



**APPLICATION FOR TRADE ACCOUNT  
FACILITIES**

In this Credit Application form the above company shall be referred to as the "Company."

Initial

This application, including the conditions of sale, deed of suretyship and any other documentation which we may require you to sign, form the contract between the Company and the customer. The following information is important for our (forthcoming) relationship, please ensure that you answer the questions honestly and correctly and that you read carefully and understand the contract documents.

**CUSTOMER DETAILS:**

Registered Name of Business: \_\_\_\_\_

Trading Name of Business: \_\_\_\_\_

Company/CC Registration No.: \_\_\_\_\_

Date of Registration: \_\_\_\_\_

Type of Business:	Public Company	<input type="checkbox"/>	Private Company	<input type="checkbox"/>
	Close Corporation	<input type="checkbox"/>	Partnership	<input type="checkbox"/>
	Sole Proprietor	<input type="checkbox"/>	Trust	<input type="checkbox"/>
			Other: _____	

Registered Address: \_\_\_\_\_

\_\_\_\_\_ Postal Code: \_\_\_\_\_

Physical Address: \_\_\_\_\_

\_\_\_\_\_ Postal Code: \_\_\_\_\_

Postal Address: \_\_\_\_\_

\_\_\_\_\_ Postal Code: \_\_\_\_\_

Telephone No.: \_\_\_\_\_ Cellular No.: \_\_\_\_\_

Facsimile No.: \_\_\_\_\_

E-mail Address: \_\_\_\_\_

VAT Registration No.: \_\_\_\_\_

Previous trading names / addresses of the Business:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

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Shareholders / Directors / Members / Partners / Trustees (whichever is applicable):

1. Name: \_\_\_\_\_  
Identity Number: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_ Tel: \_\_\_\_\_  
Cellular: \_\_\_\_\_ e-mail: \_\_\_\_\_
  
2. Name: \_\_\_\_\_  
Identity Number: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_ Tel: \_\_\_\_\_  
Cellular: \_\_\_\_\_ e-mail: \_\_\_\_\_
  
3. Name: \_\_\_\_\_  
Identity Number: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_ Tel: \_\_\_\_\_  
Cellular: \_\_\_\_\_ e-mail: \_\_\_\_\_
  
4. Name: \_\_\_\_\_  
Identity Number: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_ Tel: \_\_\_\_\_  
Cellular: \_\_\_\_\_ e-mail: \_\_\_\_\_
  
5. Name: \_\_\_\_\_  
Identity Number: \_\_\_\_\_  
Address: \_\_\_\_\_  
\_\_\_\_\_ Tel: \_\_\_\_\_  
Cellular: \_\_\_\_\_ e-mail: \_\_\_\_\_

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Trade References:

1. Company Name: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_ Credit Limit: \_\_\_\_\_  
Fax No: \_\_\_\_\_ Terms: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
E-mail: \_\_\_\_\_
  
2. Company Name: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_ Credit Limit: \_\_\_\_\_  
Fax No: \_\_\_\_\_ Terms: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
E-mail: \_\_\_\_\_
  
3. Company Name: \_\_\_\_\_  
Telephone No.: \_\_\_\_\_ Credit Limit: \_\_\_\_\_  
Fax No: \_\_\_\_\_ Terms: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
E-mail: \_\_\_\_\_

Bank:

Name of Bankers: \_\_\_\_\_ Branch Name: \_\_\_\_\_

Account No.: \_\_\_\_\_ Branch Code: \_\_\_\_\_

Type of Account:      Cheque       Transmission       Savings

Details of Securities held by Bank (e.g. sureties, mortgage and notarial bonds, pledges and cession of debts):

\_\_\_\_\_  
\_\_\_\_\_

Auditors/Accountants:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_ Tel: \_\_\_\_\_

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**ESTIMATED MONTHLY REQUIREMENTS:**

To accommodate you with regard to credit facilities, please indicate what volumes you envisage using from the Company and your monthly credit requirements.

	<b>Volume</b>	<b>Monthly usage rand value</b>
Readymix concrete	_____	R _____

**BUSINESS INFORMATION:**

Nature of Business: \_\_\_\_\_

Date business commenced: \_\_\_\_\_

Years under present ownership: \_\_\_\_\_

Are business premises  Owned  Rented

**DETAILS OF FIXED PROPERTY:**

	In what name is property registered?	Year Purchased	Current Market Value	Bondholder	Bond Value
1.					
2.					
3.					

**DETAILS OF LEASED / RENTED PROPERTY:**

Name of Address of Landlord: \_\_\_\_\_  
\_\_\_\_\_

Period of Lease: \_\_\_\_\_

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**PLEASE TICK CORRECT ANSWER:**

Has the customer issued any guarantees in favour of any of its creditors?

 Yes No

Have the directors or members of the customer signed any personal Suretyship in favour of any creditors?

 Yes No

Have the directors, shareholders or members ever been directors, Shareholders or members of any business that has gone into liquidation?

