



TOPFLOOR CONCRETE LIMITED

Reg. No. 1937/010143/06 - VAT Reg No. 4930103785
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TERMS AND CONDITIONS OF SALE including cession of book debts and suretyship

In these conditions:

1. **"THE GOODS"** means the goods indicated on any company forms, price lists, quotations, delivery notes, orders or invoices.
2. **PRICE**
 - 2.1 The price of the goods shall be the quoted price current at the time of the dispatch of the goods.
 - 2.2 The price of the goods shall be according to the customized quote per project subject to industrial fluctuation and the company has the right from time to time, for any reason and without notice to the customer to change the price of the goods to be delivered.
3. **PAYMENT (FOR ACCOUNT CUSTOMERS)**
 - 3.1 Payment is to be made 30 days from date of the Company's statement and must reflect on the Company's bank statement on the **last working day of the month, with all queries raised within SEVEN (7) WORKING DAYS. NO RETENTION IS ALLOWED AND SETTLEMENT DISCOUNT ONLY ALLOWED AS PER WRITTEN AGREEMENT WITH COMPANY.**
 - 3.2 In all cases where the Customer uses a postal, banking, electronic or similar such service to effect payment, such services shall be deemed to be the agent of the Customer.
 - 3.3 Should any amount not be paid by the Customer on due date then the whole amount in respect of all purchases by the Customer shall become due, owing and payable irrespective of the dates when the goods were purchased and the Customer shall be liable to pay interest in respect of amounts unpaid as at the due date at the compound rate of 2% above the prime overdraft lending rate of the Company's Bank on all overdue amounts from due date until date of payment, calculated and payable monthly in advance and should the said interest not be paid in full as aforesaid, the same shall be added to the principal sum, and the total shall form the principal debt which shall then bear interest in the manner as set out above.
 - 3.4 The Customer shall not be entitled to claim set off or deduction in respect of any payment due by the Customer to the company for goods or services supplied.
 - 3.5 The Company may appropriate all payments made by the Customer to such accounts as it will in its sole and absolute discretion decide.
 - 3.6 The Company shall have the right to suspend deliveries and to exercise its rights in terms of clause 7.1 if any amount due by the Customer is unpaid.
 - 3.7 The Customer shall not be entitled to counter claim against the Company for a debasement of account to frustrate making payment to the Company. Furthermore, the Customer undertakes to keep a comprehensive set of books at all material times from which it will be liable to ascertain its liability to the Company without the need for any debatement.
4. **PAYMENT (FOR NON ACCOUNT CUSTOMERS)**
 - 4.1 This Quotation shall remain valid and shall be capable of being accepted, for a period of 15 (Fifteen) days from date hereof. Thereafter the quotation shall lapse.
5. **PAYMENT (WHERE NO ACCOUNT IS OFFERED)**
 - 5.1 On acceptance of this Quotation, a deposit of 80% is required upfront.
 - 5.2 If a cheque is provided as a deposit, we will wait for Bank clearance before processing the order.
 - 5.3 Balance of monies to be paid 5 working days prior to the installation of the slabs in the form of Cash, deposited into our bank account, Electronic Transfer or a Bank Guaranteed cheque, subject to bank clearance prior to delivery and installation of any slabs.
 - 5.4 Our factory is to be considered an extension of the contract site for purposes of receiving payment for units stored in our yard.
6. **CREDIT FACILITIES**
 - 6.1 The Customer understands that the Company's decision to grant credit facilities to the customer is at the sole discretion of the Company.
 - 6.2 The Company reserves the right to withdraw any credit facilities at any time without prior notice and the nature and extent of such facilities shall at all times be in the Company's sole discretion.
 - 6.3 Despite the fact that the Company may grant the Customer a credit limit or a credit facility up to a certain amount, the Company reserves the right to increase or decrease this amount at its sole discretion. The credit limit shall not be deemed to be the limit of a customer's indebtedness to the Company.
7. **ORDERS**
 - 7.1 Orders by the Customer for the Company's goods or services shall be made in writing to such address as may be nominated by the Company from time to time.
 - 7.2 Orders shall constitute irrevocable offers to obtain the Company's services at the Company's quoted fees and/ or to purchase the goods in question at the quoted prices of the Company and shall be capable of acceptance by the Company by the delivery of the goods and/ or provision of the services or by the written acceptance or confirmation of the order.
 - 7.3 Verbal or email orders shall similarly be capable of acceptance by the Company, by submitting in response, an acceptance and confirmation letter on the Company letterhead, confirming receipt and acceptance of such order. but the Company will not be responsible for any errors or misunderstandings occasioned by the Customer's failure to make orders in writing.
 - 7.4 The Customer shall provide the Company with either a business purchase order, signed copy of the Company's quotation or a formal contract agreement, when placing any order with the Company.
 - 7.5 Orders accepted by the Company shall not be varied or cancelled by the Customer, except with the written consent of the Company.



