



**Mineral
Technologies**
A Downer Company

Commercial Terms and Conditions of Purchase

MD Mineral Technologies SA Pty Ltd

Company Number: 2000/017876/07

15 December 2025

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1. Definitions

Agent	means any individual, company or entity authorised to act on the Purchaser's behalf
South African Standards	means standards as approved and published by the South African Bureau of (SABS) and includes any foreign or international standards endorsed or approved by SABS.
Delivery Date	means the date specified in the Purchase Order Documents for the delivery of Merchandise or provision of Services.
Liquidated Damages	mean the amount payable by the Supplier to the Purchaser for late delivery of the Merchandise.
Merchandise	includes, without limitation, all goods, chattels, plant, equipment, machinery, stores and the like.
Party	means any individual, company or entity related to the merchandise or services supplied under this agreement.
Purchaser	means Mineral Technologies, carrying on business as MD Mineral Technologies Africa (Pty) LTD 16 Bauxite Bay Alton Richards Bay KwaZulu Natal 3900 South Africa.
Purchase Order Documents	has the same meaning as that given in Clause 2.0.
Services	include, without limitation, delivery, installation, manufacture and repair.
Supplier	means the person, firm or corporation from whom the Merchandise has been ordered.

2. Contract

- 2.1 These Terms and Conditions together with all documents attached hereto or incorporated herein by reference (referred to as the "Purchase Order Documents") constitutes the entire agreement between the Parties and supersedes any previous understandings and arrangements unless agreed in writing by the Purchaser. No terms and conditions subsequently notified by the Supplier and no amendments hereto will bind the Purchaser unless expressly accepted in writing.
- 2.2 The Supplier may not assign this order without the Purchaser's prior written consent.
- 2.3 No waiver of a breach of any provision of this order will constitute a waiver of any other breach of such provision or of any other provision.

3. Price

- 3.1 The Price for Services will be as stated on the Purchase Order Documents.

4. Time and Delivery

- 4.1 If the Supplier fails to deliver the Merchandise or provide the Services by the Delivery Date or in the quantity specified in the Purchase Order Documents, the Purchaser is entitled to cancel this order without notice.
- 4.2 The Purchaser may cancel without penalty and without prejudice to any of its other rights under this agreement or otherwise if the Supplier fails to deliver the Merchandise or supply the Services by the Delivery Date.
- 4.3 If the Purchaser terminates this order, the Purchaser may in its discretion retain any partial delivery upon the terms of this order or return excess quantities to the Supplier at the Supplier's expense.
- 4.4 Where specified in the Purchase Order Documents, the Supplier will be liable to pay the Purchaser Liquidated Damages if the Supplier fails to deliver the Merchandise by the Delivery Date.

5. Payments

- 5.1 Payments will be made in accordance with the Purchase Order Documents, but if not specified will be paid 30 days from the end of the month of receipt of invoice and any documents or information as specified in the Purchase Order Documents.

5.2 Set-Off

Where Supplier has incurred any liability to Purchaser, whether arising from or under this Agreement or otherwise howsoever arising, Purchaser may without notice to Supplier set-off the amount of such liability against any liability of Purchaser to Supplier arising from or under this Agreement, whether either such liability is liquidated or unliquidated, present or future, accrued or contingent.

Or

The Purchaser shall have the right, but not the obligation, to set off, in whole or in part, against any obligation it owes to the Supplier under this Agreement or under any other amounts owed to the Supplier.

6. Invoice

- 6.1 Invoices must be mailed separately from Merchandise and within two (2) days of despatch of the Merchandise or provision of the Services
- 6.2 Invoices must show sufficient description of the Merchandise, including quantity and the name of the plant or other destination to which the Merchandise was delivered or shipped or the Services performed.
- 6.3 If any sales tax, duty, excise, or other similar tax or charge, is applicable to this order, it must be stated separately on the invoice unless the Purchaser has furnished or agreed to furnish an exemption certificate.

