

STANDARD TRADING TERMS AND CONDITIONS

BETWEEN

HOLVLEI BOERDERY & AGGREGATES
(“THE SUPPLIER”)

AND

ITS CUSTOMERS

Unless otherwise agreed to in writing, all Contracts between the Supplier and its customers shall be subject to the terms and conditions set out below, as amended from time to time, which terms and conditions take precedence over any other terms and conditions which may be contained in the customer’s documentation:

1. DEFINITIONS

- 1.1. “Supplier” shall mean NH Loubser Boerdery (Pty) Ltd t/a Holvlei Boerdery & Aggregates, registration no.: 2015/317897/07, and includes, where applicable, each of its servants, agents and sub-contractors who shall enjoy the same protection as the Supplier.
- 1.2. “Customer” means those persons that contract with the Supplier for the purchase of any Products and incidental services, including transportation of Products, and shall include, where applicable, each of its servants, agents and subcontractors.
- 1.3. “Contract” means any contract or agreement arising out of the acceptance of any offer made by the Customer for the purchase of Products from the Supplier and which offer has been accepted by the Supplier.
- 1.4. “Credit Agreement” means the credit application made by the Customer and approved by the Supplier and any reference thereto shall be incorporated into this agreement.
- 1.5. “Products” mean aggregates including, sand, filling, granite, syenite and / or calcrete aggregates and includes where applicable transportation thereof.
- 1.6. Unless a contrary intention clearly appears, the terms used in this document shall have the meanings assigned to them in section 1, section 53 or any other section, as the case may be, of the Consumer Protection Act, 2008, regardless of whether that Act is applicable to the Contract or not.

2. INTERPRETATION

- 2.1. In these conditions, unless the context requires otherwise –
 - 2.1.1. words importing any one gender shall include the other two genders;
 - 2.1.2. the singular shall include the plural and vice versa;
 - 2.1.3. a reference to persons shall include natural persons and juristic persons (whether incorporated or still to be incorporated), including trusts and partnerships.
- 2.2. In these conditions, the headings have been inserted for convenience only and shall not be used for nor assist or affect their interpretation.

3. ORDERS

- 3.1. Orders by the Customer for products shall, unless specified by the Supplier to be otherwise, be made in writing to such addresses, electronic or otherwise, as may be nominated by the Supplier from time to time. Orders shall constitute irrevocable offers to acquire the relevant products in accordance with the terms and conditions contained herein.
- 3.2. An Order is deemed to have been accepted by the Supplier once the Supplier informs the Customer thereof in writing, including *inter alia*, furnishing the Customer with a pro-forma invoice or sales order (excluding quotation).
- 3.3. The quantity of Products ordered shall be expressed in kilogrammes or metric tonnes reflecting the net mass thereof, unless the Supplier specifically agrees otherwise in writing, and shall be indicated as such on any quotation, pro-forma invoice, invoice, statement or the like.
- 3.4. The Customer agrees to pay for all orders which purport to be issued on its behalf and are accepted and given effect to in good faith by the Supplier.
- 3.5. The Supplier may in its discretion agree to the cancellation, variation or diversion of orders by the Customer which have been accepted by the Supplier. If Products have already been despatched to the Customer, the Customer will reimburse the Supplier for any costs incurred with regard to the cancellation, variation or diversion of any orders, including any transportation costs incurred.
- 3.6. The Supplier may cancel any accepted order if the Customer breaches any term of this agreement or makes any attempt of compromise, liquidation, sequestration, termination or if judgement is recorded against the Customer or any of its principals.
- 3.7. Products are supplied at its contract price and are not subject to discounts, unless specifically agreed to otherwise in writing by the Supplier.
- 3.8. The contract price shall be the price stipulated in a quotation or pro-forma invoice (whichever the Customer requests) provided by the Supplier which quotation or pro-forma invoice, as the case may be, may be amended or withdrawn prior to acceptance by the Customer and which quotation or pro-forma invoice shall be valid for a period of 30 (thirty) days from issuing thereof.

