

**BRAKKEFONTEIN CLAY PRODUCTS (PROPRIETARY) LIMITED**  
**T/A Apollo Brick - Gauteng**  
**(the "Company")**

**APPLICATION FOR CREDIT FACILITIES**

Date: \_\_\_\_\_

The Customer's registered organisation name: \_\_\_\_\_ (the "Customer")

Trading name if different: \_\_\_\_\_

Street address: \_\_\_\_\_ Postal code: \_\_\_\_\_

Postal address: \_\_\_\_\_ Postal code: \_\_\_\_\_

Telephone no: \_\_\_\_\_ Fax no: \_\_\_\_\_ Cell: \_\_\_\_\_

E-mail address: \_\_\_\_\_

Accounts Contact: Name: \_\_\_\_\_ Email: \_\_\_\_\_ Tel: \_\_\_\_\_

Invoices and Statements: Name: \_\_\_\_\_ Email: \_\_\_\_\_ Tel: \_\_\_\_\_

**Please mark the relevant answer with an  $\checkmark$**

<b>Sole Trader</b>	<b>Partnership</b>	<b>Close Corp</b>	<b>(Pty) Ltd</b>	<b>Ltd</b>	<b>Trust</b>
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Company / CC / Trust registration number: \_\_\_\_\_ VAT Registration no: \_\_\_\_\_

<b>DETAILS OF SOLE TRADER / ALL PARTNERS / MEMBERS / DIRECTORS / TRUSTEES</b>					
	Full name	Residential address	ID no. (Attach copy)	% Holding	Tel no
1	_____	_____	_____	_____	_____
2	_____	_____	_____	_____	_____
3	_____	_____	_____	_____	_____
4	_____	_____	_____	_____	_____

<b>TRADE REFERENCES</b>					
	Name of supplier	Tel no	Account no	Credit Limit	Terms
1	_____	_____	_____	_____	_____
2	_____	_____	_____	_____	_____
3	_____	_____	_____	_____	_____

**BANKING DETAILS**

Name of bankers: \_\_\_\_\_ Branch: \_\_\_\_\_ Branch code: \_\_\_\_\_

Account name: \_\_\_\_\_ Acc no.: \_\_\_\_\_ Acc Type: \_\_\_\_\_

Sign

<b>BUSINESS INFORMATION</b>
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Nature of applicant's core business: .....

Date business commenced: .....

Years under present ownership / management: .....

Have any of the directors / members / partners / trustees ever been sequestered?

Yes	No
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Has applicant ever had to defend a liquidation / sequestration order application?

Yes	No
-----	----

If yes, please provide details: .....

Are your latest audited financial statements available for inspection?

Yes	No
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Name & address of auditors: .....

Postal code: .....

**Information required for National Credit Act, No 34 of 2005 and Consumer Protection Act, No 68 of 2008 purposes**

**Will the goods be used wholly or mainly for purposes unrelated to your business**

*(Tick ✓ the applicable box)*

Yes	No
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**Your current gross annual turnover**

R \_\_\_\_\_

**Your current gross asset value (after allowance for depreciation)**

R \_\_\_\_\_

**Maximum credit limit required:**

R \_\_\_\_\_

*(2 x expected monthly purchases)*

**Warranties**

1. The signatory hereto and the Customer warrant that:

1.1 all the information contained herein is true, complete and correct in every respect and that they are not aware of any material facts or circumstances not disclosed to the Company, which if disclosed, can adversely affect the Company's decision to grant the credit to the Customer and to enter into an agreement or transaction with the Customer;

1.2 they have fully and truthfully answered all and any requests for information made of him by or on behalf of the Company.

2. The signatory hereto warrants that he/she is duly authorised to sign this document on behalf of the Customer.

**Notification of information change**

3. The Customer undertakes to notify the Company in writing immediately of any change in the information provided above.

**Prevailing terms**

4. **The Customer acknowledges that the Company's Standard Trading Terms and Conditions of Sale (which is available on request or on the Company's website, [www.apollobrick.com](http://www.apollobrick.com)) will be applicable in respect of all transactions entered into between the Customer and the Company in respect of the supply of bricks and related services and that same shall prevail over any term or condition contained in any documentation of the Customer.**

**Financial Statements**

5 The Customer undertakes to furnish the Company with all financial information as the Company may require, including, but not limited to financial statements to assess the applicability of relevant legislation and the credit facilities granted or to be granted by the Company.

<i>Sign</i>
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### Consents / Permissions granted by the Customer

