

## Terms and Conditions (“T&C”)

T&C between MDD Heavy Industries Pty Ltd (ACN 604 467 094) (ABN 76 604 467 094) of 23827 Peak Downs Highway, Eton, Queensland (“Supplier”), the client (“Client”) and any guarantor

### 1. Definitions and Interpretation

In these T&C, unless the context otherwise requires:

- (a) “Business Day” means a day which is not a Saturday, Sunday or public holiday in Mackay, Queensland, Australia;
- (b) “Claim” includes a claim, demand, notice, investigation, action, proceeding, suit, judgment, damage, loss, cost (including legal expenses on a full indemnity basis), charge, fine, penalty, expense or liability of any description, however based (including whether based in contract, tort or statute) and however arising (including whether present, future, unascertained, or contingent);
- (c) “Contract” means a contract formed between the Supplier and the Client pursuant to clause 2.4;
- (d) “Equipment” means any plant or equipment or machinery that the Client requires the Supplier to work on in carrying out the Works;
- (e) “Force Majeure Event” means any event or circumstance or combination of events and circumstances which is beyond the reasonable control of the party affected and causes or results in delay in, or prevention of, the performance by the party affected of any of its obligations under a Contract;
- (f) “Law” includes statute, regulation, by-law, proclamation, ordinance, code and rule;
- (g) “Loss” means any loss (including loss of rent and/ or profit), cost, damage, expense, liability, diminution in value or deficiency of any kind, or character or description, however based (including whether based in contract, tort or statute) and however arising (including whether present, future, unascertained, or contingent);
- (h) “Install” means install, incorporate or affix;
- (i) “Intellectual Property” means all intellectual or industrial property (whether registered or not) wherever subsisting in the world;
- (j) “Parts” means any products, parts, consumables and/ or further items (as the case may be) supplied by the Supplier in carrying out the Works or pursuant to the Contract;
- (k) “PPSA” means the *Personal Property Securities Act 2009* (Cth) and its regulations, as amended and in force from time to time;
- (l) “PPSR” means the Personal Property Securities Register as established under the PPSA;
- (m) “PMSI” means a ‘Purchase Money Security Interest’ as that term is defined in the PPSA;
- (n) “Price” means the price for the Services as quoted by the Supplier from time to time;
- (o) “Security Interest” means a security interest as defined in the PPSA;
- (p) “Services” means the performance of the Work;
- (q) “Specifications” means any specifications, designs, drawings or other material (in physical or electronic form or otherwise) with respect to or in connection with the Services to be provided by the Supplier under the Contract;
- (r) “Works” means the works which were the subject of the Contract, reasonably incidental work thereto and any other work agreed between the parties;
- (s) “Workshop” means the Supplier’s main workshop from time to time or any relevant site;
- (t) “Quote” means the quotation provided by the Supplier to the Client for the Services, which incorporates these T&C;
- (u) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (v) all amounts are in Australian dollars (AUD\$).

### 2. Quote

- 2.1. The Client states that it has carefully read the Quote.
- 2.2. Unless the Quote is on a fixed-price basis, any estimate of the Price is a non-binding approximation only.
- 2.3. The Supplier reserves the right to adjust the Quote due to any changes in federal or state government legislation during the Contract Period. The Supplier may adjust the Quote at any time without first needing to obtain the Client’s prior consent. The Supplier shall endeavour to provide written notice to the Client of any changes to the Quote within a reasonable time.
- 2.4. The Client may accept the Quote by any form of overt acceptance (verbal and/or written) (“Acceptance”). For clarity, the acceptance of a Quote accepts these T&C in full. On acceptance, a contract is formed between the Supplier and the Client (and any guarantor) on the terms of the Quote and these T&C (“Contract”).
- 2.5. The Acceptance must not contain any terms or conditions that are contrary to the Quote (which includes these T&C). Any terms or

conditions that are contrary or supplementary to the Quote are not accepted by the Supplier unless the Supplier specifically acknowledges and agrees to such terms in writing.

