

STANDARD TERMS AND CONDITIONS OF SALE

1. DEFINITIONS AND INTERPRETATION

The following terms shall have the following meanings:

- 1.1 "agreement/contract" shall mean these standard terms and conditions of sale, and such other terms and conditions of sale as may be agreed in writing between the parties;
- 1.2 "CPA" means the Consumer Protection Act No. 68 of 2008;
- 1.3 "CPA customer" means any person or persons who are customers as defined in 1.4 and whose annual turnover falls within the Gazetted thresholds determined in the CPA and its Regulations, as amended from time to time;
- 1.4 "customer" means any person or persons at whose request or on whose behalf Highlands undertakes to supply any goods, do any business, or provide any advice or service in respect of the goods and shall include CPA customers, except where otherwise qualified herein;
- 1.5 "free issue goods" means goods supplied and delivered to Highlands' warehouse/factory by the customer or its agents, at no cost to Highlands, to either attach to Highlands' equipment to complete final assembly, complete orders, or accompany goods to their final destination;
- 1.6 "goods" means any materials, products and/or services supplied to the customer by Highlands;
- 1.7 "Highlands" means Highlands Mining Supplies cc supplying the goods to the customer;
- 1.8 "VAT" means Value Added Tax; and
- 1.9 "writing" shall mean any mode of reproducing information or data in physical form and includes hard copy printouts, handwritten documents and email and "written" and "write" shall have a corresponding meaning.

2. TERMS AND CONDITIONS TO PREVAIL

- 2.1 This agreement shall apply to customers and CPA customers in their entirety, except where otherwise provided herein.
- 2.2 This agreement shall be incorporated in and shall apply consistently to every contract of sale entered into between Highlands and the customer regardless of whether such contract of sale is concluded orally or in writing.

3. QUOTATION AND ORDER PROCEDURE

- 3.1 The customer may place a written order on Highlands from time to time.
- 3.2 Highlands shall first provide customer with a written quotation for the goods ordered by customer. Any quotation given by Highlands shall not be an offer by Highlands to sell the goods, but constitutes an invitation by Highlands to the customer to do business with Highlands.
- 3.3 A quotation shall only be valid for a period of 30 calendar days from the date of the quotation, where after it shall lapse and be of no force or effect. On request by the customer, Highlands shall issue a new quotation at the then prevailing prices.
- 3.4 A valid and binding contract of sale will only come into force once Highlands accepts the customer's order in writing or if Highlands supplies, or tenders to supply, the goods in question to the customer.
- 3.5 All quotations are based on rates of exchange, freight charges, insurance, rail age, delivery costs, costs of labour, material, import duty, taxes and other charges ruling at the date of the quotation (collectively the "rates and charges"). These rates and charges may vary daily and accordingly, customer agrees that Highlands may vary the quotation should any variations in any of the rates and charges change prior to acceptance of order.
- 3.6 Free issue goods may be rejected by Highlands if they do not conform to the required specifications or that on receipt thereof appear to be damaged. The rejection of free issue goods will be discussed with the customer and confirmed in writing.
- 3.7 Any subsequent changes to an order must be communicated to Highlands in writing by the customer and any change affecting the prices or despatch date shall be confirmed by Highlands to the customer in writing.

4. PURCHASE PRICE AND PAYMENT

- 4.1 Save where manifestly incorrect, the customer agrees that the amount due and payable to Highlands shall be determined and proven by a certificate issued by Highlands and signed on its behalf by any person duly authorised, which authority need not be proven, such certificate being binding and prima facie proof of the indebtedness of the customer. Such certificate shall be sufficient for purposes of judgment, provisional sentence or any other legal proceedings.
- 4.2 **CPA customers:**
 - 4.2.1 Highlands shall invoice the customer the purchase price applicable on the date of acceptance of order;
 - 4.2.2 Unless otherwise agreed to by Highlands in writing, payment of the purchase price in respect of any goods collected by customer or despatched by Highlands must be made on or prior to collection or delivery of the goods ("due date") and reflect in Highlands' banking account in cleared funds.
 - 4.2.3 Should any payment due by the customer to Highlands not be made on the due date, then Highlands at its sole discretion shall have the right to cancel the agreement between Highlands and the customer and refuse to permit collection or deliver the goods to the customer. In such event, the customer shall have no claim or claims of whatsoever nature or kind against Highlands

arising out of such cancellation or the refusal of Highlands to permit collection or deliver the goods to the customer.

