



RICHARDS BAY MINERALS

GENERAL CONDITIONS OF PURCHASE (INCORPORATING SERVICES)

1. Definitions

- (a) "Company" means Richards Bay Iron and Titanium (Pty) Limited and Tisand (Pty) Limited jointly trading as Richards Bay Minerals (RBM).
- (b) "Subsidiary Companies" means the respective subsidiaries from time to time of Richards Bay Iron and Titanium (Pty) Limited and Tisand (Pty) Limited.
- (c) "Supplier" means the person to whom the order is addressed, or the contractor in the Supply Agreement.
- (d) "goods" means whatever is ordered in terms of the order and includes, where applicable, work to be done and services to be rendered.
- (e) "The order" means and includes:
 - (i) the contents of the Company's official order form;
 - (ii) any Supply Agreement between the Company and the Supplier; and
 - (iii) all documents attached to the order form and Supply Agreement including drawings, schedules and specifications (if any), which constitute the contract between the Company and the Supplier.

Should there be any conflict between any of the documents referred to in then the contents of the order form or the Supply Agreement shall prevail.
- (f) "Purchase Price" means the price stated in the order or the Supply Agreement.
- (g) "Supply Agreement" means an agreement entered into between the Company and the Supplier for the rendering of services and/or supply of goods.

2. Terms

- (a) All orders placed by the Company shall be subject to these conditions save as may be modified by the order. The supply of goods by the Supplier to the Company shall be governed by the terms and conditions of this agreement which shall apply to the exclusion of the Suppliers terms and conditions of sale/supply.

3. Quality

All goods and services supplied shall conform to the specification embodied in the order and in the absence thereof shall be the best of their respective kind and shall be suitable for the purpose for which they are intended.

4. Standard of Services

4.1 If services are being provided, the Supplier shall:

- (a) supply the services with all proper care and diligence and in accordance with the highest recognised standards applicable to such services;
- (b) ensure that its employees will have the qualifications, experience and skills required for the performance of the services;
- (c) ensure its employees are sober, not under the influence of mind altering drugs, are well presented and courteous;
- (d) perform the services in such a manner so as not to disrupt or interfere with the normal business operations of the Company and which will not constitute a nuisance to any person; and
- (e) comply with all of the Company's standard health, safety, security, fire, environmental and other ancillary standards, policies and regulations as amended from time to time.

4.2 Access to the Site shall be made by means of an access card issued by the Employer to the Contractor's employees and subcontractors. The Contractor undertakes to return all access cards issued to its employees and subcontractors on completion of the Contract Works or on termination of the contract. A levy of R100.00 shall be payable by the Contractor for each access card which becomes lost or which is not returned to the Employer as aforesaid.

5. Discrepancies

Should there appear to be any contradiction or conflict in description, dimensions or quantities in the order, the Supplier shall refer the same to the Company for clarification and if necessary for rectification before the Supplier shall proceed to execute the order or part thereof in respect of which such apparent conflict or contradiction exists. Any anticipated or actual delay by reason of the foregoing in the execution of the order shall immediately be communicated to the Company's Service Delivery Manager.

6. Inspection and Audit

- (a) The Company shall be entitled, at such frequency as it may determine, to send a person authorised by it (the authorised representative) to the Supplier's works at any stage of manufacture or production for the purpose of inspecting the goods and/or monitoring the services. The Supplier shall afford the authorised representative access to the work in progress and all facilities and information relating thereto for the purpose of such inspection. The Company reserves the right to reject goods at any stage of manufacture which are found to be in any way defective or not in conformity with the terms of the order.
- (b) The Supplier shall keep proper accounting and administrative records relating to its dealings with the Company. The Company shall have the right, at its cost, to

have its auditors make an examination and audit of the records of the Supplier during the term of the agreement and for a period of two years thereafter, provided that such audit(s) shall be conducted during normal business hours at a time and place mutually agreeable to the parties.

