26.4. Neither the Company nor the Customer may resort to the jurisdiction of the courts in terms of Clause 5 without first following the procedure in Clauses 26.1 and 26.2, except to obtain urgent relief from the courts.
- 26.5. In the event of a dispute or complaint by a Consumer who purchased the Goods from a Customer who is a retailer or distributor regarding the quality, quantity or performance of the Goods supplied, the Customer must take all reasonable steps to assist the Consumer as required in terms of the CPA. The Customer shall advise the Company of the complaint and all steps taken to resolve the dispute or complaint.
- 26.6. Should the Customer not succeed in resolving the dispute or complaint then the Customer shall advise the Company accordingly and the Company shall use reasonable endeavours to resolve the complaint as soon as possible in accordance with the provisions of clauses 26.1 and 26.2.
- 26.7. In the event of a dispute or complaint by a Consumer, who purchased the Goods directly from the Company, regarding the quality, quantity or performance of the Goods supplied, the Company shall use reasonable endeavours to resolve the dispute or complaint as soon as possible in accordance with the provisions of clauses 26.1 and 26.2.
- 26.8. Despite the above, the Consumer is not prevented from referring any unresolved dispute between the Company and the Consumer to the National Consumer Commission established under the CPA.
- 26.9. Nothing in this clause prevents the Customer to take legal action against the Company.

**SECTION C: SPECIAL CONDITIONS APPLICABLE TO THE SALE OF CEMENT**

**NB: The terms and conditions set out hereunder are in addition to the "Standard Terms and Conditions Applicable to both Sales and**

**Services transactions" set out in Section A and the "Conditions Applicable to the Sale of Goods" in Section B.**

**27. CEMENT PRICE**

The Price for cementitious Goods is based on the Goods, as specified, measured by mass (metric tonnes) or by bags, as the case may be.

**28. CEMENT DELIVERIES**

- 28.1. If cement is purchased in bulk:
  - 28.1.1 the mass of the cement will be as determined by the assized massmeter at the factory or depot supplying the cement. Queries or disputes in connection with gross mass variances should be made prior to the breaking of factory seals on bulk tankers;
  - 28.1.2 the Customer shall ensure that adequate silo storage capacity is available, so as to not unnecessarily delay the off-loading of the delivery vehicle;
  - 28.1.3 the onus is on the Customer to correctly instruct the driver of the delivery vehicle to the correct silo discharge point. The Company does not accept responsibility for Goods being discharged into the incorrect silo; and
  - 28.1.4 the onus is on the Customer to ensure that product is discharged or off-loaded within 1 hour of the delivery being on site.
- 28.2. Orders for cement to be delivered by rail are only accepted in full truckloads in accordance with the tariffs and conditions laid down by Transnet.
- 28.3. Claims for shortages, damage, breakages or water damage to cementitious bag Goods must comply with the Company's Goods Return Policy for broken bags and wet bags, a copy of which is available on request.
- 28.4. The Company reserves the right to charge the Customer for loads diverted by the Customer due no fault of the Company at the Company's ruling rate from time to time.

**29. CEMENT WARRANTIES**

- 29.1. The Company warrants that, at the time of sale of any Goods, the Goods will comply with the relevant specifications of the SABS and NRCS for such Goods.
- 29.2. The Company gives no warranty as to the colour consistency of any Goods.
- 29.3. Save for the warranties referred to in clauses 29.1 and 29.2, the Company gives no other warranties, express or implied, and makes no other representations in respect of the Goods.
- 29.4. The onus shall be on the Customer to establish that the Goods ordered is suitable for the purpose for which the Goods are required by the Customer. Goods The Company gives no warranty that the Goods will be suitable for that purpose, even if such purpose has been communicated to the Company by the Customer.

**30. SHORT OR INCORRECT DELIVERY OF CEMENT**

The Customer must inform the Company within a period of 24 hours if it alleges short delivery or incorrect delivery of Goods. This will enable the Company to conduct a proper investigation of the claim and to ensure a speedy resolution to the matter.

**SECTION D: SPECIAL CONDITIONS APPLICABLE TO THE SALE OF READY MIXED CONCRETE**

**NB: The terms and conditions set out hereunder are in addition to the "Standard Terms and Conditions Applicable to both Sales and Service transactions" set out in Section A and the "Conditions Applicable to the Sale of Goods" in Section B.**

**31. CONCRETE PRICE**

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

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**32. CONCRETE DELIVERIES**

- 32.1. Part loads and deliveries outside normal working hours will be subject to an extra charge at the Company's ruling rates from time to time.
- 32.2. If a Customer requests the Company to return a load or part thereof, the Company will do so at extra charge to the Customer at the Company's ruling rate from time to time.
- 32.3. Where the delivery vehicles of Company are delayed on site for any reason whatsoever by the Customer, an extra charge may be raised at the Company's ruling rates from time to time.
- 32.4. 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.
- 32.5. The Customer must inform the Company 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.

