

Steadfast Bituminous Suppliers (Pty) Ltd
Shop 6, Van Set Centre
15 Linscott Road
Athlone Park
4126



Registration Number: 2009/016157/07
Telephone: +27 31 904 3415
Mobile: +27 83 298 1245
Email: steadfast@steadfastafrica.com
Website: www.steadfastafrica.com

GENERAL TRADING TERMS AND CONDITIONS

Reg. No. 2009/016157/07

1. APPLICABILITY OF THE STANDARD CONDITIONS

All and any business undertaken by Steadfast Bituminous Suppliers (Pty) Ltd (SBS), including without limitation the supply of Products, Services and advice, is and shall be subject to the terms and conditions hereunder, unless otherwise agreed in writing and signed by SBS. Any conditions or terms imposed or intended by the Customer that are contrary to these conditions shall be null and void and of no force and effect.

2. DEFINITIONS

'Customer' means any person, juristic or natural, at whose request or on whose behalf or in respect of whom SBS undertakes any business;

'SBS' means Steadfast Bituminous Suppliers (Pty) Ltd Registration No. 2009/016157/07

'Product' means the bituminous products supplied by SBS to the Customer;

'Services' means any incidental services offered by SBS as set out in the quotation to the Customer or offered to the Customer in conjunction with or without the Product;

'Point of delivery' means the premises to which SBS delivers the Product to the Customer and/or at which the Services are provided.

3. QUOTATIONS AND ORDERS

1. A quotation given by SBS to the Customer shall only be binding on SBS if it is in writing, signed by a duly authorised representative of SBS and accepted by the Customer, in writing, within 14 days of the date of issue. A quotation shall be binding only if accepted in its entirety.
2. SBS shall not be obliged to deliver the Product unless an order is placed by the Customer with SBS.
3. SBS shall be entitled to insist on a guarantee for the payment of the quoted price prior to delivery of the Product, the acceptance of a quotation and/or an order by the Customer and/or SBS does not constitute waiver of this entitlement.

4. PRICES

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1. Subject to the other provisions of these conditions, the prices at which the Products shall be sold, will be at SBS's ruling price (based on SBS's suppliers ruling ex works price) at the date on which the Products are delivered to the Customer. The Customer agrees and acknowledges that the price of the Products shall vary as fluctuations in the variables taken into account by SBS in determining its price, may occur from time to time.
2. Unless otherwise stipulated, all prices are exclusive of VAT.
3. If the Customer varies its order or if there are delays or changes which are not as a result of any act or omission of SBS, then SBS shall be entitled to revise its prices by notice in writing to the customer.

5. DISCOUNTS

1. The purchase price of the Products is strictly net and not subject to any discounts unless otherwise agreed to in writing by SBS and signed by an authorized signatory of SBS.

6. DUTIES LEVIES AND TAX

The Customer shall be responsible for and undertakes to pay to SBS, at the same time as SBS or the Customer is obligated to pay any sum in respect of Products supplied or to be supplied and/or Services rendered or to be rendered, any duty, levy or tax payable thereon by SBS in terms of any law or regulation or ruling relating to the Product and its delivery or carriage into or out of the Republic of South Africa.

7. PAYMENTS

1. Unless otherwise specifically agreed to by SBS in writing, all amounts shall be paid by the Customer to SBS, without deduction, demand or set-off, within 14 days of the date of SBS's statement of account.
2. If any amount owing by the Customer to SBS is not paid on the due date then all amounts owing by the Customer to SBS from any cause whatsoever shall become immediately due and payable.
3. Complaints, claims or disputes, of whatsoever nature and cause, raised by the Customer shall not entitle the Customer to either withhold, defer or suspend payment of any amounts owed.
4. No retention monies in respect of the purchase price may be withheld by the Customer unless specifically agreed in writing by SBS.