7. Warranty

- (a) The Supplier warrants and represents that all goods purchased in terms of the order shall be free from patent or latent defects and that such goods shall be satisfactory in every respect for the purpose for which they are intended.
- (b) The Supplier shall fully disclose all hazards, potential and actual, that may be associated in any way whatsoever with the goods including in particular hazards associated with the direct or indirect use of and exposure to storage and disposal thereof. Where the goods are potentially hazardous the Supplier shall:
 - (i) furnish full details as to the safe transport, storage, handling, use and disposal of the goods;
 - (ii) furnish full details of the recommended treatment for persons who may be harmed or injured through use of or contact with the goods;
 - (iii) label all goods and packages containing the goods in such a way that persons who handle them or are exposed to them are clearly warned as to the hazards and the safety precautions which shall be observed in relation thereto.
 - (iv) In the case of all chemicals supplied shall be accompanied by a Material Safety Data Sheet as required in terms of the Occupational Health and Safety Act, 85 of 1993.

Should the Supplier fail fully to comply with the provisions of (b) (i), (ii), (iii) and (iv) above then the Supplier shall and does hereby indemnify the Company and the Associate Companies and holds them harmless against all loss or damage which may be sustained by them including all claims, demands, proceedings, legal costs, charges and expenses which they may incur or sustain.

8. Risk and Delivery

- (a) All prices include free delivery to the delivery point stated in the order form.
- (b) The Supplier shall be responsible for any loss or damage to the goods, whether total or partial, from any cause whatsoever until full and complete delivery is made at the point stated in the order.
- (c) All carriers charged with transportation of the goods shall be deemed to be the Supplier's agent to the point of delivery stated in the order.
- (d) All deliveries shall be effected during the hours of 7.30 a.m. to 2.00 p.m. on Mondays to Thursdays and 7.30 a.m. to 1.00 p.m. on Fridays.
- (e) Time is the essence of the order.

9. Default in Delivery

- (a) Should delivery of the goods not be made by the dates specified in the order or if the Company is of the opinion that the Supplier will be unable to make timeous delivery, whether in whole or in part, the Company shall be entitled to cancel the order either in whole or to the extent of such default. Such cancellation shall be without prejudice and in addition to any other rights and remedies available to the Company.

- (b) Should the Company cancel the order either in whole or in part it shall be entitled to purchase the goods or the balance thereof, as the case may be, from an alternative source and in such event shall be entitled to recover from the Supplier any additional costs incurred by it as a result thereof.
- (c) The Company shall be entitled without prejudice to any other rights available to it either in terms of these conditions or at Law to recover from the Supplier a penalty in lieu of damages in a sum equal to 1% of the purchase price for each week or part thereof during which the Supplier is in default in effecting delivery of the order or any outstanding portion thereof.

10. Invoices and Packing

- (a) The Company's order number shall be quoted on all invoices, delivery notes and consignment notes which shall give details of goods to which they relate. The Company reserves the right to return incomplete documents to the Supplier for rectification and in that event shall not be responsible for any delay in payment of the purchase price resulting therefrom.
- (b) Invoices may only be forwarded once the service has been provided and/or the goods delivered. Should the Supplier submit an invoice prior to the completion of the requested services or goods the Company reserves the right to withhold payment until the circumstances surrounding the transaction/s have been satisfactorily provided.
- (c) Detailed invoices shall be forwarded to the Company's administration office at the address shown on the order form. Separate invoices shall be issued in respect of each individual order number. The Company shall not be responsible for any invoice handed to any of its employees or for any delay in payment thereof resulting therefrom.
- (d) Where packing is included in the order, durable labels shall be affixed to each package, case, carton or other container and shall clearly show the Company's name, the address to which delivery is to be made and the order number. Each such package, case, carton or other container shall contain a packing list identifying the goods as well as identifying them, where applicable, with the equipment for which they are intended.

All packages, cases, cartons and containers and packaging material shall be deemed to have been included in the purchase price and shall become the Company's property upon delivery. The Supplier shall be responsible for packing and marking goods in such manner as will eliminate loss or damage in transit.

11. Acceptance

- (a) Goods will only be accepted by the Company at the delivery address stated in the order form.
- (b) Goods will be accepted by the Company at the place of delivery as regards number and condition of packages only. Notwithstanding any receipt or inspection certificate which the Company may give, the Company shall be entitled to reject goods if they are subsequently found to be defective as regards their quality, quantity, workmanship or design (where design is the responsibility of the Supplier).

- (c) Goods will not be deemed to have been received unless the Supplier's copy of the delivery note bears the Company's official "Goods Received" stamp and signature of its authorised employee or agent.

