

RAND YORK MINERALS

CONDITIONS OF SALE

This contract supersedes all correspondence, orders or confirmations of seller or any agent thereof with respect to the material covered by this contract.

There are no additional terms or specifications not expressly contained in this contract. No modification or waiver of this contract or any right of Seller hereunder shall be binding upon Seller unless it is in writing and signed by an officer of Seller. No waiver by Seller of any default or breach shall be deemed a waiver of any other default or breach.

1. OWNERSHIP AND RISK

1.1. Ownership of the goods will, notwithstanding delivery, only pass to the Buyer against payment of the whole of the agreement price. The risk in specific goods shall pass to the Buyer on delivery and in non-specific goods on their appropriation by Rand York Minerals (Pty) Ltd. (hereafter referred to as RYM) to the Buyer.

1.2. For as long as RYM retains ownership in the goods delivered –

1.2.1 The Buyer shall have no right to dispose of or part with possession of the goods whether by way of sale or pledge or otherwise and in the event of the goods being interfered with by any third party, the Buyer shall immediately notify RYM by way of telephone call, confirming the communication by fax or electronic communication. The cost incurred in any action to prevent the interference shall be paid by the Buyer on demand and RYM shall cede its claim for costs against the third party to the Buyer.

- 1.2.2 The Buyer shall be obliged to insure the goods for the full price against the usual risks and to maintain the goods in good order and condition. Monies received under the insurance policy shall be applied first in payment of the purchase price to RYM.

- 1.3. The Buyer shall not have any claim whatever against RYM
 - 1.3.1 If the goods fail to arrive at the destination; or

 - 1.3.2 For any loss of or damage to the goods, arising from any cause whatever, while they are in transit, irrespective of who is responsible for their delivery.

- 1.4. In the event of the goods being stored by the Buyer at its premises, which are leased by the Buyer, the Buyer undertakes to notify RYM of this fact and to notify the landlord of the premises in writing of the fact that the goods stored are the property of RYM and hereby authorizes RYM to give notice of ownership in the goods to the landlord.

2. WARRANTIES AND REPRESENTATIONS

- 2.1. Any recommendation, formula, figure, advice, specification, illustration, diagram, price list, dimension, weight or other information and particulars furnished by RYM concerning the goods, is approximate and for information only and, unless otherwise expressly stated in writing, does not form the basis or any part of this agreement.

RYM shall not be liable under any circumstances whatever for any loss or damage arising out of the use by the Buyer of any material or information referred to in whether furnished negligently or otherwise.

Any model or sample of RYM shown to the Buyer is illustrative of the general type and quality of goods and shall not be construed as a representation that the goods conform to the model and or sample.

- 2.2 RYM does not make any representations nor, unless expressly given in writing (whether set out on any product label, shade card insert, data sheet, circular, current printed product brochure or otherwise), give any warranty or guarantee of any nature whatever in respect of the goods or their suitability for any purpose, whether that purpose is notified to RYM or not.
- 2.3 No representative, agent or salesman other than a director of RYM has any authority to waive or vary any of these Terms and Conditions of Sale or make any representations whatever on behalf of RYM.

3. EXCLUSION OF LIABILITY

- 3.1. RYM shall not be liable for any loss or damage whatever suffered by the Buyer or any other person as a result of –
- 3.1.1 The goods or any part thereof being defective in any way or failing to conform wholly or partly to indicated specification.
- 3.1.2 Any delay in delivering the goods or any part thereof.
- 3.2. RYM shall not be liable to the Buyer or any other person for any loss of profit or other special damages or any consequential damages whatever arising out of any breach by RYM of any of its obligations, including gross negligence under these terms and conditions of sale or out of any other cause whatever.

- 3.3. The Buyer indemnifies RYM against any claim, which may be made against RYM by any other person in respect of any matter for which the liability of RYM is excluded in terms of 3.1 and 3.2
- 3.4. Subject to other provisions of these Terms and Conditions Of Sale, the Buyer may not claim any reduction of the agreement price for any short delivery of, or defect in, any goods unless RYM is notified thereof –
 - 3.4.1 verbally within forty-eight hours ; and
 - 3.4.2 Thereafter in writing within seven days, of the Buyer receiving the goods.
- 3.5. Subject to other provisions of these Terms and Conditions of Sale, the Buyer may not return any goods unless-
 - 3.5.1 RYM has consented in writing to such return;
 - 3.5.2 The goods and packaging are in good condition;
 - 3.5.3 It does so entirely at its own cost and risk, to a destination nominated by RYM; and
 - 3.5.4 If required to do so by RYM, it pays to RYM a handling fee equal to 5% of the agreement price of the goods.