- 6 The Customer gives permission to the Company to:
- 6.1 **process** the **personal information** of the Customer obtained in terms hereof (as aforementioned terms are defined in the Protection of Personal Information Act, No. 4 of 2013 (“**POPI**”)), for the purposes of any agreements concluded or to be concluded between the Customer and the Company, as well as for credit review, fraud detection and prevention and compliance processes;
  - 6.2 collect information (including personal information) from any persons, including registered credit bureaus, businesses, trade references and / or other suppliers, required by the Company in respect of the initial and future assessment of credit facilities granted or to be granted to the Customer and the Customer’s creditworthiness in general;
  - 6.3 disclose information (including personal information) regarding the Customer’s credit worthiness and conduct of the account to any registered credit bureau and / or other suppliers, including any breaches of the Customer’s obligations contained herein.
- 7 By signing this Application, the Customer consents to:
- 7.1 the processing of its personal information by the Company, or any of its operators, agents and/or sub-contractors, in line with the requirements and provisions of POPI;
  - 7.2 the collection of its personal information by the Company from any other source, which does not prejudice the Customer’s legitimate interests;
  - 7.3 the retention by the Company of records of the Customer’s personal information for as long as permitted in applicable laws for *inter alia* legal, regulatory, fraud detection and prevention, financial crime and/or marketing purposes;
  - 7.4 the Company disclosing its personal information to any of its third-party service providers, insurers or to other parties within the Company’s group of companies for the purposes of and in line with the provisions hereof and, to the extent required and applicable, for purposes of enabling any subsequent supply agreements to be concluded between the Company and the Customer;
  - 7.5 the Company using its personal information for the purposes of informing the Customer about any products or services which the Customer might be interested in, except if otherwise indicated by the Customer in writing to the Company.
- 8 The Customer warrants that all personal information provided by the Customer to the Company will be complete, accurate and up to date in all respects, and that where it provides any personal information on behalf of another person (including its shareholders, directors, members, trustees or the like), it is authorised to give such personal information and to consent to the processing of such person’s personal information on their behalf.

### Documents to be returned to the Company

- 9 The following documents must be returned to the Company prior to the application for credit will be considered:
- 9.1 this credit application duly completed and signed by a person duly authorised to do so.
  - 9.2 a copy of the resolution authorising the signatory to enter into agreements or transactions with the Company and passed by:
    - 9.2.1 all the Trustees of the Customer if same is a Trust;
    - 9.2.2 all the Members of the Customer if same is a Close Corporation;
    - 9.2.3 all the partners of the Customer if same is a partnership;
    - 9.2.4 the board of directors of the Customer if same is a Company;
  - 9.3 a cancelled cheque (original) bearing the Customer’s bank details or a letter from the Customer’s bank confirming the Customer’s account and bank details;
  - 9.4 proof of registration of the Customer’s business name (if applicable);
  - 9.5 if the Customer is a company or close corporation, a copy of its relevant incorporation and registration forms;
  - 9.6 if the Customer is a trust, copies of the letters of authority and deed of trust;
  - 9.7 if the Customer is a natural person, a copy of his/her green bar-coded identity document or passport and his/her marriage certificate;
  - 9.8 if the Customer is a partnership, a copy of the partnership agreement and a copy of the green bar-coded identity documents of each of the partners. If the partners are companies, close corporations or trusts, the documents required in terms of 8.7 and 8.8;
  - 9.9 the Company’s Standard Trading Terms and Conditions duly signed.
  - 9.10 a copy of the Customer’s VAT registration document.

<i>Sign</i>
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**Signed for and on behalf of the Customer by me, the undersigned who warrants that I am duly authorised to do so:**

At ..... on this ..... day of ..... year .....

Full name: ..... Signature: .....

Designation: .....

OFFICE USE ONLY	
ACC NO: .....	DATE: .....
CREDIT LIMIT: .....	

# TERMS AND CONDITIONS OF SALE

## IMPORTANT NOTES

- A. These Terms and Conditions shall apply to the purchase of products which includes, but is not limited, to bricks ("Products") by the Customer from Brakkefontein Clay Products Proprietary Limited t/a Apollo Brick (Registration Number 1990/001295/07) ("the Company") and, if applicable, to the rendering of any services, including, but not limited to, transport of the Products ("Services") by the Company to the Customer. These Terms and Conditions shall be incorporated into every Supply Contract (as defined in clause 1.4 below). These Terms and Conditions created hereby shall commence on the date of the Party signing of these Terms and Conditions last in time ("Effective Date") and shall subsist indefinitely until terminated in accordance with these Terms and Conditions.
- B. Where a provision in these Terms and Conditions is printed in **bold**, the Customer is required to initial each such provision individually in addition to initialing **every page**, in accordance with the provisions of section 49(2)(c) of the Consumer Protection Act, No 68 2008 ("CPA"), should the provisions of the CPA apply to these Terms and Conditions.
- C. **The price payable by the Customer for Products or Services shall be as per the prevailing pricelist of the Company at the time of placement of the Order unless the Supply Contract provides its own price. The price payable for Products purchased and Services rendered from time to time may be varied by the Company, and it is therefore the responsibility of the Customer to familiarise itself with the prevailing pricelist, or alternatively obtain a quotation from the Company, before placing an Order.**
- D. **The Company's liability in respect of damages is limited which specifically limits the Customer's ability to recover losses and/or damages sustained, from the Company in accordance with clauses 9 and 14 below.**
- E. **Products to be delivered may substantially differ in colour and the Customer specifically consents, in accordance with clause 9.2 below, to accept Products in such condition, notwithstanding any differences in colour.**
- F. **It is recorded that different types of bricks (such as forming part of the Products) have different specifications and characteristics and as such, the different types of bricks are used for different purposes. Should Products be used and/or applied for the wrong purpose, it may result in losses and/or damages being sustained and may even cause and/or otherwise result in bodily injury and/or the death of person(s) and/or animal(s). It is therefore the responsibility of the Customer (in accordance with clause 10 below) to ensure that the Products purchased by it are used for the appropriate purpose and the Company shall not be held liable and/or accountable for damage suffered as a result of the inappropriate and/or wrongful use of the Products.**
- G. **The Customer will not be entitled to rely on representations not contained in a Supply Contract as stated in clause 9.3 below. The Customer will not be entitled to rely on representations made to it in respect of the Products and/or Services unless same is recorded in the specific written Supply Contract and which contract records in writing that the Terms and Conditions are amended and which document must be signed by the Company and the Customer in accordance with clause 3.2 below. The Customer is to specify below which representations were made to it in respect of the Products and/or Services and which the Customer relied on when entering into these Terms and Conditions:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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- H. **The Customer warrants that the information completed by it and/or provided to the Company is truthful, complete and accurate in all respects, and is supplied voluntarily for the purpose of concluding these Terms and Conditions and, if applicable, obtaining credit from the Company in connection with the supply of Products from and/or rendering of Services by the Company.**
- I. **The Company shall be entitled to rely upon all and/or any of the information supplied herein as being completely true and accurate.**
- J. **These Terms and Conditions are applicable to (i) transactions falling within the ambit of the CPA (should the Customer be a juristic person with a turnover or gross asset value at the date of the transaction of less than R2 000 000 or an individual), as well as (ii) transactions not falling within the ambit of the CPA (should the Customer be a juristic person with a turnover or gross asset value at the date of the transaction of more or equal to R2 000 000). Where the terms contained in these Terms and Conditions differ between transactions falling within the ambit of the CPA and transactions not falling within the ambit of the CPA, it will be indicated as such under the applicable clause.**

