

YELLOW STAR BENTONITE
TERMS AND CONDITIONS
OF SALE

Effective 1 September 2017

**YELLOW STAR BENTONITE
TERMS AND CONDITIONS OF SALE**

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1. SCOPE

- 1.1. These are the general conditions which will apply to every contract for the sale of goods and services by Yellow Star Bentonite ('the Seller').
- 1.2. These conditions are applicable to every transaction with a Purchaser ('the Purchaser').

2. PRICE

- 2.1. Prices are quoted in South African Rands.
- 2.2. The prices indicated by the Seller's price list are not subject to any discounts unless this has been offered and agreed to in writing by the Seller.
- 2.3. Acceptance of an order with delivery spread equally over a period in excess of 3 months is subject to the condition that the goods, including products and services, will be delivered at the prevailing prices on the date of dispatch unless this has been specifically agreed differently in writing.
- 2.4. Where exchange rate considerations are made these will be converted at the prevailing spot exchange rate as quoted by ABSA, of South Africa.

3. PRICE LIST

- 3.1. The Yellow Star Price List is Confidential and all Purchasers agree that any price that is quoted to them, will be kept confidential by themselves.
- 3.2. The price lists and specifications on the price list is issued by the Seller and from time to time serves as an information guide in particular when products are altered.
- 3.3. Having the price list does not constitute an offer to sell.

4. PAYMENTS

- 4.1. The Seller's terms are strictly cash which must be paid by EFT to the identified bank account of the Seller.
- 4.2. At its sole discretion the Seller may provide a credit facility to pre-approved Purchasers which have been subject to credit verification.
- 4.3. The purchase price shall be paid, by the Purchaser and will be free of bank and other charges, within 30 (thirty) calendar days from the date of the Seller's statement.
- 4.4. If any payment is not made on due date, then the Seller may, without prejudice to any other rights it may have, charge interest on the amount due at the ruling ABSA prime rate as accepted by institutions, plus 2%.

5. DELIVERY

- 5.1. The goods shall be delivered to the Purchaser at the Seller's depot.
- 5.2. The goods shall be deemed to have been delivered to and accepted by the Purchaser complete and in a satisfactory condition.
- 5.3. If the Seller, at the Purchaser's request, agrees to engage any carrier to transport the goods for the Purchaser then

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- the Seller is authorised to engage the Carrier on the Purchaser's behalf, on such terms and conditions as the Seller deems fit.
- the Purchaser shall indemnify the Seller against all demands and claims, which may be made against the Seller by any carrier so engaged and all liability, which the Seller may incur arising out of the transportation of the goods.
- If the Purchaser refuses to accept delivery of the goods when delivery falls due the Seller shall be considered to have tendered and the Purchaser to have refused to accept delivery. In this event the risk in the goods shall pass to the Purchaser and the cost of storing the goods shall be for the Purchaser's account and shall be paid by the Purchaser to the Seller on demand.
- The Seller does not guarantee delivery on any specified date but will endeavor to give delivery on the date stated in the Order Confirmation.
- Time shall not be the essence of any sale and failure by the Seller to deliver on the specified date for any reason whatever shall not entitle the Purchaser to cancel the contract or claim any damages arising therefrom.

6. OWNERSHIP AND RISK

- 6.1. Ownership shall not pass to the Purchaser until the purchase price has been paid in full.
- 6.2. The risk in the goods shall pass to the Purchaser on upliftment at the Seller's site
- 6.3. For all goods supplied C.I.F. the Seller's works, the risk in the goods shall pass to the Purchaser in respect of such goods immediately upon loading at the Seller's works, but title only passes to the Purchaser when the Seller is paid by the Purchaser.
- 6.4. The Purchaser shall upon the Seller's request assist the Seller in taking any measures necessary to protect the Seller's ownership and title to the Goods in the country concerned.
- 6.5. The Purchaser accepts and authorises the Seller to retake possession of any unpaid Goods without prior notification and allows the Seller to enter into the Purchaser's premise.
- 6.6. The Purchaser shall bear any and all costs relating to the Seller's actions under this clause.

7. ORDERS

- 7.1. Orders placed against the Seller's quotation are subject to acceptance by the Seller in writing. This will be done by the Seller issuing an Order Confirmation.
- 7.2. All orders, whether placed orally or in writing, and placed with the Seller, shall be firm and irrevocable and may not be cancelled or modified without the prior written consent of the Seller.

8. ORDERING PROCEDURE

- 8.1. The Seller will supply the Purchaser with a Quote.
- 8.2. The Purchaser will issue the Seller with a Purchase Order before the expiration of the quotation.
- 8.3. In the event where the Purchaser does not utilise a purchase order system, then the quotation will be signed, and dated by an authorized signatory from the Purchaser's company and a copy returned to the Seller.

