

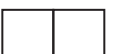
GENERAL TERMS AND CONDITIONS

between

SEPHAKU CEMENT (PROPRIETARY) LIMITED

and

THE CUSTOMER



SCOPE

- A. These General Conditions are the general conditions of sale of Sephaku, which apply (except to the extent to which they are expressly excluded or modified in writing by Sephaku whether pursuant to a request made by the Customer or otherwise) to all orders placed by the Customer on Sephaku for Goods and/or Services.
- B. The various documents comprising the agreement between the Parties shall be taken to be mutually explanatory of each other but in the event of any ambiguity, discrepancy, inconsistency or omission from or in or between any of the said documents, then they shall take precedence in the following order:
- Any invoice supplied by Sephaku to the Customer;
 - These General Conditions;
 - The Application for Credit Facilities; and
 - Any annexures thereto.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS

1.1 In this Agreement unless the context requires otherwise:

- 1.1.1 **“this Agreement”** the agreement between the Parties as constituted collectively by the Application for Credit Facilities, these General Conditions, any invoice issued in terms hereof, and the annexures thereto;
- 1.1.2 **“Application for Credit Facilities”** the “Application for Credit Facilities” to which these General Conditions are attached as Annexure “A”;
- 1.1.3 **“Business Day”** a day other than a Saturday, Sunday and a public holiday in the Republic of South Africa;
- 1.1.4 **“Customer”** the party identified as such in the Application for Credit Facilities, being the party with whom Sephaku contracts for the sale of Goods and/or Services in terms of this Agreement, as amplified by any relevant invoice or Order;
- 1.1.5 **“Delivery Site”** the site at which the Customer requires a specific Order to be delivered, as set out in the relevant Order;
- 1.1.6 **“Event of Force Majeure”** any event or circumstance whatsoever which is not within the reasonable control of the affected Party including vis major, causus fortuitus, act of God, strike, theft, fire, explosion, riot, insurrection or other civil disorder, war (whether declared or not) or military operations;
- 1.1.7 **“General Conditions”** these general terms and conditions together with the annexures hereto;
- 1.1.8 **“Goods”** in relation to each Order placed, the goods supplied by Sephaku and ordered by the Customer from Sephaku in terms of that Order;
- 1.1.9 **“Order”** an order placed by the Customer on Sephaku from time to time, which order shall specify the nature of the Goods and/or Services required by the Customer, the Delivery Site, the date of required delivery or performance, and any other relevant information;
- 1.1.10 **“Parties”** collectively the Customer and Sephaku and “Party” means either of them as the context may require;
- 1.1.11 **“Purchase Price”** the unit price of the Goods or hourly charge for the Services charged by Sephaku on the date on which such Goods/Services were ordered by the Customer, provided that if any Order or any part thereof is required to be delivered more than 30 (thirty) days from the date of acknowledgement thereof, then the Purchase Price shall be as per the revised price effective on the date of delivery of the Order or part thereof, as the case may be. Unless otherwise agreed, the Purchase Price is the standard unit/ hourly price charged by Sephaku from time to time, which prices are available on request;
- 1.1.12 **“Sephaku”** Sephaku Cement (Proprietary) Limited (Registration No. 2004/034277/07), a company duly incorporated and existing under the company laws of the Republic of South Africa; and
- 1.1.13 **“Services”** the services rendered by Sephaku to the Customer, or any part thereof, as the context may require.

2. PURCHASE PRICE

- 2.1 The price payable by the Customer to Sephaku in respect of the Goods / Services shall be the Purchase Price, confirmation of which may be requested by the Customer from Sephaku at any time during business hours. To the extent that any quotations are provided by Sephaku to the Customer, such quotations shall be open for acceptance by the Customer for a period of 7 Business Days from the date of such quotation, failing which the Customer shall not be entitled to rely on such quotations.
- 2.2 The Purchase Price includes:
- 2.2.1 value added tax (in terms of the Value Added tax Act, 1991) and all other taxes as may be payable; and
- 2.2.2 all freight/transport costs and charges relating to the delivery of the Goods / Services to the Delivery Site.
- 2.3 The Purchase Price for cementitious bulk Goods is based on the Goods, as specified, measured by mass (metric tonnes) or by bags, as the case may be.



3. PAYMENT TERMS

Invoicing and Due Date

- 3.1 Sephaku shall, after the Goods have been delivered to the Delivery Site, submit to the Customer an invoice in respect of the consideration payable by the Customer to Sephaku for the purchase of the Goods so delivered to, or performance of the Services for, as the case may be, the Customer.
- 3.2 Unless the Customer disputes and/or raises a query in respect of any invoice within 5 (five) Business Days of the date of that invoice, such invoice shall be deemed to be correct. No such dispute or query shall entitle the Customer to withhold or delay payment for the relevant Goods or Services.
- 3.3 All invoices shall be payable by the Customer within 30 (thirty) days of the date of statement.

