



**B. CREDIT DETAILS–TRADE REFERENCES: (NOT BANK OR FINANCIAL HOUSES)**

- |    |                             |              |
|----|-----------------------------|--------------|
| 1. | NAME _____                  | TEL No _____ |
| 2. | NAME _____                  | TEL No _____ |
| 3. | NAME _____                  | TEL No _____ |
| 4. | NAME _____                  | TEL No _____ |
| 5. | Credit Limit required _____ |              |

**C. SELLERS STANDARD TERMS AND CONDITIONS OF SALE**

1. The Customer acknowledges that:
  - 1.1. This contract represents the entire agreement between the Customer and Brakkefontein Clay Products (hereinafter called Apollo) and that no alterations or additions to this contract may be effected unless agreed to by both parties, reduced to writing and signed by the Customer and a director of Apollo.
  - 1.2. This agreement will govern all future contractual relationships between the parties without prejudice to any securities or guarantees held by Apollo in respect of the Customers indebtedness to Apollo arising from the sale of Goods.
  - 1.3. The party's relationship shall be governed solely by the terms and conditions contained herein, shall apply to every Contract (as defined below) and shall prevail over any term and condition contained in any order, correspondence or other documentation of the Customer.
  - 1.4. He/she has read and understood each term herein contained, accepts these as binding and acknowledges that the content reflects the true meaning of both parties and that these terms and conditions are for the benefit of Apollo.
  - 1.5. No representations were made by Apollo with regard to the Goods or any of its qualities inducing the Customer to enter into a Contract.
  - 1.6. All specifications, price lists, performance figures, advertisements, brochures and other technical data furnished by Apollo in respect of the Goods orally or in writing are intended to represent merely the general idea of the Goods described therein and will not form part of a Contract in any way unless agreed to in writing.
  - 1.7. It is the sole responsibility of the Customer to determine that the goods and services ordered are suitable for to purposes of intended use.
2. Any quotation given by Apollo is not an offer by Apollo to sell the Goods, but constitutes an invitation by Apollo to the Customer to place an Order.
3. Apollo may accept or reject in whole or in part any Order placed by the Customer.
4. Each Order accepted by Apollo shall constitute a separate Contract between the parties on the terms and conditions specified therein.
5. The Customer is obliged to forward all Orders in writing to Apollo. Notwithstanding the aforesaid, Apollo is entitled to accept in its sole discretion oral Orders, and in such circumstances the information contained in any document of Apollo reflecting the Customer's order instructions shall serve as *prima facie* proof of such order and the Customer's instructions relating thereto.
6. Apollo may, in its discretion, comply with the Customer's reasonable requests to amend the terms of a specific Contract before delivery of the Goods referred to in such Contract. Apollo shall be entitled to adjust the purchase price and date of delivery of the Goods relating to an amended Contract to make provision for such amendment.
7. Apollo reserves the right to levy a handling fee of 10% of the sales price of the Goods returned to Apollo should Apollo in its sole discretion, accept such return.
8. Apollo shall be entitled in its sole discretion to deliver the Goods sold subsequent to an Order by peace meal and to invoice the Customer therefore. The Customer shall be obliged to accept such Goods when tendered.
9. If delivery of any particular order is to be effected in consignments, Apollo shall not be obliged to deliver any part of the Goods referred to in the Contract until the purchase price which is due and payable in respect of the part of the Goods which has already been delivered, has been paid.

10. Any delivery note (copy or original) signed by the Customer or a third party engaged to transport the Goods on behalf of the Customer shall be conclusive proof that delivery of the Goods was made and in good order to the Customer.
11. Quotations are given and Orders are accepted by Apollo on the basis that the prices charged for the relevant Goods will be those as set out in Apollo's prevailing price list in force and effect on the date when the Contract comes into existence. The Customer, on request, may obtain a copy of Apollo's prevailing price list from Apollo. Apollo reserves the right to amend the price list at any time without notice to the Customer.
12. The sales price for Goods to be delivered which is not included in Apollo's prevailing price list on the date the Contract becomes of force shall be the prices as contained in Apollo's relevant quotation.
13. The Customer shall be obliged to pay to Apollo in addition to the said sales price -
  - 13.1. the amount of any Value Added Tax, duty or other charge of any nature whatsoever imposed by any law, regulation or enactment of whatsoever nature which comes into force and effect after the date the Contract comes into existence;
  - 13.2. any other additional costs of any nature whatsoever arising due to factors beyond the control of Apollo;
  - 13.3. any expenses and costs arising as a result of or during the period of any delay caused by the Customer, avoiding Apollo to deliver the Goods to the Customer, including, but not limited to, the cost of storage of any Goods;
  - 13.4. the cost of transportation payable by Apollo to deliver the Goods to the address specified by the Customer in the Contract.
14. The purchase price in respect of any Goods sold by Apollo to the Customer shall be payable by the Customer to Apollo, at such place or into such bank account as Apollo may direct from time to time, in cash, in South African currency, without deduction or set-off and free of any exchange on delivery of the Goods, alternatively, on the date reflected on Apollo's Tax Invoice relating to the relevant Goods.
15. The Customer has no right to withhold payment for any reason whatsoever and therefore the Customer is not entitled to set off any amount due to the Customer by Apollo against any debt owed by the Customer to Apollo, nor shall any payment be withheld by virtue of any alleged counterclaim against Apollo by the Customer.
16. All discounts will be forfeited if payment in full is not made on the due date.
17. Any amount due by the Customer to Apollo shall bear interest at the maximum interest rate as prescribed by the Usury Act of 1968 (as amended) or such lesser rate as Apollo may determine in its discretion, calculated monthly in arrear on the amount due from the date such amount is due until payment thereof. Such interest shall be payable on demand or the date the amount due is paid by the Customer, whichever date is the earlier.
18. A certificate under signature of any Director, Financial Manager or Credit Manager of Apollo whose authority shall not be necessary to prove, shall be *prima facie* proof of the indebtedness of the Customer towards Apollo and also of the fact that the amount and any interest payable thereon so stipulated is already due and payable.
19. **The Customer renounces the benefits of the legal exceptions, revision of accounts, non numerate petunia (no value received) error calculi (mistake in the calculation of outstanding amounts), and non causal debit (no cause of debt), the full force, meaning and effect of which the Purchase acknowledges to know and understand.**

