TERMS AND CONDITIONS

1. Application of Conditions

   The customer agrees that all goods supplied by **Tshwane Aggregates (Pty) Ltd** (hereinafter referred to as "Tshwane Aggregates (Pty) Ltd") are subject to the conditions contained herein and such other conditions, which may appear on the Tax or Commercial Invoice and/or Waybill of Tshwane Aggregates (Pty) Ltd. No variation or alteration of such conditions shall be effective unless reduced to writing and signed by a duly authorised director or manager of Tshwane Aggregates (Pty) Ltd. No indulgence granted by Tshwane Aggregates (Pty) Ltd shall constitute a waiver of any of Tshwane Aggregates (Pty) Ltd's rights.

2. Payment Terms

   2.1. Unless otherwise stated in writing by Tshwane Aggregates (Pty) Ltd, the Customer shall pay the amount reflected on the Tax or Commercial Invoice at the offices of Tshwane Aggregates (Pty) Ltd either on order, or, if the Customer is a credit approved customer, within thirty (30) days from the end of the month in which a Tax or Commercial Invoice is issued by Tshwane Aggregates (Pty) Ltd to the Customer.

   2.2. Interest on overdue accounts shall be charged at the maximum permissible rate in terms of the National Credit Act, No. 32 of 2005 as amended, calculated from the due date referred to in paragraph 2.1 above until the date of payment in full by the Customer.

   2.3. The Customer is not entitled to set off any amount due by the Customer to Tshwane Aggregates (Pty) Ltd against any amount that the Customer contends is due by Tshwane Aggregates (Pty) Ltd to the Customer, without first having obtain Tshwane Aggregates (Pty) Ltd's prior written consent.

   2.4. The Customer agrees that the amount due and payable to Tshwane Aggregates (Pty) Ltd, including interest may be determined and proven by a Certificate issued and signed by a director of Tshwane Aggregates (Pty) Ltd, which Certificate shall be *prima facie* proof of the Customer's indebtedness to Tshwane Aggregates (Pty) Ltd.

   2.5. Should the Customer have a valid reason to dispute an entry raised on the Tax or Commercial Invoice, it shall do so within 14 (fourteen) days of the date of Tshwane Aggregates (Pty) Ltd's invoice to the Customer, failing which such entry shall be deemed to be correct and payable in terms of Clause 2.1 above.

3. Orders

   All orders or variations to orders, whether oral or in writing, shall be binding on the Customer and subject to these terms and conditions and the Customer shall be estopped from denying the validity of such order notwithstanding that it may have been given or signed by a person not authorised by the Customer.

4. Quoted Prices

   All prices quoted by Tshwane Aggregates (Pty) Ltd are binding for a period of 7 (seven) days, whereafter Tshwane Aggregates (Pty) Ltd shall be entitled to resile from any quotation.

5. Delivery

   5.1. Unless otherwise agreed to in writing by Tshwane Aggregates (Pty) Ltd delivery to the customer takes place at the place of business of Tshwane Aggregates (Pty) Ltd, and *prima facie* proof of delivery to the Customer can be by means of an original/copy of Tshwane Aggregates (Pty) Ltd's delivery note signed by the Customer, or proof of delivery to any transporter if the goods are railed or transported to the Customer by a third party.

5.2. All deliveries are subject to the availability of the goods and Tshwane Aggregates (Pty) Ltd shall be entitled, in its sole discretion, to split delivery of the goods ordered by the Customer in the quantities and on the dates it decides and to invoice them separately to the Customer.

5.3. Any date indicated by Tshwane Aggregates (Pty) Ltd for delivery of the goods shall be regarded as an estimated date of delivery and does not constitute a contractual obligation. Tshwane Aggregates (Pty) Ltd shall not be liable for any loss or damage of whatsoever nature incurred or connection with any late, incorrect, partial or non-delivery. Tshwane Aggregates (Pty) Ltd will make every endeavour to deliver timeously but the Customer shall not be entitled to cancel or repudiate this agreement or claim damages for consequential loss or otherwise or refuse to accept delivery or part delivery on the grounds of delay in the delivery of the order, or any part thereof, for any cause whatsoever.

5.4. Tshwane Aggregates (Pty) Ltd shall have the right to cancel a Customer's order where Tshwane Aggregates (Pty) Ltd is unable to supply and deliver the goods due to *force majeure* from any cause beyond the control of Tshwane Aggregates (Pty) Ltd.

6. Risk

Risk in the goods shall pass to the Customer on delivery of the goods to the Customer as defined in Clause 5, but ownership in the goods shall remain vested in Tshwane Aggregates (Pty) Ltd until the purchase price has been paid in full. Tshwane Aggregates (Pty) Ltd reserves the right to inform the end user or the owner of the premises in which the goods are situated of its claim to ownership. The Customer undertakes to insure the goods until fully paid for.

7. Manufacturer's Guarantee, Damaged Goods and Incorrect Deliveries

7.1. Any warranty as to quality or freedom from latent defects of the goods sold or fitness for any particular purpose or otherwise is hereby excluded. Tshwane Aggregates (Pty) Ltd shall not be under any liability whether in contract, delict or otherwise, in respect of defects in goods delivered or for any injury, damage or loss resulting from such defects or from any misuse or abuse of the goods.

7.2. Tshwane Aggregates (Pty) Ltd shall not be liable to the Customer for consequential losses.

7.3. Without derogating from clauses 7.1 and 7.2 above, the parties agree that Tshwane Aggregates (Pty) Ltd is not responsible for the manner in which the materials on site are utilised. Thus, the parties agree that once material has been compacted on site, the Customer shall thereafter have no claim of whatsoever nature against Tshwane Aggregates (Pty) Ltd in relation (directly or indirectly) to such material, or its suitability for the intended purpose.

