

CREDIT APPLICATION

FULL AND CORRECT REGISTERED NAME:

TRADING NAME:

ASH RESOURCES (PTY) LIMITED
(Registration No. 1975/000746/07)

CREDIT ASSESSMENT FORM

Full and correct registered name:

Trading name if different from above:

Street address:

..... Code:

Postal address:

..... Code:

Telephone No: Fax No: Cell No:

E-mail address:

Holding Company:

Customer's Duly Authorised Representative (clause 18.1) :

Sole Trader	Partnership	Trust	Ltd	(Pty) Ltd	Close Corp

Registration No: Vat Registration No:

Address of registered office:

..... Code:

Name and address of Auditors:

..... Code:

DETAILS OF SOLE TRADER/PARTNERS/DIRECTORS/MEMBERS					
	Full Name	Residential Address	ID Number	% Hldg	Telephone No
1.					
2.					
3.					
4.					

Accounts department contact name:

E-mail address (accounts department):

CREDIT REFERENCES					
	Name	Telephone Number	Account No.	Limit	Terms
1.					
2.					
3.					
4.					

Name of Banker: Branch :

Account Name: Account Number:

Details of security held by bank (surety, bond, cession, etc.):

Maximum credit limited required (est. value of two months purchases): R

Annual Turnover as at date of signature hereof : R

BUSINESS INFORMATION

Nature of business?

Date business commenced? Years under present ownership?

Are business premises OWNED LEASED RENTED

DETAILS OF FIXED PROPERTIES

	In what name is the property registered?	Year Purchased	Current Market Value	Bond holder	Bond Value
1.					
2.					
3.					

DETAILS OF MOVEABLE PROPERTY

Details	Market Value	Fully Paid?

Details of leased/rented property

1. Name and Address of landlord:

2. Monthly rental : R. Period of lease :

PLEASE TICK CORRECT ANSWER

Has sole proprietorship/partnership/company/cc issued/signed any guarantees in favour of other creditors?	YES	NO
Have proprietors/partners/directors/members issued/signed any guarantees in favour of other creditors?:	YES	NO
Have principals ever been directors/members of a business that ceased trading?	YES	NO
Have your book debts been ceded? YES NO To whom Date ceded		
Are your latest financial statements available for inspection?	YES	NO

I/We warrant that the information contained herein is true and correct in every respect. I/We undertake to notify ASH RESOURCES (PTY) LIMITED in writing immediately of any change in this information. I/We am/are duly authorised to sign this application. I/We acknowledge that I/We have read and understood the standard terms and conditions attached hereto and agree that such terms and conditions shall be binding upon me/us/the company/close corporation in respect of all transactions entered into between myself/ourselves and ASH RESOURCES (PTY) LIMITED.

I/We agree that ASH RESOURCES (PTY) LIMITED use the services and records of a registered credit bureau and other suppliers for information required in the original and future assessment of credit facilities. I/We agree that ASH RESOURCES (PTY) LIMITED may disclose information regarding the applicant's credit worthiness and conduct of the account to any registered credit bureau and other suppliers to the industry. Finally, we acknowledge that the standard terms and conditions attached hereto incorporate a Deed of Suretyship at the end thereof binding the signatories thereto as sureties and co-principal debtors in favour of ASH RESOURCES (PTY) LIMITED.

Signed at on this day of year

Name: Signature: Capacity:

Name: Signature: Capacity:

PREFERRED METHOD OF SECURING FACILITY:

	Deed of Suretyship where fixed property is recorded in either individual or trading capacity (cross guarantee)
	Cross Company Guarantee
	Bank guarantee
	Payment guarantee
	Collateral bond registered in our name
	Notarial bond registered in our name against moveable property
	Insurance policy cession
	Cession/letter of undertaking from developer/financial institution

**ASH RESOURCES (PTY) LIMITED
(Registration No. 1975/000746/07)**

STANDARD TERMS AND CONDITIONS APPLICABLE TO THE SALE OF PRODUCTS

All of the Company's quotations and/or tenders for the sale of Products and/or any contract resulting therefrom and/or relating thereto shall be subject to the following terms and conditions, which shall apply to the exclusion of all other terms and conditions, whether express or implied, unless the Company specifically agrees In Writing to accept any such other terms and conditions in addition to and/or in variance of those herein contained. The Customer, by accepting Delivery of any Product acknowledges that no terms and conditions which the Customer purports to attach to its acceptance, nor any terms and conditions which might have been attached to the Customer's order, shall be binding on the Company (unless the Company specifically agrees thereto In Writing), and the Customer agrees that all such conditions shall be deemed to have been substituted by these terms and conditions.