 Yes No

Have your book debts been ceded  Yes  No to whom \_\_\_\_\_

Date \_\_\_\_\_

Are your latest financial statements available for inspection?

If the answer to any of the above questions if yes, I hereby authorize the Company to request and receive copies of the relevant documentation

**DECLARATION:**

**I warrant that:**

- I am duly authorized to act on behalf of the customer;
- I have read and understood the conditions of sale and other contract documentation
- All the information given in this application form is true and correct.
- In terms of the National Credit Act that, if the Applicant is a juristic person, that it's annual turnover and that of any related juristic persons, does / does not (delete whichever is NOT applicable) exceed R1 000 000.00 at the date hereof
- In terms of the Consumer Protection Act that, if the applicant is a juristic person, that its turnover does / does not (delete whichever is NOT applicable) exceed R 3 000 000.00

Initial:.....

Initial:.....

**I agree:**

- To the terms and conditions set out in the Conditions of Sale;
- The Company may make any enquiries that it deems necessary and 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 agree that the company may disclose information regarding the customer's credit worthiness and conduct of the account to any registered credit bureau and other suppliers to the industry.
- That the customer will continue to be bound by the terms of this Application and the Conditions of Sale even if the Company allows it to exceed the maximum credit applied for in terms of this application for credit facilities;
- That, if I am a juristic person, the registered address, and, if I am a natural person, the physical address, on page 1 of this application form will be the *domicilium citandi et executandi* of the customer for the service of any legal process in relation to any matter arising out of this application for credit facilities.
- To notify the Company in writing immediately any change to the information which I have supplied for purposes of this application
- That the terms and conditions contained in this contract shall be binding upon the customer in respect of all transactions and dealings between the customer and the Company.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Full Names: \_\_\_\_\_

Identity No.: \_\_\_\_\_

Designation: \_\_\_\_\_

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## SURETYSHIP, CO-PRINCIPAL DEBTORSHIP AND GUARANTEE

(IF THE CUSTOMER IS A COMPANY / CLOSE CORPORATION / TRUST)

I/We the undersigned (Co-Principal Debtor/s)

Full Names in Block Letters	Full residential address	Marital status
1. _____ _____ ID _____ _____	OF _____ _____ _____	UNMARRIED/MARRIED  IN/OUT OF COMMUNITY OF PROPERTY  (Delete whichever is not applicable)
2. _____ _____ ID _____ _____	OF _____ _____ _____	UNMARRIED/MARRIED  IN/OUT OF COMMUNITY OF PROPERTY  (Delete whichever is not applicable)
3. _____ _____ ID _____ _____	OF _____ _____ _____	UNMARRIED/MARRIED  IN/OUT OF COMMUNITY OF PROPERTY  (Delete whichever is not applicable)

Do hereby bind myself/ourselves jointly and severally to the Company

("the CREDITOR") and its successors in title

As surety and for and co-principal debtor with (insert your company name below)

\_\_\_\_\_

\_\_\_\_\_

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("the DEBTOR") for the due and punctual payment and performance by the DEBTOR of all debts and obligations of whatsoever nature and howsoever arising which the DEBTOR may now or in the future owe to the CREDITOR – (all of which debts and obligations are hereinafter referred to as "the obligations").

I/We further jointly and severally guarantee the performance by the DEBTOR of all its obligations to the CREDITOR.

1. As part of my/our liability in terms hereof I/we bind myself/ourselves as aforesaid to pay the amount of all charges and expenses of whatsoever nature, including, but without derogating from the generality of the foregoing, Attorney and own client cost, collection commission and tracing fees incurred by the CREDITOR in securing or endeavouring to secure fulfilment of the obligations.
2. The rights of the CREDITOR under this SURETYSHIP shall not be affected or diminished:  
  
If the CREDITOR at any time obtains additional suretyships, guarantees, co-principal debtorships securities or indemnities in connection with the obligations, If any of the other persons named herein fail and/or refuse and/or neglect to sign this document; and/or by virtue of the fact that the CREDITOR acquired its claim against the DEBTOR as a consequence of a cession from any of its holding, subsidiary or associated companies; and/or by virtue of the fact that this document is not witnessed.
3. This SURETYSHIP shall be a continuing covering suretyship, co-principal debtorship and guarantee, and shall remain in full force and effect notwithstanding and fluctuation in or extinction of any period whatsoever of the obligations.
4. I/We shall be bound by all admissions or acknowledgements of indebtedness made or given by the DEBTOR to the CREDITOR from time to time. No alteration or variation of any present or future agreement between the DEBTOR and the CREDITOR shall in any way release me/us from my/our liability hereunder.
5. The CREDITOR shall be entitled without reference or notification to me/us without its rights hereunder to release other sureties and securities, co-principal debtors and guarantees and securities, to grant the DEBTOR extensions of time for payment and to compound or make any other arrangements with the DEBTOR for the discharge of the DEBTOR'S indebtedness.
6. If the DEBTOR shall be placed in liquidation or provisional liquidation or under judicial management or under sequestration or provisional sequestration, or shall submit an offer of compromise or of composition or scheme of arrangement in terms of any Company or insolvency law, the CREDITOR shall be entitled to accept any dividend on account and in reduction of the DEBTOR'S indebtedness without prejudicing its rights against me/us which rights shall further not be prejudiced by its acceptance of any other securities, guarantee, co-principal debtorships or suretyships arising out of any such event, and I/we further bind myself/ourselves in any such event not to file any claims against the DEBTOR, save with the prior written consent of the CREDITOR.
7. For as long as the CREDITOR may think fit, and at the option and in the sole and absolute discretion of the CREDITOR, any monies paid by me/us to the CREDITOR hereunder may be treated as cash security to be held by the CREDITOR in a securities realisation account in the CREDITORS books of account until the obligations shall have been fully discharged, or may be applied to such debt or debts of the DEBTOR as the CREDITOR may think fit.
8. Should the DEBTOR fail to discharge any of the obligations on due date, the CREDITOR shall be entitled, notwithstanding any contrary arrangement with the DEBTOR, to demand from me/us immediate performance of all the obligations then owing by the DEBTOR to the CREDITOR, whether the due date for the performance of the obligations shall have arrived or not.

