

TERMS & CONDITIONS of Sale and Credit



1. DEFINITIONS

1.1 Capitalised terms in this Agreement have the following meaning:
"Agreement" means these Terms & Conditions of Sale and Credit agreed upon by the Seller and Buyer, whether expressly or impliedly, including through the Buyer's acceptance of the delivery of Goods and/or Services as well as any Tax Invoice, Application for Credit Trading Account form or Application for International Credit Trading Account form.

"Buyer" or "you" means the person or entity purchasing Goods and/or Services or applying for credit and all successors and assigns.

"Credit Terms" means the conditions under which credit is granted.

"Goods" means the goods, products and materials manufactured, imported, supplied and/or delivered by the Seller to the Buyer.

"GST" means Goods and Services tax levied or imposed in Australia pursuant to the New Tax System (Goods and Services Tax) Act 1999 (Cth).

"Seller" or "Lessor" or "we" or "us" means Montrae Mining Pty Ltd (A.C.N. 100 519 971).

"Services" means any work, support, functions, and activities, provided, performed, and/or carried out by the Seller for the Buyer.

"Tax Invoice" means a document issued by the Seller to the Buyer that shows the price of the Goods and/or Services and meets the requirements of Australian tax law, including the Seller's ABN and the words "Tax Invoice".

1.2 The Customer acknowledges that these terms and conditions constitute the whole agreement between the parties unless otherwise agreed in writing.

2. PAYMENT TERMS

2.1 An Application for Credit Trading Account form or Application for International Credit Trading Account form is to be completed by all accounts requiring credit.

2.2 The Buyer must pay the Seller the full price of all Goods and/or Services ordered within thirty (30) days from the date of the Seller's Tax Invoice.

2.3 All payments must be made in the currency, and to the account, specified on the relevant Tax Invoice unless otherwise agreed with the Seller.

2.4 If payment is not made within thirty (30) days from the date of the Tax Invoice the Seller may without demand and at its sole discretion elect to either:

(a) charge interest calculated daily, from the end of the day on which the amount owing should have been paid until the day on which the amount owing is paid at the rate of 10%; or

(b) retake possession of the Goods and without notice sell the Goods on such terms and in such manner as it may determine and will be entitled to deduct all expenses incurred. For the purpose of recovering possession, and without limiting the generality of the foregoing the Buyer hereby irrevocably authorises and licences the Seller and its servants and agents to enter upon any premises where any Goods may be stored and to take possession of the Goods.

2.5 All applicable taxes, duties or levies (including GST) on the sale of the Goods will be to the Buyer's account.

2.6 GST will be invoiced at time of delivery.

2.7 Any account outstanding at the expiration of 60 days will be suspended and will be subject to a 1.5% penalty per month until all outstanding amounts have been paid.

2.8 The Seller may, at its option and without prejudice to any of its rights, either suspend further deliveries, require payment in advance or terminate any contract by written notice to the Buyer where the Buyer:

(a) defaults on any payment due under the agreement;
(b) being a natural person, commits an act of bankruptcy;
(c) being a corporation, is subject to any event in Clauses 12.1(a)-(g) below.

3. PRICES

3.1 The prices set out in this agreement (or as otherwise agreed in writing between the Seller and the Buyer) are binding.

3.2 Prices are based on production costs for supplies, labour, deliveries, duties and services current on the order date.

3.3 Unless stated otherwise, all quoted prices are exclusive of GST, stamp duty, and any other applicable taxes or levies. Prices are quoted on an ex-works basis.

3.4 The Seller reserves the right to amend prices at any time without prior notice. All quotations are valid for a period of thirty (30) days from the date of issue.

3.5 The contract price shall not exceed the amount specified in the Order unless first approved by the Seller in writing.

4. DUTIES AND TAXES

4.1 All duties, taxes, levies, fees, and other compulsory charges related to the provision of the Goods and/or Services — including, without limitation, sales tax, customs duties, and mobilisation and demobilisation costs — are payable as applicable under this Agreement.

4.2 These amounts are not subject to adjustment for exchange rate fluctuations, changes in tax rates, or any other external factors, unless expressly stated otherwise in this Agreement.

5. DELIVERY

5.1 Any delivery dates noted on the face hereof are subject to reasonable adjustment.

5.2 Delivery or tender of delivery of the Goods within (20) days before or after the date specified on the face hereof shall be timely delivery.

5.3 The acceptance of shipment by a common carrier or by any licensed public truck man shall constitute proper delivery.

5.4 Risks in the Goods shall pass to Buyer on delivery or upon any collection of the Goods by the Buyer or the passing of title in the Goods, whichever occurs first.

