



General Terms & Conditions

ATCO Concrete Products N.V.

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1. General conditions

1.1. Applicability

- a) These general terms and conditions shall apply to all transactions and agreements of ATCO Concrete Products N.V. hereinafter to be named "ATCO", to the exclusion of the general terms of the (customers/customer) other party, unless ATCO has explicitly declared in writing to deviate from its terms.
- b) The provisions herein will prevail in case of conflicting provisions with the general terms of the customer/other party, unless explicitly stated otherwise and confirmed in writing by ATCO.
- c) The terms and provisions of contained in the following Sections 2 through 4 shall take precedence over conflicting terms and provisions contained in the general conditions contained in this Section 1.
- d) These general terms and conditions may be amended from time to time.

1.2. Alterations not permitted

The agreement with the customer and the general terms and conditions shall form the whole of the terms of the agreement between ATCO and the customer and no variation thereof shall be of any effect whether prior to or subsequent to the date of the agreement, unless expressed in writing and signed by an authorized officer of ATCO and the customer.

1.3. Representation

- a) ATCO's employees or agents are not authorized to make any representation concerning the services to be performed by ATCO unless confirmed in writing by an authorized officer. In entering into an agreement, the customer acknowledges that it does not rely on and waives any claims for breach of any such representations, which are not confirmed.
- b) Any advice or recommendation given by ATCO's employees to the customer or its employees or agents as to the services to be performed by ATCO or any associated matters, which is not confirmed in writing by an authorized officer of ATCO, is followed or acted upon entirely at the customer's own risk and accordingly ATCO shall not be liable for any such advice or recommendation which is not confirmed.

1.4. Termination

- a) Should any payment due by the customer be outstanding for a period exceeding 30 days from the date of the invoice, ATCO's obligation under the agreement with the customer shall cease immediately and ATCO will have the right to terminate the agreement with the customer immediately.
- b) Without prejudice to any other remedy ATCO may have against the customer for breach of non-observance of the agreement between parties, ATCO shall have the right to terminate this agreement immediately and without notice in the event the customer materially defaults in the performance of any of his/her duties or obligations and/or in the event of the customer being declared bankrupt or being granted a suspension of payment or in the event of liquidation.
- c) The termination of this agreement shall be without prejudice to any rights, claims, causes of action, or remedies which ATCO may have against the customer, and shall not relieve the customer from any obligations which by their nature or description continue following the expiration or termination of this agreement or any other agreement between the parties.

1.5. Liability

- a) In the event that a customer suffers damage or loss, due to willful misconduct or gross negligence of ATCO or a person for whom ATCO can be legally held responsible, the customer shall not be entitled to claim compensation exceeding the amount of the invoice value of the transaction.
- b) The right to claim compensation for damages shall terminate after the lapse of one year after the occurrence of the damage or loss.
- c) The Customer shall indemnify ATCO and hold ATCO harmless from and against any and all claims or third parties for compensation of damages, made after the lapse of one year after the occurrence of the damage or loss.

1.6. Force Majeure

- a) ATCO shall not be liable to the customer or be deemed to be in breach of the agreement by reason of any delay in performing or failing to perform, any of ATCO's obligations in relation to agreement with the customer, if the delay or failure to perform is due to any cause beyond ATCO's control including but not limited to the following occurrences:
 - i. Act of God, explosion, flood, tempest, fire or accident,
 - ii. War or threat of war, sabotage, insurrection, civil disturbance or requisition,
 - iii. Acts, restrictions, regulations, laws, prohibitions or measures of any kind on the part of any government or parliament,
 - iv. Strikes, lockouts or other industrial actions or trade disputes whether involving ATCO's employees or not,
 - v. Difficulties in obtaining labor, fuel, parts or machinery or failure or breakdown in machinery.
- b) In case of force majeure, ATCO shall inform the customer thereof as soon as possible, and ATCO shall have the right to suspend the agreement or to terminate it in writing, without judicial intervention being necessary, and without the customer being entitled to any compensation for damages as a result.
- c) In case ATCO suspends the agreement because of temporary force majeure, the customer shall not have the right to claim dissolution of the agreement.

