

AFRISTONE DECORATIVE CONCRETE ^{CC} TERMS AND CONDITIONS

1. INTERPRETATION

- 1.1 "The CC" shall mean Afristone Decorative Concrete CC;
- 1.2 "The client" shall mean the company, close corporation, partnership, trust, proprietor or individual utilizing the services of the CC.

2. THE PARTIES

The CC provides cementitious flooring and screeds, decorative and other, will only provide services subject to these terms and conditions. The client acknowledges having read and understood these terms and conditions.

3. TERMS OF PAYMENT

- 3.1 The CC does not offer credit facilities and all services are to be paid for in cash.
- 3.2 The minimum size project undertaken by Afristone would be for 35m² at a cost of R13500.00 plus Vat for a maximum period of three day's work. Thereafter a cost of R4500.00 per day will be levied. The client shall be obliged to pay 100% (one hundred percent) of the quoted price prior to the commencement of the project work.
- 3.3 On large projects where the cost of materials on site is high, the client shall be obliged to pay 70% (seventy percent) of the quoted price before commencing with the work, of which the amount for materials on site will be included. In addition, freight charges unless otherwise indicated by the CC, will also be payable by the Client.
- 3.4 On completion of the substrate preparation, floor overlay and colour wash, if any, the client shall be obliged to pay a further 20% (twenty percent) of the quoted price.
- 3.5 The final payment of 10% (ten percent) will be due on completion of the application of final wash, floor sealer, and handover to client. Draws will be advised accordingly.
- 3.6 The CC shall, without prejudice to any other right, be entitled to immediately suspend their services should the Client be in breach of its obligations, until such time as the breach has been remedied. If the breach is non-payment then the suspension of services will be until such time as payment is made in accordance with the agreed terms.
- 3.7 After the CC has completed the work, the client has five working days within which to list any snags or problems in writing. If the client has failed to provide any written notice of defects or snags the he shall be deemed to have accepted the workmanship and will have no claim whatsoever against the CC for damages for alleged defective workmanship.
- 3.8 Any amounts not paid on due date shall incur interest at a rate of prime plus 5% and shall be calculated daily and added monthly, at the end of the month calculated from due date to date of payment.
- 3.9 Should the CC deem it necessary to take legal action against the client, and subject to the interest at prime plus 5%, all legal costs will be for the client's account on the scale as between attorney and own client and the client indemnifies the CC in respect of all costs including collection commission.

4. OBLIGATIONS OF THE CLIENT

The client shall be obliged to clear the site at its own cost prior to the CC commencing to render their services. Should the client insist that the CC clear the site then it shall do so at an additional cost which must be paid together with the 70% deposit referred to in clause 3.3 above. Should any movables be damaged by the CC, the Client acknowledges that it will have no claim against the CC even in the event of the CC's employees or agents being negligent.

- 4.1 Before the commencement of the work, the client shall be obliged to finalize the order by signing the appropriate quotation form which will indicate his acceptance thereof or it will be deemed that the client has read and agrees with the CC's Terms and Conditions herein on receipt of payment of the 70% deposit. Any variations thereafter will be charged for over and above the quoted price.
- 4.2 The client will therefore not be entitled to delay payment or fail to make payment on conclusion of the project
- 4.3 The client acknowledges that machine straight lines are not always possible and as a result acknowledges that it shall not be entitled to withhold payment as a result of the lines not being perfectly straight.
- 4.4 The client acknowledges that due to the nature of the CC's products and application by hand that it is not possible to obtain a perfectly flat surface or a glass-like finish as the applied product will follow the contour of the substrate on which it is applied
- 4.5 **For the duration of the project the client shall be obliged to ensure that the CC has unhindered access to:-**
 - 4.5.1 ***The site***
 - 4.5.2 ***Water and electricity supply***
 - 4.5.3 ***Clean proper toilet facilities***
 - 4.5.4 ***That the site is free of other trades persons/foot traffic to enable the application of the CC's product/s6***

4.6 The CC will inform the client of the curing time of the product. If damage is caused to the floor as a result of other contractors, the client or the client's agent during the curing period, then the client shall be liable to pay the CC to repair the damage. The client shall not be entitled to delay payment while the repairs are being performed and the CC shall not be obliged to effect the repairs until such time as payment for the repairs has been made.