Mode of Payment

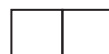
- 3.4 All amounts due by the Customer to Sephaku shall be paid timeously on the due date thereof free of exchange, set-off, deferment for any reason or deduction, and, subject to the provisions of clause 3.5, either by way of electronic funds transfer directly into Sephaku's bank account, or by cash, or by cheque.
- 3.5 The Customer acknowledges that:
 - 3.5.1 Sephaku does not authorise the use of the postal facilities for any payment/s to be made to it in terms hereof and all documents and other matter including cash, cheques, bank drafts and other remittances sent to Sephaku through the post shall be deemed not to have been received by Sephaku unless and until they are actually delivered to Sephaku by the postal authorities and all risk in and to such documents and other matter shall be at the risk of the Customer until actually delivered to Sephaku;
 - 3.5.2 payments made directly into Sephaku's bank account shall be at the Customers risk until confirmed as cleared funds by Sephaku's bankers;
 - 3.5.3 unless otherwise specifically directed by the financial manager or a director of Sephaku in writing from time to time, no third party is authorised to accept any payment due by the Customer for or on behalf of Sephaku; and
 - 3.5.4 acceptance of a negotiable instrument by Sephaku shall not be deemed to be a waiver of Sephaku's rights under these General Conditions. In relation to cheques furnished by the Customer to Sephaku, the Customer waives its right to insist on notice of dishonour or protest being given to it in the event that the cheque is dishonoured.

Late Payment/ Failure to Pay

- 3.6 If any amount is not paid to Sephaku on the due date thereof, then in that event and without prejudice to all of the other rights of Sephaku:
 - 3.6.1 Sephaku shall be entitled to charge the Customer interest thereon at 2% (two percent) above the publicly quoted basis rate of interest at which ABSA Bank Limited lends on overdraft from time to time (as certified in the event of any disputes by a manager by such bank whose appointment it shall not be necessary to prove), calculated from the due date of such payment to the date of final payment thereof; and
 - 3.6.2 all amounts in respect of invoices that have not yet been paid by the Customer to Sephaku shall forthwith and without further notice become due and payable; and
 - 3.6.3 Sephaku shall be entitled to suspend deliveries and to exercise its rights in terms of clause 8.6.

Miscellaneous

- 3.7 No rebates and/or discounts on the Purchase Price are permitted in terms of these General Conditions. However, notwithstanding this fact, a director of Sephaku may agree, from time to time, in writing, to grant a Customer a rebate and/or discount provided that payment for any Goods invoiced prior to the granting of such rebate and/or discount are not overdue / outstanding.
- 3.8 Sephaku shall in its absolute discretion be entitled to appropriate all or any payment made by the Customer towards the payment of any debt or obligation of whatsoever nature owing by the Customer to Sephaku, irrespective of when - such debt or obligation arose.
- 3.9 A certificate signed by a director of Sephaku as to the balance owing to Sephaku by the Customer at any time and from time to time shall be admissible as evidence in any legal proceedings including those for the purposes of provisional sentence and summary judgement proceedings taken against the Customer, or for any other purpose whatsoever, and shall constitute prima facie proof of its contents and of the amount then owing by the Customer to Sephaku.
- 3.10 Where the Customer is resident, or acquires any Goods / Services to be delivered outside the Republic of South Africa:
 - 3.10.1 Sephaku reserves the right to require the Customer's orders to be accompanied by an irrevocable letter of credit acceptable to, and confirmed by a South African bank approved by, Sephaku.
 - 3.10.2 notwithstanding the provisions of clause 2.2.1, the Customer shall be liable for all taxes and duties that may be payable for the importation of goods into the applicable country.



4. ORDERS

- 4.1 Orders by the Customer for Goods and/or Services, shall be made in writing, by way of telefax, email and/or online to Sephaku, and shall specify the quantity of Goods and/or the nature of the Services required, the Delivery Site, the required date of delivery and any other relevant information that Sephaku may require from time to time.
- 4.2 Orders from the Customer shall require to be signed by a manager of the Customer with authority to place such order. Sephaku shall not, however, be required to make inquiries as to whether or not the person placing the Order has such authority, and will be entitled to deem that the ordering party has the necessary authority to do so, and shall not accept liability for deliveries of Goods made in respect of Orders which have not been validly authorised.
- 4.3 All Orders sent to Sephaku and all deliveries made to the Customer in respect of such Orders shall be subject to the terms and conditions of this Agreement. Whenever it is necessary, for the purpose of these General Conditions or any other purpose whatsoever, for instructions to be given to Sephaku such instructions shall be recognised by Sephaku as valid, only if timeously given specifically in relation to the Order in question. Sephaku shall not be liable in respect of any instructions received late by Sephaku. Further, orders placed telephonically or orally shall be executed at the Customer's risk and must be confirmed in writing by the Customer prior to the dispatch of the Goods.
- 4.4 All orders shall be deemed to be irrevocable offers to purchase the Goods or procure the Services contained therein, which shall be subject to confirmation and acceptance by Sephaku and such acceptance by Sephaku shall be confirmed by the dispatch of the Goods or confirmation in writing or by sms by Sephaku.
- 4.5 Sephaku reserves the right, at its sole discretion at any time to discontinue the supply of any Goods and/or to amend the specifications thereof. All particulars concerning capacities and/or other data and catalogues, circulars, advertisements, illustrated material and other matter are approximate only.
- 4.6 Sephaku shall be entitled to delivery Goods which vary from those ordered, provided that the difference between the Goods ordered and those supplied do not render the Goods unsuitable for the Customer's requirements. All specifications of the Goods are approximations, provided that they shall adhere to the provisions of the Trade Metrology Act, 1973.

