

## **STANDARD TERMS AND CONDITIONS OF EQUIPMENT SALE AND /OR SERVICES**

### **1 INTERPRETATION:**

- 1.1 Unless this agreement defines or the context indicates otherwise, the following terms shall have the meanings given to them as defined below when used in this agreement:
  - 1.1.1 "This agreement" – the terms and conditions upon which the Seller sells goods and/or services to the Purchaser, as recorded in this document
  - 1.1.2 "The Seller"- Blastrite (Pty) Ltd, a company with limited liability, incorporated in terms of the company laws of the Republic of South Africa, and which has its principle place of business at.....;
  - 1.1.3 "The Purchaser"- the Customer who purchases products and/or services from the Seller, and, if circumstances should warrant the furnishing of the purchaser's full and further particulars, then the purchaser is  
.....of  
.....;
  - 1.1.4 "Products and/or Services"- Any equipment, goods, materials, products and/or services that the seller may sell to the Purchaser;
  - 1.1.5 "Standard Terms and Conditions"- these Standard Terms and Conditions of Sale and, should the Purchaser be an existing customer with a credit facility with the Seller, then, in addition hereto, the relevant Standard Terms and Conditions of Application for a Credit Facility shall also apply, should these Standard Terms and Conditions be Silent in any way;
- 1.2 Words importing the singular shall include the plural, and *vice versa*, and words importing the masculine gender shall include the feminine and neuter genders, and *vice versa*, and words importing persons shall include partnerships, trusts and bodies corporate, and *vice versa*.
- 1.3 The head notes to the clauses of this agreement are inserted for reference purposes only and shall not affect the interpretation of any of the provisions to which they relate.
- 1.4 This agreement shall be binding on and enforceable by the estates, heirs, executors, administrators, trustees or assigns of the parties as fully and effectually as if they had signed this agreement in the first instance and reference to any party shall be deemed to include all such persons.
- 1.5 If any conflict exists between the provisions of this agreement and the provisions of the Articles of Association of the Seller, then the provisions of this agreement shall take precedence and shall be appropriately implemented.
- 1.6 If any provision in the interpretation clause or introduction clause to this agreement and/or if any provisions of this clause 1 is a substantive provision conferring rights or imposing obligations on any third party then notwithstanding that such provision is contained in the introduction clause and/or this clause 1, as the case may be, effect shall be given thereto as if such provision were a substantive provision in the body of the agreement.

## **2 QUOTATIONS**

A quotation given by the Seller shall constitute an offer by the Seller to sell goods and/or services subject to the terms and conditions herein contained.

## **3 ORDERS**

Any order received from the Purchaser by the Seller shall constitute an acceptance of the offer in full by the Purchaser to purchase goods and/or services. Accordingly, a contract in regard to any particular order of goods and/or services comes into force between the parties upon receipt by the Seller of the order.

## **4 DESIGN, MANUFACTURE AND INSTRUCTIONS**

4.1 All goods supplied by the Seller are subject to the manufacturer's product specifications applicable at the time of manufacture;

4.2 No drawing, plan, specification or other descriptive or technical document furnished by the Seller, including instructions regarding the processing of the goods and/or services shall form part of this agreement unless made an annexure to this agreement by the signature and notation of the seller.

## **5 CONDITIONS PRECEDENT**

5.1 Notwithstanding any other provision herein to the contrary, the Seller's obligation to deliver the goods and/or services shall in all cases be subject to the following Conditions Precedent, which until fulfillment thereof, shall entitle the Seller to suspend or refuse delivery without the Purchaser having any recourse against the Seller:

5.1.1 The availability to the Seller of the goods from the manufacturer thereof;

5.1.2 The timeous receipt by the Seller of any instructions, including drawings and specification, required by the Seller from the Purchaser for the supply or processing of the goods and/or services;

5.1.3 The availability of sufficient capacity in the Seller's own storage and/or manufacturing facilities for the supply and processing of the goods and/or services;

