

STANDARD TERMS AND CONDITIONS OF SALE

1. INTERPRETATION

As used herein, the words and phrases hereinafter set out shall in each particular case, unless the context requires otherwise, have the meaning hereafter provided:

Company means MATO Australia Pty Limited.

Contract means the combined terms applicable to the provision of Goods or services by the Company contained (in descending order of precedence) in any specific written agreement of the parties, the quotation (if applicable), these Terms and Conditions, the Purchase Order and any credit terms applying to the Customer.

Customer means the person or entity which places the Purchase Order.

Goods means any products and services specified in the Company's delivery document or invoice.

Purchase Order means an irrevocable offer by the Customer to buy certain Goods and/or services provided by the Company which supersedes all previous communications and negotiations.

PPSA means the Personal Property Securities Act 2009.

2. GENERAL

- a. These Terms and Conditions apply to all supplies of Goods by MATO Australia Pty Limited (hereinafter referred to as "the Company") to the Customer, unless otherwise specifically agreed by the Company in writing. These Terms and Conditions constitute the entire agreement between the Company and the Customer in relation to the supply of the Goods or Services and supersede any previous terms and conditions conveyed to the Customer.
- b. The Company reserves the right to vary these Terms and Conditions generally on 30 days written notice to the Customer for all orders placed after the notice period. These Terms and Conditions may be varied or modified for specific orders by either one of the following:
 - i. any additional terms agreed in writing by parties;
 - ii. if specifically stated in the Company's quotation (if applicable);
 - iii. if specifically stated in the Customer's Purchase Order and accepted and confirmed in writing by the Company;
 - iv. any credit terms agreed by the parties in a separate instrument (if applicable).
- c. Terms, conditions and disclaimers preprinted on the Customer's purchase order or otherwise introduced shall have no force or effect.

3. QUOTATIONS

- a. A quotation is an estimate only based on the information supplied by the Customer and the then current costs to the Company. Quotations given by the Company are without obligation and not binding unless expressly confirmed in writing as binding. The Company reserves the right to vary or withdraw any quotation at any time up until acceptance of the quotation by the Customer.
- b. Subject to the preceding sub-section, a quotation is valid for a period of 30 days from the date of the quotation, unless the Company specifies otherwise in writing. A quotation may only be accepted by a Customer by placing a purchase order for the quoted Goods in accordance with these Terms and Conditions.

- c. A quotation may only be accepted without variation. Any request for Goods at variance with the quotation shall be deemed to be a request to the Company to re-quote.
- d. All descriptive matter and specifications, drawings and particulars of weights and dimensions submitted with or prior to any quotation, but not forming part of the quotations, or material contained in the Company's catalogue, price lists or advertising matter are intended merely to present a general idea of the Goods, and none of these will form part of the contract between the parties.

4. PRICES

- a. Unless otherwise agreed between the parties in writing, the prices for the Goods are as stated in the Company's price list for the respective Goods current at the time of acceptance of the Customer's Purchase Order
- b. Unless otherwise stated, the prices are ex the Company's warehouse and do not include delivery or transport related costs.
- c. Unless otherwise stated in the Company's price list, quotation or invoice, prices are in Australian currency and do not include any taxes or duties, in particular not Australian Goods and Services Tax (GST). Any taxes and duties are to be paid by the Customer in addition to the prices (if applicable).
- d. The Customer must pay for the Goods the total amount shown in the Company's invoice and is not entitled to any deduction or set-off or withholding of payment for whatever reason.

5. ORDERS

- a. Each Purchase Order of Goods must be placed by the Customer in writing. Placing a Purchase Order by the Customer does not constitute a binding contract between the Company and the Customer. A Purchase Order constitutes an offer by the Customer to purchase the Goods described in the Purchase Order at the current price for the respective goods as per the Company's price list or as set out in the Purchase Order or these Terms and Conditions.
- b. The Company may accept or decline, in whole or in part, any Purchase Order made by the Customer. A binding contract between the Company and the Customer arises only when the Company accepts the offer by:
 - i. sending the Customer written acceptance of the Purchase Order; or
 - ii. notifying the Customer in any other way that the Purchase Order is accepted; or
 - iii. delivering the Goods (whichever occurs first).

6. DELIVERY

- a. Any delivery time given by the Company is only an estimate. However, the Company shall make all reasonable efforts to deliver the Goods on the date agreed by the parties, but shall not be liable for any loss or damage directly or indirectly arising out of or in connection with late or non delivery.

