

## **GENERAL TERMS AND CONDITIONS**

### **1 ENTIRE CONTRACT**

- 1.1 These terms and conditions (“T&Cs”), together with the terms contained in any quotation provided by AFRIMAT LIMITED and/or any of its subsidiaries (hereinafter referred to as “**AFRIMAT**”) to the **CUSTOMER**, constitute the entire contract between **AFRIMAT** and the **CUSTOMER**. The **CUSTOMER** agrees that no amendments or variations hereof shall be binding on **AFRIMAT** unless reduced to writing and signed by the **CUSTOMER** and a duly authorised manager or director of **AFRIMAT**.
- 1.2 In the event that there is any conflict between the terms of the quotation and the terms contained herein, the terms in the quotation shall take preference.
- 1.3 These T&Cs shall apply notwithstanding the fact that the amount due by the **CUSTOMER** to **AFRIMAT** may exceed the initial credit limit applied for or the subsequent increases thereto.

### **2 QUOTATIONS**

- 2.1 Any quotation issued by **AFRIMAT** shall remain firm for acceptance for a period of 90 (ninety) days, where after it will automatically expire without any further action by **AFRIMAT**. Notwithstanding the above such 90 day period shall not apply if an alternative expiry date is specifically stated in the quotation.
- 2.2 **AFRIMAT shall be entitled to withdraw any quotation before acceptance thereof by the CUSTOMER for whatsoever reason.**
- 2.3 Notwithstanding the firm nature of the Contract Price reflected in the quotation **AFRIMAT** shall have the right to invoice the **CUSTOMER** for a higher amount in the event that:
  - 2.3.1 a delivery vehicle is damaged or delayed as a result of the **CUSTOMER’S** failure to comply with the T&Cs;
  - 2.3.2 **AFRIMAT** is obliged, due to circumstances beyond its control, to utilise routes at the time of delivery that are different from those intended when the quotation was issued, resulting in a longer distance and travelling time to the delivery site;
  - 2.3.3 **AFRIMAT’S** vehicles are delayed at the delivery site or off-loading points (i.e standing time), due to no fault on the part of **AFRIMAT** or its employees;
  - 2.3.4 **AFRIMAT** reasonable incurs additional costs or expenses in order to deliver the goods that were not contemplated, nor included in the quotation, provided that the additional amount/s reflected on the invoice are charged for at a reasonable rate.
- 2.4 If two competing quotations are issued by **AFRIMAT** in respect of the same goods and/or services, the quotation bearing the later date will be the valid and binding quotation and will revoke and replace any earlier quotation.

### **3 PERFORMANCE**

- 3.1 **AFRIMAT will only be obliged to perform in terms of the contract concluded with the CUSTOMER if the following conditions are fulfilled:**
  - 3.1.1 **The CUSTOMER has signed the application for credit facilities together with a copy of these T&Cs and furnished AFRIMAT with the duly signed original application;**
  - 3.1.2 **The CUSTOMER has accepted the quotation and furnished AFRIMAT with the duly signed original;**
  - 3.1.3 **AFRIMAT is satisfied that the CUSTOMER is solvent and able to pay for the goods and services within the time and in the manner prescribed in these T&Cs and the**

quotation.

- 3.2 While any of the above conditions remain unfulfilled AFRIMAT is entitled to suspend performance in terms of the contract without being liable to the CUSTOMER in any way whatsoever.
- 3.3 The credit facilities granted to the CUSTOMER may be withdrawn by AFRIMAT at any time without prior notice in which event payment of the full outstanding balance will be due, owing and payable immediately and AFRIMAT reserves the right to review the extent, nature and duration of such facilities at any time.

#### **4 PRICES AND DISCOUNTS**

- 4.1 The goods are sold and/or services rendered by AFRIMAT to the CUSTOMER at the Contract Price recorded in the quotation issued by AFRIMAT, which price is exclusive of VAT;
- 4.2 AFRIMAT may allow discounts, as specifically agreed upon, provided that such discounts shall not be allowed on any goods or services where payment for same is overdue.

