

## Terms and Conditions of Sale

### 1. Interpretation

(a) In these conditions:

**Buyer** means the purchaser of the Goods.

**Goods** means the products and, if any, services specified overleaf.

**Seller** means Exploration Drill Rigs Pty Ltd of 27 General Macarthur Place Redbank Qld 4301, which is the seller of the Goods.

(b) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding, restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Competition and Consumer Act 2010) and which by law cannot be excluded, restricted or modified.

### 2. General

These conditions (which shall only be waived in writing signed by the Seller) shall prevail over all conditions of the Buyer's order to the extent of any inconsistency.

### 3. Terms of sale

The Goods and all other products sold by Seller are sold on these terms and conditions.

### 4. Seller's quotations

Unless previously withdrawn, Seller's quotations are open for acceptance within the period stated in them or, when no period is so stated, within 60 days only after its date. The Seller reserves the right to refuse any order based on this quotation within 7 days after the receipt of the order.

### 5. Packing

The cost of any special packing and packing materials used in relation to the Goods are at the Buyer's expense notwithstanding that such cost may have been omitted from any quotation.

### 6. Shortage

The Buyer waives any claim for shortage of any Goods delivered if a claim in respect for short delivery has not been lodged with the Seller within 7 days from the date of receipt of Goods by the Buyer.

### 7. Drawings, etc

(a) All specifications, drawings, and particulars of weights and dimensions submitted to the Seller are approximate only and any deviation from any of these things does not vitiate any contract with the Seller or form grounds for any claim against the Seller.

(b) The descriptions, illustrations and performances contained in catalogues product lists, on the web site, price lists and other advertising matter do not form part of the contract of sale of the Goods or of the description applied to the Goods.

- (c) Where specifications, drawings or other particulars are supplied by the Buyer for the purposes of the Goods order, the Seller's price will be calculated on the basis of estimates of quantities required to provide the Goods as specified, drawn or otherwise particularised by the Buyer. If there are any adjustments in quantities above or below the quantities estimated by Seller as set out in a quotation, then any such increase or decrease will be adjusted on a unit rate basis according to unit prices set out in this document or in the quotation.

## **8. Performance**

Any performance figures given by the Seller are estimates only. The Seller is under no liability for damages for failure of the Goods to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

## **9. Delivery**

- (a) The delivery times made known to the Buyer are estimates only and the Seller is not liable for late delivery or non-delivery.
- (b) The Seller will not be liable for any loss, damage or delay occasioned to the Buyer or its customers arising from late or non-delivery or late installation of the Goods.
- (c) The Seller may at its option deliver the Goods to the Buyer in any number of instalments unless there is an endorsement overleaf to the effect that the Buyer will not take delivery by instalments.
- (d) If the Seller delivers any of the Goods by instalments, and any one of those instalments is defective for any reason:
  - (i) this does not constitute a repudiation of the contract of sale formed by these conditions; and
  - (ii) the defective instalment is a severable breach that gives rise only to a claim for compensation.

## **10. Force majeure**

- (a) If by any reason of any fact, circumstance, matter or thing beyond reasonable control of the seller or buyer either is unable to perform in whole or in part any obligation under this agreement that party is relieved of that obligation under this agreement to the extent and for the period that it is so unable to perform and is to not to be liable to the other party to this agreement in respect of such inability.

## **11. Responsibility for advice**

- (a) Any express or implied advice, guidance, recommendations, representations or other statements (in this condition collectively referred to as "statements") which the seller may give or make to the buyer as to the goods sold or supplied by the seller, or as to the service the seller perform, or as to any matter relating to such goods or services, are given or made on the sole basis that the seller accepts no responsibility for the accuracy or correctness of such statements. However, nothing in this condition shall exclude or limit the seller's liability for fraudulent misrepresentation.
- (b) In particular, and without prejudice to the generality of the foregoing the buyer agrees that prior to entering into this agreement the buyer has relied, and thereafter the buyer shall rely, exclusively on the buyer's own skill and judgement as to:
  - (i) the fitness of goods sold by the seller for any particular purpose for which they are required by the buyer; and
  - (ii) the correct selection, fitting and adjustment of parts for the buyer's machinery and equipment; and

- (iii) the correct method of operation and maintenance of the buyer's machinery and equipment, to the exclusion of any reliance upon the seller's statements in relation to such matter.
- (c) Accordingly, the buyer further agrees that the seller shall not be liable to the buyer whether in contract, tort, delict or otherwise for any loss or damage of whatsoever nature caused by reliance by the buyer or by any other person on the seller's statements or skill and judgment, regardless of whether such statements were given or made or such skill and judgment was exercised negligently or otherwise.

