

**Standard Terms & Conditions of Sale**

In this document: **we, us** and similar expressions, refer to **EPEC** and **you, your** and similar expressions, refer to the Customer.

The terms of the Standard Terms & Conditions of Sale document apply to the supply of DES, Components and Services by us to you by way of a Purchase Order, unless otherwise agreed in writing signed by you and us.

**1 Definitions**

1.1 In these Standard Terms & Conditions, unless the contrary intention appears otherwise:

**Business Day** means a day on which trading banks are open for general banking business in New South Wales, excluding a Saturday or Sunday.

**Calendar Quarter** means the three month period beginning on 1 January, 1 April, 1 July and 1 October each year.

**Confidential Information** of a party is information of a party which the party identifies as confidential or which would reasonably be regarded as confidential.

**Component** means the component(s) described in the Purchase Order.

**Delivery Arrangements** mean the arrangements made between the parties for the delivery of the Product(s) as specified in each Purchase Order.

**Delivery Date** means the date agreed between the parties for the delivery of the Product(s) as specified in the Purchase Order.

**Deposit** means that percentage of the Price specified in the Purchase Order.

**DES** means Diesel Engine System (s) described in the Purchase Order.

**Intellectual Property** means all intellectual property rights at any time protected by statute or common law including:

- (a) patents, copyright, rights in circuit layouts, designs, trademarks; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph (a) above.

**Insolvency Event** means the happening of any one of the following events:

- (a) an application is made to a court for an order that a party be wound up or a liquidator, provisional liquidator, receiver or other administrator be appointed in respect of the party or a party enters into, or resolves to enter into, a scheme of arrangement or compositions with, or assignment for the benefit of, all or any class of its creditors;
- (b) a party is, or states that it is, or is deemed to be, unable to pay its debts when they fall due; or

- (c) any secured creditor of a party enforces its security.

**Moral Rights** has the meaning given to that term in the *Copyright Act 1968* (Cth).

**Price** means the price specified in the Purchase Order.

**Product** means the DES and Components.

**Service** means the service(s) described in the Purchase Order.

**Purchase Order** has the meaning given to that term in clause 6.1.

**2 Interpretation**

2.1 In these Standard Terms & Conditions of Sale, unless the contrary intention appears otherwise:

- (a) words in the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (c) a reference to a party includes its personnel, agents, contractors, successors and permitted assigns;
- (d) a reference to a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) any schedule attached to this Standard Terms & Conditions forms part of it;
- (f) a reference to a document includes any amendment or supplement to, or replacement or novation of, that document;
- (g) headings are for convenience only and do not affect the interpretation of this document; and
- (h) unless expressly stated to be otherwise, the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar inclusive expressions.

**3 Certification of Products**

3.1 The Products will be manufactured to the applicable Australian standards and any other standards referred to in the Purchase Order.

3.2 To the extent required, we will procure that the Products are certified by the organisations specified in the Purchase Order.

#### **4 Supply**

- 4.1 Subject to the terms and conditions of this document, we agree:
- (a) to manufacture each Product in accordance with its specification; and
  - (b) supply the Products and Services, that are the subject of each Purchase Order.

#### **5 Purchase Orders and Acceptance**

- 5.1 When you require Products or Services, you must complete and submit a signed order in the form reproduced in Schedule 1 to us (**Purchase Order**).
- 5.2 When completing the Purchase Order, you must complete the pricing section by reference to the Price Schedule current at the date on which the Purchase Order is submitted.
- 5.3 On receipt of a Purchase Order from you, we will either:
- (a) accept such Purchase Order, and deliver an order confirmation and tax invoice to you; or
  - (b) reject such Purchase Order by giving notice to you.
- 5.4 In the course of determining whether or not to accept a Purchase Order, you must give us access to the equipment on which the Product(s) will be installed as well as any specifications or other information about the equipment so as to:
- (a) take measurements and collect other technical data;
  - (b) assess what Components will be required; and
  - (c) determine whether the equipment is capable of being adapted to incorporate the DES.
- 5.5 For the avoidance of doubt, if we do not respond to a Purchase Order within 10 Business Days of the date on which it is received by us, we will be deemed to have rejected such Purchase Order.
- 5.6 If you submit a signed Purchase Order to us, you acknowledge and agree that such Purchase Order will be governed by the terms and conditions of this document and our standard terms and conditions of sale.