4. PAYMENTS

- 4.1. Payment is to be made within the credit terms provided for in the Credit Application. If no valid Credit Application exists between the Customer and Supplier, then payment is to be made when requested by the Supplier, unless the Supplier agrees otherwise in writing.
- 4.2. If the Customer fails to object to any item on the Supplier's statement within 7 (seven) days from date of receipt thereof then the account shall be deemed to be in order.
- 4.3. All payments to the Supplier shall be without delay, deduction or set-off and no amount may be deferred or withheld by reason of any claim or counter claim, unless the Supplier specifically agrees thereto in writing.
- 4.4. All payments shall be made in South African currency, free of bank and other charges, by the Customer to the nominated bank account of the Supplier by way of electronic fund transfer or direct deposit, unless the Supplier specifically agrees otherwise in writing.
- 4.5. Should any amount not be paid by the Customer on the due date or in the event that the Customer commits an act of insolvency as defined in the Insolvency Act, 1936, then the whole amount in respect of all Contracts shall immediately become due and payable forthwith irrespective of the due dates for payment of such amounts in terms of any Credit Agreement and the Customer may be liable to pay interest, at the sole discretion of the Supplier, in respect of these amounts at the maximum rate permissible in terms of the Prescribed Rate of Interest Act, 1975, from due date until date of final payment.
- 4.6. The Supplier shall in its absolute discretion be entitled to appropriate payments received from or on behalf of the Customer to any debt the Customer may owe it, including interest, legal costs and capital.
- 4.7. It is a condition of supply that the Customer's liability for payment becomes irrevocable against proof of delivery by signature on the Supplier's delivery note or on the delivery note or consignment note of any carrier acting as an agent for the Supplier as stated in clause 5.6.

5. DELIVERY

- 5.1. Any claim regarding shortages, quantities and/or specifications of Products delivered which are material in nature must be lodged with the Supplier immediately and confirmed in writing by endorsing delivery notes to that effect at the time of delivery, failing which the Customer will be deemed to have accepted the Products unconditionally as is and the rights of the customer in regard thereto shall be deemed to be waived.
- 5.2. Clear and unrestricted access must be provided at the delivery point for offloading of the Products.
- 5.3. It is the obligation of the Customer to ensure that any Products ordered is offloaded at the correct location and that correct delivery addresses are provided to the Supplier.
- 5.4. Any costs incurred in the transport, handling or storage of products that cannot be delivered or are not accepted for delivery and any connected demurrage charges which have arisen due to the

Supplier being unable to unload its product within a reasonable period will be for the Customer's account.

- 5.5. All sizes, weights and other specifications given by the Supplier are approximate only, subject to the provisions of the Legal Metrology Act, 2014. The Supplier reserves the right to supply products which do not exactly correspond with what it has agreed to supply provided that any differences are not material (i.e. within tolerable deficiency per applicable industry standards) or do not make the products unsuitable for the customer's declared purpose.
- 5.6. Any delivery note or waybill (copy or original) held by the Supplier, signed by the Customer or a person duly authorized by the Customer, shall be prima facie proof that delivery was made to the Customer. The Supplier's delivery notes shall for all purposes be deemed to be accurate in all respects and be binding on the customer.
- 5.7. Product will be delivered to only one point at the site address indicated on the order and as reflected on the delivery note and scheduled transport will not be diverted without authority or instructions from the Supplier. Should the Customer request that product to be delivered to another site, the Customer will be responsible for any additional transport or any costs that may be incurred.
- 5.8. Delivery shall be by road, unless otherwise stipulated on any quotation / pro-forma invoice or the like.
- 5.9. If the Customer requires delivery to take place by collection by the Customer from the Supplier's premises, the Customer shall make its own arrangements for transport, at its own risk and cost.
- 5.10. Maximum carrying mass will be governed by the relevant statutes. Where the customer appoints his own road transporter to collect the product at the factory, axle loading and any overloading will be the responsibility of the customer.
- 5.11. Where the customer appoints its own road transporter to collect the product at the factory, the Supplier's responsibility for providing proof of delivery will be limited to proving that the product was accepted by the road transporter at the factory.
- 5.12. Delivery shall be deemed to take place when the Supplier's representative issues a delivery note signed on behalf of the Supplier in accordance with clause 5.6.
- 5.13. The Supplier reserves the right to search any Customer's vehicles and any vehicle of a road transporter appointed by the Customer before it enters or leaves the Supplier's premises, and in addition reserves the right to search any of the customer's personnel or those of any sub-contractor appointed by the customer. It shall be the responsibility of the Customer to ensure that such persons are aware of this provision.
- 5.14. Whilst it will endeavour to deliver all products as advised, the Supplier cannot guarantee delivery on any specific date, and time will not be of the essence in respect of the delivery of the products. The Supplier shall not be liable for any loss or damage due to delay and the customer shall not be entitled to cancel or repudiate a contract or claim damages due to late delivery.