## **12. Loss or damage in transit**

- (a) The Seller is not responsible to the Buyer or any person claiming through the Buyer for any loss or damage to Goods in transit caused by any event of any kind or by any person (whether or not the Seller is legally responsible for the actions of that person).
- (b) The Seller must provide the Buyer with such assistance as may be reasonably necessary to institute claims against a carrier for damages to Goods in transit so long as the Buyer:
  - (i) has notified the Seller and the carrier in writing immediately after loss or damage is discovered on receipt of Goods; and
  - (ii) serves a claim for compensation on the carrier within 3 days of the date of receipt of the Goods.

## **13. Guarantee**

- (a) During the period of ninety (90) days from the date of delivery of the goods from the seller, or any authorised distributor, to the buyer, the seller will repair any defects without charge so long as the damage at the Seller's opinion has not arisen from:
  - (i) improper adjustment, calibration, maltreatment, inattention or interference by the buyer or anyone whom the buyer has legal responsibility;
  - (ii) the use of accessories including consumables, hardware and equipment which were not manufactured by or approved in writing by the seller;
  - (iii) any contamination or leakages caused or induced by the buyer;
  - (iv) any modifications of the goods which has not been authorised in writing by the seller;
  - (v) any misuse of the goods by the buyer or anyone whom the buyer has legal responsibility;
  - (vi) the use or operation of the goods outside of the physical, mechanical, electrical or environmental specifications of the goods;
  - (vii) inadequate or incorrect site preparation;
  - (viii) the buyer making any further use of the goods after giving notice of the defect;
  - (ix) the buyer failing to follow either the seller's instructions or normal standards prevailing in the industry as to the products use, storage or installation;
  - (x) the buyer altering or repairing the goods without the written consent of the seller;
  - (xi) the buyer failure to apply proper lubrication to components; and l) inadequate or improper maintenance of the goods.
- (b) The Seller's liability for Goods manufactured by it is limited to making good any defects by repairing the defects or at the Seller's option by replacement, within a period not exceeding six (6) calendar months after the Goods have been dispatched so long as:
  - (i) the defects have arisen solely from faulty materials or workmanship;
  - (ii) the Goods have not received maltreatment, inattention or interference;
  - (iii) accessories of any kind used by the Buyer are manufactured by or approved by Seller;

- (iv) the Goods have not been subject to improper adjustment, calibration, maltreatment, inattention or interference by the buyer or anyone whom the buyer has legal responsibility; and
- (v) the defective parts are promptly returned free of cost to the Seller.
- (c) If the Goods are not manufactured by the Seller the guarantee of the manufacturer of those Goods is accepted by the Buyer and is the only guarantee given to the Buyer in respect of the Goods. The Seller agrees to assign to the Buyer on request made by the Buyer the benefit of any warranty or entitlement to the Goods that the manufacturer has granted to the Seller under any contract or by implication or operation of law to the extent that the benefit of any warranty or entitlement is assignable.
- (d) The Seller is not liable for and the Buyer releases the Seller from any claims in respect of faulty or defective design of any Goods supplied unless such design has been wholly prepared by the Seller and the responsibility for any claim has been specifically accepted by the Seller in writing. In any event the Seller's liability under this paragraph is limited strictly to the replacement of defective parts in accordance with paragraph (a) of these conditions.
- (e) Except as provided in these conditions, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, description, quality, suitability or fitness of the Goods for any purpose or as to design, assembly, installation, materials or workmanship or otherwise are expressly excluded. The Seller is not liable for physical or financial injury, loss or damage or for consequential loss or damage of any kind arising out of the supply, layout, assembly, installation or operation of the Goods arising out of the Seller's negligence or in any way.

