

Standard Terms and Conditions of Sale Pertaining to Copper Supply Contracts

1. ACCEPTANCE, WAIVER, MODIFICATION, INTERPRETATION AND CONSTRUCTION

Orders that are accepted, and contracts that are formed, are accepted or formed at Seller's offices in Phalaborwa, South Africa, on the basis of and strictly limited to these standard terms and conditions of sale of Palabora Mining Company (herein "Seller"), as amended or modified from time to time (these "Terms"), which Buyer is deemed to consent to as a condition thereto and which shall control over any contrary or additional terms and conditions on any purchase order or other document of Buyer, which additional terms and conditions are hereby expressly objected to and to which Seller shall not be bound. Waiver of any term or condition of sale shall not constitute waiver of any other term or condition or legal remedy of Seller. Any act by Buyer of confirmation of any transaction contemplated hereby, including any order issued to Seller (whether in response to a quote of Seller or otherwise), shall constitute Buyer's acceptance of these Terms. Neither the failure of Seller to respond to any terms or conditions contained in Buyer's order nor the commencement by Seller of any work relating to the supply of copper rod shall be construed as Seller's assent to any terms and conditions which are additional to or different from, or which modify or extend, these Terms. No modification of any order or contract shall be binding unless in writing, signed by both parties hereto. Orders and contracts shall be interpreted in accordance with and the construction hereof shall be governed by, the laws of South Africa. Captions as used herein are for convenience or reference only and shall not be deemed or construed as in any way limiting or extending the meaning of any terms and conditions contained herein. The International Convention on the Sale of Goods shall have no application to any sales of goods hereunder.

2. TITLE, DELIVERY, RISK OF LOSS, AND SHIPPING

Unless otherwise agreed to and accepted by Seller, title to and risk of loss of all goods sold hereunder shall pass to Buyer upon tender of such goods onto Buyer's nominated carrier i.e. on FOT/FOR basis.

All shipments will be at Seller's option.

Any shipping date provided by Seller is the Seller's best estimate and will not operate to bind Seller to ship or make deliveries on the date indicated on quotation or order acknowledgment.

Buyer will furnish destination instructions for all goods as promptly as possible. Seller shall, for the account and at the expense and risk of Buyer, arrange for shipment of the goods by Buyer's nominated carrier and carrier's route of own selection to Buyer's destination. In the absence of destination instructions, Seller will not be required to ship any goods. Seller shall not be liable for loss or damage attributed to negligence either in selection of the carrier or route or in entering into contracts in connection therewith on Buyer's behalf.

3. ORDERS, PRICE AND PAYMENT

All orders are subject to acceptance or rejection by Seller in its sole discretion. No order submitted by Buyer shall be deemed to be accepted by Seller unless and until either confirmed in writing by Seller or by delivery of the copper rod specified in the order.

The price of any goods sold to Buyer shall be Seller's quoted price in writing. Where no price has been quoted (or a quoted price is no longer in effect), the price of any goods sold to Buyer shall equal the base metal price in effect on the date of shipment, plus a processing adder specified by Seller. Unanticipated cost increases created by circumstances such as, but not limited to, changes in delivery date, quantities or specifications for copper rod requested by Buyer, changes in government energy policies, metal premium charges or increases in the cost of energy, raw materials, packaging costs, production processes or delivery mechanisms, are not covered by the price quoted, and the processing adder in respect of copper rod is subject to adjustment as a result thereof. Any order accepted requiring special manufacturing processes, inspection, specified weight, packaging, test results, certification or other similar items or matters is subject to additional charges.

Unless a quotation expressly provides otherwise, all quotes and the prices referenced therein are valid for a period as indicated in original contract or quotation following the issuance thereof, except to the extent that such quote is earlier terminated or withdrawn by Seller.

Unless otherwise agreed to by Seller and subject to Seller's determination regarding Buyer's qualification for credit, payment terms are net fifteen (15) days after invoice date. Overdue amounts will attract an interest charge, calculated daily, of prime plus five percent.

Credit and delivery shall be subject to Seller's approval and Seller reserves the right to alter the terms and fix a limit of credit.

Each order or contract shall be treated as a distinct contract; but if Buyer shall fail to fulfil the terms of payment, Seller may without prejudice to any other lawful remedy defer further shipments and/or cancel any order or contract. Buyer shall be liable to Seller for all costs and fees, including attorneys' fees, which Seller may reasonable incur in any actions by Seller taken to collect on any overdue account of Buyer.