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9. In respect of all contracts entered into by the DEBTOR with the CREDITOR, I/we warrant that each such contract was or will be at the time of execution or formation within the scope, authority and powers and objects of the DEBTOR, and that all resolutions of and signatures by director/s or member/s or trustee/s of the DEBTORS were, or in the case of further contracts, will be properly and with due authority passed executed and made. If there shall, in respect of any such contract, be any breach of the terms of this warranty, then I/we hereby assume the liability to the CREDITOR which any such contract purported to impose upon the DEBTOR.
10. As collateral security for the discharge of the obligations assumed by me/us in terms hereof I/we hereby cede, assign, transfer and make over unto and in favour of the CREDITOR all my/our rights, titles and interest in and to any amounts which now are or may hereafter become owing to me/us by the DEBTOR from any cause of indebtedness whatsoever, including but without derogating from the generality of the foregoing, any revisionary right or interest which I/we might acquire after termination of any prior cession, assignment or transfer.
11. For the purpose of any action against me/us for provisional sentence, default or summary judgment, a certificate under the signature of any manager of the CREDITOR as to the amount owing by the DEBTOR to the CREDITOR and of the fact that due date of the discharge of the obligations and/or my/our obligations hereunder has arrived shall be prima facie proof of the indebtedness of the DEBTOR to the CREDITOR. The designation and authority of the manager need not be proved by the CREDITOR.
12. In terms of Section 45 of the Magistrate's Court Act of 1944 as amended, I/we hereby consent to the jurisdiction of the Magistrate's Court having jurisdiction in terms of Section 28 of the said Act in respect of any action being instituted against me/us by the CREDITOR in terms hereof. It shall nevertheless be entirely within the discretion of the CREDITOR as to whether to proceed against me/us in such Magistrate's Court or any other Court having jurisdiction, and I/we consent to the jurisdiction of the High Court of South Africa, Durban and Coast Local Division for purposes of any application or action arising out of this contract.
13. I/we hereby expressly renounce the benefits of the legal exceptions, (save for the exceptions "money not paid over", "wrong calculation" or "no cause of action exists", should this deed of suretyship be subject to the National Credit Act) of "order", "exclusion" "division", "cession of action" and all or any exceptions which could or might be pleaded to any claim by the CREDITOR against me/us with the meaning, force and effect of all of which exceptions I/we declare myself/ourselves to be fully acquainted.
14. At the CREDITOR'S sole discretion it may refer any breach, dispute, impasse or deadlock either to its accountants for determination who shall act as an umpire and whose decision, including who shall pay the costs including their costs, shall be final and binding upon the parties; or, to arbitration.

The Arbitrator shall be a person nominated by the President of the Kwa Zulu Natal Law Society from time to time and such person will not necessarily be a lawyer.

The determination by the Company's Accountants shall be held at their offices and an arbitration shall be held in Durban unless, agreed to otherwise by the parties in writing.

The arbitration shall be held upon such terms as the Arbitrator may decide, in which event the arbitration shall be held as informally and as expeditiously as possible, unless the Company in its sole discretion elects that the arbitration be determined in accordance with the summary procedure for arbitration as set out in the Rules for the Conduct of Arbitration prepared by the Association of Arbitration.

The decision of the Arbitrator, as in the case of the Umpire, shall be final and binding upon the parties and he shall be entitled to stipulate who shall pay the costs, including his costs and disbursements of the arbitration or the determination by the Accountants acting as umpire.

Any party to the determination by the Company's Accountant as Umpire or the arbitration proceedings shall be entitled to have such an award made an order of court.

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15. For the purpose of this SURETYSHIP and any proceedings which may be instituted by virtue hereof, I/we hereby choose domicilium citandi et executandi at the physical address given on page one of the Application for Credit to which this SURETYSHIP forms part, or the residential address on page 1 of the Deed of Suretyship, where all notices and processes may be effectively served and delivered upon me/us.
  