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## 1. INTERPRETATION AND DEFINITIONS

- 1.1 The headings of the clauses in these Terms and Conditions are for the purpose of convenience and reference only and shall not be used in the interpretation of nor modify nor amplify the terms of these Terms and Conditions nor any clause hereof. Unless a contrary intention clearly appears, words importing:
- 1.1.1 any one gender include the other genders;
- 1.1.2 the singular include the plural and *vice versa* (the opposite of); and
- 1.1.3 natural persons include created entities (corporate or non-corporate) and the state and *vice versa* (the opposite of).
- 1.2 The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the contract, shall not apply.
- 1.3 Any reference in these Terms and Conditions to a Party shall include a reference to that Party's assigns expressly permitted under these Terms and Conditions and, if such Party is liquidated or sequestrated, be applicable also to and binding upon that Party's liquidator or trustee, as the case may be.
- 1.4 In these Terms and Conditions (including the important notes), the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:
- 1.4.1 "**Company**" means Brakkefontein Clay Products Proprietary Limited (Registration Number 1990/001295/07) (t/a Apollo Brick);
- 1.4.2 "**Customer**" means the signatory to these Terms and Conditions purchasing Products and/or Services from the Company;
- 1.4.3 "**Order**" means each acceptance of a quotation or placing of an order by the Customer for Products and/or Services to be supplied and/or rendered by the Company, as indicated by the Customer, whether same is conveyed to the Company in writing or orally;
- 1.4.4 "**Parties**" means the Customer and the Company and "**Party**" shall refer to either one of them, as the context requires;

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- 1.4.5 **"POPI"** means the Protection of Personal Information Act, No. 4 of 2013, as amended;
- 1.4.6 **"Supply Contract"** means the Order or other contract recording the terms of the specific sale of Products and/or rendering of Services which has been signed by both Parties, or as otherwise permitted in clause 4.1;
- 1.4.7 **"Terms and Conditions"** means these trading Terms and Conditions set out in this document (which for the sake of clarity includes the important notes).

**2. CREDIT**

- 2.1 **If applicable, the Customer authorises the Company and its officer, employees and agents (together, "representatives") to investigate the Customer's credit history in any manner and from any source deemed by the Company as appropriate.**
- 2.2 Should the Customer exceed its credit limit as indicated on the application form or its account becomes past due, the Customer agrees to and acknowledges that the Company has the right to refuse or cancel any Supply Contract until the account is satisfied in full. The Customer also agrees to and acknowledges that the Company has the right to take any advisable and/or necessary steps to collect all and any amounts outstanding on the Customer's account.
- 2.3 The Customer will forthwith upon request from the Company update its credit information for the purpose of increasing or maintaining credit limits.

Clause 2.4 will only apply in the event of these Terms and Conditions not being regulated by the CPA:

- 2.4 As security for all moneys (whether past or present) owing by the Customer to the Company pursuant to these Terms and Conditions, the Customer hereby cedes and assigns any and all right, title and interest in and to any book debts and other debts and claims of whatsoever nature, present and future, due or to become due to the Customer (including any reversionary rights that there may be from time to time) and to all rights of action arising thereunder.

**3. CONTRACT**

- 3.1 These Terms and Conditions (with the applicable Supply Contract) shall solely govern the relationship between the Company and the Customer in respect of the supply of the Products and Services by the Company to the Customer.
- 3.2 The Terms and Conditions shall prevail over any terms and conditions referred to in any other documentation (including any Supply Contract), unless such other document is a formal written agreement signed by the Company and the Customer, specifically stipulating that the Parties are supplementing or amending these Terms and Conditions.
- 3.3 Each Order accepted by the Company shall constitute a separate Supply Contract between the Parties.
- 3.4 Any quotation furnished by the Company is only an invitation to place an order with the Company and acceptance of the quotation will only be deemed to be a Supply Contract placed by the Customer which is open for acceptance by the Company, and until being accepted, the Company is not obliged to deliver the Products or render the Services as referred to in the quotation.