SECTION A: STANDARD TERMS AND CONDITIONS APPLICABLE TO ALL TRANSACTIONS (PRODUCTS AND FLY ASH)

1. DEFINITIONS

- 1.1. In these terms and conditions, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them hereunder and cognate expressions bear corresponding meanings:
 - 1.1.1. **"Company"** means Ash Resources (Propriety) Limited (Registration No. 1975/000746/07), and shall include its successors-in-title.
 - 1.1.2. **"Contract Price"** means the **Company's** applicable price, together with value added tax thereon, for the **Product** concerned at the time of dispatch of such **Product**, as envisaged and subject to clauses 3 and 12 and, in the case of Fly Ash, also clause 21.
 - 1.1.3. **"Customer"** means the party specified as such on the first page hereof, being the party with whom the **Company** contracts for the sale of **Product** in terms hereof.
 - 1.1.4. **"Delivery"** means either the making available of **Product** by the **Company** at, and the collection by or on behalf of the **Customer** from, the site/s specified **In Writing** by the **Company** for the collection of **Product** ordered or, in the event of the **Company** agreeing thereto **In Writing**, the delivery of **Product** to the **Customer** at a delivery site specified by the **Customer**.
 - 1.1.5. **"Fly Ash"** means the **Company's** range of ash based products, which products are produced by the **Company** from ash by-products resulting from the burning of pulverised bituminous hard coals in power station furnaces.
 - 1.1.6. **"In Writing"** means, in the case of the **Company**, a written letter and/or other written document duly issued by the **Company** and signed by one or more of its directors and/or senior managers who is/are duly authorised thereto.
 - 1.1.7. **"Product"** means any goods of whatsoever nature purchased by the **Customer** from the **Company**, including **Fly Ash**.
 - 1.1.8. **"Quotation"** means a document issued by the **Company In Writing**, addressed specifically to the **Customer** and quoting prices for **Product**.
 - 1.1.9. **"Site Problems"** means any problems that may be encountered at the site from where and/or to where **Delivery** of the **Product** is to be given effect to, including insufficient silo and/or site storage capacity thereat.
- 1.2. Subject to clause 1.3, defined terms appearing in these terms and conditions in title case and in bold shall be given their meaning as defined, while the same terms appearing in lower case and not in bold shall be interpreted in accordance with their plain English meaning.
- 1.3. In these terms and conditions, the words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples shall not be construed as limiting the meaning of the general wording preceding it.

2. PAYMENT

- 2.1. The **Contract Price** for **Product** shall be payable by the **Customer** to the **Company**, in cash, in South African currency and free of any exchange, deduction or set-off. Payments effected by mail shall be effected at the sole risk of the **Customer**.
- 2.2. In the event of the **Company** granting the **Customer** credit facilities (the granting of which shall be in the sole discretion of the **Company**), the **Contract Price** shall be paid by the **Customer** within 30 (THIRTY) days from the

date of the **Company's** first statement relating thereto, so as to be received by the **Company** within such 30 (THIRTY) day period. Where no such credit facilities have been granted to the **Customer**, the **Contract Price** shall be paid by electronic funds transfer (EFT) or, at the sole discretion of the **Company**, by bank guaranteed cheque, prior to **Delivery** of the **Product** concerned.

