



TRADING TERMS AND CONDITIONS BOSUN CONCRETE PRODUCTS (PTY) LIMITED ("Bosun")

PLEASE PAY SPECIAL ATTENTION TO CLAUSES MARKED WITH  AND INITIAL TO CONFIRM

1. Interpretation & Definitions

In this Agreement, unless the context otherwise indicates:

- 1.1. the singular shall import and include the plural and vice versa;
- 1.2. words indicating one gender shall import and include other genders;
- 1.3. words indicating natural persons shall import and include artificial persons;
- 1.4. the following words and expressions shall, in addition to their respective ordinary meanings, bear the following meanings assigned to each of them respectively:
 - 1.4.1. "Customer" means any person at whose request or on whose behalf Bosun undertakes any business or provides any advice, information or services;
 - 1.4.2. "Bosun" means Bosun Concrete Products (Proprietary) Limited trading as Bosun Brick Midrand, Bosun Brick Brits and Bosun Brick Port Elizabeth; registration number 2006/021238/07;
- 1.5. The rule of interpretation that a contract, or any part of a contract, is to be interpreted against the party responsible for the drafting or preparation of the contract, shall not apply.

2. Application of these Trading Terms and Conditions

All and any business undertaken, products sold or advice, information or services provided by Bosun (whether gratuitous or not) is undertaken or provided on these trading terms and conditions.

3. Conditions of Credit

- 3.1. The granting of credit (if any) is entirely discretionary to Bosun. Any credit facility may be withdrawn by Bosun at any time without prior notice to the Customer, and Bosun reserves the right to review the extent, nature and duration of such facilities at any time.
- 3.2. The Customer shall be liable for interest on all amounts that are not paid timeously at the maximum rate permitted by the National Credit Act, No 34 of 2005 ("the Act") as amended. Interest charged in terms of this clause 3.2 shall be compounded and capitalized monthly.
- 3.3. Unless otherwise specifically agreed by Bosun in writing, the Customer shall pay all sums due to Bosun in cash immediately upon presentation of account. Payment shall be made without deduction or set-off and payments shall not be withheld or deferred on account of any claim or counterclaim which the Customer may contend for.
- 3.4. All and any monies received by Bosun from the Customer shall be appropriated by Bosun in its sole and absolute discretion notwithstanding that the Customer might, when making payment, seek to appropriate the payment so made to any particular debt or portion of a debt.
- 3.5. The Customer agrees that the amount due and payable to Bosun, including interest, may be determined and proven by a Certificate signed by a director of Bosun (whose appointment need not be proved), which Certificate shall be *prima facie* proof of the Customer's indebtedness to Bosun.
- 3.6. In the event of Bosun instructing attorneys to collect from the Customer an amount owing to Bosun, the Customer agrees to pay all costs on the scale as between attorney and client.
- 3.7. The Customer consents to Bosun making enquiries from a registered credit bureau or other credit provider in order for Bosun to conduct a credit assessment in respect of the Customer and/or to trace the Customer.
- 3.8. The Customer consents to Bosun submitting consumer credit information concerning the Customer to registered credit bureaus and to other credit providers.
- 3.9. In the event that the Customer commits any breach of these trading terms and conditions, including without limitation if any amount is not paid on due date, then the full amount owed by the Customer to Bosun shall immediately become due, owing and payable by the Customer to Bosun.

4. Conditions of Sale

- 4.1. Bosun conducts business on the basis of these trading terms and conditions. Bosun will not be bound by any terms and conditions other than these terms and conditions, unless Bosun has agreed in writing to be bound thereto. Therefore, any terms and conditions contained in (or referred to) in any tender, order or other document are not binding upon Bosun.
- 4.2. The price of any goods that are supplied by Bosun in terms of an order by the Customer will be in accordance with the prices ruling at the date of despatch.
- 4.3. Any order is subject to acceptance by Bosun, and Bosun shall have the right to accept such order either in whole, or in part thereof only. All orders accepted by Bosun will be binding on the Customer and may not be cancelled without obtaining Bosun's consent in writing.