- b. Where no date for delivery has been stated by the parties, the Company shall ensure that the Goods are delivered within a reasonable time frame.
- c. The Customer bears all delivery, freight and other transport related costs (including any insurance of the Goods), unless expressly agreed otherwise in writing between the parties.
- d. Unless expressly agreed in writing by the Company, the Company shall deliver the Goods to the Customer's address specified in the Purchase Order.
- e. The Company may deliver the Goods in partial deliveries and the Customer shall not be entitled to reject partial deliveries.
- f. Unless a specific way of delivery has been agreed between the parties, the mode and method of delivery shall be at the Company's discretion and the Company shall not be liable for its selection of carrier or other particulars of delivery.
- g. The Customer must inspect all Goods supplied upon delivery and notify the Company in writing within seven (7) days of delivery of any discrepancy to the Contract. If the customer does not do so it is deemed to have accepted delivery of the Goods as per contract and will not be entitled to make any claim in respect of the Goods.
- h. The Customer must not return any Goods to the Company without first obtaining the Company's written authorisation.
- i. Return of Goods for any reason other than a claim under Section 14 will be at the Customer's expense and will incur a restocking fee of 10% of the value of the returned Goods.

7. RISK

- a. Risk in the Goods pass from the Company to the Customer upon the Goods leaving the Company's warehouse or place of storage, or on notification that the Goods are ready for collection, whichever is applicable or the earlier.
- b. The Company is not responsible to the Customer - or any person claiming through the Customer - for any loss or any damage to Goods in transit caused by any event of any kind by any person (whether or not the Company is legally responsible for the person who caused or contributed to the loss or damage).
- c. The Company shall only be obliged to insure the Goods upon express written request by the Customer and, if so requested, with an insurer of its choice without being liable for the selection of the insurer.
- d. The Company will provide the Customer with reasonable assistance to allow the Customer to press claims on carriers so long as the Customer:
 - i. has notified the Company and carriers in writing immediately after loss or damage is discovered on receipts of Goods; and
 - ii. lodges a claim for compensation on the carrier within 3 days of receipt of the Goods.

8. PAYMENT

Unless otherwise agreed in writing by the Company the following applies:

- a. If the Customer does not keep an approved credit account with the Company all purchases must be paid fully in cash prior to the Goods being released or dispatched or Services being provided.
- b. All invoices to a Customer with an approved credit account must be paid in full within 30 days from the end of month of invoice.
- c. The Customer must pay interest on overdue amounts calculated at the rate of 10% per annum on any outstanding amount from the date the payment was due until the date payment is received in full.
- d. In addition to interest, the Customer will also be liable for any administrative, legal or other costs incurred by the Company to recover the amount outstanding.
- e. The Company reserves the right at the Company's discretion and without being liable for any loss or damage to decline the supply of Goods or services under a contract if the Customer is in default of payment terms in relation to any previous order or above their credit limit.

9. CANCELLATION OF CREDIT ACCOUNT

- a. The Company reserves the right to withdraw credit at any time, whether the Customer is in default under the terms of any Contract with the Company or not.
- b. Without limiting default to these incidents, the Customer will in particular be in default if:
 - j. a payment for Goods or services is not received by the Company by the due date for payment; or
 - ii. the Customer becomes insolvent; or
 - iii. the Company, in its absolute discretion, forms the opinion that there has been a material adverse change in the business assets or financial condition of the Customer.
- c. Upon cancellation of the Customer's credit account, with or without notice, all liabilities incurred by the Customer become immediately due and payable to the Company and the Company may (without prejudice to any other rights or remedies it may have) give notice to the Customer:
 - i. Requiring the immediate payment of all monies actually or contingently owing by the Customer to the Company on any account whatsoever; and/or
 - ii. refusing to supply any Goods or services to the Customer on credit or at all; and/or
 - iii. immediately terminating any Contract.

10. RETENTION OF TITLE

- a. The Customer agrees that legal and equitable title to the Goods remains with the Company until the Customer has paid for the Goods in full and has paid all other money owing for any reason at any time under any contract, agreement or account between the Company and the Customer, including all payments to be made under clauses of these Term and Conditions.
- b. The Company's retention of title shall apply irrespective of the Customer having enhanced or changed the Goods or performed work on them and shall extend to proceeds from the sale of the Goods and any product or mass that the Goods may be or become part of.
- c. Until title to the Goods passes, the Customer:
 - i. Holds the Goods as bailee and fiduciary agent of the Company;
 - ii. must store the Goods separately and securely and in such a manner as to indicate clearly that they remain the property of the Company;
 - iii. must insure the Goods for their full replacement value; and
 - iv. must not create or allow to be created any security interest or any other form of encumbrance over the Goods which is inconsistent with the Company's title to the Goods.
- d. Despite the preceding sub-clause, unless the Company notifies the Customer to the contrary, the Customer may, in the ordinary course of its business:
 - i. Re-sell the Goods, but only as a fiduciary agent of the Company, in which case the Customer must perform in favour of the Company all the obligations and assumes all of the liabilities of a fiduciary agent. Any right to bind the Company to any liability to a third party any contract or otherwise is expressly excluded; and
 - ii. use any of the Goods or part of the Goods, and in case of using the Goods in a manufacturing or construction process so that they become part of a product or mass, must hold this product or mass on trust for the Company as bailee and fiduciary agent of the Company and may sell this product or mass.
- e. Where the Customer has not paid for the Goods in full by the due date for payment, then the Customer irrevocably authorises the Company to repossess the Goods and to enter any site owned, possessed or controlled by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of

