

TERMS AND CONDITIONS - GOODS

1 DEFINITIONS

In this Agreement:

2MT means 2MT Mining Products Pty Ltd ABN 58 140 317 988.

Agreement has the meaning given in clause 2.3.

Claim means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with the Agreement, the Goods or either party's conduct under the Agreement before it came into force, whether at law (including breach of contract) or in equity (including restitution), by statute, in tort (including negligence).

Consequential Loss means any loss of actual or anticipated profits or revenues, loss by reason of shut down or non operation, increased costs of borrowing, capital or financing, or loss of use or productivity), consequential, indirect or economic loss or damage (including whether caused by or in relation to breach of contract, warranty, tort (including negligence), product liability, indemnity, contribution, strict liability or otherwise at law.

Customer means the person or entity identified in the Quotation and/or the Purchase Order.

Delivery means the transfer of possession of the Goods to the Customer as set out in clauses 4.2 and 4.3.

Goods means the goods required in a Purchase Order and Quotation.

Intellectual Property Rights means all rights in and relating to copyright, patents, registered and unregistered trademarks, registered designs, trade secrets and know-how and all other intellectual property including moral rights.

Legislative Requirement includes:

- Acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State or Territory applicable to the Goods;
- certificates, licences, consents, permits, approvals, codes, standards and requirements of organisations having jurisdiction in connection with the supply of the Goods;
- Australian Standards and any other relevant standards; and
- fees and charges payable in connection with the foregoing.

Personnel means the employees, agents, subcontractors and consultants of a party, but does not include the other party or the other party's Personnel.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Price means the price for Goods set out in the Quotation and/or the Purchase Order.

Purchase Order means a purchase order issued by the Customer to 2MT for the supply of Goods (and excludes any reference to the Customer's terms and conditions or similar in that document).

Quotation means any quotation provided by 2MT to the Customer for the supply of Goods.

Terms and Conditions means the terms and condition set out in this document.

Warranty Statement means a statement of warranty provided by 2MT outlining the warranty on Goods supplied by 2MT and any processes or limitations in regards to claiming against such warranty.

Other capitalised terms in the Agreement have the meanings set out in the Quotation or the relevant clause.

2 AGREEMENT

- The Customer agrees that the supply of Goods by 2MT to the Customer is subject to these Terms and Conditions.
- The Customer agrees that, except if 2MT expressly agrees in writing:
 - an offer to supply Goods by 2MT is conditional on the Customer's acceptance of these Terms and Conditions;
 - any acceptance by 2MT of an offer by the Customer to acquire Goods from 2MT is conditional on the Customer accepting these Terms and Conditions; and
 - any terms and conditions proposed by the Customer in connection with the supply of Goods by 2MT are expressly excluded, including any term or condition in prior or subsequent Purchase Orders or communications from the Customer.
- Unless 2MT expressly agrees in writing otherwise:
 - these Terms and Conditions;
 - the last Quotation issued by 2MT (as may be varied in accordance with these Terms and Conditions); and
 - any other document referred to in the Quotation,
 constitute the entire agreement between 2MT and the Customer (**Agreement**). If there is any inconsistency, discrepancy or ambiguity between the documents

listed above, the inconsistency, discrepancy or ambiguity will be resolved by giving precedence to the document highest in the list except to the extent otherwise determined by 2MT.

- To the extent permitted by law, any statement, representation or promise made in any document, discussion or prior Quotation has no effect except as expressly set out or incorporated by reference in this Agreement.
- 2MT may vary any aspect of a Quotation issued, including prices and these Terms and Conditions, at any time prior to the formation of an Agreement for the supply of Goods referred to in the Quotation.
- A Purchase Order submitted in response to a Quotation will not be binding on 2MT to the extent that it differs to these Terms and Conditions.

