

TERMS AND CONDITIONS

1 INTERPRETATION

1.1 In these Terms & Conditions:-

1.1.1 The headings to the clauses are for reference purposes only and shall not aid the interpretation of the clauses which they relate to.

1.1.2 Any reference to "**Parties**" shall include the Parties' respective successors-in title and, if permitted in these Terms and Conditions, their respective cessionaries and assignees.

1.1.3 Any reference to one gender shall include the other gender.

1.1.4 Words in the singular number shall include the plural and *vice versa*.

1.1.5 If any definition in this clause 1 contains a substantive provision conferring rights or imposing obligations on any Party, effect shall be given to such provision as if it was a substantive provision in the body of these Terms and Conditions.

1.1.6 These Terms and Conditions and any other terms and/or conditions agreed between the Parties shall be governed in all respects by the Law of the Republic of South Africa.

1.1.7 Unless inconsistent with or otherwise indicated by the context, the following words and expressions shall have the meanings set out opposite them:-

1.1.7.1 "**Addendums**" means the credit facility application agreement to be read with these Terms and Conditions as well as any other addendums not expressly mentioned;

1.1.7.2 "**Business**" means all and any business undertaken, including any advice, information, or intellectual property, or services provided, whether gratuitously or not, by the Company for and on behalf of the Customer in terms of these Terms and Conditions.

1.1.7.3 "**Confidential Information**" means any information which by its nature or content is identifiably as confidential and/or proprietary and is disclosed by a Customer or any of its Affiliates (the "Disclosing Party"), or which is provided or disclosed in confidence of the

Customer or any of its Affiliates (the "Receiving Party"); and which the Disclosing Party or any person acting on its behalf may disclose.

1.1.7.4 "**Customer**" means any natural person or juristic entity at whose request or on whose behalf the Company undertakes any Business.

1.1.7.5 "**Credit Agreement**" means the agreement in place in terms of which credit is extended to the Customer by the Company, upon approval by the Company of the Customer's credit application to the satisfaction of the Company as to the Customer's creditworthiness, and which is to be read with these Terms and Conditions, governing the terms of credit granted to the Customer;

1.1.7.6 "**Goods**" means the Goods manufactured, handled, transported and/or dealt with by or on behalf of or at the instance of the Company or which come under the control of the Company on the instructions of the Customer and shall include conveyor idlers, frames, impact station, skeega pads, belt scrapers, training devices, modular extendable structures, any container, transportable tank, flat pallet, package and/or any other form of covering, packaging, container and/or equipment used in connection with or in relation to the Goods.

1.1.7.7 "**Initial term**" means the period of 24 months from date of signature of these Terms and Conditions by the Customer, subject to and read in conjunction with clause 13 relating to 'Duration'.

1.1.7.8 "**Intellectual Property**" means all patents, trademarks, trade names, service marks, domain names, logos, copyrights, as well as and any applications, adaptations, renewals or extensions thereof, together with any Know How, designs, technical drawings, data, specifications (to include the Product Specifications), bills of material or trade secrets – whether or not registered or patented or capable of being registered or patented. Moret Mining's parents and affiliate companies have certain Intellectual Property which is recorded in part, but not limited to, that listed in clause 9.

1.1.7.9 "**Intended Use**" means the purpose for which

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the manufactured Products are used by the end-user customer.