**4. ORDER PROCESS**

- 4.1 The Company is entitled to accept, at its own discretion, verbal requests for Products and/or Services and in such circumstances the information contained in any document reflecting the Customer's order instructions (whether or not signed by the Customer and/or the Company) shall serve

as *prima facie* (at first sight) proof of such order and Customer's instructions relating thereto.

- 4.2 The Supply Contract for the Products and/or Services the Customer wishes to procure from the Company shall indicate the following minimum information:
  - 4.2.1 the types of Products and/or Services and the number of units of each type of Product which the Customer wishes to procure; and
  - 4.2.2 the date of delivery of the Products and/or the date upon which the Services are to be performed.
- 4.3 **The Company shall be entitled to accept or reject any or all requests for Products and/or Services placed by the Customer.**

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**5. PRICE**

- 5.1 The price payable by the Customer for Products to be supplied and/or Services to be rendered by the Company in respect of each Supply Contract shall be those as set out in the Supply Contract and in the event the Supply Contract does not specify the price, the price contained in the Company's prevailing price list in force and effect on the date the Customer has placed the relevant Order for the relevant Products and/or Services. The Customer shall, on request, be furnished with a copy of the Company's prevailing price list. The Company however reserves the right to amend its price list at any time without notice to the Customer.
- 5.2 **The purchase price is exclusive of value added tax, sales, and any and all other taxes that may be applicable to the Products and/or Services and any additional items not forming part of the purchased Products and/or Services, and any such taxes shall be payable by the Customer at the applicable rates. Where an advance payment is subject to sales or value added tax (or equivalent), the sales or value added tax (or equivalent) arising on the advance payment shall be payable by the Customer with the advance payment.**

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**6. PAYMENTS**

- 6.1 The Company shall render a tax invoice in respect of Product sold and/or Services rendered and shall, unless a sale takes place on a cash basis, issue statements on a monthly basis.
- 6.2 The purchase price of Products and/or Services rendered shall be payable before the last day of the calendar month immediately following the calendar month in which a tax invoice was rendered to the Customer in respect of Product and/or Services. This clause shall not apply to cash sales.
- 6.3 Where Products and/or Services are purchased on credit, the credit terms of such purchases shall be regulated by the credit application signed by the Customer and the Company as well as clause 2.
- 6.4 All Supply Contracts accepted by the Company which result in the Customer's account exceeding the prevailing credit limit granted by the Company to the Customer shall, notwithstanding clause 6.2, above become due and payable upon presentation of the invoice, and delivery of the relevant Products or Services may be postponed until the Customer has effected payment.
- 6.5 All payments shall be made in freely transferable South African currency, without any deductions or set off, free of exchange and commission into the bank account of the Company, particulars of which the Customer shall be

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informed of by way of notice after signature hereof. This clause shall not apply to cash sales.

6.6 No early settlement discounts or any other discounts are given by the Company and the Customer is not entitled to unilaterally deduct same from any amount due and payable for Products and Services rendered by the Company.

6.7 **Every invoice of the Company shall be deemed to be accepted by the Customer if the Customer has not expressly rejected such invoice in writing within 5 (five) business days from date of receipt thereof.**

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## 7. INTEREST

The Company shall charge interest on any amounts due and payable at the rate confirmed by the Company to the Customer in writing from time to time, (which may differ in respect of each Supply Contract), and failing such confirmation, the prime overdraft interest rate as charged by Standard Bank plus 3%.

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## 8. DEPOSIT

8.1 The Company may in its sole discretion determine whether the Customer has to pay a deposit to the Company and the amount of such deposit.

8.2 All deposits paid are non-refundable unless (save in such instances as provided for under clause 14) the Company (i) cancels a Supply Contract for reasons other than a breach by the Customer of the provisions of the Supply Agreement, or (ii) cannot fulfil an order per a Supply Contract in full.

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## 9. WARRANTIES

**Clauses 9.1 to 9.3 will only apply in the event of these Terms and Conditions being regulated by the CPA:**

9.1 **The Company does not give any warranty express or implied in respect of the Products not contained in a Supply Contract, other than those as contemplated in section 56 of the CPA. The warranties contemplated by the CPA will be limited in its scope and to the time period as prescribed by the CPA.**

9.2 **The Customer acknowledges that the Company does not warrant that the colour of the Products to be delivered will be the same, amongst others, due to the fact that the Products are manufactured from natural resources. The Customer herewith confirms that it will accept Products delivered despite the fact that the colour of the independent items comprising the Products may differ substantially.**

9.3 **The Customer further confirms that representations not contained in a Supply Contract or reduced to writing and signed by the Company will not entitle the Customer to any claim against the Company in respect of such representations.**

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Clause 9.4 will only apply in the event of these Terms and Conditions not being regulated by the CPA:

9.4 The Company does not give any warranty express or implied for Products supplied or in respect of Services rendered and advice furnished except those contained in a Supply Contract. The Customer further confirms that representations not contained in a Supply Contract or reduced to writing and signed by the Company will not entitle the Customer to any claim against the Company in respect of such representations.