- 2.6. The Client must notify the Supplier of the details of any of the Client’s staff that do not have authority to provide Acceptance, or only have some limited authority. If the Supplier does not hear from the Client, the Supplier is entitled to assume that all of the Client’s staff have full authority to provide Acceptance.

### 3. Payment

- 3.1. In consideration of the Services that the Supplier is to provide to or perform for the Client under the Contract, the Client must pay the Price, in cleared funds within thirty (30) days after the end of the month the Client receives the invoice from the Supplier in.
- 3.2. Tax invoices will be emailed to the address that the Client notifies the Supplier to use (or to any address otherwise notified to the Supplier). This is sufficient notice of the amount due under the tax invoice.
- 3.3. A statement setting out details of the amount owing and any other matters relating to the account on the Suppliers letterhead is sufficient evidence (in the absence of any manifest error) of the supply of Services by the Supplier to the Client. This statement may be used in court proceedings.

### 4. GST

- 4.1. The parties agree that unless otherwise specified, the consideration for the supply of goods and services under any Contract is exclusive of GST (goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or replaced).
- 4.2. The party making the supply shall provide to the recipient of that supply a valid tax invoice at or prior to the time for payment of the GST amount.

### 5. Services

#### 5.1. Information

- (a) The Client must promptly provide the Supplier with all necessary documents and information to enable the Supplier to quote on the Services and to provide the Services, including to precisely and accurately state all specifications and requirements. This is the Client’s responsibility.
- (b) The Supplier may rely on and treat the documentation and other information provided by the Client as accurate and correct in all respects.
- (c) If the Supplier considers any documents or information provided by the Client is insufficient for the Supplier’s purposes, then the Supplier may notify the Client and the Client shall use its best endeavours to provide sufficient information.
- (d) The Supplier must take reasonable care of any items, patterns or tools supplied by the Client but these remain at the Client’s risk. The Supplier takes no responsibility for loss, damage or insurance of same.
- (e) If the Client becomes aware of any matter that will change the scope, character, quality, sequence or timing of the Services (including their provision), then the Client shall promptly notify the Supplier of the matter. Any changes are at the discretion of the Supplier and the Client will be liable for any further costs that are incurred by the Supplier in providing the Services due to the change.
- (f) The Client agrees that it does not rely on the skill or judgement of the Supplier in relation to the suitability of the Equipment for a particular purpose. Any advice, recommendation, information or assistance provided by the Supplier is provided without any liability by the Supplier whatsoever.
- (g) Unless otherwise agreed, the Supplier does not warrant that the Equipment is or will be compliant for immediate use and entry onto any mining site. It is the Client’s responsibility to make such enquiries prior to entry into the Contract and to attend to such alterations to the Equipment as may be needed to ensure the Equipment is mine site compliant following collection/delivery.

#### 5.2. Warranty

- (a) The Supplier guarantees that any Work carried out by the Supplier shall be guaranteed on workmanship for a period of six (6) months from the date of completion of the Work unless otherwise agreed between the parties (the “Warranty Period”).
- (b) The Supplier does not provide any warranty for Parts manufactured by a third party and the warranty conditions of the manufacturer (if any) shall apply.
- (c) Any Work found to be defective in material or workmanship within the

Warranty Period will be repaired or replaced by the Supplier as follows ("Supplier's Warranty"):