12. Rejected Goods

If any goods or services are found at any time to be :

- (a) defective in quantity, material, workmanship or design (where design is the responsibility of the Supplier); or
- (b) damaged because of unsatisfactory packaging; or
- (c) not in conformity with the requirements of the order as to description, formula, specification or any special instructions contained in the order; or
- (d) not in conformity with any approved samples; or
- (e) not in conformity with the normal standards of quality for such goods or services or;
- (f) defective or deficient in any other way;

then notwithstanding acceptance of delivery of, or payment for, such goods or services by the Company, the Company shall have the right in addition and without prejudice to any other rights and remedies available to it either to reject and return the goods or reject the services at the Supplier's expense and to recover the purchase price paid for the goods or services or to rectify the rejected goods or services and recover the cost thereof from the Supplier.

13. Payment

- (a) The Company does not accept responsibility for payment of goods supplied except in pursuance of the issue of its official order.
- (b) Where goods are sold by weight they are purchased by net weight only.
- (c) If any order covers goods to be imported into South Africa with payment to be made in a foreign currency the rate of exchange stated in the order shall apply. Any profit or loss resulting from any variation in the rate of exchange shall be for the account of the Supplier.
- (d) Payment for goods received or services rendered will become due upon the receipt by the Company of a VAT invoice and will become payable at the end of the month following the month of receipt of a VAT invoice in respect of the goods or service. The Company has the right to defer payment of invoices received after the tenth of the following month without prejudicing the right to deduct any settlement discount as stipulated in the order.
- (e) Payment will be effected by electronic bank transfer into a bank account nominated by the Supplier or by any other method of payment elected by the Company.

14. Price Adjustment

Should the price stipulated in the order be subject to revision at the instance of the Supplier the following provisions shall apply:

- (a) the Company shall not be liable for any increase in the purchase price of goods which are delivered after the delivery date stipulated in the order;
- (b) the Supplier shall give the Company not less than sixty (60) days prior notice in writing of any adjustment which it intends to make to the purchase price in respect of goods or services to be delivered after the adjusted purchase price takes effect. Such written notification shall include full details showing how the adjusted purchase price is arrived at. The Supplier shall furnish to the Company such information as the Company may require in respect of the proposed adjustment to the purchase price and the Company shall have the right to inspect and audit the books of account of the Supplier for the purpose of deriving therefrom such information as it may require in connection herewith;
- (c) whenever the Supplier gives the notification referred to in (b) the Company shall have the sole and exclusive right and option to purchase the whole or any part of the Supplier's stocks of the goods at any date prior to the date upon which the adjustment in price takes effect at the price ruling in the order or any adjusted purchase price to which the Company may previously have agreed;
- (d) notwithstanding anything contained in the order final acceptance of any claims for price adjustment by the Supplier shall be at the sole discretion of the Company. Should the Company and the Supplier fail to reach agreement on any adjustment to the price the order in respect of all of the goods or the balance thereof still to be supplied shall be deemed to have been cancelled and neither party shall have any claim of any nature whatsoever against the other arising out of such cancellation.

15. PAYE and VAT

15.1 Where the order requires the Supplier to provide a service, the following provisions will apply:

- (a) within 3 days of the date of order, the Supplier must provide evidence to the satisfaction of the Company that the Company is not obliged to deduct tax from any amounts due to the Supplier in terms of the Fourth Schedule of the Income Tax Act, provided that, should the Supplier fail to provide the Company with such evidence, the Company is entitled to deduct tax from payments due to the Supplier at the rate and in the manner provided for in the Income Tax Act;
- (b) where the Supplier has been issued with a certificate of exemption by the South African Revenue Services, the Supplier must renew such certificate of exemption timeously and keep it current for the duration of this agreement, provided that in the event that the certificate of exemption is cancelled or not renewed for any reason, the Supplier must notify the Company within 3 days of such cancellation or expiry;
- (c) the Supplier hereby indemnifies the Company against all claims, losses, damages and costs (including legal costs on an attorney and own client scale) arising out of or in connection with the non-deduction by the Company of any tax from any payment due to the Supplier.