8. TIME NOT OF THE ESSENCE

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1. The time stated for delivery of the Products or the rendering of any Service by SBS, shall be mutually agreed between the parties and will be only approximate. Time of delivery shall not be a material term to any contract or agreement between SBS and the Customer.
2. Subject to 8.1, SBS will make reasonable efforts to deliver Products and render Services within the times agreed and any delay or anticipation in delivery shall not render the contract invalid nor render SBS liable for any claim or damages, whether consequential or direct damages or compensation to the Customer or any other party through the Customer.
3. Delivery of the Products and provision of the Services is dependent on stock availability and shall be made, subject to 8.1 and 8.2, when stocks are available.

9. DELIVERY AND RISK

1. Unless otherwise agreed in writing, the Customer shall take delivery of the Products at SBS's premises. If shipped on FOB Incoterm terms and conditions or at such other premises as SBS may specify or agree in writing with the Customer. All risk of loss or damage in and to the Products supplied by SBS to the Customer shall pass to the Customer when the Customer takes delivery of the Products at such premises or in accordance with the shipping terms relating to FOB delivery. All and any costs of delivery shall be factored into and comprise part of SBS's price, which shall be paid to SBS by the Customer in terms of clause 7.
2. Where delivery is effected by SBS's road transport, or by SBS's or the Customer appointed transport contractor:-
 - a. all risks in the Products shall pass to the Customer on the transporting vehicle departing from the loading point where SBS loads the Product onto the vehicle;
 - b. the responsibility for unloading rests with the Customer, unless otherwise agreed in writing between the parties;
 - c. SBS reserves the right to pass on to the Customer any additional charges or any other costs whatsoever, including but not limited to insurance premiums, which may be incurred by SBS as a result of delayed or protracted loading or unloading of the Products by or on behalf of the Customer.
3. All Products shall conform to Product specification requirements as at time of delivery in terms of clause 9.1, SBS shall not be liable for damage to or deterioration in such Products after delivery.
4. Where a delivery is affected by SBS to the Customer through the medium of a transport carrier engaged by or on behalf of the Customer, then all risks in and to the Products in question shall pass to the Customer on delivery of the Products by SBS to the carrier.
5. Unless the Customer reports in writing an incomplete or short delivery to SBS within 7 (seven) days of the consignment in question having been delivered, the Customer shall be precluded from making any claim against SBS in connection with such short or incomplete delivery.
6. Where the Customer requests that delivery be suspended or delayed to a date later than that originally requested, SBS shall be entitled to charge the Customer a reasonable fee for



the storage of and any costs incidental to the delay in delivery of such Products or for costs incurred in suspension of the Services.

7. SBS is entitled to withhold delivery of Products or Services if the Customer has not made payment of amounts due in respect of any previous orders. SBS shall be entitled, but not obligated, to set off any payments received from a Customer against any monies due and outstanding to SBS by that customer, irrespective of the order against which that payment was made or relates to.

10. OWNERSHIP

1. Ownership of all Products delivered shall remain in SBS until SBS has received payment of the full purchase price and any other amounts outstanding notwithstanding that the Products may have been purchased for resale.
2. Prior to effecting payment in full, the Customer shall at its cost :-
 - a. keep the Products fully insured, and if any of the Products are lost, destroyed or damaged, shall hold the proceeds of insurance for and to the order of SBS;
 - b. keep, so far as is practicable, the Products separate and clearly identified as the property of SBS; and
 - c. if the Customer sells the Products to a third party as between the Customer and such third party as principal, the Customer shall sell as the fiduciary agent of SBS. The Customer shall hold the proceeds of any such sale separate from any of its other assets and for SBS's account pending payment, or shall, if SBS requires, authorize and direct such third party to pay SBS all sums due to the Customer in respect of the Products sold and assign to SBS the debt owed by the third party to the Customer.
3. The Customer acknowledges SBS's rights to enter upon the Customer's premises, without notice and repossess the Products, if the Customer defaults with any payment and/or if the Customer is placed under provisional or final liquidation or sequestration, judicial management, commences business rescue proceedings or if any other process is brought against or enforced upon any of the assets of the Customer or if the Customer ceases or threatens to cease to carry on business or makes any arrangement or compromise with any of its creditors or any equivalent or similar event, then the Customer shall bear the onus of proving that it has not defaulted with any payment and that payment has been made in full to SBS, and/or that it is not under liquidation, sequestration, judicial management or any of the other circumstances aforementioned.
4. Any other property of SBS, other than the Products, delivered or brought onto the premises of the Customer, shall remain the property of SBS and shall not be subject to any applicable vesting provision. The Customer is obliged and undertakes to notify its Landlord of any property belonging to SBS.