- 4.2.4 Payment of the purchase price shall be made by electronic funds transfer and no cheques, promissory notes or bills of exchange will be accepted by Highlands.
- 4.2.5 The purchase price is exclusive of VAT, which is payable by customer to Highlands on due date.
- 4.2.6 The purchase price is payable in the currency stated on the quote, without deduction or set-off and free from any exchange or as otherwise agreed to in the order.
- 4.3 **Non CPA customers:**
 - 4.3.1 Unless otherwise stated in any order given to Highlands (or elsewhere in writing to Highlands), payment of the purchase price in respect of any goods despatched by Highlands up to and including the last day of each month, must be made into and reflect as cleared funds in Highlands' banking account by the last banking day of the month following the month in which such order is despatched and invoiced to the account of the customer ("due date").
 - 4.3.2 If the price stated in the quotation of Highlands is subject to a discount, then that discount will only be allowed if payment is made timeously on or before the due date for payment.
 - 4.3.3 Should any payment due by the customer to Highlands not be made on due date then the full balance owing to Highlands by the customer from whatsoever cause arising, shall immediately become due and payable without notice. Highlands at its sole discretion shall furthermore have the right to cancel the agreement between Highlands and the customer and refuse to deliver any further goods to the customer. In such event, the customer shall have no claim or claims of whatsoever nature or kind against Highlands arising out of such cancellation or the refusal of Highlands to deliver any further goods to the customer.
 - 4.3.4 Unless otherwise stipulated in the agreement, the contract price is based on such "ex works delivery", exclusive of the costs of packaging, freight, off-loading and insurance.
 - 4.3.5 Any promissory notes and/or bills of exchange shall be deemed to have been accepted by Highlands without prejudice to Highlands' claims or rights against the customer in respect of the original cause of debt and the customer hereby waives presentment, notice of dishonour and protest in respect of any promissory note or bill of exchange of which it is an endorser, surety or other party and of which Highlands may become the holder.
 - 4.3.6 The customer shall not be discharged from its obligation to pay the contract price until Highlands actually recovers payment in full, notwithstanding the means and method of payment agreed upon by the parties.
 - 4.3.7 Prices are exclusive of VAT, unless otherwise stated in any quote, which the customer shall pay or reimburse to Highlands simultaneously with the purchase price. The purchase price shall be payable by the customer to Highlands in the currency stated on the quote, without deduction or set-off and free from any exchange.
 - 4.3.8 The customer has no right to withhold payment for any reason whatsoever. The customer shall not be entitled to set-off any amounts, which may be claimed by the customer from Highlands, against any amounts owing by the customer to Highlands.

5. **RISK**

5.1 **CPA customers:**

- 5.1.1 The risk in and to the goods shall pass to the customer on collection by customer or customer's transporter at Highlands' premises, or on delivery by Highlands or Highlands' transporter at the customer's premises.

5.2 **Non- CPA customers:**

- 5.2.1 The risk in and to the goods shall pass to the customer from the moment that it or customer's transporter signs for the goods which are loaded onto the delivery vehicle; or

5.3 Where the goods are destined for export they shall be subject to Incoterms® 2010.

6. **DELIVERY**

- 6.1 Any claims for shortages or damage to the goods must be made in writing by the customer within fourteen (14) days of the goods being received or collected by the customer, failing which Highlands shall be excused from all liability in respect of such claims.
- 6.2 Any delivery date indicated by Highlands shall not bind Highlands to effect delivery on such delivery date indicated. Highlands shall in any event deliver goods to the customer within thirty (30) days of the delivery date indicated or such later date as the parties may agree in writing. The customer shall accept delivery when it is tendered and shall not be entitled to resile from the agreement, withhold or defer payment, reduce the price or be entitled to any other remedy against Highlands.
- 6.3 The customer shall be liable for all costs occasioned by its failure or refusal to take delivery of the goods from Highlands when delivered or tendered for collection by Highlands.
- 6.4 The signature of any employee of the customer on any official delivery note, invoice, waybill of Highlands or the similar paper of any authorised independent carrier of Highlands shall constitute good and sufficient proof of delivery of the goods to the customer.