- 1.1.7.10 **"Know-How"** means all information that is related solely and specifically to the design of the Product, which know-how vests with Moret Mining (Pty) Ltd in accordance with their Product Specifications, and the manufacture of the Products pursuant to the terms and conditions which vests with Moret Mining (Pty) Ltd and is held as Confidential Information and identified in any appropriate form.
- 1.1.7.11 **"Law"** means the common law and any applicable Constitution, statute, by-law, proclamation, regulation, rule, notice, treaty, directive, code of practice, charter, judgment or order having force of law in South Africa, and any interpretation of any of them by any court or forum of law;
- 1.1.7.12 **"Manufacturing Services"** means the manufacture and supply of manufactured Products to the Customer.
- 1.1.7.13 **"Purchase Order"** means the order placed by the Customer for the manufactured Products from Moret Mining (Pty) Ltd or for Supply Services relating to supplied goods.
- 1.1.7.14 **"Services"** means collectively, any Manufacturing Services, Repair Services or Supply Services as contemplated by the terms and conditions.
- 1.1.7.15 **"Terms and Conditions"** means the terms and conditions hereinafter set out which governs the contractual relationship between the Parties.

2 GENERAL APPLICATION OF BUSINESS

- 2.1 Business is undertaken by Moret Mining (Pty) Ltd strictly subject to these Terms and Conditions which shall be deemed to be incorporated in and be a part of any agreement between Moret Mining (Pty) Ltd and the Customer.
- 2.2 Moret Mining (Pty) Ltd may in its absolute and sole discretion refuse to accept any order or any class of the order and shall not be obliged to give any reasons for such refusal.
- 2.3 Moret Mining (Pty) Ltd shall be entitled to warehouse, store or hold any order of the Customer and to levy a fee, in addition to any disbursement charge, thereon

pending the delivery of the Goods, due to the customer's non-payment.

- 2.4 Unless the Parties agree in writing, specifically to the contrary, these Terms and Conditions shall prevail in the event of the Customer itself having trading terms and conditions, even if the latter conditions are apparently incorporated after these Terms and Conditions.
- 2.5 Moret Mining (Pty) Ltd is entitled to amend these Terms and Conditions and to publish supplementary terms and conditions which will be available electronically to the Customer on the Moret Mining (Pty) Ltd's website www.moretmining.co.za or at the Moret Mining (Pty) Ltd's offices. All amendments and supplements shall take effect 7 (seven) days from the date which such amendment or supplement is published by the Moret Mining (Pty) Ltd on its website.

3 OWNERSHIP

Ownership shall remain with Moret Mining (Pty) Ltd until such time as the order has been paid in full.

4 PURCHASE ORDERS

- 4.1 The Customer will issue Moret Mining (Pty) Ltd with Purchase Orders for the Products from time to time, in accordance with its requirements for Products and Services, and Moret Mining (Pty) Ltd will only be committed to provide the same, in accordance with valid Purchase Orders issued pursuant to the terms and conditions.

4.2 Such Purchase Orders are to contain:

- 1.1.1 listing of Products to be manufactured, which includes the accompanying part number or model number;
- 1.1.2 to the extent of any variation or modification and Product Specifications, specific reference to and incorporation of a quotation submitted by Moret Mining (Pty) Ltd in response to a request for quote from the Customer which details supplementary or replacement design drawings and Product Specifications which account in full for the required variation or modification, together with a customized part number which identifies the Product variant;
- 1.1.3 pricing separated by each Product type;
- 1.1.4 total price; and