5.1.4 The Seller being satisfied as to the Purchaser's solvency and ability and readiness to pay for the goods to be delivered within the time and manner prescribed in terms of this agreement;

5.1.5 The Purchaser not being in breach of any terms or conditions of this agreement.

## **6 DELIVERY OF GOODS AND/OR SERVICES**

6.1 Delivery of any goods and/or services from the Seller's address to that of the Purchaser shall be the responsibility of the Purchaser;

6.2 The Seller may, at the request of the Purchaser, and at the Seller's discretion, deliver the goods and/or services to the Purchaser's selected address, at a delivery cost specified by the Seller which shall be at the Purchaser's expense, over and above any price(s) paid for the purchase of the goods and/or services;

6.3 Should the Seller elect to deliver the goods and/or services to the Purchaser then, and in that event, the Seller shall use its best endeavors to effect delivery of the goods on the estimated date of delivery indicated in the quotation and/or order. Save as otherwise provided for, the Purchaser shall have no claims against the Seller on account of delays in effecting delivery, partial delivery or non-delivery, for any damages suffered whatsoever, whether consequential damages or not, and the Purchaser shall not be entitled to resile from this agreement nor to withhold or deliver any payment due in terms hereof;

6.4 Should the Seller at the Purchaser's request, agree to engage a carrier to transport the goods and/or services for the Purchaser then the Seller is authorised to engage a carrier on such terms and conditions it deems fit and the Purchaser shall indemnify the Seller against all claims which may be made against the Seller by the carrier so engaged and all liability which the Seller may incur arising out of the transportation of the goods and/or services;

6.5 Delivery of the goods and/or services by the Seller to the Purchaser shall be effected when:

6.5.1 Goods are offloaded at the delivery destination, if the goods are transported by the Seller; or

- 6.5.2 Goods are loaded on to the transporting vehicle at the Seller's premises, if the goods are transported by the Purchaser or a carrier whether engaged by the Seller or the Purchaser;
- 6.6 If the Purchaser fails to take delivery of the goods when tendered by the Seller or requests the Seller to store the goods prior to delivery then:
- 6.6.1 The Purchaser shall refund the Seller on demand the reasonable costs, including storage and insurance of keeping the goods during the period of the delay;
- 6.6.2 The goods shall be deemed to have been delivered to the Purchaser upon notification by the Seller to the Purchaser of the tender of delivery, when all risks in and to the goods shall pass from the Seller to the Purchaser, notwithstanding that the goods may be in the possession or under the control of the Seller;
- 6.7 The Purchaser shall be obliged to inspect the goods and/or services upon delivery thereof and shall immediately endorse the delivery note as to any missing, damaged or defective goods. The endorsement of any employee or agent of the Purchaser, or of any person found at the premises to which the goods are delivered which appears on the delivery note irrespective of its wording, will constitute evidence of the delivery of the goods and/or services purchased, which shall be deemed to be complete, in good condition and without defect unless proved to the contrary by the Purchaser.

## **7 RISK**

Irrespective of when ownership in and to the goods and/or services passes to the Purchaser, all risk and in and to the goods shall transfer to the Purchaser, who will thereafter be responsible for all loss or damage to the goods however arising:

- 7.1 Where the Seller transports the goods to the delivery destination or arranges the transport of the goods to the delivery destination otherwise than at the Purchaser's request, upon offloading of the goods from the Seller's vehicle at the delivery destination;
- 7.2 Where the Seller arranges the transport of the goods to the delivery destination at the Purchaser's request, upon dispatch of the goods from the premises of the Seller;

## **8 OWNERSHIP**

Ownership in and to the goods and/or services shall pass to the Purchaser on payment in full of the purchase price for the goods to the Seller.