8. DELIVERY

- 8.1 In the event that the Company transports the goods to the Customer, delivery and passing of the risk in the goods, shall be deemed to have taken place when the goods are off-loaded at the Customer's premises. The signature of any employee of the Customer on a Company delivery note or invoice shall be prime facie proof of the proper delivery of the goods.
- 8.2 In all cases where delivery to the Customer occurs by carrier, the carrier shall be the Customer's agent, and delivery to such carrier by the Company shall be deemed to be delivery to the Customer. The signature of any employee of the carrier shall be prime facie proof of proper delivery to the Customer.
- 8.3 Delivery of goods to any delivery address by the Customer shall constitute proper delivery of the goods, despite the fact that such address may not have been the address or premises of the Customer.
- 8.4 Whilst every effort will be made to dispatch goods as advised, the Company does not guarantee dispatch on any specific date and shall not be liable for any damages for failure to effect delivery/ dispatch timeously for any reason beyond the Company's reasonable control, including but not limited to, inability to secure transport, labour, power, materials, equipment 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 or legislation. The Customer shall not be entitled to cancel any order by reason of such delay.
- 8.5 In the event that the Company makes delivery to the Customer in installments each installment shall be deemed to be the subject of a separate contract and non-delivery or delay in delivery of any installment shall not affect the balance of the contract or entitle the Customer to cancel the contract.
- 8.6 When goods are delivered in installments, invoices relating to separate deliveries shall be paid 30 days from delivery and no payment shall be postponed until such time as all the goods ordered have been delivered.
- 8.7 The Customer will be liable for payment of all fees, charges, expenses and the like due to the said carrier in respect of the transport of the goods to the Customer.
- 8.8 Should the Company, at the Customers request, agree to engage a carrier to transport goods to the Customer, such carrier shall be the Customer's agent and the Company shall engage the carrier on such terms and conditions as it deems fit and the Customer indemnifies the Company against all demands and claims which may be made against it by the carrier so engaged and all liability which the Company may incur to the carrier arising out of the transportation of the goods.
- 8.9 If the Customer fails to take delivery of the goods ordered, or in any way delays the delivery of goods ordered, then the risk in the goods shall immediately pass to the Customer and the Customer shall be liable to pay the Company the reasonable costs of storing, insuring, and handling the goods, until delivery takes place.
- 8.10 The Customer shall be barred from lodging any claim in respect of discrepancies between goods charged and goods delivered, unless the Customer has specified on the delivery note, the nature of the discrepancy.

9. DRAWINGS

- 9.1 Topfloor Concrete Limited t/a Topfloor shall supply final slab layout drawings of the floor slab layout in duplicate. This **does not** imply acceptance of the adequacy of the supports to take the applied and dynamic floor loads.
- 9.3 This service is provided by an outside Professional Engineer of the client's choice, at the client's discretion, for which Topfloor Concrete Limited t/a Topfloor can accept no responsibility whatsoever.

10. LIABILITY

- 10.1 We shall not be liable under any circumstances whatsoever for any loss or damage of whatsoever nature or kind and howsoever arising whether direct or indirect, consequential or otherwise alleged to be sustained by you as a result or attributable to:
- 10.1.1 Any delay in the manufacturing or delivery of the goods.
- 10.1.2 Failure by us to manufacture or deliver goods or to render service as a result directly or indirectly of vis major, strikes, labour disputes, delays in manufacture or transportation of goods, shortages of materials or labour, or any other act or situation or cause which is directly or indirectly or partly beyond our control.
- 10.1.3 Any Acts of omission or negligence (gross or otherwise) attributable to us or to any of our employees or agent or servants or any other person for whom we may in law be liable.