7. **OWNERSHIP**

Notwithstanding delivery of the goods by Highlands to the customer, or the use of the goods after delivery, the goods shall remain the property of Highlands until it has received payment in full of the purchase price.

8.

WARRANTIES & INDEMNITIES

8.1 The warranty periods in respect of the goods are as follows:

8.1.1 All goods shall carry a warranty in respect of manufacture and workmanship of 12 months from the date the goods are ready for delivery. This warranty shall run concurrent to any warranty against defective workmanship given under the CPA and shall not be in addition to the aforementioned warranty.

8.2 Other than the aforementioned warranties, the goods are purchased "voetstoots" (as they stand) and no other warranties, guarantees or representations, express or implied whether by law, contract or otherwise, which are not set forth in this agreement, shall be binding on Highlands.

8.3 Highlands shall not be liable for any defects in workmanship or manufacture arising from inaccuracies in any drawing, specifications or other information supplied by the customer.

8.4 Highlands shall under no circumstances be liable for any special, consequential or indirect loss or damage, death or injury howsoever arising.

8.5 In the event that the customer provides any specifications or designs to Highlands and requests the goods to be manufactured according to such designs or specifications, then the customer hereby indemnifies and holds harmless Highlands against all claims and expenses of whatsoever nature and description arising from the alleged or actual infringement of any Letters Patent, Trade Marks, Designs or Copyrights occasioned by Highlands' performance.

8.6 The customer shall keep confidential and shall not use for any purpose all drawings and designs supplied by Highlands, and the customer hereby indemnifies Highlands against any loss suffered by Highlands as a result of a breach of this clause.

8.7 The parties agree that Highlands shall have no liability in respect of any loss or damage (direct, indirect or consequential) arising out of any Patent or Trade Mark relating to any of the goods sold being infringed, cancelled, breached or otherwise set aside or declared invalid if Highlands is not the original manufacturer of the goods. Highlands undertakes to pass on the original manufacturer's warranty, if any, in respect of such goods.

8.8 Highlands does not provide a warranty for free issue goods.

8.9 CPA customers:

8.9.1 The customer acknowledges that it has inspected the goods prior to purchase and further acknowledges that it has not informed Highlands of the reason or purpose for which it intends using the goods. In addition, the customer knows and understands that free issue goods may have inherent defects and the customer has nevertheless agreed to accept the free issue goods.

8.9.2 Accordingly, Highlands shall under no circumstances (except if negligence is proven) become liable to the customer for any direct or indirect damages or losses sustained by the customer, which are alleged to have been sustained by the customer as a result of but not limited to:

8.9.2.1 any delay or failure in the manufacture or delivery of the goods;

8.9.2.2 defective or incorrect materials, workmanship, design or specification;

8.9.2.3 the acceptance, malfunction, reliability or use of free issue goods.

8.9.3 Returns for defects shall be returned at Highlands' cost. If the customer is entitled in law to return the goods and cancel the sale, then the customer understands that it is liable to pay a prescribed cancellation fee as determined by the CPA. In these circumstances the customer shall be credited in full, less the cancellation fee, subject to the goods being within their specified shelf life and in a marketable condition.

8.9.4 Any other return of goods shall be at the customer's cost.

8.10 Non CPA customers

8.10.1 Highlands shall under no circumstances be liable for any special, consequential or indirect loss or damage, death or injury howsoever arising.

8.10.2 Save for any loss or damage which arises as a direct result of the gross negligence or wilful misconduct of Highlands or any person for whom Highlands is vicariously liable at law, Highlands shall under no circumstances become liable to the customer for any direct damages or losses sustained by the customer, which are alleged to have been sustained by the customer as a result of but not limited to:

8.10.2.1 Any delay or failure in the manufacture or delivery of the goods;

8.10.2.2 Defective or incorrect materials, workmanship, design or specification.

8.10.3 Without prejudice to the provisions of this clause, Highlands' liability on account of workmanship, whether such defects be latent or patent, shall be limited exclusively to the repair or replacement thereof at Highlands' sole discretion and at Highlands' cost, but Highlands shall nevertheless be excused from all liability unless it has been notified of such defect in writing within the warranty period.

