



**TRADING TERMS AND CONDITIONS OF SALE**

**of**

**CEMTEQ BUILDING SOLUTIONS (PROPRIETARY)  
LIMITED (Registration No. 2017/437927/07)**

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## **TRADING TERMS AND CONDITIONS OF SALE**

These Trading Terms and Conditions of Sale supersede all previous terms, understandings and agreements governing the sale of the Company's product with effect from 1 March 2018.

### **1. DEFINITIONS**

CPA means the Consumer Protection Act 68 of 2008, as amended, and any applicable regulations; the company means CemteQ Building Solutions (Proprietary) Limited, Registration number 2017/437927/07, its holding company and its subsidiaries, and includes any business unit of CemteQ Building Solutions, or where CemteQ Building Solutions acts as the agent of any of its associated companies or a joint venture/consortium in which CemteQ Building Solutions has an interest; such associated company or joint venture/consortium; the customer means anyone who buys the product from, or places orders for the product from the company, and the product will mean any one or more of perlite, perlite and cement composites and ancillary materials produced and/or distributed by the company.

### **2. CONTRACT**

2.1 These Trading Terms and Conditions (trading terms) will apply to verbal, written orders or electronic orders placed with the company for the product, the delivery of the product and credit applications.

2.2 All sales between the company and the customer will be regulated by these trading terms, and no other terms are applicable unless agreed between the parties in writing and signed by authorised representatives of the parties.

2.3 If the customer is a consumer as defined in the CPA, the provisions of the CPA will prevail where specified in these trading terms. Any customer who is a consumer can request an explanation of any of these trading terms from the company to the extent necessary.

### **3. QUOTATIONS**

3.1 The company will, unless otherwise requested by the customer, provide a written quotation to the customer, which will be valid for a period of 30 (thirty) days from the quotation date only, unless the company agrees to an extended period.

3.2 Verbal quotations are not binding and if a customer has obtained more than one quotation from the company for a particular enquiry, the latest quotation will apply.

### **4. RECORDING OF TELEPHONE CALLS**

4.1 The company may record all telephone conversations with the customer for record keeping and for the purposes of verifying conversations relating to orders and as evidence in the event of a dispute between the company and the customer. The customer agrees that recordings may be used for these purposes.

4.2 When placing an order, the customer must provide detailed instructions regarding when supply is required and the timing of deliveries of all materials for the duration of the contract. This is required to allow the company to ensure sufficient availability of the product as far as reasonably possible.

## **5. PRICE**

5.1 The price to be paid by the customer for the product will be the price reflected on the company's quotation.

5.2 The customer will be provided with 7 (seven) days' notice prior to any price increase. Prices may vary as a result of:

- an increase in transport costs (including all disbursements);
- an increase in levies or taxation rates applicable to the manufacture and sale of the product; and
- any change in the order which occurs after the quotation is issued.

## **6. OWNERSHIP AND RISK**

6.1 Ownership of the product will not pass to the customer until the company has received full payment for the product.

6.2 If payment is not made in terms of the payment terms, as reflected in the credit application or on the company's written quotation and/or order confirmation in relation to cash sales (as applicable), the company may recover possession of the product immediately without notice or cancellation of the contract of sale in respect of such product.

6.3 The customer assumes the risk in the product on delivery to the customer and the customer, its employee or agent has signed the delivery note. If the customer arranges its own transport, the risk will transfer to the customer once the product is loaded onto the customer's vehicle and the delivery note is signed.

6.4 When delivery is made to unattended rail sidings, the customer will be liable for all risk in the product once it is delivered at the siding as reflected by Spoornet's delivery records.

6.5 Subject to the CPA, and in circumstances where the company has, in error, supplied the customer with product in excess of the amount stipulated in the written quotation ("the excess product"), the risk in and to the excess product shall nevertheless transfer to the customer as set out in clause 6.3 above, and the company shall be entitled to, in its sole and absolute discretion:

- a) Recover possession of the excess product from the customer immediately without notice; or
- b) Require the customer to make immediate payment of the balance owing to the company in relation to the excess product.

6.6 Should the customer fail to allow the company to exercise its rights in terms of clause 6.5 above, the Company shall be entitled to suspend any delivery to the customer in accordance with clause 10 below or cancel the contract of sale in respect of product ordered by the customer.

