

## 1. PARTIES

These Terms and Conditions of Sales ("**these Terms and Conditions**") apply to all Transactions between the customer ("**Buyer**") and Aalborg Portland Malaysia Sdn Bhd (275155-P), ("**Seller**") For purpose of these Terms & Conditions, Transaction(s) shall mean all quotations, offers and orders in relation to all products ("**Product**") sold by the Seller. The Seller and Buyer shall hereinafter be collectively referred to as "**Parties**" and individually as "**Party**", as the case may be.

## 2. INCONSISTENCIES OR CONFLICTS

Unless otherwise expressly agreed in writing, these Terms and Conditions shall prevail over any other terms of the Transaction, whether oral or written (including but not limited to any invoice, purchase order or delivery order) to the extent of any inconsistency or conflict between these Terms and Conditions and such other terms.

## 3. SUCCESSION

These Terms and Conditions shall be binding upon and inure for the benefit of the respective heirs, personal representatives, successors-in-title or permitted assigns, as the case may be, of the Parties.

## 4. QUOTES

Save for any orders accepted in writing by the Seller, all prices quoted by the Seller from time to time for any Product shall be subject to revision at any time.

## 5. PRICES

The prices at which the Product will be invoiced to the Buyer will be based upon the prices and in such currencies as agreed in writing between the Parties.

## 6. ORDERS

- 6.1 Purchase orders from the Buyer for the Product shall be sent in writing to the Seller and shall be subject to the Seller's written acceptance.
- 6.2 Upon receipt of each purchase order, the Seller shall, as soon as practicable, inform the Buyer of the Seller's acceptance and estimated delivery date for the Product.
- 6.3 If the Buyer requires any changes to the delivery date, the Buyer shall request the Seller in writing. Any change in the delivery date is at the subject to the Seller's written acceptance and at its discretion.

## 7. DELIVERY

- 7.1 While the Seller endeavours to comply with the delivery dates agreed in writing with the Buyer, the Seller shall not be liable for any losses, damages, costs, expenses or any other liabilities arising from any delay in delivery nor will the Buyer be entitled to cancel, rescind or terminate the Transaction.
- 7.2 Where the product is sold in bulk, the quantity of the Product shown by weighbridge will be the invoiced quantity and will take precedence over the estimated quantity on the face of the delivery docket. Where the product is sold in pre-packed bags the quantity stated on a bag will form the basis for the invoice quantity of the bag.
- 7.3 The Buyer shall notify the Seller on any claimed deficiency to quantity within seventy two (72) hours of arrival of the Product at the port of destination and such notification shall be confirmed in writing by the Buyer to the Seller within seven (7) days of such arrival. The Seller shall deliver any deficient quantities of the Product as soon as reasonably possible.
- 7.4 In respect of bulk orders delivered in tankers by road transport, The Seller reserves the right to supply quantities of any order in excess of the quantities ordered by the Buyer within reasonable limits. The Buyer agrees to pay for such excess supply at the same per unit price as the ordered quantity for the Product.
- 7.5 Unless otherwise agreed by Seller in writing, the Seller sells and deliver the Product to Buyer under INCOTERMS 2010.

## 8. INSPECTION AND REJECTION

- 8.1 The Buyer must inspect the Product on delivery.
- 8.2 Any claims that the Product is not as ordered or is faulty must be made to the Seller in writing within thirty (30) days of delivery and must be supported by a copy of the invoice and the results of testing of the Product carried out in accordance with the relevant Malaysian MS888 Standards or EN197-1 by an independent testing laboratory for cement Products. For dry-mix and mortar Products, testing must be according to relevant Malaysian and/or European Standards. Any testing shall be at the Buyer's expense. If such a claim is not made within thirty (30) days of delivery, the Product is deemed accepted by the Buyer and cannot be rejected later.

## 9. RISK

- 9.1 Subject to the terms of this Clause, risk in the Product will pass to Buyer upon delivery of the Product to the Buyer in accordance with these Terms and Conditions.
- 9.2 If delivery of the Product is delayed at the request of the Buyer or where any delay is caused by the Buyer, risk passes to the Buyer upon the Product being ready for delivery at the Seller's premises notwithstanding such delay.
- 9.3 In the event that the Buyer is in default in taking delivery, the risk of accidental destruction or deterioration of the Product passes to the Buyer at the time the Buyer is in default.