- 5.15. The Customer warrants that the signatory to any tax invoice, delivery note or other document of the Supplier made out in the name of the Customer or consignee is duly authorised to bind the Customer in relation to the contract and shall constitute proof of proper delivery of the products.

6. OWNERSHIP AND RISK

- 6.1. The risk and benefits in the Products shall pass to the Customer on delivery.
- 6.2. Notwithstanding the delivery of Products or the passing of risk and benefits to the Customer, ownership thereof shall remain vested in the Supplier for as long as permitted by law and until the product has been paid for in full.

7. BREACH OF CONTRACT

- 7.1. Should the Customer breach any contract with the Supplier or default in its own obligations, the Supplier, shall without prejudice to any other rights it may have, in its absolute discretion be entitled to suspend any further performance under any contract with the customer until the default is remedied.
- 7.2. A certificate issued under the signature of any director or manager of the Supplier, whose authority, appointment and signature it shall not be necessary to prove, that purports to certify any indebtedness by the Customer to the Supplier, delivery of the products in terms of a contract or that payment in respect of a contract has not been made shall constitute prima facie proof of such indebtedness, delivery or non-payment, as the case may be. Such certificate shall be deemed to be a liquid document for purposes of Summary Judgment and/or Provisional Sentence proceedings in any Court of Law.
- 7.3. In the event of the Supplier proceeding against the Customer for recovery of any amounts due in terms of this agreement or any contract or proceedings to enforce any of its rights arising here from, then and in such event the Customer shall be liable for the legal costs incurred by the Supplier on the attorney and own client scale, including counsel's fees as well as collection costs, tracing fees and any other costs incidental thereto, on demand.
- 7.4. Save as specifically provided for herein, should any Party ("Defaulting Party") commit a breach of any terms and conditions herein contained, then the aggrieved Party ("Aggrieved Party") shall be obliged to give the Defaulting Party 7 (seven) days written notice to remedy the breach. If the Defaulting Party fails to comply with such notice, the Aggrieved Party shall be entitled to cancel this agreement immediately and claim any damages it/they may have sustained thereby from the Defaulting Party, without prejudice to any other remedies that such Aggrieved Party may have at law.

8. CESSION OF RIGHTS / CLAIMS

The Customer and all sureties to this agreement hereby cede all their rights against each other and any benefits they may have under any insurance related to this or any other contracts with the Supplier to it as security for payment of any amounts they may owe to it and each of them hereby appoints the Supplier exclusively and irrevocably to do everything necessary to collect any payment due to them from such insurer/s and to appropriate it to any debt they may owe to it.

9. JURISDICTION

- 9.1. These terms and conditions and all modifications and amendments hereof shall be governed by and decided upon and in accordance with the laws of South Africa.
- 9.2. The parties consent to the jurisdiction of the Magistrates Court in connection with any action that might be instituted arising from or relating to this agreement or any contract, provided that the Supplier may institute any action out of the High Court.

10. ADDRESS OF LEGAL NOTICE

- 10.1. The Customer chooses its *domicilium citanandi et executandi* for all purposes arising here from, including for the service of any notice and court process, as the physical address, fax number and the accounts department's electronic mail address appearing on the Credit Agreement.
- 10.2. All notices forwarded by prepaid registered post shall be deemed given and received 3 (three) days after the date of posting and notices by fax shall be deemed to have been given and received on the business day following the day of despatch of such notice.
- 10.3. All notices forwarded by electronic mail shall be deemed given and received 24 hours after successful transmission thereof.
- 10.4. The Customer shall be entitled to change such address from time to time provided that such change shall only be effective upon receipt of written notice thereof by the Supplier.

11. FINANCIAL POSITION AND CREDIT CHECKS

- 11.1. The Customer hereby consents and grants authority to the Supplier to conduct credit checks, searches and the like in respect of the Customer and any of its principals with any credit agency or party which the Supplier may at its discretion consider expedient or necessary, *inter alia*, for the purpose of ascertaining the creditworthiness of the Customer and/or its principals or in order to trace the Customer and/or its principals, or any of their assets.
- 11.2. The Supplier shall not be obliged to perform under this agreement unless the Supplier is satisfied of the Customer's solvency and liquidity and willingness to pay for the products sold in terms of a contract.