#### **6 Completion of Purchase Orders**

- 6.1 Subject to receipt of the Deposit, we will use our reasonable endeavours to satisfy each Purchase Order within 14 weeks or such other time as is specified in the Purchase Order.
- 6.2 The Deposit is not subject to either full or partial Refund once work has been commenced.
- 6.3 If at any time we become aware that:
- (a) we will be unable to meet a Purchase Order; or

- (b) completion of a Purchase Order will take longer than the time specified in the Purchase Order, we will notify you.

6.4 If we are unable to complete a Purchase Order for any reason, we will cancel the Purchase Order.

6.5 If we cancel the Purchase Order, we will refund the deposit, and you acknowledge that we do not have, and agree to release us from, any further liability to you in respect of the Purchase Order.

#### **7 Price and Payment**

7.1 The Price payable in respect of each Purchase Order is specified in the Pricing Schedule or Quotation and may also be varied depending on whether you request priority completion of a Purchase Order.

7.2 When we receive a Purchase Order from you, we will issue an order confirmation and tax invoice for the price.

7.3 The Deposit is payable to us by electronic funds transfer or by such other means as is specified in the tax invoice.

7.4 Until we receive payment of the Deposit, the Purchase Order will not be binding on us and we will not commence work on the manufacture of the Products or delivery of the Services described in the Purchase Order.

7.5 When the Products are ready or when we are ready to supply the Services, we will notify you in writing at which time you must pay the balance of the tax invoice by electronic funds transfer or by such other means as is specified in the Purchase Order.

7.6 If, after the expiry of seven Business Days, the tax invoice has not been paid:

- (a) we will not deliver the Products or Services to you; and

- (b) interest will accrue on the amount of that tax invoice in accordance with clause 7.8.

7.7 Within five Business Days of the date on which we receive payment of the Price in full (including any interest that has accrued), we will, arrange for delivery of the Products in accordance with clause 8.1 or supply the Services (as applicable).

7.8 If you do not pay the Price for a particular Purchase Order by its due date for payment, we will charge interest on the outstanding amount from the due date for payment until the date on which payment is received. Interest on outstanding amounts will be calculated daily, at the cash target rate set by the Reserve Bank of

Australia from time to time plus a margin of 10.00%;

7.9 You are liable for all our costs, losses and expenses relating to recovering overdue amounts from you, including but not limited to mercantile agents' and lawyers' fees and expenses on a full indemnity basis.

7.10 Unless otherwise expressly stated, all prices are in Australian dollars and do not include any sales tax, goods and services tax, stamp duty and other excises and duties that may be imposed in relation to an document containing these terms or the supply of the product. Each of them is payable by you and if paid by us must be reimbursed on demand.

## 8 Delivery of Products

8.1 In respect of each Purchase Order, the Products will either:

- (a) be available for collection by you from the location specified in the Purchase Order; or
- (b) delivered to such location specified in the Purchase Order at your cost.

8.2 In respect of each Purchase Order, delivery of the Products is deemed to have occurred on the date that the Products are delivered in accordance with clause 8.1.

8.3 You will not be entitled to take delivery of the Products until you have paid the Purchase Price to us in full.

8.4 Risk of loss or damage to the Products and title to the Products passes to you on the date on which the Products are delivered in accordance with this clause.

## 9 EPEC Intellectual Property

9.1 We represent and warrant to you that we are either the legal and beneficial owner of all intellectual property rights subsisting in the Products or Services or hold a licence to make use of and supply the Products or Services to you.

