



SUPPLIER'S STANDARD TERMS AND CONDITIONS OF CONTRACT

The Customer hereby applies for credit facilities with the Supplier and in consideration thereof the Customer accepts the following standard terms and conditions of contract:

1. DEFINITIONS

The following terms shall bear the meanings ascribed to them below:

- 1.1. "Supplier" shall mean Strata (Proprietary) Limited, Registration number 2017/226837/07;
- 1.2. "Customer" shall mean the applicant as more fully detailed in section A of the application for credit facilities;
- 1.3. "Services" shall mean plant hire and / or mining services as agreed to by or on behalf of the parties

2. APPLICABILITY OF TERMS AND CONDITIONS OF CONTRACT

- 2.1. The standard terms and conditions of contract contained herein are those on which the Supplier will supply the Services to a Customer, whether on a credit or cash basis.
- 2.2. These standard terms and conditions of contract shall prevail over any terms or conditions stipulated or referred to by the Customer in any order or in any negotiations preceding the placing of any order.

3. CREDIT

- 3.1. It is in the sole and unfettered discretion of the Supplier to provide the Customer with credit terms for payment.
- 3.2. Should the Customer not be successful in obtaining credit from the Supplier, Services to that Customer shall be on the basis of cash on delivery in advance of Services.
- 3.3. Where the National Credit Act (2005) ("NCA") applies to a Customer, all credit limits, increases and decreases in the credit limit, will be dealt with as provided for in the NCA.
- 3.4. Where the NCA does not apply to a Customer, all credit limits, increases and decreases in the credit limit, will be at the Supplier's sole discretion.

4. QUOTATIONS, PRICING AND ORDERS

- 4.1. Quotations and agreements for Services provided by the Supplier to the Customer, excludes VAT and E&OE.

- 4.2. Pricing/rates include fully competent operators, service and maintenance associated with fair wear and tear of plant.
- 4.3. Site establishment and de-establishment costs are for the Customer's account and must be settled with the first payment due or will be deducted from any cash in advance payments received.
- 4.4. Pricing / rates excludes the following items, which will be for the Customer's account (unless otherwise agreed by the parties and reduced to writing in a separate agreement) –
 - 4.4.1. Diesel (all rates quoted at dry rates exclusive of diesel);
 - 4.4.2. Accommodation for operator/s;
 - 4.4.3. Induction training for operator/s, medicals and exit medicals;
 - 4.4.4. Basic Medical assessments are provided to employees of the Supplier. Should site specific Medicals be a requirement, such costs will be for the Customer's account;
 - 4.4.5. Basic Personal Protective Equipment (PPE) will be provided to employees of the Supplier. Should site specific PPE be a requirement, such costs will be for the Customer's account;
 - 4.4.6. Excessive operator overtime;
 - 4.4.7. Abnormal usage of tyres due to abnormal working sites;
 - 4.4.8. Tyre puncture repairs;
 - 4.4.9. Excessive wear and tear on undercarriage and bucket reclamation; This assessment remains at the sole discretion of the Supplier who shall provide motivation from the necessary OEM (Original Equipment Manufacturer);
 - 4.4.10. Insurance excess payable by the Supplier to its insurance company resulting from theft or damage to plant caused by the Customer's gross negligence. Such excess should be noted as being the responsibility of the Customer for the first R200 000,00 excluding VAT per claim;
 - 4.4.11. Toll fees where plant travels on toll routed to site of delivery of Services;
 - 4.4.12. Damage to plant due to misuse. This assessment remains at the sole discretion of the Supplier who shall provide motivation from the necessary OEM (Original Equipment Manufacturer).
- 4.5. Prices quoted by the Supplier for Services to be rendered and accepted by the Customer on an official order form, are subject to availability of Services to be provided and valid for 3 (three) months from the date of the order form.