- (i) the Work/s carried out by the Supplier are to be inspected by the Supplier. The Client will need to deliver the Equipment to the Supplier's Workshop, at the Client's cost and risk, in order for the Supplier to inspect the Works. Alternatively, the Supplier may elect to attend on location to inspect the Works.
  - (ii) As soon as practicable following the inspection, the Supplier shall contact the Client to confirm whether the repairs or replacement work is covered by the Supplier's Warranty and the time it will take to effect such repairs/replacement.
  - (iii) In the instance such repair or replacement work is covered under the Supplier's Warranty, then the Supplier will correct any defect in workmanship at its sole expense.
  - (iv) In the instance such repair or replacement work is not covered under the Supplier's Warranty, then the Client can engage the Supplier to attend to the repair/replacement works at the Client's cost.
  - (v) In the instance the Client does not require the Supplier to attend to the repair or replacement works, then the Client is required to reimburse the Supplier for any costs incurred by the Supplier.
  - (vi) The same warranty period as under paragraph 5.2(a) shall apply to those parts repaired/replaced (only) or service provided from the date that the part or part/s of the Equipment are repaired or replaced, or defect in workmanship is remedied.
- e) For the avoidance of doubt, the Client agrees that the Supplier shall not be held responsible for any consequential damage, and/or any damage incurred to the Equipment or to the Client's property or person/s whilst dismantling and or assembling the Equipment;

### 5.3. Parts

- a) If the Client requests the Supplier to order Parts to be installed in the Equipment, the Client must provide the Supplier with all necessary documents and information to enable the Supplier to order the Parts including to precisely and accurately state all measurements, dimensions, specifications and requirements. This is the Client's responsibility and the Supplier disclaims all liability in this regard.
- b) The Client agrees that in relation to the suitability of the Parts for a particular purpose, any advice, recommendation, information or assistance provided by the Supplier is provided without any liability.
- c) Unless otherwise agreed and expressly acknowledged by the Supplier in writing, the Supplier does not warrant that the Parts are or will be compliant for use and entry onto the work site and/or any mine site. It is the Client's responsibility to make any necessary enquiries in this regard and to ensure the Parts are mine site compliant. We disclaim all liability regarding mine site compliance matters.
- d) The Supplier will remain the owner of and retain full title to the any Parts until such time as all amounts payable with respect to the Parts and/ or Works have been received in full and as clear funds by Client. During such time, the Parts remain the full and absolute property of the Supplier notwithstanding the delivery of the Parts to the Client or if the Parts are installed into the Equipment.
- e) The Supplier has a lien on the Parts for all amounts payable to the Supplier pursuant to the Contract.
- f) If following a demand by the Supplier the Client fails to pay any amount due to the Supplier, the Supplier can, within fourteen (14) days' notice, sell (or appoint a nominee to sell) by public auction, or privately, on any terms all or any of the Parts.
- g) From the proceeds of such sale, the Supplier is entitled to keep an amount equal to the sum payable by the Client as well as any expenses incurred by the Supplier in storing the Parts and conducting the sale. Once these have been satisfied, the Supplier shall deal with any surplus money arising from the sale and any unsold Parts or documents at the Supplier's discretions. Any sale conducted pursuant to this clause will not affect the Supplier's right to recover any deficit between the net proceeds of sale and the total amount owed to the Supplier by the Client.

### 5.4. Transport Equipment

Where the Equipment is in the Supplier's Workshop and the Works have been completed:

- (a) The Supplier must take reasonable efforts to have the Equipment available for collection from the Workshop approximately by any agreed completion date. However, the completion date is only an estimate and the Supplier does not guarantee that the Equipment will be ready for collection by that date.
- (b) The Supplier will notify the Client (verbally and/or in writing). The "Collection Date" shall mean two (2) Business Days after the date that the Client is so notified.
- (c) Prior to collection, the Client must have paid in cleared funds all amounts under the Contract that are said to be due to the Supplier on or before the Collection Date. If not, then the Supplier may refuse to release the Equipment until full payment is made.
- (d) The Client must, by the Collection Date, collect the Equipment from the Workshop during the business hours of the Supplier (from time to time), or as otherwise agreed.
- (e) The Client must collect the Equipment (including to load the Equipment) in a safe and proper manner, supplying suitable people,

equipment and vehicles necessary for such collection. If the Supplier assists the Client, then to the maximum extent permitted by law the Client releases the Supplier from any Claim or Loss resulting from the Supplier's assistance, apart from any gross negligence by the Supplier.