- 2.3. The **Company** reserves the right, at any time, to withdraw or amend any credit facilities which may have been granted to the **Customer**, and/or to require the **Customer** to furnish guarantees, suretyships and/or any other forms of security that may, from time to time, be required by the **Company** as security for the **Customer's** current and/or future obligations owed and/or to be owed by it to the **Company** from whatsoever cause arising.
- 2.4. Should any amount owing by the **Customer** to the **Company** not be received by the **Company** on or before the due date for payment thereof, all amounts payable by the **Customer** to the **Company**, regardless of whether or not they are yet due for payment, shall immediately (and without notice to the **Customer**) become due, owing and payable by the **Customer** to the **Company**.
- 2.5. The **Customer** shall not be entitled to withhold payment of the **Contract Price**, or any portion thereof, for any reason whatsoever, including due to any dispute that may be pending between the parties hereto, nor shall the **Customer** be entitled to make any deduction from the **Contract Price** or set-off any alleged claim against any amount/s, or any portion thereof, due by the **Customer** to the **Company**.
- 2.6. Should the **Customer** fail to clearly indicate in writing to the **Company** which items appearing on the **Company's** statement it is paying, the **Company** shall have the right to apply such payment to those items in respect of which payment has been overdue for the longest time.
- 2.7. A query or dispute on a particular invoice and/or in respect of a particular **Delivery** of **Product** will not entitle the **Customer** to withhold payment for such **Product**.
- 2.8. In the event of any default by the **Customer** of any provision of these terms and conditions, the **Customer** hereby consents and authorises the **Company** to furnish its name, credit record and repayment history to any credit bureau as a delinquent debtor.

3. QUOTATIONS

Subject to the provisions of clauses 12 and 21:

- 3.1. Any **Quotation** by the **Company** is open for acceptance for a period of 30 (THIRTY) days from the date appearing on the **Quotation**, unless revoked earlier by the **Company In Writing** on notice to the **Customer** or otherwise agreed to **In Writing** by the **Company** with the **Customer**;
- 3.2. The price quoted in a **Quotation**, plus VAT thereon, will, upon acceptance by the **Customer** (whether such acceptance is tacit or written) and confirmation by the **Company**, constitute the **Contract Price**; and
- 3.3. Prices quoted in a **Quotation** for **Product** are in South African Rands and are exclusive of delivery charges, VAT (and any and all taxes, levies, import duties and/or charges of similar nature), insurance and packaging costs (unless stated to the contrary **In Writing** by the **Company**).

4. CERTIFICATE

The **Customer** agrees that a certificate signed by any director or manager of the **Company** (whose authority, appointment and designation it shall not be necessary to prove) as to the existence and amount of any indebtedness of the **Customer** to the **Company** at any time, shall be *prima facie* proof (sufficient evidence) of the amount of such indebtedness to the **Company** and the fact that such amount is due, owing and payable by the **Customer** to the **Company**.

5. JURISDICTION

Save in respect of disputes to which Clause 18 applies, the **Customer** hereby consents, in terms of Section 45 of the Magistrates' Court Act, No. 32 of 1944, as amended, to the jurisdiction of the Magistrate's Court having territorial jurisdiction over the **Customer**, notwithstanding that any action or proceeding arising herefrom would otherwise be beyond the jurisdiction of such Court; provided that the **Company** shall always have the right (at its election) to institute any action or proceedings in any other competent Court having jurisdiction and, in the event of the **Company** exercising such election so as to institute any such action or proceedings in any division of the High Court of South Africa, the **Customer** agrees that this shall have no adverse effect on the **Company's** right to claim costs on the High Court scale as between attorney and own client, as envisaged in clause 8.1.

6. VARIATION

- 6.1. These terms and conditions represent the entire agreement between the parties hereto in respect of the subject matter hereof and no alteration, variation, cancellation of and/or addition to these terms and conditions will be of any force or effect unless agreed to by the **Company In Writing**.
- 6.2. No indulgence, extension of time, relaxation and/or latitude of whatsoever nature which the **Company** may show, grant and/or allow to the **Customer** shall constitute a waiver by the **Company** of any of its rights or act as an

estoppel against the **Company** in respect of any of its rights and/or remedies.

- 6.3. If any of the provisions contained in these terms and conditions are invalid and/or unenforceable, or become so, such invalid and/or unenforceable provisions shall be severable from the remainder of the provisions in these terms and conditions, which remaining provisions shall nevertheless remain valid and binding. The **Customer** agrees that each of the provisions of these terms and conditions shall be capable of being enforced, notwithstanding that any one or more of other provisions herein contained may not be so capable of being enforced for any reason whatsoever.