3 TITLE AND RISK

- Risk in Goods supplied by 2MT passes to the Customer on Delivery.
- Title in Goods supplied by 2MT passes to the Customer on payment of the Price to 2MT for those Goods. If the Customer fails to make payment for Goods in accordance with the Agreement, 2MT will be entitled to demand the return of the Goods or enter the place at which the Goods are located and repossess the Goods (without incurring any liability to the Customer). The Customer shall reimburse 2MT for all costs resulting from 2MT's repossession of the Goods.
- If the Customer sells the Goods prior to such time as title in the Goods passes to the Customer, the proceeds of any sale of the relevant Goods must be paid to 2MT to the extent that amounts are due and payable by the Customer for the Goods supplied by 2MT.

4 COMPLETION AND DELIVERY

- Any Delivery dates quoted by 2MT are estimates only and 2MT is not liable for any loss (including any Consequential Loss) arising from late Delivery. 2MT may Deliver in advance of a date quoted unless expressly stated otherwise.
- Subject to clause 4.3, 2MT will Deliver the Goods by making them available for collection by the Customer at 2MT's nominated premises. The Goods are deemed to be Delivered on the date that 2MT notifies the Customer that the Goods are available for collection.
- If 2MT expressly agrees in writing to transport the Goods to the Customer's premises or other premises:
 - 2MT does so as the agent of the Customer and the loading, transport, delivery and unloading of Goods is at the Customer's risk and expense;
 - Goods are deemed to be Delivered when they are made available for collection by the transport provider at 2MT's premises; and
 - the Customer releases 2MT from and indemnifies 2MT against all Claims in connection with the transport of Goods.
- If:
 - 2MT must Deliver in circumstances other than those expressly stated in the Quotation or these Terms and Conditions; or
 - there is a change in the time or place of Delivery,

2MT is entitled to payment of an additional charge on a time and materials basis in respect of additional resources reasonably utilised by 2MT to fulfil its obligations under the Agreement.

- Time is not of the essence in the supply of Goods by 2MT.

5 FORCE MAJEURE

- In this clause, '**Force Majeure Event**' means any occurrence or omission outside of 2MT's reasonable control, as a direct or indirect result of which 2MT is prevented from or delayed or disrupted in performing its obligations under this Agreement.
- If 2MT is affected by a Force Majeure Event, 2MT will not be in breach of the Agreement for failing to perform its obligations and those obligations are suspended to the extent they are affected by the relevant Force Majeure Event, as long as the Force Majeure Event continues.
- If a Force Majeure Event continues for three months or more, 2MT may terminate the Agreement by written notice to the other party.

6 INVOICING AND PAYMENT

- The Customer will pay 2MT the Price for the Goods. Unless expressly agreed otherwise by 2MT, the Price is exclusive of any other costs and charges associated with the supply of Goods, including Delivery or freight charges, insurance, duties and taxes that are not set out in the Quotation. If incurred by 2MT, the Customer is liable to pay for these costs and charges in addition to the Price.
- Anytime prior to Delivery, 2MT may notify the Customer of an increase in the price of Goods to reflect increases in 2MT's costs of supplying Goods due to events occurring after the Customer's acceptance of the Quotation which are

beyond 2MT's reasonable control (including without limitation, foreign exchange changes, insurance, taxes, cost of labour and materials).

- 6.3** Unless otherwise specified in the Quotation, the Customer will pay 2MT the amount stated in invoices issued by 2MT without set off or deduction within 30 days of receipt of the invoice. The invoice will be deemed to be received on the date the invoice is provided to the Customer by 2MT.
- 6.4** If the Customer disputes an amount purportedly owed by it to 2MT under the Agreement, the Customer must pay the amount of the invoice to 2MT. After the dispute is resolved, if it is determined that 2MT has been paid more than it was entitled to, the amount that has been determined will be repaid within 30 days after the determination is made.
- 6.5** If the Customer fails to pay 2MT's invoice by the due date for payment, 2MT is entitled to charge interest on the unpaid amount at 2% greater than the average cash rate published on the due date, and charge such default interest from the date when payment was due to the date payment of the full unpaid amount is made.
- 6.6** Money payable under the Agreement must be paid in Australian dollars.