7. Title and Risk

- 7.1 The Supplier warrants that all merchandise is free and clear of all liens and encumbrances and that the Supplier has a good and marketable title to it.
- 7.2 The risk in the Merchandise must remain in the Supplier until delivery to the Purchaser or to an entity or location designated by the Purchaser.
- 7.3 Full title to and property in any Merchandise or Services will pass to the Purchaser at the time of full payment.
- 7.4 Where any part payment for the Merchandise or Services is made by the Purchaser the title to and property in all the Merchandise or Services, and any materials and parts to be used in its manufacture as on hand, will pass to the Purchaser.

8. Warranty

- 8.1 The Supplier warrants that the Merchandise will conform to its description and any applicable specifications and is of merchantable quality, and fit for the purpose for which it is sold.
- 8.2 The Supplier also warrants that all Services will be carried out and performed with due care and skill and in a proper and workmanlike manner. These warranties are in addition to any warranties or service guarantees stated in the Purchase Order Documents or implied by law.
- 8.3 Unless otherwise specified this warranty is for a period of 18 months from the Delivery Date of the Merchandise or 12 months from placing in service, whichever is the later.
- 8.4 The Supplier shall be liable for all expenses incurred in relation to any injury to person or loss or damage to property, caused by any defects or repair, replacement or modifications for a period of 12 months after any such repair, replacement or modification.

9. Laws, Regulations, etc

- 9.1 The Supplier must conform with the provisions of all laws (national, provincial or municipal) in any way affecting or applicable to the manufacture or supply of Merchandise the provision of any Services and must obtain all permits, licences and give all notices required to be given and must pay all fees, deposits and taxes in connection therewith.
- 9.2 All work and materials must be of suitable quality and consistency to meet any relevant South African standards or other standards as specified by the Purchaser.

10. Patents, Trademarks and Copyright

- 10.1 The Supplier warrants that the sale or use of the Merchandise or the provision of any Services will not infringe or contribute to the infringement of any patents, trademarks, copyrights or other intellectual property rights in any country.
- 10.2 The Supplier must indemnify the Purchaser against any loss or damage (including legal fees and other costs of defending an action) arising from breach of this warranty.

11. Packaging and Transportation

- 11.1 Immediately upon despatch of any Merchandise to the Purchaser, the Supplier must notify the Purchaser of the time of despatch, the number of the order, the kind and amount of Merchandise despatched and the route and method by which the Merchandise will be transported.
- 11.2 All Merchandise must be packed, marked and transported as specified in the Purchase Order Documents.
- 11.3 If the Purchase Order Documents do not specify delivery terms, then the Merchandise shall be supplied DDP to the specified destination in a proper and suitable manner and in all cases in accordance with the proper requirements of the carriers and any law or regulation relating to packaging or transport.
- 11.4 All merchandise transported to the Purchaser must contain a packing slip which must be clearly visible and securely attached to the container of the Merchandise. Merchandise shipped to the Purchaser without packing slips may be returned to the Supplier freight collect.
- 11.5 The Supplier must be liable for any difference in freight charges arising from its failure to follow any transport instructions in the Purchase Order Documents or properly describe the Merchandise transported.
- 11.6 The Purchaser and the Supplier must assist each other in obtaining documents and other information desirable for the prosecution of claims against carriers.

12. Inspection of Work

- 12.1 The Supplier agrees that the Purchaser or its designated Agent will have the right to inspect all work contained in the Purchase Order Documents while in any stage of engineering, manufacture or installation. The Supplier must make this a condition of any sub-contract work.
- 12.2 The Purchaser or designated Agent will have the power to reject any work performed or being performed that does not conform to the Purchase Order Documents, whereupon the work rejected must be redone at no additional cost to the Purchaser. Any such inspection must not relieve the Supplier of any obligations contained in the Purchase Order Documents.