12. RETURNS POLICY

- 12.1. All Products wrongly delivered (including *inter alia*, incorrect type, specifications and/or quantity) and rejected on arrival before offloading, subject to clause 5.1, will be taken back to the Supplier's nearest depot by its drivers at no additional cost to the Customer. It is the customer's responsibility to visit the Supplier's depot and view samples for all coloured aggregate and stone products as natural gravels / aggregates vary in shades of colour and / or consistency. Correct product will be delivered within 24 hours (product exchange), subject to Product availability, or alternatively a full refund is processed as soon as practicable (unless purchased on credit), whichever the Customer may request. This refund policy is not applicable to product rejection due to gravel / aggregate colour variations.
- 12.2. Products delivered and accepted may be returned at the sole discretion of the Supplier upon written notification received from the Customer within 48 hours after delivery, which products may be refunded at contract price value less handling fees (if Customer paid in advance). Handling fees are charged to cover transportation, and handling costs of Products. Where the Products are delivered on credit, accepted and subsequently returned, the Customer will be liable for handling fees as aforementioned.

13. CANCELLATION

- 13.1. The Supplier may cancel a contract/s or uncompleted part of it forthwith, if the Customer –
- 13.1.1. commits, or permits a commission of a breach of any of the terms or conditions of the contract;
 - 13.1.2. being an individual, dies or is provisionally or finally sequestrated or surrenders his estate;
 - 13.1.3. being a partnership, the partnership is terminated;
 - 13.1.4. being a trust, is provisionally or finally sequestrated or surrenders its estate;
 - 13.1.5. being a company or close corporation is placed under provisional or final order of liquidation or business rescue; or
 - 13.1.6. compromises or attempts to compromise generally with any of its creditors.
- 13.2. The Supplier's rights in terms of point 13.1 above shall not be exhaustive and shall be in addition to any other rights it may have whether under the agreement or otherwise.
- 13.3. Upon termination of the contract for any reason whatever –
- 13.3.1. all amounts then owed by the customer to the Supplier, in terms of the contract, shall become due and payable forthwith; and
 - 13.3.2. the Supplier may retake possession of any product in respect of which ownership has not passed.

14. WARRANTIES

- 14.1. The Supplier warrants that at the time of any sale, unless otherwise stipulated on any quotation or pro-forma invoice, the product will comply with the relevant specifications of the South African Bureau of Standards but gives no other warranties, expressed or implied, and makes no other representations.
- 14.2. No warranty is given by the Supplier with regard to colour consistency of product.
- 14.3. If the product is required for a special purpose communicated to the Supplier no warranty is given that the product will be suitable for that purpose. The customer will be deemed to have satisfied itself as to the suitability of the product ordered, by virtue of the fact that it has placed the order.
- 14.4. The Supplier shall not be liable under any circumstances whatsoever for any damages, loss of profit, demurrage, whether direct or indirect, consequential or otherwise alleged to be sustained by the customer as a result of or attributed to:
- 14.4.1. product supplied by the Supplier being defective or incorrectly used and/or used in conjunction with materials not supplied by the Supplier;
 - 14.4.2. any delay in the manufacture or delivery of the product in acts or omissions or negligence (gross or otherwise) of any of the Supplier's employees or agents or servants or any other person for whose acts or omissions the Supplier is liable.
- 14.5. In the event that any product does not comply with any of the Supplier's warranty undertakings it shall replace the product as soon as reasonably possible after the defect has been brought to its attention, subject to clause 12.1.
- 14.6. The warranty given by the Supplier in 14.1 is given in lieu of any common law liability, and accordingly all and any liability for:
- 14.6.1. warranties implied by law in respect of latent defects; or
 - 14.6.2. the fitness of the products for the customer's purpose (in respect of which the customer must satisfy itself); or
 - 14.6.3. any loss or injury arising from the supply of the products, including any loss attributable to any negligent act of the Supplier or its servants or agents; or
 - 14.6.4. any representations or warranties as to the products given by any of the Supplier's servants or agents,
- are hereby excluded.

15. INDEMNITY

- 15.1. The parties acknowledge that in terms of section 61 of Consumer Protection Act, the producer, importer, distributor, retailer, and/or supplier, may be jointly and severally liable for any harm caused wholly or partly as a consequence of–
- 15.1.1. supplying unsafe products;
 - 15.1.2. a products failure, defect or hazard in any products; or

- 15.1.3. inadequate instructions or warning provided to the consumer pertaining to any hazard arising from or associated with the use of any products, irrespective of whether the harm resulted from any negligence on the part of the producer, importer, distributor, retailer or supplier, as the case may be.
- 15.2. In respect of above, each party ("indemnifying party") hereby indemnifies and holds harmless the other party from and against any and all claims, actions, liabilities, damages, costs and expenses asserted against, imposed upon or incurred by such other party as a result of or arising out of any harm alleged or proven by a consumer itself, or other person contemplated in section 4(1) of the Consumer Protection Act, to the extent that such harm is attributable to the conduct of the indemnifying party or any contravention by the indemnifying party of any applicable law.
- 15.3. It is recorded that signature of this document by the Customer is without prejudice to any rights or defences which the Supplier may have under and in terms of the Consumer Protection Act or at law in respect of any claims made or brought against it by the customer and/or any protected consumer or purchaser of any products supplied by the Supplier.

