

## MINING INDUSTRIAL TRADE SUPPLIERS PTY LTD

### Definitions

**“Australian Consumer Law”** means Schedule 2 to the Competition and Consumer Act 2010 (Cth).

**“Company”** means Mining Industrial Trade Supplies Pty Ltd (Trading As Safety MITS) ABN. 83 158 619 204

**“Customer”** means the party placing the Order with or purchasing Products from the Company.

**“Order”** means an offer by a Customer to purchase Products from the Company.

**“PPS Act”** means the Personal Property Securities Act 2009 (Cth) and its associated Regulations as varied from time to time.

**“PPSR”** refers to the Personal Property Securities Register established under the PPS Act.

**“Products”** means goods of all kinds or service ordered by the Customer from the Company or supplied by the Company on the Order of the Customer.

**“Ts&Cs”** means these Terms & Conditions of Trade as varied and applicable from time to time.

**“Writing”** includes quotes, letters, fax, email and other similar electronic communication methods.

### 1. Sale Terms

- 1.1 The Ts&Cs apply to all supplies by the Company to the Customer including all Orders or other sales and will prevail over all prior conditions previously agreed between the parties or which the Customer puts forward at any time without the Company's express written agreement.
- 1.2 The Ts&Cs may be amended from time to time by the Company without prior notice. Publication of the amended Ts&Cs on the website of the Company shall be deemed to amend the Ts&Cs and be notice of that amendment and the amended Ts&Cs shall apply to any Order or part of an Order from the time of amendment. The Company may, but shall not otherwise be required or responsible to notify the Customer of the existence or content of any amendments to the Ts&Cs.

### 2. Order and Acceptance

- 2.1 Any Order submitted to the Company by a Customer shall be deemed to be made pursuant to the terms of the Ts&Cs. Any Order placed or made by the Customer for the purchase of the Products shall be an irrevocable offer under those terms.
- 2.2 The Company may accept any Order in whole or in part by providing confirmation of the Order. Acceptance may be oral or in writing at the Company's discretion. Accepted Orders may not be varied or cancelled by the Customer without the Company's written consent and (subject to the conditions set out herein) there is no right of return.

### 3. Price

- 3.1 The price of the Products shall be as agreed between the parties and where there is no written confirmation of the price, the price shall be the amount indicated on Tax Invoices provided by the Company to the Customer regarding Products ordered.
- 3.2 All prices quoted are based on the full quantities specified and do not necessarily adjust pro rata for any greater or lesser quantities.
- 3.3 The delivery method for Products ordered as specified on the Order are as per Incoterms 2010.
- 3.4 If the Company's cost of supplying the Products increases by more than 10% due to any change in the rate or amount of any GST or other taxes, currency fluctuations, duties, or freight and transport charges which may be applicable, the Company may upon written notice to the Customer at any time before delivery increase the price of the Products to compensate for the entire increased cost.

## 4. Credit Granting and Payment

- 4.1 The Company may accept an Order and allow credit for part or all of its value or may accept an Order and require pre-payment as a condition of delivery.
- 4.2 Credit approval once granted may be withdrawn at any time. Where credit approval has not been granted, or is withdrawn, payment for all Products supplied is required before delivery (cash or cleared funds). Where credit has been approved for the Customer, all Tax Invoices issued by the Company are due and payable by the date for payment agreed in writing by the Customer and the Company, but if no agreement in writing is made, then thirty (30) days from the date of the Tax Invoice provided by the Company to the Customer regarding Products ordered.

