

# Ciolti Readymix (Pty) Ltd

## Conditions of Sale

### GENERAL CONDITIONS:

- (1) **DEFINITIONS:** In these conditions "the company", "we", "us" and "our" shall mean CIOLLI READYMIX and "the customer" shall mean any person, firm or company to whom this order/quotation is addressed or with whom any contract is concluded.
- (2) **APPLICATIONS OF CONDITIONS:** The Conditions of Sale shall apply to all quotations, and to all contracts concluded by us, notwithstanding the fact that other conditions may be printed on order forms used by the customer, it being clearly understood that we do not recognise or accept any other such Conditions of Sale, and that these Conditions of Sale shall not be deemed to have amended or varied in any way by conditions appearing on customers' order forms unless we have agreed, in writing, to such other conditions when acknowledging the customer's order.
- (3) **VALIDITY:** Only our written quotations will be recognised and unless withdrawn or specifically otherwise stated, will be valid for 30 days only.
- (4) **DELIVERY DATE & TIMES:** Normal hours of delivery - Monday to Friday 7.00 am to 5.00 p.m. At other times, by mutual arrangement. All delivery dates and times are given in good faith and every endeavour will be made to supply within the period and/or periods specified, but we shall not be responsible for delays in deliveries due to breakdown of machinery, strikes, labour disputes, war, riots, civil commotion delays or transportation carriers accidents, regulations or orders of any Government or to other causes beyond our control, and in no circumstances whatsoever shall we be responsible for loss of customers profit or any consequential or direct or indirect damages.
- (5) **CLAIMS FOR SHORTAGES:** No claims for shortages will be considered unless an opportunity is given to us to verify the claim, where adequate measurements cannot be obtained, the batching record will be regarded as correct. See also Item 4 under Conditions - Concrete below.
- (6) **TERMS OF PAYMENT:**
  - (a) Strictly net 30 days from date of statement. We reserve the right to charge 1% above the prime bank overdraft and to suspend credit facility on any overdue account.
  - (b) We reserve the right to impose or vary or cancel the credit limits of any customer. The dispatch of a registered letter informing a customer of our decision to impose or vary or cancel such customer's credit limits shall constitute valid notice thereof, in any event, we reserve the right to require the customer to provide a Bank or acceptable guarantee to cover the amount of credit granted.
- (7) **LEGAL PROCEEDINGS:**
  - (a) Should we institute proceedings for recovery of debts due to non-payment of account, we shall be entitled to recover from the customer all legal costs including attorney/client costs, which may be incurred by us, as well as collection commission at the tariff laid down from time to time by the Law Society of the Cape of Good Hope.
  - (b) The customer hereby agrees and consents that the Magistrate's Courts shall have jurisdiction irrespective of the amounts incurred in any action instituted by us for the recovery of amounts due to us and the provisions hereof shall and do hereby constitute the consent in writing for the purpose of such proceedings as is required by Section 45 of Act 32 of 1944 (as amended). We may at our option nevertheless institute such proceedings in the Supreme Court.
- (8) **VAT:** The current prevailing VAT price will be applied to all contract prices.

(9) **SURCHARGES :**

- a) Validity of quote – Quotation is valid until the date detailed thereon except for increases in the cost of cement and fuel.
- b) Cancellation – R30/m<sup>3</sup> plus pump set up fee, if applicable, will be charged if cancelled after 12H00 on the day prior to delivery
- c) Environmental Levy – R500.00 per m<sup>3</sup> will be charged for all returned concrete.
- d) Part Load – Loads under 4 m<sup>3</sup> will incur a part load fee.
- e) Allowable time on site is 7mins per m<sup>3</sup> delivered. Thereafter the remaining concrete must be dumped or demurrage will be charged at R20 for every additional on site.

