

COAL MINES TECHNICAL SERVICES – SERVICE AND MAINTENANCE TERMS AND CONDITIONS

Operative provisions:

1. DEFINITIONS

In these Conditions:

Additional Charge means a charge in accordance with the Supplier's standard rates in effect from time to time;

Agreement means this agreement for the service and/or maintenance of the equipment and/or training of the employees of the Customer in the operation of the Equipment;

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney;

Confidential Information means the confidential information of a Party which relates to the subject matter of this Agreement and includes:

- (a) information relating to the technology and design of the Equipment;
- (b) information relating to the personnel, policies or business strategies of the Customer;
- (c) data stored in the Equipment;
- (d) information relating to the terms upon which the Equipment has been supplied, installed or maintained pursuant to this Agreement;

Delivery Date means the date or period for the delivery of the Equipment;

Documentation means the operating manuals, training materials and associated documentation;

Equipment means the equipment to be supplied by the Supplier to the Customer as identified by the Customer;

Force Majeure means a circumstance beyond the reasonable control of the Parties which results in a Party being unable to observe or perform on time an obligation under this Agreement. Such circumstances will include but will not be limited to:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution;

Intellectual Property Rights means copyright, trade mark, design, patent, semiconductor or circuit layout rights;

Maintenance Fees means the fees for the Maintenance Services;

Maintenance Response Time means the time within which the Supplier must respond to a request for Remedial Maintenance as agreed upon between the Supplier and the Customer;

Maintenance Services means Remedial Maintenance and includes, but is not limited to, inspection, repairs, calibration, adjustment and replacement of unserviceable or defective mechanical and electro-mechanical parts of the Equipment;

Party means either the Supplier or the Customer as the context dictates.

Remedial Maintenance means scheduled or unscheduled maintenance carried out at the request of the Customer to restore the Equipment to good working order;

Site means the location for installation of the Equipment; and

Training means the training of the employees of the Customer reasonably necessary to enable safe and proper operation of the Equipment as requested by the Customer.

1.1 Interpretation

In this Agreement, unless the contrary intention appears:

- (a) the clause headings are for ease of reference only and will not be relevant to interpretation;
- (b) words in the singular number include the plural and vice versa;
- (c) words importing a gender include any other gender;
- (d) a reference to a person includes bodies corporate and unincorporated associations and partnerships;
- (e) a reference to a clause is a reference to a clause or subclause of this Agreement;
- (f) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (g) a reference to a Schedule includes a reference to any part of that Schedule which is incorporated by reference;
- (h) the recitals to this Agreement do not form part of the Agreement; and
- (i) monetary references are references to Australian currency.

2. MAINTENANCE SERVICES

2.1 Maintenance Services

In the event the Customer wishes to engage the Supplier to provide the Maintenance, Calibration and Repair Services, the Services will commence upon receipt of the Customer's equipment and official paperwork.

The Maintenance Services may be carried out at the Supplier's facilities or at the Customer's site using the Supplier's mobile Maintenance Services facilities.

2.2 Remedial Maintenance

- (a) Upon receipt of a request for Remedial Maintenance and subject to clause 2.2**Error! Reference source not found.**, the Supplier will provide a suitably qualified maintenance technician to examine the Equipment and to thereupon immediately arrange Remedial Maintenance.
- (b) The Supplier will carry out the Remedial maintenance in accordance with relevant accreditation, certification requirements
- (c) Prior to completion of Remedial Maintenance, the Supplier will at the option of the Customer either:
 - (i) test the Equipment to demonstrate the Maintenance Services have been successful; or
 - (ii) otherwise explain and demonstrate to the Customer the effect of the Maintenance Services;

and if requested provide the Customer with written confirmation of such test results or such explanation.

2.3 Exclusions

- (a) Unless reasonably incidental to the Maintenance Services, the Supplier is not required to provide services involving:
 - (i) reinstallation, moving or removing of Equipment, devices or attachments;
 - (ii) repair of damage caused by the failure of electrical power, air conditioning, humidity control or any environmental factor;

- (iii) furnishing or maintenance or accessories, attachments, supplies, consumables or items associated with the Equipment; or
 - (iv) repair of damage arising from the Customer's failure to comply with any provision of this Agreement.
- (b) If the Customer so requests in writing, the Supplier may provide any of the services referred to in clause 2.(a). Services provided pursuant to this subclause will, to the extent relevant, be deemed Maintenance Services.

