

STANDARD TERMS AND CONDITIONS

Pertaining to the Commission, Installation and Delivery of Specialized Equipment

1. PREAMBLE

The terms and conditions stipulated hereunder are terms and conditions prepared by Stones and Stones Incorporated Investments (Pty) LTD, Registration no 2003/013409/07 with a registered address of 50 Pomeroy Avenue, Crosby, Johannesburg, Republic of South Africa and shall be effective as from 1ST January 2010 and may be subject to amendments from time to time to meet with the changing Regulatory Requirements in Law or the application thereof.

Stones and Stones Incorporated Investments (Pty) LTD hereinafter referred to as Stones *inter alia* provides a service for clients from time to time and such service may entail, but not limited to crushing or screening or earthmoving services and to give effect to such services, Stones may commission, install or otherwise deliver static, moveable or other specialised equipment to a client, on behalf of a client and/or at a client's site or a third party site as the client may have requested.

Such terms and conditions are available to existing and prospective clients on inspection or made available on request or, in the sole discretion of Stones, maybe posted on Stones and Stones website and shall be binding on the client upon his order.

2. OWNERSHIP, POSSESSION AND CONTROL

All equipment provided for by Stones to and or on behalf of a client shall remain at all times the sole and exclusive property of Stones which shall over and above include ownership, possession and control of the equipment on the clients or Third Party site. This provision shall specifically preclude the client or third party from assuming or claiming possession or control of the equipment by the virtue of such equipment being delivered and operated on a clients or third party site and/or be operated under his instructions. Stones has no intention at any given time to grant possession or control of its equipment to a client, even in the

event that an act, term, presentation, or omission or indulgence may have indicated to the contrary.

3. HIRE, RENTAL OR LEASE

The conditions stipulated herein above shall further preclude the clients assumption or claim that the equipment has been hired, rented or leased to him or a Third Party by the virtue of the quotation stipulating a date, hours of time or a period of time; Stones has no intention to enter into a lease, hire or rental agreement with a client or a Third Party, no matter the circumstance.

4. LANDLORD'S HYPOTHEC

All equipment/vehicles, as the case may be, delivered to a client or a Third Party on behalf of the client, and were the client or Third Party is the Tenant to the Land shall not, under any conditions or circumstance, be subject to a Landlord's Hypothec, lien or any other rights that a Land Owner or Landlord may want to exercise with the assumption of such equipment being established or operated on the Landlord's site, or belonging to the client.

5. CONDITION AND COMPETENCE OF THE SPECIALISED EQUIPMENT

The onus rests solely on the client and/or third party to inspect the equipment prior to order and delivery, that it is free of any defects, that it is fit and operational for client's order and Stones will not warrant the condition of the equipment once loaded for the client's site, further the onus rests solely on the client and/or third party to ensure prior to order that the equipment is competent to fulfil the client's or third party requirement and Stones will not warrant the equipment's competence or performance for the client's requirements. The client's order, alternatively the client's instruction to load the equipment shall deem proof that the client has satisfied himself to both the condition and competence of the equipment and indemnifies Stones from any damages whatsoever and howsoever caused, whether actual or prospective, that the client may suffer as a result of defective or incompetent equipment arriving on client's or third party site.

6. RISK OF OWNERSHIP

The risk in the equipment shall pass onto the client from the moment the equipment is loaded for transport to client's/third party site until returned

and off loaded at Stones site. The client will be responsible for any damages, however incurred, whether accidental, wilful or negligent, resulting in partial or total loss of the equipment and subsequent loss of income, regardless the cause or reason, whether occasioned due to his or a third party action, during transport or whilst operating on site. Furthermore the client indemnifies Stones from any third party claims that may have resulted as a consequence relevant to the above events. The client must arrange at his own cost the necessary fully comprehensive insurance to cover the above events for Stones benefit.

7. PERMITS, LICENCES AND REGULATORY DUTIES

The client confirms by virtue of his order that he has fulfilled prior all his Regulatory Duties including but not limited to Licences and Permits for the execution of Stones services, in particular also that client has and will during the time of Stones services comply with all Health and Safety Regulations applicable by Law or otherwise directed by a Third Party. The client hereby indemnifies Stones from any claims or damages instituted by a Third Party due to client's omissions to fulfil his or any duties that he had to perform in terms of the above. The client further shall in any such event make good and be liable to Stones for any damages, injuries, standing time and loss of income until the return of equipment to Stones.

8. CLIENTS REPRESENTATIONS

The client warrants, prior to order that his representations made to Stones are true and *bona fides* in particular in relation to his legal occupation of the designated site, further that he is the legal owner, alternatively has legal right to the materials located on such lands for which processing, moving or handling he intends engaging the services of Stones. Should a dispute arise in terms of the rights above at any time during Stones service and which cannot be resolved within 72 hours from the time of such dispute, Stones will remove without notice it's equipment from site in which event the client shall be liable for the cost of transportation and any other loss, actual and prospective, Stones may suffer as a result of such removal. Furthermore the onus rests solely with the client that the material he wishes to handle with Stones equipment is suitable for its intended application, that it has been examined prior to order and that it is free of any contaminants that could result in the damaging of the equipment. The subsequent standing time and costs of repair shall be consequently for the client's account. Stones shall not warrant the suitability and condition of any of the client's material.

9. STANDING TIME, LOSS OF INCOME (ACTUAL AND PROSPECTIVE)

The client shall be responsible and liable to Stones for all standing time, once the equipment has been delivered to site, however occasioned with the exception of maintenance and fair wear and tear repairs to the equipment. Such standing time shall be calculated by Stones, in its sole discretion, and charged to client's account, having regard to the hours of each item of equipment, so standing, in the event of such service being calculated on an hourly or shift basis at the full rate agreed upon prior to delivery until restart/commencement. And/or where the client had agreed to specific volumes over a period of time, standing time will be calculated on the prospective volumes the equipment could have reasonably processed during the respective standing time. Standing time due to inclement weather shall be calculated and charged at the rate of 50% of the agreed rates prior to delivery.

