

## COM07.3-REV04-Terms & Conditions Region (1)

Resp. Person(s)	Notes		Legacy	
CEO <sup>1</sup> , CM, GM			IMP08.1.3	
Terms & conditions of sales for nominated region				
Rev.	Date	Description	Prepared	Rev & Appr
2	2018-09-20	Document set transplant	Justin Martens	John van Reenen
3	2020-02-27	Format updated	Justin Martens	Jaco Greef
4	2021-01-04	Warranty responsibilities reviewed	IA/JGM/CB2	Jaco Greef

Goods & services sold by Seller are expressly subject to terms & conditions set forth below & any additional commitment within relevant or accepted quotation. Any different or additional terms & conditions in Purchaser's purchase order or similar communication are objected to, shall not be binding on Seller unless expressly agreed to in writing by Seller & this shall not constitute an acceptance of any of them. Purchaser's acceptance of shipment or performance and/or payment for goods or services constitutes acceptance of Seller's terms & conditions.

### Definitions:

*Agreement* means latest revision of this Standard Terms & Conditions of Sale document applicable to sale. Latest revision shall be file present on website [www.vrsteel.net](http://www.vrsteel.net) at time of quoting.

*Consequential Loss* means any consequential, indirect, exemplary, or punitive loss or damage & direct or indirect loss of actual or anticipated profits or revenues, loss by reason of shutdown or non-operation, increased cost of borrowing capital or financing, or loss of use, or productivity, whether caused by or contributed to by a breach of contract or statute, breach of warranty (express or implied), tort, strict liability, or any other cause whatsoever.

*Contract* means these terms & conditions & documents expressly incorporated herein.

*Delivery* means when Goods leave Seller's premises or as otherwise agreed in writing.

*Goods or Services* (or both) collectively & severally means mining attachment products or Services relating to Contract or expressed in quotation & excludes all things not expressly specified in writing by Seller.

*GST* means Goods & Services Tax.

*Intellectual property* or IP means all industrial & intellectual property rights whether protectable by statute, common law or equity including without limitation, all copyright in goods & all materials provided in connection with goods, rights in relation to inventions (including all patents & patent applications), trade secrets & know-how, design rights (registrable or not), trade mark rights (registered or not), circuit layout design rights & excluding non-assignable moral rights.

*Part/s* means goods other than mining attachment products.

*Party* means either Purchaser or Seller.

*Parties* means both Purchaser & Seller.

*Price* means total monetary amount for sale of Goods or Services (excluding VAT, GST, other taxes, & duties).

*Purchaser* means entity purchasing Goods and/or Services or as otherwise described in quotation, final sale invoice or agreement.

*Purchaser Local Currency* means currency in country where Purchaser has its operations.

*Seller* means Van Reenen Steel (Pty) Ltd & all associated subsidiary companies in South Africa or International.

*Services* mean any service pursuant to a quotation, sale invoice or agreement including Commissioning.

*USD* means United States Dollar currency.

*VAT* means Value Added Tax.

*ZAR* means South African Rand currency.

<sup>1</sup> CEO: Chief Executive Officer | CM: Commercial Manager | GM: General Manager

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## 1. Governing Provisions

This offer of sale or quotation, except for price, shall be deemed open for acceptance for a period of 30 days unless otherwise specified. Cancellations, modifications & waivers of this order or any of underlying rights or obligations shall not be effective without Seller's written consent. These terms & conditions shall not be modified by any course of dealing or trade customs & usage.

## 2. Conditions of Sale

- a. Goods and/or Services are supplied on basis of these terms & conditions which are to be read in conjunction with specific quotation/proposal, where any terms & conditions specified in quotation/proposal will take precedent.
- b. These terms & conditions & those detailed in specific quotation/proposal may only be varied or added to by written agreement signed by an authorised representative of both Purchaser & Seller.
- c. By issuing a purchase order, invoice or similar document to Seller, Purchaser unconditionally accepts to be bound by this Contract in its entirety & without alteration. Purchaser unconditionally agrees that any terms attached to such purchase order, invoice or otherwise are accepted only where they do not contradict these terms & only with express written confirmation by Seller.

## 3. Price

- a. Unless otherwise stated, Price quoted excludes VAT, GST, Duties & all other taxes, Delivery costs & any other matter or thing not expressly specified in writing by Seller.
- b. Unless otherwise stated, Price quoted is valid for thirty (30) calendar days from date of quotation after which time it will lapse.