- 9.4 Subject to Clause 8, where in accordance with these Terms and Conditions, the Seller accepts the return of any Product, risk in the Product will revert to the Seller only upon delivery of the Product to the Seller or upon collection of the Product by the Seller's agent or courier as the case may be.
- 9.5 Any property of the Buyer under the Seller's custody or control will be entirely at the Buyer's risk as regards any loss or damage caused to the property for any reason or by any person.

#### **10. RETENTION OF TITLE**

- 10.1 Notwithstanding that risk passes to the Buyer under Clause 9, unless and until the Buyer has effected full payment for the Product and any other Product previously supplied by the Seller:
  - 10.1.1 legal title to the Product will remain with the Seller;
  - 10.1.2 risk in the Product will pass to the Buyer on delivery to the Buyer or its agent;
  - 10.1.3 the Buyer will:
    - 10.1.3.1 hold the Product as bailee for the Seller; and
    - 10.1.3.2 keep the Product separate from other Product.
  - 10.1.4 with the Seller's consent (which is given on the following conditions), the Buyer is at liberty to sell the Product, in the ordinary course of the Buyer's business, provided that the money resulting from the sale will:
    - 10.1.4.1 be held in a separate account in trust for the Seller;
    - 10.1.4.2 not be mingled with other money; and
    - 10.1.4.3 not be placed into an overdrawn account.
- 10.2 In the event that the Buyer uses the Product in some manufacturing process of its own ("**Finished Goods**") then the Buyer will hold, in trust for the Seller, such part of the proceeds received by the Buyer from the sale of the Finished Goods equivalent to the price payable to the Seller for the Product.

#### **11. PAYMENT**

- 11.1 The Buyer shall pay the full price for each Transaction to the Seller on before the last day of the payment due date agreed in writing between the Parties ("Due Date") either by LC at sight, document against payment, cash in advance, agreed LC terms or as otherwise agreed between the Parties.
- 11.2 In the event that the Buyer fails to pay an invoice by the Due Date, then, in addition to any other rights which may be conferred upon the Seller by law or equity, the Seller shall be entitled, at its discretion, to impose on the Buyer and, if the Seller exercises its discretion (which shall be communicated in writing to the Buyer), the Buyer shall pay late payment charges on the outstanding amount at 1.25% per month (calculated daily) from the date of such default until payment is received by the Seller. For the avoidance of doubt, the imposition of such charges shall not be construed as an extension of time for payment of any outstanding amount due.
- 11.3 If payment for a particular invoice is not made on or before its Due Date, all other invoices of the Seller which remain unpaid by the Buyer at that time (even if such other invoices have not reached their Due Date) shall become payable immediately and the Seller may without demand enforce its rights under Clause 13.

#### **12. LICENSES AND TAXES**

The Buyer shall be responsible for obtaining all necessary import licenses, certificates of origin or other requisite licenses, approvals, permissions and/or documents for the Product, and bear all applicable customs, duties and taxes in respect of the importation, resale and distribution of the Product.

#### **13. TERMINATION**

- 13.1 If:
  - 13.1.1 the Buyer breaches any provisions of these Terms and Conditions
  - 13.1.2 the Buyer becomes insolvent, is declared a bankrupt or a petition is presented against it, order is made or a meeting is called to consider a resolution for the Buyer to be wound up, deregistered or dissolved or a liquidator, receiver and manager or an administrator is appointed over all or any part of the Buyer's property and undertaking or the Buyer makes any assignment for the benefit of creditors; or
  - 13.1.3 the Seller has reasonable grounds to believe that the Product has been or will be destroyed, damaged, endangered or removed from the Buyer's normal place of business or its normal location.  
the Seller may at its absolute discretion:
    - (a) terminate all or any Transactions by written notice to the Buyer;
    - (b) withhold delivery of any Product for pending Transactions;
    - (c) require payment in advance for pending or future Transactions;
    - (d) require payment of all monies payable by the Buyer whether due then or later; and/or
    - (e) without demand retake possession of the Product and may without notice sell the Product on such terms and in such manner as it determines and will be entitled to be paid or reimbursed by the Buyer for all expenses incurred. For the purposes of recovering possession and without limiting the generality of the foregoing, the Buyer irrevocably authorizes and licenses the Seller and its servants and agents to enter any premises where any Product may be stored and to take possession of the Product. The Seller is not liable for any damage or injury to any premise or person caused by the Seller exercising its rights this clause unless such damage is solely caused by willful negligence of the Seller, its servants or agents.

