

APPENDIX 1

General terms and conditions

General terms and conditions of sale

■ 1 General

Unless agreed otherwise in writing with Aalborg Portland, any sale shall be subject to these general terms and conditions of sale. Any terms and conditions prepared by the Buyer shall only be effective if they have been accepted in writing by Aalborg Portland. Likewise, if the Buyer sets out specific terms and conditions in any tender documents, orders etc., these present terms and conditions of sale shall not be deemed to be derogated from, unless Aalborg Portland has accepted such derogation in writing. In case of any sale of products or services which have to be specially produced, Aalborg Portland's obligations vis-à-vis the Buyer shall be limited to the rights gained and the liability incurred by Aalborg Portland in relation to the company supplying the product in question to Aalborg Portland.

Unless otherwise provided in this appendix, all terms and expressions used herein shall bear the same meaning as defined in the Agreement.

■ 2 Quality

Aalborg Portland is DS/EN ISO 9001 quality certified. This means that the control system, which has been implemented in order to ensure a certain level of product quality of Aalborg Portland's cement, has been approved by an independent body and that the system meets the requirements of the standard.

Aalborg Portland is product-certified according to DS/EN 197-1. The product certification ensures that the cement products meet the requirements of the harmonised standard with an evaluation of conformity according to DS/EN 197-2, and the product certification entitles the products to a CE marking.

Aalborg Portland shall ensure that each delivery of Cement to the Buyer is manufactured, stored, tested and packed in accordance with the chemical and physical requirements as set out in the Agreement. The Buyer may reject any delivery of Cement which is not in accordance with the Specifications.

Aalborg Portland shall ensure, unless otherwise agreed between Aalborg Portland and the Buyer, that the Cement does not deviate the Specifications. Aalborg Portland shall give the Buyer a 6 (six) weeks' prior written notice of any proposed change in the quality of the Cement (the "Notice"). In the event that Aalborg Portland changes the quality of the Cement in accordance this clause, the Buyer may terminate the Agreement by giving one month's prior written notice to Aalborg Portland within 2 weeks after receipt of Notice as stipulated in this clause.

■ 3 Retention of title

As long as the Buyer has not fully satisfied his payment obligations to Aalborg Portland under this Agreement or any other agreement, which Aalborg Portland has concluded with him, Aalborg Portland retains the ownership of the cement.

■ 4 Blasting of Cement into a silo

Aalborg Portland's responsibility for the cement being blast into the correct silo shall be conditional upon the pneumatic pipe bearing clear and actual indication the type of cement to be blast into the silo in question. If a silo may not be used, this must be indicated on the pneumatic pipe which must be locked. Aalborg Portland shall be liable for any damage caused by defects in the tank truck, the pneumatic hose or the coupling of the hose.

In addition to the said situations, the Buyer shall be liable for any damage caused by defects in silo facilities, pneumatic pipes, filters, missing filling indicator in the silo facilities (however, with the exception of mobile silo facilities) and access roads and for overloading when this is due to the Buyer's silo not having the necessary capacity to hold the amount of cement ordered. In case of any defects in the Buyer's silo facilities, the Buyer shall be held liable for defects, damage or other consequential circumstances (including cleaning of the silo facilities).

■ 5 Indemnification and Defence of Claims

Aalborg Portland and the Buyer (each, an "**Indemnifying Party**") shall indemnify and hold harmless the other Party and its subsidiaries and affiliates against any third party claims and any damages, losses, liabilities, judgments, settlements, awards and costs (including but not limited to reasonable legal fees and

expenses) resulting from third party claims arising out of or related to the Indemnifying Party's (i) breach of any representation, warranty or obligation or (ii) its grossly negligent or intentional act or omission ("**Claims**").

Any defense of Claims related to Cement delivered by Aalborg Portland shall be organized and led by Buyer, but in close consultation with Aalborg Portland. Aalborg Portland will provide all available information and reasonable support to investigate and defend such Claims.

■ 6 Limitation of liability

EXCEPT AS SET FORTH HEREIN, UNDER NO CIRCUMSTANCES SHALL AALBORG PORTLAND BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY OR CONSEQUENTIAL DAMAGES. AALBORG PORTLAND DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED WITH RESPECT TO THE CEMENT, INCLUDING THE WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. HAVING NO CONTROL OVER THE USE OF THE CEMENT BY THE BUYER OR BUYER'S CUSTOMERS, AALBORG PORTLAND WILL NOT GUARANTEE FINISHED WORK, NOR SHALL AALBORG PORTLAND BE RESPONSIBLE FOR THE CONDITION OF THE CEMENT AFTER DELIVERY TO BUYER.

