

**International Purchases**

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**1 GENERAL/SCOPE OF APPLICATION**

- (1) In these terms and conditions (the "**Conditions**"): "**Buyer**" means Reclamation Holdings (Pty) Ltd, its successors and assigns and includes any subsidiary company of the Buyer by which the goods are sold, as set out on the commercial terms document to which these Conditions are appended (the "**Purchase Contract**"); "**Seller**" means the person, firm or company also named in the Purchase Contract 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 Purchase Contract (together the "**Contract**"), are the only terms and conditions upon which the Buyer is prepared to deal with the Seller in respect of the Goods and shall govern the Contract to the exclusion of all other terms or conditions proposed by the Seller, (including any terms purporting to reserve title to the Goods) whether in any quotation, acknowledgement, or otherwise, 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 Purchase Contract, the Purchase Contract shall prevail.
- (4) These Conditions may only be amended in writing by the Buyer.
- (5) Trade terms (such as 'Cost Insurance and Freight' ("CIF"), '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.

**2 PRICE AND PAYMENT**

- (1) The price (as set out in the Purchase Contract) may not be varied except with the Buyer's written consent and shall include such packaging as is acceptable to the Buyer's needs and the costs of delivery. Neither variation in the price nor extra charges will be applicable at any time without express written acceptance by a duly authorised representative of the Buyer.
- (2) The Seller shall invoice the Buyer on or at any time after completion of delivery and the Buyer shall pay the price as set out in the Purchase Contract. Time of payment shall not be of the essence.

**3 SHIPMENT/DELIVERY**

- (1) Time of shipment/delivery is of the essence of the Contract. Delays, including partial deliveries, must be reported to the Buyer immediately, stating the reasons and anticipated length of the delay, although such a notice does not restrict the legal rights of the Buyer arising from the delayed delivery.
- (2) The Seller shall be in default if it exceeds an agreed delivery time or period, in respect of all or part of the delivery. If the Buyer extends a delivery period for the Seller, this does not affect the default of the Seller and the rights of the Buyer. The Buyer has the right to (partially or wholly) refuse early or late deliveries, without incurring any liability in this regard and without prejudice to its other rights and remedies.
- (3) In the event that the Seller fails to make timely shipment/delivery of the Goods, without limiting any other remedies of the Buyer, the Buyer may, upon written notice to the Seller, immediately terminate the Contract and/or claim damages arising out of or in connection with such delay in shipment/delivery.
- (4) If the Buyer has reasonable grounds for insecurity with respect to the Seller's ability to make timely shipment or delivery of the Goods, of the quality and in the quantity set forth in the Purchase Contract, or otherwise perform any of its obligations hereunder, whether fundamental or not, the Buyer may suspend its performance of the Contract (including without limitation acceptance of the Goods by the Buyer and payment of the price) and, if it becomes apparent that the Seller will not perform its obligations under the Contract the Buyer may terminate the Contract immediately upon notice to the Seller.
- (5) In the event that shipping space is arranged by the Seller, the Seller shall, unless otherwise agreed in the Contract, ship the Goods on an ocean-going vessel of a type normally used for the transportation of Goods of the same type. The Goods shall be carried without any deviation by the usual route or routes.
- (6) Notice of the details and particulars of the shipment shall be sent to the Buyer immediately after shipment. Date of bill of lading, waybill, cargo receipt or any other similar document acceptable to the Buyer as a negotiable shipping document shall, in the absence of evidence to the contrary, be proof of the date of shipment