1.7. Payment

- a) Payment of all invoices shall be effected no later than 30 days after invoice date. The method of payment shall be indicated by ATCO. In case of failure to pay on the due date of the invoice, the customer shall be in default immediately. In this case ATCO shall have the right to claim 1,5% interest charges per month on overdue accounts, whereby part of a month shall be considered as a full month. All collection charges in and out of court shall be for client's account and shall be 15% of the principal amount owed, with a minimum of AFL. 100.00.
- b) All payments in cash, maestro and credit cards shall be effected at ATCO 's offices.
- c) If and when a credit has been granted to the customer, which granting is at the sole and complete discretion of ATCO, payment shall be effected at ATCO 's offices or a transfer can be made within terms of credit agreement.
- d) Refunds will only be paid on designated days upon a minimum of 2 days notice. Customer will be informed by Sales representative when the next payment date is for refunds.

1.8. Claims

- a) All claims in connection with agreements shall have to be made in writing and no later than 30 days after conclusion of the performance, with specific mention of the nature and the basis of the claimed shortcomings. After expiration of this term the performance of the agreement shall be considered approved by the customer, and the customer shall have no right to any claim.
- b) All claims in connection with invoices shall have to be made in writing not later than 30 days of the invoice date. After expiration of this term the invoice shall be considered approved by the customer, and the customer shall have no right to any claim.
- c) Any claim by the customer with respect to the services rendered shall be deemed waived unless made in writing within seventy-two (72) hours from the time of service. ATCO shall be given full opportunity to investigate any claim, but in no event shall ATCO's liability, including the liability for consequential damages, exceed the purchase price of the service against which the claim is made.

1.9. Access

The customer shall provide satisfactory access to ATCO. For services beyond the curb line, the customer assumes all liability for the damage to sidewalks, curbs, gutters, drive ways, septic tanks, utility lines, turf or other property and agrees to indemnify ATCO for all liability, loss and expenses incurred as a result of such delivery, including damage to ATCO's equipment and loss of time.

1.10. Miscellaneous

- a) Any offer given by ATCO is only valid for a 30 day period unless otherwise specified in offer letter.
- b) In no way does ATCO become a subcontractor under an agreement with a customer, ATCO is solely a seller of materials and provider of services.
- c) ATCO shall not be required to modify its personnel policies or terms of any Union Contract to which it is or may become party.
- d) When driving over public roads ATCO assume no liability whatsoever for cables hanging lower than the measurements stipulated by the law.
- e) Prices are subject to increase by any taxes adjusted by the Government.

1.11. Applicable law and jurisdiction

Aruban law governs the legal relationship between parties. All dispute out of or in connection with the agreement concluded with ATCO shall be tried/settled by the Court in First instance of Aruba.

2. Terms & Conditions for Equipment related to the Supply of Concrete Products

2.1. Delivery services of Ready mix concrete and other concrete products.

- a) The customer agrees to give ATCO reasonable notice of the time and rate at which deliveries will be required. ATCO agrees to make deliveries at the best rate within its ability, but shall not be liable for any loss, damage or delay, occasioned by strikes, labor difficulties, fires, accidents, breakdown, utilities failure, storm, war, delays of carrier, or by any other cause beyond ATCO's control.
- b) A maximum of ten (10) minutes per cubic meter will be allowed for the discharge of each load of concrete. If the discharge takes more than ten (10) minutes per cubic meter a surcharge is applicable. If ATCO pump is at jobsite, a surcharge per every extra ten (10) minutes will be charged.
- c) The customer shall provide satisfactory access to ATCO. For services beyond the curb line, the customer assumes all liability for the damage to sidewalks, curbs, gutters, drive ways, septic tanks, utility lines, turf or other property and agrees to indemnify ATCO for all liability, loss and expenses incurred as a result of such delivery, including damage to ATCO's equipment and loss of time.
- d) The building-site must be ready for delivery of the concrete. If the building site is not ready, the ATCO-truck will wait a maximum of fifteen (15) minutes at the site. The customer shall then be informed that another time or day will be scheduled by ATCO to deliver the concrete. The concrete in the truck shall then be relocated to another destination provided there has been a similar request for the same quantity and quality of concrete on the same day. If relocation is not possible the customer shall have to pay for the excess of concrete.
- e) The concrete becomes the property of the customer once batched. Concrete ordered in excess of requirements cannot be returned for credit.
- f) Unless otherwise mutually agreed, each load of concrete is to be unloaded in its entirety at one designated construction-site.
- g) With pours like ring beam, floor levels and sites that cannot be reached by the truck (e.g. behind a building), the rental of the required pump or crane are at the expense and risk of the customer.
- h) If pours are done with a pump from a third party, the concrete shall only leave the plant at the moment that ATCO is notified that the pump is ready at the site.
- i) Pours with a pump require a special mix design. The customer must notify ATCO of this when ordering concrete.
- j) The seal of the mixer truck must be controlled by the client a/o authorized contractor prior to pouring.
- k) The delivery receipt has to be signed by the customer or his authorized representative with full name and signature.
- l) Additional use of chemicals a/o water on site is at an additional charge.
- m) Cancellation/rescheduling of concrete done on pouring date requires a minimum of 2 hour notice prior to concrete delivery is required. Failure to do so will result in all charges being applicable.