- 15.2** The Supplier must supply the Company with a proper Value-Added Tax Invoice, as defined in the Value-Added Tax Act No.89 of 1991 as amended or replaced from time to time, for all amounts paid to the Supplier by the Company for the goods and must on request provide the Company with proof of the Supplier's registration in terms of the Value-Added Tax Act

15.3 Compliance with Laws and Regulations

Where the order requires the Supplier to go about or perform any work on the Company's premises or the premises of any of its Associate Companies the following provision shall apply:

- (a) the Supplier shall effect and maintain in full force and effect during the entire period of the order:
- (i) insurance of the Supplier's employees in terms of the provisions of the Compensation for Occupational Injuries and Diseases Act 130 of 1993, as amended, ("COIDA") and Occupational Diseases in Mines and Works Act 78 of 1973, as amended;
 - (ii) its COIDA registration and its certificate of good standing issued by the COIDA Compensation Commissioner;
 - (iii) timeous payment of all assessments payable in terms of COIDA; and
 - (iv) employee common law liability insurance;

in terms and for amounts approved by the Company and shall submit proof thereof to the Company immediately upon receipt of the order and whenever thereafter required by the Company.

- (b) The Supplier indemnifies the Company and undertakes to hold it harmless against all claims which may be made against the Company, and against all losses, damages and costs (including costs on an attorney and own client scale) which the Company may incur or suffer arising out of or in connection with any act or omission on the part of the Supplier, its agents, officers, employees, invitees or sub-contractors.
- (c) The Supplier shall comply with the Mine Health and Safety Act 29 of 1996, as amended, ("MHS Act") and any regulations thereunder ("MHS Regulations") as well as any other statutory legislation, to the extent to which the same may be applicable.

16. Patents

The Supplier warrants that the goods do not and will not constitute an infringement of any trade mark, patent, copyright, design or any other industrial or intellectual property rights (the rights). The Supplier hereby indemnifies the Company and its Associate Companies against any claims which may be made against them for an infringement or unauthorised use of the rights. All royalties and expenses arising from the use of the rights shall be payable by the Supplier. The Supplier agrees that the Company shall have the free and unrestricted right to maintain or replace any broken or worn part of the goods notwithstanding that such goods are subject to any of the rights. The Supplier expressly warrants that it has authority to grant this unrestricted right to the Company or to any person whom the Company may nominate.

17. Cancellation

- (a) In addition to its right to do so under other provisions hereof, the Company shall be entitled summarily to cancel and terminate the order without payment of any compensation, other than for substantiated invoices, to the Supplier and in addition to and without prejudice to any other rights which it may have in law including the right to claim damages or otherwise should the Supplier:
 - (i) commit any breach of any of the terms and conditions of the order; or
 - (ii) be placed in liquidation either voluntarily or compulsorily by order of Court or otherwise; or
 - (iii) anyone in the Supplier's employ pay or offer to pay, give or offer to give any money, present or inducement of any nature whatsoever whether by way of commission, gratuity or otherwise or lend or offer to lend any money or give or offer to give any other valuable consideration to any person in the employ of the Company or its Associate Companies.
- (b) The Company reserves the right to cancel the order at any time even though the Supplier may not be in breach thereof. In such event all substantiated expenses incurred by the Supplier up to the date of cancellation shall be paid by the Company and the Supplier shall have no further claim of any nature whatsoever against the Company.

18. Cession and Assignment

- (a) The Supplier shall not cede, assign or otherwise make over the order or Supply Agreement or any part thereof or share any interest therein or sub-let or entrust the performance of anything to be done thereunder to any other person without the prior written consent of the Company which may be refused without any reasons being given therefor. Such consent shall not relieve the Contractor of any of its obligations and it shall be responsible to the Company for the acts and omissions of its subcontractors as if they had been acts and omissions of the Contractor.
- (b) Richards Bay Iron and Titanium (Pty) Limited and Tisand (Pty) Limited shall each be entitled at any time during the currency of the order/supply agreement and upon giving written notice to that effect to assign its rights and obligations under the order to the other of them and the Supplier hereby consents to such assignment. In such event the Supplier shall have no claim of any nature or description whatsoever against the assignor after the date of assignment.

19. Law Applicable

- (a) The order shall in all respects be construed in accordance with the Laws of the Republic of South Africa any difference or dispute which may arise between the Company and the Supplier in regard to the order or the performance by either party of its obligations thereunder shall be settled in the Republic of South Africa.
- (b) The Company and the Supplier hereby submit to the jurisdiction of the Durban and Coast Local Division of the High Court of South Africa in addition to any other South African Court which may have jurisdiction by operation of Law.

20. Indulgences

No indulgence granted by the Company shall constitute a waiver of any of its rights under the order.