- (f) At the Client's earliest opportunity but in any event prior to finalising collection, the Client agrees to carefully inspect the Equipment and advise the Supplier of any issues that the Client notices with it.
- (g) Collection of the Equipment (including the preparing, packing and loading of the Equipment) is at the sole risk and cost of the Client, as is the subsequent transportation and unloading of the Equipment.
- (h) Even if the Supplier arranges transport/delivery of the Equipment with a third party transport provider, then the Client agrees that the Supplier is not liable for any damage to the Equipment. Any damage caused to the Equipment whilst in transit to or from the Supplier's Workshop shall be the third party transport provider's responsibility.

### 6. Default

- 6.1. If the Client fails to make any payment under the Contract when due then the Supplier is entitled to claim interest at the rate of the 12% per annum on the amount outstanding from time to time with interest calculated on daily balances outstanding and with any interest not paid at the end of each month added to the amount outstanding and attracting interest accordingly. The Client acknowledges that this rate is reasonable.
- 6.2. The Client must on demand reimburse the Supplier for all costs, charges, Expenses, fees, disbursements (including all reasonable legal costs on a solicitor and own client basis) paid or incurred by the Supplier of or incidental to:
  - (a) Any breach, default or repudiation of the Contract by the Client (including the fees of all professional consultants properly incurred by the Supplier in consequence of, or in connection with, any such breach, default or repudiation);
  - (b) The exercise or attempted exercise of any right, power, privilege, authority or remedy of the Supplier under or by virtue of the Contract, including all amounts incurred in repossessing any Equipment from the Client under the terms of the Contract and in enforcing the Contract generally;
  - (c) To pay the fees of a debt collector or solicitor in association with any debt collection services provided to the Supplier in association with the Client breaching the Contract.
- 6.3. If the Client considers or has reason to believe that the Services are defective, incorrect or do not comply with the Contract, then the Client must give immediate written notice of this to the Supplier, with full particulars and details of same. The Client agrees to give the Supplier the first right to inspect the issue(s) in question and then, if the Supplier chooses, to attend to addressing such issue(s) (e.g. by repair, rectification or replacement).

### 7. Liability

- 7.1. The Client indemnifies the Supplier for any Loss and/or Claim as a direct or indirect consequence/result of the Client breaching the Contract.
- 7.2. The Supplier, notwithstanding any right the Client may have at law or in equity or otherwise under the Contract, shall not be liable for any loss or damages suffered by the Client for any economic loss or consequential loss or damage including loss of profits, loss of opportunity or loss of use of any goods or site (where applicable) or of the benefit of the works or any part thereof. Where the Client is a consumer for the purposes of the Australian Consumer Law, consequential loss will be limited to the maximum amount permitted by law.
- 7.3. If the Supplier gives any indemnity to the Client in respect of matters arising out of or related to the Contract, then the Client indemnifies the Supplier from any Claim under such indemnity.
- 7.4. Any liability of the Supplier, arising out of or in respect of the Contract, is limited to damage or liability directly caused or contributed to by the Supplier and the maximum liability recoverable from the Supplier is limited to the sum of \$500,000.00, unless the claim relates to personal injury or damage to a third party.

### 8. Risk

- 8.1. The Equipment remains at the Client's sole risk, even whilst in the Supplier's possession or whilst the Supplier is conducting Works. The Client agrees that the Supplier is not liable to the Client for any damage to the Equipment caused by the Client or any third party (including any trespass). Further, the Supplier is not liable for damage to the Equipment if the Supplier is required to test the Equipment, reposition it, lift it, test drive it or do other things in carrying out the Works, where requested or permitted by the Client, unless it arises from the Supplier's negligence.
- 8.2. The Client warrants to the Supplier that it has comprehensively insured the Equipment.

### 9. Force Majeure

- 9.1. If a Force Majeure Event occurs, the party affected by the Force Majeure Event ("Affected Party") must promptly give the other party a notice of same.
- 9.2. The obligations of the Affected Party are suspended, to the extent that they are affected by the Force Majeure Event, from the date the Affected Party gives the notice until cessation of the Force Majeure Event.