8.10.4 Returns in respect of non-defective goods, if accepted by Highlands at its sole discretion and upon such terms as it may prescribe, shall be credited in full, less a minimum of 10% (ten percent) as a handling charge, subject to the goods being within their specified shelf life and in a marketable condition and provided further that the customer shall be liable for all costs of delivery to Highlands' designated premises.

8.10.5 Unless the goods are defective, special order goods may not be returned to Highlands for credit.

9. **BREACH**

9.1 If either party (the "defaulting party") breaches any of the terms and conditions hereof, and remains in breach after receipt of 14 (fourteen) days' written notice requesting remedy of the breach, or commits any act of insolvency, or endeavours to compromise generally with its creditors, or is placed under provisional or final liquidation, or business rescue, or its estate is voluntarily surrendered, then in such event the other party shall have the right, without prejudice to any of its other rights, to cancel this agreement and any other agreements concluded with the defaulting party.

10. **DOMICILIUM AND NOTICES**

10.1 The customer chooses *domicilium citandi et executandi* for purposes of the giving of any notices, the serving of any process and for any other purpose, the delivery address as set out in an Application to Open a Credit Account or order form. Highlands chooses No 80 Hythe Avenue, Johannesburg, Republic of South Africa as *domicilium citandi et executandi*. Notice sent by pre-paid post shall be deemed to have been received on the seventh day after posting and if sent by telefacsimile, on the first business day after the date of transmission, and if delivered by hand during normal hours, to have been received by the addressee at the time of delivery. If the notice is sent by telefacsimile, the original document shall be immediately delivered by hand or sent by pre-paid registered post.

10.2 Regardless of the place of execution, performance or domicile of the parties, this agreement and all modifications/amendments shall be governed by or construed under and in accordance with the laws of the Republic of South Africa.

11. **COSTS**

Either party shall be entitled to recover from the other party all costs incurred by it in enforcing any rights that it has hereunder, including collection charges, costs on an attorney and own client scale, costs of counsel as on brief (whether incurred prior to or during the institution of legal proceedings), or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.

12. **INTEREST**

The customer shall pay interest at the rate of 3% above the publicly quoted prime overdraft rate at which Highlands' bank lends money, or at the LIBOR rate where applicable. For contracts where the currency other than the South African Rand is stipulated, the customer shall pay interest at the rate of 3% above the ruling LIBOR rate. Such interest will be compounded monthly in arrears, on all unpaid amounts owing by the customer to Highlands. The prime overdraft rate shall be proved by way of a certificate signed by an employee of such bank.

13. **MISCELLANEOUS**

13.1 This agreement constitutes the whole agreement between the customer and Highlands and no amendment or consensual cancellation and no extension of time, waiver or relaxation of any of the provisions or terms of this agreement shall be binding unless recorded in writing and signed by an authorised representative of Highlands.

13.2 No extension of time or waiver or relaxation of any of the provisions or terms of this agreement, bill of exchange or any other document shall operate as an estoppel against Highlands in respect of its rights under the agreement, nor shall it preclude Highlands from exercising its rights strictly in accordance with this agreement.

13.3 Highlands shall not be bound by an express or implied term, representation, warranty, promise or the like not recorded herein.

13.4 I/we have read these terms and conditions contained herein and understand and accept them in every respect.

13.5 If any term or condition contained herein is found to be invalid or unenforceable, then those terms and conditions shall not apply and shall be separated from these terms and conditions. Any such separation will not affect the validity and enforceability of the remainder of these terms and conditions.

13.6 Should any term or condition contained herein conflict with any provision of the CPA, then the relevant provision of the CPA shall replace such term or condition.

13.7 These terms and conditions shall be interpreted and determined according to the laws of the Republic of South Africa.

BY MY SIGNATURE HERETO I WARRANT THAT:

- I have read and that I understand the above terms and conditions and agree to be bound thereto.
- I have the legal capacity and authority to enter into these terms and conditions.

SIGNED AT _____ ON THIS _____ DAY OF _____ 20__

Signature of customer, for and

on behalf of _____