Neither Aalborg Portland, nor the Buyer shall be liable for any indirect losses, loss of profit, consequential losses or damages, irrespective of whether such consequential losses entail loss of business opportunities, goodwill depletion and/or loss of goodwill.

Aalborg Portland's total liability pursuant to the Agreement shall be limited to the price of the minimum quantity of Cement supplied or to be supplied by Aalborg Portland to the Buyer for the Year in which the liability for damages occurs.

In the event of any delay in delivery, the Aalborg Portland's liability for damages or losses caused or incurred by the Buyer as a direct result of the delay shall not exceed the price of the Cement so delayed.

■ 7 Force majeure

A "Force Majeure Event" shall mean an event beyond the reasonable control of either Party, including without limitation, strike, lock-out (strike and lock-out also if affecting only the business of that Party), labour dispute, acts of God, war, riot, civil commotion, malicious damage, accident, breakdown of a plant or machinery, fire, flood and storm, difficulty or material increased costs in obtaining workers, goods or transport.

If a Party (the "Affected Party") is prevented, hindered or delayed from or in performing any of its obligations under this Agreement (other than a payment obligation) by a Force Majeure Event, the Affected Party's obligations under this Agreement shall be suspended while the Force Majeure Event continues to exist and to the extent that performance is prevented, hindered or delayed.

As soon as reasonably possible after the start of the Force Majeure Event, the Affected Party shall notify the other Party of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement.

If the Affected Party does not comply with the obligations above, it will forfeit its rights to have its obligations suspended while the Force Majeure Event continues.

The Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement; and as soon as reasonably possible after the end of the Force Majeure Event, the Affected Party shall notify the other Party of the discontinuation of the Force Majeure Event and resume performance of its obligations under the Agreement.

If the Force Majeure Event continues for more than 3 (three) months counting from the day when the Force Majeure Event begins, either Party may terminate this Agreement by giving not less than 5 (five) days' prior written notice to the other Party.

In addition, in the event that Aalborg Portland does not have sufficient quantities of cement manufactured in Denmark at its disposal in order to fulfil its delivery obligations, such an event shall be deemed to exempt Aalborg Portland from liability in relation to its delivery obligations, regardless of whether such a sit-

uation is due to an error or breakdown of operations, stock, distribution, planning, administration or elsewhere, and regardless of whether Aalborg Portland is responsible for the event in any way. In such case, Aalborg Portland shall be entitled to assess freely which delivery obligations Aalborg Portland cannot fulfil or which will be reduced proportionately.

■ 8 Technical advice

With respect to Aalborg Portland's liability in connection with technical advice and testing regarding the use and the features of Aalborg Portland's cement products, including any particulars and reports, Aalborg Portland shall be liable towards the Buyer in compliance with the rules of the governing law of the Agreement on damages, however, with the following limitations as set out below:

1. Technical advice, testing and preparation of any particulars and any accompanying report, if any, shall be based on the knowledge and technology at the disposal of Aalborg Portland at the time when the advice is given. Aalborg Portland shall not be liable if any subsequent developments prove such knowledge and technology in question to be faulty or incorrect.
2. If any one of the Buyer's cement-stabilised products causes damage, Aalborg Portland shall not be liable for such damage if;
 - The tortious conduct on the part of the Buyer occurred before the technical advice regarding the product was given by Aalborg Portland.
 - The specific tortious cement-stabilised product in question has not been tested correctly by Aalborg Portland, unless the Buyer can prove that the tortious product is identical with a product which has been tested correctly by Aalborg Portland.
 - The damage is due to properties of the cement-stabilised product or the use of the product which has not been tested and described by Aalborg Portland in the particulars with an accompanying report, if any, or which is different from Aalborg Portland's description in the particulars regarding the product properties or a possible use of the product.
3. Aalborg Portland shall not be liable for any damage occurred in connection with the use of the particulars as made by Aalborg Portland if it is indicated that the particulars are based on a discretionary assessment or an evaluation.
4. However, Aalborg Portland's liability shall never exceed EUR 70.000 unless otherwise expressly agreed in writing. Aalborg Portland shall never be liable for any indirect loss and consequential damage such as business interruption, loss of profits or loss of goodwill. Aalborg Portland shall not be liable for damage which has not been claimed in writing within 3 years of the time when the advice was given.

■ 9 Assignment

The Buyer may not assign or transfer or purport to assign or transfer a right or obligation under the Agreement without having first obtained Aalborg Portland's prior written consent.