20. Goods sold by Apollo to the Customer shall be delivered by Apollo to the Customer Ex Works as defined in Incoterms 2000, as developed by the International Chamber of Commerce, even if Apollo is prepared to comply with any delivery instructions of the Customer. Apollo shall be entitled, in its discretion, to comply with any delivery instructions provided by the Customer on an Order and to recover all costs relating to compliance with such delivery instructions in addition to the purchase price of the Goods, but delivery will still be deemed to be Ex Works.
21. Apollo shall be entitled to supply the Goods in such packaging as it deems fit.
22. Any delivery date indicated by Apollo shall merely be regarded as the estimated date of delivery and shall not bind Apollo to effect delivery on or near such date. Any delay or failure to meet delivery requirements will therefore not entitle the Customer to resile from a Contract or to reject delivery of the Goods or part thereof.
23. Any order is subject to cancellation by Apollo due to force majeure from any cause beyond the control of Apollo, including (without restricting this clause to the instances); inability to secure labour, power, materials or supplies, or by reason of an act of God, war, civil disturbance, riot, state of emergency, strike, lockout or other labour disputes, fire, flood, drought, rain and any other weather conditions adverse to Apollo's business or legislation, or if the Customer breaches any term of this contract or makes any attempt of compromise, sequestration, termination or judgement is recorded against the Customer or any of its principals.
24. Apollo will be entitled to engage third parties to transport the Goods to the address specified in the Contract on the Customer's behalf on the terms Apollo deems fit, should the Contract stipulate that transportation of the Goods have to be arranged by Apollo.
25. Goods are sold voetstoots and no warranties, guarantees or representations, express or implied or tacit whether by law, contract or otherwise and whether they induced the contract or not, which are not set forth herein shall be binding on Apollo.
26. Notwithstanding the aforesaid the Customer may, to the extent that Goods supplied by Apollo are in any ways defective, claim the replacement of the Goods or any part thereof to eliminate any defect in workmanship or materials found in the Goods originally ordered to be due exclusively to any acts or omissions on the part of Apollo.
27. The Apollo may in its discretion decide to replace the relevant Goods. The Apollo shall however not be under any obligation to effect any replacement until the Customer has paid the full amount due to Apollo in respect of the Goods concerned.
28. In order to be valid, a claim for replacement must be submitted to Apollo in writing within 3 days after the date of delivery of the relevant Goods, specifying the alleged defect, and supported by the original tax invoice. The Goods must further be returned by the Customer to Apollo at the Customer's expense, packaged in their original packaging.
29. The Customer accepts the guarantee referred to above to the exclusion of any other remedy available to the Customer and Apollo's liability shall be limited to what is set out in the above clause.
30. **Apollo shall not be liable to the Customer by reason of any representation or implied warranty, condition or other term or any duty at common law, or under the express terms of this agreement, for any loss or damage (direct, indirect or consequential, for loss or profit or otherwise and whether occasioned by the negligence of Apollo or its employees or agents or otherwise) arising out of or in connection with the manufacture and/or supply of the Goods and/or any act or omission of Apollo relating to the supply of the Goods, their use, inability or resale by the Customer or any third party.**