## 5. Credit Policy and Default

- 5.1 In the event that the Customer fails to make any payment payable pursuant to the Ts&Cs within the payment terms or breaches any of the warranties, obligations or agreements, the Customer shall be in default.
- 5.2 The Company may charge interest on all amounts not paid by the Customer within the term for payment at a rate of 1.5% per calendar month calculated from the due date and accruing monthly therefrom until the date of payment.
- 5.3 If the Customer is in default the Customer must reimburse and indemnify the Company from and against all expenses, costs and disbursements incurred by the Company in pursuing the debt including all reasonably charged legal costs on a "solicitor and own client" basis and the fees charged to the Company by any mercantile agency. If the Customer fails to pay any amount by the due date, the Company may at its sole discretion:
  - (a) cancel any provision of credit to the Customer;
  - (b) reverse any rebates or discounts allowed;
  - (c) change credit payment terms including require cash pre-payment for any further Products ordered;
  - (d) provide to a credit reporting agency details of the payment default;
  - (e) commence legal proceedings against the Customer (and any guarantors) for all outstanding amounts, interest and costs;
  - (f) decline to supply Products to the Customer and terminate this and any other agreement with the Customer; and;
  - (g) exercise any other rights at law including pursuant to the PPS Act.
- 5.4 A certificate of debt signed by a representative of the Company shall be prima facie evidence and proof of money owing by the Customer to the Company at the time of the certificate.
- 5.5 As security for payment by the Customer for all goods and services supplied or that may in future be supplied from time to time at the Customer's request and all other money payable by the Customer to the Company, actually or contingently, now or in the future (secured money), the Customer hereby charges in favour of the Company all of the Customer's interest in any real property (including all property acquired after the date of this Deed and wherever situate). The Customer agrees to grant a mortgage over any such real property to better secure the secured money. The Customer also grants, as security for the secured money, a security interest as defined in the PPS Act in all the Customer's present and after acquired personal property. The Customer hereby irrevocably appoints the Company and any person nominated by the Company as the attorney of the Customer with power to execute, sign, seal and deliver any documents to better secure the secured money and to perfect any security, including to execute any registrable real property mortgage.

## 6. GST

- 6.1 The Company reserves the right, upon production of a Tax Invoice, to recover from the Customer any Goods and Services Tax (GST) payable in respect of supply of Products.
- 6.2 Unless expressly included all amounts of consideration expressed or described in any quotation or agreement. The Customer must pay an additional amount equal to any applicable GST. The additional amount must be paid when the other consideration is payable or at any earlier time that the Company is

obliged to pay or allow credit for the GST.

## **7. Delivery**

7.1 Delivery of the Products shall be deemed to have taken place when:

- (a) the Customer takes possession of the Products at the Company's address if the Products are collected; or
- (b) the Products are delivered at the Customer's nominated address (in the event that the Products are delivered by the Company or the Company's nominated carrier); or
- (c) the Customer's nominated carrier takes possession of the Products in which event the carrier shall be deemed to be the Customer's agent.

7.2 The Company's nominated address shall be the address specified in the Commercial Account Application Form or otherwise notified in writing by the Company.

7.3 Delivery of Products may not be refused by the Customer after an Order has been accepted by the Company. Where prices are stated as inclusive of delivery, delivery is to the delivery point accepted by the Company.

7.4 The Customer shall make all arrangements necessary to accept delivery of the Products whenever they are tendered for delivery.

7.5 Delivery of Products to a third party or place nominated in any way by the Customer is deemed to be delivery to the Customer pursuant to these Ts&Cs.

7.6 The Company shall not be liable for any loss or damage or expense arising from failure by the Company to deliver the Products at a specified time, promptly or at all and the failure of the Company to deliver at a specific time or at all shall not entitle either party to treat this contract as repudiated.

## **8. Recalls**

8.1 If the Customer is directed to assist in any suspension of supply or recall of Products for any reason by the Company, the Customer must co-operate and comply with all such reasonable directions to ensure the most effective response to the suspension or recall. The sole cost and expense of such suspension or recall will be borne by: (a) the Company to the extent the costs and expenses are reasonable and necessary where the reason for the suspension or recall is fault in the manufacture of the Products; and (b) by the Customer where the reason is its act or omission.