7. FINANCIAL CENTRE INTELLIGENCE ACT

The **Customer** acknowledges that Section 29 (1) of the Financial Centre Intelligence Act, No 38 of 2001, requires that businesses report to the statutory Centre any suspicious or unusual transaction or series of transactions and in particular where the **Company** has received, or is about to receive, the proceeds of suspected unlawful activities in payment of the **Customer's** indebtedness to the **Company**.

8. COSTS AND DOMICILIUM

- 8.1. In the event of the **Company** having to instruct its attorneys to enforce any of its rights and/or to recover any amount owing by the **Customer** to the **Company** in terms hereof, the **Customer** agrees that it shall be liable for, and will effect immediate payment of, the **Company's** legal costs on the scale as between attorney and own client, including, where applicable, collection commission and tracing agent charges, incurred in respect thereof, regardless of whether or not any action or proceedings have been instituted by the **Company** against the **Customer**.
- 8.2. The **Customer** nominates its physical address as reflected on the **Company's** credit application forms as its *domicilium citandi et executandi* (address for service) for service upon it of all notices and process, whether in connection with any claim for any sum due to the **Company** or otherwise. The **Customer** shall be entitled to change its selected *domicilium citandi et executandi* (address for service) on written notice of such change to the **Company**.

9. CESSION AND ASSIGNMENT

The **Customer** shall not be entitled to cede and/or assign any of its rights and/or obligations under these terms and conditions without the prior written consent of the **Company**. The **Company** shall be entitled to cede and/or assign its rights and/or obligations, and/or any portion thereof, without having to obtain the **Customer's** consent thereto and/or without having to give the **Customer** notice thereof.

10. APPLICABLE LAW

These terms and conditions shall be governed by and interpreted in accordance with the laws of the Republic of South Africa in all respects.

11. ORDERS

- 11.1. All orders placed by the **Customer** with the **Company** for **Product** are subject in all respects to approval and acceptance thereof by the **Company In Writing**, in its sole and absolute discretion in this regard, and the **Company** shall not be bound to accept any order placed by the **Customer** nor be liable to the **Customer** for any claim of any nature whatsoever which may arise by virtue of its failure, neglect and/or refusal to accept any such order. Any such order placed by the **Customer** with the **Company** shall become binding on, and irrevocable by, the **Customer** upon the **Company** accepting such order, which acceptance need not be conveyed by the **Company** to the **Customer**, and with the **Customer** waiving any necessity for the **Company** to so notify it of such acceptance. Once such an order has become binding and irrevocable, as aforesaid, cancellation of such order by the **Customer** can only be effected with the consent **In Writing** of the **Company**.
- 11.2. The **Customer** accepts responsibility for the issue and safekeeping of its orders and agrees to pay for orders that purport to be issued on its behalf and are given effect to in good faith by the **Company**.

12. PRICE

- 12.1. Unless otherwise agreed **In Writing**, **Product** will be supplied at the **Contract Price** ruling on the date the **Company** despatches the **Product** concerned from the site, depot or plant concerned.
- 12.2. **Contract Prices** are subject to adjustment for any increase in the cost of production and/or **Delivery** of the **Product** concerned that may arise, directly or indirectly from any cause whatsoever, between the date of **Quotation** and the **Delivery** of the **Product** concerned.

13. DELIVERY OF PRODUCT

- 13.1. **Delivery of Product** will take place between the hours of 07h00 to 22h00 Monday to Friday, excluding public holidays, unless specified otherwise by the **Company In Writing**. **Delivery** outside normal working hours may be subject to an extra charge, in the **Company's** sole discretion in this regard.