11. INSTALLATION

- 11.1 Topfloor Concrete Limited t/a Topfloor shall not be responsible for any defect in the installation of the goods whatsoever.
- 11.2 Topfloor Concrete Limited t/a Topfloor shall not be responsible for any delay in the installation of the goods whatsoever.
- 11.3 Volume availability at customer program requirement dates cannot be guaranteed.
- 11.4 Deliveries on specified dates are subject to availability by us of all necessary materials, labour and transport and shall further be subject to any cause or circumstances beyond our control.
- 11.5 Topfloor Concrete Limited t/a Topfloor installation crews are equipped with safety boots, grey two piece overalls with reflective strips appropriately positioned, Topfloor reflective vests and white hard hats. Topfloor Concrete Limited t/a Topfloor shall not be responsible for the supply and cost of any additional Personal Protective Equipment which may deviate from the standard issue stated above.

12. OWNERSHIP & RISK

- 12.1 Notwithstanding that all risk in and to all goods sold by the Company to the Customer shall pass on delivery, ownership in all goods sold and delivered shall remain vested in the Company until the full purchase has been paid and in the event of a breach of these terms and conditions by the Customer, or if the Customer is sequestrated or placed under liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgment granted against it within 7 days of the date of judgment or changes the structure of its ownership, the company shall be entitled to take possession of the goods without prejudice to any further rights vested in the company, and is hereby irrevocably authorized to enter upon the Customer's premises to take possession of such goods without Court order.
- 12.2 In the event of the Customer obstructing the Company in the process of removing its goods from the Customer necessitating the obtaining of a Court order, the Company shall be entitled to obtain an award of costs against the Customer on a punitive scale.
- 12.3 Furthermore, the Customer shall have no claim against the Company for damages caused due to loss of profits or otherwise occasioned by the removal of goods from the Customer's premises as aforesaid notwithstanding that such removal was effected without Court order.
- 12.4 Goods in the possession of the Customer bearing the Company name, trademarks and labels shall be deemed to be those for which payment has not yet been made, and should any breach of these terms occur, may be repossessed by the Company in terms of paragraph 3.1.1.



- 12.5 The Customer shall fully insure the goods purchased from the Company against loss or damage, until the full purchase price has been paid by the Customer for such goods. Pending payment to the Company for goods purchased, all benefits in terms of the insurance policy relating to such goods are ceded to the Company.
- 12.6 It shall not be necessary for the Company to prove either to the Customer or the Customer's liquidator or trustee which goods in the possession of the Company have actually been paid for and which has not been paid for.
- 12.7 The Company shall be entitled to identify its goods merely by way of packaging and other distinguishing marks. The Company shall not be obliged to identify its goods by way of serial numbers or any other form of intricate identification.
- 12.8 Specifically, the Company shall be entitled to remove all goods of whatsoever nature owned by it from the Customer's premises notwithstanding that certain of such goods removed may have been paid for. The rationale for permitting the Company to act in this manner is due to the fact that the Customer's account is in debit and after reconciliation thereof, should it emerge that with the recovery of all goods on the premises of the Company, the said Company is due a credit, and such credit shall be passed.

13. LEGAL PROCEEDINGS

- 13.1 Regardless of the place of execution or performance under these terms and conditions or domicile of the Customer, these terms and conditions and all modifications and amendments hereof, shall be governed by and decided upon and construed under and in accordance with the laws of the Republic of South Africa,
- 13.2 The company shall, 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 court.
- 13.3 A certificate issued and signed by any director or Credit Manager of the Company, whose authority need not be proved, in respect of any indebtedness of the Customer to the Company or in respect of any other fact, including the fact that such goods were sold and delivered, shall be prima facie evidence of the Customer's indebtedness to the Company and prima facie evidence of such other fact and prima facie evidence of the delivery of the goods.
- 13.4 The Customer's physical address as given on the front page of this document, shall be recognized as the Customer's domicilium citandi et executandi (resides or carries on business) for all purposes in terms of this agreement, whether in respect of the serving of any court process, notices, the payment of any amount or communications of whatever nature.
- 13.5 The Customer shall pay all legal costs, including attorney/ own client costs, tracing agent's fees and collection charges which the Company may incur in taking any steps pursuant to any breach or enforcement of these terms and conditions by the Customer.

14. ARBITRATION

- 14.1 The Company has the sole option to refer any dispute arising from or in connection with this agreement to arbitration, which arbitration shall bind both Company and Customer.
- 14.2 The arbitrator must be a person agreed upon by the parties or failing agreement, an arbitrator must be appointed by the Arbitration Foundation of Southern Africa, who shall then finally resolve the dispute or issue in accordance with the Rules to the Arbitration Foundation of SA.

15. NEGOTIABLE INSTRUMENTS

Acceptance of a negotiable instrument by the Company shall not be deemed to be a waiver of the Company's rights under this agreement. In relation to cheques furnished by the Customer to the Company, the Customer waives its right to insist on notice of dishonour or protest being given to it in the event that the cheque is dishonored.