5. DELIVERY

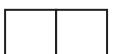
- 5.1 General
 - 5.1.1 Unless otherwise expressly stated by Sephaku, the Customer shall take delivery of all Goods at Sephaku's factory, depot or plant, and delivery shall be deemed to have taken place upon acceptance of the Goods by the Customer or its transporter. In such instance, Sephaku shall be entitled to search the Customer's vehicle, personnel and/or its transporter before entering and leaving Sephaku's premises.
 - 5.1.2 Where, if requested by the Customer, Sephaku transports the Goods to the Customer, the following terms shall, in addition to any other terms set out in clauses 5.2 and 5.3, apply:
 - 5.1.2.1 The Customer shall ensure that Sephaku and/or the transporter have free, clear and full access to the Delivery Site in order to perform their obligations in terms of this Agreement, and only for such purpose, provided that the Customer may require Sephaku and/or the transporter to adhere to reasonable security and safety measures whilst present at the Delivery Site.
 - 5.1.2.2 All packaging requirements of the Customer shall be at the Customer's cost.
 - 5.1.2.3 Sephaku and/or the transporter may, at its discretion, if it is of the view that the Delivery Site is unsafe or unsecure, refuse to enter, or leave, the Delivery Site
 - 5.1.2.4 Once the Goods have been off-loaded at the Delivery Site at the place indicated by the Customer or its employees at the Delivery Site, the Customer shall sign the delivery note supplied with the Goods, which signed delivery note shall constitute prima facie proof of delivery. The Customer shall, within 24 hours of delivery of the Goods, fax or email to Sephaku a copy of the signed delivery note in respect of those Goods.
 - 5.1.2.5 The Customer shall be liable for all costs that are incurred if a consignment of Goods is, at the Customer's instance, diverted to a delivery site other than the Delivery Site, provided that diversions shall have been notified to Sephaku in writing prior to delivery thereof.
 - 5.1.2.6 In all cases where a transporter (including delivery made by rail) makes the delivery to the Customer, the transporter shall be Sephaku's agent.
 - 5.1.2.7 The Customer accepts responsibility and risk for the means or method selected by it or its transporter for the handling, placing and storage of the Goods after the Goods are delivered and offloaded at either the Delivery Site or the transporter's premises.
 - 5.1.2.8 Loss or damages caused to any of Sephaku's property while at the Delivery Site shall be borne by the Customer.
 - 5.1.2.9 The Customer hereby indemnifies and holds Sephaku harmless against any loss, liability or damage sustained or incurred by Sephaku, its agents and/or employees whilst they are present at the Delivery Site, and provided that such loss, liability or damage is not due to the gross negligence of Sephaku, its employee or agent, as the case may be.
 - 5.1.3 All deliveries shall take place during working hours on a Business Day. Although Sephaku will use its reasonable commercial endeavours to render the Services and/or deliver the Goods to the Customer within any given delivery date or time period quoted, such delivery dates or times are approximate only, and time is not of the essence of this Agreement. Sephaku shall therefore not be liable for any loss or damages arising out of late delivery of the failure to deliver any Goods or provide the Services.
 - 5.1.4 If Sephaku makes delivery to the Customer in instalments, each delay in delivery of an instalment shall not affect the balance of these General Conditions or entitle the Customer to cancel these General Conditions. When Goods are delivered in instalments, invoices reflecting separate deliveries shall be paid 30 (thirty) days from delivery and no payment shall be withheld until such time as all the Goods ordered have been delivered.



- 5.1.5 If the Customer fails to take delivery of the Goods ordered, or in any way delays delivery of the Goods, then the risk in the Goods shall, notwithstanding the provisions of clause 9, immediately pass to the Customer and the Customer shall be liable to pay to Sephaku, on demand, the reasonable costs of storing, insuring and handling the Goods, and any connected demurrage charges, until delivery takes place.
- 5.1.6 If the Customer claims that the Goods were not delivered and/or the quantity and/or the value thereof is not in accordance with Sephaku's claim, the onus of proving such claim shall be the Customer's.
- 5.1.7 Sephaku shall be entitled to suspend any Service and/or supply of Goods while the Customer is in breach of any of the terms and conditions contained herein.
- 5.1.8 Orders for cement to be delivered by rail are only accepted in full truckloads in accordance with the tariffs and conditions laid down by Transnet Freight Rail.
- 5.2 Terms Applicable to Cement Bags
- 5.2.1 For all Orders of bagged cement product, the following terms shall apply:
- 5.2.1.1 Sephaku shall procure that all Goods shall be clearly marked and addressed and accompanied by a delivery note stipulating the contents of the package, the quantity of Goods ordered, the Order number and any other relevant information. In the absence of any written agreement to the contrary, packing cases and materials shall be deemed to be included in the Purchase Price of the Goods.
- 5.2.1.2 Delivery shall take place upon the arrival of the transport vehicle at the Delivery Site, and the Customer shall be responsible for off-loading the Goods.
- 5.2.1.3 To the extent that any of the bags of cement are delivered wet or broken, or if the quantity of bags so delivered is short of what had been ordered, the Customer shall be entitled to submit a claim in respect thereof, provided that the claim is submitted in accordance with the procedures notified by Sephaku to the Customer for that purpose.
- 5.3 Terms Applicable to Bulk Cementitious Goods
- 5.3.1 For all Orders of bulk dry cementitious Goods, the following terms shall apply:
- 5.3.1.1 The mass of the consignment of Goods delivered shall be determined by Sephaku by the means normally utilised by Sephaku for that purpose. Once the seals of the bulk tankers have been broken upon delivery, the Customer shall not longer be entitled to raise any concerns regarding the weight of the delivered Goods. If the Customer believes that Sephaku has delivered an incorrect quantity of Goods, the Customer should indicate such belief by endorsing the delivery note relevant to that Order immediately upon delivery thereof.
- 5.3.1.2 It shall be the responsibility of the Customer to verify that the tanker seals are not broken prior to the Goods being offloaded, and the Customer shall bear the responsibility of breaking the seals. It shall be incumbent on the Customer to ensure that the seals of the Order correspond to those reflected on the applicable delivery note in respect of that Order.
- 5.3.1.3 The Customer shall ensure that the Goods are offloaded into the silo selected by the Customer and indicated to the party offloading the Goods. The onus is on the Customer to correctly instruct the driver of the delivery vehicle to the correct silo discharge point. Sephaku does not accept responsibility for Goods being discharged into incorrect silos.
- 5.3.1.4 The offloading shall be carried out by the transporter under the supervision of Sephaku and an authorised employee of the Customer, at the Customer's risk. To that end, delivery shall take place upon arrival of the vehicle at the Delivery Site.
- 5.3.1.5 The Customer shall ensure that adequate silo ullage is available, so as to not unreasonably delay the off-loading of the delivery vehicle.