- 13.2. Subject to the provisions of clause 13.3, the **Company** shall endeavour to effect **Delivery** of the **Product** on the agreed date and timeslot to the **Customer**, provided that:
- 13.2.1. the **Company** receives a minimum of 48 (FORTY EIGHT) hours notice of the intended **Delivery** date if the date agreed upon has changed or if no date has been previously agreed.
- 13.3. The **Company** shall not be responsible for late or non-**Delivery** of **Product** due to causes beyond the **Company's** control (including adverse weather conditions, road congestion, labour related actions, shortage of stock, Eskom outages, delays on the part of sub-contracted transport services and/or **Site Problems**), nor will the **Company** accept liability for damages or for any loss that the **Customer** may suffer pursuant thereto, of whatsoever nature arising from the late or non-**Delivery** of **Product**. Furthermore, the **Customer** shall not be entitled to cancel or repudiate any order/s and/or purchase/s and/or refuse **Delivery** and/or claim damages and/or set-off payment due to the **Company** due to late, defective and/or non-**Delivery**. The **Company's** responsibility shall be to notify the **Company** of the event/s giving rise to the delay in **Delivery** in circumstances where such delay of **Delivery** is expected to extend beyond one day after the time/date of the agreed **Delivery** schedule.
- 13.4. Should adverse weather conditions or **Site Problems** necessitate a change in the agreed **Delivery** date of the **Product**, the **Customer** shall advise the **Company** as soon as possible thereof. The **Customer** shall, in any event, be liable for the **Contract Price** of any **Product** already dispatched for **Delivery**, prior to notification of the delay.
- 13.5. The **Customer** accepts responsibility for whatever means or method it chooses to adopt for the handling, placing, storage and/or consolidation of the **Product** after **Delivery**. Furthermore, the **Customer** accepts responsibility for any lack of quality, fault and/or failure of the **Product** resulting from such handling, placing, storage and/or consolidation of the **Product**.
- 13.6. In the event of the **Customer** contracting with the **Company** to **Deliver Product** to the **Customer's** premises or to another site specified by the **Customer**:
- 13.6.1. the **Customer** shall ensure that routes to and from the points of such delivery site are safe and suitable, and that full and free access is available for the **Company's** or its contracted carrier's delivery vehicles;
- 13.6.2. the **Customer** shall ensure that the **Company's** or its contracted carrier's delivery vehicles are offloaded at the **Customer's** desired point on the delivery site. In the event of the **Product** being offloaded at an incorrect point, the **Company** shall not be liable for any loss arising therefrom, whether direct, indirect, consequential, special and/or general;
- 13.6.3. the **Customer** bears the sole and absolute risk for any loss and/or damage, whether direct, indirect and/or consequential, to the **Company's** or its contracted carrier's delivery vehicles and/or the **Company's** machinery and/or equipment brought onto such delivery site; and
- 13.6.4. the **Customer** hereby indemnifies the **Company**, its agents and employees and holds them harmless against any loss, damage and/or liability sustained and/or incurred by the **Company**, its agents and/or employees arising from any cause whatsoever while the **Company's** vehicles are on such delivery site.
- 13.7. The **Customer**, its employees or its agents shall sign and/or affix the **Customer's** official company stamp (in the discretion of the **Customer**) on the **Company's** delivery note and either or both these shall constitute prima facie proof (sufficient evidence) that the type and quantity of **Product** recorded thereon was **Delivered** and was accepted by the **Customer**. Subject to the provisions of clause 14, in the event of a dispute regarding the **Delivery**, quantity and/or quality of the **Product**, the onus of proving that the **Product** was not **Delivered** and/or that the quantity and/or quality thereof was not in accordance with the **Customer's** order, shall vest with the **Customer**. It shall be the **Customer's** sole responsibility to ensure that its employees or agents sign and/or stamp, as aforesaid, the **Company's** delivery note when receiving **Delivery** of the **Product** and in the event of this not been attended to by its employees or agents, either at all or in part, this alone shall not entitle the **Customer** to deny liability for the applicable **Contract Price**.
- 13.8. If the **Company** has reasonable reason to be concerned about the credit worthiness of the **Customer** and/or its ability to pay the **Contract Price**, the **Company** shall have the right to suspend and/or withhold **Delivery** of **Product**.
- 13.9. The **Company** shall be entitled, in its sole discretion, to split the **Delivery** of **Product** ordered in quantities and on dates it determines. The **Company** shall be entitled separately to invoice the **Customer** for each such **Delivery** actually made.

14. SHORT DELIVERY / INCORRECT DELIVERY OF PRODUCT

- 14.1. It is the duty of the **Customer** to inspect **Product on Delivery** thereof and the **Company** shall not be liable for any claim for short and/or incorrect **Delivery** of **Product** unless the **Customer** notifies the **Company In Writing** of its claim within 24 (TWENTY FOUR) hours of **Delivery**, and the **Company** is given every reasonable opportunity and assistance to satisfy itself that such short and/or incorrect **Delivery** has, in fact, taken place.
- 14.2. The **Company's** liability for short and/or incorrect **Delivery** shall be limited, at the **Company's** option, either to

replacement of the **Product** short and/or incorrectly **Delivered** or to an appropriate reduction or credit of the **Contract Price** concerned (in line with that aspect of the **Product** short and/or incorrectly **Delivered**).