- (7) If the Goods are of a dangerous nature, the Seller shall notify the Buyer of the nature thereof and any and all necessary information for their safe carriage, stowage and handling by legally acceptable way before the delivery of the Goods.
- (8) The date for shipment/ delivery shall be specified in the Purchase Contract and if no such date is specified therein then delivery shall take place within twenty(20) days of the date of the Contract. Time of delivery of the Goods shall be of the essence, unless otherwise specified in the Contract.
- (9) The Goods shall be delivered carriage paid (unless otherwise agreed by the parties in writing) to such location as specified in the Purchase Contract or by the Buyer before delivery or, if no location is so specified, to the Buyer's place of business. The Seller shall (unless the Buyer specifies otherwise) at its own cost remove from the place of delivery any packaging material used in transporting the Goods.
- (10) The Seller may not deliver the Goods by instalments except with the prior written consent of the Buyer. Unless otherwise agreed, the Seller delivering by instalments shall not be entitled to any payment on account of the price until all instalments of the Goods are delivered in accordance with the Contract.
- (11) Where the Goods are delivered Ex Works (as such term is defined in the Incoterms), the Buyer shall use reasonable efforts to unload the Goods in a reasonable time but the Buyer shall have no liability to the Seller for any vehicle trailer or container hire, demurrage or other charges all of which shall be for the Sellers account.
- (12) The Buyer shall have the right, at any time prior to delivery of the Goods, to inspect and test the Goods and the Seller shall provide the Buyer with all facilities reasonably required for such inspection and testing and if the results of such inspection or testing indicate that the Goods do not conform or are unlikely to conform with the Contract, the Buyer shall inform the Seller within seven (7) days of the inspection and/or testing and the Seller shall immediately take such action as is necessary to ensure conformity and the Buyer shall have the right to require and witness further testing and inspection. Notwithstanding any such inspection or testing, the Seller shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Seller's obligations under the Contract.
- (13) A detailed delivery order in triplicate must be attached to each delivery, indicating the order number, the date of the Contract, and the position number(s) for the delivered Goods. The Seller is liable for any damage that is caused by insufficient or inadequate packaging. Superfluous packaging material is to be avoided. The delivered object must be clearly indicated on the packaging. The packaging and labels must correspond to the legal requirements. Non-applicable labels from previously used packaging must be removed. The packaging shall become the property of the Buyer; alternatively, at the Buyer's discretion and request, it shall be taken back by the Seller free of charge. Packaging costs are to be paid by the Seller as a matter of principle, unless other arrangements have been made. To the extent it has been agreed that the Buyer has to pay the costs for packaging materials, the Buyer is authorized to return the packaging materials to the Seller.
- (14) In all instances where the goods are delivered by the Seller to the Buyers nominated discharge port, the Seller arrange and be liable for a minimum period of 30 (thirty) days for any demurrage, detention and/or delays and/or storage associated with the shipment/delivery, clearance and/or offloading of any shipment/delivery/consignment of the Goods at the discharge port, from whatsoever cause and howsoever arising and the Seller shall indemnify and keep indemnified the Buyer in full and hold the Buyer harmless and pay the Buyer, the discharge port and/or any other party or authority, on demand, against any and all losses, claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs suffered or incurred thereby or as may be due and payable on account thereof.

#### **4 TRANSFER OF RISK**

- (1) The risk of loss or damage to the Goods shall pass from the Seller to the Buyer at the time of delivery of the Goods or, if any relevant term from the Incoterms. The title to the Commodity shall pass from the Seller to the Buyer at the same time as the risk of loss or damage to the Commodity passes from the Seller to the Buyer under the foregoing sentence.

#### **5 INSURANCE**

- (1) In the event of the Contract being made on a C.I.F. basis or on the basis of any other terms where the Seller is obligated to effect marine insurance at its own expense, the Seller shall effect marine insurance in accordance, with underwriters or insurance companies of good repute and satisfactory to the Buyer in the amount of one hundred and ten percent (110%) of C.I.F. value of the Goods, unless otherwise specified on the face of this Contract. Such insurance shall also include the risks of war and strikes.
- (2) In the event of loss or damage to the Goods after shipment but prior to unloading at the discharge port the Buyer shall not have to pay the price for the Goods (and any payment made to the Seller on that account shall be held by the Seller on trust for the Buyer), until any insurance claim to be made has been settled and notwithstanding that the documents representing the Goods may have been delivered to the Buyer.