6. RETURNED GOODS

- 6.1 To the extent that the Customer wishes to bring a claim based on an alleged defect in any Goods, such claim must be notified to Sephaku in writing within no more than 10 (ten) days after delivery thereof. The Customer's claim in such instance shall, at Sephaku's election, be limited to the replacement of the relevant defective Goods.
- 6.2 Should Sephaku in its absolute discretion elect to accept the return of any Goods, the following provisions shall apply:
- 6.2.1 All Goods returned must be complete, clean and undamaged and in their original packaging and must be granted quality control approval by Sephaku before a credit will be considered;
- 6.2.2 If a bulk delivery is returned, Sephaku will not accept the returned load if the seals on the tanker are broken, or do not correspond with the seals numbers printed on the delivery notes. The full cost in such event shall be borne by the Customer;
- 6.2.3 The value of credit for Goods returned will be calculated at the invoice value when the Goods were purchased less a 10% handling charge;
- 6.2.4 The Credit Control Department of Sephaku must be notified of the relevant invoice, packing slip and batch numbers before the claim will be considered;
- 6.2.5 All Goods are to be returned at the Customer's expense and the risk in the Goods remains with the Customer until the Goods are received by Sephaku;
- 6.2.6 The relevant invoice number and/or delivery note must be stated on the Customer's request for credit; and
- 6.2.7 Sephaku's representatives are not empowered to uplift goods for credit.



7. ROAD STABILISATION/ SPREADING

- 7.1 To the extent that the Services comprise an obligation on Sephaku to apply and/or spread (also known as "road stabilisation") the Goods as part of their delivery obligations:
- 7.1.1 Sephaku shall be doing so as a principal and not as a sub-contractor.
- 7.1.2 The Customer shall be obliged to supervise and direct all such spreading, and the Goods shall only be applied in accordance with the Customer's instructions.
- 7.2 Should a Customer request assistance or advice from a representative of Sephaku on the application and use of the Goods, any such advice given to the Customer by Sephaku or its representatives is given in good faith and to the best of Sephaku's ability.
- 7.3 Although Sephaku will perform all spreading Services in a professional manner, Sephaku shall not accept responsibility or liability for problems arising out of any spreading carried out by it, nor shall Sephaku be liable for any loss or damage, whether special or general, direct or consequential, arising out of the rendering of such services by Sephaku to the Customer, and/or any advice that Sephaku may provide to the Customer that may transpire to have been incorrect, and the Customer indemnifies Sephaku in respect thereof.

8. CREDIT FACILITIES

- 8.1 The Customer hereby consents to Sephaku making enquiries, in its discretion, relating to the Customer's credit record and trade references with any credit reference agency or any third party. Sephaku may likewise provide credit reference agencies with updates regarding the Customer's account (and including, if the occasion arises, any failure by the Customer to meet any agreed conditions). The Customer agrees and undertakes that information given in confidence to Sephaku by a third party on the Customer will not be disclosed to the Customer.
- 8.2 The Customer understands that the personal and confidential information given in the Application for Credit Facilities is to be used by Sephaku for the purposes of assessing his / its creditworthiness. The Customer confirms that the information given in the Application for Credit Facilities is accurate and complete. The Customer further agrees to update the information supplied, and to provide such documentation requested by Sephaku, as and when required, in order to ensure the accuracy of the information contained in the Application for Credit Facilities, failing which Sephaku shall not be liable for any inaccuracies.
- 8.3 Sephaku may, at any time, review the extent of the credit facilities granted to the Customer and, upon notice being provided to the Customer, increase, decrease or withdraw the Customer's credit limit, and to require the Customer to provide to Sephaku reasonable security as may be required by Sephaku to secure the Customer's existing and future obligations to Sephaku.
- 8.4 Notwithstanding the provisions of clause 8.3, Sephaku shall at all times have the absolute right, in its sole discretion, to immediately discontinue the Customer's credit facility upon notice to the Customer in writing, whereupon the full balance then owing by the Customer to Sephaku shall immediately become due and payable on demand.
- 8.5 The Customer shall diligently observe and adhere to the credit limit applicable from time to time and shall promptly make payments of all amounts due to Sephaku.
- 8.6 If the Customer at any time exceeds the credit limit or does not pay any amount to Sephaku timeously, or generally is in default of any of its obligations to Sephaku (whether in terms of this Agreement or otherwise), then Sephaku shall have the right (without limiting any of the other rights of Sephaku in terms of this Agreement or in law) to refuse to render any further Services and/or supply any Goods to the Customer.
- 8.7 The Customer acknowledges that the credit facilities applied for will come into operation only upon acceptance by Sephaku. The Customer acknowledges that it shall not be necessary for Sephaku to give notice to the Customer of its acceptance hereof. Prior to acceptance by Sephaku any business shall be conducted on a cash basis (cash on delivery or cash with order, as may be applicable) and in terms of these General Conditions.