- 4.4. In the event that products are specifically made to order for the Customer, or the order is in excess of 500m², Bosun shall be entitled to call for a deposit of up to 50% of the order value. In the event that the Customer cancels the order, Bosun shall be entitled to retain the deposit as *rouwkoop* or in the event that no deposit is held by Bosun, the Customer agrees to make payment to Bosun of a penalty of 50% of the order value, as pre-liquidated agreed damages.
- 4.5. Bosun shall not be responsible for 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 Bosun's acceptance of either, the whole order, or part thereof, on account of an ACT OF GOD, FORCE MAJEURE or the consequence thereof, WAR, REVOLUTIONS, RIOT, STRIKES, SABOTAGE, LOCKOUTS, FIRE, FLOOD, EARTHQUAKES, STORMS, ACCIDENTS, GOVERNMENT RESTRICTIONS, NEGLIGENCE OF CARRIERS, INABILITY TO OBTAIN RAW MATERIALS, or any other cause of whatsoever kind beyond Bosun's control, and under no circumstances whatsoever shall the Customer have any claim against Bosun, whether for damages or otherwise arising out of such non-performance or delay in performance.
- 4.6. The purchase price is based on the cost to Bosun 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 Bosun in obtaining supplies of raw material. In the event of any increase in such cost or change in such rate causing an increase in the cost to Bosun, Bosun shall have the right to increase the purchase price accordingly.
- 4.7. Any increase in the freight charges will be for the Customer's account.
- 4.8. Should the price reflected on an order or confirmation of order be incorrect due to a clerical error, Bosun shall have the right to amend such price.
- 4.9. The ownership of the goods shall remain vested in Bosun until the purchase price is fully paid.
- 4.10. Bosun shall be entitled to notify the Customer's Landlord that by virtue of the reservation of ownership of the goods in Bosun, those goods do not become subject to the Landlord's hypothec for rent outstanding.
- 4.11. The risk in, and to, the goods sold shall pass to the Customer on delivery thereof to the Carrier, notwithstanding the reservation of ownership therein and irrespective of whether Bosun or the Customer pays the Carrier's charge.
- 4.12. If payment of the purchase price of any goods sold to the Customer becomes overdue, in whole or part, then without prejudice to any of Bosun's other rights, Bosun or its Agents shall be entitled, without notice, to cancel the sale and recover possession of the goods or to re-sell the same or any of them and shall be entitled to enter upon the Customer's premises for the purpose of such resale or for the purpose of inspecting the goods or for the purpose of retaking possession of the goods.
- 4.13. Any claims made by the Customer must be lodged in writing with Bosun within ten (10) days of the receipt of such goods or services by the Customer, failing which Bosun shall not recognise any such claim, nor shall Bosun be obliged to do so.
- 4.14. Colours and shades of products do vary, in particular those of blended colour products. No claims will be entertained for products supplied within Bosun's colour range specification. Customers are invited to inspect the products sold by Bosun prior to dispatch or collection thereof. In the event that the Customer elects not to inspect the products as aforesaid, the Customer shall not be entitled to raise any complaint or seek to cancel the order or refuse to make any payment on account of variations in colour from a sample or marketing material, or in respect of any texture complaint with regard to "Bosun Standard Range Product" as referred to below.
- 4.15. Bosun does not accept responsibility for efflorescence (a natural phenomenon) which can be a characteristic of all good quality products with high cement content.
- 4.16. No product may be returned without the express authorisation of Bosun. Stock returned must be in the same condition and state as delivered, failing which credit will be passed at the rate applicable to "seconds". Returns accepted for credit will carry a 10 % handling fee of the invoiced price. Transport cost of returns will be for the Customer's account. Under no circumstances will products that have been unpacked, or installed, be accepted for return or credit, it being the responsibility of the Customer to inspect the product, either at Bosun's premises or immediately upon delivery to site.
- 4.17. Without derogating from the remaining provisions of these terms and conditions, in the event that the Customer orders a "Bosun Standard Range Product", the products are supplied without a fine topping, with the result that the top portion of the paver is rougher than the "Bosun Premium Range Product". The Customer shall not be entitled to return any of these products on account of alleged defects in the finish of the top portion of the product.
- 4.18. Save unless both the quotation and the invoice issued to the Customer specifically describes the items sold as being "CMACS" products, Bosun does not warrant that the products sold are CMACS accredited products. Without detracting from the foregoing provisions of this clause, Bosun does not warrant that any "Bosun Economy Range Product" is CMACS approved or comply with the prevailing CMACS standard for the particular product.
- 4.19. No warranty or representations will be made by Bosun regarding the suitability of the products supplied for any application whatsoever. Bosun does not undertake to supply any technical advice, and should it do so, it does not warrant the correctness thereof. All products should be installed in accordance with an Engineer's specification and with the applicable SANS standard.
- 4.20. Bosun is not apprised of the intended use or application of its products on site and, consequently, it is the Customer's sole responsibility to ensure that the correct product is purchased from Bosun, in order to meet the Customer's requirements.