2.4 Replacement and Spare Parts

- (a) Title in all replacement parts for the Equipment will pass to the Customer upon payment for those parts by the Customer.
- (b) Title in replaced parts removed will remain with the Customer.
- (c) The Supplier may from time to time request the Customer to purchase and to store such spare parts as are necessary for the provision of effective maintenance on the Equipment. If purchased from the Supplier, such parts will be sold at the Supplier's prevailing list price at the time the request is made by the Supplier.

2.5 Documentation to be Maintained

- (a) Maintenance Services include the provision of all necessary amendments, revisions and updating of the Documentation.
- (b) Without limiting the foregoing, the Supplier must amend Documentation immediately in order to address and adequately explain the implications of any substitution or modification of the Equipment if such substitution or modification is likely to result in varied operational procedures involving the use of the Equipment.

2.6 Maintenance Records

- (a) The Supplier will maintain records of all Maintenance and Repair Services including:
 - (i) all faults reported;
 - (ii) all faults detected;
 - (iii) all remedial action taken; and
 - (iv) all parts replaced pursuant to this Agreement (**Records**).
- (b) The Supplier will make copies of the Records available to the Customer immediately upon request. If subsequent requests for copies of the Records are made by the Customer, the Customer will reimburse the Supplier for out-of-pocket expenses arising directly from the requirement to supply subsequent copies of the Records.

2.7 Access for Maintenance Purposes

- (a) Subject to clause 2.7(b), the Customer will ensure the Supplier's maintenance personnel have access to the Equipment at all reasonable times for the purpose of providing Maintenance Services.
- (b) The Customer may refuse access to the Supplier's maintenance personnel at any time for reasons of security. Unless the refusal is based on a reasonable belief by the Customer that the Supplier's personnel pose a threat to the security of the Customer's premises, facilities or personnel, the Supplier's obligations under this Agreement will be suspended for the duration of the period during which access is denied pursuant to this subclause.

2.8 Warranties - Maintenance

- (a) The Supplier warrants that when providing the Maintenance Services, it will at all times:
 - (i) use appropriate materials of high quality;

- (ii) employ appropriate techniques and standards; and
- (iii) exercise due care, skill and attention.

- (b) Where the Supplier replaces parts of the Equipment pursuant to this Agreement, the Supplier warrants that the replacement parts will be:
 - (i) of at least equal quality to the replaced parts;
 - (ii) newly manufactured;
 - (iii) free from defects in materials and workmanship; and
 - (iv) suitable for normal use as reasonably contemplated by the Customer.
- (c) The Supplier will meet all costs incidental to the discharge of its warranty obligations including the provision of back-up equipment and any packing, freight, disassembly and reassembly costs.

3. MAINTENANCE FEES

- (a) In consideration for the performance by the Supplier of the Maintenance Services, the Customer will pay the Supplier the Maintenance Fees.
- (b) The Maintenance Fees are reviewed annually and may be increased at this time.
- (c) The Supplier may make an Additional Charge for services requested by the Customer and provided by the Supplier if such services are not specifically included in this Agreement or are specifically excluded by this Agreement.

4. TRAINING

In the event the Customer wishes to engage the Supplier to provide Training, in consideration for the Training Fees, the Supplier will provide the Customer's personnel with Training.

5. PAYMENT

- (a) Subject to clause 5(b), the Customer will pay the Installation Fees and/or the Maintenance Fees and/or the Training Fees (as the case may be) within 30 days of an invoice being issued by the Supplier.
- (b) Payment will not be due until the Customer receives a correctly rendered invoice. An invoice is correctly rendered if:
 - (i) the specified charge is, correctly calculated and due for payment;
 - (ii) the invoice is set out in a manner that enables the Customer to ascertain the goods or services to which the invoice relates and the charge payable in respect of those goods or services;
 - (iii) the invoice is accompanied (where necessary or where reasonably requested by the Customer) by verifying documentation; and
 - (iv) the invoice is addressed with all relevant Supplier's details.
- (c) Any additional charges payable by the Customer pursuant to this Agreement will be paid within thirty (30) days of receipt of the Invoice.