7 GST

- 7.1** The consideration for a Supply made under or in connection with this Agreement does not include GST.
- 7.2** If a Supply made under or in connection with this Agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
- (a) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this document for that Supply); and
 - (b) the Supplier must give the Recipient a Tax Invoice for the Supply.
- 7.3** If either party has the right under this Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with this document, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- 7.4** 'Supplier' means a party making a Supply and capitalised terms in this clause have the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

8 INSURANCES

- 8.1** 2MT maintains for itself the following insurances:
- (a) public and products liability insurance with a limit of not less than A\$20 million;
 - (b) workers' compensation insurance; and
 - (c) compulsory motor vehicle insurance as required by Legislative Requirements.
- 8.2** 2MT will not name or note the Customer as an additional insured or interested party in any of the policies of insurance it maintains.
- 8.3** Where 2MT will be required to Deliver to a site, the Customer must maintain, and ensure that any other contractor who interfaces with 2MT each maintains, the following insurances:
- (a) public liability insurance with a limit of not less than \$20 million;
 - (b) workers' compensation insurance; and
 - (c) comprehensive motor vehicle insurance with a limit of not less than \$5 million and compulsory motor vehicle insurance as required by Legislative Requirements.

9 WARRANTIES

- 9.1** The Customer acknowledges that it has satisfied itself that the Goods are suitable for its purposes and acknowledges that it has not relied upon any warranty or representation from 2MT concerning the Goods.
- 9.2** 2MT warrants that Goods supplied:
- (a) are of merchantable quality and match the description of the Goods in the Quotation (if any); and
 - (b) are of a standard set out in any applicable Warranty Statement.
- 9.3** Except as expressly set out in these Terms and Conditions, 2MT does not give and is not bound by any condition, term, warranty, representation or obligation in connection with the supply of the Goods, whether such condition, term, warranty, representation or obligation is implied by virtue of any statute, the common law, equity, custom or trade usage or otherwise.
- 9.4** This clause does not exclude, restrict or modify any condition, term, warranty, representation or obligation which cannot lawfully be excluded, restricted or modified. If any condition, term, warranty, representation or obligation is implied in these Terms and Conditions and can not be lawfully excluded, restricted or

modified then, to the extent permitted by law, the liability of 2MT for breach of that condition, term, warranty, representation or obligation is limited to, at 2MT's sole discretion, replacing or repairing the Goods or payment of the cost of replacing or repairing the Goods.

- 9.5** Despite other provisions in this clause 9, if 2MT supply Goods which have been procured from another supplier, the warranties provided by 2MT for the Goods shall not exceed (in duration or scope) the warranties 2MT received from the other supplier.

10 DEFECTS

- 10.1** 2MT will only be liable for defects in Goods:
- (a) caused by faulty materials supplied by 2MT or faulty workmanship performed by 2MT; and
 - (b) notified to 2MT by the Customer:
 - (i) in accordance with any applicable Warranty Statement; or
 - (ii) within 6 months of Delivery if paragraph (i) does not apply.
- 10.2** 2MT's liability for defects in Goods is limited to, at 2MT's sole discretion, replacing or repairing the Goods or payment of the cost of replacing or repairing the Goods.
- 10.3** 2MT will not be liable for defects in Goods caused by:
- (a) use of Goods in a manner not reasonably contemplated by 2MT or for purposes other than their intended purposes (including modifications not authorised by 2MT);
 - (b) use of Goods in a manner contrary to Legislative Requirements or by a person other than the Customer;
 - (c) damage in transit;
 - (d) the Customer's failure to comply with the Agreement;
 - (e) the Customer's failure or refusal to install changes or enhancements recommended by 2MT; and
 - (f) any other causes set out in these Terms and Conditions.

