

**CONDITIONS OF SALE  
AND CREDIT FACILITIES (where applicable)**

**1. SOLE CONDITIONS**

The following will be the sole terms and conditions upon which Cabrico Brick Sales (Pty) Ltd will contract to sell goods and these terms and conditions supersede any other conditions which a Purchaser may seek to impose on Cabrico Brick Sales (Pty) Ltd. Cabrico Brick Sales (Pty) Ltd shall not be bound by a Purchaser's conditions of purchase unless such have been reduced to writing and signed and accepted by a duly authorised representative of Cabrico Brick Sales (Pty) Ltd.

**2. PRICE**

- 2.1 The price of goods sold shall be Cabrico Brick Sales (Pty) Ltd's price as at date of despatch of the goods.
- 2.2 Should this price be different from the price ruling as at the date at which any quotation may have been given to the Purchaser, Cabrico Brick Sales (Pty) Ltd shall advise the Purchaser of the said increase and the Purchaser shall be entitled to cancel his order provided that he does so as soon as possible after being advised of the said increase. If, however, at the time of placing the order and the issuing of a written acceptance of such order by Cabrico Brick Sales (Pty) Ltd both a date for delivery has been agreed to by Cabrico Brick Sales (Pty) Ltd and the purchase price of the goods has been paid in full, then that price will be the price at which the goods will be sold.
- 2.3 Where the price of goods is the delivered price, any increase in the transport rate prior to the date of despatch shall be for the account of the Purchaser. Any additional charges raised by carriers in connection with the delivery of goods to the Purchaser, including demurrage or a change in rail tariff, shall be for the account of the Purchaser.

### 3. DELIVERY

- 3.1 In the case of goods sold for delivery at Cabrigo Brick Sales (Pty) Ltd's factories, the Purchaser shall provide transport and labour and take delivery of the goods at a rate and at such time or times as agreed to by the Purchaser and Cabrigo Brick Sales (Pty) Ltd.
- 3.2 The carrier taking such delivery on behalf of the Purchaser, whether shipper, haulage, contractor or rail carrier, shall be deemed to be the Purchaser's carrier and agent and delivery shall be deemed to be effected upon possession of goods sold being taken by the carrier. A consignment note issued by the carrier shall constitute *prima facie* proof of delivery of the goods expressed to be covered thereby.
- 3.3 In the case of goods sold for delivery by Cabrigo Brick Sales (Pty) Ltd, the Purchaser may request the delivery of goods in accordance with a delivery schedule and depending on the efficient use of its delivery fleet and subject to 3.5. Cabrigo Brick Sales (Pty) Ltd will attempt, but shall not be bound to meet such delivery schedule. In the absence of a delivery schedule agreed in terms of 3.5, Cabrigo Brick Sales (Pty) Ltd shall, when it delivers products, deliver at such time and date and offload in such a manner as it determines at or as near as possible to the Purchaser's building site, provided that if a point of delivery have been indicated by the Purchaser, it will be attempted to deliver at such point. On order to comply with Local Authority Bylaws, the Purchaser undertakes to remove the goods from the place where they are delivered to within the boundaries of the building site. The Purchaser shall ensure that Cabrigo Brick Sales (Pty) Ltd has access to the building site and the point of delivery at all times. Failure on the part of the Purchaser in each or any regard shall entitle Cabrigo Brick Sales (Pty) Ltd to divert the goods or return them to its premises. In either event the Purchaser shall, upon demand, pay Cabrigo Brick Sales (Pty) Ltd's expenses incurred in tendering delivery of the goods.
- 3.4 Upon delivery or deemed delivery of goods to the Purchaser, all risk in and to the goods, including packaging materials thereof, shall pass to the Purchaser.
- 3.5 Cabrigo Brick Sales (Pty) Ltd may agree, in writing, to a delivery schedule, then Cabrigo Brick Sales (Pty) Ltd shall attempt to deliver products in accordance with such delivery schedule, but is not bound to do so. Should the Purchaser wish to change an agreed delivery

schedule then it shall give a minimum of 48 hours' notice to Cabrico Brick Sales (Pty) Ltd. Acceptance shall be subject to availability of goods.