6. GST

6.1 Definitions

In this clause 6:

- (a) the expressions **Consideration, GST, Input Tax Credit, Recipient, Supply, Tax Invoice** and **Taxable Supply** have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)*; and
- (b) **Supplier** means any party treated by the GST Act as making a Supply under this Agreement.

6.2 Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with this Agreement are exclusive of GST.

6.3 Payment of GST

- (a) If GST is imposed on any Supply made under or in accordance with this Agreement, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply at or before the time of payment.
- (b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with this Agreement.

6.4 Reimbursement of expenses

If this Agreement requires a Party (the **First Party**) to pay for, reimburse, set off or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by the other Party (the **Other Party**), the amount required to be paid, reimbursed, set off or contributed by the First Party will be the sum of:

- (a) the amount of the Reimbursable Expense net of Input Tax Credits (if any) to which the Other Party is entitled in respect of the Reimbursable Expense (**Net Amount**); and
- (b) if the Other Party's recovery from the First Party is a Taxable Supply, any GST payable in respect of that Supply,

such that after the Other Party meets the GST liability, it retains the Net Amount.

7. CONFIDENTIALITY

- (a) A Party will not, without the prior written approval of the other Party, disclose the other Party's Confidential Information.
- (b) A Party will not be in breach of clause 7(a) in circumstances where it is legally compelled to disclose the other Party's Confidential Information.
- (c) Each Party will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purposes of this Agreement, do not make public or disclose the other Party's Confidential Information.
- (d) A Party will on demand return to the other Party any documents supplied by the Party to the other Party in connection with this Agreement.
- (e) Notwithstanding any other provision of this clause, each Party may disclose the terms of this Agreement (other than Confidential Information of a technical nature) to its related companies, solicitors, auditors, insurers and accountants.
- (f) This clause will survive the termination of this Agreement.

8. INTELLECTUAL PROPERTY RIGHTS

- (a) The Supplier warrants that the Equipment does not infringe the Intellectual Property Rights of any person. The Supplier will fully indemnify the Customer against any loss, costs, expenses, demands or liability, whether direct or indirect, arising out of a claim by a third party against the Customer alleging that the Equipment infringes any such Intellectual Property Rights.
- (b) The indemnity referred to in clause 8(a) will be granted whether or not legal proceedings are instituted and, if such proceedings are instituted, irrespective of the means, manner or nature of any settlement, compromise or determination.
- (c) The Customer will notify the Supplier as soon as practicable of any infringement, suspected infringement or alleged infringement by the Equipment of the Intellectual Property Rights of any person (**Proceedings**)

(d) The Customer has no right to:

- (i) enter into any settlement discussions of any nature in relation to the Proceedings;
- (ii) settle or compromise the Proceedings in any way; or
- (iii) take any action in relation to the Proceedings,
- without the Supplier's prior written consent.

(e) The Supplier may, in its absolute discretion, take over the conduct or handling of any Proceedings to the exclusion of the Customer. If the Supplier does so:

- (i) the Supplier must indemnify the Customer against any liability for costs relating to the Proceedings from the date the Supplier elects to take over the Proceedings;
- (ii) the Supplier is entitled to benefits, if any, of the Proceedings and is liable for any award of damages or other liability resulting from the Proceedings; and
- (iii) the Customer appoints the Supplier as its attorney to do in the Supplier's name all acts, matters and things that the Supplier thinks fit in respect of the conduct of the Proceedings and the Customer must furnish the Supplier with all assistance and information in that regard as the Supplier may request.

9. LOSS OR DAMAGE

Except in respect of death or personal injury caused solely by the Supplier's negligence, the Supplier will not be liable to the Customer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of this Agreement, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by negligence of the Supplier, its employees or agents or otherwise) which arise out of or in connection with the supply of the services under this Agreement and the entire liability of the Seller under or in connection with this Agreement will not exceed the sum of [insert \$AUD], except as expressly provided in this Agreement.