15. DIVERSIONS

- 15.1. If the **Company** attempts to **Deliver** the **Product** to a **Customer** at an outside delivery site specified by the **Customer** and for any reason whatsoever (including **Site Problems**) **Delivery** of the **Product** cannot be given effect to, then the **Customer** shall be liable for payment of the **Contract Price** in respect of the **Product** concerned, notwithstanding the failure of **Delivery**, and shall further be liable for all transport costs incurred by the **Company** in attempting to **Deliver** and/or divert the **Product**; provided that in the event of the **Company** being able immediately to divert and sell the **Product** concerned to a third party, the **Customer** shall be liable only for all of the transport costs incurred and not for the **Contract Price**.
- 15.2. In the event of the **Customer** accepting **Product** which was diverted from another customer's site (in circumstances that are the same and/or similar to that described clause 15.1), then the **Customer** shall be liable for payment of the **Contract Price** of the **Product** concerned, as well as the transport costs incurred relating to delivering the **Product** to the **Customer**.

16. OWNERSHIP AND RISK

- 16.1. Notwithstanding **Delivery** of any **Product**, ownership of the **Product** shall not pass to the **Customer** and shall remain vested in the **Company** until the **Company** has received payment in full of the **Contract Price** for such **Product**. In the event of payment not being timeously effected, the **Company** reserves the right to recover possession of **Product** concerned immediately, without notice and without the necessity to first cancel the contract of sale in respect of such **Product**.
- 16.2. Risk in and to the **Product** shall pass to the **Customer** on **Delivery** of the **Product** concerned; provided that in the case of **Delivery** of **Product** to any unattended rail siding, risk in and to the **Product** shall pass to the **Customer** on departure from the **Company's** private rail siding, and TransFreight Rail's records will constitute proof of such departure.
- 16.3. Where the **Customer** has appointed it's own transport contractor to effect delivery of the **Product**, the **Company's** responsibility for providing proof of delivery of **Product** will be limited to proving that the **Product** was accepted by a person purporting to be the transport contractor. In this case, risk in and to the **Product** shall pass to the **Customer** on delivery of the **Product** to the transport contractor.
- 16.4. Until the **Contract Price** of **Product** sold and **Delivered** has been paid in full by the **Customer** to the **Company**, the **Customer** shall ensure that the **Product** is comprehensively insured against all appropriate risks.

17. WARRANTY

- 17.1. The **Company** warrants that the **Product** delivered complies with the details shown on the delivery note concerned and complies with the **Company's** standard specification for such **Product**.
- 17.2. The onus shall be on the **Customer** to ensure by examination before use that the **Product Delivered** is within specification.
- 17.3. Liability for breach of the warranty set out in clause 17.1 shall only arise where the **Customer** has established, in addition to any other proof required by law, that:
 - 17.3.1. the **Customer** has inspected the **Product** before use;
 - 17.3.2. the **Product** has not been worked or processed since **Delivery**;
 - 17.3.3. inspection, sampling methods and interpretation of test results were done in strict compliance with the specifications therefor, these being no less stringent than those prescribed by the South African Bureau of Standards (or its successor-in-title);
 - 17.3.4. the **Customer** notified the **Company** within 48 (FORTY EIGHT) hours of its tests having revealed an alleged non-conformity with specification, provided that written notification thereof shall be given by the **Customer** within a maximum of 10 (TEN) days from date of **Delivery**;
 - 17.3.5. the **Company** was afforded every reasonable opportunity to inspect the **Product** and/or any sample taken therefrom, and to submit the **Product** and/or sample to its own examination and testing;
 - 17.3.6. all records of handling, sampling and testing and the interpretation of any tests were made available to the **Company** for inspection; and
 - 17.3.7. the **Product** was not misused, neglected, contaminated, improperly handled and/or altered in any way and/or that no foreign material was added to the **Product** since **Delivery**.
- 17.4. Save as set out in 17.6 below, the **Company** shall not under any circumstances be liable for any loss and/or

damages, whether special or general, direct, indirect and/or consequential, arising out of the sale of **Product** by the **Company** to the **Customer**, or from any other cause whatsoever. The **Customer** hereby indemnifies the **Company** against all claims of whatsoever nature that may be made against the **Company** arising from the use by any person of the **Product** supplied by the **Company**.

