



MAELGWYN MINERAL SERVICES AFRICA

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GENERAL CONDITIONS OF SALES AND DELIVERY

I. General

1. These General Conditions of Sale and Delivery shall be an integral part of the contract of purchase. Changes and additions must be made in writing. Conflicting or deviating conditions of purchase or other reservations made by the Buyer shall not be effective unless the Seller had expressly accepted them in writing for a particular order.

2. The following General Conditions of Sale and Delivery are only applicable to "The Customer" meaning the person, firm or company purchasing the Goods or Services.

II. Offers, Orders, Assignment

1. The Seller's offer shall not be binding with respect to price, quantity, delivery time or availability.

2. By placing the order, the Buyer declares bindingly his will to acquire the goods. The contractual offer of the Buyer comprised in the order shall only become binding upon acceptance.

The acceptance can be declared either in writing or by delivery of the goods to the Buyer.

3. In case the Buyer orders the goods electronically, the Seller can confirm the receipt of the order by email. The confirmation of receipt does not constitute a binding acceptance of the order. The confirmation of receipt can be combined with the declaration of acceptance. As for the rest, the Seller's obligations are explicitly excluded.

4. Assignment by the Buyer with respect to rights granted in purchase or delivery contracts with the Seller shall not be effective until the Seller's prior written consent has been obtained.

III. Invoicing

1. The prices invoiced shall be the Seller's prices effective at the time of delivery.

2. Should the Seller, in the interval between conclusion of the contract and delivery, effect a general price increase, the Buyer shall have the right to withdraw from the contract within two weeks of having been informed thereof, unless the price increase is exclusively due to an increase in freight rates.

3. The weight of the goods on which the invoice amount is to be calculated shall be ascertained in the dispatch department of the Seller's plant from which the goods are supplied unless the Buyer wishes them to be weighed, at his expense, by the authorities at the point of dispatch.

IV. Terms of Payment, Delayed Payment

1. The handing in of the invoice shall be subject to the Seller's prior consent and shall not constitute payment. The maturity of the invoice shall not exceed 90 days from the invoice date. Discount expense, bill charges, bill tax and similar expenses incurred after the due date of the invoice shall be for the Buyer's account.

2. The Buyer shall examine the Seller's invoice within 10 days after receipt. The Seller's invoice is considered to have been accepted by the Buyer if the latter does not object within the allotted period of time.

3. The statutory rules for default in payment apply. Should the Buyer exceed the terms of payment, the Seller shall have the right to charge interest at a rate of 8 (eight) per cent above the South African Prime interest rate. The Seller reserves the right to prove and claim a higher damage caused by delay.

4. Interest will be charged on all overdue debts at the rate stated, or at the rate for the time being applicable under the Late Payment of Commercial Debts (Interest) Act 1998, whichever is higher.

5. Where the Seller has reason to doubt the Buyer's solvency or credit worthiness, and the Buyer is not prepared to effect an advance cash payment or provide the Seller with security as requested, the Seller shall have the right to cancel that portion of the contract which he has not yet performed.

6. Deposits and advance payments shall be made inclusive of Value Added Tax. VAT is not payable by

entities outside of South Africa.

7. Payment shall not be deemed to have been effected until the amount has been cleared into one of the Seller's accounts.

8. The Seller reserves the right to use payments for the settlement of the invoices which have been outstanding longest, plus any interest on arrears and cost accrued thereon, in the following order: cost, interest, principal claim.

9. The Buyer shall not have the right to withhold payments. Counterclaims may only be offset if they are uncontested or have become *res judicata*.

10. The Company reserves the right to invoice Goods and Services upon delivery, regardless of whether other Goods or Services remain outstanding or not.

V. Delivery

1. The Seller shall make every effort to effect delivery as early as possible. There shall be no fixed periods of delivery.

2. Should, notwithstanding the preceding sentence, a fixed period for delivery have been agreed, and should the Seller default with the supply, the Buyer shall grant the Seller a reasonable amount of time in which to make delivery, normally of four weeks.

3. Delivery shall be subject to punctual delivery of the appropriate goods by the Seller's own suppliers.

4. The day of delivery shall be the day on which the goods leave the Seller's plant or warehouse or, if the day cannot be ascertained, the day on which the goods are put at the Buyer's disposal.