#### **5 DELIVERY**

- 5.1 Deliveries of goods by AFRIMAT to the CUSTOMER'S premises or collected by the CUSTOMER from AFRIMAT'S premises will be effected during normal business hours unless the parties have agreed otherwise in writing.
- 5.2 Volume to weight conversion factors are given as a guideline only and AFRIMAT does not warrant the accuracy of these factors.
- 5.3 Should AFRIMAT elect to sell and/or deliver by volume, the CUSTOMER acknowledges and accepts that the quantity of each load will be determined at the point of loading and that an amount of settling during transport to the point of discharge is inevitable.
- 5.4 Where a CUSTOMER requires delivery by AFRIMAT of goods with a volume of less than 10 (TEN) m3 or weighing less than 14 (FOURTEEN) ton, the transport component of the price for such goods may be calculated on the basis of 10 (TEN) m3 or 14 (FOURTEEN) tons. In other words there shall be a minimum transport cost, however AFRIMAT may, in its sole discretion, charge less than 10 (TEN) m3 or 14 (FOURTEEN) ton transport.
- 5.5 The CUSTOMER, its employees or agents shall be entitled to inspect and satisfy themselves of the condition, quality and quantity of all delivered goods at the time of the delivery by AFRIMAT to the CUSTOMER'S premises or when the goods are collected by the CUSTOMER from AFRIMAT'S premises. After completion of the delivery or collection the CUSTOMER shall verify the correctness of all the details contained in AFRIMAT's delivery documents by signing such documentation, and shall notify AFRIMAT within 24 (TWENTY FOUR) hours of any errors contained therein. Delivery will be deemed to have taken place upon signing of the delivery note by the CUSTOMER, its employee or agent.
- 5.6 The CUSTOMER shall further be entitled to point out the exact location at the delivery address where off-loading is required. The CUSTOMER shall be responsible for providing AFRIMAT'S delivery vehicle safe access to the off-load point and AFRIMAT shall off-load as close to that location as reasonably possible. Should AFRIMAT be unable to off-load goods at the exact identified location, for whatever reason, the CUSTOMER shall have no claim whatsoever against AFRIMAT.
- 5.7 Delivery by rail:
  - 5.7.1 At the CUSTOMER'S election, the goods will be transported by rail;
  - 5.7.2 The transport prices quoted by AFRIMAT will be limited to the *transport-to-rail* cost. The CUSTOMER will be liable for the rail transport costs and additional costs and levies, including, but not limited to, demurrage charged by Spoornet from the loading point

- siding to the off-loading point siding as well as the cost of transport from the off-loading siding to the **CUSTOMER's** premises;
- 5.7.3 All queries in respect of deliveries made by rail must be addressed to **AFRIMAT** within 14 (FOURTEEN) days of delivery of the goods to the **CUSTOMER's** premises;
- 5.7.4 **AFRIMAT** will, if and when applicable, upon timeous receipt of any queries and/or claims from the **CUSTOMER**, lodge same with Spoornet and/or its agents or partners on behalf of the **CUSTOMER**;
- 5.7.5 In the event that Spoornet and/or its agents or partners repudiates any claim, the **CUSTOMER** will be liable for the full amount owing to **AFRIMAT** in respect of goods delivered to the loading siding. **In the event that any such claim by the CUSTOMER against Spoornet or its insurers is not adiated or repudiated within 60 (SIXTY) days of such claim being lodged the CUSTOMER shall immediately make payment to AFRIMAT of the relevant invoice, notwithstanding the fact that the CUSTOMER did not receive delivery of the goods.**
- 5.8 Where the **CUSTOMER** provides the transport:
- 5.8.1 **It is specifically recorded that AFRIMAT will accept no liability for non-compliance by the CUSTOMER, its employees or agents with the applicable statutory and regulatory legislation. The CUSTOMER shall remain responsible for all liabilities due to non-compliance by the CUSTOMER, its employees or agents with such legislation, including, but not limited to, overloading;**
- 5.8.2 **The CUSTOMER, its employees, agents or contractors will enter the premises of AFRIMAT at their own risk and will be subject to the safety and security procedures applicable to AFRIMAT'S premises;**
- 5.8.3 Delivery is deemed to have taken place once the goods are loaded onto the **CUSTOMER's** vehicle, or that of its agent or transporter, and the delivery note is signed by the **CUSTOMER**, its employee, agent or transporter; and
- 5.8.4 Loading of aggregate (*i.e. coarse particulate material used in construction, including sand, gravel, crushed stone, slag and recycled concrete*) at **AFRIMAT's** premises may attract a loading fee, not included in the quotation, payable by the **CUSTOMER** to **AFRIMAT**, that is equal to the ruling fee at the time of the collection. The dispatching plant or quarry will provide this fee upon request of the **CUSTOMER**.
- 5.9 The **CUSTOMER** acknowledges that the time of the delivery is dependent on the availability of goods and accordingly any delivery date stipulated in the quotation or purchase order is an estimate only. Although **AFRIMAT** shall not be bound by any recorded delivery date, it will make reasonable efforts to deliver the goods by such date. If no delivery date is stipulated then in such event **AFRIMAT** will deliver the goods as soon as it can conveniently do so.