4. RESALE OF GOODS

- 4.1. The Buyer shall not, unless the purchase price for the goods has been paid in full, be entitled to dispose of any goods delivered to it, to any third party without the prior written consent of RYM.

- 4.2. Where any goods are disposed of by the Buyer to any third party without such written consent any undertaking given by RYM in respect of the goods shall forthwith and ipso facto cease to be of any force or effect. The Buyer indemnifies RYM against all claims of any nature whatsoever that may be made against RYM by any third party arising directly or indirectly from any such disposal, and against all damages, losses, costs or expenses incurred by RYM in respect of any such claim.
- 4.3. Where the Buyer disposes of goods to any third party with the written consent of RYM, the Buyer shall only dispose of such goods on the terms contained in these Terms and Conditions of Sale, mutatis mutandis.
- 4.4. If the Buyer disposes of the goods with the written consent of RYM but on terms other than those contained in these Terms and Conditions of Sale, mutatis mutandis, the Buyer indemnifies RYM against any claim of any nature whatsoever which may be made against RYM by any third party arising directly or indirectly from such disposal.

5. THE AGREEMENT PRICE

- 5.1 The terms of payment of the purchase price will agreed between RYM and the Buyer.
- 5.2 All sales of the product will be done on a cost, insurance and freight basis (CIF) unless otherwise agreed by RYM
- 5.3 The agreement price shall not take account any loss or estimated loss or extra cost incurred by RYM as a result of the default by the Buyer causing a delay in

delivery of the goods. The agreement price shall be adjusted to take into account any extra cost incurred by RYM or damages suffered by RYM as a result of such default by the buyer.

Any such extra cost incurred by RYM shall become payable against written proof of the extra cost furnished by RYM to the Buyer.

6. ARBITRATION

- 6.1 The parties hereto agree that every controversy or claim arising out of, in connection, or relating to this contract or the interpretation, performance or breach thereof shall be settled by arbitration by a single arbitrator in the city of Johannesburg under the rules then obtaining of the South-African arbitration association, or its successor, and that judgement may be entered on any award so made in any court having jurisdiction.
- 6.2 Upon the written demand for arbitration by buyer or seller, the parties shall agree upon a specified individual as the single arbitrator or if they are unable to agree within 15 days of such demand, then the single arbitrator shall be appointed by the South-African arbitration association.
- 6.3 In any arbitration proceeding in which any award is made in favour of seller, seller shall be entitled, to recover from buyer all costs and expenses of the arbitration including its attorney's fees.

7. FORCE MAJEURE

This contract and RYM's performance there under are subject to all contingencies beyond RYM's control and beyond the control of RYM's customer, (whether or not now in contemplation of either of the parties hereto); including but not limited to force majeure, strikes, labour disputes, floods, civil commotion, war, riot, act of God, rules,

laws, orders, restrictions, embargoes, quotas or actions of any government, foreign or domestic or any agency or subdivision thereof, casualties, fires, accidents, shortages of transportation facilities, detention of material by customs authorities, loss of material in public or private warehouses, or other casualty or contingency beyond RYM's control or the control of RYM's customer. In any such event, RYM shall have the right, at its election and without any liability to the Buyer to (a) cancel or delay the performance of all or any portion of this contract, or (b) perform the contract as so cancelled or delayed to the extent determined by RYM in its sole and absolute discretion or (c) perform the contract within a reasonable time after the causes for non-performance or delay have terminated.

8. APPLICABLE LAW

This contract shall be deemed to have been made in, and its interpretation and performance there under shall be governed by, the domestic laws of the Republic of South-Africa.

9. ACCEPTANCE

The terms of this agreement will be deemed to have been accepted by the Buyer unless the Buyer notifies RYM otherwise within seven days after it was electronically send to the Buyer. Once the terms have been accepted or deemed to have been accepted it will govern all future transactions between RYM and the Buyer.