9. OWNERSHIP AND RISK

- 9.1 Ownership of all Goods supplied to the Customer (and not withstanding the delivery thereof) will only pass to the Customer against payment of the whole of the Purchase Price thereof, pending which ownership therein shall vest exclusively in Sephaku, and Sephaku shall be entitled to retake possession of any Goods if payment is not received.
- 9.2 All risk and benefit in and to the Goods shall transfer to the Customer upon delivery to the Customer.

10. WARRANTIES AND INDEMNITY

- 10.1 Sephaku warrants that:
- 10.1.1 the Goods comply with the details indicated on the delivery note in respect of those Goods; and
- 10.1.2 all cementitious Goods delivered to the Customer shall comply with the South African National Standards (SANS 50197/1), which is the applicable conformance standard for cementitious products, as replaced from time to time.
- 10.2 Save to the extent expressly and specifically given in writing, Sephaku does not make any representations nor give any warranty or guarantee of any nature whatsoever whether in respect of any Services and/or Goods, including any warranty that the Goods are fit for a particular purpose or as to the colour consistency of any Goods. The Customer shall, for that purpose, be deemed to have satisfied itself as to the suitability of the Goods ordered, but gives no other warranties, express or implied, and makes no other representations in respect of the Goods.
- 10.3 Sephaku shall not, under any circumstances whatsoever, be liable to the Customer or any other person for any loss or damages, including without limitation any loss of profits or other special damages or any consequential loss or damages arising from any cause with the exception of gross negligence or misconduct attributable to Sephaku.



- 10.4 If any legislation is compulsorily applicable to any business undertaken, these General Conditions shall as regards such business be read as subject to such legislation and nothing in these General Conditions shall be construed as a surrender by Sephaku of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these General Conditions should be repugnant to such legislation to any extent, such part shall as regards such business be taken as pro-non scripto to that extent but no further.

11. FORCE MAJEURE

To the extent that Sephaku is prevented, directly or indirectly, from performing any of its obligations in terms of this Agreement due to an Event of Force Majeure, Sephaku shall be relieved of such obligations for the duration that such Event of Force Majeure persists. Sephaku will not accept liability for damages or for loss the Customer may suffer as a result, and the Customer shall not be entitled to cancel any Orders and/or claim damages or set off any payment due to late delivery or non-delivery. Sephaku undertakes to use all reasonable commercial endeavours to overcome the Event of Force Majeure as soon as practically possible and shall mitigate the effect thereof on the unaffected party to the extent possible.

12. BREACH

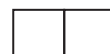
- 12.1 If:-
- 12.1.1 the Customer commits a breach of any of these General Conditions and fails to rectify or remedy such breach within 10 (ten) Business Days of receipt of written notice from Sephaku requiring it to do so;
- 12.1.2 the Customer commits an act of insolvency and/or is provisionally or finally wound up or makes any arrangement or composition with its creditors or suffers or takes any similar action or consequence; or
- 12.1.3 the Customer makes known its intention to cede or delegate any of its rights and/or obligations in terms of these General Conditions or of its intention to sell or otherwise dispose of its business, or purports to cede, delegate, sell or otherwise dispose of the foregoing, without the prior written approval of Sephaku, Sephaku shall be entitled, without prejudice to any of its other rights in law, to claim specific performance in terms of this Agreement or to cancel these General Conditions forthwith, in either event without prejudice to its rights to claim damages.
- 12.2 If Sephaku commits a material breach of any of the terms and conditions of these General Conditions, and fails to rectify or remedy such breach within 10 (ten) Business Days of receipt of written notice from the Customer requiring it to remedy such breach, then the Customer shall be entitled, at its discretion and without prejudice to any of its other rights in law, either to claim specific performance in terms of these General Conditions or to cancel these General Conditions on written notice.

13. SECURITY

- 13.1 The Customer shall enter into and sign a suretyship in favor Sephaku, which shall be in accordance with the form of suretyship attached to this Agreement as Annexure "A1".
- 13.2 The person/s signing a suretyship shall warrant the authority to do so.
- 13.3 The Customer hereby pledges and cedes unto and in favour of Sephaku all of its rights, title, interest, claim and demand in and to all book debts of the Customer, of whatsoever nature, owed to it from time to time, both present and future, as security for all the Customer's obligations to Sephaku under this Agreement and for the due and punctual payment of all monies which become payable to Sephaku under this Agreement.
- 13.4 This cession shall remain in force as continuing covering security until all the monies secured by it have been paid to Sephaku.
- 13.5 Should any monies secured by this cession not be paid by the Customer on due date, and should it remain in default for 7 (seven) Business Days after receiving notice to pay the monies due, Sephaku shall be entitled to realise all the rights pledged to them under this cession in such manner and on such terms and conditions as it deems fit.