11. NOTIFICATION OF DEFECTS



1. Within 5 days after receipt of the Products, the Customer shall be required to advise SBS of any defects, supported by test results, failing which the Products shall be deemed to be complete in all respects and without defects.
2. If SBS agrees that the Products are defective, or the Customer proves as much to the satisfaction of SBS, SBS's liability shall be limited to replacing such Products as against return to it of the defective Products.
3. SBS will not accept responsibility for any defect in the Products in the event that:
 - a. the Customer provided any of its own storage, packaging and unpacking or ancillary services;
 - b. the Customer supplied the incorrect specifications for Products, responsibility for accurate specifications prior to delivery lies solely with the Customer or

12. NO WARRANTIES

SBS gives no warranties, guarantees or undertakings and makes no representations in respect of the Products in any way whatsoever.

13. LIMITATION OF LIABILITY AND INDEMNITY

1. Neither SBS nor any of its directors, employees or agents shall be liable for any loss or damage, whether direct, indirect, consequential or otherwise, including any loss of profit, suffered by the Customer or the Customer's officers, employees or agents (if applicable), arising from any cause in connection with the Products or Services, whether such loss or damage results from any breach of contract, delict, negligence of any degree or any other cause without limitation.
2. The Customer hereby agrees and undertakes to indemnify and keep SBS indemnified and harmless against all and any claims arising from loss, injury, damage, fine, liability, tax or other charges, penalties and claims (including loss of profit) made by any person of any nature whatsoever and howsoever arising from or in connection with the Products supplied or Services provided by SBS and including but not limited to the transport, storage, use and/or sale thereof and including, in particular, any failure whatsoever on the part of the Customer to comply with its obligations set out in clauses 14. It is specifically recorded that the customer acknowledges that it assumes responsibility for all and any injury to persons or damage to property or the environment caused by or arising from the use of the Products or implementation of the Services.
3. If a Customer sells or disposes of any Products supplied to it by SBS to a third party or otherwise permits a third party to use such Products, the Customer shall include in the Customer's agreement with the third party a provision in terms of which SBS is afforded a similar restriction of liability to that contemplated in 12 or 13.1.



4. Notwithstanding any other provisions to the contrary, any claim which a Customer is deemed to have against SBS in connection with or arising out of any Products or Services shall lapse and become extinguished unless within:-
 - a. 90 days of such claim arising, the Customer gives written notice thereof to SBS and at the same time discloses to SBS in writing the material facts on which the claim is based; and
 - b. 12 months of such claim arising, the Customer institutes legal proceedings against SBS in respect of the claim by issuing summons out of a court of competent jurisdiction and having such summons served on SBS.
5. Subject to and without in any way limiting the provisions of clauses 13.1, 13.2 and 13.3, SBS's liability to the Customer for any damages sustained by the Customer from any cause whatsoever, including any damages arising out of SBS's negligence or that of its agents, servants, employees or sub-contractors, shall in any event and under all circumstances be strictly limited to the replacement of the defective Products, provided that in all circumstances SBS agrees in writing that the Products are defective, as set out in clause 11.