16. PROTECTION OF PERSONAL INFORMATION

In the course of the customer obtaining products from the Supplier, the Supplier will become privy to obtaining personal information of the Customer and the customer undertakes to do the following:

- 16.1. The customer gives its express and informed consent to the Supplier collecting, receiving, recording and thereby processing its personal information reflected on the Supplier's quotation forms, invoices and any other annexures reflecting the customer's personal information, in support of such transaction to give effect to this agreement and consents to such information being safeguarded by the Supplier for this purpose.
- 16.2. The customer gives its express and informed consent to the Supplier collecting, receiving and recording of its personal information relating to the entering of terms of payment with the Supplier for the issuing of a quotation for the supply of any product or service by the Supplier to the customer.
- 16.3. The recording of personal information of the customer will only be retained by the Supplier for the specific purpose of completion of such order.
- 16.4. The customer accepts responsibility for safe keeping and issuing of its orders with the Supplier and undertakes to safeguard the processing of the Supplier's personal information as reflected on such orders.
- 16.5. The Supplier undertakes to protect and safeguard the processing of personal information of the customer as alluded to in paragraph 4(1)(g) of the Protection of Personal Information Act, 2013.

17. PROTECTED CONSUMER

- 17.1. If the customer is protected under the Consumer Protection Act, 2008 –

- 17.1.1. clauses 3.6 and 13.1 shall be read in conjunction with the provisions of section 14 of the Consumer Protection Act (if the Customer falls within the scope of that section);
- 17.1.2. clause 5 shall not apply insofar as it contravenes section 19 of the Consumer Protection Act;
- 17.1.3. clause 4.3 shall not apply insofar as it contravene section 48 of the Consumer Protection Act;
- 17.1.4. clause 14.1 shall not apply insofar as it contravene sections 55 and 56 of the Consumer Protection Act;
- 17.1.5. clause 12 shall not apply insofar as it contravenes section 20 of the Consumer Protection Act.

18. APPLICATION OF CONSUMER PROTECTION ACT

If the Customer falls outside the scope of application of the Consumer Protection Act, 2008, as stipulated in section 5 of that Act or any specific section in that Act, then any reference to that Act or section of that Act or clause pertaining thereto, as the case may be, contained herein shall not be applicable to the Contract and such provisions shall be regarded as *pro non scripto*, unless context specifically dictate otherwise.

19. GENERAL

- 19.1. The customer warrants that it is acting as a principal and not as an agent for an undisclosed principal.
- 19.2. These standard terms and conditions shall override any standard terms and conditions of purchase which the customer purports to impose and in the event of any conflict these terms and conditions shall prevail.
- 19.3. The Supplier shall be entitled to employ sub-contractors on such terms and conditions as it deems fit for the purpose of fulfilling a contract or any part thereof.
- 19.4. The Supplier shall be entitled to cede or assign any of its rights or obligations under any contract to any party. The Customer shall have no right to cede or assign any of its rights or obligations under any Contract, unless specifically consented to by the Supplier in writing.
- 19.5. No agreement at variance with the terms and conditions of this agreement or consensual cancellation thereof and no waiver by the Supplier of any of its rights shall be of any force or effect unless reduced to writing. Any indulgence granted by the Supplier to the Customer shall neither be deemed to be a waiver of any of the rights of the Supplier nor operate as an estoppel against the Supplier.
- 19.6. Each provision in this agreement is severable, the one from the other. If any provision is found to be defective, unlawful or unenforceable for any reason, the remaining provisions shall continue to be of full force and effect.

- 19.7. The Supplier shall not be considered to be a contractor or sub-contractor or in any way be bound by the terms of any other agreement or contractual document to which the Supplier is not directly a party.
- 19.8. The Supplier retains the right to amend or vary the Standard Trading Terms and Conditions from time to time at its sole discretion and without prior notice to the Customer and the Customer agrees to be bound by any such amendments/variations.
- 19.9. Signature of these terms and conditions, as amended from time to time, are not required in order to effect a valid and binding agreement between the Supplier and Customer.