

STANDARD TRADING CONDITIONS FOR AGGREGATE AND CONCRETE

Version 08 March 2011

1. Introduction

1.1 These terms and conditions ("the conditions") read with any credit application form agreed to by the parties, shall govern the sale of all products and services between NPC Concrete and Aggregates (NPC) and its customers. These conditions must be read in conjunction with any authorised quote, specification sheets and Codes of Conduct issued by NPC from time to time. Any order placed by the customer shall be deemed to be an acceptance of these conditions of sale.

1.2 NPC manufactures and sells a variety of products comprising of ready mix concrete and aggregate and related services. Specific technical terms apply to each category of product and these may be found in NPC's applicable Codes of Conduct.

1.3 However it is also recorded that :

1.3.1 Concrete, and pumping of concrete, is sold strictly in measurements of cubic metres. (m³).

1.3.2 Aggregates are sold in measurements of metric tons (tons).

1.3.3 Services sold as specified on quote or on the prevailing NPC price list.

1.3.4 The placing, levelling, compaction and curing of concrete shall be at the risk and responsibility of the customer.

2. Products and Quality

2.1 NPC warrants that the concrete supplied by it will comply with the specifications in SANS 878:2004.

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- 2.2 Notwithstanding this it is the customer's responsibility to ensure that the concrete ordered from NPC complies with the technical requirements or specification/s of its use.
- 2.3 The products supplied by NPC will comply with the description on its delivery note and on acceptance of the delivery note the customer acknowledges that this shall be prima facie proof that NPC has complied with all of its delivery obligations.
- 2.4 It is recorded that the products shall be delivered on the following basis unless otherwise stated in writing :
- 2.4.1 Concrete is supplied subject to the SARMA exclusion clauses, a copy of which can be viewed on the SARMA website at www.sarma.co.za
- 2.4.2 Concrete will be supplied with a slump of 75 mm for normal concrete & 100mm for pump mixes (Tolerances as per SANS 878);
- 2.4.3 Concrete is sold on the basis of its performance and NPC reserves the right to blend SABS compliant cement, additives, and aggregates to achieve the required standard or strength classes;
- 2.4.4 NPC's Quality System obliges random sampling & testing of concrete which takes place from time to time;
- 2.4.5 Aggregate is supplied subject to the ASPASA exclusion clauses, a copy of which can be viewed on the ASPASA website www.aspasa.co.za.

3. **Pricing and Validity**

- 3.1 Unless agreed in writing to the contrary, product shall be sold at NPC's ruling price of each product category as at the date of delivery.
- 3.2 Prices quoted include delivery and exclude Value Added Tax, and/or any other statutory or regulatory charges that apply.
- 3.3 Should a price be quoted for a product (which does not have a ruling price) the quote shall remain valid for 30 days unless extended in writing by NPC.

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- 3.4 Pricing of NPC products and services is subject to site inspection prior to Delivery.
- 3.5 NPC reserves the right to adjust prices should there be an increase in the cost of materials, production, or delivery. The adjusted price shall be increased proportionately by the amount of the increased costs.
- 3.6 Minimum load fees may be charged by NPC for concrete deliveries on loads less than 4 m³, which will be communicated to the customer on acceptance of the order.
- 3.7 All concrete prices are quoted subject to a maximum discharge period of 8 minutes per m³ where after delay penalties will apply at a rate of R8.00 per minute excluding VAT.
- 3.8 Concrete Pump Establishment fees apply only for the purposes of establishment and additional costs for cancellation, static lines and delays may also be charged by NPC at its election.
- 3.9 The customer shall at all times remain responsible for supplying material at its cost to prime any concrete pump that is to be used in the process.

4. **Payment**

- 4.1 The customer shall make payment by way of cash, bank guaranteed cheque, or electronic fund transfer. Payment in full must be made prior to noon on the day before delivery failing which no product will be despatched.
- 4.2 Where credit is extended to a customer payment shall be made within the credit limits agreed to by NPC and the customer. No settlement discount shall be allowed unless specifically agreed to in writing by NPC.
- 4.3 NPC reserves the right to charge interest at the prevailing prime rate of interest of Standard Bank of South Africa Limited plus 1% on amounts not paid by the customer on due date.

4.4 All payments shall be made to NPC without deduction and/or set-off of any kind and all payments will be allocated first to interest (if charged) and then to the longest outstanding debts reflected on NPC's most recent statement

4.5 Notwithstanding the amount of the claim, NPC may, at its election, institute action against the customer in the Magistrates court having territorial jurisdiction. The customer consents to the jurisdiction of the Magistrate's Court and agrees that in the event of legal action being instituted against it, it shall be liable for all the legal costs of NPC on the scale as between attorney and client.

5. **Performance of Products and Claims**

5.1 It is recorded that NPC shall not be held liable for any changes to the performance of its products brought about by the customer adding water or any other additive to the product or due to delays on site which delay delivery.