## **9 PURCHASE PRICES**

Unless otherwise specified or quoted in writing by the Seller:

- 9.1 Orders are accepted by the Seller subject to the Seller's current price ruling on the date upon which the goods are delivered to the Purchaser, less any discount authorised by the Seller in writing;
- 9.2 All prices are specified to exclude value added tax, or any other ancillary cost, or charge.

## **10 PAYMENT PROVISIONS**

- 10.1 The full purchase price for the goods and/or services stated on the Seller's invoice shall be paid by the Purchaser without any deduction, exchange or setoff, save for the discounts allowed by the Seller in writing, within the due date for payment specified in the quote, or if no date is so specified, within thirty (30) days of date of issue of the Seller's statement and/or invoice and at such place as may be specified by the Seller from time to time;
- 10.2 Under no circumstances shall any payment be deemed to have been received by the Seller until the Seller is in actual possession thereof, either in cash or paid to the credit of the Seller on the Seller's account, by any other means of payment to the Seller's satisfaction;
- 10.3 In regard to any goods, if more than one delivery is to be made, then each delivery may be invoiced separately, but payment shall still be effected by the Purchaser in accordance with paragraph 10.1;
- 10.4 The Purchaser agrees that in the event of any series of an invoiced indebtedness being disputed then, in that event, the Purchaser shall nevertheless pay the undisputed amount of such indebtedness according to the agreed terms of credit allowed to the Purchaser, failing which any discount permitted in respect of the invoiced indebtedness will be forfeited without prejudice to the Seller's remedies in law;

10.5 The Seller shall be entitled to apportion any payment received from the Purchaser to any indebtedness which the Purchaser may owe to the Seller or realise any security held by the Seller and use the payment towards payment of any amount due by the Purchaser;

10.6 Where the Purchaser orders goods which exceeds the value of the credit which the Seller has approved, the Seller shall in its sole discretion and without notice to the Purchaser be entitled to increase its approved credit limit and the terms and conditions hereof and thereof shall automatically apply to the additional goods and/or services so supplied;

10.7 The Seller reserves the right to make processing of the goods and/or services at the Purchaser's request and on his instruction, subject to the receipt of a deposit, to be determined by the Seller and to be retained by the Seller and deducted from the Purchase price of the goods and which deposit shall not attract any interest.

## **11 INTEREST**

The Purchaser shall pay to the Seller on demand, interest, compounded monthly in arrears on any amount(s) not paid on due date, in terms of this agreement, at the prescribed rate of 15.5% per annum or such other rate as determined in accordance with the Prescribed Rate of Interest Act, reckoned from due date of payment until date of actual payment thereof.

## **12 DISCOUNTS**

12.1 Unless otherwise specified by the Seller in writing, prices are not subject to any discounts, whether for prompt settlement, loyalty, quantity purchasing or otherwise;

12.2 If any discounts have been agreed to in writing, such discounts shall be irrevocably forfeited if payment of the purchase price is not received by the Seller on due date thereof. Such discounts shall only be applicable to the net price of the goods exclusive of value added tax or any other additional charges such as transportation costs and/or any other costs required by law.

## **13 WARRANTIES**

13.1 All goods are sold *voetstoots* subject only to the manufacturer's warranty, a copy whereof is available on request;

13.2 The Seller shall not be liable in any manner whatsoever for any warranty and/or guarantee furnished by the manufacturer of any goods sold by the Seller to the Purchaser and any right of recourse which the Purchaser may have for any defect, patent or latent, in the goods shall, if applicable, entitle the Purchaser to a right of recourse purely against the manufacturer, and to the exclusion of the Seller;

13.3 No other warranties or representations, expressed, implied or tacit, whether by law, contract or otherwise and whether inducing the Purchaser to purchase the goods/or services which are not set forth in this agreement or the warranty referred to in 13.1 and 13.2 above shall be binding on the Seller.