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- 8.4.A Purchase Order does not become binding upon the Seller until the Seller sends to the Purchaser a corresponding Order Confirmation.
- 8.5. An Order Confirmation will be issued within 3 working days of the Purchase Order being received. It will detail the following minimum information:
- Date(s) of Upliftment
 - Quantity of Upliftment
 - Transport Provider
 - After hours contact details of Seller
 - After hours contact details of Transport Provider
 - Information required for weighbridge lading bills
- 8.6. If there are terms and conditions in the Purchase Order or referred to in the Purchase Order that differ from or are contradictory to this Conditions of Contract and Sale, any subsequent communication from the Seller constitutes a counter-offer and not acceptance of such terms and conditions submitted by Purchaser.
- 8.7. A Purchase Order shall be considered firm and definitive and may not be cancelled following the Seller's Order Confirmation.

9. DELAYS

- 9.1. If Seller reasonably believes that the agreed time for delivery or Purchaser reasonably believes that receipt of the Goods under the Agreement cannot be met, the delayed party shall immediately give the other party written notice to that effect, stating when delivery or receipt of Goods reasonably can be expected ("Notice of Delay").
- 9.2. If Seller gives Notice of Delay, Purchaser shall be entitled to cancel the delivery in question, provided that the expected delay exceeds ten (10) Business Days and Seller has understood or should have understood that such delay would cause Purchaser material inconvenience, by giving notice in writing thereof to Seller.
- 9.3. Purchaser must exercise its right to cancel the delivery in question within two (2) Business Days from receipt of the Notice of Delay otherwise Purchaser's right to cancel the delivery is forfeited and the new delivery time stated in the Notice of Delay shall be deemed to be the new agreed time of delivery. In all other respects the Agreement shall remain in full force and effect. In no event shall Seller have any liability for any costs or losses of Purchaser by means of a delay in delivery unless caused by the gross negligence or willful misconduct of the Seller.
- 9.4. If the Purchaser gives Notice of Delay, the Seller shall be entitled to either
- 9.4.1. extend the delivery time by a period that is reasonable in consideration of the circumstances, in which case Seller shall arrange for storage of the Goods at Purchaser's risk and expense and at the Purchaser's written request, Seller shall insure the Goods at the Purchaser's expense, or
 - 9.4.2. cancel the delivery in question provided that Purchaser has understood or should have understood that such delay would cause Seller material inconvenience, by giving notice in writing thereof to Purchaser. Seller must exercise its right to cancel the delivery in question within five (5) Business Days from receipt of the Notice of Delay otherwise Seller's right to cancel the delivery in question is forfeited and the new time for receipt of

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the Goods stated in the Notice of Delay shall be deemed to be the new agreed time for receipt of the Goods.

9.5. In all other respects the Agreement shall remain in full force and effect. If Seller exercises the right to cancel the delivery in question, Purchaser shall indemnify and hold Seller harmless from any costs or losses incurred by Seller in relation to such cancelled delivery.

- Purchaser's right to cancel a certain delivery shall not give Purchaser any right to cancel any other or successive delivery of the Goods.
- Purchaser's cancellation right in this Article are in substitution for all other rights of cancellation or any other rights by operation of law or otherwise due to delays in delivery.

9. RETURN OF GOODS

9.1. No goods may be returned or changed without the Seller's prior written consent.

9.2. If the Seller does consent in terms of 9.1. the Purchaser shall be obliged to pay a handling fee of 10% (ten percent) of the invoiced price of the goods which handling fee shall form part of the selling price of the goods which price will be increased by an amount equivalent to such handling fee.

10. LEGAL COSTS

10.1. The Purchaser shall pay all legal costs, on the attorney and client scale (including collection commission) incurred by the Seller in the recovery from the Purchaser of all or any moneys owing by the Purchaser under contract of sale.

11. WARRANTY

11.1. The Seller does not give any warranty or guarantee, expressed or implied, in respect of the goods or their fitness for any particular purpose, whether known to the Seller or not, and shall not be liable for any latent or other defect in the goods.

12. EXCLUSIONS

12.1. If any goods are to be supplied in accordance with any specifications, measurements or other instructions furnished by the Purchaser, the Purchaser shall not have any claim of any nature whatever against the Seller.

- for any loss or damages of any kind, whether direct or consequential or whether claimed on grounds of breach or contract or negligence, sustained by the Purchaser as a result of any error, discrepancy or defect in those specifications, measurements or other instructions, or
- If the goods are not suitable for the purposes for which they are required, whether or not those purposes are known to the Seller.