## **6 PAYMENT**

- 6.1 The **CUSTOMER** shall settle the full outstanding balance owing to **AFRIMAT** in respect of the credit facilities granted for the purchase of goods and services from **AFRIMAT**, within 30 (THIRTY) days of the date of the monthly statement sent to the **CUSTOMER**, which date shall be deemed to be the last day of every month;
- 6.2 In the event of the **CUSTOMER** not receiving monthly statements, it is the responsibility of the **CUSTOMER** to draw this to the attention of **AFRIMAT** so that statements may be provided to the **CUSTOMER** in order for the **CUSTOMER** to make timeous payment of the amount owing to **AFRIMAT**.
- 6.3 **AFRIMAT** in its sole and absolute discretion may appropriate any payment made by the **CUSTOMER** to any indebtedness as may be owed by the **CUSTOMER** to **AFRIMAT**.
- 6.4 There will be no valid discharge of the **CUSTOMER'S** obligation to pay **AFRIMAT** unless payments have been made to either **AFRIMAT**, or to **AFRIMAT's** appointed attorneys after the account is handed over for collection.

- 6.5 The **CUSTOMER** agrees that any payments made to **AFRIMAT** shall firstly be applied towards settlement of attorney-and-own-client costs, then to interest and lastly to capital.
- 6.6 A certificate signed by any director, credit manager or finance manager of **AFRIMAT** (whose appointment shall not be required to be proven), shall constitute *prima facie* proof of the amount, interest and costs due by the **CUSTOMER** to **AFRIMAT**.
- 6.7 **Unless the CUSTOMER lodges a written objection to any specific entry/ies on the monthly statement provided by AFRIMAT within 14 (FOURTEEN) days of the date of the statement, such statement shall be deemed, in any legal proceedings or otherwise, to be prima facie evidence that the goods and services stated therein have been provided by AFRIMAT to the CUSTOMER and that all entries therein are correct.**
- 6.8 Upon the timeous lodgment of such objection by the **CUSTOMER**, the provisions in the clause above shall not apply to the items the objection relates to, but they shall still apply to the remainder of the entries on the statement.
- 6.9 **Notwithstanding any notification of claims or objections, the CUSTOMER shall pay to AFRIMAT the full amount stated on the invoice on due date, without any deduction or set-off, and without prejudice to the CUSTOMER's rights contended for in any such claim or objection.**
- 6.10 The **CUSTOMER** agrees that **AFRIMAT** has the right of set-off and shall be entitled, but not obliged, to use this right whenever monies are reciprocally due and owing by **CUSTOMER** and **AFRIMAT**.
- 6.11 The **CUSTOMER** shall not be entitled to withhold payment of any monies due to **AFRIMAT** in terms of this contract, nor apply any set-off whatsoever, in the event of a dispute arising between the parties.

## **7 RISK AND OWNERSHIP**

- 7.1 **Notwithstanding delivery of goods by AFRIMAT to the CUSTOMER, all goods and materials will remain the property of AFRIMAT until paid for in full by the CUSTOMER.**
- 7.2 All risk of loss and deterioration of the goods shall pass to the **CUSTOMER** on delivery thereof;
- 7.3 Notwithstanding clause 7.2 above the risk in and to any goods that are delivered to the **CUSTOMER** by a third party transportation carrier or are collected by the **CUSTOMER** from **AFRIMAT'S** premises or mine shall pass from **AFRIMAT** to the **CUSTOMER** the moment the carrier's truck or delivery vehicle has been loaded.
- 7.4 In the event of the **CUSTOMER** being sequestered or liquidated or placed in business rescue this clause shall be deemed to be the requisite, timeous written notice by **AFRIMAT** to the **CUSTOMER** that it reclaims the goods;
- 7.5 **Should the CUSTOMER fail and/or refuse to take delivery of the goods when delivery thereof has been tendered by AFRIMAT, the CUSTOMER shall be liable for the reasonable transportation costs of such undelivered goods and all risk in respect of such goods shall immediately pass to the CUSTOMER;**