2.2. Quantity and Quality

- a) ATCO Concrete Products meet the standards as required by the Department of Public Services (DOW), unless specified differently by the customer.
- b) The concrete standard ordered by the customer shall be delivered by ATCO such that after twenty-eight (28) days of curing and provided that the concrete is properly applied in accordance with the standards of good workmanship, the concrete will, upon applying the proper testing methods, break at, or in excess of the minimum standard ordered.
- c) ATCO recommends not to add any additional water to the concrete on site. The customer assumes responsibility for the concrete quality whenever any water or other material is added to the concrete by the customer or at his request. The customer also assumes responsibility for the concrete quality whenever the discharge of concrete is not completed within one hour after the time of arrival of the truck mixer. Furthermore it is the customer responsibility to apply/order the appropriate concrete mix and /or concrete products for the intended application.
- d) Any exception or claim by the customer with respect to the concrete shall be deemed waived unless made in writing seventy-two (72) hours from the time of delivery. ATCO shall be given full opportunity (max. 30 days) to investigate any exception or claim, but in no event shall ATCO's liability, including the liability for consequential damages, exceed the purchase price of the material against which claim is made.
- e) The records of ATCO on quantities batched and loaded at the concrete-plant by ATCO shall serve as full legal evidence of the quantities of concrete delivered, such without prejudice to the right of the customer to prove otherwise.
- f) Any legal claim on account of the quality of concrete or damages shall expire twelve months after the concrete was batched.
- g) Orders less than 3 m3 (three cubic meters) are subject to an additional charge.
- h) Additional m3 in excess of the original order and/or less than 3 m3 (three cubic meters) are subject to a surcharge and will be placed on the waiting list of that day.
- i) ATCO is not responsible for concrete poured 2 hours after the truck leaves the batching plant, nor for replacement of the concrete.

2.3. Prices

- a) Prices quoted are for deliveries leaving ATCO's plant after 7:00 am and returning at ATCO's plant before 4:00 pm on weekdays. Deliveries at other hours or on a Saturdays, Sundays and holidays will be subject to a special arrangement.
- b) In the event that the performance of the agreement is delayed at the customer's request, or because of information or instructions not being given, or other circumstances to be imputed by customer, ATCO shall also have the right to increase the price agreed on with additional costs incurred as a consequence thereof.
- c) Refunds will only be paid on designated days upon a minimum of 2 day notice. Customer will be informed by Sales representative when the next payment date is for refunds.
- d) Prices are subject to increase by any taxes adjusted by the Government.

3. Terms & Conditions for Equipment related to the Supply of Blocks

3.1. Delivery services of Block, Pavers and other Block related concrete products.

- a) The customer agrees to give ATCO reasonable notice of the time and rate at which deliveries will be required. ATCO agrees to make deliveries at the best rate within its ability, but shall not be liable for any loss, damage or delay, occasioned by strikes, labor difficulties, fires, accidents, breakdown, utilities failure, storm, war, delays of carrier, or by any other cause beyond ATCO's control.
- b) The customer shall provide satisfactory access to ATCO. For services beyond the curb line, the customer assumes all liability for the damage to sidewalks, curbs, gutters, drive ways, septic tanks, utility lines, turf or other property and agrees to indemnify ATCO for all liability, loss and expenses incurred as a result of such delivery, including damage to ATCO's equipment and loss of time.
- c) Products delivered inside the clients premises, remains the responsibility of the client. The client waves all claims to ATCO Concrete Products and its employees for damages to his or her property that may result by allowing or requiring placement of product inside owner's property.
- d) Operators of block truck cranes are not permitted to deliver product over any obstacles which could potentially cause damage to the equipment or the client's property. Obstacles include but are not limited to; electrical cables, trees, tall fencing, walls under construction (for example walls already at ring beam level)
- e) Products will not be unloaded at any site if for any reason the site is deemed unsafe for operation of the crane.
- f) Products may only be placed on second floor, in the case there is clear access to the second floor, and will only be placed on the border of the second floor.
- g) Cancellation/rescheduling of order must be done in advance prior to loading of the truck, in order to avoid unnecessary delivery charges.