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- 1.1.5 completion date and collection and/or delivering times; and
- 1.1.6 location for collection and/or delivering and shipping instructions, should same be required.
- 4.3 To the extent the Customer requires any variation or modification Products or Product Specifications (or to any Products under a pending Purchase Order at the time of such requirement), or additional Services for any reason, it will submit a written request for a quotation to Moret Mining (Pty) Ltd, which as applicable, includes detailed supplementary or replacement design drawings and Product Specifications which account in full for the required variation or modification.
- 4.4 Promptly upon receipt of such request for quotation, but no later than a reasonable time later than receipt of the request for quotation, Moret Mining (Pty) Ltd shall indicate when it will submit a quote to the Customer for the Services or the modified or variant Products, but in any event, such date will be no later than fifteen (15) business days after receipt of the request for quotation.
- 4.5 Moret Mining (Pty) Ltd will then prepare and submit the quotation by the date indicated, unless the date is extended by written agreement of which consent shall not be unreasonable withheld. Any quotation submitted by Moret Mining (Pty) Ltd will be valid for a period of thirty (30) days from the date of submission.
- 4.6 Neither party will be under any further obligation with regard to any quotation submitted by Moret Mining (Pty) Ltd until the Customer issues a Purchase Order with reference to such quote, at which point, shall accept the Purchase Order in accordance with this terms and conditions.
- 4.7 Should Moret Mining (Pty) Ltd upon receipt of the Purchase Order note that the Purchase Order does not comply in all respects with the provisions of Section 4.2, Moret Mining (Pty) Ltd shall provide written notice to the Customer within 5 business days. If Moret Mining (Pty) Ltd does not so notify the Customer of a non-compliance with the terms of this Section 4.2 within 5 business days, the Purchase Order will be deemed accepted as is and binding.
- 4.8 Should the Customer not rectify the Purchase Order within 7 days to ensure that it complies with the requirements of clauses 4.2, Moret Mining (Pty) Ltd will not act upon such Purchase Order and accordingly not manufacture any Products in terms thereof, and such Purchase Order will be of no effect.
- 5 PAYMENT**
- 5.1 Payment shall be made to Moret Mining (Pty) Ltd within 30 days by way of electronic fund transfer (EFT) of the date on any valid and correct statements submitted by Moret Mining (Pty) Ltd for Products which have been delivered/accepted. Products will be deemed accepted by the Customer if it does not notify Moret Mining (Pty) Ltd of rejection in accordance with clause 8 of the terms and conditions.
- 5.2 Invoices will be submitted upon collection of the Products and be payable in South African Rands (ZAR).
- 5.3 Should the Customer for any reason dispute the invoice after signing for it upon collection, it is to revert to Moret Mining (Pty) Ltd within 5 business days to address such issue, and make payment of the undisputed portion of the invoice (if any) within the requisite 30 day period irrespectively.
- 5.4 Any and all monies due and invoiced for by Moret Mining (Pty) Ltd, not timeously paid within the 30 day period, shall accrue interest at an annual rate of 12% from the first day that it becomes overdue, being the first day after the 30 day period has expired.
- 5.5 Shipping costs will be the costs incurred by Moret Mining (Pty) Ltd and invoiced to the Customer.
- 5.6 Price adjustments will be effected annually, at the beginning of each calendar year. Prices for the Products will be adjusted in accordance with the year over year change documented in the Producer Price Index ("PPI") published by the Department of Trade and Industry ("DTI") for the Republic of South Africa, for the month of November (or if no PPI is published in November, the most recent month available) which immediately precedes the corresponding calendar year adjustment.
- 5.7 Price adjustments will be discussed with the other party with substantiating circumstances or reasons for such increase being provided. There will be no unilateral price amendments and parties have to agree thereto, which consent will not be unreasonably withheld.
- 5.8 In addition to consideration of steel price data and the annual price adjustment, Moret Mining (Pty) Ltd may submit data at any time that demonstrates material cost increases to Moret Mining (Pty) Ltd, which are specific to Moret Mining (Pty) Ltd supply of the Products, including inter alia, overheads, labour and utilities, and any other documented unforeseen cost increases. In the event that Moret Mining (Pty) Ltd submits such data, within a reasonable time, the parties will engage in a good faith

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effort to reach agreement on a mutually acceptable price adjustment. Any price adjustment pursuant to this clause will be documented by a mutually agreed Agreement, signed by both parties. If the parties are unable to so agree, the matter may be addressed in accordance with the dispute resolution procedures of this Agreement.