## **8 WARRANTIES AND INDEMNITIES IN RESPECT OF GOODS SUPPLIED**

- 8.1 **AFRIMAT** warrants that the goods supplied comply with the specifications and details shown on the delivery note, the appropriate *Codes of Practice* agreed upon between the **CUSTOMER** and **AFRIMAT** and/or the specifications as prescribed by the **CUSTOMER** in writing and agreed upon between the **CUSTOMER** and **AFRIMAT**.
- 8.2 **Liability for breach of the warranty set out in clause 8.1 will only arise where the CUSTOMER has proof, in addition to any other proof required by law, that:**
- 8.2.1 **The CUSTOMER did inspect and test the goods and did not use the goods; and**

- 8.2.2 Inspection, sampling methods and interpretations of test results have been carried out by the CUSTOMER or its appointed expert, in strict compliance with the specifications therefore, these being no more stringent than those prescribed by the South African Bureau of Standards and in the case of road building materials, samples are taken prior to compaction; and
  - 8.2.3 The CUSTOMER notified AFRIMAT verbally within 48 (FORTY EIGHT) hours of its tests revealing an alleged non-conformity with the specifications and such notification was confirmed in writing within a maximum of 7 (SEVEN) days after the test results were received; and
  - 8.2.4 AFRIMAT was afforded a reasonable opportunity to inspect the goods or any sample taken from the goods and to submit such goods or sample to an independent accredited laboratory for testing; and
  - 8.2.5 All records relating to the handling, sampling, curing and testing of the goods and the interpretation of any tests in respect thereof were made available by the CUSTOMER to AFRIMAT for inspection; and
  - 8.2.6 The goods were not stored, misused, neglected, contaminated, improperly handled or altered in any way and no foreign material was added to, or mixed with, the goods by the CUSTOMER.
- 8.3 Neither AFRIMAT nor any of its officers, employees, agents or distributors shall be liable for any loss or damage, whether direct, indirect, consequential or otherwise suffered by the CUSTOMER, its employees, family and invitees, arising from any cause in connection with the delivery of the goods (including but not limited to, any act, omission, neglect or default on the part of AFRIMAT's employees) whether such loss or damage results from breach of contract, delict, negligence or any other cause whatsoever.
- 8.4 Without in any way limiting or derogating from the provisions of clause 8.3 above, AFRIMAT shall further not be liable to the CUSTOMER for any damage, loss, liability or injury of whatsoever nature and howsoever arising that may result from any *vis maior* (i.e. irresistible, overpowering act of God that causes damage or disruption) or *casus fortuitous* (i.e. an accident against which due prudence could not have provided), including but not limited to unforeseeable interruptions in electricity, strikes, acts of war, interruption of transport, flood, storm or fire.
- 8.5 Notwithstanding the provisions of 8.3 above, AFRIMAT's only liability in respect of the supply of defective goods will in any event be strictly limited to:
- 8.5.1 The repair or removal and replacement of the defective goods not yet used by the CUSTOMER, or
  - 8.5.2 A full refund or, if not yet paid, a full credit, to the CUSTOMER of the purchase price of the defective product not yet used by the CUSTOMER, the option of which shall be in the sole discretion of AFRIMAT.
- 8.6 AFRIMAT offers no warranty, express or implied, in respect of the goods, including, but not limited to, their colour, consistency or suitability for a particular purpose even if such purpose is communicated to AFRIMAT, save that it will be manufactured in accordance with its specifications.
- 8.7 **Exclusion of liability:** In addition to the exclusions set out in 8.1 to 8.5 above, all and any liability in respect of the following is expressly excluded:
- 8.7.1 Warranties implied in law in respect of latent defects;
  - 8.7.2 Any injury or death arising from the supply of the goods or from any negligent act or omission of AFRIMAT, its employees, agents or contractors.
- 8.8 **Prohibition of Reprocessing:** Dump rock will be supplied to the CUSTOMER on condition that it may not be reprocessed into other aggregate products by the CUSTOMER or its agent.
- 8.9 Building sand will be supplied when available and only in accordance with specifications of **AFRIMAT**.

## 9 BREACH

- 9.1 Should any amount payable by the **CUSTOMER** not be paid on the due date or should the **CUSTOMER** breach any of these T&Cs, or be sequestrated or liquidated (provisionally or finally) or apply to be placed under business rescue or die then, in such event, **AFRIMAT** shall, at its election and without prejudice to any other rights which it may have in law, have the right to:
- 9.1.1 Suspend performance of its obligations in terms of the contract until the breach is remedied and/or payment of all amounts payable under the contract are secured to the satisfaction of **AFRIMAT**;
- 9.1.2 Stop supply to the extent that the **CUSTOMER** has not performed its obligations under the contract and retain all money previously paid by the **CUSTOMER**;
- 9.1.3 cancel the contract forthwith, without notice to the **CUSTOMER**, remove and repossess the goods and recover all damages which **AFRIMAT** may have suffered consequent upon such cancellation; or
- 9.1.4 abide by the contract and recover from the **CUSTOMER** payment of the full outstanding balance, which shall immediately become due and payable.