31. Ownership of the Goods shall not pass to the Customer until the sales price (including interest if any) in respect of the Goods in question has been paid. The provisions hereof shall apply notwithstanding the fact that the Goods may be incorporated into or form part of other Goods or may have changed their essential character.
32. Any printout of computer evidence tendered by any party shall be admissible evidence and no party shall object to the admissibility of such evidence purely on grounds that such evidence is computer evidence.
33. Apollo is entitled to immediately and without notice institute action against the Customer to enforce payment of any amount due and payable and/or to cancel any Contract and/or to repossess any Goods delivered to the Customer in terms of such Contract and claim damages in the event that the Customer fails to comply with its obligation contained herein, including but not limited to settling of any amount on the due date for payment in full on the date indicated as such on Apollo's Tax Invoice.
34. In the event of repossession of the Goods, the Customer shall be liable to pay the difference between the selling price and the value of the goods at the time of repossession, the cost of the valuer referred to below and all other costs incurred in the repossession of the Goods.
35. The value of repossessed goods will be deemed to be the value placed on them by any sworn valuator appointed by Apollo after such repossession and such valuation will be conclusive proof of the value.
36. The Customer agrees that Apollo will not be required to furnish security in terms of Rule 62 of the Rules of Court of the Magistrate's Courts or in terms of Rule 47 of the Law of the Supreme Court 59 of 1959.
37. The Customer agrees that no indulgence whatsoever by Apollo will affect the terms herein contained or any of the rights of Apollo and such indulgence shall not constitute a waiver by Apollo in respect of any of its rights herein.
38. Any document will be deemed duly presented to the Customer within:
  - 38.1. 3 days of prepaid registered mail to any of the Customer's business or postal addresses or to the personal address of any director, member or owner of the Customer: or
  - 38.2. Within 24 hrs of being faxed to any of the Customer's fax numbers or any director, member or owner's fax number;
  - 38.3. On being delivered by hand to the Customer or any director, member or owner of the Customer.
  - 38.4 Within 48 hrs if sent by overnight courier; or
  - 38.5 Within 24 hrs of being telexed to the Customer's telex number.
39. The Customer chooses domicilium citandi et executandi the business address or the physical addresses of any director (in the case of a company), member (in the case of a close corporation) or of the owner(s) or partner(s).
40. The Customer undertakes to inform Apollo in writing at least 14 days prior to selling, disposing or alienating the Customer business and/or any change of Directors, Members, Shareholders or Owners of the Customer business and/or the Customer's address and failure to do so will constitute a material breach of this agreement.
41. Each clause in a Contract is severable the one from the other and if any paragraph or clause is found by any competent court to be defective or unenforceable for any reason whatever, the remaining paragraphs or clauses shall be of full force and effect and continue to be of full force and effect.

42. The Customer shall be liable for all costs incurred by Apollo in the recovery of any amounts or the enforcement of any rights which it has hereunder, including tracing fees, collection charges and costs on an attorney and own client scale and costs of counsel as on brief whether incurred prior to or during the institution of legal proceedings or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.
43. The headings of the clauses herein are for the purpose of convenience and reference only and shall not be used in the interpretation, nor amplify the terms of these terms and conditions or any clause hereof. Unless contrary intention clearly appears, wording importing any one gender includes the other gender, the singular includes the plural and vice versa, and natural persons include legal entities and vice versa.
44. The Credit Grantor may:
- 44.1 Perform a credit search on the applicant's credit profile with one or more of the registered Credit Bureau when assessing the Applicant's application for credit.
- 44.2 Monitor the credit applicant's payment behaviour by researching their profile at one or more of the Credit Bureaus.
- 44.3 Use new information and data obtained from the Credit Bureau in respect of the applicant's future credit applications.
- 44.4 Record the existence of the applicant's account with the Credit Bureau.
- 44.5 Record and transmit details of how the applicant has performed, and how the account is conducted by the applicant in meeting their obligations on the account.
45. The following terms shall have the meaning assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
- 45.1 "Apollo" means Brakkefontein Clay Products (Pty) Ltd No.: 1990/001295/07
- 45.2 "Customer" means any person or entity ordering Goods from Apollo as referred to in an Order;
- 45.3 "the Contract" means the sale and purchase agreement of Goods which comes into existence upon Apollo's acceptance of an Order , which acceptance needs not be communicated to the Customer.
- 45.4 "Order" means the placing of an order by the Customer to purchase Goods from Apollo, whether same is conveyed to Apollo in writing or orally;
- 45.5 "Goods" means bricks and other clay products to be supplied by Apollo to the Customer in the quantities and packaging as set out in the Contract.

SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_

\_\_\_\_\_  
(APPLICANTS SIGNATURE)

\_\_\_\_\_  
CAPACITY

WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_

# SURETYSHIP

The signatory referred to below hereby binds himself/herself in his/her personal capacity as co-debtor jointly and severally for the full amount due to Apollo and agrees that these Standard Conditions will apply mutatis mutandis to him/her.

SIGNED AT \_\_\_\_\_ ON THE \_\_\_\_\_ DAY OF \_\_\_\_\_

\_\_\_\_\_  
(SURETY'S SIGNATURE)

\_\_\_\_\_  
NAME OF SURETY

WITNESSES:

1. \_\_\_\_\_

2. \_\_\_\_\_