## **7. DELIVERY**

7.1 The company will deliver the product to the customer at the address specified by the customer (the delivery site) within the timeframe agreed between the customer and the company, provided that the delivery site offers adequate and safe access to and from the

points of delivery onsite. Deliveries will be made between 07h00 to 18h00 from Monday to Friday, unless the parties have agreed otherwise.

7.2 The customer will obtain the prior consent of the company to deliver the product to another delivery site.

7.3 The customer will be responsible for off-loading of the products from the delivery vehicle at the delivery site, placing the product at the desired location and following the correct procedures in respect of the handling, storage and consolidation of the product.

7.4 The customer will be responsible for:

7.4.1 any deterioration or damage to the product after delivery due to improper handling, storage or consolidation;

7.4.2 any cost related to its failure to accept delivery or to accept full delivery of the product ordered, unless such failure is due to an error on the part of the company; and

7.4.3 all costs relating to the product being diverted to another delivery site.

7.5 The company may charge:

7.5.1 a demurrage fee, if the off-loading time exceeds the agreed discharge time in the quote for off-loading which may vary depending on the product supplied;

7.5.2 a cancellation fee for orders cancelled within 24 (twenty four) hours of the scheduled delivery time;

7.5.3 a surcharge for any additional cost incurred if an alternative dispatch point to that specified in the quotation must be used in order to meet orders placed less than 24 (twenty four) hours prior to delivery.

7.6 The customer will be liable for any loss or damage, direct or consequential to the company's or the company's contractor's vehicles and or machinery equipment or the death of or injury to the company's or the contractor's, employees or agents at the delivery site, unless such loss or damage is due the negligence of the company or its contractors. The customer will in this regard insure that it has sufficient insurance in place.

7.7 The company or its contractor may refuse to enter or may leave a delivery site if the conditions on the delivery site can reasonably be considered to be or may become unsafe for any reason.

## **7.8 Delivery by customers own transport**

7.8.1 If the customer provides its own transport:

7.8.1.1 the load on a customer's vehicle will not exceed the maximum load capacity of the vehicle; and

7.8.1.2 the customer, its employees or agents will enter the premises of the company at their own risk and must comply with the company's safety and security procedures.

## **8. ADDITIONAL TERMS AND CONDITIONS OF SALE APPLICABLE TO DELIVERY OF SPECIFIC PRODUCTS**

The following conditions will apply to the delivery of specific products:

8.1 Perlite and Perlite composite products:

8.1.1 for the delivery of bulk cementitious product by road:

8.1.1.1 the quantities delivered will be closest to the delivery capacity of the vehicle on which the customer was quoted;

8.1.1.2 the customer will be obliged to accept and pay for the actual quantity specified on the delivery note of the goods despatched, subject to the CPA where applicable;

8.1.1.3 the customer should understand the requirements as set out in the company's procedures, which will be provided on request, for damaged, short and broken bag claims and pallets;

8.1.1.4 the customer is responsible for ensuring that:

8.1.1.4.1 the product delivered is that ordered;

8.1.1.4.2 the quantity of the load is as recorded on the delivery note;

8.1.1.4.3 the transport cost of any load under 8 (eight) tons will be calculated on the basis of 8 (eight) tons;

8.1.1.5 the company reserves the right to charge:

8.1.1.5.1 a demurrage fee, if the off-loading time exceeds 2 (two) hours, unless any extension in offloading time is the fault of the company;

8.1.1.5.2 A cancellation fee for orders cancelled within 24 (twenty four) hours of the scheduled delivery time;

8.1.1.6 The customer is entirely responsible for the offloading, handling and storage of any delivered product;

8.1.1.7 Quotations are subject to access to and exit from the working area being provided by the customer.

## **9. DELAY**

The company aims to deliver all products without unreasonable delay. However, subject to the CPA where applicable, the company accepts no responsibility for any delay in respect of delivery of the product. Except where the CPA applies, the customer is not entitled to claim damages or set-off payment from the company as a result of such delay or non-delivery.

## **10. SUSPENSION OF DELIVERIES**

The company has the right to suspend any delivery if the customer has not paid any amount it owes to the company in respect of any contract between the parties.