14. GOVERNING LAW AND DISPUTE RESOLUTION

- 14.1 This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa (notwithstanding conflict of law principles).
- 14.2 Any dispute arising out of, or in connection with this Agreement or the subject matter hereof (other than where interim and/or urgent relief is sought from a court of competent jurisdiction), shall be resolved by the Magistrates Court having jurisdiction notwithstanding that the amount claimed may exceed the jurisdiction of the Magistrates Court. The Customer hereby consents to the jurisdiction of such Magistrates Court, and to the jurisdiction of the High Court of South Africa in the event of Sephaku electing to proceed against the Customer in such High Court.
- 14.3 If the dispute relates to the quality, quantity or performance of the Goods / Services supplied by Sephaku, such dispute shall, in the first instance, be referred to the appropriate responsible representatives of each Party, who shall, within 5 (five) Business Days after such referral use reasonable commercial endeavours to resolve such dispute amicably, failing which the provisions of **clause 14.4** shall apply.
- 14.4 If the responsible persons referred to in **clause 14.3** above are unable to resolve the dispute within the period stipulated in that **clause 14.3**, the matter shall be referred to each Party's appropriate manager, which managers shall, within 5 (five) Business Days after the referral of such matter, meet and use reasonable commercial endeavours to resolve the dispute amicably, failing which the provisions of **clause 14.5** shall apply.
- 14.5 If the dispute remains unresolved after the steps set out above are followed, the matter shall be referred, in Sephaku's sole discretion, to either an independent expert appointed by the Cement and Concrete Institute, or other recognised authority whose decision shall be final and binding; or it shall proceed directly to the relevant court/s with jurisdiction.



15. ADDRESSES FOR LEGAL PROCESS AND NOTICES

- 15.1 Any legal process to be served:
 - 15.1.1 on the Customer may be served on it at the address so specified in the Customer's Application for Credit Facilities, as may be amended by written notification to Sephaku from time to time; and
 - 15.1.2 on Sephaku may be served on it at the address so specified in its invoices.
- 15.2 Any notice or other communication to be given to either Party shall be valid and effective only if it is given in writing.

16. VARIATION AND ALTERATION OF GENERAL CONDITIONS

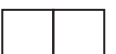
- 16.1 No agent or employee of Sephaku has Sephaku's authority to alter or vary the terms of these General Conditions either by an oral or a written undertaking or promise given before or after receipt of these General Conditions and no alteration, amendment, variation or consensual cancellation of these General Conditions shall be of any force and effect, unless reduced to writing and signed by the Customer and a director of Sephaku.
- 16.2 Should the Customer purport to attach any conditions to or in respect of any business conducted from time to time which may vary, amend or are in conflict with a term set out in these General Conditions, then notwithstanding anything to the contrary stipulated by the Customer, the terms set out herein shall prevail and be of full force and effect, unless specifically varied in writing with reference to Customer's contrary documentation in accordance with **clause 16.1** above.
- 16.3 No act or omission of Sephaku shall be construed as a variation or waiver of any of these General Conditions.

17. INTERPRETATION

- 17.1 The following rules of construction shall apply to this Agreement:
 - 17.1.1 the singular shall include the plural and vice versa; and a reference to any one gender, whether masculine, feminine or neuter, includes the other two;
 - 17.1.2 any reference to a person includes, without being limited to, any individual, body corporate, unincorporated association or other entity recognised under any law as having a separate legal existence or personality;
 - 17.1.3 references in this Agreement to "clauses" and "Annexures" are to clauses of, and annexures to, this Agreement;
 - 17.1.4 no rule of construction shall be applied to the disadvantage of a Party to this Agreement because that Party was responsible for or participated in the preparation of this Agreement or any part of it; and
 - 17.1.5 unless otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or, where the last day falls on a day that is not a Business Day, the next succeeding Business Day.

18. GENERAL

- 18.1 This document contains the entire General Conditions between the Parties in regard to the subject matter thereof. No Party shall be bound by or have any claim or right of action arising from any express or implied term, undertaking, representation, warranty, promise or the like not included or recorded in these General Conditions or whether it was negligent or not.
- 18.2 No failure by any Party to enforce any provision of g these General Conditions shall constitute a waiver of such provisions or affect in any way such Party's rights to require the performance of such provision at any time in the future, nor shall a waiver of a subsequent breach nullify the effectiveness of the provision itself.
- 18.3 The Customer shall not, without the prior written consent of Sephaku, cede or transfer to any person its right, title and interest in and to any existing or future book debt of its business.
- 18.4 If any provision of these General Conditions, which is not material to its efficacy as a whole, is rendered void, illegal or unenforceable in any respect under any law, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
- 18.5 The Customer shall be liable for all legal costs incurred by Sephaku, as between attorney and client as well as collection commission and interest should it be necessary for legal action to be taken for the recovery of any amounts owing to Sephaku, arising out of the business conducted between the Customer and Sephaku.



