

TERMS AND CONDITIONS OF SALE OF SPRAY PAVE (PTY) LTD
Of 7 Evans Street, Alrode South, Gauteng. Reg no: 1995/006372/07

STANDARD TERMS AND CONDITIONS

The Company's quotation for the sale of Product and the rendering of Services and any contract resulting therefrom shall be Subject to the following terms and conditions, read with the terms and conditions contained in the Company's quotation, delivery note and invoice, which shall apply to the exclusion of all other terms and conditions, whether express or implied, unless the Company specifically agrees in writing to accept any variation hereto. The Customer, by accepting delivery of Product or the rendering of Services pursuant hereto, acknowledge that no terms and conditions which the Customer purports to attach to its acceptance, nor any terms and conditions which might have been attached to the Customer's order, shall be binding on the Company. The Customer agrees that all such conditions shall be deemed to have been substituted by these terms and conditions.

DEFINITIONS

"Company" means Spray Pave (Pty) Ltd, Registration Number 1995/006372/07.

"Customer" means any party with whom the Company contracts for the sale of any Product or the rendering of any Services. "Product" means any goods of whatsoever nature purchased by the Customer from the Company.

"Services" means any service of whatsoever nature rendered by the Company to the Customer, including but not limited to manufacturing, haulage and application of Product.

"Price" means the usual price current at the time of delivery of Product or rendering of Services, excluding VAT, foreign taxes, border, toll fees etc. or any other taxes levied in or outside RSA, which will be payable in addition thereto.

1. QUOTATIONS & ORDERS

- 1.1 Any quotation by the Company is open for acceptance by the Customer for a period of 30 (thirty) days from the date of the quotation, unless revoked earlier in terms of written notice to the Customer or otherwise agreed in writing between the Company and the Customer.
- 1.2 Orders by the Customer for Product or Services shall be made in writing to the Company, at least 48(forty-eight) hours prior to the Product or Services being required. This however does not hold Spray Pave liable whatsoever for standing time or compensation.
- 1.3 The Customer's order shall constitute an irrevocable offer to purchase the Product and shall be capable of acceptance by the Company by delivery of Product and/or rendering of Services or by the written acceptance or confirmation of the order.
- 1.4 Under no circumstances whatsoever will the Company accept oral orders. All orders are to be made in writing on the official letterhead of the Customer and signed by a duly authorised representative of the Customer. No blending or dispatch of product, as well as rendering of services will take place until such time that the aforementioned is received and approved by the Company. However, the Company reserves its right not to accept any orders deemed to be unofficial.
- 1.5 The Customer shall provide the Company with an order number when placing any order with the Company.
- 1.6 Any variation to the original trade agreement between the Company and Customer, in terms of rates, scope of service rendered etc., will only be deemed official once noted in writing and authorised by the Managing Director of the Company.
- 1.7 Special orders, orders placed for specially manufactured product, will be charged at full cost price if cancelled without prior notice or reasonable lead time.
- 1.8 If the Customer cancels any order placed on the Company for any reason whatsoever, excluding breach of any obligation by the Company, within 12 (twelve) hours before the Product or Services are required up to 200 (two hundred) km and within 24(twenty-four) hours beyond 200 (two-hundred) km from the point of dispatch, then the Customer shall be liable towards the Company for a cancellation fee equivalent to the higher of 5% (five percent) of the value of the cancelled order or the actual cost incurred by the Company in the manufacturing and/or procurement of the Product. Where an order is cancelled and the vehicle in question has already left the Company's premises, the Customer will be liable to pay the Company's full transport element as stated in the quotation.
- 1.9 Additional sub-contracts may be concluded by the Company and these terms and conditions will apply mutatis mutandis to such sub-contracts, unless specifically waived by the Company.
- 1.10 The Price quoted is subject to variation from time to time as follows: *Product*: The quoted Price of Product is based on the ruling list price of the Company and is subject to rise and fall in accordance with any variation in the ruling price from the relevant refinery between the time of quotation and time of delivery. It is to be expressly noted that all products listed on the Company's quotation deemed to be special materials, and therefore rise and fall is applicable. *Modified Products*: The Modified Product price is based on the special materials, as per the above, plus the modifying agents. The price of the basic binder will vary as stated above. The price of the modifying agent will vary in accordance with any variation in the price of modifying agents, extender or fluxing oils, rubber crumbs, etc., as well as any variation in production costs. *Drums*: The quoted price for any Product supplied in drums is subject to variation in the Product price, the price of drums as well as drumming costs. *Deliver & Spray*: The price quoted for delivery and spray will vary in accordance with the variation in the price index of fuel and consumer price index (CPI) as published by STATS SA. Including but not limited to toll fees or any other cost whatsoever.
- 1.11 Diluted and modified products are charged in full on order and no returned product will be accepted. In the event that the company agrees to accept the return of modified or diluted products, this will not entitle the client to any credit or refund thereof.
- 1.12 For Rise & Fall purposes all our products are classified as "Special Materials"