- 3.6 Cabrico Brick Sales (Pty) Ltd goods correctly despatched per orders are not returnable. Where Cabrico Brick Sales (Pty) Ltd agrees to goods being returned the cost of returning the goods will be for the account of the Purchaser where the reason for returning goods is attributable to the Purchaser. Cabrico Brick Sales (Pty) Ltd reserves the right to levy a 10% (ten percent) handling charge on all goods returned. Only goods returned which Cabrico Brick Sales (Pty) Ltd approves as fit for the purpose manufactured in every respect will be credited to the Purchaser's account.

#### **4. IMPOSSIBILITY OF PERFORMANCE AND INJURY OR BREAKAGES**

- 4.1 In the event of Cabrico Brick Sales (Pty) Ltd being prevented by any cause beyond its control from supplying goods ordered, which shall be deemed to include shortage of stocks of the goods, then it shall be excused performance during the period for which it is so prevented.
- 4.2 The Purchaser indemnifies and holds harmless Cabrico Brick Sales (Pty) Ltd/Brick 'n Tile against all claims of any nature whatsoever in respect of loss or damage to persons or goods or property suffered by the Purchaser and the Purchaser's employees, agents and invitees while on the premises of Cabrico Brick Sales (Pty) Ltd or alliance factories.

#### **5. WARRENTY**

- 5.1 The provisions of these Conditions shall apply to and be in lieu of any other warranty expressed or implied which may otherwise result from the sale of goods by Cabrico Brick Sales (Pty) Ltd.
- 5.2 All goods sold by Cabrico Brick Sales (Pty) Ltd are manufactured to the standard applicable to and of application at each factory from time to time and in accordance with any quotation given by Cabrico Brick Sales (Pty) Ltd. In addition, those factories which have the right to use the SABS mark warrant that products supplied in accordance with the mark scheme comply with the relevant South African Bureau of Standards specifications in all respects. Purchasers are required and

shall be deemed to have made themselves acquainted with such standards.

### 5.3

- 5.3.1 It is further warranted that all goods are manufactured using goods and proper materials and workmanship and that in the case of clay bricks, goods will be suitable for use in terms of the appropriate product classification as classified by the South African Bureau of Standards (SABS) applicable to the goods concerned. That is to say, under normal conditions, FBX, FBS and FBA classified goods are suitable for use without rendering or plastering whereas NFP classified goods require such rendering or plastering and NFX classified goods are for use in special circumstances. Cabrico Brick Sales (Pty) Ltd's waybill shall constitute prima vacie proof of the SABS concerned.
- 5.3.2 Cabrico Brick Sales (Pty) Ltd's liability in relation to this warranty shall not in any circumstance whatsoever exceed the cost to Cabrico Brick Sales (Pty) Ltd of replacing the goods giving rise to such loss or damage with similar goods to which goods the provisions of these Conditions shall apply. Save with regards to the foregoing, no warranty is given, expressed or implied that goods will be suitable for use for any specific purpose or under any specific conditions, even though such purpose or conditions may be known to Cabrico Brick Sales (Pty) Ltd.
- 5.4 Cabrico Brick Sales (Pty) Ltd shall not be liable to the Purchaser nor to any third person for any loss or damage arising directly or indirectly from any defect whatsoever other than in respect of the matters warranted above.
- 5.5 Notwithstanding anything to the contrary contained in any statute or other law, any claim which the Purchaser may have pursuant to a breach of any of the above warranties shall be deemed to prescribe three years after the delivery to him of the goods.

## 6. CLAIMS

- 6.1 Cabrico Brick Sales (Pty) Ltd will attempt to deliver products in accordance with a delivery schedule agreed to in terms of 3.5, but the Purchaser shall have no claim of any nature whatsoever against

Cabrigo Brick Sales (Pty) Ltd by reason of any delay by Cabrigo Brick Sales (Pty) Ltd in giving delivery of goods on any date or dates that may be specified in the Purchaser's order or a delivery schedule agreed in terms of 3.5 or within a reasonable time in those cases in which no such date is specified or agreed.