VI. Force Majeure, Impediments to Performance

Force majeure of any kind, in particular, unforeseeable production, traffic or shipping disturbances, fire damage, floods, unforeseeable shortage of labour, utilities or raw materials and supplies, strikes, lockouts, acts of authorities or any other hindrances beyond the control of the party obliged to fulfil the contract that diminish, delay or prevent production, shipment, acceptance or use of the goods, or make their use unreasonable shall relieve the party from the obligation to supply or accept delivery, as the case may be, as long as and to the extent that the hindrance prevails. If as a result of the hindrance, supply and/or acceptance is delayed by more than eight weeks; either party shall have the right to cancel the contract. Should the Seller's suppliers fail to supply him in whole or in part, the Seller shall not be under any obligation to purchase from other sources. In such cases the Seller shall have the right to distribute the available quantities amongst his customers while taking into account his own requirements.

VII. Shipment, Passing of Risk

1. The Seller reserves the right to choose the route and the mode of transport. Any additional costs resulting from special shipping requests made by the Buyer shall be borne by

the Buyer. Unless prepaid freight has been agreed, the Buyer shall also bear any increase in freight rates which become effective after the contract has been concluded, as well as any additional costs resulting from re-routing a consignment, additional costs due to storage expenses, and so forth.

2. The Buyer accepts the risk of destruction, loss or damage upon dispatch of the goods or, if they are collected by the Buyer, at the time they are placed at the Buyer's disposal.

3. Goods not accepted by the Buyer will be warehoused at the Buyer's expense and risk.

VIII. Retention of Title

1. Title to the delivered goods shall not pass to the Buyer until he has fulfilled all obligations arising from his business connection with the Seller, which shall include settling accessory claims and claims for damages and honouring cheques and bills. Title to the goods shall also remain with the Seller if the Seller's claims have been included in a current account and the balance of the account has been struck and acknowledged.

2. If the Buyer defaults on his obligations to the Seller, the Seller has the right, without granting a respite and without cancelling the contract, to demand the return of the good to which the Seller retains title.

3. If goods to which the Seller retains title are processed into new products, the Buyer shall be deemed to be effecting such processing on behalf of the Seller without thereby

acquiring any claims against the Seller.

4. The Buyer shall be under the obligation to provide, on behalf of the Seller, adequate storage of the goods to which the Seller retains title, to service and repair them at his expense against loss and damage up to an extent which may reasonably be expected of a prudent businessman. By accepting these Conditions the Buyer assigns in advance to the Seller any claims which may accrue to him under the insurance policies.

5. As long as the Buyer duly meets his obligations to the Seller, he shall have the right in the normal course of business to do as he wishes with the goods to which the Seller retains title. This shall not apply, however, if he and his customers have concluded an agreement on purchase price claims according to which the Buyer may not transfer his claims to third parties. The Buyer shall not have the right to pawn, transfer by way of security or otherwise encumber the goods to which the Seller retains title. When reselling the goods, the Buyer shall make the passing of the title subject to full payment of the goods by his customers.

6. By accepting these Conditions, the Buyer assigns in advance to the Seller any claims which may arise from a resale of the goods to which the Seller retains title, together with any incidental rights and security interest, including bills of exchange and cheques, so as to provide the Seller with security for all claims he has on the Buyer as a result of the

business transaction. If goods to which the Seller retains title are sold together with other goods at a single price, the assignment shall be limited to the portion of the invoiced value which covers the goods to which the Seller retains title. If the Buyer sells goods of which the Seller has co-ownership pursuant to Paragraph VIII, Clause 3, the assignment shall be limited to the portion of the invoice value which corresponds to the Seller's co-ownership. If the Buyer uses goods to which the Seller retains title for processing a third party's product on a contractual basis, in accepting these Conditions he forfeits his contractual claims against the third party to the Seller in order to provide him with security for his claim. As long as the Buyer duly meets his obligations to the Seller, he may collect claims from a resale or from contract processing himself. He shall not have the right to assign or pledge such claims as security.

7. If the Seller believes his claim to be at risk, the Buyer shall, at the Seller's request, inform his customers of the assignment of his claim to the Seller and supply the Seller with all necessary information and documents. Any acts of third parties aimed at seizing the goods to which the Seller retains title to the forfeited claims assigned to him shall be brought to the Seller's attention by the Buyer immediately.

8. If the value of the security provided to the Seller exceeds the value of the claims to be safeguarded by

more than 20 per cent, the Seller shall, at the Buyer's request, bring the excess coverage down to 20 per cent by releasing security of his own choice.

IX. Damages

1. No claims for compensation may be lodged by the Buyer including those of a non-contractual nature for any minor negligent breach of duty by the Seller, his executive staff or other agents, unless such breach concerns a duty that is crucial for the object of the contract.