- (3) In the event of loss of the carrying vessel no payment for the Goods shall be made by the Buyer until loss of the carrying vessel is established and any insurance claim relating to the Buyer's interest settled.
- (4) Any insurance monies received by the Seller in relation to the Goods shall be held on trust for the Buyer and at the Buyer's discretion the Seller shall apply the same in respect of the price or so much of it as may be properly payable by the Buyer.
- (5) For the duration of the Contract and for a period of five(5) years thereafter, the Seller shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Buyer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **5 WARRANTIES**

- (1) The Seller warrants the specification, quality, quantity and mass, safety, merchantability and fitness of the Goods for purposes indicated, expressly or impliedly, by the Buyer. If the Goods fail to conform to the foregoing warranty, the Seller shall, at its own expense, and without limiting any other remedy of the Buyer, render the Buyer or any party claiming through the Buyer all such service or assistance as the Buyer may reasonably request in enforcing the foregoing warranty. Notwithstanding the provisions of any applicable law, the Seller shall not be exempted from any liability arising from non-conformity of the Goods with the requirements of the Contract (i) by the reason of any delay of inspection or notice from the Buyer (including but not limited to any customer purchasing the Goods from the Buyer or any other person, firm, or company directly or indirectly connected with the purchase, resale, transportation or taking delivery of the Goods) or (ii) by the reason that such non-conformity is not attributable to the negligence or wilful misconduct of the Seller.
- (2) The Seller warrants that the Goods will be delivered by their due date for delivery, comply with all applicable statutory and regulatory requirements including those relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods, comply with the specifications, weight standards and descriptions stated overleaf and sample (if any) and will be of merchantable quality, safe, free from any dangerous, hazardous, or toxic material or deleterious impurities and be fit for any purpose held out by the Seller or made known to the Seller by the Buyer, expressly or by implication and the foregoing warranty shall survive delivery and acceptance of the Goods or documents or payment for them.
- (3) The Seller warrants that it has free and unrestricted entitlement in and to the Product and is capable of transferring full and unencumbered title thereof to the Purchaser;
- (4) The Seller warrants (i) that the Goods shall, in all respects, be suitable to be accommodated, as is, in its delivered state and condition, in the Buyer's smelting and/or melting foundry operations and in particular (ii) that the Goods shall, in all respects, be safe for the normal use, processing and/or beneficiation by the Buyer, and shall be free from wood, sand and waste material and all or any types of explosives, dangerous, hazardous and/or deleterious materials, such as bombs, ammunition, gas cylinders, flammable material and radioactive materials, radioactive waste or gas. In the event that the Goods shall contain any contaminating, dangerous, hazardous and/or deleterious materials, as detailed and/or contemplated above, the Seller shall take such material back to the source of supplies at Seller's own risk and expense and shall be responsible for all the related expenses, losses and damages incurred thereof.

## **6 PERMITS, TAXES AND DUTIES**

- (1) The Seller shall obtain at or by the proper time and keep in good standing all necessary export licenses, permits and authorisations and the Seller's obligations to do so shall not be relieved by failure or delay by governmental agencies or other third parties.
- (2) All taxes, export duties, fees, banking charge and other charges incurred on the Goods, containers and/or documents including certificates of origin in the country of shipment and/or of origin shall be the responsibility of the Seller and for the Seller's account
- (3) In the event of failure or delay in delivery of the Goods due to any reason whatsoever, the Seller shall, without prejudice to the other rights of the Buyer, reimburse to the Buyer (i) the dead freight payable in respect of the vessel or vessels by the Buyer and (ii) all other actual costs incurred by the Buyer in respect of the Goods as a result of such failure or delay in delivery of the Goods, without limitation to any other right or remedy of the Buyer, the Seller shall indemnify the Buyer from all loss or expense arising from delay, demurrage or failure by the Buyer in performance its obligations under these Conditions, however caused.

