

IMP08.1.3-REV02-Standard Terms & Conditions of Sale

Date	Resp. Person(s)	Notes	Signed (if printed)
2019-08-21	CM ¹ , GM	To be live & available on the website	
Communication with customers shall include: providing information relating to products and services; handling enquiries, contracts or orders, including changes; establishing specific requirements for contingency actions, when relevant.			

Goods and services sold by Seller are expressly subject to the terms and conditions set forth below and any additional commitment within the relevant or accepted quotation. Any different or additional terms and 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 and this shall not constitute an acceptance of any of them. Purchaser's acceptance of shipment or performance and/or payment for the goods or services constitutes acceptance of Seller's terms and conditions.

Definitions:

Agreement means the latest revision of this Standard Terms & Conditions of Sale document applicable to that sale. The latest revision shall be the file present on the website www.vrsteel.net at the time of quoting.

Consequential Loss means any consequential, indirect, exemplary, or punitive loss or damage and 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 and conditions and the documents expressly incorporated herein.

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

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

GST means Goods and Services Tax.

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

Part/s means goods other than mining attachment products.

Party means either the Purchaser or Seller.

Parties means both the Purchaser and Seller.

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

¹ CM: Commercial Manager | GM: General Manager

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

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

Seller means Van Reenen Steel (Pty) Ltd and/or 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.

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 and waivers of this order or any of the underlying rights or obligations shall not be effective without Seller's written consent. These terms and conditions shall not be modified by any course of dealing or trade customs and usage.

2. Conditions of Sale

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

3. Price

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

4. Purchase Orders

- a. Submission by the Purchaser of a purchase order for the Goods and/or Services is deemed to be an offer to purchase the Goods and/or Services (offer) subject to these terms and conditions and any special terms and conditions provided for in a written quotation or tender submission. The 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 the Seller when it is acknowledged by the Seller in writing.
- c. An offer to purchase Parts can be accepted by the Seller either orally or in writing or by the Seller's Delivery of the Parts.

5. Specifications

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

6. Custom Import Duties

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

7. Price Variation due to Currency Fluctuations

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

8. Intellectual Property

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

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

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

9. Payment

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

10. Goods Remain Property of the Seller until Payment

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

- a. keep the Goods in its possession and control;
- b. keep the Goods in good repair and condition, excluding fair wear and tear;
- c. keep the Goods stored separately and marked so that the Goods are clearly and easily identifiable as the Seller's property and if requested, promptly inform the Seller of the location of the Goods; and
- d. not sell, assign or lease the 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 the Seller may have, the Seller reserves the right to suspend or terminate this Agreement and Purchaser's access to the Product if Purchaser's account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to a service fee of one and one-half percent (1.5%) per month, or the maximum penalty permitted by law (whichever is less), on any outstanding balance, plus all expenses of collection. Seller will continue to

charge Purchaser for the Service during any period of suspension. If Purchaser terminates this Agreement, the Purchaser will be obligated to pay the balance due on Purchaser's account computed in accordance with the relevant quotation initiating of this Agreement. Purchaser agrees Seller may bill Purchaser for such unpaid fees. Seller reserves the right to impose a collection fee if Purchaser is suspended and thereafter requests access to the Product.

12. Warranty

a. Coverage

The Seller warrants, to the original purchaser only, that the Goods and Services supplied as part of this sale are free from defects in material and workmanship on the bare product. This limited warranty is not transferable to a subsequent purchaser.

b. Coverage Exclusions

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

- i. unauthorized modifications
- ii. wear and tear during normal operation
- iii. abuse or misuse by the purchaser or operator
- iv. operation in an environment unsuited for the purpose intended
- v. operating the Goods outside the manufacturers specified parameters
- vi. neglect or lack of fair and reasonable routine maintenance

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

c. Duration

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

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

d. Purchaser Responsibility to Uphold Warranty

The product is seen as a mine asset operating in varied and unpredictable conditions. Moreover, the product encompasses Fatigue and Damage Tolerance (F&DT) design features¹ but remains a dynamically loaded welded structure requiring strict monitoring. Full utilization of the asset pertaining to performance and longevity is only achieved through:

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

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- i. proactive schedules inspection of key areas
 - ii. record keeping of inspections
 - iii. normal and routine maintenance if and when required (catching of cracks)

The key areas to inspect and the inspection frequency are typically defined in documents such as VRSD-2012-0021. Copies of these relevant documents will be provided to the Purchaser upon request.

e. Warranty Procedure

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

All warranty work shall be carried out at the Seller's nominated facility. The Purchaser shall be responsible for all costs associated with returning the Goods to the Seller's nominated facility. Where this is not practical the Seller will carry out the repairs at the Purchaser's facility and the Purchaser will be required to cover all costs relating to flights, accommodation, meals, specialized equipment hire and other site related costs. All warranty repair work will be carried out during normal working hours unless overtime is requested and authorized by the Purchaser, in which case all overtime and associated penalty rates will be charged to the Purchaser's account.

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

f. Limitation of Remedies

In no case shall the 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 the equipment or any associated equipment, cost of capital, cost of any substitute equipment, facilities or services; downtime; the claims of third parties including customers, and injury to property.

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

In the event any clause in this Warranty is found to be unlawful under the law of any Country or State, the other provisions of the Warranty will continue in effect to the extent consistent with the 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 the date of shipment.

13. Delivery

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

The Seller will use all reasonable endeavours to deliver the Goods on or before the agreed date for delivery ("Delivery Date") but the Delivery Date is subject to extension should the completion be hindered by any delay caused by the Purchaser's instructions or lack of instructions, by strikes, lockouts, war, breakdowns, accidents, material and labour supply difficulties, delays in transport or compliance with government requirements or any cause beyond the reasonable control of the Seller. The 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 the Goods not being delivered by the Delivery Date for any reason.

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

Goods sold inclusive of delivery will be dispatched by any means of transport, at the Seller's option, unless otherwise agreed in writing, and all unloading and demurrage charges will be for the Purchaser's Account. Where the Seller undertakes to sell Goods delivered to the Purchaser's premises or site, the 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

The Buyer is at liberty to inspect their product upon appointment at the premises of fabrication; the Seller maintains an open-door policy in this regard and is furthermore guided by transparency through the choice of quality system (ISO9001:2015). The Buyer is also within their right(s) to appoint a suitable 3rd party inspector to carry out inspections, observations and witness points of fabrication on behalf of the Buyer. Due diligence pertaining to current systems, processes and procedures shall be conducted upfront prior to production. The Seller reserves the right to request a change of 3rd party inspector if the 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 and inevitably jeopardises the project timeline resulting in delayed delivery and upset Purchaser. What has happened in the past (without prejudice to future inspectors) is such audits are dragged out to swell their time booked and subsequent invoice amount for the Purchaser. Should such a change request be ignored by the Purchaser and the initial appointment stands, the Seller may elect to further invoice the Purchaser for the additional time and costs that inexorably result on the project resource pool.

15. Seller Indemnified if Goods Used Improperly

Without limitation, the Purchaser will keep the Seller, its officers, agents, employees and other contractors indemnified against any loss, damage or liability arising directly or indirectly from a use of the Goods or any modification to them which is not in accordance with the manufacturer's, operator's or maintenance manual, authorised by manufacturer's recommendations, in accordance with any applicable law, or in accordance with good safety and operating practices relating to the 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. The Seller is entitled to insist on completion of the Contract or at its sole discretion elect to charge the Purchaser the Seller's direct and indirect costs and expenses in connection with the cancellation (including without limitation, works required on the Goods, the holding of Goods until such time as the Goods are re-sold and any foreign exchange variances.) plus indirect costs, loss of profit and any administration or other costs, expenses or fees incurred by the Seller whatsoever, as reasonably determined by the Seller ("Cancellation Costs") and as a condition of consent to any order cancellation.

18. Taxes

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

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

19. Governing Law

The Contract of sale is governed by the laws of South Africa.