2. The Seller shall only be liable for indirect damage or damage which could not be foreseen at the time of conclusion of the contract if such damage is due to a gross fault on the part of the Seller or one of his managerial staff.

3. The above limitations shall not apply to damages resulting from death, injury or damage to health. However, this shall not affect the applicability of compelling statutory liability regulations such as, for example, liability for the assumption of a guarantee or product liability law.

X. Notification of Defects

1. Notification of defects shall only be recognised if filed in writing within two weeks of receipt of the goods together with supporting evidence, samples and packing slips, stating the invoice number and date, and the markings of the packaging. Such claims are subject to the requirement of the Seller that 80 per cent of the delivered goods be

unopened and made available to the Seller for analysis.

2. The Seller must be notified of hidden defects immediately upon discovery, but no later than and three months after receipt of the goods. This shall not affect the statutory periods of limitation. The responsibility to prove that a defect is a hidden defect shall rest with the Buyer.

3. Delivered goods forming the basis of a complaint shall not be returned to the Seller except with the Seller's express consent.

XI. Buyer's Right in the Event of Defects

1. Warranty claims made by the Buyer shall only entitle the Buyer to be supplied with a replacement. If the replacement provided by the Seller is also defective, the Buyer may reduce the purchase price or cancel the contract. Claims for damages as defined in section IX shall remain unaffected by the above. Claims made by the Buyer due to expenses incurred as a result of reworking, in particular transport, travel, labour and material costs, shall be excluded where such expenses have been increased by the fact that the item was subsequently transported to a location other than the premises of the party placing the order, unless the goods were supplied to this location in line with their intended use.

2. Any guarantee agreement must be made in writing. A statement of guarantee shall only be effective, if it describes the content of the guarantee and the duration and physical scope of

guarantee protection in sufficient detail.

XII. Periods of Limitation

Warranty claims shall expire with effect from one year from the beginning of the statutory period of limitation. Compelling regulations governing the statutory period of limitation or the question of liability, such as for example, liability for the assumption of a guarantee, liability for wilful intent and gross negligence, for death, physical injury or damage to health, for the violation of essential contractual obligations, in accordance with the product liability law and the provisions relating to the sale of consumer goods shall remain unaffected.

XIII. Properties of Goods, Technical Support, Use and Processing

1. The properties of the goods shall as a general rule only include the properties as stated in the product descriptions, specifications and labelling of the Seller. Public statements, claims or advertising shall not be classed as information on the properties of the items for sale.

2. Technical advice provided by the Seller verbally, in writing or by way of trials is given in good faith but without warranty, and this shall also apply where proprietary rights of third parties are involved. The Seller's technical advice shall not release the Buyer from the obligation to test the products supplied by the Seller as to their suitability for the intended process and uses. The application, use and processing of the

products are beyond the Seller's control and therefore entirely the Buyer's responsibility.

XIV. Trademarks

1. The Buyer shall not have the right to refer to the Seller's products when offering or supplying substitute products or, in price lists or similar business communications, to use the work "substitute" in conjunction with the Seller's – protected or unprotected – product designations or list these designations together with any designations for substitute products.

2. When using the Seller's products for manufacturing purposes or when processing them into new products, the Buyer shall not have the right, without the Seller's prior consent, to use the Seller's product designation, especially his trademarks, on the resulting products or on the packaging therefore or in any relevant printed matter of advertising literature, particularly by mentioning the Seller's products as components of his own products. The supply of goods under a trademark shall not be deemed agreement to the use of his trademark for the products manufactured therefrom.

XV. Applicable Law, Interpretation of Terms of Trade, Place of Performance and Jurisdiction, Invalidity of Individual Clauses

1. South African law shall apply. Application of the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contract for the International Sale of

Goods and of the UN agreement on the sale of goods of April 11, 1980 shall be excluded.

2. Customary terms of trade shall be interpreted in accordance with the Incoterms current at the time.

3. Even if it has been agreed that the Seller pays the customs and import duties in the country of destination, any increase in such duties which become effective between the date of the order acknowledgement and delivery of the goods shall be borne by the Buyer.

4. Should any clause in these General Conditions of Sale and Delivery be or become invalid, this shall not affect the validity of the remaining clauses or remaining parts of the clause concerned. The parties shall replace any invalid arrangement with an effective one which conforms as far as possible to the economic purpose of the invalid clause.

5. Place of performance for each delivery shall be the Seller's dispatch department. Place of performance for payment shall be Customer's premises/offices.

6. Place of jurisdiction for both parties shall be Johannesburg. The Seller shall furthermore have the right to sue the Buyer at the Buyer's general place of jurisdiction.