9.2 Nothing in this document assigns intellectual property rights in each Product or the Services to you.

9.3 We grant you a non-exclusive, non-transferable, royalty free licence to make use of the intellectual property in the Products solely for the purpose of installing on, and making use of the Products in, your equipment.

## 10 Infringing EPEC Intellectual Property

10.1 If a third party makes a Claim against you that the third party's intellectual property rights have been infringed by you as a result of making use of the Products (**Third Party Claim**) in accordance with the terms and conditions of this document:

- (a) you will promptly notify us in writing;
- (b) you will, at our cost, provide promptly all assistance reasonably requested by us in relation to the Third Party Claim.

10.2 We will have control and conduct of the defence of any Third Party Claim and any resulting settlement negotiations.

10.3 We will keep you informed on a regular basis of the progress of any such defence.

10.4 If all or any part of the Products become or, in our reasonable opinion, is likely to become the subject of a Third Party Claim, we will, in addition to its other obligations under this clause and to the other rights you may have under this document, promptly at its own expense:

- (a) use its best efforts to secure the right for you to continue to use the affected Products; or
- (b) modify the affected Products to make it non-infringing provided that any such modification will not degrade the performance of the Product.

## 11 Confidentiality

11.1 Each party must treat, and ensure that its employees, contractors and agents treat, as confidential the Confidential Information of the other.

11.2 The party who receives the Confidential Information must not without the written consent of the other:

- (a) use it except in performing its obligations under this deed;
- (b) disclose it to any person except its approved employees and subcontractors and then only to those who need to know the same and who agree to be bound by these obligations of confidentiality.

11.3 The exceptions to these obligations of confidentiality are where:

- (a) disclosure is required by law;
- (b) Confidential Information is in the public domain through no fault or action of the recipient, its employees, contractors or agents; and
- (c) Confidential Information was received by the recipient on a non-confidential basis from a third party who is not prohibited from disclosing it.

11.4 These obligations of confidentiality survive termination of this deed.

## 12 Mutual Warranties

12.1 Each party warrants and represents to the other that:

- (a) it has full power and authority to enter into and perform its obligations under this document;
- (b) it has taken all necessary action to authorise the execution, delivery and performance of this document; and
- (c) this document constitutes legal, valid and binding obligations the party and is enforceable against that party in accordance with the terms of this document.

### **13 Product and Service Warranties**

- 13.1 We warrant that Products manufactured by us will be free from defects in materials and workmanship for a period of one (1) year or 1,000 hours from the date of delivery.
- 13.2 Products not manufactured by us or supplied by a Sub-Contractor are supplied by us to you on an "as is" basis without a warranty of any kind, provided that we will assign to you, insofar as we are able to do so, the benefit of any condition, warranty or guarantee (express or implied) in our contract with the supplier of the relevant Products.
- 13.3 Subject to clause 13.2, we warrant that the Products are fit as DES for Underground Coal Mining applications subject to installation and operation in accordance with our manuals. The products comply with AS/NZS 3584.
- 13.4 We warrant that the Services will be performed with reasonable care and skill and will investigate any bona fide complaint that any Services have been performed unsatisfactorily in breach of this warranty.

### **14 Limitation of Liability**

- 14.1 Terms, conditions and warranties implied by law which cannot be excluded, restricted or modified apply to our supply of Products and Services to you to the extent required by that law.
- 14.2 We exclude, to the extent permitted by law, all other terms, conditions and warranties which might be implied into these terms.
- 14.3 You release us from any liability to you for any loss or damage suffered by you arising from or related to our supply of Products or Services to you.
- 14.4 To the extent permitted by law, our sole liability for breach of contract, negligence or other tort is limited at our option to:
  - (a) replacement of, or supply of equivalent, Products or Services (as applicable);
  - (b) repair of the Products;
  - (c) payment of the costs of replacing the Products or acquiring an equivalent product or resupplying the Services (as applicable); or
  - (d) payment of the cost of having the Products repaired.

