

COAL MINES TECHNICAL SERVICES – GENERAL TERMS AND CONDITIONS

Operative provisions:

1. DEFINITIONS

In these Conditions:

Approved Purpose means the use of the Software in determining trending of results arising from gas analysis;

Bad Data means any data which is incorrect for whatever reason including due to improper gas sample collection or damaged or faulty equipment;

Buyer means the person who accepts a quotation of the Seller for the sale of the Products or whose order for the Products is accepted by the Seller;

Conditions means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing; and

Contract means the contract for the purchase and sale of the Products.

Distributor means any distributor appointed by the Seller to sell the Products and Software as the case may be;

End User means the buyer of the Products from the Distributor;

Intellectual Property Rights means all present and future intellectual and industrial property rights in the Products, whether conferred by statute, at common law or in equity and wherever existing, including:

- (a) patents, designs, copyright, rights in circuit layouts, plant breeder's rights, trade marks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) any application or right to apply for registration of any of these rights;
- (c) any registration of any of those rights or any registration of any application referred to in paragraph (b); and

all renewals and extensions of these rights;

Products means the products (including any instalment of the products or any parts for them) which the Seller is to supply in accordance with these Conditions;

Seller means Mines Rescue Pty Ltd ACN 099 078 261 trading as Coal Mines Technical Services;

Software means the gas analysis trending software of the Supplier;

Software Intellectual Property Rights means all present and future intellectual and industrial property rights in the Software, whether conferred by statute, at common law or in equity and wherever existing, including:

- (d) patents, designs, copyright, rights in circuit layouts, plant breeder's rights, trade marks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (e) any application or right to apply for registration of any of these rights;
- (f) any registration of any of those rights or any registration of any application referred to in paragraph (b); and

all renewals and extensions of these rights;

2. BASIS OF THE SALE

2.1 Written Quotation and Orders

The Seller will sell and the Buyer will purchase the Products in accordance with any written quotation of the Seller which

is accepted by the Buyer, or any written order of the Buyer which is accepted by the Seller, subject in either case to these Conditions, which will govern the Contract to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the Buyer.

2.2 Variation Not Binding

No variation to these Conditions will be binding unless agreed in writing between the authorised representatives of the Buyer and the Seller.

2.3 Representation by Agents and Employees

The Seller's employees or agents are not authorised to make any representations concerning the Products unless confirmed by the Seller in writing. In entering into the Contract the Buyer acknowledges that it does not rely on any such representations which are not so confirmed.

2.4 Advice and Recommendations

Any advice or recommendation given by the Seller or its employees or agents to the Buyer or its employees or agents as to storage, application or use of the Products which is not confirmed in writing by the Seller is followed or acted upon entirely at the Buyer's own risk and accordingly the Seller will not be liable for any such advice or recommendation which is not so confirmed.

3. ORDERS AND SPECIFICATIONS

3.1 Specifications of Products

The quantity, quality and description of and any specification for the Products will be those set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller).

3.2 Cancellation of Order

No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in writing of the Seller and on the terms that the Buyer indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

4. PRICE OF THE PRODUCTS

4.1 Sellers Quoted Price

The price of the Products will be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price listed in the Seller's published price list current at the date of acceptance of the order. Where the Products are supplied for export from Australia, the Seller's published export price list will apply. All prices quoted are valid for 30 days only or until earlier acceptance by the Buyer, after which they may be altered by the Seller without giving notice to the Buyer.

4.2 Increase in Price

The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Products to reflect any increases in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, material or other costs of manufacture), any change in delivery dates, quantities or specifications for the Products which is requested by the Buyer or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.

4.3 Prices Ex Works

Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Products otherwise than at the Seller's premises, the Buyer will be liable to pay the Seller's charges for transport, packaging and insurance.

4.4 Taxes

The Buyer will be responsible for all transportation, insurance, taxes, duties and other charges relating to the Products.

Buyer for the excess over the price under the Contract or charge the Buyer for any shortfall below the price under the Contract.

5. TERMS OF PAYMENT**5.1 Invoicing**

Subject to any special terms agreed in writing between the Buyer and the Seller, the Seller will be entitled to invoice the Buyer for the price of the Products on or at any time after delivery of the Products, unless the Products are to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Products, in which event the Seller will be entitled to invoice the Buyer for the price at any time after the Seller has notified the Buyer that the Products are ready for collection or (as the case may be) the Seller has tendered delivery of the Products.