10. SPECIFIC DUTIES OF CLIENT

The client warrants that prior to the arrival of the equipment on site, that the site has been properly established, that the equipment can be established, that the site is secure, sound and safe and free of any obstructions or other disturbances which may either stall the establishment and operation of the equipment or render the service either momentarily or totally impossible. The client warrants that the material on site is accessible and sufficient for the immediate start-up of Stones service on site and that Stones will be undisturbed during such service until completion. Any delays in establishing the above shall incur standing time, in which event the conditions stipulated herein above shall *mutatis mutandis* apply.

The client further undertakes to immediately report to Stones any standing time, incidents, accidents or damages to equipment. Should any of the above not be adhered to, Stones reserves its right and may at their sole discretion immediately collect the equipment off site and cancel the services forthwith.

The above will strictly apply to incidents whereby the client has shifted the goalposts of the agreement or is either preventing, making impossible or frustrating the services to take effect, or the equipment is transported to any other site outside the service area, or is using the equipment for alternative and/or additional purposes which have not been agreed upon in writing and accepted by Stones prior to commencement.

11. BREAKDOWN IN EQUIPMENT

In the event of any fault or breakdown occurring in respect of any of the machines, the client shall not be permitted under any circumstances whatsoever to either tamper with or attempt to repair or repair the machines. The repair of the machines shall always be the sole responsibility of Stones, who shall attend to the repair of the machines in such manner and time as it in its sole and absolute discretion may determine.

12. WEIGHTOMETERS AND QUANTITY SURVEYS

Should the client have agreed on volumes to be processed and Stones is charging their services for processing certain volumes, these volumes shall be measured either by electronic weightometers or through the assistance of an independent qualified Quantity Surveyor. In the absence of such weightometers or availability of a qualified Quantity Surveyor, the volumes shall be agreed upon mutually and in doing so, taking the prior estimated volumes indicated by the client prior to order into account, together with any measurable capable performance of the equipment; some of the equipment may have weightometers, whereas others may not, however the readings of such weightometers that would measure the performance of the equipment and in case of a quantity survey, the report by a qualified surveyor shall be final and binding on both parties as regards to the volumes processed.

13. LABOUR CONTENT

The client is advised that Stones will supply competent operators for each item of equipment that will be in attendance of the equipment for the duration of the service. Such labour or operators shall be under the exclusive supervision of Stones at all times and the client may not interfere with such supervision or the instructions given to the operators during such time of supervision. The working hours of Stones labour or operators shall not exceed the daily working hours prescribed by Law. The client undertakes to make available suitable full accommodation for all labour supplied by Stones and in case where the site of accommodation and the site of service are not the same, the client at his cost shall arrange the daily transportation to and from site; both accommodation and transport, as the case maybe, shall be for client's account.

14. PAYMENTS AND OVERDUE ACCOUNTS

The client warrants at all times that he is in financial good standing prior to order and that he will notify Stones immediately should the client experience any adverse financial standing during the course of Stones services. The client further warrants that he will adhere strictly to all payment terms and/or payment sequels as may have been agreed upon. Should any of the above conditions not be adhered to the client shall be forthwith in breach of contract and Stones may collect the equipment off site without further notice and cancel the contract forthwith.

15. SECURITY OF EQUIPMENT

The client undertakes to employ professional and capable security personnel to guard Stones equipment at his own cost, to guard and protect the equipment from any acts of theft, damage, sabotage or vandalism and the client shall be liable for any damages to the equipment suffered by Stones as a result of any such acts.

In the event of Labour Strikes on site or Strike Actions, or Riots and or Civil Unrest on site or in the immediate area around the site, the client shall immediately secure the equipment, alternatively remove the equipment, at his cost, to a location deemed safe and notifies Stones of such move and the new location forthwith.

16. BREACH OF CONTRACT

The client shall be deemed to be in breach of contract if any of the conditions stipulated herein are not adhered to and, upon notice failing to remedy his breach within 72 hours after receipt of such notice, Stones shall without further notice collect the equipment and cancel the service forthwith. All monies paid by the client paid in advance shall be forfeit in this instance.

17. GENERAL

Stones shall not be bound by any express or implied terms, representations, warranty, promise or the like not flowing from the above terms and conditions or not recorded herein, in particular Stones shall not be bound by any conditions that the client may want to impose by clients order, in any event Stones terms and conditions shall supercede any such condition stipulated on a client's order.

No terms, variations or consensual cancellation of the above terms and conditions shall be of any force or effect unless in writing and signed by or on behalf of the parties.

No indulgence which either party ("the grantor") may grant to the other ("the grantee"), shall constitute a waiver of any of the rights of the grantor, nor create an estoppel against the grantor, who shall not thereby be precluded from exercising any rights against the grantee which may have arisen in the past, or which might arise in the future.

All notices, consents, advice or other communication advised by Stones or the client to the other of them, shall be in writing, and unless in writing, shall be deemed not to have been given or made.

Stones shall be entitled to appropriate any payment made by the client in terms hereof to any debt of whatsoever nature, which may be owing by the client to Stones in terms hereof.

18. **JURISDICTION**

The client consents to the jurisdiction of the Magistrate's Court in respect of any action or proceedings which may be brought against it by Stones; provided that Stones shall be entitled to bring proceedings in the High Court where such proceedings would, but for the foregoing, fall outside the jurisdiction of the Magistrate's Court.