## **7 BREACH AND REMEDIES**

- (1) The Buyer shall have the right at any time and for any reason to terminate the Contract in whole or in part by giving the Seller written notice whereupon all work on the Contract shall be discontinued and the Buyer shall pay to the Seller fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

- (2) The rights and remedies of the Buyer set forth in these Conditions are in addition to the Buyer's rights and remedies at general law.
- (3) In the event that the Seller fails for whatever reason to deliver all the Goods on time in accordance with the Contract, (including without limitation the Seller's warranty in condition 5 (or any other breach of the Contract by the Seller)), the Buyer may terminate the Contract without incurring liability to the Seller and without prejudice to the Buyer's rights to claim damages.
- (4) In the event of over or under delivery the Goods, without prejudice to the Buyer's right to claim damages, the Buyer may elect within a reasonable time of delivery either to reject the Goods (in which case the Goods shall remain at the Seller's risk and returnable at the Seller's expense), or to accept the Goods actually delivered or accept some but not all the Goods actually delivered and reject the remainder, in which event the Buyer shall pay for the Goods actually delivered and accepted at the rate indicated overleaf or such lesser sum as the Buyer shall consider fair in the circumstances.
- (5) In the event that the Goods fail to comply with the Seller's warranty in clause 5 or are otherwise not in accordance with the Contract in any respect, without prejudice to the Buyer's right to claim damages the Buyer may elect either to reject all the Goods or to reject some of the Goods and accept the rest and, subject always to condition (7) below, the Buyer shall only be obliged to pay such price for the Goods actually accepted as the Buyer shall consider fair in the circumstances having regard to the condition of such Goods and Buyer's losses and expenses
- (6) In the event that the Goods do not comply with the Seller's warranty in clause 5, without prejudice to the Buyer's right to claim damages without further notice to the Seller, the Buyer may in its discretion by itself or through others clean, resort, re-melt, repack or otherwise handle, process or use such Goods as it has not rejected to bring them so far as possible into a condition which complies with the Seller's warranty in clause 5 and all costs and expenses incurred in the Buyer so doing shall be for the Seller's account and if the Buyer exercises its rights under this clause 7 the Buyer shall not be obliged to pay the Seller any part of the price (and any part of the price already paid shall be held by the Seller on trust for the Buyer) until the Seller has paid the Buyer the costs and expenses incurred by the Buyer as aforesaid and all other liabilities to the Buyer.
- (7) The Seller shall be responsible for all costs of collection or re-delivery of Goods rejected by the Buyer and risk in such Goods shall pass to the Seller on being advised by the Buyer that such Goods are rejected.
- (8) The Seller shall indemnify and keep indemnified the Buyer in full and hold it harmless on demand from and against any and all losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation), claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs suffered or incurred by the Buyer or for which the Buyer may become liable arising out of or in connection with (i) defective design, workmanship, quality, specification, quantity and mass, pertaining to and/or associated with the Goods or any other defect in the Goods (including any claim made against the Buyer for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods) attributable to the acts or omissions of the Seller, its employees, agents or sub-contractors, (ii) any and all demurrage, detention and/or delays and/or storage associated with the shipment/delivery, clearance and/or offloading of any shipment/delivery attributable to the acts or omissions of the Seller by reason of the Seller's conduct specified in (i) and (iv) of this clause 8, (iii) any claim made against the Buyer for any infringement or alleged infringement of any intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods; and (iv) any claim made against the Buyer arising out of, or in connection with, the supply and/or shipment/delivery of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Seller, its employees, agents or sub-contractors. This clause 7(8) shall survive termination of the Contract, for whatever reason.
- (9) In the event that the Goods or any part or portion of any consignment of the Goods fail to comply with the Seller's warranty in clause 5 or is/are otherwise not in accordance with the Contract in any respect, without prejudice to the Buyer's rights and remedies in clause 5, the Buyer shall, in writing, notify the Seller thereof ("Non-Conformance Notice") and from the date of the Buyer's transmission of the Non-Conformance Notice to the Seller, it is expressly recorded and agreed, that the Buyer shall without prejudice to the Buyer's rights and remedies in clause 3(4) or otherwise, be entitled to (i) suspend its performance of the Contract and the Seller shall not be entitled to any payment on account of the price of the Goods or any part or portion of any consignment of the Goods associated with the Contract, until the Seller shall have, in all respects, fully and effectively recompensed and reimbursed the Buyer in respect of any and all damages as the Buyer shall have suffered or incurred thereby or as may be due and payable to the Buyer on account thereof and (ii) the Seller shall indemnify and keep indemnified the Buyer in full and hold it harmless on demand from and against any and all losses (including any direct, indirect or consequential losses, loss of profit and loss of reputation), claims, damages, liabilities, fines, interest, penalties, costs, charges, expenses, demands and legal and other professional costs suffered or incurred by the Buyer associated with any and all consequent and resulting demurrage, detention and/or delays and /or storage relating to the shipment/delivery, clearance and/or offloading of the Goods.