2. PAYMENT

- 2.1 The Company reserves the right to credit check the Customer as well as its Members and / or Directors. All new accounts are subjected to credit checks and any falsification of information or documentation will be deemed as fraud.
- 2.2 Onus is on the Customer to inform the Company in writing of invoices or statements that are not timeously received. Failure to do so will be deemed that the invoices and statements were received and are currently due. Legal fees incurred to recover outstanding payments will be for Customers account and charged on an attorney and client scale.
- 2.3 The terms of payment are cash upfront before delivery. Facilities for credit may be granted at the discretion of the Company in which event payment will be made within 30(thirty) days of the date of the Company's statement. In the event that the Customer exceeds the specified credit terms, the Company reserves the right to revise the credit terms to cash up front and to suspend all further delivery of Product or rendering of Services until payment is received, without prejudice to the Company's right to cancel the remainder of the order and to recover all monies then outstanding together with damages suffered by the Company.
- 2.4 Should the Customer neglect / refuse to make payment as indicated in paragraph 2.2 hereof, default interest as provided for in the Consumer Protection Act (Act 68 of 2008) will accumulate on the contract price commencing on the expiry of the abovementioned 30 (thirty) days and will accumulate until full payment has been received.

- 2.5 Should the Customer fail to clearly indicate to the Company which items appearing on the Company's statement it is paying, the Company reserves the right to apply such payment to those items in respect of which payment has been overdue for the longest period.
- 2.6 Complaints, claims or disputes shall not entitle the Customer to withhold, deduct or set-off payments due to the Company for any reason whatsoever.
- 2.7 No settlement or discounted amount shall be provided to the Customer in respect of any early payment, unless agreed upon in writing between the Company and the Customer.
- 2.8 Any disputes regarding the invoice amounts shall be conveyed to the Company, comprehensively and in writing, within 25 (twenty-five) days of the date of the Companies statement. The Company reserves the right not to entertain any claims/disputes that fail to meet the aforementioned deadline.

3. OWNERSHIP AND RISK

- 3.1 Notwithstanding delivery of Product to the Customer, ownership thereof shall not pass to the Customer until the Company has received payment in full in respect of the Price of such Product.
- 3.2 The product shall be at the Customers risk as soon as the Customer accepts delivery of the product, in bulk or in drums. The disposal of the drums is the sole responsibility of the Client.
- 3.3 Any SHEQ requirements outside of industry norm pertaining to the specific site are to be communicated in writing to the Company and site staff.
- 3.4 Pertaining to SHEQ, risk in the Product shall pass to the Customer at the point of delivery of Product (i.e. where signed acceptance of the Product takes place) or in the case of collection of the Product, on dispatch from the Company's premises.
- 3.5 Until the Price of the Product has been paid, the Customer shall ensure that the Product is adequately insured against all appropriate risks.
- 3.6 All machinery and equipment brought on to the Customer's premises by the Company shall remain the property of the Company and shall not become subject to any vesting provision which may exist.