## **11. DELIVERY NOTES**

11.1 On delivery of the product to the delivery site the customer, its employee or agent will sign the delivery note.

11.2 Unless the contrary is proven, the delivery note is proof of:

11.2.1 the type of product delivered;

11.2.2 the quantity / volume / mass of the product delivered;

11.2.3 any variation to the SABS or prescribed specifications of the product (on the customer's oral or written request which variation will then specifically be recorded on the delivery note) delivered to the customer;

11.2.4 whether water or any other foreign material has been added to the product; and

11.2.5 arrival and offloading times.

11.3 Unless the contrary is proven, the consignment note of a third party transporter or its agents or partners in respect of delivery of the product, is proof of such delivery.

11.4 In the event of a dispute arising in respect of any statement recorded on the delivery note or the consignment note signed by the customer or its agent, the customer is responsible for disproving any of the statements recorded on such note.

## **12. WARRANTY/LIABILITY**

12.1 The company warrants that the product delivered complies with the following requirements:

12.1.1 the details shown on the delivery note;

12.1.2 the South African National Standards SANS 50197 ("SABS specifications"), as amended from time to time in the case of cement and/or the applicable specifications as set out below for the relevant products;

12.1.3 the appropriate SABS specifications and/or Codes of Practice, or the specifications as prescribed by the customer in writing and agreed on between the parties.

12.2 Subject to the CPA, liability for breach of the warranty set out in clause 12.1.3 will only arise where the customer has established, in addition to any other proof required by law, that:

12.2.1 the customer has inspected the product before use in accordance with the trading terms;

12.2.2 inspection, sampling methods and interpretation of test results have been carried out in strict compliance with applicable specifications, these being no less stringent than those prescribed by the SABS;

12.2.3 the customer has notified the company verbally within 48 (forty eight) hours of its tests revealing an alleged non-conformity with specification, provided that written notification was given within a maximum of 7 (seven) days after the tests revealing an alleged non-conformity;

12.2.4 the company was afforded every reasonable opportunity to inspect the product or any sample taken and to submit the product or sample to an independent accredited laboratory for testing;

12.2.5 all records relating to the handling, sampling, curing and testing of the product and the interpretation of any tests in respect were made available to the company for inspection; and

12.2.6 the product was not stored, misused, neglected, contaminated, improperly handled or altered in any way and that no foreign material was added to the product; and

12.2.7 the customer must notify the company of any damaged, short or broken bags in accordance with the company's procedure for damaged, short and broken bag claims, failing which claims will be invalid.

12.3 Under no circumstances will the company be liable for direct, consequential, general or special damages arising out of:

12.3.1 the use by the customer of the product in any manner that is contrary to the instructions, company procedures or warnings provided by the company;

12.3.2 any circumstances beyond the reasonable control of the company; or

12.3.3 subject to the CPA, any harm caused by the company's negligence (unless the customer can prove that the company's conduct was grossly negligent);

12.3.4 and the customer hereby indemnifies the company against all such claims which may be made against the company arising from the use by any person of the product under these circumstances.

12.4 Despite the provisions of 12.2 and to the extent permitted by the CPA, the company's only liability in respect of the supply of defective products will, in any event, and in its absolute discretion be strictly limited to:

12.4.1 the repair or removal and replacement of such defective product; or

12.4.2 the refund to the customer of the cost at which the customer purchased such defective product.

12.5 Subject to the CPA, the company offers no warranty, express or implied in respect of the product, its colour, consistency or its suitability for a particular purpose even if such purpose is communicated to the company, save that it will be manufactured in accordance with its specification.

### **13. EXCLUSION OF LIABILITY**

13.1 In addition to the exclusions set out in 12, and subject to the CPA, all and any liability in respect of the following is excluded:

13.1.1 warranties implied in law in respect of latent defects;

13.1.2 warranties in respect of suitability of the product for the purpose;

13.1.3 any loss including consequential loss and loss of profits, whether in contract or in delict, including any loss or damage arising from any negligent act and omission of the company, its servants, agents or contractors;

13.1.4 any injury or death arising from any negligent act or omission of the company, its servants, agents, or contractors.