11 LIABILITY

- 11.1** Each party indemnifies the other from and against all amounts that the indemnified party is ordered by a court to pay to a third party for personal injuries or property damage, to the extent caused or contributed to by the negligence or wilful misconduct of the indemnifying party.
- 11.2** Despite anything to the contrary in the Agreement:
- (a) subject to clause 11.3, 2MT will not be liable to the Customer for any Consequential Loss;
 - (b) subject to clause 11.3, 2MT's liability under or in connection with this Agreement including for the supply or failure to supply Goods is limited to the greater of the Price paid to 2MT or the amount recovered by 2MT under a policy of insurance; and
 - (c) to the extent permitted by law, the rights and remedies in these Terms and Conditions are the sole and exclusive rights and remedies available to the Customer in connection with the Agreement.
- 11.3** The exclusion of liability in clause 11.2(a) and the limitation of liability in clause 11.2(b) shall not apply to, or otherwise limit liability, to the extent of liability for any fraud or criminal conduct of 2MT or any of 2MT's Personnel.

12 INTELLECTUAL PROPERTY AND CONFIDENTIAL INFORMATION

- 12.1** All Intellectual Property Rights in the Goods provided by 2MT and in the processes used to produce these Goods (where applicable) remain vested in 2MT and the Customer must not use or exploit 2MT's Intellectual Property Rights without 2MT's written consent.
- 12.2** 2MT warrants that the supply of the Goods will not cause or contribute to an infringement of any third party's Intellectual Property Rights.
- 12.3** Both parties must not disclose to any person, or use for any purpose other than carrying out the supply, or receiving, of Goods the contents of the Agreement and any other document or information obtained in the course of or in connection with carrying out the supply, or receiving, of Goods (**Confidential Information**):
- (a) without the prior written consent of the other party; or
 - (b) unless required by law.
- 12.4** Each Party must immediately notify the other party if it becomes aware of any unauthorised disclosure or use of Confidential Information and return any Confidential Information upon written request by the other party.

13 TERMINATION

13.1 2MT may terminate or suspend these Terms and Conditions immediately by written notice to the Customer if the Customer:

- (a) becomes insolvent, commits an act of bankruptcy, enters into administration, appoints a liquidator, receiver, manager or controller or anything analogous to these events;
- (b) is in breach of the Agreement; or
- (c) fails to pay any amount owing to 2MT under the Agreement.

13.2 Without limiting any other right, if 2MT gives the Customer notice under clause 13.1, 2MT may repossess Goods if title has not passed to the Customer under clause 3.

14 SAFETY

14.1 The parties must ensure that:

- (a) while their Personnel attend the premises of the other party, those Personnel comply with any policies or procedures of the other party in relation to workplace health and safety;
- (b) they advise the other party immediately if:
 - (i) they believe that the other party's premises, or any other place provided by the other party for Delivery, is unsafe;
 - (ii) the other party engages in unsafe work practices which may or does put their Personnel at risk; or
 - (iii) an injury occurs to the other party's Personnel; and
- (c) they remedy any matters advised under paragraph (b) in a timely manner and, until it is remedied, do not require that the Personnel of the other party attend the relevant unsafe premises or place.

14.2 To the extent 2MT will Deliver to the Customer's site, the Customer must:

- (a) provide 2MT and its Personnel with reasonable access to the Customer's site as required to enable 2MT to make Delivery;
- (b) provide a safe working environment, maintain compliance with relevant Legislative Requirements and properly instruct the 2MT Personnel in regards to any safety requirements for the site; and
- (c) keep 2MT Personnel and 2MT informed about the Customer's policies and procedures, and amendments to those policies and procedures, relevant to the Delivery to the Customer's site.

14.3 The Customer indemnifies 2MT for and against any Claims arising out of, or in connection with, the Customer's breach of clause 14.2.

15 PERSONAL PROPERTY SECURITIES ACT

15.1 The parties acknowledge that the supply of Goods by 2MT to the Customer pursuant to these Terms and Conditions and the Quotation may constitute a Security Interest in favour of 2MT.