12.2. Subject to 10.1. if any goods fail to comply in any respect with requirements of any sale. the Seller's liability shall be limited to making good the failure or replacing the goods at the Seller's election, with reasonable promptness and without any charges, provided that the Seller receives written notice of the alleged failure within 14 (fourteen) days after the

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goods are delivered to the Purchaser and provided such goods have been paid for, and the Purchaser shall not have any other claim against the Seller for any such failure.

- 12.3. The Seller is exempt from and not liable under
- 12.3.1. any circumstances whatever for any indirect or consequential damages of any kind or any loss of profit or other special damages of any kind, whether within the contemplation of the parties or not which the Purchaser may suffer as a result of any breach by the Seller, its servants, agents or sub-contractors of its/their obligations under any contract:
- 12.3.2. any claim for any alleged shortage in delivery unless written notice of the claim is received by the Seller within 14 (fourteen) days after the goods are delivered to the Purchaser,
- 12.3.3. any claim of any nature arising out of an oral order or oral variation of an order unless that oral order or oral variation order has been confirmed in writing to the Seller before the Seller has delivered under the contract.
- 12.4. Subject to and without in any way limiting any of the provisions of this clause, the Seller's liability to the Purchaser for any damages sustained by the Purchaser and which arise in any way out of any goods purchased from the Seller, including any damages caused by the circumstances described above, be limited to an aggregate for all claims of 10% (ten percent) of the purchase price of the goods concerned.
- 12.5. The Purchaser hereby indemnifies the Seller against all damages, costs and expenses for which the Seller may become liable as a result of work done in accordance with the Purchaser's specifications which involves the infringement of any letters patent or registered design.

13. FORCE MAJEURE

- 13.1. Neither party shall be responsible to the other for any failure or delay in performing any of its obligations under the Agreement or for other non-performance hereof if such delay or non-performance is caused by strike, slowdown, labour disturbances, difficulty in obtaining necessary labour, fire, flood, riot, civil commotion, accident, act or ordinance of any governmental or local authority, terrorism, or by any other cause beyond the reasonable control of that party.
- 13.2. The party that is prevented to perform under the Agreement due to a force majeure event shall immediately inform the other party of such event and use reasonable commercial efforts to remove or overcome the hindrance for performance.
- 13.3. Should hindrance due to a force majeure event continue for more than three (3) months, the other party shall have the right to terminate the Agreement with immediate effect.
- 13.4. If, in such case, the Purchaser cancels the Agreement, the Seller shall be entitled to receive compensation for the costs incurred by discharging delivery obligations up to the time of the cancellation of the Agreement.

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14. CANCELLATION AND SUSPENSION

- 14.1. The Seller may cancel the contract or any uncompleted part of it, if the Purchaser:
 - 14.1.1. commits a breach of any of the terms or conditions of the contract, or
- 14.2. being an individual, dies or is provisionally or finally sequestered or surrenders his estate, or
 - 14.2.1. being a partnership the partnership is terminated, or
- 14.3. being a company or a closed corporation, is placed under a provisional or final order of liquidation or judicial management, or
- 14.4. compromises or attempts to compromise generally with the Purchaser's creditors.
- 14.5. The Seller's rights in terms of any of the above shall not be exhaustive and shall be in addition to its other rights under the agreement or otherwise
- 14.6. Upon termination of the contract for any reason whatever;
 - 14.6.1. all amounts then owed by the Purchaser to the Seller in terms of the contract shall become due and payable forthwith:
 - 14.6.2. the Seller may retake possession of any goods in respect of which ownership has not passed;
 - 14.6.3. the Seller shall be entitled to retain all moneys paid by the Purchaser as rouwkoop or deposit.
- 14.7. If any amount owed by the Purchaser is not paid on due date or if the Purchaser commits any other breach of the contract, then without prejudice to any other right the Seller may have it may immediately suspend the carrying out of any of its then uncompleted obligations until payment is made:
 - 14.7.1. it may terminate any credit facilities previously granted to the Purchaser.
 - 14.7.2. All amounts then owed by the Purchaser to the Seller in terms of the contract or from any other cause whatever shall become due and payable forthwith.

15. SPECIAL CONDITIONS

- 15.1. Every endeavor will be made to deliver the correct quantity ordered, but owing to difficulty of producing exact quantities, and in conformity with normal mineral trade practice, estimates are conditional upon a margin of $\pm 5\%$ being allowed for over and under deliveries, the same to be charged for or deducted, as the case may be, on a pro-rata basis.
- 15.2. When goods are consigned in or on returnable containers of any kind, any deposits or charges raised and invoiced in respect of such returnable containers, etc., shall be due and payable by the Purchaser at the same time as payment is due for the goods so consigned.