13. Inspection of Merchandise

- 13.1 All Merchandise is subject to inspection by the Purchaser or designated Agent within a reasonable time after arrival at the destination agreed in Purchase Order Documents.
- 13.2 If upon inspection any Merchandise is found to be unsatisfactory, defective, or of inferior quality or workmanship or fails to meet the specifications or any other requirements of the Purchase Order Documents, the Purchaser may return such Merchandise to the Supplier at the Supplier's expense.
- 13.3 Upon return of any unsatisfactory or defective Merchandise, the Supplier must reimburse the Purchaser for:
- a. Any amounts paid by the Purchaser on account of the purchase price of returned Merchandise, and
 - b. Any cost incurred by the Purchaser in connection with the delivery or return of Merchandise.

14. Installation or Fitting Services

- 14.1 The following conditions must also apply where the Supplier provides Services in connection with the installation or fitting of the Merchandise or where the Purchase Order Documents require either specifically or by implication the presence of the Supplier or his servants or agents on the Purchaser's premises:
- a. All work must be performed in a proper and manlike manner.
 - b. If any of the work or materials is found by the Purchaser or its designated Agent to be defective or not in compliance with the Purchase Order documents, and the Supplier on request of the Purchaser fails to remedy any defect or default within a reasonable period and to the satisfaction of the Purchaser, the same may be remedied by the Purchaser at the cost of the Supplier.
 - c. The Supplier must supply all labour, tools, equipment and materials necessary to complete the work.
 - d. The Supplier must use their best endeavours not to impede or interfere with other work in progress on the Purchaser's premises or the premises of other Parties designated by the Purchaser.

- e. The Supplier enters the Purchaser's premises at his own risk and must indemnify the Purchaser against any injury, death, loss, damage, claims or liability arising directly or indirectly out of the performance of the work or presence on the Purchaser's premises including claims against the Purchaser whether alleging negligence on the part of the Purchaser or otherwise.
- f. The Supplier must at its own expense obtain all requisite licences and permits and comply with all laws and regulations in connection with the work or installation.
- g. The Supplier, their servants, agents and sub-contractors must comply with the safety regulations of the Purchaser, its designated Agent's or designated Parties and with the reasonable directions and orders of the Purchaser or its manager, foreman, authorised officer or designated Agent.
- h. The Supplier must not sub-contract or assign the work or any part thereof without the Purchaser's written consent.
- i. The Supplier performs all work as an independent contractor and not as an agent or employee of the Purchaser.

15. Documentation

- 15.1 The Supplier must furnish all engineering and other documentation or information in accordance with Purchase Order Documents and within the time stated.
- 15.2 The Purchaser will have the right to make such copies of the documentation as is necessary for the Purchaser's reasonable internal use.

16. Cancellation

- 16.1 The Purchaser may at its option cancel any unshipped Merchandise or incomplete Services.
- 16.2 If the order covers any standard stock Merchandise, the Purchaser's obligation will be to pay for the Merchandise shipped prior to cancellation.
- 16.3 If the order covers Merchandise manufactured or fabricated to the Purchaser's specification or specifications prepared by the Supplier for the Purchaser, upon receipt of notice of cancellation the Supplier must cease manufacture, supply or work in accordance with and to the extent specified in the notice and must immediately do everything possible to mitigate any cost incurred by him consequent upon such cancellation.
- 16.4 Provided that the Supplier is not in default the Purchaser must, except for standard stock Merchandise, pay to the Supplier the reasonable costs incurred by the Supplier in connection with this order prior to date of cancellation provided always that the total cancellation payment plus previous payments must not exceed the total price of this order. Upon such payments, title to and property in any material or incomplete Merchandise must pass to the Purchaser.

17. Termination for Default

- 17.1 In the event of a breach by the Supplier of any terms of this order, including the Supplier's warranties, the Purchaser may at its option and without prejudice to any of its other rights cancel any undelivered Merchandise or incomplete Services.