the Customer) at any time and without notice to search for, inspect or repossess the Goods, whether such Goods are in their original form, or in a modified form or mixed with other products of the Customer. The Company is not liable to the Customer as a result of action taken pursuant to this clause. The Company may delay taking action to retain or dispose of the repossessed Goods under the *Personal Property Securities Act 2009* for a period of up to 12 months.

- f. The Customer agrees that where the Goods have been retaken into the possession of the Company, the Company has the absolute right to sell or deal with the Goods, and if necessary, sell the Goods with the trademark or name of the Customer on those Goods, and the Customer hereby grants an irrevocable license to the Company to do all things necessary to sell the goods bearing the name or trademark of the Customer.
- g. The Customer indemnifies the Company against any claim by a third party arising from, or in connection with the Company enforcing any of its rights under this clause 10.

11. SECURITY AGREEMENT

- a. The Company's interest in Goods sold constitutes a 'purchase money security interest' pursuant to the *Personal Property Securities Act 2009* (PPSA) and any term used in this clause having a particular meaning in the PPSA shall have the same meaning in this clause.
- b. The Customer acknowledges that these Terms and Conditions constitute a security agreement for the purposes of section 20 of the PPSA and that the Company holds a security interest over all of the present and after acquired Goods supplied by the Company to the Customer.
- c. The Customer will execute documents and do such further acts as may be required by the Company to register the security interest granted to the Company under these Terms and Conditions under the PPSA. The Customer waives its right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement.
- d. The Customer acknowledges that the security interests in the Goods granted to the Company pursuant to the retention of title clause secures payment of the amount payable and:
 - i. extends to and continues in all proceeds and accessions and processed goods; and
 - ii. is a purchase money securities interest to the extent which it secures payment of that part of the amount payable which comprises the aggregate unpaid purchase price of the Goods.
- e. For the purposes of the PPSA, the Goods are commercial property and are mining, industrial and agricultural equipment and parts;
- f. The Customer must do anything which the Company reasonably considers necessary to ensure the security interest is at all times enforceable, perfected and otherwise effective.
- g. The Customer must not do or permit anything to be done that may result in the purchase money security interest granted to the Company ranking in priority behind any other security interest.
- h. The Customer must give the Company prior notice of any change to its name or business that would require lodgment of a financing change statement on the PPSA register.
- i. To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by the Company of its security interest in the Goods, the Customer and the Company agree as follows:
 - i. To the extent permitted by the PPSA, the parties contract out of sections 95, 121(4), 125, the second sentence of section 126(2), sections 129(2), 129(3), 130, 132(3)(d), 132(4), 135, 142 and 143, which sections (or parts of sections) will not apply;
 - ii. to the extent permitted by law the parties further agree to exclude any provisions of the PPSA which may be excluded in the Company's discretion and which would otherwise confer rights on the Customer.

- j. The Customer agrees that where the Company has rights in addition to those under Chapter 4 of the PPSA, those rights shall continue to apply.

12. WARRANTIES

- a. The Company warrants that the Goods manufactured by it will comply with any description of the Goods contained in the relevant Contract documentation. The Company is not required to supply Goods with any specifications or characteristics that are outside any such description for the Goods.
- b. Apart from the warranties under the preceding sub-clause and subject to other express written arrangements, all warranties, representations, provisions or conditions in respect of any of the Goods sold, either expressly or implied, except for any warranties under the Australian Consumer Law or statutory warranty as to merchantability and fitness for purpose, are hereby excluded. In particular, but without limiting the generality of the afore-said, the Company's warranty for the does not apply to or cover:
 - i. Defects caused in whole or in part by misuse, abuse, neglect, electrical or other overload, failure to operate in accordance with manufacturer specifications, use of unsuitable products in connection with the Goods, improper storage or accident;
 - ii. wear and tear;
 - iii. any repair or alteration carried out without the Company's prior written consent; or
 - iv. defects caused by any act or circumstance beyond the Company's control.
- c. Any components of the Goods not manufactured by the Company are subject solely to the warranties (if any) provided by the manufacturer or the third party supplier to the Company, and the Customer acknowledges that, to the extent permitted by law, the Company gives no warranties for such component part beyond such manufacturers' or suppliers' warranties.
- d. The Customer acknowledges that it has relied on its own enquiries to satisfy itself as to the fitness or suitability for purpose of the Goods or Services. The Customer further acknowledges that in trading with the Company it has not relied on any representations or statements of the Company, its servants or agents.
- e. The Company will remedy a defect covered under this warranty by, at its discretion, repairing, replacing or providing a refund for the Goods.
- f. The Company shall not be liable to the Customer (or any person claiming through the Customer) for any liability, cost, loss or damage the Customer incurs arising directly or indirectly out of any act or omission of the Company, whether negligent or not, or use of the Goods or services.