- 17.5. Save for the warranty specified in clause 17.1, the **Company** offers no other warranty, whether express or implied, in respect of **Product**, including the colour, consistency and/or suitability thereof for a particular purpose, even if such purpose is communicated to the **Company**.
- 17.6. The **Company's** sole liability in respect of defective **Product** shall, in the **Company's** sole discretion, be to replace such **Product** or to refund to the **Customer** the **Contract Price** of such defective **Product**.

18. RESOLUTION OF TECHNICAL DISPUTES

- 18.1. In the event of a dispute arising between the **Company** and the **Customer**, in respect of the quality, quantity and/or performance of **Product** supplied by the **Company**, such dispute shall initially be referred to the **Company's** Segment Manager and the **Customer's** duly authorised representative specified on the first page hereof (or his/her successor-in-title), who shall, within 7 (SEVEN) days after such referral, meet and use commercially reasonable endeavours to resolve such dispute.
- 18.2. If the individuals envisaged in clause 18.1 fail, neglect and/or refuse to resolve the dispute within such 7 (SEVEN) day time period, then the matter shall be referred to the **Company's** and the **Customer's** Senior Managers, who shall likewise meet within 7 (SEVEN) days after such referral and use commercially reasonable endeavours to resolve the dispute.
- 18.3. If the dispute is still not resolved, then the matter shall be referred, at the **Company's** election, either to:
 - 18.3.1. an independent expert appointed by the Cement and Concrete Institute (or its successor-in-title); or
 - 18.3.2. arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa (or its successor-in-title); or
 - 18.3.3. proceed directly to the jurisdiction of the Courts in terms of Clause 5.
- 18.4. Neither the **Company** nor the **Customer** may resort to the jurisdiction of the Courts in terms of Clause 5 without first following the procedure in clauses 18.1 and 18.2.

19. NON-LIABILITY

The **Company** shall not, under any circumstances, be liable for any loss and/or damages, whether special and/or general, direct, indirect and/or consequential, arising out of the supply of **Products** and/or rendering of any services by the **Company** to the **Customer**. The **Customer** hereby indemnifies the **Company** against all claims of whatsoever nature that may be made against the **Company** arising from the supply of **Products** and/or the rendering by the **Company** of any services to the **Customer**.

20. PRODUCT ADVICE

- 20.1. Should a **Customer** request any service, assistance and/or advice from the **Company**, including any service, assistance and/or advice on the application and use of any **Product**, any such service, assistance and/or advice given to the **Customer** by the **Company** is given in good faith. However, under no circumstances will the **Company** be liable to the **Customer** for damages of whatsoever nature sustained by the **Customer** and/or any third party arising from any advice that may transpire to have been incorrect.
- 20.2. The **Company** shall be entitled to charge a fee for the rendering of any such service, assistance and/or advice and the **Customer** will be liable to pay such fee, with these terms and conditions to apply thereto mutatis mutandis (adapted where necessary).

SECTION B: SPECIAL CONDITIONS APPLICABLE TO THE SALE OF FLY ASH

NB: The terms and conditions set out hereunder are in addition to the "Standard Terms and Conditions Applicable to all Transactions (Products and Fly Ash)" set out in Section A, but are only applicable in respect of Fly Ash.

21. FLY ASH PRICE

In addition to and without derogating from the provisions of clause 12, the Contract Price for Fly Ash is based on the Fly Ash as specified, measured by mass (metric tonnes), in bulk or by bags, as the case may be.