4. DELIVERY / RENDERING OF SERVICES

- 4.1 The Company will use its best endeavours to meet delivery dates and times, but it is clearly understood and agreed that dates and times for delivery of product or rendering of Services quoted by the Company are business estimates only and do not constitute contractual undertakings by the Company as to when delivery of Product or rendering of Services will take place. The Company shall not be liable in any way whatsoever for failure to meet delivery dates or times or for any damages claimed by the Consumer as a result thereof.
- 4.2 Delivery shall be deemed to have been effected, where Product is delivered by the Company or any one of their subcontractors, once it is rendered at the agreed point of delivery. The Company will only execute the offloading or application of Product when the Customer or his duly authorised representative is present. If the Customer's representative is not present and in consequence the delivery, offloading or application is aborted, then the Company reserves the right to recover all and any costs incurred from the Customer whether directly or indirectly in consequence thereof. The Customer is permitted 2 (two) hours to off-load the Product where-after standing time will be charged at the ruling rate at time of delivery.
- 4.3 Upon delivery, any concern/disagreement with regards to the product and/or quantity, stipulated on the delivery note, needs to be communicated telephonically to the Company immediately and prior to offloading, as well as noted in the comment section provided on the delivery note. No claims whatsoever shall be entertained should the above not be adhered to.
- 4.4 Offloading of the product will only commence once the duly authorised representative of the Customer has signed acceptance of the product and quantity in the space provided on the delivery note.
- 4.5 Signed authority as per 4.3 will constitute full and final acceptance of the product type and quantity, along with all applicable charges as quoted. No claims relating to the aforementioned will be entertained thereafter.
- 4.6 When Product is collected by the Customer from the Company's premises or where an independent transporter is utilized by the Consumer, delivery shall be deemed to have been effected by loading the Product onto/into the relevant vehicle.
- 4.7 Where Services are rendered, and in the case of the Company being delayed for circumstances reasonably under the control of the Customer, the Company reserves the right to charge standing time according to actual costs incurred, including the Company's site and general overhead costs. In the event that a vehicle of the Company has to remain at the Customer's premises overnight, the Customer shall advise the Company telephonically of its intention to do so for planning purposes and the Customer shall indicate this requirement on the Company's spray sheet.
- 4.8 In the event that a part of a load in the Customer's vehicle, ordered for spraying, is pumped into a tank or into drums, the Product will be charged at the sprayed rate and not at the haulage rate.
- 4.9 The Customer, its employees or agents shall sign the Company's delivery note and the delivery note shall constitute *prima facie* proof that the type and quantity of Product and quantity recorded thereon was delivered and accepted by the Customer. The Customer shall be liable for the cost of any damages suffered by the Company as a result of refusal by the Customer to accept the whole or any part of any delivery.
- 4.10 Delivery and application of Product is subject to specifications and availability from suppliers, if applicable, as well as the availability of the necessary permits, certificates or exemption in terms of the Road Transportation Act or similar, subsequent or other legislation in connection with the transportation of Product or Services referred to in the quotation. The Company shall not be bound to any contract if such permits, certificates or exemptions are refused, withdrawn or cancelled in respect of that contract.
- 4.11 The Customer is responsible to inform the Company of any damages to the Product on delivery. The Product remains the sole property of the Company which reserves the right to remove the Product at any time without prior notification.
- 4.12 Storage tanks established on site will be returned to the Company at the Customer's cost. The Customer will be responsible for: a) informing the Company, in writing, of any damages to tank on delivery b) maintaining these tanks in the condition in which they were handed to the Customer; c) informing the Company of any movement of these tanks; d) insuring these tanks against loss of any kind; and e) notifying the Company should any third party lay claim to any of these tanks. The Customer shall only use these tanks for Product supplied by the Company.
- 4.13 Product to be applied by the Company's vehicles will be delivered at the correct temperature for surface application, however the onus lies firmly with the Customer to ensure that the required temperature is obtained prior to application. In the event of it being necessary to maintain temperature after delivery, for reasons beyond the control of the Company, such temperature maintenance shall be done at the sole cost and Risk of the Customer. In all instances the unit of measure for the supply and application of Product will be charged per trip and will be measured in liters at the application temperature or per metric ton as specified in the quotation.
- 4.14 The Company has the right, at its sole discretion, to suspend, for as long as deemed necessary, application of Product should it be considered that the prevailing weather conditions are unsuitable. In the event of Services being suspended, the Company shall only resume the rendering of Services during such adverse weather conditions if the Customer advises the Company telephonically of its