13. HAZARDOUS MATERIALS

- a. Where the Company sells any potentially hazardous material to the Customer, the Company shall upon request provide to the Customer a Material Safety Data Sheet (MSDS) applicable to those hazardous materials.
- b. The Customer agrees to follow the instructions for use and handling of the hazardous material, and accepts it is the Customer's responsibility to ensure that its employees, contractors, agents or Purchasers comply with the instructions for use and handling as stipulated in the MSDS and/or warning Labels supplied by the Company.
- c. The Customer hereby indemnifies the Company against losses, damages, claims or other liability arising out of the supply of the hazardous materials by the Company to the Customer and the use and handling of the hazardous materials by the Customer, its employees, contractors, agents or Purchasers.
- d. The information provided by the Company in the MSDS or Warning Labels is often obtained from the Company's own suppliers or other sources, and the Company will not be held liable in contract and/or in tort for any reliance placed on such information.

e The Company reserves the right to withdraw further supply of any hazardous materials if the Customer, its employees, contractors, agents or purchasers fail to comply with the conditions of use and handling as stipulated in the MSDS and/or warning labels.

14. INDEMNITY

The Customer indemnifies and holds the Company harmless against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without prejudice to the generality of the foregoing, claims of death, personal injury, damage to property and consequential loss (including loss of profit and legal costs) which may be made against the Company arising from the Customer's breach of the Contract and from any claim against the Company by any third party, including any customers of the Customer, in connection with the use of the Goods or services. It shall not be necessary for the Company to incur expense, make a payment or contest any costs or expenses before enforcing the right of indemnity conferred by this clause.

15. CONFIDENTIALITY

a. The Company and the Customer agree to keep the particulars of their business relationship hereunder strictly confidential.
b. In particular, but not limiting the generality of the preceding subsection, the Company and the Customer agree that neither party will disclose information of the kind mentioned in section 275, subsection (1) of the PPSA.
c. The Customer and the Company covenant not to divulge – and procure that their respective employees, agents and sub-contractors do not divulge – to third parties any trade or business secrets or any other confidential information of the other party such as, but not limited to, sales, financial and marketing information, ideas, technical data and concepts not otherwise disclosed to the general public.

16. FORCE MAJEURE

The Company is not liable for failure to perform its obligations under the Contract to the extent and for so long as its performance is prevented or delayed without substantial fault or negligence by the Company because of circumstances outside the Company's control, failure of the Company's machinery, or failure of a supplier to the Company, provided that the Company gives notice to the Customer of the delay and uses reasonable efforts to remedy the cause of the delay quickly.

17. INTELLECTUAL PROPERTY

The copyright, patent rights, design rights and all other intellectual property rights in respect of or contained within the Goods, any component part of the Goods, or in any working documents or tooling which have been developed by or on behalf of the Company, remain the property of the Company. Unless expressly provided otherwise in the Contract, no transfer to the Customer of any such rights occurs by reason of the supply of the Goods, including circumstances where the price under the Contract includes an amount for designing or producing the Goods or Services. Unless authorized in writing by the Company, neither the Customer nor any third party is authorised to reproduce, adapt or use in any manner whether in part or in whole, any of the abovementioned materials

18. DISPUTE RESOLUTION

In the event of any dispute arising between the Company and the Customer in respect of, or in connection with a Contract, the parties shall, without prejudice to any other right or entitlement they may have under pursuant to these Terms and Conditions or otherwise, explore whether this dispute can be resolved by agreement between them using informal dispute resolution techniques such as negotiation, mediation, independent expert appraisal or any other alternative dispute resolution techniques.

19. APPLICABLE LAW

a. The Contract between the parties is governed by the laws in force in New South Wales. The Customer agrees to submit to the non-exclusive jurisdiction of the New South Wales Courts, and any court that may hear appeals from any of those courts, for all purposes of or in connection with the Contract and waives any right it might have to claim that those courts are an inconvenient forum.
b. The United Nations Convention on Contracts for the International Sale of Goods 1980 shall not apply to the Contract between the Company and the Customer.

20. SEVERABILITY

If any provision or part of any provision of these Terms and Conditions is invalid, illegal or unenforceable, such provision or part thereof shall be severed to the extent necessary to make these Terms and Conditions enforceable, unless this would materially change the intended effect of these terms.

These Terms and Conditions are acknowledged and accepted for and on behalf of:

Company: _____

Name: _____

Position: _____

Signature: _____

Date: _____