## 4. Purchase Orders

- a. Submission by Purchaser of a purchase order for Goods and/or Services is deemed to be an offer to purchase Goods and/or Services (offer) subject to these terms & conditions & any special terms & conditions provided for in a written quotation or tender submission. Seller may accept or reject such offer in its sole discretion.
- b. An offer to purchase Goods and/or Services (except Parts) is only deemed accepted by Seller when it is acknowledged by Seller in writing.
- c. An offer to purchase Parts can be accepted by Seller either orally or in writing or by Seller's Delivery of Parts.

## 5. Specifications

All drawings, sketches, illustrations, etc, provided with Seller's quotation, or published on-line, in sales brochures or advertisements must be regarded as approximate representations only & are not binding in detail unless stated to be so in writing. All weights, measurements, capacities, & other particular Goods being offered are stated as being approximately correct but small variations shall not violate contract nor be made basis of any claims against Seller. Errors & omissions are subject to correction.

## 6. Custom Import Duties

Unless otherwise specified, Price is exclusive of any custom import duties payable by Purchaser in respect of import of Goods by Seller into destination country. If Price is specified to be inclusive of any such custom import duties, then if there is any change in dutiable classification or effective rate of applicable custom import duties Price will be adjusted to pass through effect of change to Purchaser & Purchaser must pay adjusted Price.

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## 7. Price Variation due to Currency Fluctuations

- a. Price may include an imported content of Goods in relevant foreign currency being ZAR/USD equivalent to Purchaser's Local Currency & is based on an indicative currency exchange rate of 1.00 unit of Purchaser's Local Currency = X units ZAR/USD.
- b. A Purchaser must specify in its purchase order whether to fix exchange rate for payment of any imported content of Goods in their Local Currency or whether to take exchange rate risk. Seller reserves right not to accept a purchase order until a Purchaser makes this election. If Seller chooses to accept a purchase order in circumstances where Purchaser has not made an election whether to fix exchange rate for payment of any imported content of Goods in their Local Currency then purchase order is accepted on basis that Purchaser is taking exchange rate risk unless Seller has advised Purchaser, in writing, at time of acceptance of purchase order that Seller will take exchange rate risk.
- c. Where a Purchaser elects to fix exchange rate for payment of any imported content of Goods in their Local Currency then Seller will issue a revised final Price in chosen currency & thereafter Seller will take exchange rate risk, provided Goods are paid for in accordance with terms of sale invoice. Relevant foreign exchange rate(s) that will be used in final Price will be spot buying rate of currency specified being ZAR/USD minus appropriate forward points from date of receiving purchase order from Purchaser up to agreed date of full settlement of sale invoice. Currency will be purchased from a reputed commercial bank based with whom Seller holds an account.
- d. Where a Purchaser elects to take exchange, rate risk any variation from rate used in quotation or other document issued prior to time of final Price, will be to Purchaser's account.
- e. Where Price for Goods in Contract is specified in Purchaser's Local Currency only, Seller reserves right to issue a revised Price where there is a depreciation of 5% or more of chosen currency against relevant overseas currency from where Goods are imported by Seller, when measured against daily foreign exchange rate available to Seller. Seller may issue a revised Price at any time from date of Contract for purchase of Goods to date of actual full payment for Goods by Purchaser. If Seller exercises its rights under this clause, it will give Purchaser 7 days from notification of revised Price to exercise a right to cancel Contract for purchase of Goods, without penalty.

## 8. Intellectual Property

All patent, design rights, trade marks, copyright, original works & other intellectual property in any design, specification, process, method of manufacture or other documentation relating to Goods (other than that provided by Purchaser to Seller) are Seller's IP & Seller retains all right, title & ownership therein.

Where IP rights are expressly granted by Seller in writing, following clauses are applicable to grant of IP in Goods:

- a. Seller grants Purchaser a non-exclusive, non-transferable revocable license to use IP provided by Seller for operation of Goods (including without limitation, collection, manipulation & reporting of data associated with Goods) for such period as Purchaser owns & operates Goods.
- b. Purchaser may only use IP for operation, maintenance & use of Goods & Seller accepts no liability whatsoever for any other use. Purchaser must not modify IP in any way, decompile, copy, disassemble, reverse engineer or derive software source code or otherwise do anything which conflicts with licensed use of IP provided under this clause.