- 6.2 The Purchaser acknowledges that during the normal transportation of goods from factory to site, damages and breakages are likely to occur. In the case of goods packaged and transported by Cabrigo Brick Sales (Pty) Ltd itself, breakage could be as high as 8% (eight percent) in the case of non-face bricks and 5% (five percent) in the case of face bricks and tiles or such percentage as quoted at the time of sale. It is agreed that the Purchaser shall have no claim whatsoever against Cabrigo Brick Sales (Pty) Ltd, whether by way of reduction of the purchase price or otherwise, in respect of losses of up to the aforesaid percentages unless Cabrigo Brick Sales (Pty) Ltd has specifically, in writing, agreed to some lesser percentage of breakages.
- 6.3 Products delivered by rail are despatched at the Purchaser's risk. Any claim for damage in transit should be directed to the carrier.
- 6.4 In the case of products delivered by road by Cabrigo Brick Sales (Pty) Ltd's carrier claims will, as between the Purchaser and Seller, only be valid if such claims are endorsed on the waybill at the time of delivery or are brought to Cabrigo Brick Sales (Pty) Ltd's attention in writing within 7 days of receipt of the goods by the Purchaser or the agent.
- 6.5 Should the Purchaser wish to query any item on Cabrigo Brick Sales (Pty) Ltd's invoice or should he wish to request proof of delivery pursuant to a query as to the quantity of product delivered to him, he shall be obligated to make relevant query, claim or request (as the case may be) within a period of 30 days from the date of Cabrigo Brick Sales (Pty) Ltd's invoice. Failing which his right to do so shall be deemed to be waived and he shall have no further claim against Cabrigo Brick Sales (Pty) Ltd arising pursuant thereto.

## **7. PAYMENT OF PURCHASE PRICE**

- 7.1 The normal form of payment for goods including cartage shall be cash payable in advance of delivery or despatch. The term "cash" includes payment by means of a credit card acceptable to Cabrigo Brick Sales (Pty) Ltd. In the event of the purchase price and other charges not

being paid as aforesaid, Cabrico Brick Sales (Pty) Ltd shall be entitled to cancel any contract for the delivery of goods without prejudice to its right to recover from the Purchaser any loss or damage suffered by it by reason of such cancellation.

- 7.2 It is recorded that in those instances where Cabrico Brick Sales (Pty) Ltd, whether expressly or otherwise, agrees to grant credit to the Purchaser without specifying the period for which the credit will be granted, the payment terms shall be strictly 30 days from the date of Cabrico Brick Sales (Pty) Ltd's first statement in respect of the goods concerned. No credit cards will be accepted by Cabrico Brick Sales (Pty) Ltd for payment of an account where Cabrico Brick Sales (Pty) Ltd has granted credit. Where the basis of payment is expressly stated in writing and Cabrico Brick Sales (Pty) Ltd accepts that basis of payment then such basis overrides this provision, or as agreed a 5% credit card charge will be added to the outstanding balance on acceptance of a credit card.
- 7.3 In the event of Cabrico Brick Sales (Pty) Ltd agreeing in writing to give credit to a Purchaser for the payment of the purchase price of goods and the Purchaser failing to make payment upon the due date in respect of the purchase price or any other portion thereof or in the event of a Purchaser being indebted to Cabrico Brick Sales (Pty) Ltd arising from any cause whatsoever, then in either or both of such circumstance Cabrico Brick Sales (Pty) Ltd shall not be obliged to perform under any contract then in existence and may, at its election, terminate any such contract, which termination may be made without prejudice to its rights to claim damages arising from such termination and to its right to recover from the Purchaser any moneys then owing to it from whatever cause arising.
- 7.4 Ownership of all goods sold and delivered by Cabrico Brick Sales (Pty) Ltd to Purchasers, shall to the extent that they have not been built into a permanent structure, remain with Cabrico Brick Sales (Pty) Ltd until the purchase price thereof shall have been paid in full. A certificate issued by Cabrico Brick Sales (Pty) Ltd's auditors shall constitute prima facie proof of the goods for which payment has not been made to Cabrico Brick Sales (Pty) Ltd.
- 7.5 Without prejudice to the foregoing, in the event of the Purchaser failing to pay any amount due to Cabrico Brick Sales (Pty) Ltd on due

date then such amount as remains unpaid shall bear interest at the rate equal to the prime overdraft rate charged by Cabrigo Brick Sales (Pty) Ltd's bankers to it plus 2% (two percent), subject to the maximum rate prescribed in terms of the Usury Act No.73 of 1968, as amended. Such interest shall be calculated monthly in arrears.