22. FLY ASH DELIVERIES

- 22.1. Where **Fly Ash** is purchased in bulk:
 - 22.1.1. the mass of the **Fly Ash** will be as determined by the assized massmeter at the plant or depot supplying the

Fly Ash. Queries or disputes in connection with gross mass variances are to be made prior to the breaking of factory seals on bulk tankers; and

22.1.2. where applicable, the **Customer** shall ensure that adequate silo storage capacity is available, so as not unnecessarily to delay the off-loading of the delivery vehicle by more than 1 (ONE) hour, failing which the **Customer** will be liable to pay the **Company** its charge at the demurrage rate ruling at the date of such delay (in addition to and without derogating from the provisions of clauses 13 and 15); and

22.1.3. where applicable, the onus is on the **Customer** to correctly instruct the driver of the delivery vehicle to the correct silo discharge point. The **Company** shall not be responsible for **Product** being discharged into the incorrect silo.

22.2. Claims for shortages, damage, breakages and/or water damage to cementitious bag **Products** must comply with the **Company's** detailed procedures, a copy of which is available on request.

23. FLY ASH WARRANTIES

23.1. In addition to, and without derogating from, the warranty in clause 17, the **Company** warrants that, at the time of sale of any **Fly Ash**, the **Fly Ash** will comply with the applicable specifications of the South African Bureau of Standards (SANS 1491 Part II) for such **Fly Ash**. The **Company** gives no other warranties, express or implied, and makes no other representations in respect of the **Fly Ash**, save for those contained in and subject to clause 17 and this clause 23.1.

23.2. Without derogating from the generality of the foregoing and in addition thereto:

23.2.1. the **Company** gives no warranty as to the colour consistency of any **Fly Ash**; and

23.2.2. the onus shall be on the **Customer** to establish that the **Fly Ash** ordered is suitable for the purpose for which it is required by the **Customer**. The **Company** gives no warranty that the **Fly Ash** will be suitable for that purpose, even if such purpose has been communicated to the **Company**.

23.3. The provisions of clauses 17.3 to 17.6 shall apply to this warranty in respect of **Fly Ash**, mutatis mutandis (adapted where necessary).

SURETYSHIP

I/We, the undersigned:

.....
(Hereinafter referred to as "the First Surety")

Identification No:
(Copy of Identification enclosed)

and

.....
(Hereinafter referred to as "the Second Surety")

Identification No:
(Copy of Identification enclosed)

.....
(Hereinafter referred to as "the Third Surety")

Identification No:
(Copy of Identification enclosed)

by my/our signature(s) hereunder, hereby interpose and bind myself/ourselves jointly and severally unto and in favour of Ash Resources (Pty) Ltd (hereinafter referred to as "the **Company**"), as surety in *solidum* and co-principal debtor/s with:

.....
(hereinafter referred to as "the Customer") for the due and punctual payment by the Customer to the Company of any amount which is now or which may hereafter become owing by the Customer to the Company from any cause of indebtedness howsoever arising. I/We accept the terms and conditions, as stated herein, to be binding upon me/us and in the event of one paying the other/s are to be released.

I/We renounce all the benefits of the legal exceptions of cession of action, no cause of debt, excussion and division, no value received and revision of accounts, with the full force and meaning and effect which I/we declare to be fully acquainted with.

SIGNED at on this day of 20.....

.....
First Surety (As Surety and Co-Principal Debtor)

.....
Second Surety (As Surety and Co-Principal Debtor)

.....
Third Surety (As Surety and Co-Principal Debtor)

FOR OFFICE USE ONLY

Registered name of Business:

Date Assessment Form Received:

Credit Limit Requested Credit Limit Recommended

Terms Requested Terms Recommended

Security available Acc No. Syspro:

Linked to Fusion?

Type of Security:

What methods have been used to assess the credit risk of this Customer

<input type="checkbox"/>	Report from Industry Credit Bureau including Trade References
<input type="checkbox"/>	Report from another Credit Bureau including Trade References
<input type="checkbox"/>	References from another Company within Lafarge Group
<input type="checkbox"/>	Other publicly available information
<input type="checkbox"/>	Financial Statement Ratio Analysis

Credit Controllers Comments:

Financial Accountants Comments:

NOTES: The approval below should be in accordance with the Authority Matrix (which may change from time to time) and will depend on the value of the Credit Limit being granted. The Signature of the Credit Controller does not form part of the approval but is merely a recommendation by the Controller.

Recommendation/ Authorisation by:	Terms	Credit Limit	Sign	Date
Credit Controller				
Financial Accountant/Corporate Accountant/Cost and Management Accountant				
Financial Manager				
Managing Director				