## **14 EXEMPTIONS AND INDEMNITIES**

14.1 Save as provided for in the warranty referred to at 13 above the Purchaser shall have no claim of any nature, without restricting the generality of the foregoing, whether contractual or delictual and whether for damages, consequential or otherwise or for a remission of the purchase price or for the cancellation of this agreement or otherwise, against the Seller or the Seller's agents or subsidiaries for any loss or

damage sustained by the Purchaser or the Purchaser's agents or subsidiaries of any nature whatsoever or howsoever caused, even through the negligent act or omission of the Seller or its agents or subsidiaries, arising out of the parties having dealings with each other, whether by way of the sale of goods and/or services in terms of this agreement, or by way of credit or through the rental of goods and/or services by the Seller to the Purchaser.

14.2 Provided that the goods and/or services in regards to which any claim is brought by any third party against the Seller comply with the Seller's product specification, the Purchaser indemnifies the Seller against any such claim inclusive of all legal costs which may be demanded from the Seller and undertakes to settle such claim upon demand by the third party.

14.3 If the Seller has processed the goods at the request and on the instructions of the Purchaser, the Purchaser shall have no claim against the Seller for any loss or damage arising out of any error or discrepancy, provided that the Seller has processed the goods in accordance with the instructions received from the Purchaser, and in which event the Seller shall be deemed to have complied with the instructions regarding the processing thereof, unless the contrary is proved.

## **15 BREACH**

A breach of this agreement shall occur if and in the event that:

15.1 The Purchaser fails to pay any amount(s) or other payment required hereunder when due and such failure continues for a period exceeding seven (7) days;

15.2 The Purchaser breaches any representation or warranty made or given by the Purchaser, or that any representation or warranty is found to be untrue or, by reason of failure to state a material fact or otherwise, shall be materially misleading;

15.3 The Purchaser fails to perform or observe any of its other obligations hereunder, and such failure or breach shall continue to remain unremedied for a period of thirty (30) days after the earlier of:

15.3.1 The date upon which the Purchaser obtains, or should reasonably have obtained knowledge of such failure or breach; or

15.3.2 The date upon which notice thereof shall be given by the Seller to the Purchaser;

15.4 The Purchaser shall be declared insolvent, or commit an act of insolvency, or be placed under judicial management or enter into a scheme of arrangement, or be placed under administration, or make an undue disposition in favour of one or more of its creditors;

15.5 The Purchaser ceases doing business as a going concern;

15.6 The Purchaser shall have terminated its legal existence, consolidated with, merged into, or transferred or leased substantially all of its assets to any other person or entity;

## **16 REMEDIES UPON BREACH**

In the event of any breach by the Purchaser, the Seller may, at its own discretion elect to:

16.1 Terminate this and any other ancillary agreements and the Purchaser's rights hereunder, and claim such damages as it may have suffered by reason of the breach; and/or

16.2 Institute appropriate court action to enforce compliance with the terms of this agreement and/or recover such damages arising from the Purchaser's breach;

## **17 JURISDICTION**

The Seller shall be entitled but not obliged to institute action arising from the Purchaser's breach of this agreement in the Magistrate's court, and for this purpose, the parties hereby consent and agree to the jurisdiction of the Magistrate's court for the district of Cape Town, irrespective of the amount or cause of action involved, for any action instituted by the Seller arising out of or incidental to this agreement. The provisions of this clause hereby constitute any necessary consent in writing for the purposes of such proceedings as may be required by the Magistrate's Court Act No. 32 of 1944;

## **18 CERTIFICATE OF INDEBTEDNESS**

A certificate signed by a Director of the Seller, whose appointment as such shall require no proof, showing the amount due and owing and payable by the Purchaser to the Seller at any given time shall be sufficient proof of the facts therein stated for the purposes of all legal proceedings against the Purchaser for recovery of any amounts outstanding, due, owing and payable, unless proved to the contrary by the Purchaser.

## **19 NOMINATED SUPPLIER**

The Seller reserves the right to nominate any company which is a subsidiary or associate company of the Seller for the purpose of supplying the Purchaser with goods and/or services subject to the terms and conditions herein contained.

