

EPIROC MINING AND ROCK EXCAVATION TECHNIQUE STANDARD TERMS AND CONDITIONS OF SALE

1. PERFORMANCE

Our performance figures are based on our experience and are what we expect will be obtained. We shall only be liable, however, in those cases where the expected performance figures are not achieved where we have given a written guarantee specifying the performance within specified 'tolerance' margins, and in those cases our liability is limited to the Purchaser's right to cancel the contract and reclaim the purchase price. The Purchaser shall not be entitled to recover any damages or loss which it may have suffered.

2. DELIVERY

We shall be deemed to have received delivery instructions on the date of receipt by us of a written, oral, or telegraphic order from you. We shall endeavor to make delivery on the date required by you, but you shall only be entitled to cancel this agreement by reason of our failure to make delivery timeously if we have guaranteed in writing that we would do so and time is of the essence and provided that we shall be entitled to a reasonable extension of time to complete, manufacture and/or make delivery be occasioned as a result of strikes, lockouts, vis major fires, accidents, defective material, causes fortuitous or any cause whatsoever beyond our reasonable control. The Purchaser shall not be entitled to claim any damages or loss consequential or otherwise by reason of such late delivery and cancellation. In the event of our being unable to complete manufacture or make delivery for reasons beyond our control, we shall be entitled to cancel the contract and the Purchaser shall likewise have no claim for loss or damages consequential or otherwise. Signature or our official delivery note or waybill or service report or delivery note of any independent carrier, will constitute proof of delivery of goods purchased or services rendered.

3. RISK

All risk in the goods, whether partial or complete, and from whatsoever cause shall pass to the Purchaser on delivery. Delivery shall be deemed to have been effected on the date the Purchaser is advised the goods are ready to be delivered in accordance with its instructions unless we shall have undertaken in writing to deliver the goods to a place nominated by the Purchaser, in which event and subject to Clause 6 hereof, Delivery of the goods to a carrier (including our own carrier) shall be deemed to be delivered to the Purchaser. The cost of any special packing materials and the cost of carriage shall be paid by the Purchaser, unless otherwise stated and acknowledged by both parties in writing.

4. OWNERSHIP

Notwithstanding anything herein contained express or implied, and the fact that risk in the goods shall be deemed to have passed to the Purchaser on delivery, ownership in the goods shall remain vested in us and shall not pass to the Purchaser until all amounts due in terms hereof shall have been paid in full. It shall however be our discretion at all times to decide whether or not ownership has passed to the Purchaser.

5. TERMS OF PAYMENT

- (a) Unless otherwise provided in writing and signed by both parties, the Purchaser shall be required to pay the purchase consideration and all other charges within 30 (thirty) days net from date of our invoice.
- (b) All payment due in terms of this Agreement shall be made at our place of business or at such other place as we may in writing direct, free of exchange and any deductions. This agreement constitutes the entire contract between the parties. No amendment to our variation of any of the terms and condition herein contained will be valid and binding unless reduced to writing and signed by or on behalf of the parties hereto.
- (c) Any liability on our part is subject to payment being made on due date and the Purchaser complying with all its obligations.

6. DAMAGE IN TRANSIT

Where our quoted price includes delivery charges, we shall repair or replace at our option and free of charge, goods damaged in transit provided:

- (a) both the carrier and ourselves have been given written notice of such damage within 3 (three) working days from date of delivery, and
- (b) We shall not be liable to the Purchaser for any claims for loss or damage (from any cause whatsoever) by reason of the damage of the goods.

7. GUARANTEE

Epiroc Botswana (Pty) Ltd.

Epiroc
Gaborone
Botswana

Address:
Plot 175, Unit 1, Gaborone
International Commerce Park
P O Box 41565, Gaborone

Telephone: +267 3959155
Fax: +267 3959150
epiroc.com

Reg. No: 1969655
Reg. Gaborone

We guarantee the condition of the goods for a period of 6 (six) months or 1000 (one thousand) hours, whichever shall first occur, from date of the delivery of goods, and in the instance of oil free rotary screw compressors 1 (one) year from date of delivery irrespective of number of hours worked and in the instance of the compressor elements only of both portable and stationary oil injected screw compressors 2 (two) years from date of delivery irrespective of number of hours worked, provided that::