- 7.6 All payments made by a Purchaser to Cabrigo Brick Sales (Pty) Ltd shall be attributed by Cabrigo Brick Sales (Pty) Ltd firstly towards the payment of all interest then owing by the Purchaser to Cabrigo Brick Sales (Pty) Ltd and thereafter in reduction of the purchase consideration in respect of goods due and owing by the Purchaser to Cabrigo Brick Sales (Pty) Ltd, provided that payment made shall be attributed to the amount which has been owing by the Purchaser to Cabrigo Brick Sales (Pty) Ltd for the longest period of time.
- 7.7 A certificate issued by Cabrigo Brick Sales (Pty) Ltd's auditors shall constitute prima facie proof of the indebtedness of the Purchaser to Cabrigo Brick Sales (Pty) Ltd from time to time.

## **8. JURISDICTION**

- 8.1 The Purchaser hereby consents in terms of Section 45 of the Magistrate's Court Act to the jurisdiction of the appropriate Magistrate's Court in respect of any proceedings arising here from notwithstanding that such proceedings would otherwise have been beyond the jurisdiction of such Magistrate's Court. However notwithstanding such consent, Cabrigo Brick Sales (Pty) Ltd shall be entitled in its sole discretion, and without prejudice to institute such proceedings in the appropriate High Court.
- 8.2 The Purchaser hereby consents to the jurisdiction of the High Court in which any action is instituted against the Purchaser in respect of any Constitutional issues which arise in such action or if this becomes permissible in the Magistrate's Court in which the aforesaid action is instituted.

## **9. LEGAL COSTS**

In the event of Cabrigo Brick Sales (Pty) Ltd instructing its Attorney to collect any amount owing by a Purchaser, the Purchaser shall pay Cabrigo Brick Sales (Pty) Ltd's attorney and own client costs which include all collection commission and other costs incurred by Cabrigo Brick Sales (Pty) Ltd with its Attorneys in that regard.

## **10. NON-WAIVER**

The failure by Cabrico Brick Sales (Pty) Ltd to strictly enforce any provision of these Conditions shall not be construed as a waiver by Cabrico Brick Sales (Pty) Ltd of any of its rights in terms hereof nor shall it prejudice Cabrico Brick Sales (Pty) Ltd's right to strictly enforce such conditions.

## **11. VAT**

Cabrico Brick Sales (Pty) Ltd is a registered vendor for VAT purposes and will charge VAT on all taxable supplies made by it to the Purchaser in addition to the price of goods.

## **12. CONSENT TO ACCESS INFORMATION**

- 12.1 The Purchaser agrees that Cabrico Brick Sales (Pty) Ltd may use the services and records of a registered credit bureau and other supplies for information required in the original and future assessment of credit facilities. The Purchaser agrees that Cabrico Brick Sales (Pty) Ltd may disclose information regarding the Purchaser's credit worthiness and conduct of the Purchaser's account with it to any registered credit bureau and other supplies.
- 12.2 If the Purchaser is a private or unlisted public company, close corporation or other artificial person then it undertakes to advise Cabrico Brick Sales (Pty) Ltd forthwith in writing of any agreement concluded for the change of its shareholding, membership or ownership. In such event (or if the Purchaser fails to advise Cabrico Brick Sales (Pty) Ltd as required in terms hereof), Cabrico Brick Sales (Pty) Ltd reserves the right to suspend its credit terms on written notice to the Purchaser until all requirements of Cabrico Brick Sales (Pty) Ltd as a consequence of such change have been met in full.
- 12.3 Cabrico Brick Sales (Pty) Ltd reserves the right to suspend the Purchaser's credit terms at any time on written notice to the Purchaser.

## **13. RIGHT TO UPDATE**

Cabrico Brick Sales (Pty) Ltd reserves the right to update these conditions of sale from time to time on written notice to the Purchaser which shall on receipt of the updated conditions of sale from time to time be bound to the same as if they were the original conditions of sale.