6 **GENERAL OBLIGATIONS OF THE PARTIES**

6.1 Moret Mining (Pty) Ltd agrees to:

- 6.1.1 manufacture the Product;
- 6.1.2 maintain and preserve a sufficient manufacturing capability to manufacture and supply the Products ordered by the Customer in accordance with the Purchase Order terms;
- 6.1.3 comply with the Product Specifications and drawings;
- 6.1.4 honour the manufacturing warranties for the Products manufactured;
- 6.1.5 make the Products available for collection/delivery to the Customer;
- 6.1.6 conduct its business in strict compliance with applicable regulatory requirements applicable to Moret Mining (Pty) Ltd as a manufacturer of the Products in a manner reasonable intended to reflect favourably upon and promote and maintain the goodwill and reputation of the Products.

6.2 The Customer agrees:

- 6.2.1 to make payment to Moret Mining (Pty) Ltd of valid and correct invoiced amounts for Products and Services, as and when due in accordance with the terms and conditions;
- 6.2.2 to provide Moret Mining (Pty) Ltd with all the information and instructions received by Moret Mining (Pty) Ltd to perform its manufacturing obligations envisaged herein and any Purchase Order issued in terms of the terms and conditions;
- 6.2.3 that arrear payments on undisputed invoiced amounts shall result in Moret Mining (Pty) Ltd ceasing its manufacturing obligations, until such time that all arrear amounts have been paid to Moret Mining (Pty) Ltd.

7 **WARRANTIES**

7.1 Representations and Warranties of Moret Mining (Pty) Ltd:

7.1.1 Moret Mining (Pty) Ltd represents and warrants to the Customer that:

7.1.1.1 Moret Mining (Pty) Ltd is duly organised, validly existing and in good standing under the relevant applicable laws and is duly qualified to do business;

7.1.1.2 Moret Mining (Pty) Ltd has the requisite ability to execute, deliver and perform in terms of agreement, which agreement constitutes a valid and legally binding obligation;

7.1.1.3 Moret Mining (Pty) Ltd warrants that all Products will conform with the Product Specifications issued by the Customer compliant to the Purchase Order requirements;

7.1.1.4 Moret Mining (Pty) Ltd warrants:

7.1.1.4.1 that all Products manufactured under this Agreement shall be new when delivered, of a good quality and free from any defects in workmanship and material; and

7.1.1.4.2 that its Manufacturing Services will be provided in a good and workmanlike manner;

7.1.1.4.3 that it will repair or replace (at its discretion) any Products upon notification from the Customer at the inspection of the Products, or after the inspection of it relates to defective materials or manufacturing defect and mechanical defaults. Once the inspection and acceptance of Products have taken place and the Customer did not raise any issues, the warranty shall no longer apply for the repairing or replacement of the Product, and only to defective materials, manufacturing defects and mechanical defaults;

7.1.1.4.4 to the extent that the Customer makes any claims in respect of the Products under the warranty applicable for defective materials, manufacturing defects, Moret Mining (Pty) Ltd agrees to investigate such claims at its cost, and should it be found that there was no fault on More Mining (Pty) Ltd's behalf, the costs associated with such investigation shall be for the Customer's account.