5.5 All freight, express, insurance and delivery charges shall be paid by the Buyer unless otherwise specified in writing on the face of the Tax Invoice.

5.6 Each delivery shall be considered as a separate contract and the failure of delivery shall not vitiate a contract as to other deliveries.

6. RETENTION OF TITLE

6.1 The Buyer shall, at the Seller's request, take any measures necessary under applicable law to protect the Seller's title in the Goods, and lawfully notify the Buyer's present or potential creditors of Seller's title and interest to the Goods.

6.2 Notwithstanding delivery of the Goods to the Buyer, until the Buyer has effected full payment for the Goods and any other goods previously supplied by the Seller:

(a) legal title to the Goods will remain with the Seller;
(b) the risk in the Goods will pass to the Buyer on delivery to the Buyer or its agent;
(c) the relationship between the Seller and the Buyer will be fiduciary;
(d) the Buyer will:

(i) hold the Goods as bailee for the Seller;
(ii) keep the Goods separate from other goods; and
(iii) label the Goods so that they are identifiable as the goods of the Seller;

(e) with the Seller's consent (which is given), the Buyer is at liberty to sell the Goods, in the ordinary course of the Buyer's business, provided that the money resulting from the sale will:

(i) be held in a separate account in trust for the Seller;
(ii) not be mingled with other money; and
(iii) not be placed into an overdrawn account; and

(f) in the event that the Buyer uses the Goods in some manufacturing or construction process of its own or of some third party then the Buyer will hold such part of the proceeds of such manufacturing or construction process as relates to the Goods in trust for the Seller. Such part will be deemed to equal in dollar terms the amount owing by the Buyer to the Seller at the time of receipt of such proceeds.

6.3 The Buyer is not an agent of the Seller in any sale of the Goods by the Buyer.

6.4 If the Buyer defaults under this Agreement, the Seller may without demand retake possession of the Goods and may without notice sell the Goods on such terms and in such manner as it determines and will be entitled to deduct all expenses incurred.

6.5 For the purposes of recovering possession and without limiting the generality of the foregoing, the Buyer irrevocably authorises and licenses the Seller and its servants and agents to enter any premises where any Goods may be stored and to take possession of the Goods.

7. PPSA

7.1 Unless otherwise defined in these terms, the capitalised terms and expressions used in this Clause 7 have the meanings given to them in the *Personal Property Securities Act 2009* (Cth) (PPSA).

7.2 The Buyer acknowledges and agrees that it will grant to the Seller a Security Interest in the Goods and their Proceeds, including any Accounts, Accessions and Commingled Goods.

7.3 The Buyer acknowledges that any purchase by it on credit terms from the Seller, or any retention of title supply pursuant to these terms, Attaches on delivery of the relevant goods and constitutes a Purchase Money Security Interest.

