



MUCH ASPHALT (PTY) LTD (“the Company”)

CONDITIONS OF SALE - BITUMINOUS PRODUCTS AND SERVICES

All quotations and orders issued by this Company are subject to the following Conditions of Sale, which shall apply to all contracts concluded between the Company and the Customer, notwithstanding the fact that other conditions may be printed on order forms issued by customers, it being clearly understood that the Company does not recognise or accept any such other Conditions of Sale, and that these Conditions of Sale shall not be deemed to have been amended or varied in any way unless such other Conditions have expressly been agreed to in writing and signed by a Director of the Company.

- Clause 1 The quotation shall be open to written acceptance for 60 (sixty) calendar days only, and to be reckoned from and inclusive of date of quotation. Unless agreed to by the Company in writing, this quotation shall not be accepted in part only.
- Clause 2 The place and date of acceptance of the quotation shall be the place where and date upon which the Customer's acceptance of the Company's quotation shall be received by the Company.
- Clause 3 Prices are quoted for the duration of the initial contract period subject to escalation on applicable rates in accordance with the Contract Price Adjustment Formula Schedule annexed hereto. Should the contract extend beyond the initial contract period, the Company reserves the right to negotiate revised prices.
- Clause 4 All prices quoted are inclusive of Value Added Tax, unless otherwise stated on the Company quotations schedules.
- Clause 5 Supply of materials in terms of this quotation is subject to prior acceptable financial arrangement in respect of payment being made.
- Clause 6 Payment shall be made within 30 (thirty) calendar days from date of statement and shall be made free of exchange and deduction at the address shown on the Company's statement. If any payment in respect of any order is in arrears, or the Customer's agreed credit limit is exceeded, the Company has the right to suspend all further deliveries and/or all further work whether or not related to the same order, until payment is received, without prejudice to the Company's right to cancel the remainder of the order and to recover all monies then outstanding and damages. Complaints of whatever nature shall not entitle the Customer to withhold or defer payment. The Company reserves the right to charge interest at the prime overdraft rate plus one percent (1%), as charged from time to time by Nedbank Limited or such other registered commercial bank in the Republic Of South Africa as the Company may nominate, on accounts over 30 (thirty) calendar days. In the event of the Customer committing any act of insolvency, or failing to satisfy any judgement within 30 days of its having been granted, or failing to take steps to remedy any failure to fulfil any terms of the contract within three days from the Company's written notification to the Customer of such failure, then the Company will have the right to terminate the contract forthwith by written notice to the Customer or his representative.
- Clause 7 A settlement discount, if quoted, will be allowed for payments made in the month following supply provided payment is made into our Company designated banking account and such payment reflects in such banking account on or before the last working day of such month. The settlement discount does not apply to the actual cost variations resultant from contract price adjustment and/or rise and fall in costs.
- Clause 8 The prices quoted in this quotation are firm and subject to price adjustment as provided in the schedules attached hereto. Any variation to this contract price adjustment schedule is subject to the terms and conditions as stated hereunder in Clause 26 below.
- Clause 9 The Company reserves the right to nominate the source of all materials used in any contract resulting from this quotation.
- Clause 10 The Company reserves the right to supply the Customer from any of its branches or associated companies.
- Clause 11 All products and services supplied will substantially be in compliance with the Company description. Such description is given for identification purposes only. Where a sample has been provided by the Company, all goods which correspond with such sample shall be deemed to correspond with the Company description. No claim shall be enforceable unless full particulars thereof are notified to the Company in writing at its address set out in the quotation. No complaints will be considered by the Company regarding delivery, application rates, quantities of asphalt delivered or the quality of the product, unless written notification is received by the Company from the Customer within 72 (seventy two) hours from delivery of the product.