4. INSPECTION

If upon receipt of the goods by Buyer at destination the same shall appear not to conform to this order or contract, Buyer shall within thirty (30) days after receipt thereof notify Seller of such condition and afford Seller a reasonable opportunity to inspect the goods and make any appropriate adjustment or replacement. The remedies afforded Buyer under the paragraph hereof entitled "LIMITED WARRANTIES, REMEDIES AND LIMITATIONS" shall be the exclusive remedies for defective goods whether or not discovered upon inspection by Buyer. Buyer shall not delay payment for the goods pending their inspection.

5. LIMITED WARRANTIES, REMEDIES AND LIMITATIONS

a. Defective Goods

Seller warrants to Buyer that at the time of delivery the goods sold hereunder will be free from defects in material and workmanship and will conform substantially to Seller's applicable specification as stipulated in the order or contract. Seller's liability and Buyer's remedy under this warranty are strictly limited to the refund of purchase price, repair or replacement of the defective goods, at Seller's sole option, of goods or materials sold which are returned to Seller and which are shown to Seller's reasonable satisfaction to have been defective provided that written notice of the defect shall have been given by Buyer to Seller within thirty (30) days of delivery of such goods by the Seller. Transportation charges to and from Seller's location for the return of defective goods to Seller and their re-shipment to Buyer and the risk of loss thereof will be borne by Seller.

b. Title

Seller warrants to Buyer that it will convey good title to the property sold. Seller's liability and Buyer's remedy under this warranty are strictly limited to the removal of any title defect or, at the sole option of the Seller, to the replacement of the goods or parts thereof which are defective in title; provided however, that the rights and remedies of the parties with respect to patent infringement shall be limited to the provisions of subparagraph "c" below.

c. Patent Infringement

Seller shall conduct, at its own expense, the entire defense of any claim, suit, or action alleging that, without further combination, the use or resale by Buyer or any subsequent purchaser or user of the goods delivered hereunder, directly infringes any International patent, but only on the conditions that, (1) Seller receives prompt written notice of such claim, suit, or action, full opportunity and authority to assume the sole defense thereof including settlement and appeals, and all information available to Buyer and defendant for such defense, (2) said goods are made according to a specification or design furnished by Seller, or if a process patent is involved, the process performed by the goods is recommended in writing by Seller, and (3) the claim, suit or action is brought against Buyer or one expressly indemnified by Buyer. Provided all three of the foregoing conditions have been met, Seller shall, at its own expense, either settle said claim, suit, or action or shall pay all damages excluding consequential damages and costs awarded by the court therein and, if the use or resale of such goods is finally enjoined, Seller shall, at Seller's option, procure for defendant the right to use or resell the goods, replace them with equivalent non-infringing goods, modify them so they become non-infringing but equivalent, or remove them and refund the purchase price (less a reasonable allowance for use, damage or obsolescence). If a claim, suit, or action is based on a specification or design furnished by Buyer or on the performance of a process not recommended in writing by Seller, or on the use or sale of the goods delivered hereunder in combination with other goods not delivered to Buyer by Seller, Buyer shall indemnify and save Seller harmless there from.

d. Exclusive Warranties and Remedies

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE GIVEN AND ACCEPTED IN LIEU OF (a) ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR ARISING OUT OF THE CONDUCT OF THE PARTIES, AND (b) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY FOR SELLER'S NEGLIGENCE, ACTUAL OR IMPUTED. The remedies of the Buyer for breach of any warranty arising hereby, expressed or implied, or by operation of law, or for breach of any duty of Seller, expressed or implied or arising out of any conduct of the parties, shall be strictly limited to those provided herein to the exclusion of any and all other remedies. In no event shall Seller be liable for any incidental, special, indirect or consequential damages. The total liability of Seller for all claims of any kind, whether in contract, warranty, indemnity, tort or otherwise, arising out of the supply of copper rod pursuant to any contract or order shall not exceed the price allocable to the item giving rise to such claim. No agreement varying or extending the foregoing warranties, remedies or these limitations will be binding upon Seller unless in writing, signed by a duly authorized executive officer of Seller

6. EXCUSABLE DELAYS

Buyer acknowledges that the goods called for hereunder are to be manufactured or provided by or for Seller to fulfil this order or contract and that the delivery date(s) is (are) based on the assumption that there will be no delay due to causes beyond the reasonable control of Seller. Seller shall not be charged with any liability for delay or non-delivery when due to delays of suppliers, acts of God, nature, governments or their agencies, terrorism, war or sabotage, compliance in good faith with any applicable foreign or domestic governmental regulation or order, whether or not it proves to be invalid, fires, riots, inability to supply or obtain labour, raw materials, supplies, fuel or utilities, labour disputes, work stoppages, lockouts, delays in transportation, earthquakes, floods, storms or other severe weather conditions, power shortages or power failures or any other cause beyond the reasonable control of Seller.