16. I/we hereby confirm and declare that this Deed of Suretyship, Co-principal Debtorship and Guarantee was properly completed at the time of my/our signature hereof. This Deed of Suretyship, Co-principal Debtorship and Guarantee is enforceable by the CREDITOR against the person signing the same whether or not the other party/ies named herein sign the same.
  
17. Any reference in this document, to either the masculine or feminine or neuter gender shall in the appropriate context be deemed to include or mean reference to any of the other genders, and references to either the singular or plural, shall in the appropriate context be deemed to include or refer to other number.

Dated at \_\_\_\_\_ on \_\_\_\_\_

\_\_\_\_\_  
 SURETY, CO-PRINCIPAL DEBTOR AND GUARANTOR SPOUSE (if applicable)

\_\_\_\_\_  
 SURETY, CO-PRINCIPAL DEBTOR AND GUARANTOR SPOUSE (if applicable)

\_\_\_\_\_  
 SURETY, CO-PRINCIPAL DEBTOR AND GUARANTOR SPOUSE (if applicable)

WITNESS:

1. Signature: \_\_\_\_\_ 2. Signature: \_\_\_\_\_

Name: \_\_\_\_\_ Name: \_\_\_\_\_

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## STANDARD TERMS AND CONDITIONS OF SALE

The Company's quotation or tender and any contract resulting herefrom shall be subject to the following terms and conditions which shall apply to the exclusion of all other terms and conditions, whether expressed or implied, unless the Company specifically agrees in writing to accept any variation hereto. The Customer, by accepting delivery of any products 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. The Customer agrees that all such conditions shall be deemed to have been substituted by these terms and conditions:

### 1. DEFINITIONS

- 1.1 "The Company" shall mean Métier Mixed Concrete (Pty) Ltd, including the successor in title;
- 1.2 "The Customer" is the person or entity reflected on the face of the credit application.
- 1.3 "Product shall mean any goods of whatever nature purchased by the Customer from the Company.

### 2 Price

- 2.1 The price of any Product, supplied by the Company in terms of an order by the Customer, will be in accordance with the Company's prices ruling at the date of delivery.
- 2.2 In respect of ready mixed concrete or other products or services where the company provides a quotation the following shall apply:
- 2.3 Any quotation by the Company is open for acceptance for a period of 14 (FOURTEEN) days from the date appearing on the quotation, unless revoked earlier in term of written notice to the Customer or otherwise agreed to in writing between the Company and the Customer.
  - 2.3.1 The price quoted for the Product specified in the quotation is based on:
    - 2.3.1.1 Concrete, mortar or plaster, deliveries or collections, as the case may be, of the Product as specified on the quotation, measured in cubic meters in the wet form, and
    - 2.3.1.2 delivery of fully loaded vehicles, between the hours 07:00 to 17:00 on Mondays to Fridays, excluding public holidays, and excluding an extra charge at the Company's ruling rates from time to time for part loads and for deliveries outside normal working hours.
  - 2.3.2 All products will be supplied at the quoted prices ruling on the date of despatch from the plant. In particular, quoted prices are subject to adjustment for increase in the cost of production and/or delivery arising directly or indirectly from any one or more of the following causes:
    - 2.3.2.1 increases in the price of Petrol/Diesel, increased cartage rates and/or other extraordinary transport costs;
    - 2.3.2.2 any amendments to any existing law, regulation, by-law or notice having force of law;
    - 2.3.2.3 any increase in direct taxation attributed to the sale of Product or any new tax, levy or impost payable by the Company.
    - 2.3.2.4 an increase in raw material costs associated with the Product.
- 2.4 Any order is subject to acceptance by the Seller, and the Seller shall have the right to accept such order either in whole, or in part thereof only. All orders accepted by the Seller will be binding on the Purchaser and may not be cancelled without obtaining the Seller's consent in writing.
- 2.5 Price Adjustments:
  - 2.5.1 The purchase price, is based on the cost to the Seller of raw materials, labour, freight and import duty ruling at the date of the order and where applicable on the prevailing rate of exchange operating between the Rand and the currency to be provided by the Seller in obtaining supplies of raw materials, in the event of any increase in such cost or change in such rate causing an increase in the cost to the Seller, the Seller shall have the right to increase the purchase price accordingly.
  - 2.5.2 Any increase in the freight charges will be for the Purchaser's account.
  - 2.5.3 Should the price reflected on an order or confirmation of order be incorrect due to a clerical error, then the Seller shall have the right to amend such price.

