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# Terms and Conditions of Order



## 1. Applicable Conditions

- 1.1. Unless expressly agreed to the contrary in writing by Mintek, these terms and conditions shall apply to all orders placed by Mintek with the Supplier.
- 1.2. For the purpose of these conditions “goods” shall include services and these terms and conditions shall mutatis mutandis apply to any order for services placed on the Supplier.

## 2. Delivery

- 2.1. All goods shall be delivered to Mintek as specified in the order. If a date for delivery is specified, the goods shall be delivered on or before the specified date. Should no date be specified, the order shall be executed promptly and within a commercially acceptable time.
- 2.2. The Supplier shall accompany all deliveries with a delivery note specifying the nature and quantity of goods so delivered, quoting Mintek’s order number therein. **(Note that in cases where a 3rd party, distributor or freight agent, is making the delivery on behalf of the Supplier, the delivery note must be the original one, from the Supplier.)**

## 3. Price, Invoice, Payments

- 3.1. The Supplier shall deliver or forward to Mintek a tax invoice quoting Mintek’s purchase order number for goods delivered in terms of the order. Separate invoices must be furnished for each order placed on the Supplier.
- 3.2. Except for the month of March, tax invoices delivered up to and including the 25th day of each month, shall be paid by *the last day of the month following delivery*, provided that the goods supplied or services rendered are to the complete satisfaction of Mintek. Tax invoices in respect of goods delivered during the month of March must include all goods delivered up to and including the 31st of March by which date the tax invoices must likewise be submitted for March deliveries.
- 3.3. Unless clearly stated to the contrary the price on the order includes Value Added Tax at 14 per cent, or such rate as may be applicable from time to time.
- 3.4. Any liability on the part of Mintek for variations in exchange rates is excluded. The risk is for the Supplier’s account and must be carried or covered by a forward cover exchange contract unless otherwise stated in the order.
- 3.5. Unless otherwise provided in the order all charges at sending stations, such as weighing, loading, sheeting, storage and demurrage must be borne by the Supplier. All shipping, transportation and import costs shall be borne by the Supplier.
- 3.6. Variations between exchange rates ruling at the time of the order and time of delivery shall be at the Supplier’s own risk. Mintek shall only pay the fixed price as indicated on the order.

## Terms and Conditions of Order



3.7. All correspondence including tax invoices in regard to the purchase order shall be addressed to:

**The Manager Finance  
Mintek  
Private Bag X3015  
Randburg  
2125**

3.8. Failure to comply with Mintek's instructions as set out herein may result in a delay in payment being effected to the Supplier.

#### **4. Subcontractors**

4.1. The Supplier shall not cede or assign any of the Supplier's rights and obligations without Mintek's prior written consent.

4.2. Subject to 4.1, if the Supplier to which this order is addressed is itself unable to supply the goods and subcontracts the execution of the order to a third party, the Supplier shall ensure that the subcontractor complies fully with these terms and conditions, but the Supplier shall nevertheless remain fully responsible for the due fulfilment of the order subject to these terms and conditions.

4.3. Mintek may in its sole and absolute discretion pay the Supplier or any subcontractor who executed any portion of the order, provided that payment to a subcontractor shall not exceed the value of actual goods or services supplied by the subcontractor.

4.4. Nothing in this clause shall be construed as placing an obligation on Mintek to pay any subcontractor of the Supplier, who shall remain solely liable to its subcontractors.

#### **5. Guarantees and Indemnity**

5.1. The Supplier guarantees that it will execute the order strictly in accordance with what is specified in the order. If the goods delivered by the Supplier are not to Mintek's satisfaction, Mintek shall be entitled to return the goods and claim any damages from the Supplier, up to three months after delivery of the goods.

5.2. The Supplier guarantees that the goods will be free of defects in equipment, material and workmanship and that it will be fit for the intended use thereof. The Supplier shall remedy any defects in the goods at its own cost when called upon to do so by Mintek, for a period of at least twelve months from the date of the physical delivery of the goods to Mintek.

5.3. Should it become necessary to replace or renew defective parts of the goods, the replaced or renewed goods shall likewise be subject to twelve months guarantee period as set forth in 5.2, from the date of replacement of the defective part.

5.4. The Supplier shall respond within twenty-four hours to any reports concerning defects in the goods. If the Supplier fails to take immediate effective steps to rectify the defect, Mintek shall have the right to proceed to replace the defective goods and take such action as Mintek deems fit at the Supplier's risk and expense.

### **6. Specifications**

6.1. All goods delivered by the Supplier shall comply with the specification as indicated on the order by Mintek. All the specifications and instructions supplied by Mintek to the Supplier or by the Supplier to Mintek shall remain the property of Mintek. The Supplier shall use or copy the same to the extent necessary to enable the Supplier to execute the order. The Supplier undertakes to keep all specifications confidential and not to allow any third party to have access thereto without Mintek's prior written consent.

### **7. Permits**

In the event of the goods being imported beyond the borders of South Africa, the Supplier shall obtain and maintain all necessary permits to export the goods from the country of origin and to import the goods into South Africa, at the Supplier's cost.

### **8. Ownership**

Ownership shall pass to Mintek upon delivery of or a payment for the goods whichever is earlier.

### **9. Tests**

Should Mintek require any tests to be conducted to prove the performance level of the goods, the Supplier shall promptly conduct such tests as may be reasonable to prove the performance level of the goods.

### **10. Risk, loss or damage**

- 10.1. Goods will be accepted at the specified place of delivery only as regards to the number and condition of packages notwithstanding any receipt that may have been given. The goods shall remain subject to rejection if not in accordance with the order and Mintek's specifications. Rejected goods will be held at the risk of the Supplier, who before such goods are released, shall refund the purchase price and all charges incurred by Mintek in respect thereof.
- 10.2. The risk of any loss or damage to the goods, whether direct or indirect from whatsoever cause arising and whether or not in contemplation of the Supplier shall vest in the Supplier until full and complete delivery in terms of the order have been affected by the Supplier.

### **11. Marking of documents and packages**

All documents, cases, crates, packages etc. must be clearly marked or labelled with the order number.

### **12. Inspection and expediting**

All work performed in connection with the order is subject to inspection and expediting by Mintek's representatives during the course of manufacture or upon completion.

### **13. Cancellation**

Mintek may at any time suspend or cancel part of or all the order. Should Mintek suspend work on or cancel the order, the Supplier and Mintek shall agree on any payments to be made to the Supplier for work carried out before cancellation or suspension.

### **14. Discrepancies in documentation**

Should there be any discrepancy in descriptions, dimensions or quantities in the order and any other specification or document relating to the order, the Supplier shall refer such discrepancy to Mintek for clarification before proceeding to execute the order or the part thereof in respect of which the discrepancy exists.

### **15. Breach**

If the Supplier breaches any obligation owed by it to Mintek in terms of the order Mintek may forthwith suspend payment to the Supplier, cancel the agreement and claim such damages as it may suffer as a result of such breach, without prejudice to any other rights of Mintek.

### **16. Indulgences**

No relaxation or indulgence of these order conditions by Mintek shall be construed as a waiver of Mintek's rights.

### **17. Legal Costs**

The Supplier shall pay all legal cost, as between attorney and own client incurred by Mintek as a result of the breach hereof by the Supplier.

### **18. Applicable Laws**

The laws of the Republic of South Africa shall govern the rights and obligations of Mintek and the Supplier.