5.2 Time for Payment

The Buyer will pay the price of the Products (less any discount to which the Buyer is entitled, but without any other deduction) within 30 days of the date of the Seller's invoice, and the Seller will be entitled to recover the price, notwithstanding that delivery may not have taken place and the property in the Products has not passed to the Buyer. The time of payment of the price will be of the essence of the Contract. Receipts for payment will be issued only upon request.

5.3 Failure to Make Payment

If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller will be entitled to:

- (a) cancel the contract or suspend any further deliveries to the Buyer;
- (b) appropriate any payment made by the Buyer to such of the Products (or the products supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer); and
- (c) charge the Buyer interest (both before and after any judgment) on the amount unpaid, at a rate which is three (3) percent above the highest overdraft rate charged by the Seller's principal bank for commercial loans in excess of \$100,000, until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest).

6. DELIVERY**6.1 Delivery by Collection**

Unless otherwise agreed, delivery of the Products will be made by the Buyer collecting the Products at the Seller's premises at any time after the Seller has notified the Buyer that the Products are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Products to that place.

6.2 Non Liability for Delay

Any dates quoted for delivery of the Products are approximate only and the Seller will not be liable for any delay in delivery of the products however caused. Time for delivery will not be of the essence of the Contract unless previously agreed by the Seller in writing. The Products may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.

6.3 Failure to Take Delivery

If the Buyer fails to take delivery of the Products or fails to give the Seller adequate delivery instructions at the time stated for delivery (otherwise than by reason of any cause beyond the Buyer's reasonable control or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller may:

- (a) store the Products until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage; or
- (b) sell the Products at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the

7. RISK AND PROPERTY**7.1 Passing of Risk**

Risk of damage to or loss of the Products will pass to the Buyer:

- (a) in the case of Products to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Products are available for collection; or
- (b) in the case of Products to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the Products, the time when the Seller has tendered delivery of the Products.

7.2 Property Not to Pass

Notwithstanding delivery and the passing of risk in the Products, or any other provision of these Conditions, the property in the Products will not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Products and all other products agreed to be sold by the Seller to the Buyer for which payment is then due.

7.3 Buyer as Fiduciary Agent and Bailee

Until such time as the property in the Products passes to the Buyer, the Buyer will hold the Products as the Seller's fiduciary agent and bailee, and will keep the Products separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but where the Buyer is the Distributor, it will be entitled to resell or use the Products in the ordinary course of its business.

7.4 Right of Seller to Products

Until such time as the property in the Products passes to the Buyer (and provided the Products are still in existence and have not been resold by the Distributor), the Seller will be entitled at any time to require the Buyer to deliver up the Products to the Seller and, if the Buyer fails to do so, to enter upon any premises of the Buyer or any third party where the Products are stored and repossess the Products.

7.5 Buyer Not to Pledge or Charge

The Buyer will not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Products which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller will (without prejudice to any other right or remedy of the Seller) become due and payable.

8. SOFTWARE**8.1 Software**

At the request of the Buyer, the Seller may sell the Software to the Buyer in addition to the Products pursuant to these Conditions and subject to clauses 10.3 and 10.4.

8.2 Buyer's Obligations

- (a) The Buyer (or its agents and employees) or the End User (or its agents and employees) (as the case may be) must use the Software only for the Approved Purpose.
- (b) The Buyer (or its agents and employees) or the End User (or its agents and employees) (as the case may be) must use reasonable judgement and experience when confirming the results of the Software or the interpretation of the Software and analyse such results in light of other environmental and ventilation monitoring and not in isolation.
- (c) The Buyer (or its agents and employees) or the End User (or its agents and employees) (as the case may be) must have good working knowledge of Microsoft Excel in order to utilise all the software functions of the Software.

8.3 Limitations of use of Software

The Buyer (or its agents and employees) or the End User (or its agents and employees) (as the case may be) must not:

- (a) alter, amend, adapt, modify, obliterate, reproduce, obscure, conceal, remove, tamper, decompile, decipher, disassemble, reverse engineer or otherwise interfere with or decrypt whole or part of the Software or the results of the Software without the Supplier's prior written consent;
- (b) exercise any copyright in respect of the Software other than as specified in the Contract and these Conditions;
- (c) assign, transfer, sell or distribute the Software to a third party; or
- (d) disclose to or allow any third party to use the Software in any manner.