#### **14. CLAUSE SEVERABLE AND DIVISIBLE**

- 14.1 Each and every clause contained in these conditions of sale is severable and divisible from the others and separately enforceable as such. Should any provision be found not to be binding then this shall not affect the enforceability of the remaining provisions.
- 14.2 The Guarantee, Suretyship and Co-principal Debtorship overleaf shall not, whether properly completed, incorrectly completed, in any way whatsoever affect the validity and enforceability of these conditions of sale at the instance of Cabrico Brick Sales (Pty) Ltd.

#### **15. ARBITRATION AND CONSTITUTIONAL ISSUES**

- 15.1 At the election of Cabrico Brick Sales (Pty) Ltd (made by written notice to the Purchaser all disputes, differences, impasses or deadlocks between Cabrico Brick Sales (Pty) Ltd and the Purchaser shall be referred to arbitration. All references in this agreement to "arbitration" shall be deemed to be a reference to arbitration in terms of the Statute which replaces it. The Arbitrator shall be a person agreed upon between Cabrico Brick Sales (Pty) Ltd and the Purchaser and failing agreement, a person nominated by the President of the Cape Town Law Society (or if that Body changes its name the President or head of the Body that succeeds it) and such person shall not necessarily be a lawyer. The arbitration shall be held in Cape Town. No party shall except jointly with all the other parties, invoke the provisions of Section 23 (a) of the Arbitration Act or any other similar provision which may hereafter exist. The decision of such Arbitrator shall be final and binding upon Cabrico Brick Sales (Pty) Ltd and the Purchaser and the Arbitration shall also be entitled to stipulate who shall pay his costs of resolving such dispute, difference, impasse or deadlock.

#### **16. GUARANTEE, SURETYSHIP AND CO-PRINCIPAL DEBTORSHIP**

- 16.1 Cabrico Brick Sales (Pty) Ltd reserves the right to require:
- (a) suretyships, co-principals debtor shops and guarantees from all members, shareholders, beneficiaries and other persons associated with the purchaser before or after accepting an

application

- (b) holding company guarantees, cessions of book debts and bank guarantees from the purchaser
- (c) at any time on written notice to the purchaser, and Cabrico Brick Sales (Pty) Ltd shall be entitled to suspend credit facilities until its requirements are met in full.

16.2 In respect of cash sales; COD; transport cash sales and the incorporation of the provisions of these conditions of sale onto waybills and invoices in respect of such sales the provision of clause 16 and clause 17 shall not apply and shall be regarded a pro-non scripto.

16.3 These conditions of sale apply to all transactions between Cabrico Brick Sales (Pty) Ltd and the purchaser notwithstanding the fact that the suretyship, co-principle debtorship and guarantee contained in the Credit Application form is not completed and/or signed by any person or is partially completed and/or signed by certain persons.

## **17. DOMICILIA AND NOTICES**

(a) The parties choose as their domicilia citandi et executandi for all purposes under this agreement, whether in respect of court process notice or other documents or communications of whatsoever nature the following addresses.

(i) Cabrico Brick Sales (Pty) Ltd      Bottelary road  
Koelenhof  
Stellenbosch  
7600

(ii) The Purchaser      See physical address, fax number and  
email address in application for credit to  
which these conditions form part

(b) Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing but is shall be competent to give notice by telefax or email.

- (c) Any part may by notice to any other party change the physical address chosen as its domicilium citandi et executandi via-a-vis that party to another physical address in the Republic of South Africa or its telefax number or Email address, provided that the change shall become effective via-a-vis that addressee on the 4<sup>th</sup> business day from the deemed receipt of the notice by the addressee.
  
- (d) Any notice to a party
  - (i) Sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its domicilium citandi et executandi shall be deemed to have received on the 4<sup>th</sup> business day after posting (unless the contrary is proved).
  
  - (ii) Delivery by hand to a responsible person during ordinary business hours at its domicilium citandi et executandi shall be deemed to have been received on the day of delivery; or
  
  - (iii) Sent by telefax or email to its chosen telefax number or email address shall be deemed to have been received on the date of despatch (unless the contrary is proved)
  
- (e) 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 or delivered at its chosen domicilium citandi et executandi.

## **18. CONSUMER PROTECTION ACT**

The purchaser/Debtor by its signature hereto warrants and confirms that his asset value or annual turnover at date hereof is in excess of Two Million Rand.

YES                      NO    (Tick Applicable)