- intention to do so and by indicating this instruction on the Company's spray sheet. The Services shall be carried out entirely at the Customer's risk and the Customer indemnifies the Company against all or any claims that may be made against the Company as a result of carrying out such an instruction.
- 4.15 It is the responsibility of the Customer to identify and point out to the representative of the Company the desired place on site at which, and the manner in which, the Customer requires the Services to be rendered. In the event of the Services being rendered at an incorrect place on site, the Company shall not be liable for any loss arising there from, whether direct, consequential, special or general.
- 4.16 It is the responsibility of the Customer to ensure that the correct procedures are followed on site with regards to maintaining the product in storage in tanks including correct dilution procedures etc.
- 4.17 The Company shall not accept the return of empty drums and Product shall not be returned without the written consent of an authorised employee of the Company.
- 4.18 It is expressly noted that all works carried out during both the supply of product and rendering of services, as well as any deviations thereof and concerns, queries etc., are to be recorded on the Companies official spray sheets by the Customer's authorized representative on site, as this will be *prima facie* evidence when resolving any claims/disputes.
- 4.19 Pertaining to spraying, no claims deductions or compensation will be considered for application rates within 10% (ten percent), either way, of the specified application rate. No claims whatsoever will be entertained when hand spraying, where guaranteed application rates are impossible to obtain. Any claim for excess binder sprayed may only result in compensation by means of deduction of the excess liters from the total amount stated on the delivery note.
- 5. DILUTION / MODIFICATION OF PRODUCTS ON SITE**
- 5.1 Any product purchased by the Customer for, but not limited to, diluting / modifying on site, utilising for slurry etc., is to undergo compatibility testing, at the cost of the Customer, prior to said product being utilised.
- 5.2 The correct dilution procedures are to be adhered to at all times. Should the Customer wish the Company will provide already diluted product at the quoted rate.
- 6. LOADING INTO CUSTOMER VEHICLES & TANKS**
- 6.1 Onus is on the client to ensure correct loading procedure and loading matrix is adhered to.
- 6.2 The Company neither accepts responsibility for any product failure nor any damages suffered by the Customer as a result, thereof.
- 6.3 It is the sole responsibility of the Customer to ensure that the storage tanks, haulers, distributors, etc., provided by them are free of any contaminants and or substances which may have an adverse effect on the Company's Products. No claim whatsoever will be entertained following inception of the Company's product into the Customer's tank/storage facility.
- 7. MANUFACTURING**
- 7.1 Product manufactured by the Company will, unless otherwise specified, be in compliance with applicable standards & tested accordingly.
- 7.2 If Product is supplied in accordance with a specification stipulated by the Customer, the Company does not warrant that such specification is suitable for its intended purpose. Should the Customer request a deviation from the stipulated specification, the Company reserves the right to revise the Price in line with additional manufacturing or operating costs resulting from the said deviation to the standard.
- 7.3 Manufactured test results are available on request.
- 7.4 Manufactured batch samples are available on request for a period of 30 (thirty) days.
- 7.5 The Company reserves the right to the identity, intellectual property as well as the trade secrets of its manufacture materials, formulations and suppliers.
- 7.6 Modified products shall only be transported and sprayed by the Company.
- 8. INDEMNITY**
- 8.1 To the fullest extent permitted by law, the Customer indemnifies and holds harmless the Company, its agents and employees against all or any claims of whatsoever nature by the Customer, and any of its employees, while on the Company's premises or otherwise related to the provision of Product or rendering of Services, whether in contract and/or delict and whether for direct or consequential damages including but not limited to loss of profits and damages to person or property.
- 9. LIMITATION OF LIABILITY**
- 9.1 The Company shall under no circumstances whatsoever be liable for any losses or damages whether direct, indirect, special, incidental and consequential arising out of the supply of Product or the rendering of Services. Without derogating from the foregoing, the Company shall not be liable for any losses or damages suffered by the Customer arising from innocent misrepresentation, negligence, poor performance or breach of any obligations by the Company or as a result of any other act or omission by the Company, howsoever arising. The Customer indemnifies the Company against any claim in this regard.
- 9.2 The Company's liability in respect of defective Product shall, in the Company's sole discretion be either to replace such Product or to refund the cost of such defective Product paid by the Customer.
- 9.3 Should a Customer request assistance or advice from a representative of the Company on application and use of the Company's Product, any such advice given to the Customer by the Company or its representatives is given in good faith and to the best of the Company's ability. However, under no circumstances will the Company be liable to the Customer for damages of whatsoever nature sustained by the Customer and/or any third party arising from advice that may transpire to have been incorrect.
- 9.4 The Company will adhere to the specified requirements of the approved seal design at all times. However, should the Company identify possible flaws/irregularities in the aforementioned design, these may be communicated to the Customer/Customer's representative, along with possible technical recommendations, however the Company shall at no time be held liable for any damages, costs, etc., incurred as a result of either the design flaw, or as a consequence of the aforementioned technical advice being practiced by the Customer/Customer's representative. Further to the above, it is expressly noted that the onus lies not with the Company to identify such flaws/irregularities, should they exist.
- 9.5 Should any possible irregularities in the Product or workmanship in services rendered by the Company, be identified by the Customer/Customer's representative, all works are to cease immediately pending advice by the Company. No claims for compensation of any sort will be entertained should the above be disregarded by the Customer.
- 9.6 No complaints will be considered by the Company regarding delivery, application rates, quantities of Product delivered or quality of the Product, unless written notification is received by the Company from the Customer within 72 (seventy two) hours from the delivery of Product or rendering the Service.
- 9.7 All claims shall be in writing and lodged with the Company within 30 days of supply of the Product or Services being rendered to the Customer. If these requirements are not strictly complied with, the claim shall lapse and all liability of the Company shall cease.