7.1.2 Representations and Warranties of the Customer:

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- 7.1.2.1 The Customer represents and warrants to Moret Mining (Pty) Ltd:
- 7.1.2.1.1 the Customer is duly organised, validly existing and in good standing under the relevant applicable laws.
- 8 INSPECTION AND ACCEPTANCE**
- 8.1 The Customer reserves the right to inspect the manufactured Products, in its discretion, at Moret Mining (Pty) Ltd's premises, and to reject any Products due to manufacturing defects or non-conformance with the Product Specifications, by written notice to Moret Mining (Pty) Ltd within 10 (ten) business days after collection.
- 8.2 Moret Mining (Pty) Ltd shall accept no responsibility for the Products after collection thereof, except in accordance with the Customer's right to inspect the Products and the applicable warranty terms.
- 9 INTELLECTUAL PROPERTY**
- 9.1 All Intellectual Property and technical information provided by Moret Mining (Pty) Ltd to the Customer in furtherance of this Agreement, (whether or not patentable or susceptible to any registration, including Manufacturing process, sampling and testing methods, etc.), or any access to trademarks, patents, copyrights, data, drawings and proprietary information, ("Background Intellectual Property") shall be and remain the sole and exclusive property of Moret Mining (Pty) Ltd AND any derivative works, drawings, bills of material, specifications, designs, documents or information developed by Moret Mining (Pty) Ltd with reference to the Background Intellectual Property or otherwise developed, conceived or produced by Moret Mining (Pty) Ltd ("Foreground Intellectual Property") in the performance of its obligations under this Agreement, shall be and remain exclusively the property of Moret Mining (Pty) Ltd.
- 10 SURETY**
- The person, affixing his/her signature to these terms and conditions and the personal surety attached hereto, binds itself as surety in favour of the Company and as co-principal debtor *in solidum* with the Customer in respect of the Customer's indebtedness and/or obligations to the Company in whatever amount and for whatever cause, on a renunciation of the benefits of division of excussion, with the full meaning and scope of which it declares itself to have full knowledge.
- 11 DEFAULT**
- 11.1 In the event that the Customer shall default in fulfilment in any of its obligations to the Company, whether relating to payment of money is due or otherwise, the Company shall be entitled to:-
- 11.1.1 Cancel the agreement; or
- 11.1.2 Claim specific performance from the Customer.
- 11.2 In the event that the Company cancels the agreement, the Company shall be entitled to:
- 11.2.1 Claim immediate payment of all amounts due to it together with interest as set out in clause 5.4 and all legal costs on an attorney-client scale inclusive of collection commission and tracing charges; and
- 11.2.2 Suspend all Business; and
- 11.2.3 Retain all Goods which may be in the Moret Mining (Pty) Ltd's possession until the amounts owing have been paid in full; and
- 11.2.4 Institute any action it deems appropriate against the Customer in the appropriate South African Court of Law, including any Magistrate's Court, notwithstanding that the amount claimed by the Company from the Customer may otherwise exceed the jurisdiction of the Magistrate's Court.
- 11.3 A certificate by any of the directors of Moret Mining (Pty) Ltd (whose appointment or qualifications it shall not be necessary to prove) as to the amount owing by the Customer and to the effect that the date of payment of such amount has arrived, shall for the purposes of any action against the Customer hereunder for provisional sentence or summary judgement or otherwise be sufficient and satisfactory proof of the fact therein stated until the contrary shall have been proved.
- 12 DURATION**
- 12.1 The duration of the agreement shall be a period of 24 months which is the initial term.
- 12.2 The initial term, will extend automatically for a further period of 12 months, if written notice confirming the intention to not extend and the termination after the initial period is not advanced by the customer one month prior to the expiry of the initial period (in other words, the customer needs to, one month before the expiry of the initial 24 months period, give notice to the Company if it does not want the agreement to extend

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after the initial period, failing which it will extend for another 12 months).

12.3 Notwithstanding the duration of the agreement, whether it be during the initial period or any extended period, the Company has the right to cancel the agreement at any time within one month's written notice.

12.4 The Customer has the option to terminate the agreement on one month's written notice only after the expiry of the initial period of 24 months.

**the aforementioned duration terms are applicable to juristic entities as Customers, should a natural person be the customer, the provisions of the Consumer Protection Act will be applicable.*

13 GENERAL

13.1 **Indulgence**

No relaxation, indulgence or delay (collectively referred to as "**Indulgence**") granted by Moret Mining (Pty) Ltd shall constitute a waiver of any of Moret Mining (Pty) Ltd's rights under these terms and conditions; accordingly, Moret Mining (Pty) Ltd shall not be precluded from as a consequence of having granted such indulgence, from exercising any rights against the Customer, which may have arisen in the past or which may arise in the future.

13.2 **Waiver of Rights**

13.2.1 The waiver of any right under these terms and conditions shall be binding on the waiving Party only to the extent that the waiver has been reduced to writing and signed by the duly authorized representative(s) of the waiving Party.