**CONDITIONS - CONCRETE**

(1) Our price is based upon:

- (a) Deliveries of the product as specified, measured in cubic meters, in the wet form.
  - (b) Cost of material, labour services, insurance and transport ruling at the tender date. Should any of these costs increase on or before delivery of the product or during the progress of the work, through circumstances beyond our control, we reserve the right to advise you in writing of such increases and thereafter to increase our rates by such amount for delivery/subsequent delivery of the product.
  - (c) Delivery during normal working hours, Monday to Friday, of full capacity delivery vehicle loads. Therefore, notwithstanding the tender price quoted, an extra charge for part-loads to cover full costs of transport and an extra charge for deliveries outside normal working hours shall be deemed to form part of the tender price.
- (2) Unless otherwise provided for herein the date and time at which delivery is to be made and the rate of delivery required are to be mutually agreed upon in advance, it being your sole responsibility to confirm in writing our availability. In the event of inclement weather or other site problems resulting/necessitating postponement of deliveries, you should advise us thereof as soon as possible, but in any event you shall be liable for the cost of any product already batched prior to notification. We shall not accept responsibility for unfulfilled orders.
- (3) No load or product or portion of a load may be returned in a delivery vehicle and you will not be entitled to any credit for unused product discharged to waste.
- (4) Invoices will be based on the quantity of product supplied as per delivery note. Any claim for alleged short supply must be made verbally as soon as possible, but no later than 24 hours after date of delivery and this needs to be confirmed in writing within three days after the alleged short supply. Unless any claim is made as provided for herein and until such time as such claim is accepted by us, the quantity stated on the delivery notes will be deemed to be the correct quantity.
- (5) The product delivered is sold at the point of delivery from the delivery vehicle and you must satisfy yourself that the description of the product shown on the delivery note is in fact the product ordered. If you accept such product, whether or not it complies with the product ordered, you will be liable to pay for it and will have no claim against us.
- (6) It will be your responsibility to ensure that the product is poured in accordance with the site requirements and we will not be liable for any loss resulting from pouring the product in the wrong location. We do not accept any responsibility for the means and methods you adopt for handling, placing and consolidation of the product after discharge from the delivery vehicle or for any lack of quality, fault or failure of materials resulting from the handling, placing and consolidation of the product.  
In respect of long-life mortar it will be your responsibility to ensure that it is stored and used in accordance with the following:

In a suitable impervious container of adequate volume and depth (minimum 200 litre capacity) the container is covered with a light-reflective impermeable cover.

It is stored in shade. No foreign material is added to the mortar.

- (7) It is your responsibility to ensure that there is safe and proper access between the point at which it is necessary for the delivery vehicle to leave a public road and the point on the job-site at which the load is to be discharged. It is your responsibility to assist the driver to avoid any accidents and/or damage. Despite the responsibility, the driver of our vehicle will be entitled to refuse to proceed if, in his opinion, he considers that there is a risk of damage to the vehicle or of injury to any person. In addition, you hereby indemnify us against any loss or damage beyond our reasonable control and any claim for damages resulting from any injury to any person or property, howsoever arising, from the time the delivery vehicle leaves until it returns to the public road. "Public road" means that portion of a public road normally used by motor vehicles and shall exclude sidewalks, footpaths, manholes and covers, kerbing and channelling.
- (8) In the place of any other guarantee, warranty or undertaking expressed or implied by law, trade custom or otherwise, we guarantee and undertake that the product supplied will conform to the specification stated on the Delivery Note, provided that in all cases, the sampling is from the delivery vehicle and that in respect of concrete, the applicable procedures set out in SANS 5861 Part 2 & 3 published by the South African Bureau of Standards in respect of concrete procedures set out in regulation 4 (a) of Chapter 5 of the Standard Building Regulations published by the South African Bureau of Standards are strictly followed. Slump tolerances are as per Table 1, SANS 878 with specific reference to Item 13.2 Concrete shall be available within the permissible range for a period of 30min from arrival at the job site. If the user is unprepared for discharge of the concrete from the vehicle, the producer shall not be responsible for the slump after the 30 min have elapsed. Where any water, cement, aggregates or other additives or combinations of these are added to concrete by anybody without our specific authority whether these additions are made before or after discharge from the delivery vehicle, then we will not be liable for any damages of any nature whether direct, consequential or otherwise arising from any breach of the above guarantee. Any claims for replacement of product must be in writing immediately after the defect becomes apparent and in any case not more than three months after the date of supply.