#### **14. Consumer guarantees**

The Seller's liability for a breach of a condition or warranty implied by Pt 3-2 Div 1 of the Australian Consumer Law is limited to:

- (a) in the case of Goods, any one or more of the following:
  - (i) the replacement of the Goods or the supply of equivalent goods;
  - (ii) the repair of the Goods;
  - (iii) the payment of the cost of having the Goods repaired; or
- (b) in the case of services:
  - (i) the supplying of the services again; or
  - (ii) the payment of the cost of having the services supplied again.

#### **15. Indemnification of suppliers by manufacturers**

The Seller's liability under s 274 of the Australian Consumer Law is expressly limited to a liability to pay to the purchaser an amount equal to:

- (a) the cost of replacing the Goods;
  - (b) the cost of obtaining equivalent goods; or
  - (c) the cost of having the Goods repaired,
- whichever is the lowest amount.

#### **16. Prices**

- (a) Unless otherwise stated all prices quoted by vendor are net, exclusive of Goods and Services Tax (GST).
- (b) Prices quoted are those ruling at the date of issue of quotation and are based on rates of freight, insurance, customs duties, exchange, shipping expenses, sorting and stacking charges, cartage, rate of water, cost of materials and other charges affecting the cost of production ruling on the date is made.
- (c) If the Seller makes any alterations to the price of the Goods or to any of their inputs either

before acceptance of or during the currency of the contract, these alterations are for the Buyer's account.

## **17. Payment**

The purchase price for the Goods plus GST where applicable is payable on or before the thirtieth day of the month next following the delivery of the Goods unless other terms of payment are expressly stated in these conditions in writing.

## **18. Rights in relation to Goods**

The Seller reserves the following rights in relation to the Goods until all amounts owed by the Buyer to the Seller are paid to the satisfaction of the Seller:

- (a) Prior to title in the Goods passing to the Buyer under the terms of this agreement, the Buyer agrees that:
  - (i) the Buyer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Seller owes to the Buyer;
  - (ii) the Buyer cannot claim any lien over the Goods;
  - (iii) the Buyer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Seller; and
  - (iv) where the Buyer is in actual or constructive possession of the Goods:
    - (A) the Buyer will not deliver them or any document of title to the Goods to any person except as directed by the Seller; and
    - (B) it is in possession of the Goods as a bailee of those Goods and owes the Seller the duties and liabilities of a bailee.
- (b) In connection with the Goods, the Seller states to the Buyer that:
  - (i) the Seller has the right to supply the Goods to the Buyer;
  - (ii) the activities of the Buyer in supplying the Goods do not infringe the rights of the owner of the Goods (where the Seller is not the owner of the Goods); and
  - (iii) if the Goods are not owned by the Seller, that the Seller is authorised to supply the Goods to the Buyer.
- (c) The Seller and the Buyer agree that:
  - (i) the property of the Seller in the Goods remains with the Seller until the Seller has been paid in full for the Goods under all individual contracts for the supply of the Goods between the Seller and the Buyer;
  - (ii) the Buyer is a bailee of the Goods until such time as property in them passes to the Buyer and that this bailment continues in relation to each of the Goods until the price of the Goods has been paid in full; and
  - (iii) pending payment in full for the Goods, the Buyer:
    - (A) must not supply any of the Goods to any person outside of its ordinary or usual course of business;
    - (B) must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business;
    - (C) must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.
- (d) If the Buyer supplies any of the Goods to any person before all moneys payable by the Buyer have been paid to the Seller, the Buyer agrees that:
  - (i) it holds the proceeds of re-supply of the Goods on trust for and as agent for the Seller immediately when they are receivable or are received;

- (ii) it must either pay the amount of the proceeds of re-supply to the Seller immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Seller;
- (iii) any accessory or item which accedes to any of the Goods by an act of the Buyer or of any person at the direction or request of the Buyer becomes and remains the property of the Seller until the Seller is paid in accordance with paragraph (c)(i) when the property in the Goods (including the accessory) passes to the Buyer; and
- (iv) if the Buyer fails to pay for the Goods within the period of credit (if any) extended by the Seller to the Buyer, subject to, and in accordance with, the Personal Property Securities Act 2009, the Seller may recover possession of the Goods at any site owned, possessed or controlled by the Buyer and the Buyer agrees that the Seller has an irrevocable licence to do so.