### **14. FORCE MAJEURE**

14.1 If a party is prevented or restricted directly or indirectly from carrying out its obligations in the trading terms 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 reason beyond the control of that party, the affected party will be relieved of its obligations during the period that such event and its consequences continue to the extent that it is prevented from fulfilling its obligations.

14.2 Neither party will be liable for any delay or failure in the performance of any obligations or loss or damages either general, special or consequential which the other party may suffer due such delay or failure, provided that written notice was given to the affected party of any inability to perform.

14.3 The party invoking force majeure must give written notice to the other party when the event giving rise to its inability to perform has ceased.

14.4 Should such force majeure continue for a period of more than 90 (ninety) days then either party will be entitled to cancel this contract in respect of any obligations still to be performed by that party under the contract.

## **15. GOVERNING LAW AND JURISDICTION**

15.1 These trading terms will be interpreted and governed in all respects by the laws of the Republic of South Africa.

15.2 The customer unconditionally consents and submits to the non-exclusive jurisdiction of the Magistrate's Court in regard to all matters arising from these trading terms, but the company will not be obliged to institute action in the Magistrate's Court.

## **16. COSTS**

16.1 All costs, expenses and charges, including legal costs and collection commission incurred by the company in enforcing its rights against the customer will be paid by the customer even if legal proceedings are not commenced.

16.2 Legal costs will be as agreed between the company or the customer and its attorneys. If there is no agreement or any agreement is not enforceable, legal costs will be calculated on attorney and own client scale.

## **17. ARBITRATION**

Unless otherwise set out in the trading terms, all disputes regarding the trading terms including disputes as to the meaning or interpretation of any provision or the effect of any such provision or the quantification or determination of any amount or thing required to be determined or quantified in terms of or pursuant of these trading terms, will be finally resolved in accordance with the rules of the Arbitration Foundation of Southern Africa Limited (or its successors), as amended from time to time, by an arbitrator or arbitrators appointed by the Foundation.

## **18. PROTECTION OF PERSONAL INFORMATION ACT, 2013**

18.1 The customer acknowledges that, when requesting a quotation or completing a credit application, the company will require certain Personal Information as defined in the Protection of Personal Information Act, 2013 ("POPI") from the customer.

18.2 The customer agrees that the company requires such Personal Information for purposes of:

18.2.1 processing the customer's credit application, if applicable;

18.2.2 verifying the customer's credit record, with a view to possibly supplying product to the Customer on credit;

18.2.3 monitoring the customer's adherence with the terms of the customer's credit application, if applicable, or with the trading terms;

18.2.4 providing a written quotation to the customer;

18.2.5 processing the customer's order;

18.2.6 confirming the customer's order; and

18.2.7 effecting delivery of the product to the customer.

18.3 By placing an order, and by completing the credit application (if applicable) the customer consents to:

18.3.1 The company processing the customer's Personal Information for the purposes set out above, as applicable;

18.3.2 The company's use of third party credit bureaus or any other Operator, as defined in POPI, to process the customer's Personal Information, which processing will be in line with the purpose for which it was collected, as set out above; and

18.3.3 The company processing its Personal Information for direct marketing and promotional purposes.

18.4 The customer's failure to supply the Personal Information requested by the company will result in the relevant credit application being denied or the company being unable to process the customer's order.

18.5 The customer will have the right to:

18.5.1 access any Personal Information pertaining to it that the Company has in its possession;

18.5.2 rectify or correct any such Personal Information in the event that it, at any stage, becomes outdated or incorrect for whatever reason;

18.5.3 request the destruction or deletion of its Personal Information by the company;

18.5.4 be informed by the company in the event that its Personal Information has been accessed or acquired by an unauthorised person;

18.5.5 object to the processing of its Personal Information by the company on any reasonable grounds. On receipt of such objection, the company will no longer process the customer's Personal Information, which will unfortunately result in your credit application being denied, if applicable, and the company being unable to process the customer's orders;

18.5.6 object to the processing of its Personal Information at any time for purposes of direct marketing;

18.5.7 to submit a complaint to the Regulator regarding an alleged interference with the protection of the customer's Personal Information or to submit a complaint to the Regulator in respect of a determination of an adjudicator as provided for in POPI; and 18.5.8 to institute civil proceedings regarding the alleged interference with the protection of its Personal Information as provided for in POPI.