## **9. Passing of Risk**

9.1 The risk (but not title) in respect of Products sold passes to the Customer immediately upon delivery to the customer, the Customer's agent or courier as the case may be.

## **10. Retention of Title to the Products Pending Payment**

10.1 Legal and beneficial ownership of the Products shall remain with the Company and shall not pass to the Customer until the Company has received in full (cash or cleared funds) all sums due to it in respect of the Products and all other sums which are or which become due to the Company from the Customer on any credit account with the Company or pursuant to these Ts&Cs.

10.2 Until ownership of the Products has passed to the Customer, the Customer shall keep the Products in question as fiduciary agent and bailee for and on behalf of the Company.

## **11. PPS Act**

11.1 Words in italic shall have the meaning and definitions set out in the PPS Act.

11.2 The Customer acknowledges that by virtue of these Ts&Cs the Company has a security interest in the Products and their proceeds for the purposes of the PPS Act.

11.3 The Customer acknowledges that the Company may do anything it considers necessary, including but not limited to registering on the PPSR any security interest in the Products which the Company has and including registration as a purchase money security interest (PMSI) in order to perfect the Company's

security interest as a first priority interest under the PPS Act. The Customer agrees to do all things including signing any document which the Company reasonably requires to assist the Company to undertake the matters set out above.

- 11.4 The Customer waives pursuant to section 157(3)(b) of the PPS Act the right to receive notice of a financing statement, financing change statement or a verification statement in relation to any registration on the PPSR.
- 11.5 The Customer and the Company agree that, pursuant to section 115 of the PPS Act, that the following provisions in the PPS Act are contracted out of insofar as they require the Company to give any notice or statement or allow any period of time or grant any opportunity to remedy to the Customer:
- (a) sections 95 (removal of accession), 96 (retention of accession);
  - (b) section 125 (disposal or retention of collateral);
  - (c) section 129 (disposal by purchase);
  - (d) section 130 (notice of disposal), to the extent that it requires the secured party to give a notice to the grantor before disposal;
  - (e) subsection 132(4) (statement of account if no disposal);
  - (f) section 135 (notice of retention);
  - (g) section 142 (redemption of collateral);
  - (h) section 143 (reinstatement of security agreement).
- 11.6 Solely to preserve their confidentiality, to the extent allowed under section 275 of the PPS Act, the Customer and Company agree that neither will disclose information if requested by a third party under section 275(1).
- 11.7 The Customer agrees that any rights of the Company under this document are in addition to and not in substitution for its rights under the PPS Act.
- 11.8 The Customer undertakes to give the Company not less than 14 days prior notice of any proposed change in the Customer's name or any other change in the Customer's details (including, but not limited to, changes in its address, phone or facsimile number and trading name).

## 12. Claims and Returns

- 12.1 Refunds or returns will only be given to the extent there is a non-excludable right to return or refund under the Australian Consumer Law or the Sale of Goods Act NSW or other applicable legislation.
- 12.2 The Customer will inspect and check all Products received and within 7 days of receipt notify the Company in writing of any shortage in quantity, defect, incorrect specification, damage or Products not in accordance with the Customer's Order. The Customer is responsible for checking that Products correspond with those Ordered prior to use. After use or expiry of the time stated herein the Product shall be deemed to be free from any defect or damage at delivery.
- 12.3 The Customer agrees that it will not return any of the Products without first informing the Company so that a Returns Authorisation ("RA") number may be issued by the Company for valid returns. The RA is valid for 7 days. Returned Products must be unmarked, in a saleable condition and must include the original packaging, accessories, delivery document and Tax Invoice.
- 12.4 No credit or replacement will be given unless and until Products so returned have been verified as being valid for return or are defective and are returned with a valid RA number. The Company reserves the right to recover its costs where the returned Products prove not to be valid for return or are not defective. Returned Products must be returned to the Company at 8/14 Rodborough Road, Frenchs Forest NSW 2086 Australia or another address notified by the Company.
- 12.5 All freight, handling and other charges in relation to returning Products (other than Products defective or not ordered) are the responsibility of the Customer.
- 12.6 The Customer shall be liable for a Restocking Fee on all Products accepted for return. The Restocking Fee shall not apply to Products returned for being defective, damaged or for failing to comply with the Order. The current Restocking Fee is 20% of the price of the Products returned.