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### 3. DELIVERY

- 3.1 The Company shall endeavour to effect delivery of the Product on the agreed date and time to the Customer at the Customer's premises, provided that:
- 3.1.1 the Company receives a minimum of 72 (SEVENTY TWO) hours notice of the intended delivery date if the date agreed upon has changed or if no date has been previously agreed;
- 3.1.2 The Company shall not be responsible for any delay in the performance, or non performance in whole, or in part, of any order or any contract arising between the parties as a result of the breakdown of machinery, strikes, acts of God, labour disputes, war, adverse weather including storms, fire, flood or earthquake, lockout, riot, viz majeure, civil commotion, traffic accident or delays, negligence of carriers, inability to obtain raw materials, regulations or order of any governmental or statutory bodies or persons, or due to any other cause beyond the Company's control; and under these circumstances the Customer shall have no claim against the Company whatsoever, whether for damages or otherwise arising out of such non performance or delay in performance.
- 3.1.3 Should adverse weather or site problems necessitate a change in the agreed delivery date, the Customer shall advise the Company as soon as possible thereof, but shall in any event be liable for any Product already batched prior to notification of the delay.
- 3.1.4 The Customer:
- 3.1.4.1 shall ensure that the Company's delivery vehicles have full and free access to the points of delivery on site;
- 3.1.4.2 shall ensure that routes to and from the points of delivery on site are safe and suitable for the Company's delivery vehicles;
- 3.1.4.3 shall ensure that vehicles are off-loaded by the customer at the desired point on the site, and in the event of the Product being off-loaded at an incorrect point, the Company shall not be liable for any loss arising therefrom, whether direct, consequential, special or general;
- 3.1.4.4 accepts responsibility for the means or method adopted for the handling, placing, storage and consolidation of Product after discharge from the delivery vehicle and for lack of quality, fault or failure of materials resulting from the handling, placing or consolidation of the Product;
- 3.1.4.5 bears the sole and absolute risk for any loss or damage, whether direct or consequential to the Company's vehicles and/or the Company's machinery and equipment brought onto the delivery site;
- 3.1.4.6 indemnifies the Company, its agents and employees and holds each of them harmless against any loss, damage or liability sustained or incurred by the Company, its agents or employees arising from any cause whatsoever while the Company's vehicle is on the Customer's site;
- 3.1.5 The delivery note shall be signed by the Customer, its employee or agent and shall:
- 3.1.5.1 constitute prima facie proof that the type and quantity of Product recorded therein was delivered and accepted by the Customer;
- 3.1.5.2 constitute approval of any additions to any Product as specified on the delivery note,
- 3.1.6 In the event of a dispute under clause 3.1.5.1 and 3.1.5.2 regarding delivery of goods sold and/or the quantity and/or value thereof, the onus of proving that the goods were not delivered and/or that the quantity and/or value thereof is not in accordance with the Company's claim, shall be upon the Customer.
- 3.1.7 The Customer accepts responsibility for the safe keeping and issue 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 the Company.
- 3.1.8 The Company accepts no responsibility for any delays in the despatch or delivery of Product or as a consequence of non-delivery and the Customer shall not be entitled to cancel or repudiate any order/e and/or purchase/s and/or refuse delivery and/or claim damages and/or set off payment from the Company due to late and/or defective delivery.
- 3.1.9 The Company reserves the right to suspend and/or cut back and/or withhold deliveries in its absolute discretion for any reason whatsoever.

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3.2 SHORT DELIVERY

In respect of concrete products, the Company shall not be liable for any claim for short or incorrect delivery unless:

- 3.2.1 The Customer verbally and in writing notifies the Company within 24 (twenty-four) hours of delivery.
- 3.2.2 The Company's representative must be permitted to measure the Product whilst it is still in the plastic state;
- 3.2.3 Written notification is given to the Company within 3 (three) days of the date of the alleged short delivery;
- 3.2.4 Every reasonable opportunity and assistance is given to the Company to verify the correctness of the claim.
- 3.2.5 The Company's liability for short or incorrect delivery shall be limited, at the company's option, to either replacement of the Product incorrectly or short delivered or the giving of credit for the cost thereof.

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3.3 Claims:

In respect of delivery of ready mixed concrete:

- 3.3.1 Any claims made by the Customer in respect of deliveries must be lodged with the Company within SEVEN (7) days of the receipt of such Product by the Customer failing which the Company shall not recognise any such claim, nor shall the Company be obliged to do so.
- 3.3.2 The Company will attempt to deliver products in accordance with a delivery schedule agreed to, but the Customer shall have no claim of any nature whatsoever against the Company by reason of any delay by the Customer in giving delivery of Product on any date or dates that may be specified in the Customer's order or a delivery schedule agreed to or within a reasonable time in those cases in which no such date is specified or agreed.

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- 3.4 Delivery dates quoted are a fair estimate and are not the essence of the contract unless specifically agreed to by the Company in writing. This is notwithstanding any remarks to this effect on the face of the quotation or order, made by the Company's agent or salesman.
- 3.5 Whilst every effort will be made to record the Customer's verbal or telephonic instructions accurately, it is the responsibility of the Customer to check the details of the order and to notify the Company of mistakes, in writing, immediately.
- 3.6 The Customer shall ensure that there is safe and proper access to the point at which the load is to be discharged. The driver of the delivery vehicle, however, shall be entitled to refuse to proceed to the designated discharge point if, in his discretion, he considers it a risk to do so, in which event he shall be entitled but not obliged to offload the Product at the nearest safe point which shall thereupon be deemed to be the delivery address.
- 3.7 Where the Product is delivered other than by the Company's own transport, the carrier is deemed to be the Customer's agent. Any claims for short delivery, non-delivery or damage must be made to the carrier by the Customer and payment on the due date may not be withheld on this account. Should the Company, for reason of convenience, claim from the carrier, this is understood to be on the Customer behalf and payment terms are unaffected.