**SURETYSHIP & CO-PRINCIPAL DEBTOR AGREEMENT
("this Suretyship")**

(Sephaku Cement (PTY) Ltd & _____ : Sephaku Sale Agreement)

(Identity number _____)

and

(Identity number _____)

(collectively "the Sureties")

hereby bind themselves, jointly and severally, on the following terms and conditions as sureties for and co-principal debtor in *solidum* with

(a company registered in accordance with the laws of the Republic of South Africa under Registration Number

_____)

("the Debtor")

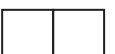
for the due payment of all amounts and the due performance of all other obligations by the Debtor to

SEPHAKU CEMENT (PTY) LIMITED

(a company duly registered and incorporated in accordance with the laws of the Republic of South Africa under Registration No. 2004/034277/07)

("the Creditor")

under or which arise in any way out of the Sephaku Sale Agreement (defined below).



THE SURETIES AGREE THAT:

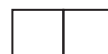
1. For the purposes of this Suretyship: "Sephaku Sale Agreement" means the written sale agreement between the Creditor and the Debtor, in respect of the Creditors terms and conditions of sale, entered into on or about _____/20 _____
2. All acknowledgements of indebtedness and admissions by the Debtor shall be binding on the Sureties.
3. The Creditor shall be entitled from time to time, as it, in its absolute discretion, deems fit, and without prejudice to its rights hereunder and without any further consent from the Sureties:
 - 3.1 to release any securities given to it or any other sureties from the Debtor;
 - 3.2 to give time to or compromise or make any arrangements with the Debtor in regard to the payment of the indebtedness to it of the Debtor; and/or
 - 3.3 to make any variation of the terms and conditions of the Sephaku Sale Agreement, including but not limited to any amendments that increase the amount of the indebtedness or increase the duration.
4. This Suretyship shall be in addition to and without prejudice to any other suretyship or securities now held or hereafter held by the Creditor in respect of any indebtedness of the Debtor to the Creditor under the Sephaku Sale Agreement.
5. The Sureties renounce the benefits of excussion, division, non numeratae pecuniae, revision of accounts, no value received and cession of action, the full meaning and effect of which they know and understand.
6. A certificate signed by any director of the Creditor (whose appointment, qualification or authority need not be proved) as to the amount of the indebtedness of the Debtor to the Creditor which is guaranteed under this Suretyship or as to the amount of the Debtor's indebtedness to the Creditor at the date of the certificate, shall be:
 - 6.1 prima facie evidence of the amounts of indebtedness shown in the certificate; and
 - 6.2 binding on the Sureties (save to the extent that it proves it to be incorrect) in any proceedings instituted by the Creditor in any competent court for the purpose of obtaining provisional sentence.
7. Should the Creditor cede the whole of its right of action against the Debtor to any third party, then the Creditor shall be entitled to cede to such third party the rights of the Creditor under this Suretyship, and the Creditor shall notify the Debtor of any such cession.
8. Any indulgence, leniency, extension of time or waiver which may be granted to:
 - 8.1 the Debtor; or
 - 8.2 the Sureties; or
 - 8.3 any other sureties, guarantors or indemnitors for the Debtor; or
 - 8.4 any third party;

whether before or after any obligation has fallen due for performance is not a waiver of any of the rights or claims of the Creditor against the Sureties. The Sureties irrevocably waive any right to rely on any defence of, or based on, waiver, equity, estoppel or prejudice to the Sureties.

9. Notwithstanding any past performance of any obligation by the Sureties, or on their behalf, the Sureties have no right to:
 - 9.1 any cession of action in respect of such past performance; and
 - 9.2 take any action against:
 - 9.2.1 the Debtor; or
 - 9.2.2 any other surety for the Debtor;

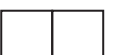
in respect thereof until the obligations of the Debtor to the Creditor have been discharged in full.

10. The Sureties shall not be released from their liability if the Creditor:
 - 10.1 makes any payment to the Debtor which ought not to have been made; or
 - 10.2 withholds performance of any obligations to the Debtor which ought to have been performed; or
 - 10.3 allows the Debtor to breach its obligations to the Creditor, exceed its credit terms or default in any manner; or
 - 10.4 fails to take or prosecute to its conclusion any action against the Debtor; or
 - 10.5 in any other manner prejudices the rights of the Sureties or the Debtor.
11. If any obligation is novated, the Sureties shall be liable for the original obligation or the novated obligation at the election of the Creditor and whether or not the Sureties were aware of the novation.
12. If:
 - 12.1 any performance which has the effect of reducing or discharging the liability of the Sureties is:
 - 12.1.1 set aside under the insolvency laws or for any reason whatsoever by order of court; or
 - 12.1.2 refunded to the Debtor or liquidator of the Debtor by agreement; or
 - 12.1.3 any security held by the Creditor is set aside by the court or released by agreement; the Sureties shall be liable to the Creditor as sureties for the Debtor in respect of the obligations of the Debtor to the Creditor arising from, revived by or which becomes unsecured as a result of the setting aside, refund or release of such security notwithstanding that it may take place after the termination of the liability of the Sureties in respect of those obligations howsoever such termination happened.
 - 12.2 All references in this Suretyship to obligations of the Debtor are accordingly deemed to include any obligation arising from or revived by the setting aside, refund or release of any such performance, payment or security.
 - 12.3 This Suretyship document is and at all times shall remain the property of the Creditor.
13. The rights of the Creditor under this Suretyship shall not be affected or diminished if the Creditor at any time obtains any additional or other suretyships, guarantees, securities or indemnities from the Sureties or any other third party whatsoever in connection with the obligations of the Debtor and/or the Sureties.