## 9. Payment

- a. Unless otherwise agreed in writing, Purchaser must pay Price (together with VAT, GST & Delivery costs) without deduction or set-off when notified by Seller in writing that Price is due & payable but, in any event, as per invoice. Seller may request full or partial payment in advance. Time is of essence for payment. If Delivery is delayed by Purchaser, then Purchaser must pay Price required by this clause when Delivery would have occurred if not for delay by Purchaser.
- b. Parties irrevocably acknowledge & agree that once Delivery has been made in accordance with this Contract, Price becomes immediately payable by Purchaser to Seller as a liquidated debt & Seller shall be entitled to commence & maintain an action against Purchaser for Price as a liquidated debt.

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- c. Purchaser indemnifies Seller for any losses, costs or fees incurred or arising in connection with recovery of any overdue payment due to Seller.

## **10. Goods Remain Property of Seller until Payment**

Goods remain Seller's property until all monies owed by Purchaser are received in clear funds by Seller, & whilst these Goods remain Seller's property Purchaser must:

- a. keep Goods in its possession & control;
- b. keep Goods in good repair & condition, excluding fair wear & tear;
- c. keep Goods stored separately & marked so that Goods are clearly & easily identifiable as Seller's property & if requested, promptly inform Seller of location of Goods; &
- d. not sell, assign or lease Goods or any interest in them, or permit any charge, pledge, lien or other encumbrance to be created in relation to them.

## **11. Consequences of Non-Payment**

In addition to any other rights Seller may have, Seller reserves right to suspend or terminate this Agreement & Purchaser's access to Product if Purchaser's account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to a service fee of one & one-half percent (1.5%) per month, or maximum penalty permitted by law (whichever is less), on any outstanding balance, plus all expenses of collection. Seller will continue to charge Purchaser for Service during any period of suspension. If Purchaser terminates this Agreement, Purchaser will be obligated to pay balance due on Purchaser's account computed in accordance with relevant quotation initiating of this Agreement. Purchaser agrees Seller may bill Purchaser for such unpaid fees. Seller reserves right to impose a collection fee if Purchaser is suspended & thereafter requesting access to Product.

## **12. Warranty**

### **a. Coverage**

Seller warrants, to original purchaser only, that Goods & Services supplied as part of this sale are free from defects in material & workmanship on bare product. This limited warranty is not transferable to a subsequent purchaser. Sensible electronic support of the product is generally offered for the duration of its life (spares, supply chain, queries, guidance, repair advices, etc).

### **b. Coverage Exclusions**

Seller does not warrant damage caused by use of Goods for purposes or in any manner other than those for which Goods were designed or approved, including but not limited to:

- i. unauthorized modifications
- ii. wear & tear during normal operation
- iii. abuse or misuse by Purchaser or operator
- iv. operation in an environment unsuited for purpose intended
- v. operation in an environment differing in nature from known/understood/site visit observation
- vi. operating Goods outside manufacturers specified parameters
- vii. neglect or lack of fair & reasonable routine maintenance
- viii. small non-defective cracks which may present in the day-to-day operational use of the product

This warranty excludes any product or component specified by Purchaser or all or any part of product manufactured to specifications or technical requirements supplied by or required by Purchaser unless Seller has provided written acceptance to include Purchaser's specified products, components or manufacturing specifications into Goods.

### **c. Duration**

Duration of warranty for Goods will be twelve (12) months or six thousand (6,000) operating hours, whichever occurs first. Warranty period will commence two (2) calendar weeks after date that Goods arrive at site, but no later than ninety (90) calendar days after completion of goods ex-works, unless stipulated otherwise in special

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terms & conditions of respective written quotation. Any agreed-upon warranty that extends beyond twelve (12) months shall have a diminishing coverage as the timeline grows and structure wears away through normal use and shall not exceed 10% of the initial purchase price.

Duration of warranty for repaired components or products will be three (3) months unless an extended warranty is agreed in writing by Seller. Warranty for repairs shall apply to materials & workmanship only & shall be subject to Goods not being considered fatigued or stressed by age or operation in any way.