13.2.2 If Moret Mining is obliged, in the execution of any of its duties and/or responsibilities to comply with the Law then the Moret Mining (Pty) Ltd by complying therewith shall not be deemed to waive or abandon any of its rights in terms of these Terms and Conditions and in complying with the Law the Moret Mining (Pty) Ltd shall not be deemed to have assumed any onus, obligations, responsibility or liability in favour of the Customer.

13.2.3 No agent or employee of the Moret Mining (Pty) Ltd, other than a director or an individual authorised thereto by the board of directors, has the Moret Mining (Pty) Ltd's authority to alter or vary the Terms and Conditions nor shall any act or omission of the Moret Mining (Pty) Ltd be

construed as a variation or waiver of any of these Terms and Conditions.

13.3 **Severability**

13.3.1 Whenever possible, each provision of these Terms and Conditions shall be interpreted in a manner which makes it effective and valid under applicable Law, but if any provision of these Terms and Conditions is held to be illegal, invalid or unenforceable under applicable Law, that illegality, invalidity or unenforceability shall not affect the other provisions of these Terms and Conditions, all of which shall remain in full force;

13.3.2 Should any one or more of the provisions of these Terms and Conditions be unenforceable then such provision(s) shall be severed and the remaining provisions shall be of full force and effect.

13.4 **Force Majeure**

13.4.1 The obligations of either Party under these Terms and Conditions shall be suspended for the duration of any event resulting in either Party being prevented from or delayed in performing any obligation imposed herein where the causal event is not within the reasonable control of the affected party, including without limitation:

13.4.1.1 An act of God, force of nature or climatic conditions, unavoidable accidents; or

13.4.1.2 war, revolution, riot, insurrection, terrorism, vandalism, sabotage or any other unlawful act against public order or authority; ("**Force Majeure Event**"), provided that in any of these circumstances the party seeking to rely on the benefit of this clause must use its reasonable endeavours to put itself in a position where it is able to meet its obligations under this Agreement as soon as possible.

13.4.2 In the event that a Force Majeure Event continues for a period of thirty (30) consecutive days, either Party shall have the right to terminate the services of the Moret Mining (Pty) Ltd.

14 NON-VARIATION

No addition to, variation, or agreed cancellation of this agreement, this clause or any of the annexures hereto shall be of any force or effect unless in writing and signed by or on behalf of the Moret Mining (Pty) Ltd and Customer.

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16. **JURISDICTION**

These Terms and Conditions constitute an agreement executed by and between the Moret Mining (Pty) Ltd and the Customer and/or its agents and wherever made shall be governed by and constituted according to the laws of South Africa and shall be subject to the exclusive jurisdiction of the courts of the Republic of South Africa.

16. **CONSUMER PROTECTION ACT**

- 16.1 In the event that there is any conflict between these Terms and Conditions and the provisions of the Consumer Protection Act 68 of 2008 ("CPA"), the provisions of the CPA shall prevail.
- 16.2 Neither the Moret Mining (Pty) Ltd nor any person acting for and on behalf of the Moret Mining (Pty) Ltd will be liable for any loss, damage or injury

whatsoever and howsoever arising including without limitation, all direct and indirect damages, consequential and special losses or damages, sustained by the Customer or any third party. Save and except for gross negligence on the part of the Moret Mining (Pty) Ltd and any claim in terms of section 61 of the CPA, the Customer hereby indemnifies the Moret Mining (Pty) Ltd against any and all loss or damage to any property and/or any or all loss, damage and/or injury suffered by any person, including consequential loss or damage, arising from or in connection with or as a result of any act or omission of the Moret Mining (Pty) Ltd in relation to the Goods and the services rendered. Under no circumstances shall the Moret Mining (Pty) Ltd be liable for any damage arising from any misuse or abuse of the Goods.