To the extent such causes actually retard deliveries on the part of the Seller, the time for performance shall be extended for as many days beyond the date thereof as is required to obtain removal of such causes; provided, however, that if any such delay extends beyond end of delivery month, Seller shall be permitted to terminate, without liability, the order with respect to the unexecuted portion thereof.

7. TAXES

In addition to the agreed purchase price of the goods called for hereunder any and all taxes (not including any RSA income or excess profit taxes attributable to Seller) which may be imposed by any taxing authority, arising from the sale, delivery or use of the goods and for which Seller may be held responsible for collection or payment, either on its own behalf or that of Buyer, shall be paid by Buyer to Seller upon Seller's demand.

8. FINANCIAL RESPONSIBILITY OF BUYER

If before completion of performance of any order or contract by Seller, a receiver or trustee is appointed for any of Buyer's property, or Buyer be adjudicated or voluntarily files a petition or becomes a bankrupt under any bankruptcy,

dissolution or reorganization laws or similar legislation, or if Buyer becomes insolvent or makes an assignment for the benefit of creditors, or an execution be issued pursuant to a judgment rendered against Buyer, or should Buyer be unable or refuse to make payment to Seller in accordance with any of its obligations to Seller, Seller may at its option in any of such events terminate any order or contract by giving to Buyer a written notice of its intention so to do and Seller shall thereupon be relieved of any further obligation to Buyer and Buyer shall reimburse Seller for its termination costs and expenses and a reasonable allowance for profit.

9. CANCELLATIONS AND RETURNS

Due to raw material and manufacturing plant scheduling, all orders once placed with and accepted by Seller are non-cancellable thirty (30) days prior to the scheduled ship date. Orders may be cancelled, and goods may be returned for credit only upon the prior approval of Seller upon terms protecting Seller from losses.

Seller will issue a formal RETURN MATERIAL AUTHORIZATION tag to support all authorized returns. When requesting authorization to return an item, Buyer must denote the Buyer's order number, Seller's invoice number, part number and description, and quantity of item to be returned, and the reason for the request. Stock copper rod items are returnable at invoice price less 20% restocking charge, freight to be prepaid by Buyer. Non-stock copper rod items and/or special items are not subject to return. All material must be returned to Seller on the original pallets /swifts and in the original packaging.

10. CHANGES

Seller may at its option modify Buyer's order where necessary by making any of the following changes: (a) substituting the latest or correct part number or part description for the part number or part description set forth on the order; (b) substituting Seller's prices in effect as applicable to the order for the prices set forth in Buyer's order; (c) substituting an estimated delivery schedule which is reasonable (considering Seller's stock availability and lead time) for the schedule set forth on the order; and (d) correcting any stenographical or typographical error on any document.

11. RETURN OF PACKAGING

The pallets Seller uses to ship copper rod to Buyer is the property of the buyer. The Seller does not accept the return of packaging. The swifts for 20mm rod the Seller uses to ship copper rod to Buyer is the property of the Seller.

13. APPENDICES

Any appendix or other terms and conditions of the Seller as may be attached hereto, be on the reverse hereof, and/or be identified herewith are hereby incorporated and made a part of these terms and conditions. All orders or contracts shall be subject to such additional terms and conditions which shall control over any inconsistency with the terms and conditions stated herein.

14. CHANGES — PROCESS, MATERIAL AND PRODUCT DESIGN

Seller continually develops and uses new processes, materials and product designs in an effort to improve its products, while maintaining conformity to specifications. If Buyer's applications of Seller's products rely upon any performance, dimensional or constant criteria other than as required by the applicable specifications, Buyer must conduct regular testing or evaluation of those specific products. Seller makes no warranty or representation of any nature that any material shipped conforms to any material of like product description that may have previously been delivered to Buyer.

15. CONFIDENTIALITY

Buyer agrees to hold in confidence at all times any data or information of Seller, including, without limitation, any prices set forth in any quote or other document. The foregoing restriction shall not apply to any data or information which is publicly known or in the public domain through means that do not involve a breach by Buyer of its obligations set forth herein.

16. ASSIGNMENT

Neither Buyer nor Seller may assign any of its rights or obligations hereunder or under any order or quote; provided, however, that Seller shall be permitted to assign any of its rights hereunder or under any order or quote in connection with the sale or transfer of all or substantially all of its assets or capital stock, whether by merger, reorganization, consolidation or other similar transaction.

17. ENTIRE AGREEMENT

The terms and conditions of this order or contract constitute the entire agreement between the parties hereto and shall supersede all previous communications, representations, or agreements, either oral or written between the parties hereto with respect to the subject matter hereof.