#### **14. ADVICE AND INFORMATION**

Any advice, recommendation, information (including specifications), assistance or service given by the Seller in relation to Product sold by the Seller or its use or applications given in good faith and is believed to be accurate, appropriate and reliable at the time given, but is provided without any warranty of accuracy, appropriateness or reliability and the Seller does not accept any liability or responsibility for any loss suffered from the Buyer's reliance on such advice, recommendation, information, assistance or service.

#### **15. LIMITATION OF LIABILITY**

To the extent permitted by law and notwithstanding anything to the contrary in these Terms and Conditions, the Seller excludes all terms, conditions, warranties, undertakings, inducements or representations relating in any way to the Product not contained in these Terms and Conditions and shall not be liable to the Buyer in any circumstances for any losses (including but not limited to loss of profit or business opportunities or any type of special, indirect or consequential losses), damages, costs, anticipated savings, judgments, fines, penalties, claims and other liabilities whether suffered by the Buyer or by any third party and whether or not the Seller was aware that such loss was possible or foreseeable and whether such loss arises from the use of the Product or the failure by the Seller to observe and fulfill its obligations under these Terms and Conditions.

#### **16. INDEMNITY**

The Buyer agrees to indemnify the Seller against all liabilities, claims, losses, damages, fines, judgments, penalties, expenses, costs and charges (all such things being "Losses" and any one of them being a "Loss") incurred by or claimed against the Seller incidental to the sale and purchase and subsequent use or resale of the Product, including but not limited to any breach of law or any provisions of these Terms and Conditions or negligent act or omission by the Buyer.

#### **17. NO PARTNERSHIP OR AGENCY**

- 17.1 Nothing in these Terms and Conditions shall be deemed a partnership between the Parties hereto nor constitute any Party the agent or principal of the other Party for any purpose whatsoever.
- 17.2 Neither Party shall, whether directly or indirectly and whether expressly or impliedly, assume, incur or create or attempt to assume, incur or create any obligations or liabilities on or pledge the credit of the other Party.

#### **18. FORCE MAJEURE**

- 18.1 Should any Force Majeure Event occur, the Seller shall have the right but no obligation to deliver the Product while such circumstances continue. For as long as such Force Majeure Event exists, the Seller may, at its option, cancel, rescind or terminate all or any part of the Transaction or keep the Transaction in abeyance until such circumstances have ceased. Pending cessation of the Force Majeure Event, the Parties shall enter into bona fide discussions to alleviate its effects or to agree upon such possible alternative arrangements as may be fair and reasonable. In the event the Force Majeure Event continues in excess of three (3) months and no possible alternative arrangements can be agreed, all Transactions affected by the Force Majeure Event shall be deemed to have been frustrated and terminated ("Terminating Event") and neither Party shall have any claims against the other.
- 18.2 For purposes of this Clause, "Force Majeure Event" means "such circumstances beyond the control of the Seller including but not limited to strikes, lockouts, rebellions, fire, act of God, shortage of materials or Government decrees or proclamations."

#### **19. SEVERABILITY**

If any one or more of the provisions or part thereof contained in these Terms and Conditions is or becomes invalid or unenforceable due to any reason, this shall not in any way affect or impair the validity or enforceability of the remaining provisions hereof. The Parties shall use reasonable endeavours to replace such a provision with a valid provision, the effect of which is closest to the intended effect of the invalid or unenforceable provision, or in any case, with a provision which would give effect to the intention of the Parties and to the spirit of these Terms & Conditions.

#### **20. AMENDMENTS**

No amendment of, or addition to, these Terms and Conditions shall be effective unless in writing and properly signed by or on behalf of the Seller.

#### **21. GOVERNING LAW**

These Terms and Conditions shall be governed by the laws of Malaysia.

#### **22. NOTICES**

- 22.1 All notices pursuant to these Terms and Conditions shall, unless otherwise expressly stated, be in writing and be given by sending the same by hand, prepaid recorded delivery, email or fax to the other Party's address as may be designated in writing from time to time.
- 22.2 Any notices pursuant to these Terms and Conditions shall be deemed to have been duly given:
- (a) if hand delivered, when delivered;
  - (b) if sent by prepaid recorded delivery, at 10AM on the 7<sup>th</sup> day from the date of posting;
  - (c) if sent by e-mail, within three (3) hours from transmission by the sender; or
  - (d) if sent by fax, upon transmission of the fax provided the transmission report of the fax machine from which the fax was sent indicates that the facsimile was successfully sent in its entirety to the facsimile number of the recipient,
- unless there is evidence that it was received earlier than this. References to time in this Clause 22 are to local time in the country of the addressee.