- Clause 12 If this quotation is submitted in accordance with the specifications stipulated by the Customer, the Company does not warrant that such specification is suitable for its intended purpose. Designs of products and construction services must be accepted in writing by the Customer or his Client. Such acceptance by the Customer's client shall be binding upon the Customer.
- Clause 13 Where products are to be collected by the Customer, the dates and times of collection shall be subject to agreement in advance. Loading is done entirely at the Customer's own risk and the Customer indemnifies the Company from any claims from, or on behalf of the Customer, his employees or sub-contractors.
- Clause 14 Delivery and application of all products is subject to the availability of the necessary permits, certificates or exemption in terms of the Road Transportation Act or any similar, subsequent or other legislation in connection with the transportation of the product or services referred to in the quotation, and the Company shall not be bound to any contract if such permits, certificates or exemptions are refused, withdrawn or cancelled in respect of that contract.
- Clause 15 The Company will use its best endeavours to meet delivery dates but it is clearly understood and agreed that all times or dates for delivery or performance quoted by the Company are business estimates only and do not constitute contractual undertakings by the Company as to when delivery will take place and the Company shall not be liable in any way whatsoever for failure to meet delivery times or dates.
- Clause 16 Should the Customer cancel any order after the despatch of such order or part thereof, the Company reserves the right to recover all and any costs incurred whether directly or indirectly in consequence of such cancellation.
- Clause 17 The offloading or application of products will only be executed by the Company when the Customer or his duly authorised representative is present. If the aforementioned representative is not present and in consequence the delivery, offloading or application is aborted, then the Company reserves the right to recover all and any costs incurred whether directly or indirectly in consequence thereof.
- Clause 18 No responsibility is accepted by the Company for loss or damage arising out of the Customer's negligent or unskilled use of material, or failure to comply with any instructions for use given by the Company.
- Clause 19 In the event of any product supplied, designed or applied by the Company being proven to be defective, i.e. wholly or substantially unsuitable for the purpose for which it is sold or commonly used, then, notwithstanding any warranty or guarantee which may have been furnished by the Company in respect thereof, and irrespective of whether the Company was negligent in any respect in supplying, designing, producing or applying the product:
- 19.1 the Company shall under no circumstances be held liable for any consequential loss, or loss of profits, or any other damages, whether direct or indirect, and any compensation to the Customer shall be limited to what is contained in sub-clause 19.2 below;
- 19.2 the Company's total liability arising from the supply, design, production or application of any proven defective material shall, subject to sub-clause 19.3 below, be limited to either the replacement of such defective material by the Company or the passing of a credit in respect thereof by the Company, with the Company having the sole and absolute discretion as to whether to replace defective material or pass a credit note;
- 19.3 notwithstanding sub-clause 19.2 above, and without detracting from or limiting sub-clause 19.1 above, the Company shall not be liable for any damages of whatsoever nature, or any compensation, or the performance of any warranty or guarantee furnished, either expressed or implied, in the event of the aforesaid product failure being attributable to the use of defective bitumen and/or binders and the bitumen and/or binders in question complying with the relevant SABS or other applicable specification;
- 19.4 the Customer hereby indemnifies the Company against all and any claims in excess of the amounts provided for in clause 19.2 above.
- Clause 20 The Company reserves the right to sub-contract any part of this contract. All terms and conditions set out herein shall apply *mutatis mutandis* to such sub-contractor.
- Clause 21 If the Company is prevented from carrying out any of its obligations under its contract with the Customer by reason of *force majeure* (which, without detracting from the generality of the foregoing shall include acts of God, storm, flood, breakdown of machinery, war, whether declared or not, or warlike conditions, industrial action, labour unrest, civil commotion, economic upheavals, boycotts or embargoes, regulations or orders of any Government, any partial or total cessation in the provision of supplies to the Company by any existing supplier for whatever reason, delays or lack of railroad, truck or sea-borne freight facilities or any other state of affairs arising or being brought about which is outside the reasonable

control of the Company), the performance by the Company of its obligations shall be suspended during the continuance of the aforesaid circumstances to the extent to which it is so prevented from performing, provided always that a written notice shall be given by the Company of any such inability and of the cessation thereof. The Company shall not be liable in any way for any delay or failure in the performance of its obligations under the contract due to or resulting from *force majeure*.