3.2. Quantity and Quality

- a) ATCO Concrete Products meet the standards as required by the Department of Public Services (DOW), unless specified differently by the customer.
- b) Any exception or claim by the customer with respect to the quality of the product shall be deemed waived unless made in writing 3 months from the time of delivery. ATCO shall be given full opportunity (max. 30 days) to investigate any exception or claim, but in no event shall ATCO's liability, including the liability for consequential damages, exceed the purchase price of the material against which claim is made.
- c) Any claim of incorrect quantity of delivered product must be made to ATCO upon delivery. ATCO cannot be held responsible on quantity once the driver left the clients premises.

3.3. Prices

- a) Prices quoted are for deliveries leaving ATCO's plant after 7:00 am and returning at ATCO's plant before 4:00 pm on weekdays. Deliveries at other hours or on Saturdays, Sundays and holidays will be subject to a special arrangement.
- b) In the event that the performance of the agreement is delayed at the customer's request, or because of information or instructions not being given, or other circumstances to be imputed by customer, ATCO shall also have the right to increase the price agreed on with additional costs incurred as a consequence thereof.
- c) Refunds will only be paid on designated days upon a minimum of 2 day notice. Customer will be informed by Sales representative when the next payment date is for refunds.
- d) Prices are subject to increase by any taxes adjusted by the Government.

4. Terms & Conditions for Equipment related to the Supply of Aggregates

4.1. Delivery services of Aggregates.

- a) The customer agrees to give ATCO reasonable notice of the time and rate at which deliveries will be required. ATCO agrees to make deliveries at the best rate within its ability, but shall not be liable for any loss, damage or delay, occasioned by strikes, labor difficulties, fires, accidents, breakdown, utilities failure, storm, war, delays of carrier, or by any other cause beyond ATCO's control.
- b) The customer shall provide satisfactory access to ATCO. For services beyond the curb line, the customer assumes all liability for the damage to sidewalks, curbs, gutters, drive ways, septic tanks, utility lines, turf or other property and agrees to indemnify ATCO for all liability, loss and expenses incurred as a result of such delivery, including damage to ATCO's equipment and loss of time.
- c) Products delivered inside the clients premises, remains the responsibility of the client. The client waves all claims to ATCO Concrete Products and its employees for damages to his or her property that may result by allowing or requiring placement of product inside owner's property.
- d) Products will not be unloaded at any site if for any reason the site is deemed unsafe for the equipment.
- e) Cancellation/rescheduling of order must be done in advance prior to loading of the truck, in order to avoid unnecessary delivery charges.
- f) Deliveries are final.

4.2. Quantity and Quality

- a) Any exception or claim by the customer with respect to the quality of the product shall be deemed waived unless made in writing seventy-two (72) hours from the time of delivery. ATCO shall be given full opportunity (max. 30 days) to investigate any exception or claim, but in no event shall ATCO's liability, including the liability for consequential damages, exceed the purchase price of the material against which claim is made.
- b) Any claim of incorrect quantity of delivered product must be made to ATCO upon delivery. ATCO cannot be held responsible on quantity once the driver left the clients premises.

4.3. Prices

- a) Prices quoted are for deliveries leaving ATCO's plant after 7:00 am and returning at ATCO's plant before 4:00 pm on weekdays. Deliveries at other hours or on a Saturdays, Sundays and holidays will be subject to a special arrangement.
- b) In the event that the performance of the agreement is delayed at the customer's request, or because of information or instructions not being given, or other circumstances to be imputed by customer, ATCO shall also have the right to increase the price agreed on with additional costs incurred as a consequence thereof.
- c) Refunds will only be paid on designated days upon a minimum of 2 day notice. Customer will be informed by Sales representative when the next payment date is for refunds.
- d) Prices are subject to increase by any taxes adjusted by the Government.