- 9.3. On the cessation of the Force Majeure Event, the Affected Party must give notice to the other party of the cessation and resume performance of the suspended obligations.

#### **10. PPSA Definitions**

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- 10.1. In these T&C and any other associated or collateral documents (unless a contrary intention is stated):
- (a) "Controller" has the same meaning as in the PPSA;
- (b) "Personal Property" has the same meaning as in the PPSA as it relates to: all personal property of the Client, including without limitation present and after acquired property of the Client; any personal property provided by the Secured Party to the Client on a retention of title basis; any personal property leased or provided on bailment by the Secured Party to the Client; and including without limitation, any Proceeds associated with the above personal property.
- (c) "Proceeds" has the same meaning as in the PPSA;
- (d) "Secured Party" means the Supplier or any lawful assignee, transferee or successor of the Supplier in relation to the Security Interest, the Contract and any other related document(s);
- 10.2. The Client acknowledges that if the Supplier's interest under the Contract, any contract, and any other related document(s), is a Security Interest for the purposes of the PPSA then that Security Interest relates to the Personal Property and all Proceeds of any kind and the Contract are a security agreement for the purposes of the PPSA.
- 10.3. The Supplier may register its Security Interest on the PPSR (including, without limitation, as a PMSI). The Client must do anything (such as obtaining consents and signing documents) which the Supplier requires for the purposes of: ensuring that the Security Interest is enforceable, perfected and otherwise effective under the PPSA; enabling the Supplier to gain first priority (or any other priority agreed to by the Supplier in writing) for its security interest; and enabling the Supplier to exercise rights in connection with the Security Interest.
- 10.4. If Chapter 4 of the PPSA does apply to the enforcement of a Security Interest arising under or in connection with the Contract and to the maximum extent permitted by law, the Client agrees that sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1); 135, 142 and 143 and Division 6 of Part 4.3 of the PPSA will not apply to the enforcement of that Security Interest.
- 10.5. Where a person is a Controller in relation to the Personal Property, the parties agree, to the maximum extent permitted by law, that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Personal Property by that Controller.
- 10.6. The Client waives its right (including, without limitation, under s 275) to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.

#### **11. General**

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- 11.1. The Client consents to electronic communication, as does the Supplier. The Supplier may send any email to any address used by the Client in communicating with the Supplier. The Client must email the Supplier at admin@mddheavyind.com.au unless the Supplier otherwise agrees.
- 11.2. The Client represents and warrants to the Supplier that:
- (a) It is validly existing and, if a company, is registered and was duly incorporated;
- (b) It has full capacity, power and lawful authority to enter into this Agreement;
- (c) It has taken all action that is necessary or desirable to authorise the execution and performance of this Agreement;
- (d) This Agreement and the matters which this Agreement concerns and contemplates is in its commercial interests and for its benefit;
- (e) This Agreement constitutes the legal, valid, binding and enforceable obligations of the Client in accordance with the respective terms;
- (f) It is not subject to any insolvency event; and
- (g) There are no reasonable grounds to suspect that it will not be able to pay its debts, as and when they fall due.
- 11.3. The Client must not deduct from any payment any amount the Client claims the Supplier owes, or could in the future owe, the Client and cannot set off (or otherwise withhold or deduct) any such amount against any payment the Client must make under any Contract.
- 11.4. The Supplier reserves the right to sub-contract the supply of the Services or any part thereof to a third party.
- 11.5. The Contract constitutes and embodies the entire understanding and agreement between the parties in respect of its subject matter and supersedes all prior agreements, representations, promises, statements and negotiations in respect of its subject matter.
- 11.6. If any provision of the Contract is void, voidable, unenforceable, or illegal in its terms, but would not be void, voidable,

- 11.7. unenforceable or illegal if it were read down and, it is capable of being read down, that provision will be read down accordingly. In any other case, the provision is severed and the remainder of the Contract will be of full force and effect.
- The Contract shall be governed by and construed in accordance with the laws of the State of Queensland and the parties agree to submit to the jurisdiction of the Courts of that State in all matters arising out of the Contract.