10. DISPUTE RESOLUTION

- 10.1 Within 10(ten) days of notification, the Company and the Customer must seek an amicable resolution to the dispute by referring it to designated and authorised representatives of each of the Company and the Customer to negotiate and resolve the dispute within 15(fifteen) days, failing which the dispute shall be referred to mediation by a mediator agreed and appointed by both the Company and the Customer.
- 10.2 The Customer herewith agrees and / or guarantees that no additional or variation from the initial scope of the work will be done by the Customer or any third party in the event where a dispute arises between the Consumer and the Company regarding the quality / credibility of the Company's product until such time that the Company has been given reasonable time to prove the credibility of the product.
- 10.3 Any dispute regarding the testing of the Company's product not in accordance with the Companies recommended sampling method / procedures (available on request) will not be for the account of the Company. The parties herewith agree that the test results of a mutually agreed independent laboratory will be binding on the parties and used as *prima facie* evidence regarding the quality of the product.

11. CERTIFICATE

- 11.1 The Customer acknowledges that a certificate signed by any director or person duly authorised of the Company (whose authority and appointment it shall not be necessary to prove) shall be *prima facie* proof of the amount of such indebtedness to the Company. Such certificate shall be sufficient proof of the Customer's indebtedness for the purposes of provisional sentence and/or summary judgment proceedings against the Customer, or for any other purpose whatsoever.

12. FORCE MAJEURE

- 12.1 If the Company is prevented from carrying out any of its obligations by reason of force majeure (which, without detracting from the generality of the foregoing shall include acts of God, fire, storm, flood, earthquake, major breakdown of machinery, war, whether declared or not, or warlike conditions, industrial action, labour unrest, civil commotion, economic upheavals, boycotts or embargoes, regulations or orders of any Government, any partial or total cessation in the provision of supplies to the Company by any existing supplier for whatever reason, delays or lack of railroad, truck or seaborne freight facilities or any other state of affairs arising or being brought about which is outside the reasonable control of the Company), the performance by the Company of its obligations shall be suspended during such time and the Company shall not be liable for any delay or failure in the performance of any obligations due to, or resulting from the force majeure, provided always that a written notice shall be given by the Company to the Customer of any such inability and of the cessation thereof.