14. If the Debtor is placed under any provisional or final order of winding up or judicial management or if it enters into any scheme of arrangement or compromise with its creditors, then:
- 14.1 the Sureties undertake not to prove a claim against the Debtor for any amount they may be called upon to pay under this Suretyship, until all amounts guaranteed by this Suretyship and which are due by the Debtor to the Creditor will have been paid in full, unless otherwise agreed in writing by the Creditor;
- 14.2 the Sureties agree that notwithstanding any part payment by them or on their behalf to the Creditor it will have no right to any cession of action in respect of the part payment and will not be entitled to take any action against the Debtor or against any other surety for the Debtor for the part payment, unless and until all amounts guaranteed by this Suretyship will have been discharged in full;
- 14.3 no payments which the Creditor may receive from the Debtor or any other surety or sureties by or from the Sureties shall prejudice the Creditor's right to recover from the Sureties, to the full extent of this Suretyship, any sum which, after receipt of any such payments, will remain owing to the Creditor by the Debtor; and
- 14.4 notwithstanding any payments received by the Creditor from the Sureties, the Creditor shall be entitled to prove any claim against the Debtor for the full amount of the indebtedness of the Debtor to the Creditor at the date of the commencement of the winding up or judicial management or compromise, as the case may be.
15. Should the Sureties at any time in defending any action based on this Suretyship raise any of the following defences, then the onus of proving the defence will rest on it:
- 15.1 that there is no reason or cause for any obligation of the Debtor to the Creditor;
- 15.2 that errors have been made in the calculation of the amount claimed.
16. No agreement to vary the terms of this Suretyship shall be of any force or effect unless it is reduced to writing and signed by the Sureties and the Creditor.
17. The Sureties agree that they shall not be entitled to withdraw or cancel this Suretyship unless and until the obligations of the Debtor to pay all amounts due and payable in respect of which this Suretyship has been given, have been fully discharged or extinguished.
18. For the purpose of this Suretyship, the following address and telefax number shall apply:
- Attention: _____
- Telefax No: _____
19. Any legal process to be served on the Sureties may be served at the address specified for them in clause 18 and that address shall serve as the domicilium citandi et executandi for all purposes under this Suretyship.
20. Any notice or other communication to be given to the Sureties in terms of this Suretyship shall be valid and effective only if it is given in writing, provided that any notice given by telefax shall be regarded for this purpose as having been given in writing.
21. A notice to the Sureties which is sent by registered post in a correctly addressed envelope to the address specified in clause 18 shall be deemed to have been received (unless the contrary is proved) within fourteen days from the date it was posted, or which is delivered to the Sureties by hand at that address shall be deemed to have been received on the day of delivery, provided it is delivered to a responsible person during ordinary business hours.
22. Each notice by telefax at the telefax number specified in clause 18 shall be deemed to have been received (unless the contrary is proved) within four hours of transmission if it is transmitted during normal business hours or within four hours of the beginning of the next business day after it is transmitted, if it is transmitted outside those business hours.
23. Notwithstanding anything to the contrary anywhere else in this Suretyship, a written notice or other communication actually received by the Sureties shall be adequate written notice or communication to them notwithstanding that the notice is not sent to or delivered at their chosen address or otherwise in accordance with the provisions of this Suretyship.
24. This document contains the entire suretyship in respect of its subject matter.
25. The Sureties shall not have any claim or right arising from any undertaking, representation or warranty not included in this Suretyship.
26. Notwithstanding any other clause contained in this Suretyship, any dispute ("a dispute") between the Parties arising in connection with this Suretyship or the subject matter hereof shall, at the Creditor's election, be submitted to and determined by arbitration in accordance with clause 14 of the Sephaku Sale Agreement as if such clause was part of this Suretyship. For the purpose hereof the term "dispute" shall be interpreted in the widest sense and shall include any dispute or difference in connection with or in respect of the conclusion or existence of this Suretyship, the carrying into effect of this Suretyship, the interpretation or application of the provisions of this Suretyship, the Parties respective rights and/or obligations in terms of and/or arising out of this Suretyship and/or the validity, enforceability, rectification, termination or cancellation, whether in whole or in part, of this Suretyship.
27. If any provision of this Suretyship is rendered void, illegal or unenforceable in any respect under any law, that provision shall be severable from the rest of this Suretyship and the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
28. This Suretyship shall be governed by and construed in accordance with the laws of the Republic of South Africa.

(Note: The remainder of this page has intentionally been left blank)



SIGNED at _____ on _____ 20 _____

For: _____

**SEPHAKU CEMENT (PTY)
LTD**

Signatory: _____

Capacity: _____

Authority: _____

AS WITNESSES:

1. _____
Full Name

2. _____
Full Name

SIGNED at _____ on _____ 20 _____

For: _____

Signatory: _____

Capacity: _____

Authority: _____

AS WITNESSES:

1. _____
Full Name

2. _____
Full Name