## **19. Buyer's property**

Any property of the Buyer under the Seller's possession, custody or control is completely at the Buyer's risk as regards loss or damage caused to the property or by it. The Buyer is responsible for insuring all the Goods that are located in Australia.

## **20. Storage**

The Seller reserves the right to charge a reasonable fee for storage if delivery instructions are not provided by the Buyer within fourteen days of a request by the Seller for such instructions. The parties agree that the Seller may charge for storage from the first day after the Seller requests the Buyer to provide delivery instructions.

## **21. Returned Goods**

- (a) Except for any provisions to the contrary contained in this agreement, the Seller is not under any duty to accept Goods returned by the Buyer and will do so only on terms to be agreed in writing in each individual case.
- (b) If the Seller agrees to accept returned Goods from the Buyer under para (a) of this clause, the Buyer must return the Goods to the Seller at the Seller's place of business referred to at the head of these conditions.

## **22. Goods sold**

All Goods to be supplied by the Seller to the Buyer are as described on the purchase order agreed by the Seller and the Buyer and the description on such purchase order as so agreed prevails over all other descriptions of the Goods including any specification or enquiry of the Buyer.

## **23. Cancellation**

No order may be cancelled by the Buyer except with the written consent of the Seller. In the event of a cancellation of the order by the Buyer, the Seller has the right to claim indemnity against all losses suffered by the Seller as a result of such cancellation.

## **24. Personal Property Securities Act 2009 (PPSA)**

- (a) This agreement is a security agreement.
- (b) The interest of the Seller in the Goods and all proceeds from the sale of the Goods by the Buyer to a third party is a security interest.
- (c) The Buyer consents to the Seller registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonable required by the Seller to facilitate registration.
- (d) Until such time as title in the Goods has passed to the Buyer as contemplated by clause 16 of this agreement, the Buyer agrees not to in any way assign, charge, lease or

otherwise deal with the Goods in such a manner as to create, a security interest over, the Goods in favour of the Buyer or any third party, The parties agree that this clause will not prohibit the Buyer from selling the Goods in the ordinary course of business..

- (e) The Buyer waives its rights to receive any notice under PPSA (including notice of verification statement) unless the notice is required by that Act and cannot be excluded.
- (f) The Seller and Buyer agree that this agreement and all related information and document(s) are confidential (**Confidential Information**) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. The Seller and Buyer agree that the Seller will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.
- (g) Unless the Goods are used predominantly for personal, domestic or household purposes, the Seller and the Buyer agree each of the following requirements or rights under the PPSA do not apply to the enforcement of the Seller's security interest in the Goods or of this agreement:
  - (i) any requirement for the seller to give the Buyer a notice of removal of accession;
  - (ii) any requirement for the Seller to give the Buyer a notice of the Seller's proposed disposal of the goods;
  - (iii) any requirement for the Seller to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
  - (iv) any requirement for the Seller to give the Buyer a statement of account if the Seller does not dispose of the Goods;
  - (v) any right the Buyer has to redeem the Goods before the Seller exercises a right of disposal; and
  - (vi) any right the Buyer has to reinstate this agreement before the Seller exercises a right of disposal of the Goods.
- (h) Expressions defined in the PPSA have the same meaning when used in this agreement.

## 25. Termination

- (a) In the absence of any breach of this agreement, either party may terminate this agreement in its absolute discretion with a minimum of 60 days written notice to the other party.
- (b) This agreement will automatically terminate if a party enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up or judicial management (other than for the purpose of amalgamation or reconstruction).
- (c) Either party may terminate this agreement if the other party is in material breach of any of its obligations under this agreement and if the breach is capable of remedy fails to remedy the breach for a period of 30 days after receipt of a written notice by the other party requiring rectification of the breach.
- (d) Exercise of the right of termination afforded to either party under this clause will not prejudice the legal rights or remedies which either party may have against the other in respect of a breach of any term, condition or warranty of this agreement.
- (e) The obligations of the parties that by their nature could reasonably construed as being intended to continue to apply beyond the termination of this agreement will continue to apply.

## 26. Place of contract

- (a) The contract for sale of the Goods is made in the state of Queensland from which this document is issued.
- (b) The parties submit all disputes arising between them to the courts of Queensland and any court competent to hear appeals from those courts of first instance.