## 10. JURISDICTION OF THE MAGISTRATE'S COURT

**AFRIMAT** may at its option and notwithstanding that the amount of its claim exceeds the jurisdiction of the Magistrate's Court, be entitled to institute action out of such a Court. Nothing herein contained shall invalidate **AFRIMAT'S** rights to proceed in any other Court of competent jurisdiction.

## 11. ATTORNEY AND OWN CLIENT COSTS

- 11.1 The **CUSTOMER** shall pay all the legal costs incurred by **AFRIMAT** on an attorney and own client scale, including collection commission and tracing agents fees, should **AFRIMAT** take any legal steps, formal or otherwise, against the **CUSTOMER** for the enforcement of any of its rights.
- 11.2 The **CUSTOMER** shall also be liable for any costs incurred by **AFRIMAT** in connection with the tracing of the **CUSTOMER** and/or the whereabouts of the goods.

## 12. DOMICILIUM CITANDI ET EXECUTANDI

- 12.1 The **CUSTOMER** hereby chooses domicilium citandi et executandi (i.e. the address for the service of all notices and documentation) at the address stated in the Application for Credit Facilities.
- 12.2 **AFRIMAT** chooses domicilium citandi et executandi at \_\_\_\_\_.

## 13. CUSTOMER'S CONSENT FOR AFRIMAT TO ACCESS INFORMATION AND UNDERTAKING TO NOTIFY AFRIMAT OF CHANGES

- 13.1 The **CUSTOMER** consents and authorises **AFRIMAT**, its attorney or nominee to, at any time in evaluating the **CUSTOMER'S** application for credit, or at any time thereafter:
- 13.1.1 Carry out a credit enquiry in respect of the credit record of the **CUSTOMER**; and/or
- 13.1.2 Access the database of any Credit Risk Information Agency before granting credit to the **CUSTOMER**; and/or
- 13.1.3 In the event that credit is granted to the **CUSTOMER**, report information relevant to the **CUSTOMER'S** credit profile with respect to the **CUSTOMER'S** account from time to time to any Credit Risk Information Agency to which **AFRIMAT** may subscribe from time to time; and/or

- 13.1.4 Report any default or failure of the **CUSTOMER** to meet its financial obligations towards **AFRIMAT** in terms hereof to any Credit Risk Information Agency; and/or
  - 13.1.5 Refer information relating to the **CUSTOMER** for banking and credit assessment; and/or
  - 13.1.6 Record the existence of the **CUSTOMER'S** account with any credit information agency; and/or
  - 13.1.7 obtain financial information it may require from the **CUSTOMER'S** trade suppliers and to provide trade references on the **CUSTOMER'S** trade performance to trade suppliers and industry trade bodies who request trade references.
- 13.2 The **CUSTOMER** undertakes to immediately notify **AFRIMAT**, in writing, of any sale of any change of address, sale of business or change in ownership or shareholding of the company or business.
- 13.3 The **CUSTOMER** acknowledges that, notwithstanding any sale of its business interests, it shall remain liable in full for the payment of any amounts owing to **AFRIMAT**;

#### **14. GENERAL**

- 14.1 Notwithstanding that the T&Cs contained in the **CUSTOMER'S** purchase order may differ from the T&Cs contained herein and in the quotation, the conditions contained herein and in the quotation shall be the terms and conditions of the contract between the parties;
- 14.2 If any of the T&Cs herein contained shall be invalid, such T&Cs shall be severable and shall not invalidate the remainder of the contract;
- 14.3 This contract shall be interpreted and governed in all respects by the laws of the Republic of South Africa.
- 14.4 No concession, latitude or indulgence allowed by **AFRIMAT** to the **CUSTOMER** shall be construed as a waiver or abandonment of any of its rights hereunder or act as an estoppel against **AFRIMAT**.
- 14.5 **The signatory hereto warrants that he/she:**
- 14.5.1 is authorised by the CUSTOMER to act on its behalf and to accept these T&Cs;**
  - 14.5.2 understands the meaning and consequences of the T&Cs;**
  - 14.5.3 agrees to be bound thereby.**