**33. CONCRETE WARRANTIES**

- 33.1 Notwithstanding the provisions of clause 25.1, 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.
- 33.2 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 is limited to the general consistency and workability as determined by the slump test.
- 33.3 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:
  - 33.3.1 the manner in which concrete is handled, placed and consolidated; and
  - 33.3.2 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.
- 33.4 Concrete supplied to Customers where the COLTO specification applies are subject to the exclusion clauses as specified by SARMA. A copy of the exclusion clauses is available from the Company upon request.
- 33.5 The Company gives no warranty as to the colour consistency of any concrete.
- 33.6 The Company reserves the right to decline a Customer's application or request for a credit note should such application or request be received more than 60 (sixty) days after the date of invoice.

**SECTION E: SPECIAL CONDITIONS APPLICABLE TO THE SALE OF AGGREGATE**

**NB: The terms and conditions set out hereunder are in addition to the "Standard Terms and Conditions Applicable to both Sales and Service transactions set out in Section A and the "Conditions Applicable to the Sale of Goods" in Section B.**

**34. AGGREGATE PRICE**

The Contract Price for aggregate is based on the Goods, as specified, measured in its distributed state immediately after and at the point of loading, at the Company's election, either by:-

- 34.1 loose volume in full vehicle loads; or
- 34.2 mass (metric tonnes) on the Company's weighbridge.

**35. AGGREGATE DELIVERIES**

- 35.1 The Customer acknowledges that it is aware that, in the course of transporting aggregates to the point of discharge, a certain amount of settling is inevitable. Consequently the Company does not warrant the consistency of any bulk aggregate delivered to or collected from the Company's site.
- 35.2 The Customer requiring aggregate goods for specialised applications are advised to confirm with the Company's technical department to ensure that the geological make-up of the goods meet with the specification.
- 35.3 Should the Customer allege a short delivery of Goods, the Customer must ensure the Goods is not offloaded or tipped until such time as the Company's representative has had the opportunity of verifying the alleged shortage and discrepancy.

**36. AGGREGATE WARRANTIES**

- 36.1 Samples of Goods for the purpose of inspection and testing must, in the case of road base materials, have been taken prior to compaction.
- 36.2 Aggregates supplied to contracts where the COLTO specification applies are subject to the exclusion clauses as specified by ASPASA (Aggregate & Sand Producers' Association of South Africa) from time to time. A copy of the exclusion clauses is available from the Company upon request.
- 36.3 Where volumes are calculated based on dimensions supplied by the Customer the Company hereby advice that such volumes are only estimation.
- 36.4 The Company gives no warranty as to the colour consistency of any aggregates.

**SECTION F: SPECIAL CONDITIONS APPLICABLE TO THE PROVISION OF SERVICES**

**NB: The terms and conditions set out hereunder are in addition to the "Standard Terms and Conditions Applicable to both Sales and Service transactions" set out in Section A.**

**37. PRICE FOR SERVICES**

- 37.1. Services will be rendered to the Customer at the Contract Price ruling on the date such Services are rendered to the Customer.
- 37.2. Prices are subject to adjustment for any increases in the cost of rendering such Services.

**38. RENDERING OF SERVICES**

- 38.1. Services that the Company offers to the Customer shall include, but are not limited to:
  - 38.1.1 cement spreading;
  - 38.1.2 concrete pumping;
  - 38.1.3 concrete conveyor;
  - 38.1.4 laboratory testing of materials;
  - 38.1.5 concrete mix designs;
  - 38.1.6 application of Artevia;
  - 38.1.7 transportation of the Goods; and
  - 38.1.8 such other Services that the Company may provide from time to time.
- 38.2. It is the responsibility of the Customer to identify and point out to the representative of the Company the desired place on the site at which, and the manner in which, the Customer requires the Services to be rendered. In the event of the Services being rendered, at an incorrect point, the Company shall not be liable for any loss arising therefrom, whether direct, consequential, special or general.
- 38.3. In the case of the Application/spreading of cementitious Goods to roads or at a construction site, as part of the delivery process, this shall in no way whatsoever imply that the Company is acting as a sub-contractor. The Goods will only be applied in accordance with the Customer's instructions and the Company will not accept responsibility or liability for problems arising out of such Application.

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**39. SERVICES WARRANTIES**

39.1 Subject to the provisions of clause 39.2, the Company shall not, under any circumstances, be liable for any loss or damage, whether special or general, direct or consequential, arising out of the rendering of the Services by the Company to the Customer. The Customer hereby indemnifies the Company against all claims of whatsoever nature that may be made against the Company arising from the Services rendered by the Company.

39.2 The provisions of clause 39.1 shall not apply to a Consumer.

**40. GOODS ADVICE**

40.1 Subject to the provisions of clause 40.2, should a Customer request assistance or advice from a representative of the Company on the application and use of the Company's Goods, any such advice given to the Customer by the Company or its representatives is given in good faith and to the best of the Company's ability. However, under no circumstances will the Company be liable to the Customer for damages of whatsoever nature sustained by the Customer and/or any third party arising from any advice that may transpire to have been incorrect.

40.2 The provisions of clause 40.1 shall not apply to a Consumer.

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