## **20 SURETYSHIP AND LIABILITY OF SIGNATORIES**

- 20.1 If the Purchaser is a partnership, then the partners of the customer shall be bound as surety and co-principal debtor in their individual capacities, jointly and severally for all the purchaser's obligations, notwithstanding that only one partner may have signed this agreement on behalf of the purchaser;
- 20.2 If the Purchaser is a close corporation, then the members of the customer shall be bound as surety and co-principal debtor in their individual capacities, jointly and severally for all the purchaser's obligations, notwithstanding that only one member may have signed this agreement on behalf of the Purchaser;
- 20.3 In the event of the Purchaser being a juristic person and incomplete or incorrect particulars of the juristic person are provided by its employees, agents, trustees or representatives on this agreement, then the signatory hereto shall be personally liable for the obligations of the Purchaser in terms hereof;
- 20.4 In binding themselves as sureties, the individuals on behalf of the Purchaser, as the case may be, renounce the benefits of excussion and division and hereby bind themselves jointly and severally as surety and co-principal debtor in solidum with the Purchaser unto and in favour of the

Seller, its order or assigns, for the due performance by the Purchaser of all of its obligations to the Seller;

## **21 FORCE MAJEUR**

The Seller shall not be liable for any failure or delay in performing its obligations in terms of this agreement caused by the occurrence of any event beyond its reasonable control and affecting its performance, including but not limited to war, civil commotion, riots, strikes, industrial action, government action, acts of God or any other similar cause.

## **22 GENERAL**

- 22.1 Any indulgence or extension that may be granted by the Seller shall not constitute a waiver of any of the Seller's rights in terms hereof, nor constitute a novation of the terms of this Agreement;
- 22.2 No variation to the terms of this agreement shall be valid or binding unless such variation has been reduced to writing and signed by both parties;
- 22.3 The Purchaser appoints the address in clause 1.1.2 as being its *domicilium citandi et executandi* for all purposes that arise from or may be incidental to this agreement;
- 22.4 The person signing this agreement on behalf of the Lessee warrants that such person is duly authorised to bind the Lessee to the terms of this agreement.

**BY SIGNING BELOW, THE PURCHASER ACKNOWLEDGES THAT HE HAS READ THE TERMS AND CONDITIONS AND ACKNOWLEDGES THAT THE PURCHASER IS BOUND THERETO**

**SIGNED AND DATED AT**

**ON THIS THE**

**DAY OF**

**2005**

**AS WITNESSES:**

**for THE PURCHASER**

1. \_\_\_\_\_

\_\_\_\_\_  
who warrants that he/she is duly  
authorised hereto

2. \_\_\_\_\_

CAPACITY:  
NAME:

**SIGNED AND DATED AT**

**ON THIS THE**

**DAY OF**

**2005**

**AS WITNESSES:**

**for: THE SELLER**

1. \_\_\_\_\_

\_\_\_\_\_  
who warrants that he/she is duly  
authorised hereto

2. \_\_\_\_\_

CAPACITY:  
NAME:

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Gauteng

Durban

Cape Town

Rustenburg

P.O. Box 4585 Germiston 1411

Cnr. Maydon Wharf & Bayhead Rd  
Maydon Wharf Durban

Bay Rd Ben Schoeman Dock  
Cape Town Harbour Cape Town

c/o Waterval Refinery  
Rustenburg Platinum Mines

Telephone +27 (0) 11 842 7000  
Facsimile +27 (0) 11 845 6456

Telephone +27 (0) 31 205 8366  
Facsimile +27 (0) 31 205 8367

Telephone +27 (0) 21 421 7178  
Facsimile +27 (0) 21 424 2486

Telephone +27 (0) 14 591 1000  
Facsimile +27 (0) 14 591 1284

**Directors:**

**J . H a l d a n e**

**G . K e l m a n**

**A . L a s h b r o o k e**