## 13. Disputed Charges

- 13.1 If the Customer objects to any invoiced item or amount, the Customer may withhold payment of the disputed amount, but only if on or before payment or the due date for payment (whichever occurs first), the undisputed amount of the Tax Invoice is paid in full and notice in writing of the dispute is given to the Company, setting out the details of the amount disputed, the reasons for the dispute, and the basis for calculating the disputed amount. The Company will investigate all disputes. If the amount is found to be payable (in whole or in part) then the Customer must pay the due amount within 7 days of receiving notice and the basis of the decision. Invoiced amounts that are not objected to in writing within 30 days of the due date will be deemed to be correctly charged and accepted by the Customer and the customer waives all claims against the Tax Invoice.

## 14. Recovery

- 14.1 Notwithstanding any other provision to the contrary, if any amount is not paid by the Customer within the terms for payment, or if the Customer is subject to an insolvency event (including administration, liquidation or receivership) then until all amounts owed by the Customer to the Company are fully paid the Company may:
- (a) retake possession of the Products; and
  - (b) keep or resell any of the Products repossessed.
- 14.2 The Customer hereby grants full leave and irrevocable license without any liability to the Company and any person authorised by the Company to enter any premises by any means where the Products may for the time being be placed or stored for the purpose of retaking possession of the Products.

## 15. Warranties, Disclaimer and Limitation of Liability

- 15.1 The Customer warrants that the Customer acquires Products under this agreement only:
- (a) for the purpose of re-supply; or
  - (b) for the purpose of using them up or transforming them, in trade or commerce:
    - (i) in the course of a process of production or manufacture; or
    - (ii) in the course of repairing or treating other goods or fixtures on land.
- 15.2 Subject to clause 17.4 and except as expressly provided in these Ts&Cs or as set out in the Company's acceptance, and to the extent permitted by law, no guarantee, warranty, condition, undertaking or term, express or implied, statutory or otherwise, as to the condition, quality, performance, aesthetic appearance, merchantability or fitness for purpose of any Products provided pursuant to these Ts&Cs is given or assumed by the Company and all such guarantees, conditions, warranties and liabilities (including liability as to negligence) express or implied relating to such Products are hereby excluded.
- 15.3 Products must be installed and/or used in accordance with the instructions provided by the Company or any warranty otherwise provided or available is voided to the extent permissible under the law.
- 15.4 Mining Industrial Trade Suppliers Pty Ltd (ABN 83 158 619 204) warrants that all products distributed by the company are guaranteed against any apparent fault arising from manufacturing defects caused by faulty materials and / or workmanship for 50 years.

Should any part fail due to the above within the specified period, Mining Industrial Trade Suppliers Pty Ltd will repair or replace the defective part free of charge. To make a claim pursuant to this warranty, the equipment must be delivered to Mining Industrial Trade Suppliers Pty Ltd. Freight charges both ways are payable by the claimant and no liability is accepted for loss or damage during transit. The claimant is required to produce the original invoice or other purchase documents as proof of purchase when making a claim pursuant to this warranty.

The warranty does not cover the purchaser or any other person for damage, loss, normal wear or faults caused from misuse or incorrect installation of the equipment.

To be eligible under this warranty, the equipment is required to have been installed and operated correctly



by qualified personnel and has not been subject to abuse, neglect or adjustment carried out by an unauthorized person.

This warranty may only be varied with the written approval of the Directors of Mining Industrial Trade Suppliers Pty Ltd.

In the following statement 'Our' means 'Mining Industrial Trade Suppliers Pty Ltd' and 'You' means the 'claimant.'

Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and for compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

The benefits given to the claimant in this warranty are in addition to other rights and remedies under a law in relation to the goods or services to which this warranty applies.

## **16. Intellectual Property**

- 16.1 The supply of Products to the Customer does not grant the Customer any intellectual property rights in or related to the Products or the Company's or any manufacturer's trade-marks, all of which remain the exclusive property of the Company or the manufacturer.

## **17. Set-off and assignment**

- 17.1 The Customer shall not be entitled to set off against or deduct from the price of Products sold any sums owed or claimed to be owed to the Customer by the Company.
- 17.2 The Customer may not assign or subcontract any contract for the purchase of Products or its rights or obligations under an agreement the subject of the Ts&Cs.

## **18. Force Majeure**

- 18.1 The Company will have no liability to the Customer in relation to any loss, damage or expense caused by the Company's failure to complete an Order or delivery or contract as a result of fire, flood, tempest, earthquake, riot, civil disturbance, theft, crime, strike, lock-out, war or the inability of the Company's suppliers to supply necessary materials or any other matter beyond the Company's control.

## **19. Privacy consent**

- 19.1 The Company may give information to third parties about the Customer, its guarantors, directors or proprietors for the following purposes:
- (a) to obtain a consumer credit report about the Customer, its guarantors, directors or proprietors;
  - (b) to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer, its guarantors, directors or proprietors;
  - (c) for registration on the PPSR or other public records or registers; and
  - (d) to obtain commercial credit information about the Customer, its guarantors, directors or proprietors from a credit reporting agency.

## **20. Waiver of terms of agreement**

- 20.1 The failure or indulgences by the Company to exercise, or delay in exercising, any right, power or privilege available to it under an agreement the subject of the Ts&Cs will not operate as a waiver thereof or preclude any other or further exercise thereof or the exercise of any right or power and the Company shall be entitled to require strict compliance at all times.

## **21. Proper Law**

- 21.1 An agreement the subject of the Ts&Cs is governed by and will be construed in accordance with the laws of the State of New South Wales, Australia.
- 21.2 The parties agree to submit to the non-exclusive jurisdiction of the Courts of the State of NSW. If the Local Court has jurisdiction the parties consent to the non-exclusive jurisdiction of the Local Court closest to the Company's place of business.
- 21.3 An agreement formed pursuant to the Ts&Cs shall be deemed to have been entered into at the Company's place of business.

## 22. General provisions

- 22.1 This document represents the entire agreement between the parties and no agreement or understanding varying or extending the terms of these Ts&Cs shall be legally binding upon either party unless in writing and signed by both parties or allowed by these Ts&Cs.
- 22.2 The Company may serve any notice or Court document on the Customer by hand or by forwarding it by post to the address of the Customer last known to the Company, or where a fax number or an email address has been supplied by the Customer, by sending it to that number or address. Such notices shall be deemed to be given:
  - (a) where delivered by hand, on the day of delivery;
  - (b) where sent by post, two (2) business days after the day of posting; and
  - (c) where sent by facsimile or email on the day of dispatch, provided that a clear transmission report is obtained.
- 22.3 If any term of an agreement the subject of the Ts&Cs shall be invalid, void, illegal or unenforceable, it shall be severed from the agreement and the remaining provisions shall not be affected, prejudiced or impaired by such severance.
- 22.4 The Company may assign or licence or subcontract all or any parts of its rights and obligations hereunder without the Customer's agreement or consent.
- 22.5 In the event that the Customer sells or otherwise disposes of its business (or any part thereof), the Customer shall be responsible to immediately notify the Company in writing of such sale to enable the account to be closed. If the Customer fails to so notify then the Customer shall be jointly and severally liable with the third party acquiring the business (or part thereof) to the Company for the payment of Products subsequently sold to the third party on the Customer's account before the Company received such notice as if the Customer had ordered the Products itself.