

**International Sales**

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**1 GENERAL/SCOPE OF APPLICATION**

- (1) In these terms and conditions (the "**Conditions**"): "**Buyer**" means the company set out on the commercial terms document to which these Conditions are appended (the "**Sales Contract**"); "**Seller**" means Reclamation Holdings (Pty) Ltd, its successors and assigns and includes any subsidiary company of the seller by which the goods are sold, who sells, offers, or agrees to sell goods to the Buyer; "**Goods**" means any goods agreed in the Contract (as such term is defined in clause 1(2)) to be purchased by the Buyer from the Seller.
- (2) These Conditions, together with the commercial terms set out in the Sales Contract (together the "**Contract**"), are the only terms and conditions upon which the Seller is prepared to deal with the Buyer in respect of the Goods and shall govern the Contract to the exclusion of all other terms or conditions proposed by the Buyer, whether in any quotation, acknowledgement, or otherwise, and supersede, novate and cancel all previous agreements, representations and understandings in relation to the Goods.
- (3) In the event of any conflict between the Conditions and the Sales Contract, the Sales Contract shall prevail.
- (4) These Conditions may only be amended in writing by the Seller.
- (5) Trade terms (such as 'Cost Insurance and Freight', 'Carriage and Freight', or 'Free on Board') used in these Conditions shall bear the respective meanings given to them in the Incoterms Rules 2020 (the "**Incoterms**"), provided that in the case of any conflict between these Conditions and the Incoterms, these Conditions shall prevail.
- (6) The Seller and the Buyer agree that neither the Uniform Law on the International Sale of Goods, nor the Uniform Law on the Formation of Contracts for the International Sale of Goods, (as set out in the schedule to the Uniform Laws on International Sale Act, 1967), shall apply to the Contract.
- (7) The Seller shall have the right and be entitled to accept the Buyer's purchase order within a period of 2 (two) weeks from the Buyer's placement of the order on the Seller, unless another commitment period has been specified or agreed upon in the purchase order.
- (8) Orders placed on the Seller, after acceptance by the Seller as evidenced by the Contract, shall not be subject to cancellation in whole or in part, or to any variation whatsoever, except as may be agreed to in writing by the Seller and the Buyer.
- (9) All offers on the part of the Seller shall be non-binding and the Seller shall, accordingly, be entitled to revoke any offer at any time prior to the offer having been incorporated into a Contract and signed by both the Seller and the Buyer.

**2 PRICE AND PAYMENT**

- (1) The price (as set out in the Sales Contract) may not be varied except with the Seller's written consent. Neither variation in the price will be applicable at any time without express written acceptance by a duly authorized representative of the Seller.
- (2) Letters of credit must be opened by the Buyer before the date(s) specified in the contract and upon such terms and conditions as are specified in the contract.
- (3) The Buyer shall not be entitled to withhold payment of any amount payable under the Sales Contract because of any disputed claim of the Buyer or any alleged breach of the Contract, nor shall the Buyer be entitled to set off against any amount payable under the Contract to the Seller any monies which are not then presently payable by the Seller or for which the Seller disputes liability.
- (4) In the event that payment is not made by the Buyer to the Seller on due date, the Seller shall have the right to charge interest from such date up to the date of actual payment, the rate of interest to be 5% above LIBOR.

**3 OWNERSHIP AND TITLE**

- (1) Until the Seller has been paid in full for the Goods comprised in the Sales Contract and has received all sums then due under the Sales Contract and/or any other contracts between the Seller and the Buyer; (i) legal and beneficial ownership and title of the Goods remains with the Seller; (ii) the Seller may recover the Goods at any time from the Buyer if in their possession and control and for that purpose the Seller, their employees and agents may enter upon any land or building upon which the Goods are situated; (iii) whilst the Buyer has the right to dispose of the Goods as principal in the ordinary course of their business, such right shall be automatically terminated (without notice) in the event that payments have not been made on due date under the Sales Contract and/or any other contract between the Seller and the Buyer; (iv) in the event of such disposal, the Buyer has a fiduciary duty to the Seller to account to the Seller for the proceeds but may retain therefrom any excess of such proceeds over the amount outstanding under the Sales Contract and/or any other contracts between the Seller and the Buyer; (v) each sub clause (ii), (iii) and (iv) shall be construed and have effect as a separate clause and, accordingly, in the event of any of them being for any reason unenforceable according to their terms, the others shall remain in full force and effect.