- (a) we shall be obliged to exchange or repair any faulty or defective parts arising solely from faulty material or workmanship in goods or our, or our principal's own manufacture provided that:
- I. the goods have been properly used, and
 - II. our instructions for operation, general maintenance, cleaning and lubrication are followed, and
 - III. the defective parts are promptly returned at the Purchaser's expense to our works for inspection and acknowledgment of defect, and
 - IV. no claims will be set under the guarantee if the equipment is, or has been:
 - (a) Abused in any way, or damaged by wear and tear, or negligent or improper handling by the Purchaser, his employees or agents.
 - (b) Altered or repaired by the Purchaser or anyone on his behalf without our knowledge and approval:
 - (c) Damage due to causes beyond our control, and
 - (d) Damaged due to improper setting or installation by the Purchaser.
- (b) Where the goods are operated in excess of 10 (ten) hours per day, the period of liability will be limited to 3 (three) months and in the instance of contractor's tools to 6 (six) weeks;
- (c) The cost of delivering the repaired or new parts shall be for the account of the Purchaser;
- (d) The Purchaser shall pay the standard charges for our fitter's services as well as the kilometre charges of service vehicles to and from site irrespective of the reasons for the service call.

8. BENEFITS OF GUARANTEE

Our guarantee does not extend to ancillary and accessory equipment for use in conjunction with our goods which is supplied by not manufactured by us. However, we shall pass on to the Purchaser the benefit of any guarantee we receive from such manufacturer.

9. FREE SERVICE

The equipment manufacture by us and by our principals is subject to the following free services.

Mobile compressors: The Purchaser is entitled to one free hand-over service which includes the first filling of lubricants.

Stationary compressors over 25 l/s: The Purchaser is entitled to one free hand-over service on site which does not include the first filling of lubricants.

Loaders and Drilling Rigs: The Purchaser is entitled to one free hand-over service which included the initial filling of lubricants and hydraulic fluids where applicable.

10. CLAIMS & RETURNS

In the event of there being any defect in any of the items delivered or any query relating to prices of the items delivered, such defect or query shall be brought to our attention writing within 30 (thirty) days of the date stated on the invoice.

Acceptance of returns shall be solely at our discretion and shall at all times be subject to a 20 (twenty) percent handling charge.

11. HIRING OF EQUIPMENT

In addition to the TERMS AND CONDITIONS contained herein, the hirer of equipment is also subject to our separate TEMRS AND CONDITIONS applicable to hire equipment.

12. ARBITRATION

All or any dispute arising as a result of the Purchaser claiming under our guarantee or the hand-over service provisions shall be referred to arbitration in terms of the Arbitration Act and the meaning and effect of such guarantee and service provisions shall be determined in accordance with the laws of the Republic of Botswana.

13. WAIVER

No relaxation or indulgence which we may grant the Purchaser shall in any way prejudice our rights and shall not be regarded as a waiver of such rights.

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14. OBLIGATIONS OF THE PURCHASER

Until all amounts due by the Purchaser have been paid in full, the Purchaser shall:

- (a) notify us within 14 (fourteen) days of any change of business address;
- (b) maintain the goods in proper repair and good working order;
- (c) allow us reasonable facilities for the inspection of the goods, and;
- (d) Advise us forthwith of any loss or damage to the goods.

15. CESSION

The Purchaser shall not have the right to cede or assign any of its rights under this Agreement.

16. CANCELLATION

Should the Purchaser fail to comply with any of the TERMS AND CONDITION of this contract or any written and signed variation thereof, and persist in such failure for a period of 5 (five) working days from the date we shall have dispatched to it by prepaid registered post, notice calling on it to rectify such default or should the Purchaser fail to timeously make payment of any amount due in terms hereof on due date, or should the Purchaser be placed under provisional or final liquidation, or judicial management or attempt to compromise with its creditors, then and in such event we shall be entitled, inter alia, and without prejudice to any of our other rights and particularly the right to claim damages and consequential damages to forthwith cancel this contract, and recover possession of all goods supplied by us. The Purchaser shall be liable for all legal costs on the Attorney and Client scale and collection charges.

17. DOMICILIUM

The Purchaser hereby chooses **dom cilium citandi et executandi** for all purposes under this Agreement, at our business premises stated on the front of this document, unless the Purchaser has stated an address on the reverse side hereof in which vent such address shall be deemed to the **dom cilium citandi et executandi** chosen by it.

18. JURISDICTION

The Purchaser agrees and consents to the jurisdiction of the Magistrates Court having jurisdiction in respect its person notwithstanding that the amount in dispute is beyond the jurisdiction of the Court.

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