- (10) The Seller acknowledges that if the Seller fails to deliver all the Goods on time or at all in accordance with the Contract, or if the Buyer otherwise rejects all or some of the Goods or terminates the Contract pursuant to these Conditions, to meet its own requirements and commitments the Buyer may buy in alternative goods from such source or sources and at such price or prices as may be available, but the Buyer shall not owe the Seller any duty to buy in alternative goods at the lowest or any particular price available.
- (11) Without prejudice to the Buyer's right to claim damages the Buyer may terminate the Contract by notice to the Seller if the Seller is in breach (including anticipatory breach) of, or otherwise fails to perform, any other contract or commitment with the Buyer (which shall be deemed a breach of the Contract by the Seller) or if any sum due from the Seller to the Buyer on any account is overdue, or if the Seller is, or in the reasonable opinion of the Buyer is likely to be, bankrupt or insolvent or otherwise unable to perform its obligations to the Buyer, or has had or is likely to have a liquidator, trustee, manager, receiver, or administrator appointed (or suffer the process in any jurisdiction) or otherwise ceases or threatens to cease to carry on business.
- (12) Weights at the Buyer's weighbridge or receiving works shall govern in the event of any dispute.

## **8 SET- OFF**

- (1) The Buyer shall be entitled to offset any amount owed to the Seller, or any amount owed or claimed by the Buyer or its affiliates to be owed by the Seller to the Buyer or its affiliates, whether under the Contract or otherwise, regardless of whether payable or not, regardless of the place of payment or currency.
- (2) The Seller may only assign claims raised against the Buyer with the Buyer's written consent.

## **9 FORCE MAJEURE**

- (1) The Buyer shall not be liable to the Seller for any delay, breach, or partial or interrupted performance of the Buyer's obligations under the Contract attributable to any event or events beyond the Buyer'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 authorisations, non-availability or delay in availability or other transport, strikes or trade disputes whether or not official, cessation or interruption of operations of the Buyer'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 Buyer or cancellation or breach by a supplier or customer of the Buyer of any contract with the Buyer for the purchase or supply of any of the Goods or other goods derived from them.
- (2) If such event as is referred to in clause 9(1) continues for more than 7 (seven) days (or is in the reasonable opinion of the Buyer irrecoverable), the Buyer may without liability to the Seller terminate the Contract in respect of all or some of the Goods by written notice to the Seller.
- (3) The Buyer shall use reasonable endeavours to notify the Seller in writing of any of the events referred to in clause 9(1) affecting the Buyer but failure to do so not restrict the operation of condition 9(1) and (2).

## **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 Buyer should elect within a further period of 10 (ten) days to have the dispute determined by arbitration. If the Buyer 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 Purchase Contract.
- (2) The Buyer shall be entitled to assign its rights and/or obligations in terms of the Contract without any consent being required by the Seller. The Seller 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 Buyer.
- (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.