#### **d. Purchaser Responsibility to Uphold Warranty**

Product is seen as a mine asset operating in varied & unpredictable conditions. Moreover, product encompasses Fatigue & Damage Tolerance (F&DT) design features<sup>1</sup> but remains a dynamically loaded welded structure requiring strict monitoring. Full utilization of asset pertaining to performance & longevity is only achieved through:

- i. proactive schedules inspection of key areas
- ii. record keeping of inspections
- iii. normal & routine maintenance if & as when required (catching of cracks)
- iv. best practice suggests that Purchaser contracts a third-party Service Provider for routine bucket inspection & maintenance. If Service Provider is remunerated per production unit (hours or material moved) then onus is on said Service Provider to derive greatest product life between rebuilds – a scenario in which all Parties share success.

Key areas to inspect & inspection frequency are typically defined in documents such as VRSD-2012-0021. Copies of these relevant documents will be provided to Purchaser upon request. Particular Purchaser responsibilities to uphold warranty:

- v. reporting of *any crack* detected before it exceeds 25mm/1" in length
- vi. notification of damages/battle-scarring within seven (7) days of them occurring
- vii. making production and/or fitment data (dates, hours, tonnage, overloads) available within seven (7) days upon request
- viii. sharing/submission of regular quarterly inspection reports through the inspection portal ([info@vrsteel.co.za](mailto:info@vrsteel.co.za)) or to the relevant managing engineer at the time, including but not limited to commentary on structure, timeline, operations and site data
- ix. should advice be dispensed from a technical perspective to remove the product from service to prevent further or catastrophic failure, that should be carried out within seven (7) days so as not to void coverage

#### **e. Warranty Procedure**

If Purchaser discovers within warranty time mentioned above that Goods and/or Services have a defect, Purchaser must promptly notify Seller within seven (7) days in writing giving a full description of defect prior to commencing any repair or remedial action (if practical). This is to be done through warranty portal on [www.vrsteel.net](http://www.vrsteel.net). Should application for claim be recognised, within a reasonable time after notification, Seller will, at its discretion, make good defect, provide a replacement, or credit relevant invoice for Goods or Services which are subject of defect. If claim is not recognised, Purchaser shall reimburse Seller for Seller's expenses in investigating claim & where Seller has already supplied a replacement part or undertaken a repair, Seller shall be entitled to invoice Purchaser for costs thereof.

All warranty work shall be carried out at Seller's nominated facility. Purchaser shall be responsible for all costs associated with returning Goods to Seller's nominated facility. Where this is not practical Seller will carry out repairs at Purchaser's facility & Purchaser will be required to cover all costs relating to flights, accommodation, meals, specialized equipment hire & other site related costs. All warranty repair work will be carried out during

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<sup>1</sup> Damage tolerance is a property of a structure relating to its ability to sustain defects safely until repair can be effected. Approach to engineering design to account for damage tolerance is based on assumption that flaws can exist in any structure & such flaws propagate with usage. This approach is commonly used to manage extension of cracks in structure through application of principles of fracture mechanics.

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normal working hours unless overtime is requested & authorized by Purchaser, in which case all overtime & associated penalty rates will be charged to Purchaser's account.

In respect to those Goods & or components not manufactured by Seller, Seller & its suppliers extend to Purchaser equivalent warranty (but subject to same conditions & limitations) as is provided to Seller by supplier of those Goods.

#### **f. Limitation of Remedies**

In no case shall Seller be liable for any special, incidental, or consequential damages based upon breach of warranty, breach of contract, negligence, strict liability in tort, or any other legal theory. Such damages include, but are not limited to: loss of profits, loss of savings or revenue, loss of use of equipment or any associated equipment, cost of capital, cost of any substitute equipment, facilities or services; downtime; claims of third parties including customers, & injury to property.

Unless modified in writing & signed by both parties, this agreement is understood to be complete & exclusive agreement between parties relating to warranty. No employee of Seller or any other party is authorized to make any warranty in addition to those made in this agreement, verbal or otherwise. Furthermore, only first product of a batch may be recognized under each warranty claim.

In event any clause in this Warranty is found to be unlawful under law of any Country or State, other provisions of Warranty will continue in effect to extent consistent with applicable Country of State law. No action or suit to enforce Purchaser's rights or remedies arising from this sale shall be commenced later than one year from date of shipment.

### **13. Delivery**

Unless otherwise expressly agreed to in writing by Seller, all delivery dates referring to completion of manufacture & availability for shipment of Goods, are Seller's best estimate thereof & are subject to change.