- Clause 22 The Company reserves the right to change the source of supply of petroleum-based products and aggregates when supplies of such raw materials are curtailed or disrupted. The costs incurred by the Company in this regard will be for the Customer's account. Where applicable, this quotation is based upon required supplies of petroleum-based products being freely locally available for the manufacture, supply, application and completion of the contract. If during the currency of the contract there shall be a curtailment or disruption in the local supply of petroleum-based products outside the reasonable control of the Company which materially affects the execution of the contract, the Company shall use its best endeavours to complete the execution of the contract but shall be entitled to an extension of time for completion, and shall further be entitled to such adjustment of the amount of the contract price as in the opinion of the Company in its sole and absolute discretion shall be deemed reasonable, regard being had to all material and relevant factors directly affected by such curtailment or disruption including the Company's site and general overhead costs of the contract.
- Clause 23 In the sole and absolute discretion of the Company any dispute arising between the parties whether in respect of the interpretation of the agreement concluded between the two parties, or in respect of any other matters whatsoever, including and without limiting the generality of the foregoing, the performance by either party of its obligations under the contract shall be settled by Arbitration Act No. 42 of 1965, as amended from time to time. The appointment of the arbitrator shall be made by the chairman for the time being of the Association of Arbitrators (Southern Africa). The latest edition of the Standard Procedure Rules for the Conduct of Arbitration, published by the Association of Arbitrators (Southern Africa) and current when the dispute is declared, shall apply.
- Clause 24 The provisions hereof shall be governed and construed in all respects in accordance with the provision of the laws of the Republic of South Africa and the Customer hereby consents to the jurisdiction of the Magistrate's Court having jurisdiction in terms of the Magistrate's Court Act in respect of any action or application arising out of or in connection with these conditions, notwithstanding that the amount in issue may exceed the jurisdiction of such court. The Company may at its discretion elect to institute such action in the High Court having jurisdiction in the area of the quotation's acceptance.
- Clause 25 The Customer shall indemnify the Company from any claims or actions for damage to property, life or limb of any third party caused in the course of this contract or by the negligence of the Customer, his employees or any subcontractor used by the Customer.
- Clause 26 No variation, modification or waiver of any provision hereof, or consent to any departure here from, shall in any way be of any force or effect unless confirmed in writing and signed by a duly authorised representative of each of the parties, and no person other than an Executive Director of the Company shall be authorised by the Company for any such purpose; and then any such variation, modification, waiver or consent shall be effective only in the specific instances and for the purpose and to the extent for which made or given.
- Clause 27 In all instances the unit of measure for the supply and delivery of hot and cold mix asphalt will be the kilogram, as measured by the Company's assized weighbridges.
- Clause 28 Each term of this Agreement shall be considered as severable. If for any reason any term hereof is determined to be invalid and contrary to, or in conflict with, any existing or future law, then this agreement shall be interpreted and enforced as if such invalid term was not contained herein.

MUCH ASPHALT (PTY) LTD ("the Company")

CONTRACT PRICE ADJUSTMENT SCHEDULE : HOT & COLD ASPHALT PRODUCTS.

The firm price/s quoted in the Company quotation will be adjustable in accordance with Part A and Part B of this schedule.

CLAUSE 2

For the purpose of calculating the adjustment to the value of the relevant certificates / Tax Invoices, the amount "Ac" shall be determined by the formula.

$$Ac = T - S - D - E - G - Ap$$

in which the symbols have the following meaning:

2.1. "T" shall be the total value of preliminary and general items, work done, and materials on site for the certificate / Tax Invoice under consideration, before the deduction of any retention monies or repayments of advances, and before any adjustments made in terms of this schedule.