15.2 If 2MT determines that the Agreement (or a transaction in connection with it) is or contains a Security Interest, the Customer agrees to do anything which 2MT may reasonably require for the purposes of:

- (a) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
- (b) enabling 2MT to apply for, and obtain, any registration or providing any notification in accordance with the PPSA; or
- (c) enabling 2MT to exercise rights in connection with the Security Interest.

15.3 2MT is not required to give any notice under the PPSA unless the notice is required by the PPSA to be given (even though the parties have waived the right to receive notice).

15.4 The Customer must:

- (a) promptly notify 2MT if it knows or becomes aware that a third party has or claims a Security Interest on any Goods:
 - (i) supplied or to be supplied by 2MT to the Customer;
 - (ii) owned by 2MT; or
 - (iii) in which 2MT has an interest;
- (b) give 2MT any information reasonably required by 2MT in relation to any such Security Interest or claim; and
- (c) on request, use best endeavours to ensure that the third party:
 - (i) discharges any such Security Interest, and does not register or otherwise perfect (or seek to), and removes any registration, in respect of any such Security Interest; or
 - (ii) subordinates any such Security Interest to the interest of 2MT, by an agreement in a form and substance satisfactory to 2MT.

15.5 The Customer must not:

- (a) create any Security Interest or lien over any Personal Property that 2MT has an interest in (other than Security Interests granted in favour of 2MT);
- (b) sell, lease or dispose of its interest in Personal Property that 2MT has a Security Interest in;
- (c) give possession of the Customer's Personal Property that 2MT has a Security Interest in or 2MT Personal Property to another person except where 2MT expressly authorises it to do so; or
- (d) permit any of 2MT Personal Property to become an Accession to or Comingled (as those terms are defined in the PPSA) with any asset that is not owned by 2MT.

15.6 Everything the Customer is required to do under this clause is at the Customer's expense.

15.7 Neither 2MT nor the Customer will disclose information of the kind mentioned in section 275(1) of the PPSA and the Customer will not authorise, and will ensure that no party authorises, the disclosure of such information. This clause does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7)(b), (d) and (e) of the PPSA.

16 DISPUTE RESOLUTION

16.1 If any dispute between the parties arises from or in connection with the Agreement (**Dispute**), a party claiming a Dispute must notify the other party of the Dispute and specify the nature of the claim (**Dispute Notice**). A party served with a Notice of Dispute may give a written response to the Notice of Dispute to the other party within 28 days of receipt of the Dispute Notice (**Response**).

16.2 Within 42 days of service of a Dispute Notice, or within 14 days of the receipt of a Response, whichever is the earlier, the parties must confer to attempt to resolve the Dispute. Each party must be represented by a person having authority to agree to a resolution of the Dispute.

16.3 If the Dispute is not resolved under clause 16.2 within 30 days, either party may commence litigation.

16.4 Each party must continue to perform its obligations under the Agreement despite the existence of a Dispute.

17 GENERAL

17.1 Where the Customer comprises more than one person or entity, each of them shall be jointly and severally liable for the full performance of the Customer's obligations under the Agreement.

17.2 The parties agree that their relationship is one of principal and independent contractor, not employer and employee, principal and agent, partnership or joint venture.

17.3 The Customer may not subcontract or assign any of its rights or obligations under the Agreement without 2MT's written consent.

17.4 Where any provision of the Agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions.

17.5 2MT and the Customer agree that the laws in force in the State of Queensland apply to this Agreement and both submit to the non-exclusive jurisdiction of the courts of the State of Queensland.

17.6 A party's failure to require full or partial performance of a provision of the Agreement does not affect the right of that party to require performance subsequently.

17.7 No obligation in the Agreement is waived unless it is waived in writing and signed by the parties. A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

17.8 These Terms and Conditions may only be amended by written agreement between all parties.