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4 OWNERSHIP AND RISK

- 4.1 Notwithstanding the delivery of any Product to the Customer, ownership shall not pass until the Company has received payment in full in respect of the purchase price of such Product and in the event of payment not being timeously effected, the Company reserves the right to recover possession of such Product immediately, without notice and without the necessity to first cancel the contract of sale in respect of such Product. Alternatively, the Company may cancel the sale and recover possession of the products or re-sell the same or any of them and shall be entitled to enter upon the Customers premises for purposes of such re-sale or for the purpose of inspecting the products or for the purpose of re-taking possession of the products.
- 4.2 Risk in the Product purchased will pass to the Customer at the point of delivery, i.e. where signed acceptance for the Product takes place.
- 4.3 The Seller shall be entitled to notify the Purchaser's landlord that by virtue of the reservation of ownership of goods by the Seller, those goods do not become subject to the landlord's hypothec for rent outstanding.

5 PAYMENT

- 5.1 The contract price shall be paid in cash or bank guaranteed cheque prior to dispatch of the Product unless the Company has granted the Customer credit facilities in writing, in which case the contract price shall be paid by the Customer without deduction or set-off within 30 (THIRTY) days from the date of statement from the Company. Initial:.....
- 5.2 The Company reserves the right to withdraw or amend any credit facilities which may have been granted to the Customer, and to require the Customer to furnish acceptable guarantees and/or suretyships for its current or future outstanding obligations. Initial:.....
- 5.3 The Company reserves the right, at any time, to call for satisfactory guarantee of payment, or payment in advance, should the Company have any doubt as to the Customers ability to pay for the Product according to the terms arranged, notwithstanding the fact that the order might have been confirmed by the Company at an earlier date.
- 5.4 Should any amount not be received by the Company on or before due date all other amounts payable but not yet due by the Customer to the Company shall immediately and without notice to the Customer become due and payable.
- 5.5 The Customer shall be liable to pay interest on any overdue amount at 2% per month. Initial:.....
- 5.6 The Customer shall not be entitled to withhold, deduct or set off payment due by the Customer for any reason whatsoever including any dispute that may be pending.
- 5.7 If any amount due and payable by the Customer to the Company is in arrears, the Company shall have the right, until such amount has been paid, to suspend any deliveries under this and/or any contract then in force between the Company and the Customer. Initial:.....
- 5.8 The Company shall be entitled to cancel this contract and/or any part of this contract and/or any other contracts subsisting with the Customer by written notice to the Customer's last known address and claim from the Customer immediate payment of any monies due by the Customer to the Company notwithstanding any earlier agreement for credit terms if:
  - 5.8.1 the Customer fails to pay any amount due to the Company under this or any other contract on due date thereof; or
  - 5.8.2 a cheque, promissory note or other bill of exchange given to the Company in respect of any indebtedness of the Customer under this or any other contract is dishonoured; or
  - 5.8.3 the Customer is sequestrated or placed in liquidation under judicial management provisionally or finally; or
  - 5.8.4 the Customer commits any act of insolvency; or

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- 5.8.5 the Customer enters into any compromise with the Customer's creditors; or
- 5.8.6 the Customer fails to satisfy any Default Judgement granted against the Customer within seven days after date of Judgements.

5.9 In the event of the Company accepting a series of post-dated cheques, promissory notes or other bills of exchange from the Customer in respect of any indebtedness of the Customer, then the acceptance by the Company of such post-dated cheques, promissory notes or bills of exchange shall be without prejudice to the Company's rights in terms of these conditions.

5.10 If any amount is not paid within the agreed terms, the Customer shall be liable for interest on any overdue amount at 2% per month.

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## 6 WARRANTY

6.1 The Company warrants that the Product delivered complies with the details shown on the delivery note and complies with the standard strength mix for such Product.

6.2 The onus shall be on the Customer to ensure, by examination before use, that the Product delivered is within the agreed specification. This will be limited to the general consistency and workability as determined by the slump test and the strength of the concrete that was ordered by the customer.

6.3 Liability for breach of the warranty set out in Clause 6.1 and 6.2 shall only arise where the Customer established, in addition to any other proof required by law, that:

6.3.1 The Customer has inspected the Product before use;

6.3.2 The Product has not been worked or processed since delivery;

6.3.3 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 South African Bureau of Standards.

6.3.4 the Customer notified the Company verbally within 48 (FORTY EIGHT) hours of its tests, revealing an alleged nonconformity with specification, provided that written notification shall be given within a maximum of 10 (TEN) days from the date of delivery;

6.3.5 The Company was afforded every reasonable opportunity to inspect the Product or any sample taken therefrom, and to submit the Product or sample to its own examination and testing;

6.3.6 All records of handling, sampling, curing and testing and the interpretation of any tests were made available to the Company for inspection;

6.3.7 The Product was not misused, neglected, contaminated, improperly handled or altered in any way and that no foreign material was added to the Product.