- 4.21. No amount whatsoever may be deducted from invoices without Bosun's written authorisation. Payment may not be withheld for any reason whatsoever.
- 4.22. The liability of Bosun in terms of any claim lodged against Bosun by the Customer, or any other party, shall be limited to the net invoiced value of the product supplied.
- 4.23. Bosun shall not be liable to the Customer or any other person for any loss of profit or other special damages or any consequential damages whatsoever arising out of any breach by Bosun of any of its obligations under these conditions or out of any other cause whatsoever. The Customer hereby indemnifies Bosun against any claim which may be made against Bosun by any other person in respect of any matter for which the liability of Bosun is excluded in terms of the foregoing.
- 4.24. Delivery dates quoted are an estimate and are not contractual obligations undertaken by Bosun unless specifically agreed to by Bosun in writing. This is notwithstanding any remarks to this effect on the face of the order, made by Bosun's agent or salesman.
- 4.25. 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 Bosun of mistakes, in writing, immediately.
- 4.26. 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 goods at the nearest safe point which shall thereupon be deemed to be the delivery address.
- 4.27. Where the goods are delivered other than by Bosun'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 Bosun, for reasons of convenience, claim from the carrier, this is understood to be on the Customer's behalf and payment terms are unaffected.
- 4.28. A signed Delivery Note shall constitute *prima facie* proof that the goods have been delivered to and received by the Customer in good condition, whether signed by the Customer, an employee, an agent, or representative of the Customer.
- 4.29. Bosun reserves the right, at any time, to call for satisfactory guarantee of payment, or payment in advance, should Bosun have any doubt as to the Customer's ability to pay for the goods according to the terms arranged, notwithstanding the fact that the order might have been confirmed by Bosun at an earlier date.
- 4.30. If any amount due and payable by the Customer to Bosun is in arrears, Bosun shall have the right, until such amount has been paid, to suspend any deliveries under this and / or any contract then in force between Bosun and the Customer.
- 4.31. The Customer agrees that Bosun shall be entitled but not obliged to set-off, from any amounts owed by the Customer to it, any amount which is due and payable by Bosun to the Customer at any time.

5. Domicile

The Customer's *domicillium citandi et executandi* is the delivery address, its business address, registered or residential address.

6. Variation, Cancellation and Suspension

No variation of any of the terms and conditions of this agreement will be binding on the parties unless committed to writing and signed by them respectively.

7. Waivers

No indulgence that Bosun may grant to the Customer shall prejudice or constitute a waiver of Bosun's rights, who shall not thereby be precluded from exercising any rights against the Customer which may have arisen in the past or might arise in the future.

8. Cession

The agreement between the Customer and Bosun is not capable of being ceded and / or assigned by the Customer to any third party.

9. Governing Law

These trading terms and conditions and all agreements entered into between Bosun and the Customer pursuant thereto and on the terms thereof shall be governed by and construed in accordance with the laws of the Republic of South Africa.

10. Submission to Jurisdiction

The parties hereby consent to the non-exclusive jurisdiction of the South Gauteng High Court of South Africa in regard to any legal proceedings arising directly or indirectly out of or in connection with these terms and conditions or any product or services supplied by Bosun to the Customer. Notwithstanding the foregoing provisions of this clause, Bosun shall be entitled, in its discretion, to institute proceedings in the Magistrates' Court, notwithstanding that the amount of its claim may exceed the jurisdictional limit thereof, and in those circumstances, the Customer consents to the jurisdiction of the Magistrates Court.

11. Illegality

Should any of the provisions of these terms and conditions be declared invalid or unenforceable, the remaining provisions shall not be invalidated, but shall continue to be and remain in full force and effect.

12. Conflict with Consumer Protection Act

In the event that this agreement or the sale of products by Bosun to the Customer, at any time, is regulated by the Consumer Protection Act, 2008 ("CPA"), any provision of this agreement that is in conflict with the CPA shall not invalidate this agreement, but rather, that provision shall not form part of this agreement and the remainder hereof shall continue to be and remain in full force and effect.

13. Business Rescue

The Customer agrees that in the event that the Customer is placed under business rescue in terms of Chapter 6 of the Companies Act 2008, the conclusion of any compromise of the debt under such approved business rescue plan will not reduce the liability of any person or entity that has signed surety for the debts due by the Customer to Bosun and such surety shall remain liable for the full amount of the debt that was due before such compromise, notwithstanding that it is acknowledged, agreed and understood by the Customer that the surety may be entitled to have recourse against the Customer for amounts paid by the surety to Bosun pursuant to such suretyship.

14. National Credit Act, 2005

14.1. The provisions of clauses 3.2 and 4.9 of these terms and conditions will not be of application to such Customer to the extent that the Customer is either:

14.1.1. a natural person; or

14.1.2. a juristic person with both an asset value and a turnover that is less than the threshold and a credit facility is granted by Bosun to the Customer of less than two hundred and fifty thousand rand (R250,000).