8.4 Buyer and End User acknowledgements

The Buyer (or its agents and employees) or the End User (or its agents and employees) (as the case may be) acknowledges that:

- (a) Bad Data may affect the results of the Software and the interpretation of the Software and that such results and interpretation of the Software may be false or misleading as a result of the entry of the Bad Data into the Software; and
- (b) the Seller is the owner of all Software Intellectual Property Rights.

9. Intellectual Property Rights

The Buyer acknowledges and agrees that:

- (a) it is not the owner of the Intellectual Property Rights;
- (b) nothing in the Contract or these Conditions will grant the Buyer any Intellectual Property Rights;
- (c) the Seller grants it a non-exclusive, irrevocable, licence to use all software provided as separate modules or embedded in the Products (**Product Software**) together with the Products. This licence will terminate when the Buyer discontinues use of the Product Software.

10. WARRANTIES AND LIABILITY

10.1 Warranty by Seller

Subject to the conditions set out below the Seller warrants that the Products will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from delivery. In the event that the Product consists of consumable laboratory supplies the Seller warrants that those supplies will correspond with their specification at the time of delivery and will be free from defects in material and workmanship for a period of 14 days from delivery.

10.2 Conditions attaching to Warranty

The above warranty is given by the Seller subject to the following conditions:

- (a) the Seller will be under no liability in respect of any defect in the Products arising from any drawing, design or specification supplied by the Buyer;
- (b) the Seller will be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Seller's instructions (whether oral or in writing), misuse or alteration or repair of the Products without the Seller's approval;
- (c) the Seller will be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Products has not been paid by the due date for payment;
- (d) the above warranty does not extend to parts, materials, or equipment not manufactured by the Seller, in respect of which the Buyer will only be entitled to the benefit of any such warranty or

guarantee as is given by the manufacture to the Seller.

10.3 Exclusion of Liability

The Seller is not liable to the Buyer, the End User or to any other person for:

- (a) any false or misleading results of the Software or interpretation of the Software which might arise due to the entry of Bad Data into the Software;
- (b) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of the Seller or any of its officers, employees, agents or contractors in relation to the Software or the results of the Software; or
- (c) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from the Software or the results of the Software irrespective of whether:
 - (i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or
 - (ii) the Buyer or any other person was previously notified of the possibility of the loss or damage.

10.4 Exclusion of Implied Warranties

Any representation, warranty, condition or undertaking that would be implied in the Contract and these Conditions by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

10.5 Notification of Defects

Any claim by the Buyer which is based on any defect in the quality or condition of the Products or their failure to correspond with specification will (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer will not be entitled to reject the Products and the Seller will have no liability for such defect or failure, and the Buyer will be bound to pay the price as if the Products had been delivered in accordance with the Contract.

10.6 Replacement of Products

Where any valid claim in respect of any of the Products which is based on any defect in the quality or condition of the Products or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller will be entitled to replace the Products (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Products (or a proportionate part of the price), but the Seller will have no further liability to the Buyer.

10.7 Loss or Damage

Except in respect of death or personal injury caused solely by the Seller's negligence, the Seller will not be liable to the Buyer 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 the Contract, 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 Seller, its employees or agents or otherwise) which arise out of or in connection with the supply of the Products or their use or resale by the Distributor, and the entire liability of the Seller under or in connection with the Contract will not exceed the price of the Products, except as expressly provided in these Conditions.

10.8 Delay or Failure Outside Seller's Control

The Seller will not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Products, if the delay or failure was due to any case beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, the

following will be regarded as causes beyond the Seller's reasonable control:

- (a) Act of God, explosion, flood, tempest, fire or accident;
- (b) war or threat of war, sabotage, insurrection, civil disturbance or requisition;
- (c) acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority;
- (d) import or export regulations or embargoes;
- (e) strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party);
- (f) difficulties in obtaining raw materials, labour, fuel, parts or machinery;
- (g) power failure or breakdown in machinery.

11. EXPORT TERMS

11.1 Incoterms Definitions to Apply

In these Conditions "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms will have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the Conditions will prevail.

11.2 Products Exported from Australia

Where the Products are supplied for export from Australia, the provisions of this clause 10 will (subject to any special terms agreed in writing between the Buyer and the Seller) apply notwithstanding any other provision of these Conditions.

11.3 Import Regulations and Payment of Duties

The Buyer will be responsible for complying with any legislation or regulations governing the importation of the Products into the country of destination and for the payment of any duties on them.