16. RETURNED GOODS

Goods sold by the Company are not returnable save at the option of the Company. Should the Company in its absolute discretion elect to accept the return of any goods, the following shall apply:-

- 16.1 All goods returned must be complete, clean, saleable and undamaged and in their original form of issue.
- 16.2 The Customer will be responsible for the up-liftment and cost of returning the stock to Bellville if goods received later than six weeks after the occasion date.
- 16.3 All goods returned at the Customer's expense, risk in the goods remains with the Customer until the goods are received by the Company.

17. WARRANTIES & INDEMNITY

- 17.1 The customer hereby indemnifies Topfloor Concrete Limited t/a Topfloor against any claim from a third party arising out of the goods hereby sold or the installation thereof or the failure to install timeously.
- 17.2 Level supports are to be provided by you at either end of our flooring units. You are responsible for providing bearings over openings (window, door, etc.) and checking the whole structure for applied load.
- 17.3 Ground Floor partition walls are to be hard packed under flooring units to support partition walls at first floor.
- 17.4 a. Tolerance on level of tops of walls are 2.5mm in 1.2m or 1mm in 500mm. Should actual tolerance be in excess of these figures, any remedial work required for the placing of the floor units, will be for your account.
- b. **Topfloor Concrete Limited t/a Topfloor retains the right in its absolute discretion to alter the installation price by giving the customer written notice.**
- c. Delivery charges may vary due to escalation in petroleum products and license costs.
- d. Once the slabs have been positioned and grouted by the customer, the customer is responsible for the screeding the slab and pointing the soffit joints. The units are precambered and the depth of screed will need to be varied to suit the precamber. A minimum 40mm leveling screed is recommended.
- e. The V.A.T. rate applicable at the time of installation will be chargeable.
- f. Topfloor Concrete Limited t/a Topfloor is not responsible for making good of service holes or to cut-outs around columns.
- g. Floor units to be left for 48 hours after grouting before loading to allow for hardening.



- 17.5 a. If the customer does not fulfill the requirements for the preparation and accessibility of the site, the customer hereby agrees to pay Topfloor Concrete Limited t/a Topfloor extra charges incurred, resulting from such failure. A Tax invoice raised by Topfloor Concrete Limited t/a Topfloor reflecting the amount of such charges shall constitute prima facie proof of the amount of each charge.
- b. 7 metres clear, **level** and sound access up to and around buildings to be installed is to be provided by the customer free of charge to Topfloor Concrete Limited t/a Topfloor prior to the start of installation of the slabs.
- c. Topfloor Concrete Limited t/a Topfloor cannot be held responsible for any damage whatsoever caused to driveways, gardens, water or electrical pipes, walls or any other form of property in achieving and installing the floor slabs.
- 17.6 No allowance has been made in our calculations for the inclusion of service holes in the slabs unless otherwise discussed.
- 17.7 Panels with chamfered/splayed ends will be charged at full rectangular area.

18. CONTINUING COVERING SURETYSHIP

- 18.1 I, by my signature hereof (which appears below) do hereby bind myself in my private and individual capacity as surety for and co-principal debtor with the Customer in favour of the Company for the due performance of any obligation of the Customer and for the payment to the Company by the Customer of any amounts which may now or at any time be or become owing to the Company by the Customer.
- 18.2 I understand that my liability for amounts owing by the Customer to the Company is not limited to any credit limit granted by the Company to the Customer.
- 18.3 The amount which the Company can claim from the surety shall not be limited by any credit limit granted by the Company to the Customer. Should this credit limit be exceeded by the Customer for any reason whatsoever, the surety shall not be entitled to claim liability for the credit limit amount only.
- 18.4 I acknowledge and understand that as surety and co-principal debtor, I waive and renounce the benefits to which I may be entitled to arising from the legal exceptions including, but no limited, to:-
- Excussion - the right to require the Company to proceed first against the Customer for payment of any debt owing to the Company before proceeding against the surety;
 - Cession of action - the right to require the Company to give cession of the action for payment of debts to the surety before any action against the surety may be taken;
 - The benefit of simultaneous citation and division of debt - the right of a co-surety to be liable only for the pro rata share of the principal debt;
 - The right to an accounting from the Company;
- 18.5 This suretyship is given as a continuing covering suretyship for the present and future obligations of the Customer to the Company.