## 10. INDEMNITY AND LIMITATION OF LIABILITY

**Clauses 10.1 to 10.2 will only apply in the event of these Terms and Conditions being regulated by the CPA:**

10.1 **The Customer agrees that the Company shall not under any circumstances whatsoever, be held liable for damages, direct, indirect, consequential or otherwise, suffered by the Customer in respect of its use or on selling of any of the Products or pursuant to Services rendered or advice furnished by the Company, unless the Company acted with intent or gross negligence, or unless such claim falls within the ambit of section 55, section 56 or section 61 of the CPA, in which instance the Company shall be liable to the extent and for the duration prescribed by the CPA.**

10.2 **The Customer acknowledges that it is its obligation to acquaint it with the specifications and characteristics of the Products ordered and its suitability for the purpose it intends on using the Products for. The Customer further undertakes to advise its customers when on selling the Products delivered or to be delivered by the Company of the fact that the Products have different specifications and characteristics and depending on same its suitability for specific purposes vary and, if put to the wrong use, may result in losses/damages to be sustained and may even cause bodily injury and/or the death of a person and/or animal.**

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Clauses 10.3 to 10.5 will only apply in the event of these Terms and Conditions not being regulated by the CPA:

10.3 The Customer agrees that the Company shall not under any circumstances whatsoever, be held liable for damages, direct, indirect, consequential or otherwise, suffered by the Customer in respect of its use or on selling of Products supplied or pursuant to Services rendered or advice furnished by the Company.

10.4 The Customer hereby indemnifies and holds harmless the Company from and against any claims of whatsoever nature instituted by third parties in relation to their use of Products supplied or pursuant to Services rendered or advice furnished by the Company to the Customer, including but not limited to claims and liabilities arising from the provisions of the CPA.

10.5 The Customer acknowledges that it is its obligation to acquaint itself with the specifications and characteristics of the Products ordered and its suitability for the purpose it intends using same. The Customer further undertakes to advise its customers when on selling the Products of the fact that the Products have different specifications and characteristics and depending on same its suitability for specific purposes vary and, if put to the wrong use, may result in losses/damages to be sustained and may even cause bodily injury and/or the death of a person or an animal.

## 11. DELIVERY AND RETURNS

11.1 The Company shall be entitled to split the delivery of Products forming the subject matter of a Supply Contract and to invoice the Customer separately for the portion of Products actually delivered.

11.2 **The Customer acknowledges that breakage of less than 5% of the individual items comprising the Products delivered is acceptable and will not entitle the Customer to return the Products or to claim a refund in respect thereof.**

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**Clauses 11.3 to 11.5 will only apply in the event of these Terms and Conditions being regulated by the CPA:**

- 11.3 While the Company will make all reasonable endeavours to meet all times and dates for delivery, such times or dates are best estimates only and do not constitute contractual obligations. Accordingly the Company will not be liable for any loss and/or damages of whatsoever nature occasioned by delays in deliveries or completion of the Supply Contract, save to the extent the Company has acted with gross negligence.
- 11.4 The Customer is entitled to return Products to the extent permitted by the CPA and at the risk and cost of the party as determined in sections 20 and 56 of the CPA. In the instances where Products may be returned at the Company's risk and cost the Customer shall be obliged to allow the Company 5 (five) business days to collect the Products before acquiring the service of a third party to do so.
- 11.5 If a Supply Contract resulted from direct marketing, the Customer may terminate the Supply Contract by giving the Company written notice within 5 (five) business days after the later of the date on which the Contract was concluded or the Products were delivered and thereafter return the Products at the Customer's expense within 10 (ten) business days after the Products were delivered. The Customer does not have to give the Company a reason and there will be no penalty, but the Company may impose a reasonable charge, as contemplated in the CPA, in respect of the Products returned.

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**Clauses 11.6 to 11.10 will only apply in the event of these Terms and Conditions not being regulated by the CPA:**

- 11.6 While the Company will make all reasonable endeavours to meet all times and dates for delivery, such times or dates are best estimates only and do not constitute contractual obligations. Accordingly the Company will not be liable for any loss or damages of whatsoever nature occasioned by delays in deliveries or completion of a Supply Contract.
- 11.7 Products ordered and supplied by the Company in good order may not be returned once same has been delivered to the Customer unless the Company has consented thereto in writing, and such Products shall be returned to the place as the Company may determine and all costs relating thereto shall be for the Customer's account. All risk in and to the Products returned (and the liability to pay the purchase price thereof) shall remain vested in the Customer until the Company has inspected the Products and confirmed in writing that the Products and its packaging are in the Company's sole discretion, in a good condition. The Customer will only be released from payment for the Products returned in good order once the Company has issued the written confirmation that the Products and its packaging are in a good condition.
- 11.8 Subject in all respects to clause 11.2 or clause 14, any claim by the Customer against the Company for defective Products shall be submitted in writing within the period confirmed by the Company to the Customer in writing from time to time (which may differ in respect of each Supply Contract), and failing such confirmation, 6 (six) days after the earlier of (i) delivery of the Products or (ii) the date that the Products are affixed, joined or added to other Products or property, whichever date is the earlier.
- 11.9 Subject in all respects to clause 11.2, defective Products may be returned to the Company. In the event that the Company fails to remove the defective Products from the premises to which the Products have been delivered to within 7 (seven) days after being requested by the

Customer to do so, the Customer may return same at the Company's cost.

