

TERMS AND CONDITIONS OF SALE

1. Unless specifically agreed to the contrary, the Customer acknowledges that credit facilities granted are payable within thirty (30) days from date of statement, which shall be deemed to be the last day of every month.
2. Except for customers who are sole proprietors or juristic persons whose nett asset value or annual turnover at the date on which this credit application was submitted to the Creditor was less than R 1 m, interest at the rate of 2% shall be calculated and paid monthly in advance.
3. The Customer declares that no cheques will be issued unless there are funds available and that such funds will remain in the account to meet all cheques issued and that under no circumstance will any cheque issued be stopped.
4. Notwithstanding delivery of any goods sold by the Creditor to the Customer, ownership in those goods sold and delivered shall only pass to the Customer when the purchase price in respect of those goods, inclusive of any interest which may have accrued thereon, has been paid in full. Risk in and to the goods shall, however, pass to the Customer upon delivery. Delivery will be deemed to have taken place when the goods are offloaded at the Customer's nominated delivery address or, where the customer has arranged to collect goods from the Creditor, when the Creditor notifies the Customer that the goods are available for collection. Time shall not be of the essence in respect of any orders. The Customer accepts that delivery of the goods will be subject to the availability of the goods ordered. The Creditor will not be liable, under any circumstances, for any direct, indirect or consequential damage of any nature, whether in the contemplation of the parties or not, which the Customer may suffer as a result of a delay in the delivery of the goods ordered.
5. It is a condition of this and all quotations that should *force majeure* and /or shortage of any materials necessary in the manufacture and delivery of flyash contribute to our inability to supply, we should not be liable for the consequences arising therefrom.
6. 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. The goods are sold without any warranties, whether expressed or implied, and without any representations, including that the goods are suitable for the purpose for which they have been ordered.
7. The Customer agrees that the Creditor shall be entitled but not obliged to set off, from any amounts owed by the Creditor to it, any amounts which are due and payable by the Customer to the Creditor at any time.
8. The Customer gives the Creditor permission to obtain information, financial or otherwise, from the Customers Auditors, Bankers or Trade References.
9. Credit facilities may be withdrawn by the Creditor at any time without prior notice, and the Creditor reserves the right to review the extent, nature and duration of such facilities at all times.
10. The Customer agrees and acknowledges that in the event of:
 - The Customer breaching any condition in these conditions;
 - (i) The Customer breaching any condition contained in these conditions
 - (ii) The Customer failing to pay amount due and payable on due date;
 - (iii) The Customer suffering any civil judgement to be taken or entered against it;
 - (iv) The Customer causing a notice of surrender of its estate to be published in terms of the Insolvency Act no. 24 for 1936, as amended;
 - (v) The Customer dying;
 - (vi) The Customer's estate being placed under any order of provisional or final sequestration, provisional or final winding up, or provisional or final judicial management, as the case may be;Then and in that event the Creditor shall, without detracting from any other remedies which may be available to it, be entitled to summarily cancel the sale of any goods to the customer without notice to the Customer, and to rely of the provision of clause 4, and to re-possess those goods sold and delivered by the Creditor to the Customer, or to claim specific performance of all the Customers obligations whether or not such obligations would otherwise then have fallen due for performance, in either event without prejudice to the Creditor's right to claim damages.
11. The Customer hereby irrevocably and in *rem suam cedens*, pledges, assigns, transfers and makes over unto and in favour of the Creditor, all his rights, title, interest in and to all claims of whatsoever nature and description and howsoever arising which the Customer may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnership, associations, syndicates and other legal personae whomsoever (Customers' debtors) 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 or causes arising which the Customer maybe or become bound to perform in favour of the Creditor, it being acknowledged that this cession in *securitatem debiti* and is not an out and out cession. Should it transpire that the Customer entered into prior deed of cession or otherwise disposed of any of the right, title and interest in and to any of the debts which will from time to time be subject to this cession, then the cession shall operate as a cession of all the Customer's reversionary rights.
12. Should the Customer have previously made application to the Creditor for credit facilities, which said application would have embodied terms and conditions and should the Customer have furnished any security to the Creditor for the due obligations of the Customer to the Creditor on any previous occasion. The Customer records and acknowledges that the signature by it on this document shall not be regarded as a novation of any such previous agreement or any prior security given by it to the Creditor. The Customer furthermore records and acknowledges that, in so far as any provision contained herein may be inconsistent with any provisions contained in any document previously executed by it, the provision of this document shall prevail.
13. In the event of the Creditor instituting legal action against the Customer for any purpose arising out of this agreement, the Customer shall be liable for the costs on the scale as between the attorney and own client including any tracing fees and collection commission.
14. The Customer nominates as its address for service of all notices or processes arising herefrom as the address reflected on the face of the Credit Application form under the heading "Registered/Physical Address " and the surety nominates as his address for service the address reflected on the face hereof alongside his name, for service upon the Customer and the surety respectively off all notices and processes in connection with any claim for any sum due to the Creditor arising out of credit granted by the Creditor to the Customer.
15. Save as otherwise specifically provided for herein, the Creditor shall not be liable to the Customer or to any other person for any indirect or consequential damages of any nature whatsoever or any loss or profit or special damages of any nature whatsoever and whether in the contemplation of the parties or not which the Customer may suffer as a result of any breach by the Creditor of any of its obligations under these conditions or out of any other cause whatsoever. The Customer hereby indemnifies the Creditor against any claim which may be made against the Creditor by any other person in respect of any matter for which the liability of the Creditor is excluded in terms of the foregoing.
16. No relaxation or indulgence which the Creditor may grant to the Customer shall constitute a waiver of the rights of the Creditor and shall not preclude the Creditor from exercising any rights which may have arisen in the past or which may arise in the future.
17. This agreement contributes the sole record of the agreement between the parties. No party shall be bound by any express or implied terms, representation, warranty, promise or the like not recorded herein.
18. No addition to or variation of these terms shall be of any force or effect unless in writing and signed by or on behalf of the Creditor.