19. CESSION OF BOOK DEBTS

- 19.1 The Customer does hereby irrevocably cede, pledge, assign, transfer and make over unto and in favor of the Company all of its right, title, interest, claim and demand in and to all book debts of whatsoever nature and description and howsoever arising which the Customer may now or at any time hereafter have against all and any persons, companies, corporations, firms, partnerships, associations, syndicates and other legal persons whosoever ("the Customer's debtors") without exception as a continuing covering security for the due payment of every sum of money which may now be due or at any time hereafter be or become owing by the Customer to the Company.
- 19.2 Should it transpire that the Customer at any time entered into prior deeds of cession or otherwise disposed of any of the right, title and interest, in and to any of the debts which will from time to time be subject to this cession, and then this cession should operate as a cession of all the Customer's reversionary rights. Notwithstanding the terms of the foregoing cession, the Customer should be entitled to institute action against any of its debtors provided that all sums of money which the Customer collects from its debtors shall be collected on the Company's behalf and provided further that the Company shall at any time be entitled to terminate the Customer's right to collect such monies/ debts.
- 19.3 The Customer shall be obliged to deliver all relevant information in documentary form or otherwise to the Company upon demand to enable the Company to claim monies owed to the Customer from third parties.

20. GENERAL

- 20.1 The Company reserves the right in its sole discretion to vary or amend these terms and conditions from time to time and any such amended or varied terms and conditions shall be binding on the Customer from the time that the Customer is notified thereof. Any subsequent dealings shall be on the Company's amended terms and conditions.
- 20.2 This contract represents the entire agreement between the Company and the Customer and shall govern all future contractual relationships between the Company and the Customer and shall also be applicable to all debts which the Customer may owe to the Company prior to the Customer's signature hereto.
- 20.3 No amendment and/ or alteration and / or variation and/ or deletion and/ or addition and/ or cancellation of these terms and conditions, whether consensual or unilateral or bilateral shall be of any force and effect unless reduced to writing and signed by a director of the Company. No agreement, whether consensual or unilateral or bilateral, purporting to obligate the Company to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions shall be of any force and effect unless reduced to writing and signed by a director of the Company.
- 20.4 No warranties, representations or guarantees have been made by the Company or on its behalf which may have induced the Customer to sign this document.
- 20.5 No relaxation or indulgence which the company may give at any time in regard to the carrying out of the Customer's obligations in terms of any contract shall prejudice or be deemed to be waiver of any of the Company's rights in terms of any contract.
- 20.6 The Customer shall not cede its rights nor assign its obligations.
- 20.7 The Company shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of this application for credit facilities including all terms and conditions to any third party without prior notice to the Customer.
- 20.8 The Customer undertakes to notify the Company within a period of 7 (seven) days of any change of address or any changes in the information as set out in this agreement.
- 20.9 The headings in this document are included for convenience and are not to be taken into account for the purpose of interpreting this agreement.
- 20.10 Each of the terms herein, shall be a separate and divisible term and if any such term becomes unenforceable for any reason whatsoever, then that term shall be severable and shall not affect the validity of the other terms.
- 20.11 Provided that they do not conflict with any of the terms and conditions contained herein, such general practices, terms and conditions applicable to the industry or profession in which the Company conducts business shall be applicable to all dealings between the Company and the Customer.

21. DISCLOSURE OF PERSONAL INFORMATION



- 21.1 The Customer understands that the personal information given in this credit application form is to be used by the Company for the purposes of assessing its credit worthiness. The Customer confirms that the information given by it in this credit application form is accurate and complete. The Customer further agrees to update the information supplied, as and when necessary, in order to ensure the accuracy and completeness of the above information, failing which the Company will not be liable for any inaccuracies or lack of completeness of information.
- 21.2 The Company has the Customer's consent at all times to contact and request information from any persons, credit bureaus or businesses, including those mentioned in the credit application form and to obtain any information relevant to the Customer's credit assessment. Including but not limited, information regarding the amounts purchased from suppliers per month, length of time Customer has dealt with such supplier, type of goods or services purchased and manner and time of payment.
- 21.3 The Customer agrees and understands that information given in confidence to the Company by a third party on the Customer will not be disclosed to the Customer.
- 21.4 The Customer hereby consents to and authorizes the Company at all times to furnish credit information concerning the customer's dealings with the company to a credit bureau and to any third party seeking a trade reference regarding the Customer in his dealings with the Company.
22. In Terms of the South African National Credit Act all documents in relation to this agreement can be made available in any of the official languages, upon request.