We recommend that the client/contractor seek professional advice from an engineer regarding the strength and the quantity required, as we will not be responsible for incorrect specification, shortages and/or excess of concrete ordered.

- (9) All ready mixed concrete is supplied in accordance with SANS 878 - "Standard Specifications for Ready Mixed Concrete" and complies to the "Mild Exposure" category as set out in table 5.5.1.5 of SABS 1200G:(Standard Specifications for Civil Engineering Construction - G : Concrete - Structural), unless otherwise specifically requested and indicated as such on the quote.
- (10) Concrete supplied to COLTO contracts are subjects to the exclusion clauses as specified by SARMA. A copy of the exclusion clauses is available on request.
- (11) Should the customer order product and specify their own specifications, then the company does not warrant that such specification is suitable for the Customer's intended purpose. The Customer shall remain responsible for his own specifications.

### **LEGAL NOTICES**

- (1) The customer selects the address reflected on page 1 of the "Application for Credit Facilities" to which this agreement has been attached as being it's chosen *domicilium citandi et executandi*. We select the address reflected on page 1 hereof as being our *domicilium citandi et executandi*.
- (2) Any notice in terms of this Agreement shall be in writing and shall :
- (3) If delivered by hand be deemed to have been duly received by the addressee on the date of delivery.

- (4) If successfully transmitted by email, then be deemed to have been received by the addressee one day after despatch, provided that the person sending the email did not receive a "non-delivery" notice. If no "non-delivery" notice is shown on the senders system, then it is agreed that the sender shall have *prima facie* sent the email to the recipient unless the recipient can prove the contrary.
- (5) The customer shall be entitled to change its *domicilium citandi et executandi* to another address situated in the Republic of South Africa by giving us written notice to that effect.
- (6) Notwithstanding anything to the contrary contained in this Agreement, but subject to the NCA, a written notice or communication actually received by a party from the other shall be adequate written notice to such party.

**LAW**

- (1) This agreement shall in all respect be governed by and construed in accordance with the Law of the Republic of South Africa and all disputes, actions and other matters in connection therewith shall be determined in accordance with such law.

**ENTIRE AGREEMENT**

- (1) This Agreement constitutes the whole Agreement between the parties and no amendment, alteration, addition, variation or consensual cancellation shall be of any force or effect, unless reduced to writing and signed by the parties. No party is bound by any undertaking, representation or warranty not recorded herein.
- (2) The parties agree that each clause is severable, the one from the other and if any clause is found to be defective or unenforceable, either in whole or in part, for any reason by any competent Court, then the remaining clauses shall continue to be of full force and effect to the fullest extent allowed by law.
- (3) No waiver on the part of either party of any rights arising from a breach of any provision of this agreement will constitute a waiver of rights in respect of any subsequent breach of the same or any other provision. Any waiver shall be in writing.

**CONFIRMATION BY CUSTOMER**

By their signature hereto the Customer confirms that they have read and understood all of the terms and conditions contained herein. Should a Pumping subcontractor be appointed by Ciolli Readymix the T&Cs of the Pumping Contractor will apply. Terms & Conditions are available on request or on our Website //www.ciollireadymix.co.za

I confirm that I am legally able to agree to these terms and conditions of sale and to make the undertakings therein.

SIGNED AT \_\_\_\_\_ ON THIS THE \_\_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

**AS WITNESS**

1. ....

**AS WITNESS**

2. ....

.....  
**Signed The Customer**

Represented by ..... (Name)  
 Who warrants their authority to represent the customer

Initial 1  
 Initial 2  
 Initial 3