Seller will use all reasonable endeavours to deliver Goods on or before agreed date for delivery ("Delivery Date") but Delivery Date is subject to extension should completion be hindered by any delay caused by Purchaser's instructions or lack of instructions, by strikes, lockouts, war, breakdowns, accidents, material & labour supply difficulties, delays in transport or compliance with government requirements or any cause beyond reasonable control of Seller. Seller will not be liable for any loss, damage or other liability (whether in contract, tort [including negligence] or otherwise), whether directly or indirectly arising from Goods not being delivered by Delivery Date for any reason.

Seller may, with agreement of Purchaser, deliver any of Goods to Purchaser in instalments in which case Seller may separately invoice Purchaser for payment for each delivery instalment.

Goods sold inclusive of delivery will be dispatched by any means of transport, at Seller's option, unless otherwise agreed in writing, & all unloading & demurrage charges will be for Purchaser's Account. Where Seller undertakes to sell Goods delivered to Purchaser's premises or site, Purchaser undertakes that adequate facilities exist for so doing by road and/or rail and/or ship. All packing will be charged for when not specifically included in quoted prices.

### **14. Routine Inspection(s) during Fabrication**

Buyer is at liberty to inspect their product upon appointment at premises of fabrication; Seller maintains an open-door policy in this regard & is furthermore guided by transparency through choice of quality system (ISO9001:2015). Buyer is also within their right(s) to appoint a suitable 3<sup>rd</sup> party inspector to carry out inspections, observations & witness points of fabrication on behalf of Buyer. Due diligence pertaining to current systems, processes & procedures shall be conducted upfront prior to production. Seller reserves right to request a change of 3<sup>rd</sup> party inspector if appointed party is unsuitable (not industry specific, i.e. trying to impose pressure vessel standard practices on earth-moving welded structures) as historically that results in elevated levels of unnecessary administrative work & inevitably jeopardises project timeline resulting in delayed delivery & upset Purchaser. What has happened in past (without prejudice to future inspectors) is such audits are dragged out to swell their time booked & subsequent invoice amount for Purchaser. Should such a change

request be ignored by Purchaser & initial appointment stands, Seller may elect to further invoice Purchaser for additional time & costs that inexorably result on project resource pool.

### **15. Seller Indemnified if Goods Used Improperly**

Without limitation, Purchaser will keep Seller, its officers, agents, employees & other contractors indemnified against any loss, damage or liability arising directly or indirectly from a use of Goods or any modification to them which is not in accordance with manufacturer's, operator's or maintenance manual, authorised by manufacturer's recommendations, in accordance with any applicable law, or in accordance with good safety & operating practices relating to Goods.

### **16. Exclusion of Liquidated Damages, etc**

Notwithstanding anything to the contrary in these conditions or elsewhere, the Seller shall not be liable to the Purchaser for any liquidated damages, delay penalties, delay damages, performance guarantees or any other similar obligation.

### **17. Cancellation**

An order may not be cancelled. Seller is entitled to insist on completion of Contract or at its sole discretion elect to charge Purchaser Seller's direct & indirect costs & expenses in connection with cancellation (including without limitation, works required on Goods, holding of Goods until such time as Goods are re-sold & any foreign exchange variances.) plus indirect costs, loss of profit & any administration or other costs, expenses or fees incurred by Seller whatsoever, as reasonably determined by Seller ("Cancellation Costs") & as a condition of consent to any order cancellation.

### **18. Taxes**

Unless otherwise expressly stated price of Goods excludes all freight, transportation, shipping insurance, packing, crating or casing, storage, handling, demurrage, delivery, export & similar charges & all sales, good & services, excise or other taxes & Purchaser shall pay & indemnify Seller for those charges or taxes.

If Seller expressly agrees in wiring that price includes any of these charges or taxes, price is then subject to adjustment for increases in any of those charges or taxes after date of Quotation or acceptance of Order.

### **19. Governing Law**

Contract of sale is governed by laws of South Africa.

### **20. Acknowledgement**

I, undersigned as a representative of Purchaser, acknowledge above are understood & taken into consideration regarding purchase from Seller in question.

\_\_\_\_\_  
(name)

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(designation)

\_\_\_\_\_  
(date)

\_\_\_\_\_  
(company)

\_\_\_\_\_  
(VR Quote Number)