2.2. "S" shall be the aggregate of (i), (ii), and (iii) referred to below and included in "T".

- (i) the amounts actually expended and substituted for any P.C. amounts;
- (ii) the value of any work done by Nominated Sub-Contractors;
- (iii) the value of any extra or additional work where special arrangements for price adjustments in respect of those amounts were made and recorded at the time the work was ordered.

2.3. "D" shall be the value of work included in "T" done at new rates, where those rates are not based on labour, plant or materials costs in force at the time of tendering. Generally, new rates may be based on current costs and de-escalated to the base month of the indices, in which case work done at these rates shall not be included in the value of "D".

2.4. "E" shall be the amount included in "T" paid for any daywork executed at cost plus percentage allowances.

2.5 "G" shall be the amount included in "T" for bitumen and modifying agents and dealt with as "special materials" under Rise and Fall.

2.6 "Ap" shall be the sum of "Ac" amount determined above for all certificates / Tax Invoices preceding in time the certificates / Tax Invoices under consideration.

Clause 3

THE COEFFICIENTS REQUIRED FOR CLAUSE 1 ABOVE ARE AS FOLLOWS, WHERE X = 0,15 :

$$a = .22 \quad b = .40 \quad c = .20 \quad d = .18$$

PART B - RISE AND FALL

Variations in the published list prices of binders and modifying agents, and any changes in the rate of VAT shall be for the Customer's account. This quotation is based on the following list price/s (exclusive of VAT):

- (a) Bitumen : R..... per tonne
ex -.....Refinery
- (b) Modifying Agent: R..... per tonne
ex
Modifier Type.....
- (c) Imported Bitumen: R.....per tonne
ex.....

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PART A - CONTRACT PRICE ADJUSTMENT

CLAUSE 1

The value of each certificate / Tax Invoice issued by the Company shall be increased or decreased by the amount obtained by multiplying the quoted rate/s or price/s, less the value of bitumen and modifying agents, by the contract price adjustment factor, rounded off to the fourth decimal place, determined according to the following formula:

$$(1 - x) \left[a \frac{Lt}{Lo} + b \frac{Pt}{Po} + c \frac{Mt}{Mo} + d \frac{Ft}{Fo} - 1 \right]$$

in which the symbols have the following meanings:

1.1 "X shall be the proportion of "Ac" which is not subject to adjustment, the proportion of which shall not exceed 0,15.

1.2 "a", "b", and "c" shall be the coefficients stated in Clauses 3 hereof which are deemed, irrespective of the actual constituents of the work, to represent the proportionate value of labour, plant, materials and fuel respectively. The arithmetic sum of "a" "b", "c" and "d" shall in all cases be unity.

1.3 "L" shall be the Labour Index and shall be the "Consumer Price Index - All Items" for the urban area nearest the site, as published in the Statistical News Release P0141.1, Table 4.1 of Statistics South Africa.

1.4 "P" shall be the Plant Index, and shall be the "Civil Engineering Plant Index" as published in the Statistical News Release P0142.1, Table 16 of Statistics South Africa.

1.5 "M" shall be the Materials Index, and shall be the "Civil Engineering Materials Index" as published in the Statistical News Release P0142.1, Table 15 of Statistics South Africa.

1.6. "F" shall be the Fuel Index, and shall be the "Diesel Index" as published in the Statistical News Release P0141.1, Table 3.1 of Statistics South Africa.

1.7. The suffix "o" denotes the basic indices applicable to the base month, which shall be the month prior to the month in which falls the closing date of the quotation.

1.8. The suffix "t" denotes the current indices applicable to the month in which falls the last day of the period in which the relevant payment certificate/Tax Invoice relates.

1.9. If any index relevant to any particular certificate / Tax Invoice is not known at the time the certificate / Tax Invoice is valued, the value of such index shall be estimated.

