

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

Delivery of the goods shall be affected on the "due delivery date" referred to in the quotation provided by us, alternatively on a date to be agreed in writing between the parties.

We shall use our best endeavours to ensure that delivery is made on the date referred to above, but we shall not be accountable for any late delivery due to:

- i. Failure to complete manufacture resulting from strikes, lockouts, vis major, fire, accidents defective material, casus fortuitous; or
- ii. Any other cause whatsoever beyond our reasonable control; or
- iii. Delays occasioned by late delivery for whatever reason of equipment / goods emanating from manufacturers or distributors on whom we are dependent for the supply of such goods or equipment.

If we are unable to complete the manufacture or make delivery for any of the above reasons, we shall be entitled to cancel the contract and the purchaser shall likewise have no claim for loss or damages consequential or otherwise.

Signature of our official delivery note of any independent carrier shall constitute proof of delivery of the goods/equipment or service rendered as the case may be.

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 at our discretion at all times to decide whether or not ownership has passed to the Purchaser.

Where the goods are subject to an Installment Sale Agreement with Epiroc Financial Solutions AB, it is specifically recorded that Epiroc Mining Namibia (Pty) Limited will merely be acting as the appointed supplier of such equipment to the Purchaser on behalf of Epiroc Financial Solutions AB.

As such ownership will remain with Epiroc Financial Solutions AB and the goods will be delivered to the purchaser strictly on the basis that ownership therein is reserved to Epiroc Financial Solutions AB and will only pass to the Purchaser upon payment in full and the fulfillment of all its obligations to Epiroc Financial Solutions AB under the relevant Installment Sale Agreement.

The terms of all documentation between the Purchaser and us will where in conflict with the terms and conditions be regarded as pro non scripto and the conditions in any documentation between the customer and Epiroc Financial Solutions AB will take precedence.

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 conditions 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 (including consequential loss) (from whatever cause whatsoever) by reason of the damage of the goods.

Where the customer itself collects the goods or engages its own carrier to collect the goods from Epiroc Mining Namibia (Pty) Limited, all risk in and to the goods shall reside exclusively in the customer and there shall be no liability whatsoever on the part of Epiroc Mining Namibia (Pty) Limited to the customer.

7. GUARANTEE/WARRANTY

We guarantee the condition of the goods for a period of 6 (six) months or 1000 (one thousand) hours, whichever shall occur first, 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:
 1. The goods have been properly used, and
 2. Our instructions for operation, general maintenance, cleaning, and lubrication are followed, and
 3. The defective parts are promptly returned at the Purchaser's expense to our works for inspection and acknowledgment of defect, and
 4. No claims will be entertained under the guarantee if the equipment is, or has been:
 - I. Abused in any way, or damaged by wear and tear, or negligent or improper handling by the Purchaser, his employees, or agents.
 - II. Altered or repaired by the Purchaser or anyone on his behalf without our knowledge and approval:
 - III. Damage due to causes beyond our control, and
 - IV. Damage 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 kilometer charges of service vehicles to and from site irrespective of the reasons for the service call.
8. **BENEFITS OF GUARANTEE/WARRANTY**
Our guarantee does not extend to ancillary and accessory equipment for use in conjunction with our goods or are incorporated in our goods and which are supplied by not manufactured by us.
- However, we shall pass on to the Purchaser the benefit of any guarantee we receive from such manufacturer. We shall not be liable for any losses occasioned by the failure of such equipment whatsoever.
9. **FREE SERVICE**
The equipment manufactured by us and by ourselves and by our principals is subject to the following services.
- (a) Mobile compressors: The Purchaser is entitled to one free hand-over service which includes the first filling of lubricants.
- (b) Stationary compressors over 25l: The Purchaser is entitled to one free hand-over service on site which does not include the first filling of lubricants.
- (c) Loaders and Drilling Rigs: The Purchaser is entitled to one free hand-over service which included the initial filling of lubricants and hydraulic fluids 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 within our discretion and shall at all times be subject to a 20 (twenty percent) handling charge.
- Any benefit under this clause shall not apply to any goods which have been sold by Epiroc Financial Solutions AB to the customer under an Installment Sale Agreement where the relevant terms and conditions contained in the warranty clauses of those agreements shall be applicable in such event.
11. **HIRING OF EQUIPMENT**
In addition to the TERMS AND CONDITIONS contained herein, the hirer of equipment is also subject to our separate TERMS 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 South Africa.
- In the case of goods supplied or sold by Epiroc Financial Solutions AB to the customer, the terms of the relevant Installment Sale Agreement shall take precedence over these terms and shall apply thereto.
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.
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 domicilium 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 domicilium 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.
- It is agreed however that we, shall be entitled to institute action in any High Court having jurisdiction over the customer in our sole discretion.
19. ***** RISKS IN THE USE OF THE EQUIPMENT**
The Purchaser acknowledges that there are dangers/hazards inherent in the use of the equipment which must be utilized strictly in accordance with the Manufacturer's / Distributor's Operating Manual and Safety Instructions (where applicable) as well as in accordance with sound engineering practice.
- The Purchaser will also undertake to implement any revised /upgraded instructions in this regard which may be issued by the Manufacturer / Distributor from time to time.
- The Purchaser also undertakes at all times to use only suitably qualified and trained personnel in connection with the repair/maintenance and operation of the equipment.
- Under no circumstances shall Epiroc Mining Namibia (Pty) Limited be responsible for any loss/damages or injury to any party resulting from the use of the equipment the customer hereby specifically indemnifies Epiroc Mining Namibia (Pty) Limited against any claim arising therefrom.
- The customer shall initial next to this clause in confirmation that his/its attention has been drawn to the provisions contained therein.
*** Customer to initial next to this clause
20. **APPLICABILITY OF THE CONSUMER PROTECTION ACT ("CPA")**
Since the majority of its customers fall outside the provisions of the CPA, these Terms and Conditions of Sale have been prepared on the basis that the transaction envisaged would not be subject to the provisions of the CPA.
- Where, however, the provisions of the CPA are indeed applicable, then any of the Terms and Conditions of Sale which are not consonant with the CPA, shall be regarded a pro non scripto to the extent that they are in conflict with the provisions of the CPA.