#### **4 SHIPMENT/DELIVERY**

- (1) Should the Seller be hindered or delayed in effecting any shipment/delivery by the Buyers failure to give promptly any instructions reasonably required by the Seller, the time for such shipment/delivery shall (without prejudice to any right of the Seller to treat the Contract as repudiated by reason of such failure) be extended for a period equal to that to which elapsed between the Seller requiring and receiving such instructions.

#### **5 PERMITS**

- (1) The Buyer shall obtain, at its own risk and expense, at or by the proper time and keep in good standing any import license or other official authorization and carry out all customs formalities for the import of the Goods into the country of destination thereof and the Buyer shall, in turn, comply with any requests for the provision of documentation on the part of the Seller, to enable the Settler to comply with its obligations contemplated in the Sale Contract.
- (2) Should any license or consent of any governmental or other authority be or become required for the purchase of the Goods comprised in the Sales Contract, the Buyer shall obtain such license or consent.
- (3) Without limitation to any other right or remedy of the Seller, the Buyer shall indemnify the Seller from all loss or expense arising from delay, demurrage or failure by the Buyer in performance its obligations under these Conditions, however caused.

#### **6 WARRANTY**

- (1) The Goods are sold without any warranty given by the Seller as to their quality, state or otherwise or their fitness or suitability for any purpose other than those warranties/specifications contained in the Contract and all conditions and warranties, whether statutory or otherwise, and whether express or implied, are excluded.

#### **7 CLAIMS AND LIMITATION ON LIABILITY**

- (1) The Seller shall not be liable for:-
  - (1.1) any defects in the quality of the Goods or for the Goods being otherwise not in accordance with the Contract unless the Buyer shall have given the Seller not later than 7 (seven) calendar days after delivery of the Goods a written notice specifying the matters complained of and shall, thereafter, afford the Seller and persons authorized by it a reasonable opportunity of inspecting the Goods before they have been used, processed or sold; and
  - (1.2) any discrepancies in weight unless the Buyer shall have given to the Seller written notice thereof not later than 2 (two) calendar days after delivery of the Goods and thereafter afford the Seller and persons authorized by it a reasonable opportunity of witnessing a re-weighing thereof before they have been used, processed or sold, provided that no claim shall be accepted by the Seller in respect of a quantity for which the Buyers have given a clean receipt upon delivery.
- (2) In no circumstances shall the Seller be liable for any indirect or consequential loss sustained by the Buyer including but not limited to any economic loss, loss of profit, loss of revenue, loss of use, loss of power, loss of business, loss of production, costs connected with interruption of operations, costs of capital or costs of replacement power.

#### **8 DEFAULT/BREACH**

- (1) Should the Buyer default in paying promptly as and when due any sum which may be payable (whether under the Contract or otherwise howsoever) by the Buyer to the Seller or should the Buyer breach any provision of the Contract or be made bankrupt or (being a company) commence liquidation or have a Receiver or Manager appointed over any of their assets, the Seller may by written notice to the Buyer cancel the Contract in so far as it remains unperformed and shall thereupon be entitled to recover from the Buyer, in addition to any sums due from them at the time of cancellation, the amount of any loss sustained by the Seller on the resale of the Goods undelivered.
- (2) The waiver by the Seller of any default or breach of the Contract shall not operate or be construed as a waiver of any subsequent default or breach on the part of the Buyer.