11.4 Delivery Ex works for exports

Except as otherwise stated under the terms of any quotation or in any price list of the Seller, and unless otherwise agreed in writing between the Buyer and the Seller, all prices for products for export are given by the Seller on an ex works basis, and where the Seller agrees to deliver the Products otherwise than at the Seller's premises, the Buyer will be liable to pay the Seller's charges for transport, packaging and insurance.

11.5 Testing and Inspection Before Shipping

The Buyer will be responsible for arranging for testing and inspection of the Products at the Seller's premises before shipment. The Seller will have no liability for any claim in respect of any defect in the Products which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

11.6 Products Not for Resale

Save for any written agreement between the Seller and the Distributor the Buyer undertakes not to offer the Products for resale.

12. INDEMNITY

12.1 Indemnification by Seller

If any claim is made against the Buyer that the Products infringe or that their use infringes the patent, copyright, design, trade mark or other industrial or intellectual property rights of any other person, then unless the claim arises from the use of any drawing, design or specification supplied by the Buyer, the Seller will indemnify the Buyer against all loss, damages, costs and expenses awarded against or incurred by the Buyer in connection with the claim, or paid or agreed to be paid by the Buyer in settlement of the claim, provided that:

- (a) the Seller is given full control of any proceedings or negotiations in connection with any such claim;
- (b) the Buyer will give the Seller all reasonable assistance for the purposes of any such proceedings or negotiations;
- (c) except pursuant to a final award, the Buyer will not pay or accept any such claim, or compromise any such proceedings without the consent of the Seller (which will not be unreasonably withheld);
- (d) the Buyer will do nothing which would or might vitiate any policy of insurance or insurance cover which the Buyer may have in relation to such infringement, and this indemnity will not apply to the extent that the Buyer recovers any sums under any such policy or cover (which the Buyer will use its best endeavours to do);
- (e) the Seller will be entitled to the benefit of, and the Buyer will accordingly account to the Seller for, all damages and costs (if any) awarded in favour of the Buyer which are payable by, or agreed with the consent of the Buyer (which consent will not be unreasonably withheld) to be paid by, any other party in respect of any such claim; and
- (f) without prejudice to any duty of the Buyer at common law, the Seller will be entitled to require the Buyer to take such steps as the Seller may reasonably require to mitigate or reduce any such loss, damages, costs or expenses for which the Seller is liable to indemnify the Buyer under this clause.

13. GST

13.1 Definitions

In this clause 13:

- (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 the Contract and these Conditions

13.2 Consideration is GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or Consideration to be provided under or in accordance with the Contract and these Conditions are exclusive of GST.

13.3 Payment of GST

- (a) If GST is imposed on any Supply made under or in accordance with the Contract and these Conditions, 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 the Contract and these Conditions.

13.4 Reimbursement of expenses

If the Contract and these Conditions require 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.

14. General

14.1 Entire Contract

The Contract and these Conditions contain the entire understanding between the parties concerning the subject matter of the Contract and these Conditions and supersedes all prior communications between the parties.

14.2 No waiver

A failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by the Contract and these Conditions do not operate as a waiver of the power or right. A single or partial exercise of the power or right does not preclude a further exercise of it or the exercise of any other power or right under the Contract and these Conditions. A waiver of a breach does not operate as a waiver of any other breach.

14.3 Notices

Any notice or other communication to or by a party to the Contract and these Conditions:

- (a) must be in writing, legible and in English addressed to the address of the other party specified on page 1 of the Contract (or to any other address last notified by the party to the sender by notice given in accordance with this clause) and signed by an officer or under the common seal of the sender;
- (b) is deemed to be given by the sender and received by the addressee if delivered in person, when delivered to the addressee or, if posted, 2 days (or 6, if addressed outside Australia) after the date of posting to the addressee whether delivered or not.

14.4 Consents and approvals

Where anything depends on the consent or approval of a party, then, unless the Contract and these Conditions provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party.

14.5 Governing law and jurisdiction

The Contract and these Conditions are governed by and must be construed in accordance with the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the Courts of New South Wales, Australia and the Commonwealth of Australia in respect of all matters or things arising out of the Contract and these Conditions.

14.6 Severability

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question will not be affected.

14.7 Variation

The terms and conditions of the Contract and these Conditions may only be modified by the agreement of both parties in writing.