- 11.10 All risk in and to the defective Products returned shall pass to the Company once loading of the Products onto the transport provided by the Company has commenced, and in the instance where the Customer delivers the defective Products to the Company, at the time off-loading thereof has taken place at the Company's premises.

## 12. PRODUCT MODIFICATION

Any modification of the Products ordered and/or Services performed in terms of a Supply Contract shall require the prior written consent of the Company.

## 13. TITLE AND RISK; INTELLECTUAL PROPERTY

- 13.1 Ownership of and title to the Products shall not pass to the Customer until the purchase price in respect of the Products in question have been paid in full.
- 13.2 Save as otherwise agreed between the Company and the Customer, the time at which the risk of damage to or loss of the Products shall pass to the Customer shall be upon the delivery of the Products to the Customer's premises.
- 13.3 The Company is entitled to enter all and any premises owned, leased or utilised by the Customer at any time during normal business hours to remove all and any Products supplied in terms of these Terms and Conditions that have not been paid for in part or in full by the Customer. The Customer herewith consents to such removal. For the avoidance of doubt, all Products bearing labels of the Company equivalent to those supplied in terms of these Terms and Conditions situated on any such premises owned, leased or utilised by the Customer shall be deemed to have been supplied by the Company in terms of the Terms and Conditions unless the Company confirms otherwise in writing.
- 13.4 The Company retains all intellectual property rights of whatsoever nature in its drawings, specifications, data and all other information and documents in relation to its Products and Services.
- 13.5 The Company's trademarks and names shall not be used by the Customer without the prior written consent of the Company. The Customer agrees that it shall not (or permit any third party to) reverse engineer, decompile, modify or tamper with the Products and/or Services provided.
- 13.6 No right or licence is granted in favour of or between the Parties hereto under these Terms and Conditions in relation to any patent, trademark, copyright, registered design, or other intellectual property right.

## 14. EXCLUSIONS

**Clause 14.1 will only apply in the event of these Terms and Conditions being regulated by the CPA:**

- 14.1 Except to the extent the Company acted with gross negligence or fraudulent intent, the Company shall not be liable for any loss arising from any failure or delay in providing Services or Products to the Customer resulting from circumstances beyond the Company's reasonable control, including but not limited to labour disruptions, inclement weather, diesel shortages, coal shortages, strikes in the transport industry or power failures.

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Clause 14.2 will only apply in the event of these Terms and Conditions not being regulated by the CPA:

- 14.2 The Company shall not be liable for any loss arising from any failure or delay in providing Services or Products to the

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Customer resulting from circumstances beyond the Company's reasonable control, including but not limited to labour disruptions, inclement weather, diesel shortages, coal shortages, strikes in the transport industry or power failures.

#### 15. INSPECTION AND DEFICIENCIES

15.1 The Customer shall be obliged to inspect the Products upon the delivery thereof and indicate on the waybill or delivery note if there is any damage and/or deficiencies to the Products delivered, and also immediately provide written notice thereof to the Company describing the aforesaid damage and/or deficiency in detail, failing which it will be deemed that the Products are in good and working order.

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15.2 If the Products delivered are not suitable for its intended purpose, the Customer shall, after receiving the Company's written authorisation (which may be withheld in the Company's sole discretion), return such Products to the Company at its own cost whereupon the Company shall effect the necessary remedial works to such Products and procure the delivery of such rectified Products for the Customer at the Customer's cost.

15.3 The Company shall be entitled to verify claims as to any and all such alleged defective Products and/or Services performed by reviewing the relevant Product and/or Services and underlying data and records. The Customer shall furnish to the Company upon reasonable request, any other information received by the Customer or any other third party who will or may be helpful to the Company in assessing alleged defective Products and/or Services and afford the Company all requested assistance in performing remedial work.

#### 16. BREACH

16.1 If the Customer ("Defaulting Party") breaches any provision of these Terms and Conditions and remains in breach for 14 (fourteen) days after written notice to that Defaulting Party requiring that Defaulting Party to rectify that breach, the Company ("Aggrieved Party") shall be entitled, without prejudice to its right to hold the Defaulting Party liable for damages or any of its other rights, at its option:

16.1.1 to sue for immediate specific performance of any of the Defaulting Party's obligations under these Terms and Conditions, whether or not such obligation is then due; or

16.1.2 cancel these Terms and Conditions, in which case written notice of the cancellation shall be given to the Defaulting Party, and the cancellation shall take effect on the giving of the notice.

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16.2 The Aggrieved Party's remedies in terms of this clause are without prejudice to any other remedies to which the Aggrieved Party may be entitled in applicable law, including without limitation, the Aggrieved Party's rights to claim damages.

16.3 All legal costs incurred by the Aggrieved Party in consequence of any default of the provisions of these Terms and Conditions by the Defaulting Party shall, subject to specific limitations in terms thereof, be payable on demand by the Defaulting Party on the scale as between attorney and own client and shall include collection charges, the costs incurred by the Aggrieved Party in endeavouring to enforce such

rights prior to the institution of legal proceedings and the costs incurred in connection with the satisfaction or enforcement of any judgment awarded in favour of the Aggrieved Party in relation to its rights in terms of or arising out of these Terms and Conditions.