5.2 No claim shall be made against NPC for the performance of its products unless written notice has been given to NPC within 30 days of the occurrence of the event giving rise to the claim.

5.3 Should a claim be made against NPC arising out of the performance of its products then NPC shall be obliged at its election to either replace the product or refund the purchase price of the defective product.

5.4 Save for 5.3 NPC shall not be liable to the customer for any losses of any form or nature whether direct or consequential arising from the performance of the product.

6. **Delivery**

6.1 Unless otherwise agreed to by NPC in writing, its normal delivery hours are weekdays excluding public holidays between the hours of 07h00 and 17h00. Deliveries outside of these hours will attract a surcharge which will be communicated to the customer.

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- 6.2 Delivery or collection of material is always subject to stock availability. Whist NPC will endeavour to comply with agreed delivery date it cannot be held liable for any costs and/or losses resulting from any delays whatsoever, including deliveries attributable to product shortages, mechanical breakdowns, strikes and labour unrest, slow delivery of pump rates, weather or force majeure events which are beyond the reasonable control of NPC.
- 6.3 The customer shall at all times be responsible to ensure the product is offloaded at the correct designated delivery point and under no circumstances will NPC be liable for any damages that may arise from delivery to an incorrect delivery point. The risk in and to the discharge of the product at the delivery point lies with the customer.
- 6.4 Any complaint regarding shortages or incorrect product on delivery must be in writing to NPC within 24 hours of such delivery so that NPC has a reasonable opportunity of investigating the complaint. Should there be short delivery then NPC shall not be liable for any consequential losses arising there from save that it shall be obliged to deliver further product to comply with the original order.

7. Safety and Access

- 7.1 The customer shall be responsible for:
- 7.1.1 providing safe access to NPC to its discharge area and provide for the discharge of surplus concrete and the washing of its drum mixer;
 - 7.1.2 ensuring all regulatory permissions and/or approvals are obtained from all relevant authorities for the discharge of concrete;
 - 7.1.3 site preparation and management and that all structures are properly secured and capable of receipt of the product.
- 7.2 It is recorded that NPC (or its employees or agents) shall not be liable for the failure or collapse of any structures on site or for any consequent damage to persons or property arising there from. All risks on site shall lie with the customer who shall if necessary ensure that it has appropriate insurance cover in place.

- 7.3 Notwithstanding the foregoing, NPC reserves the right to refuse to enter sites which appear to be unsafe and further it shall not be liable for any damage caused to walls, pipes, roadways, or any other damage to property caused by its vehicles during delivery.

8. OWNERSHIP AND RISK

- 8.1 Notwithstanding delivery of product NPC shall remain the owner until it has received payment in full for the product.
- 8.2 Notwithstanding the above, risk in and to the product shall pass to the customer on delivery of the product or any portion of the product.

9. WARRANTIES

- 9.1 All product supplied by NPC will meet the specifications set out in the appropriate Company specification sheet. Any other warranties (express or implied) are specifically excluded.
- 9.2 The Customer warrants that it will comply with all relevant laws, regulations and by-laws while on NPC's property, including but not limited to, the Occupational Health and Safety Act 85 of 1993, the Mine Health and Safety Act 29 of 1996 and all other laws relating to occupational health and safety, protection of the environment and handling of hazardous substances.

10. INDEMNITY

- 10.1 The Customer hereby indemnifies NPC and its directors, employees and agents from any claims that may be made against them arising out of the supply, sale and delivery of product by NPC to the customer.

11. FORCE MAJEURE

In the event of any act of God, war, rebellion, riot; civil commotion, labour suspension, fire, accident, machinery malfunction, electricity or water disruptions or shortages, or any other circumstance arising or action taken beyond or outside the reasonable control of the parties hereto preventing them or any of them from the performance of any obligation hereunder (any such event hereinafter called "Force Majeure") then performance under this agreement shall be delayed until such time as the circumstance no longer prevents performance and neither party shall have any claim against the other as a result of such delay, provided that the application of this clause shall not affect the liability of either of the parties in respect of any claim, matter or Incident which arose or existed prior to the occurrence of such event.

11.1 CERTIFICATE OF BALANCE

The customer acknowledges that a certificate of balance signed by any manager of the Company (whose authority need not be proved) shall be prima facie proof of the amount outstanding and due by the customer to NPC.

12. GENERAL PROVISIONS

12.1 These Conditions and any documents referred to herein shall constitute the whole agreement between NPC and customer relating to the sale of product.

12.2 Neither party will be bound by any variation of these conditions nor any waiver of any rights under these conditions of Sales unless the variation or waiver is in writing and signed by both NPC and the customer.

12.3 No indulgence which NPC may give at any time in regard to the carrying out of any of the customer's obligations will prejudice or be a waiver of any of NPC's rights under these conditions.

12.4 If any provision of these conditions becomes, invalid or unenforceable, it shall be severable from the rest of the conditions which will continue to be binding on the parties.

12.5 These conditions must be Interpreted and implemented in accordance with the laws of the Republic of South Africa.