- 4.6. Long-term contracts will be subject to renegotiation of pricing between the Supplier and the Customer after every 6 (six) months of the existence of the contract.
- 4.7. In the event that the Supplier and the Customer cannot agree on pricing increments on long-term contracts within 1 (one) month after the expiry of every 6 (six) month period, the long-term contract will immediately terminate on the expiry of the 1 (one) month period as aforementioned. On request however by the Customer and entirely at the discretion of the Supplier, the long-term contract may terminate on an alternative date mutually agreed between the parties.
- 4.8. Any person placing an order on behalf of the Customer with the Supplier shall be deemed to be authorised by the Customer to place such order and the Customer shall bear the onus to prove any lack of authority of the person placing an order with the Supplier.

5. PAYMENT

- 5.1. All amounts due by the Customer to the Supplier shall be paid within 30 (thirty) days of the date of statement.
- 5.2. No relaxation of this term, by the Supplier, shall for any reason whatsoever be construed as a permanent alteration or change to the terms stated in 5.1. Such relaxation of terms shall only be for single instances and solely at the discretion of the Supplier.
- 5.3. Should any amount not be paid on the due date, the Supplier shall charge interest on such overdue amount at the rate of 2% per month. Additionally, the Supplier reserves the right to immediately terminate any Services should any amount not be paid on due date.
- 5.4. The Customer may not raise any claim, dispute or counterclaim as a reason for deferring payment and the Customer may not withhold any payment or set off any claim or counterclaim which it may wish to raise against the amount due to the Supplier.

6. OBLIGATIONS OF THE CUSTOMER

- 6.1. The Customer undertakes, at all times to exercise adequate security and care in respect of the Supplier's plant and / or any items which are the property of the Supplier, while on its site.
- 6.2. The Customer warrants that the Services provided by the Supplier to the Customer will not be sub-contracted by the Customer to any third party, without first obtaining the prior written consent of the Supplier. In instances where the Services provided by the Supplier to the Customer, relate to plant hire, the Customer similarly warrants that all plant hired by the Customer from the Supplier will be solely utilized by the Customer and the Customer is specifically prohibited from on-

renting / re-hiring the plant to any third party, without first obtaining the prior written consent of the Supplier.

- 6.3. The Customer undertakes to notify the Supplier in writing within 7 (seven) days of any change in ownership in the Customer's business, or should the Customer be a company, of its share transactions whereby the majority shareholding is affected, failing which notice the Supplier may terminate the Services / Plant Hire Agreement without further notice to the Customer.
- 6.4. The Customer undertakes to notify the Supplier in writing what requirement/s the Supplier will have relating to task & machine specific Health, Safety and Environmental Standards and / or machine requirements.

7. LIABILITY

- 7.1. Notwithstanding anything to the contrary contained herein, the Supplier shall not be responsible or liable to the Customer or any other person for any damages of any nature whatsoever (consequential or otherwise) arising out of any acts or omission on the part of the Supplier's operator while such operator is carrying out an instruction of the Customer.
- 7.2. The Supplier shall under no circumstances whatsoever, at any time, be liable for any claims for consequential loss or damage which may be made by the Customer or any third party resulting from the Services, save when such claims arise from an act solely and directly attributable to the gross negligence of the Supplier's operator/s or employee/s.
- 7.3. The Supplier shall under no circumstances whatsoever, at any time, be liable for any claims when construction machines are being used by the Customer or its employees on instruction of the Customer on Public Roads, or not being used by the Customer or its employees on instruction of the Customer as per Original Equipment Manufactured Standards or as detailed by the National Road Traffic Act (1996).
- 7.4. The Supplier shall under no circumstances whatsoever, at any time, be liable for the task supervision on site or task areas, nor for the work instruction on or off site, which will be the sole responsibility of the Customer.

8. BREACH

- 8.1. If the Customer is in breach of any of the terms and conditions of this contract, including but not limited to failure to pay statements on due date, becomes insolvent or wound-up or sequestrated or subject to any winding up procedure, or makes any arrangements with its creditors, or if a receiver or administrator or equivalent is appointed of all or any of its assets or undertaking, or any re-organization takes place for the purposes of amalgamation or reconstruction, or is placed under business rescue or a debt review, or dies or ceases to carry on

business, the Supplier shall be entitled forthwith, without notice to the Customer to cancel the contract and Services.