8. Colto Exclusions

8.1. The following exclusions are applicable insofar as materials contemplated by the ***COLTO STANDARD SPECIFICATION FOR ROAD AND BRIDGE WORKS FOR STATE ROAD AUTHORITIES SERIES 3000 : EARTHWORKS AND PAVEMENT LAYERS OF GRAVEL OR CRUSHED STONE, SECTION 3400 : PAVEMENT LAYERS OF GRAVEL MATERIAL AND SECTION 3600:CUSHED-STONE BASE*** ("COLTO A") are concerned.

8.1.1. Tshwane Aggregates (Pty) Ltd does not warrant that its materials do not contain deleterious material. Accordingly, Tshwane Aggregates (Pty) Ltd does not warrant compliance with COLTO A section 3602(a);

8.1.2. while Tshwane Aggregates (Pty) Ltd will endeavor to comply with the requirements set out in COLTO A table 3602/1, no warranty is provided in regard to after compaction grading. The provisions of COLTO A section 3602(c) are accordingly hereby excluded;

8.1.3. Tshwane Aggregates (Pty) Ltd does not warrant compliance with the grading limits set out in COLTO A section 3602(c)(I)(5);

8.1.4. no reduced payment, as contemplated by COLTO A 3602/1 shall apply (in situ density);

8.1.5. the tolerance on grading as contemplated by COLTO A table 3602/4 is not applicable;

8.1.6. the customer will not be entitled to withhold any payment for trial sections (as contemplated by COLTO A section 3603).

8.2. The following exclusions are applicable to the ***COLTO STANDARD SPECIFICATION FOR ROAD AND BRIDGE WORKS FOR STATE ROAD AUTHORITIES SERIES 4000: ASPHALT PAVEMENTS AND SEALS, SECTION 4200 : ASPHALT BASE AND SURFACING*** ("COLTO B"):

8.2.1. Tshwane Aggregates (Pty) Ltd does not warrant that its materials do not contain deleterious material. Accordingly, Tshwane Aggregates (Pty) Ltd does not warrant compliance with section COLTO B 4202 (b);

8.2.2. where materials are supplied in accordance with the limits set out in COLTO B tables 4202/6 to 4202/10, the average grading will conform to such specifications, but shall not necessarily comply with the tolerance specified in COLTO B sub-clause 4213(c) and COLTO B table 4213/1.

9. Breach

9.1. Should the Customer fail to make payment on due date in terms of Clause 2 hereof, or should the Customer commit any other breach of its obligations hereunder, then Tshwane Aggregates (Pty) Ltd shall have the option to either–

9.1.1. Claim from the Customer all sums owing to Tshwane Aggregates (Pty) Ltd, whether then due and payable or not, which sums will then immediately become due and payable, the Customer forfeiting all discounts on the goods sold; alternatively

9.1.2. Without prejudice to any other remedy Tshwane Aggregates (Pty) Ltd may have in terms of these conditions, or by law, to cancel

9.1.3. the contract with the Customer, retake possession of the goods supplied and not paid for and recover all amounts already due by the Customer as well as damages it may have suffered by reason of the Customer's breach. To give effect thereto, the Customer irrevocably authorises Tshwane Aggregates (Pty) Ltd to enter its premises to repossess its goods supplied and not paid for.

9.2. Subject to the provisions of Clause 8.1, if execution is levied upon the Customer's assets or should the Customer make any offer of compromise with its creditors or commit any act of insolvency, or if it is a limited liability Company or Close Corporation, an application for the Customer's liquidation is made, Tshwane Aggregates (Pty) Ltd shall have the right to forthwith terminate the contract with the Customer without prejudice to any claim and remedies Tshwane Aggregates (Pty) Ltd might have against the Customer for payment of the amounts already due prior to cancellation and damages suffered by Tshwane Aggregates (Pty) Ltd by virtue of the Customer's breach.

10. General

10.1. Should the Customer be domiciled outside the republic of South Africa, this Agreement and all contracts of sale between the Customer and Tshwane Aggregates (Pty) Ltd shall be governed and interpreted in accordance with the laws of the Republic of South Africa and the South African Courts shall have sole jurisdiction in respect thereof.

10.2. Tshwane Aggregates (Pty) Ltd shall be entitled to institute action against the principal debtor (and the surety) in the Magistrates Court, notwithstanding that the monetary value of any such claim/s exceeds the applicable jurisdiction of the Magistrates Court.

10.3. In the event of it being necessary for Tshwane Aggregates (Pty) Ltd to instruct its attorneys as a result of any breach of these conditions by the Customer or to recover any amounts owing by the Customer to Tshwane Aggregates (Pty) Ltd, the Customer agrees to pay for all legal costs on the attorney and client scale inclusive of collection commission, tracing charges, validation fees and stamp duties on any form of security Tshwane Aggregates (Pty) Ltd may require from the Customer.

10.4. The granting, continuation and termination of the credit facilities if any, shall be within the sole discretion of Tshwane Aggregates (Pty) Ltd. Tshwane Aggregates (Pty) Ltd furthermore reserves the right to suspend deliveries, to cancel any undelivered portion of any order or to impose such other conditions as to security and terms of payment as it deems fit.

10.5. The Customer chooses its business address appearing in clause 5 of the Application for Credit Facilities as its *domicilium citandi et executandi.*

10.6. In these terms and conditions, unless the context otherwise requires, words importing the masculine gender shall include the feminine gender and words importing to the singular shall include the plural and vice versa.

10.7. The invalidity of any clause or part thereof of these terms and conditions will not effect the validity of the rest of the terms and conditions.