16.4 All payments received shall be allocated firstly towards legal costs (if applicable), thereafter interest, and lastly towards the capital amount owing in respect of the Customer's outstanding indebtedness.

16.5 No early settlement discounts or any other discounts are given by the Company and the Customer is not entitled to unilaterally deduct same from any amount due and payable for the Products supplied and/or Services rendered by the Company.

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#### 17. CANCELLATION

17.1 Without prejudice to any other rights of the Company under these Terms and Conditions, the Company shall be entitled to immediately terminate these Terms and Conditions by written notice in the event that the Customer is placed in liquidation or under business rescue, whether provisional or final, or has passed a resolution for its voluntary winding-up (or, in each case, the equivalent or similar nature under the laws of the jurisdiction in which the Customer is registered or its principal place of business) or the Customer defaults on payment for the Products and/or Services.

17.2 The Company shall be entitled to cancel these Terms and Conditions at any time and for any reason, by giving 3 (three) months' written notice to that effect to the Customer. Any and all obligations on the part of the Parties in respect of these Terms and Conditions that accrued before the date of cancellation shall remain enforceable between the Parties.

17.3 Upon cancelling these Terms and Conditions, the Company shall be entitled to elect whether the separate Supply Contracts, entered into between the Customer and the Company, will be cancelled as well.

#### 18. NOTICES AND DOMICILIUM

Any notice given by either Party shall be hand delivered or sent by registered post, fax or e-mail to the other's *domicilium citandi et executandi* (i.e. an address where notices and legal documents may be delivered as will either be indicated on the credit application or the Supply Contract, as the case may be) and shall be deemed to have been delivered 5 (five) business days after it has been sent by prepaid registered post to the Party's *domicilium citandi et executandi*, on the date of delivery by hand, the business day immediately following the date on which the facsimile or email was sent, unless the contrary is proved. Notwithstanding anything to the contrary herein contained a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

#### 19. LAW AND JURISDICTION

19.1 The terms of any Supply Contract (including these Terms and Conditions) shall be governed by and construed in accordance with the laws of South Africa. The Terms and Conditions set out in the United Nations Convention for the International Sale of Goods (CISG) and the Unidroit-Agreement dated May 28th, 1988 are hereby expressly excluded.

19.2 The Customer and the Company agree that the courts of South Africa shall have exclusive jurisdiction for any action or proceedings commenced under these Terms and Conditions and any Supply Contract.

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19.3 Save where the Company elects to institute action against the Customer in the Magistrate's Court (in which case the Parties submit to the exclusive jurisdiction of the Magistrate's Court), the Parties hereby submit to the exclusive jurisdiction of the Western Cape High Court, Cape Town, in respect of any claims or disputes arising out of any Supply Contract.

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## 20. ASSIGNMENT

20.1 The Customer shall not cede and/or assign the benefit and/or the burden of any Supply Contract or these Terms and Conditions, in whole or in part to any third party without the prior written consent of the Company, which consent may in the Company's sole discretion be withheld.

20.2 The Customer may not assign or cede its payment obligations hereunder without the prior written consent of the Company.

20.3 **The Company shall be entitled to cede, delegate and/or assign, subcontract and/or outsource any of the rights and/or obligations of the Company in terms of these Terms and Conditions to other parties ("Subcontractors") without any further the consent of the Customer.**

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20.4 The Company shall use its best endeavours to procure that the Subcontractors shall comply with the provisions of these Terms and Conditions and the terms hereof shall be applicable to such services to be provided by the Subcontractors *mutatis mutandis*.

## 21. PROTECTION OF PERSONAL INFORMATION

21.1 Where a Party hereto "processes" or requires the other Party to process any "personal information", as such terms are defined in POPI, belonging to that Party, or that of a related party (both acting as "responsible parties" as such term is defined in POPI), the Parties:

21.3.1 agree to comply with the provisions of POPI for processing of such personal information, including to only process any personal information received by a Party to the extent required hereunder and any further processing as may be authorised by a Party in writing; and

21.3.2 consent to the processing of any of their/its personal information in terms of, pursuant to or for purposes of any Supply Contract and/or these Terms and Conditions.

21.4 Without limiting the generality of the above, the Customer hereby:

21.4.1 consents to the Company sharing its personal information with any of its third-party service providers, insurers or to other parties within the Company's group of companies, for the purposes of and in line with the provisions hereof;

21.4.2 warrants that where it provides any personal information on behalf of any other person (including its shareholders, directors, members, trustees and the like), it is authorised to give such personal information and to consent to the processing of such person's personal information on their behalf; and

21.4.3 agrees to the Company using its personal information for the purposes of informing the Customer about any products or services the Customer might be interested in, except if otherwise indicated by the Customer.

21.5 The Customer hereby agrees, notwithstanding any contrary provision in any other agreement between the Parties, that the Company retains its full rights to pursue any legal or equitable remedies in the event of any breach or threatened breach of POPI and/or this clause 21, and may prevent the Customer, any of its agents or

subcontractors, or any third party who has received personal information from the Customer in breach hereof from processing such personal information by any legal means available. The Customer further acknowledges that any breach of POPI and/or this clause 21 may subject it to applicable legal penalties, including those provided for under POPI and that the Company shall not be liable for any such legal penalties as may be incurred by the Customer in this regard.