5. **GENERAL**

- 5.1 Every attempt shall be made by the CC to deliver the services timeously. However the client shall not be entitled to cancel the agreement, deduct any amount from the contract price or hold the CC liable for damages as a result of late delivery of the services.
- 5.2 Afristone SmoothCoat and TextureCoat are not used for the levelling of the surface onto which it is applied, it will however conform to the profile of the substrate.
- 5.3 It is important to note that SmoothCoat and TextureCoat are made from natural products so variations in colour and texture may occur during the application process and may not exactly replicate colour samples provided.
- 5.4 The parties acknowledge that the CC has no control as to what happens in the substrate. The CC's product is bonded to the substrate, thus if the substrate cracks for any reason whatsoever, then it will crack through the CC's applied products. The client shall not be entitled to cancel the agreement, deduct any amount from the contract price or hold the CC liable for damages as a result of cracks in the substrate.
- 5.5 Any claim by a client against the CC for damages for any reason whatsoever shall be limited to the cost to the *pro rata* invoiced cost of the allegedly defective workmanship as a percentage of the whole project. That notwithstanding, in the event of the client claiming damages from the CC from whatsoever nature arising, the CC's aggregate liability shall not exceed an amount equal to the invoiced cost of the specific order and shall specifically exclude consequential loss or damages.
- 5.6 The client waives any possible claim which it may have against the CC over and above the invoiced cost of the specific order and any claims for consequential loss or damages and the client hereby indemnifies the CC against any such costs, damages, claims or expenses.
- 5.7 Any action or motion which may in any way arise out of these conditions or in respect of any services, shall be brought at the CC's sole election and discretion either in such division of the High Court of South Africa as is chosen by the CC or in such magistrates Court as is chosen by the CC, in which latter case the client consents to such jurisdiction in terms of section 46 read with section 48 of Act 32 of 1944 as amended.
- 5.8 Notwithstanding anything to the contrary contained herein, at the CC's sole election, any dispute may be referred to arbitration to be held at Johannesburg in a summary manner, that is, on the basis that it shall not be necessary to observe or carry out the usual formalities or procedures (e.g. there shall not be any pleadings or discovery) or the strict rules of evidence, immediately with a view of it being decided in accordance with the Arbitration Act no. 42 of 1958 as amended, provided that the arbitrator shall be a counsel of not less than 10 years standing chosen by the CC. The arbitrator's decision shall be final and binding on the parties and not capable, in the absence of manifest error, to be referred to a review or appeal and shall be carried into effect and shall be capable of being made an order of any Court of competent jurisdiction.
- 5.9 The CC reserves the right to revise the terms and conditions at any time without notice. Such changes will be posted on the CC's website (www.afristone.co.za) and shall be deemed to have been accepted by the client if the client continues utilizing the services of the CC. The obligation therefore is on the client to review the terms and conditions at regular intervals.
- 5.10 These terms and conditions as varied by the CC from time to time pursuant to clause 5.6 above, constitutes the whole agreement between the parties. Save as specifically provided for in clause 5.6 above, no variation or amendment of the terms and conditions contained herein shall be of any force or effect unless agreed to by the CC in writing and signed by the CC's duly authorized representative.
- 5.11 If any particular term or condition of these terms and conditions is found to be defective or unenforceable then the remaining terms and conditions or part thereof shall continue to be of full force and effect.
- 5.12 The client chooses the street address as stipulated on the signed Quotation as its *domicilium citandi et executandi* for purposes of service of all notices and processes and any other address in the Republic of South Africa as advised to the CC in writing from time to time.
- 5.13 The payment of the invoiced deposit amount and/or formal signatures renders this agreement valid.**