- 14.5 We are not liable for any damage, economic loss, or loss of profits whether direct, indirect, general, special or consequential from any cause except our gross and wilful negligence and apart from liability as set out in this clause.

### **15 Suspension and Termination**

- 15.1 If you are in default of any of your obligations under this document or under a Purchase Order we will notify you of such default and we may suspend work on one or all Purchase Orders until you have remedied the default to our satisfaction.
- 15.2 If we suspend work on a Purchase Order in accordance with clause 15.1, we will not be liable to you for any consequent delays in completing work on that Purchase Order.
- 15.3 Without limiting any rights under clause 6, we may terminate this agreement and/or any Purchase Order without cause by providing 30 days written notice to you.
- 15.4 Without limiting any rights under clause 6, we may terminate this agreement and/or any Purchase Order immediately by providing written notice to you in the following circumstances:
  - (a) If you do not remedy a default under this document or a Purchase Order within 20 Business Days of the date on which we notify you of the default in accordance with clause 15.1; or
  - (b) if you suffer an Insolvency Event; or
  - (c) either party is prohibited by any law, regulation or requirement of any government or governmental authority from complying with this document; or
  - (d) you cease to carry on business for any reason.
- 15.5 Termination, expiry or cessation of the Standard terms & Conditions and/or a Purchase Order does not affect any accrued rights or remedies of either party.

### **16 Consequences of Expiry or Termination**

- 16.1 Following the termination of any of the Purchase Orders:
  - (a) you must immediately pay all outstanding amounts owing to us (along with any interest payable in respect of each terminated Purchase Order);
  - (b) we will complete any outstanding Purchase Order that has not been terminated.

### **17 Sub-Contractors**

- 17.1 You acknowledge and agree that we are able to engage a sub-contractor without your

consent to perform any of our obligations under this document or a Service Order, subject to Mine-site requirements.

## **18 Notices**

18.1 Notices must be in writing. A notice may be delivered to a party by hand, by pre-paid ordinary post, or by facsimile to that party's address shown in this document or to the alternate address notified to the party giving the notice.

## **19 General**

19.1 We are not responsible for delay or failure caused by an event beyond our reasonable control including but not limited to war, labour disputes, terrorist attacks, equipment failure, unusually inclement weather, storm, flood, earthquake, lightning, fire, action or inaction of government or the late or inadequate supply of goods or services by third parties.

19.2 These Standard Terms & Conditions can only be varied by document in writing.

19.3 If any provision of these Standard Terms & Conditions are found to be unlawful, invalid or unenforceable for any reason, these Terms & Conditions will remain in force apart from that provision which is deemed to be deleted.

19.4 Each party must do everything, and sign and deliver all documents, reasonably required by the other to give full effect to these terms.

19.5 You must not assign, mortgage, charge or sub-license any of his rights or sub-contract or otherwise delegate any of your obligations under this document without our prior written consent.

19.6 All warranties, releases, exclusions of liability, indemnities, terms with respect to intellectual property and confidential information on the part of a party in this document will remain valid and binding upon that party following expiry or termination of this document. This **clause** does not prevent the survival of any provision which, in the absence of this **clause**, would be deemed to survive expiry or termination of this document.

19.7 This document and any variation of this document may be executed and take effect in two or more counterparts, each of which when taken together, will constitute one and the same instrument.

19.8 You must not assert or exercise any right of set off against monies payable by you to us under this document or a Purchase Order.

19.9 Where anything requires our consent or approval, that consent or approval may be given conditionally or withheld by us as we decide unless this document expressly provides otherwise.

## **20 Governing Law**

20.1 The law of New South Wales, Australia governs this document and each party submits to the non-exclusive jurisdiction of the New South Wales courts.