14. CUSTOMERS FURTHER OBLIGATIONS

1. The Customer shall ensure that SBS or its agents and employees have, at all times, access to the point of delivery specified by the Customer and shall establish or make available appropriately suitable access required by SBS in order to deliver the Products and or provide the Services.

15. FORCE MAJEURE

1. If any performance by SBS is prevented or delayed by strikes, lock-outs, shortened working hours, shortage of labour or materials, delays in transport, accidents of any kind, mechanical breakdowns, any default or delay by any sub-contractor or suppliers to SBS, war, political or civil disturbances, the elements or any other cause whatever beyond SBS's control, then SBS shall in its sole discretion have the election either:
 - a. to cancel any contract or part thereof thus affected; or
 - b. to extend the time for performance until the cause preventing or delaying performance ceases to apply, provided that SBS shall give written notice of its election to the Customer.

16. CANCELLATION

1. Notwithstanding the acceptance by SBS of the cancellation of any contract by the Customer, SBS shall be entitled to recover all damages incurred by it arising from or in connection with such cancellation, including but not being limited to all costs, expenses and loss of profit

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arising out of or in connection with such cancellation, irrespective of what other cause of action is available to SBS..

17. NOTICES AND DOMICILIA

1. All notices to be given in terms of the contract shall be in writing and shall be delivered by hand or sent by prepaid registered post to; Shop 6, Van Set Centre, 15 Linscott Road, Athlone Park, 4126; and to the Customer at any one of the physical business addresses set out in the invoice in respect of the Products, which physical addresses the parties select as their domicilium citandi et executandi.
2. Each party shall be entitled at any time to change its domicilium to any other physical address within the, provided that such change shall take effect only upon delivery or deemed delivery of written notice thereof to the other party.

18. GENERAL

1. No agent or employee of SBS, other than the general manager of SBS, have SBS's authority to alter, waive or vary any of these conditions.
2. No Customer may rely on a representation which it claims induced it to enter into this contract.
3. No agreement varying, adding to, deleting from or cancelling any of the conditions, and no waiver of any of the terms, conditions or provisions of this agreement, including this clause, shall be of any force or effect unless reduced to writing and, signed by a manager of SBS and the Customer.
4. No indulgence granted by SBS shall constitute a waiver of any of its rights.
5. If SBS refers any claim or dispute against the Customer to its attorneys, and whether or not SBS institutes or defends any legal or arbitration proceedings to enforce or protect its rights, SBS shall be entitled to recover from the Customer all legal costs (on an attorney and own client basis), tracing charges and collection commission incurred by SBS in that regard.
6. In the event of SBS deciding to institute legal proceedings for the enforcement of any of its rights against the Customer, SBS shall in its sole discretion, be entitled to do so in the Magistrate's Court which would, but for the amount involved, have jurisdiction to hear such proceedings.
7. A certificate signed by the general manager of SBS reflecting particulars of the amount owing by the Customer together with details of all deliveries made to the Customer and the invoices pertaining to such deliveries shall be prima facie proof thereof and of the Customer's indebtedness to SBS.
8. The Customer may not cede any of its rights or delegate and assign any of its obligations in terms of this contract unless a director of SBS gives prior written consent to the Customer to do so.

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9. Any credit facilities afforded to the Customer by SBS are in SBS's sole discretion and SBS is entitled, at any time, without notice to the Customer to, vary, curtail or terminate such facilities.
10. Unless it conflicts with the context of any provision of this contract, words signifying one gender will include the other genders, words signifying the singular will include the plural and vice versa, and words signifying natural persons will include artificial persons and vice versa.
11. Headings of clauses are inserted for the purpose of convenience only and shall be ignored in the interpretation of these conditions.
12. If any term or condition of this contract or part thereof is or becomes unenforceable, it will be severable from the rest of the contract which will continue to be binding on the parties.
13. This agreement shall be interpreted and implemented in accordance with the law of the Republic of South Africa.