16. INDEMNIFICATION

- 16.1. Purchaser shall hold Seller harmless from, against, for and in respect of any and all damages, losses, suits, costs and expenses (including reasonable attorneys' fees) resulting from or arising out of any product liability or other claim which a third party may bring or assert against the Seller in relation to the Goods delivered by the Seller or Purchaser's import, use, storage, distribution, marketing, promotion or sale thereof, except where such claim is resulting from the Seller's gross negligence or wilful misconduct.

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17. WAIVER

- 17.1. Any relaxation which the Seller may permit on any one occasion in regard to any of the Purchaser's obligations shall not prejudice or be regarded as a waiver of the Seller's right to enforce those obligations on any subsequent occasion.

18. NON-VARIATION

- 18.1. No alteration or variation of these conditions shall be of any force or effect unless it is recorded in writing and signed by or on behalf of the Seller.

19. PROPER LAW

- 19.1. The validity of the contract, its interpretation, the respective rights and obligations of the parties and all other matters arising in any way out of it, or its performance or expiration or earlier termination for any reason shall be determined in accordance with the laws of the Republic of South Africa.

20. JURISDICTION

- 20.1. If the Purchaser is resident or carries on business in the Republic of South Africa, then the Seller shall be entitled to institute any proceedings against the Purchaser arising out of the contract in any Magistrates Court having jurisdiction over the Seller even if the cause of action exceeds the jurisdiction.
- 20.2. If the Purchaser is not a resident of and does not carry on business in the Republic of South Africa then the Purchaser consents and submits to the jurisdiction of the South Gauteng High Court and all Courts of Appeal therefrom for all purposes arising out of the contract.

21. DOMICILIUM

- 21.1. The Purchaser chooses the address at which the goods are to be delivered as its domicilium citandi et executandi for all purposes under the contract.

22. DOCUMENTS

- 22.1. All Documents shall remain the Seller's exclusive property and shall be returned to the Seller, at Purchaser's cost, upon written request.
- 22.2. The Purchaser may not copy, reproduce or distribute the Documents, in whole or in part, without the prior written approval of the Seller.
- 22.3. The Purchaser is responsible for ensuring that Documents and other information provided by the Seller orally or in writing, is not disclosed to third parties, without the prior written approval by the Seller.

23. INSPECTION OF GOODS, CLAIMS

- 23.1. Prior to delivery, Seller shall inspect the Goods to verify compliance with the Agreement.
- 23.2. The Purchaser acknowledges and agrees that due to the specific characteristics of the Goods, where the Goods following loading and during transport or subsequent handling can

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change in character, volume and weight, Seller cannot and does not warrant the Goods' compliance with the Agreement upon Purchaser's receipt of the Goods.

- 23.3. Upon receipt of the Goods, Purchaser shall inspect the Goods and satisfy itself that the Goods meet the contractual requirements. Complaints about the Goods shall be made in writing to Seller no later than five (5) Business Days from the date of receipt of the Goods in respect of any defect, fault or shortage which would be apparent from a reasonable inspection on receipt of the Goods, but in no event later than one (1) year, in which case Purchaser's right to make complaints is forfeited.
- 23.4. Any use or processing of the Goods shall be deemed to be an unconditional acceptance of the Goods and a waiver of all claims in respect of the Goods.
- 23.5. Complaints shall in sufficient detail specify the nature and the extent of the defect, fault or shortage.
- 23.6. Claims, if any, do not affect Purchaser's obligation to pay for the Goods.
- 23.7. Claims regarding loss or any fault in the Goods caused during transportation carried out by an independent carrier shall be addressed directly to Seller's insurance company in writing, as instructed by Seller, in accordance with the terms and conditions applicable to the carriage.
- 23.8. Claims regarding loss or any fault in the Goods which occurred when Seller bore the risk for the Goods shall immediately be addressed to Seller in writing.

24. REMEDIES AND LIABILITY

- 24.1. If it is finally determined or agreed that there exist defects, faults or shortages in the Goods and Purchaser has notified Seller of such defect, fault or shortage in accordance with Section 23 above, Purchaser's sole remedy and Seller's sole liability for any such defect, fault or shortage shall be, at Seller's discretion, for Seller to either
- make a replacement delivery at Seller's expense, or
 - issue a credit note in a corresponding amount.
- 24.2. Seller shall in no circumstances be liable to Purchaser for any kind of special, incidental, indirect, consequential or punitive damage or loss, cost or expense, including without limitation to, loss of business, or goodwill, loss of revenue, work stoppage or production failure and whether arising out of or in connection with breach of warranty, breach of contract, misrepresentation, negligence or otherwise, unless caused by the gross negligence or willful misconduct of Seller.
- 24.3. The remedies in this Article are in substitution for all other rights by operation of law or otherwise.