Initial:.....

6.4 The Company shall incur no liability whatsoever for the handling, placing, curing and consolidation of any concrete subject to discharge from the delivery vehicle which action shall be the sole responsibility of the Customer, and to this end the Customer acknowledges that it is aware that:

6.4.1 the manner in which concrete is handled, placed and consolidated, and

6.4.2 the addition of water, aggregate and additives; can and does affect the quality and strength of 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.

Initial:.....

6.5 The Company shall not be liable to the Customer or any other person for any loss of profit or other special

or general damages or any consequential damages whatsoever arising out of any breach by the Company

of any of its obligations under these terms and conditions or from any other cause whatsoever. The Customer hereby indemnifies the Company against any claim which may be made against the Company by

any other person in respect of any matter or acts or omission by the Company.

Initial:.....

6.6 The Company does not undertake to supply technical advice and should it do so, it does not warrant the correctness thereof.

Initial

- 6.7 The Company cannot accept responsibility for efflorescence (a natural phenomenon) which can be a characteristic of all good quality products with high cement contents.
- 6.8 Colours, texture and shades of products are formulated to vary as in the case of natural stone. No claims will be entertained for products supplied within the Company colour range specifications.
- 6.9 Under no circumstances whatsoever, shall the Company be liable for any direct or consequential damages arising out of the supply of defective Product or from any other cause whatsoever, and the Customer indemnifies the Company against all claims of whatsoever nature which may be made against the Company arising from the use by any person of the Product supplied in terms hereof.
- 6.10 The Company's sole liability in respect of defective Product shall, in the Company's sole discretion, be to replace such Product or to refund the cost of such defective product paid by the Customer Warranty.

## 7 EXCLUSION OF LIABILITY

The warranty given by the Company in Clause 6.1 above is given in lieu of any common law liability, and accordingly all and any liability is excluded for:

- 7.1 Warranties implied by the law in respect of latent defects; and
- 7.2 Fitness of the Product for the Customer's purpose in respect of which the Customer must satisfy itself; and
- 7.3 Any loss (including consequential loss or loss of profit) whether in contract or in delict or injury arising from the supply of the Products, including any loss attributable to any negligent acts or omissions of the Company, its servants or agents; and
- 7.4 Any representations or warranties as to the Product given by any of the Company's servants, agents or employees.

## 8 CERTIFICATE

- 8.1 The Customer acknowledges that a certificate signed by the Company's external auditor and/or any director at the time of the Company shall be *prima facie* proof of the amount of its indebtedness to the Company and shall be sufficient proof of such indebtedness for purpose of provisional sentence and/or summary judgement proceedings.

## 9 LEGAL CHARGES

- 9.1 In the event of the Company being obliged to instruct Attorneys to recover any amounts due by the Customer or to enforce the Company's rights in terms of this contract irrespective of whether legal proceedings or proceedings of any other nature are actually instituted or not, the Customer hereby agrees to pay the legal costs and disbursements incurred by the Company on a scale as between attorney and own client, including collection commission.

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## 10 DOMICILIA

- 10.1 All notices by one party to the other shall be given in writing by prepaid registered post or delivery by hand:
  - 10.1.1 to the Company Romead Business Park, unit 3, 23 Malone Road, Maxmead, Pinetown
  - 10.1.2 to the Customer at the physical address set out on page 1 of the credit application form;
  - 10.1.3 which address the parties choose as their domicilium citandi et executandi where they will accept service of any notice or legal process.
- 10.2 The parties shall be entitled to change the address referred to above from time to time provided that any such address selected by either of them shall be situated with the Republic of South Africa and such notice shall be in writing.

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## 11 ENFORCEMENT

- 11.1 At the Company's sole discretion it may refer any breach, dispute, impasse or deadlock either to its accountants for determination who shall act as an umpire and whose decision, including who shall pay the costs including their costs, shall be final and binding upon the parties; or, to arbitration.
- 11.2 The Arbitrator shall be a person nominated by the President of the Kwa Zulu Natal Law Society from time to time and such person will not necessarily be a lawyer.
- 11.3 The determination by the Company's Accountants shall be held at their offices and an arbitration shall be held in Durban unless, agreed to otherwise by the parties in writing.
- 11.4 The arbitration shall be held upon such terms as the Arbitrator may decide, in which event the arbitration shall be held as informally and as expeditiously as possible, unless the Company in its sole discretion elects that the arbitration be determined in accordance with the summary procedure for arbitration as set out in the Rules for the Conduct of Arbitration prepared by the Association of Arbitration.
- 11.5 The decision of the Arbitrator, as in the case of the Umpire, shall be final and binding upon the parties and he shall be entitled to stipulate who shall pay the costs, including his costs and disbursements of the arbitration or the determination by the Accountants acting as umpire.
- 11.6 Any party to the determination by the Company's Accountant as Umpire or the arbitration proceedings shall be entitled to have such an award made an order of court."