#### **9 FORCE MAJEURE**

- (1) The Seller shall not be liable to the Buyer for any delay, breach, or partial or interrupted performance of the Seller's obligations under the Contract attributable to any event or events beyond the Seller's control. Such events shall include (without limitation) Acts of God, war, civil disturbance, fire, storm and flood, acts of any governmental, local or like authority, non-availability or delay in obtaining export or import permits or authorizations, non-availability or delay in availability or other transport, strikes or trade disputes whether or not official, cessation or interruption of operations of the Seller's plant process or machinery, shortage or non-availability of labour, raw materials or supplies, or any of the foregoing affecting any supplier or customer of the Seller or cancellation or breach by a supplier or customer of the Seller of any contract with the Seller for the purchase or supply of any of the Goods or other goods derived from them.

- (2) Should the processing or delivery of any of the Goods at any of the Seller's sites or the delivery thereof to the Buyer, whether by the Seller or associated company or an independent carrier, be prevented or hindered directly or indirectly, within the period(s) provided for in the Contract by reason of war, strikes, lock-outs, trade disputes, breakdown, shortage or interruption of means of transport, failure or delay of production by the Seller or producer of the Goods, laws, regulations or acts of governments, government agencies or local authorities or any other cause whatsoever (whether or not of a like nature to those described above) beyond the reasonable control of the Seller, the time for performance of the Contract shall be extended for the period during which such causes continues to operate, provided that, after such cause has arisen and continued for 60 (sixty) days, the Seller shall be entitled by written notice in writing to the Buyer to cancel the Contract in so far as it remains unperformed or to cancel such part thereof as is or was due for performance during the period in which such cause continues to operate.
- (3) Notwithstanding any provision contained in the Contract to the contrary, if any event as is referred to in this clause 9 continues for more than 7 (seven) days, the Seller may without liability to the Buyer terminate the Contract in respect of all or some of the Goods by written notice to the Buyer.

## **10 GOVERNING LAW**

- (1) The validity, construction and performance of the Contract shall be governed by the laws of South Africa and any disputes, differences or questions that may arise under or in relation to the Contract (including any disputes, differences or questions relating to its validity and construction) which are not settled by negotiation between the Seller and the Buyer within 10 (ten) days after either party has requested the other to enter into such negotiation, shall be referred to the non-exclusive jurisdiction of the courts of South Africa to which the Seller and the Buyer hereby submit, unless the Seller should elect within a further period of 10 (ten) days to have the dispute determined by arbitration. If the Seller so elects to arbitrate, the arbitration shall take place in South Africa in accordance with the rules of the Arbitration Foundation of Southern Africa.

## **11 GENERAL**

- (1) Any notice required by this contract to be given in writing shall be sufficiently given to either party if despatched by email to the email address of the receiving party specified in the Sales Contract.
- (2) The Seller shall be entitled to assign its rights and/or obligations in terms of the Contract without any consent being required by the Buyer. The Buyer shall not be entitled to cede, assign, transfer or delegate any of its rights or obligations nor create or permit to subsist any charge or other security interest of any kind in its rights in terms of the Contract without the prior written consent of the Seller.
- (3) All amendments to the Contract shall be in writing signed by the Seller and the Buyer.
- (4) It is a fundamental term of the Contract, that the parties shall not disclose the terms hereof to any person, except insofar as disclosure is necessary for the effective performance by either party of its respective obligations hereunder or otherwise required by law or regulation.
- (5) Should any of the provisions of this contract be deemed to violate the laws or statutory regulations of South Africa those provisions of the Contract not deemed to be in contravention of such laws or regulations shall remain in full force and effect.
- (6) If any provision or portion of the Contract is held to be invalid or unenforceable in arbitration or by any governmental or judicial authority having jurisdiction over it, the validity and enforceability of the remaining portions or provisions of the Contract shall not be affected.