9. APPLICABLE LAW AND JURISDICTION

- 9.1. The contract between the parties shall be governed by and construed in accordance with the laws of the Republic of South Africa and the parties hereto irrevocably submit to the non-exclusive jurisdiction of the High Court of South Africa, Gauteng division.
- 9.2. Notwithstanding the afore going, the Customer hereby agrees in terms of section 45 of the Magistrates' Courts Act No. 32 of 1944, as amended, that the Supplier shall at its discretion, be entitled to institute any legal proceedings which may arise out of or in connection with any contract between the parties in any Magistrates' Court having jurisdiction in respect of such proceedings in terms of section 28 of that Act, notwithstanding the fact that the value of the claim or the matter in dispute may otherwise exceed the jurisdiction of such Magistrates' Court.
- 9.3. Should the Supplier institute legal proceedings for whatsoever reason, the Customer agrees to pay all costs occasioned as a result thereof, on the scale as between attorney and own client, including collection commission.
- 9.4. In the event of any amount which is payable to the Supplier becoming overdue, the entire balance payable by the Customer to the Supplier shall immediately become due and payable, notwithstanding any prior credit arrangements or arrangements for payment in instalments.
- 9.5. For the purpose of any legal proceedings, a certificate of balance signed by any manager of the Supplier, whose authority it shall not be necessary to prove, indicating the balance due, owing and payable by the Customer to the Company shall be prima facie proof of such indebtedness.

10. GENERAL

- 10.1. No addition to, variation, novation or agreed cancellation of any provision of these standard terms and conditions shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties.
- 10.2. No indulgence or extension of time which either party may grant to the other shall constitute a waiver of or, whether by estoppel or otherwise, limit any of the existing or future rights of the grantor in terms hereof, save in the event and to the extent that the grantor has signed a written document expressly waiving or limiting such right.
- 10.3. Without prejudice to any other rights the Supplier may have, any successor-in-title, including but not limited to any executor, heir, liquidator, judicial manager, curator or trustee, of either party shall be bound by these Terms and Conditions.

- 10.4. Each provision in these standard terms and conditions is severable from all others and if any provision, phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remaining provisions, phrases, sentences, paragraphs and clauses shall nevertheless continue to be of full force.
- 10.5. The Customer, the signatory and the surety/ies hereto choose domicilium citandi et executandi (i.e. the address at which all notices will be accepted, legal documents and the like, whether or not the Customer and/or the signatory and/or the surety/ies are still at the address chosen) for all purposes arising out of this application, at the physical address stipulated in section A – Application Form.
- 10.6. For the purposes of making credit risk management decisions and preventing fraud, the Customer consents to and hereby warrants that the Supplier is entitled to –
- 10.6.1. Carry out a credit enquiry on the Customer and the sole proprietor, partners, members/directors/trustees/shareholders of the Customer from time to time with one or more credit bureaus, credit information agents, credit insurance companies or other creditors (trade references) of the Customer's in terms of this application.
- 10.6.2. The Supplier may transmit details to credit bureaus, credit information agents, credit insurance companies or other creditors of the Customer of how the Customer has performed in meeting its obligations in terms of this application and contract.
- 10.6.3. If the Customer fails to meet its commitments to the Supplier, the Supplier may record the Customer's non-performance with credit bureaus, credit information agents, credit insurance companies or other creditors of the Customer.
- 10.6.4. Such information shall be retained for periods as stipulated in any applicable law. Where the Customer has not utilized credit facilities under this application for 12 (twelve) months, the Customer will be required to re-apply for such credit facility/ies.
- 10.6.5. The Supplier may transmit details to credit bureaus, credit information agents, credit insurance companies or other creditors of the Customer of how the Customer has performed in meetings its obligations in terms of this application and contract.