## 12. JURISDICTION

- 12.1 Notwithstanding the foregoing, the Company at its option, may bring any claim against the Customer in any Magistrate's Court having jurisdiction notwithstanding that the amount of that claim may exceed the jurisdiction of the Magistrate's Court.
- 12.2 The Customer consents to the jurisdiction of the High Court of South Africa, Durban and Coast Local Division for purposes of any action or application arising out of this agreement."

## 13. ENTIRE AGREEMENT

- 13.1 The terms and conditions set out herein and on the credit application are the only conditions which shall apply to the contract and no other terms and/or conditions or representations verbal or written shall be of any effect whether made prior to or subsequent to the date hereof unless reduced to writing and signed by both parties. In the event of there being a discrepancy between any of the terms and conditions set out herein and any condition or stipulation in the Customer's order, then, unless such conditions or stipulations are specifically accepted in writing by the Company, then such stipulations or conditions shall be disregarded and the terms and conditions set out herein shall apply.

## 14. SEVERABILITY AND FAIRNESS

- 14.1 In the event that any provision of this agreement is invalid, unlawful or enforceable, such provision shall be severable from the remaining terms and conditions, which shall continue to be valid and enforceable."
- 14.2 The customer acknowledges and agrees that this agreement is not unfair or unjust in view of the credit being extended by the Company to the Customer.

## 15. RELAXATIONS AND INDULGENCES

- 15.1 No relaxation or indulgence granted of any kind by the Company to the Customer shall be a waiver of the Company's rights nor shall this constitute a novation of the terms and conditions of this agreement.

## 16. CESSION OF BOOK DEBT

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- 16.1 The Customer hereby irrevocably and *in rem suam* cedes, pledges, assigns, transfers and makes over unto and in favour of the Company, all its right, title, and interest in and to all claims of whatsoever nature and description, and however arising which the Customer may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal personae whomsoever without exception as continuing covering security for the due payment of every sum of money which may now or at any time hereafter be or become owing by the Customer from whatsoever cause arising which the Customer may be or become bound to perform in favour of the Company, it being acknowledged that this is a cession in *securitatem debilit* and is not an out-and-out cession.
- 16.2 Should it transpire that the Customer entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the claims which will from time to time be subject to this cession, then this cession shall operate as a cession of all the Customer reversionary rights.
- 16.3 This cession shall be and remain in full force and effect as a continuing security notwithstanding and fluctuation in, or temporary extinction of, the Customer's indebtedness to the Company.
- 16.4 For the purpose of giving effect to the foregoing Cession the Purchaser hereby nominates, constitutes and appoints the Company to be its Attorney and agent, *in rem suam*, with full authority for the Customer and in the Customer's name, or in its own name, to demand, sue for, recover and receive all sums of money hereby ceded and assigned, with the authority to sign all documents on the Customer's behalf and in the Customer's name in connection with the recovery of the said sums and to give acquittances and receipts for the Company.
- 16.5 The Customer agrees that, on request by the Company, it shall be obliged to hand over to the Company all books of account, contracts, invoices, documents and the like which it may require for the purpose of ascertaining the amounts due to the Customer for the purpose of recovery of payment.
- 16.6 The Customer shall be obliged to furnish the Company with a schedule of all debts due to the Customer by its debtors monthly or upon demand. Notwithstanding the foregoing, the Company or its nominee shall at all times be entitled to inspect all or any of the Customer's records as the Seller deems fit. Failure by either party to give effect to the foregoing shall not in any way prejudice the rights of the Company hereunder and the Company shall at all times be deemed to have perfected its security in terms hereof.

THUS DONE AND SIGNED AT \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ (year) \_\_\_\_\_

IN THE PRESENCE OF THE UNDERSIGNED WITNESSES:

FULL NAME	SIGNATURE
1. _____	_____
2. _____	_____
3. _____	_____

AS WITNESSES:

FULL NAME	SIGNATURE
1. _____	_____
2. _____	_____

Initial
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**For Office Use Only**

Client Name: \_\_\_\_\_

References Checked by: \_\_\_\_\_ Date: \_\_\_\_\_

Reference 1

Details: \_\_\_\_\_ Credit Terms: \_\_\_\_\_

Comments: \_\_\_\_\_

Reference 2

Details: \_\_\_\_\_ Credit Terms: \_\_\_\_\_

Comments: \_\_\_\_\_

Reference 3

Details: \_\_\_\_\_ Credit Terms: \_\_\_\_\_

Comments: \_\_\_\_\_

Credit Check Done: \_\_\_\_\_ Date: \_\_\_\_\_

Credit Approved By: \_\_\_\_\_ Date: \_\_\_\_\_

Terms Approved:

Credit Limit: \_\_\_\_\_ Days from Statement: \_\_\_\_\_

Account Opened By: \_\_\_\_\_ Date: \_\_\_\_\_

Letter of approval sent by: \_\_\_\_\_ Date: \_\_\_\_\_

Special Conditions: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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