13. APPLICABLE LAW, JURISDICTION & COSTS

- 13.1 These terms and conditions shall be governed by and interpreted in accordance with the laws of the Republic of South Africa in all respects and shall not constitute a waiver by the Company of any of its rights in terms of the common law.
- 13.2 The Customer hereby consents, in terms of Section 45 of the Magistrate's Court Act No 32 of 1944 as amended, to the jurisdiction of the Magistrate's Court having territorial jurisdiction in respect of any action instituted against the Customer by the Company for the recovery of monies or for legal action in terms hereof. It shall nevertheless be entirely within the discretion of the Company as to whether to proceed against the Customer in such Magistrate's Court or any other court having jurisdiction.
- 13.3 In the event of proceedings being instituted by the Company against the Customer for the recovery of any amount, the Customer agrees to effect payment of the Company's legal costs on the scale as between attorney and client.

14. CESSION OF DEBTORS

- 14.1 The Customer hereby irrevocably cedes and makes over to the Company all of its rights, title, interest, claim and demand in and to all debts of whatsoever nature which the Customer may now or at any time hereafter have, which cession shall be a continuing covering security for any amounts due to the Company.

15. GENERAL

- 15.1 The Company reserves the right in its sole discretion to vary or amend these terms and conditions from time to time and any such amended or varied terms and conditions shall be binding on the Customer from the time that the Customer is notified thereof. Any subsequent dealing shall be on the Company's amended terms and conditions with prior notice to the Customer.
- 15.2 The rule of contractual interpretation (i.e. *contra proferentum* rule) that in the event of ambiguity these terms and conditions shall be interpreted against the party responsible for drafting and preparation of these terms and conditions, shall not apply.
- 15.3 The Customer acknowledges that no representation, warranty or any other statements made or given by any employee of the Company, including a variation of these terms and conditions, shall be binding on the Company unless reduced to writing and signed by both the Company and the Customer.
- 15.4 No indulgences of any description, extension of time for making payment, or forbearance to sue granted by the Company to the Customer will be deemed to be a waiver of any of the Company's rights in terms hereof and will be without prejudice to such rights.
- 15.5 The Customer shall not be entitled to cede or assign any of its rights or obligations resulting from these terms and conditions without the prior written consent of the Company.
- 15.6 Provided the Customer ensures that the location at which the Product is delivered or Services are rendered, is a safe healthy environment in accordance with any applicable legislation, the Company undertakes to comply with the terms applicable to it in terms of the Occupational Health and Safety Act 85 of 1993, as amended. Notwithstanding the aforesaid, the Company shall under no circumstances assume any liability for any health and safety hazards arising out of the misuse or abuse of any Product delivered or Services rendered by the Company.
- 15.7 The Customer will not be allowed to export, distribute or sell the goods beyond the borders of the Republic of South Africa, without the written consent of the Company.
- 15.8 The terms of the National Credit Act (Act 38 of 2005) will be applicable should the Customer apply for credit facilities.
- 15.9 These terms and conditions of sale are basic terms and conditions and further terms and conditions may be applicable depending on, amongst others, the application of credit facilities.

16. DOMICILIUM AND NOTICES

For all purposes, including but not by way of limitation, the giving of any notice, the making of any communication and serving of any process, the Company and the Customer respectively choose domicilium citandi et executandi ("domicilium") at their respective addresses appearing on the face hereof. Each of the Company and the Customer shall be entitled from time to time by written notice to the other to vary its domicilium to any other address in the Republic of South Africa not being a post office box or poste restante. Any notice which either party may give to the other shall be in writing and if posted by prepaid registered post to a party's domicilium for the time being shall be presumed, unless the contrary is proved by the party to whom it is addressed, to have been received by that party on the tenth day after the date of posting.