21.6 Within 30 (thirty) days after the termination hereof, for whatsoever reason, the Customer shall return any personal information received by it under or pursuant hereto to the Company, or at the discretion of the Company, destroy such personal information, and shall not retain copies, samples or excerpts thereof (including any and all back-ups or other digital records thereof).

21.7 In cases where the Company has elected for the personal information to be destroyed, as provided for in clause 21.6 above, the Customer shall, within 5 (five) business days of receiving the instruction to destroy the personal information, send a written confirmation to the Company confirming the destruction of such personal information.

## 22. MISCELLANEOUS

22.1 The Customer shall take all reasonable steps to (a) protect and hold the Company's Confidential Information in confidence and prevent its disclosure to third parties; and (b) restrict its use to those purposes consented to in writing by the Company or permitted by these Terms and Conditions; provided, however, that the Customer shall not be required to protect or hold in confidence any Confidential Information which (i) is or becomes available to the public without the fault of the Customer, (ii) is independently developed by the Customer, (iii) is disclosed to the Customer by a third party known to the Customer not to be under any duty of confidentiality to the Company with respect to such information or (iv) except as may otherwise be required by law. "Confidential Information" means the Company know-how, trade secrets, data, proprietary and business information and all other information advised by the Company to be confidential information or which, by its nature is or should be considered confidential.

22.2 Notwithstanding any express or implied provisions of these Terms and Conditions to the contrary, no latitude or extension of time which may be allowed by the Parties hereto in respect of any matter or thing that the Parties are bound to perform or observe in terms hereof, shall under any circumstances be deemed to be a waiver of the rights of the Party which grants the said latitude or extension, at any time, and without notice, to require strict and punctual compliance with each and every provision or term hereof.

22.3 No alteration, cancellation, variation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by both Parties to these Terms and Conditions.

22.4 All notices or other communications required or permitted hereunder shall be in writing and given in the English language and shall be either personally delivered, transmitted by pre-paid registered mail (airmail if international) transmitted by facsimile or email to the Parties set forth at the beginning of these Terms and Conditions.

22.5 Notices given by personal delivery shall be deemed to have been received at the time of delivery. Notices given by local mail or airmail shall be deemed to have been received within 5 (five) days and 14 (fourteen) days respectively following the date of posting and notices given by facsimile or e-mail shall be deemed to have been received on the date following transmission.

22.6 Reference to "writing" or "written" means in writing signed by the issuing party and served by any means including facsimile and any form of electronic data interchange, i.e., the transmission of data via electronic communication links

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- 22.7 between the Parties or other machine-readable data media.
- 22.8 Reference to “**specifications**” used herein means the technical description (including relevant drawings) of the Products (including any packaging) and/or Services including but not limited to quality assurance programs, data, material content, method of manufacture, testing and generally describing the functional, technical and finished products requirements.
- 22.9 Each provision in these Terms and Conditions is severable, the one from the other, and, if at any time any provision is or becomes or is found to be illegal, invalid, defective or unenforceable for any reason by any competent court, the remaining provisions shall be of full force and effect and shall continue to be of full force and effect.
- 22.10 These Terms and Conditions replaces any and all pre-existing agreements entered into between the Parties hereto in respect of the purchasing of Products and/or performance of Services as from the Effective Date. The Customer confirms that it has no rights under or claims of any nature whatsoever against the Company under any pre-existing agreements.

**23. CPA CUSTOMER’S WARRANTIES**

23.1 **In the event of the Customer being a juristic person, the Customer herewith warrants to the Company that as at date of signature hereof the Customer’s: (Tick ✓ the applicable box)**

- 23.1.1 **asset value (after allowance for depreciation) is equal to or exceeds R2 000 000;**
- 23.1.2 **annual turnover is equal to or exceeds R2 000 000**
- 23.1.3 **asset value (after allowance for depreciation) is less than R2 000 000;**
- 23.1.4 **annual turnover is less than R2 000 000.**

Yes	No
Yes	No
Yes	No
Yes	No

23.2 **The Customer warrants that it will advise the Company by not later than the time of placing an Order or entering into a Supply Contract, in writing, that any of the warranties given in clause 23.1 is no longer applicable due to a change in the Customer’s annual turnover and/or gross asset value (after allowance for depreciation).**

23.3 **The Customer acknowledges that the Company relies on these warranties to ensure that the Company complies with the provisions of the Consumer Protection Act, No 68 of 2008.**

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**Brakkefontein Clay Products (Pty) Ltd**

**The Customer**

\_\_\_\_\_

\_\_\_\_\_

**Name of Signatory :** \_\_\_\_\_

**Name of Signatory :** \_\_\_\_\_

**Capacity :** \_\_\_\_\_

**Capacity :** \_\_\_\_\_

**(Duly authorised hereto)**

**(Duly authorised hereto)**

**Date :** \_\_\_\_\_

**Date :** \_\_\_\_\_

**Place :** \_\_\_\_\_

**Place :** \_\_\_\_\_

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