7.4 The Buyer agrees that:

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- (a) these terms or, subject to the Seller giving the Buyer at least 30 days' notice, such other terms and conditions as the Seller may adopt from time to time, apply to the supply of goods by the Seller to the Buyer to the exclusion of all other terms and conditions of sale or purchase to the extent permitted by law and constitute a Security Agreement pursuant to the PPSA;
- (b) no variation to these terms will be of any effect unless agreed to by the Seller in writing;
- (c) the goods supplied by the Seller secure the payment of the purchase price of those goods and of any other goods supplied by the Seller with priority to the fullest extent permitted by law over all other registered or unregistered Security Interests;
- (d) the Buyer will do all the things necessary in the Seller's reasonable opinion, including providing all information the Seller requires, to register a Financing Statement or Financing Change Statement on the Register as a Security Interest and/or a Purchase Money Security Interest;
- (e) the Buyer will not change its name or ABN or other details required in respect of registration, or maintenance of registration, of each Security Interest on the Register, without first notifying the Seller in writing;
- (f) the Buyer waives its right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement in respect of any Security Interest created pursuant to these terms; and
- (g) the Buyer must pay the Seller's costs of any discharge or necessary amendment of any Registration.
- 7.5 The Seller reserves the right to charge an administration fee for registration, or maintenance of registration, of any Security Interest arising under these terms.
- 7.6 If the provisions of Chapter 4 of the PPSA would otherwise apply, to the maximum extent permitted by law, the Buyer agrees that Sections 129(3), 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply.
- 7.7 To the maximum extent permitted by law, the Buyer contracts out of, and waives any rights the Buyer may have pursuant to Sections 95 and 96, and if the provisions of Chapter 4 of the PPSA would otherwise apply, Sections 117, 118, 121(4), 123, 129(2) and 130 of the PPSA.
- 7.8 In addition to any other rights under these terms, the Seller may exercise any and all remedies set out in the PPSA including, without limitation, entry into any building or premises owned, occupied or used by the Buyer, to search for and seize, dispose of or retain those goods in respect to which the Seller has a Security Interest. In this regard, the Buyer acknowledges that Sections 126, 128, and 129(1) of the PPSA relating to seizure of goods and disposal of seized goods apply.
- 7.9 The Buyer agrees with the Seller that neither will disclose any confidential information of the kind referred to in Section 275(1) of the PPSA and that this Clause 8.9 constitutes a confidentiality agreement within the meaning of Section 275(6)(a) of the PPSA.
- 7.10 The Buyer waives any rights the Buyer may have under Section 275(7)(c) of the PPSA to authorise disclosure of any confidential information that is protected from disclosure under Clause 8.9.
- 7.11 The Buyer appoints and authorises the Seller as the Buyer's attorney to sign in the Buyer's name all documents which the Seller reasonably considers necessary to enforce or protect the Seller's rights and powers under these terms and to protect, preserve and enforce the Seller's rights under the PPSA.
- 8. LIABILITY**
- 8.1 Unless the Seller shall, within 30 days after delivery of Goods and/or Services, receive from the Buyer written notice of any matter or thing by reason whereof it is alleged that Goods and/or Services are not in accordance with the Agreement, the Buyer shall be entitled neither to reject the same nor to raise any claim for damages or for other remedy in respect of any alleged negligence, breach of warranty and/or any condition.
- 8.2 In any claim, brought subject to the conditions in Clause 8.1 above, Buyer must prove to the satisfaction of the Seller that the Buyer followed Seller's instructions for use, care, storage and maintenance of the Goods.
- 8.3 Unless otherwise specifically restricted by mandatory applicable law, the Seller's liability under any claim and in any connection with any possible allegation, whether based on negligence or on any other cause of action, shall be limited to either:
- (a) replacement of the Goods or the supply of equivalent goods;
- (b) the repair or payment of the cost of the repair, of the Goods; or
- (c) credit in the amount equal to the purchase price specified on the Tax Invoice or in an amount of equivalent Goods and/or Services, at the Seller's sole option.
- 8.4 The Buyer acknowledges that the remedy available to it, as specified herein, is in lieu of any remedies that may be otherwise available to it, now or in the future, whether in law or in equity, relating to any loss or damage, whether directly or indirectly, arising from the purchase and/or the use of Goods and/or Services, including without limitation, any actual or contingent damages, loss of production, loss of profit, loss of use, loss of contracts or any other consequential or indirect loss whatsoever.
- 8.5 The Buyer agrees to indemnify and hold the Seller harmless from and against any and all claims or liabilities for damages arising from negligence — whether on the part of the Seller or any other party — including, but not limited to, claims relating to the design, manufacture, use, handling, storage, delivery, application, or maintenance of any Goods and/or Services. This indemnity also extends to any claims of alleged infringement of copyright, patents, registered designs, or trademarks. It applies whether such claims are brought by the Buyer, its employees, officers, directors, representatives, or any third party acting through or independently of the Buyer.
- 8.6 The Buyer's acknowledgements and agreements in this Clause 8 shall extend and inure to the benefit of Seller and of Seller's successors at anytime, as well as to Seller's personnel, representatives, managers, directors and officers.
- 8.7 Any and all warranties, undertakings, guarantees or assurances provided herein by Seller, are specifically limited to Buyer herein, and not imputed by Seller, whether directly or indirectly, expressly or impliedly, to any other person or entity, including any subsequent buyer or user, Bailee, licensee, assignee, employee and agent of Buyer.
- 9. INSTALLATION**
- 9.1 Products that do not require installation by the Seller (Lessor) may be installed by the Buyer and used at any time following delivery.
- 9.2 Guidelines for installation provided by the Seller (Lessor) should be followed.
- 9.3 Prior to such installation, the Buyer, at its expense, shall complete all applicable product site preparations for installation, as specified by applicable product documentation and as required by applicable law, including, without limitation, all health and safety laws, and shall thereafter provide such other assistance, services and facilities as may be requested by Seller (Lessor) (or its authorized technical representative) to complete such installation.
- 10. WARRANTY**
- 10.1 The warranties set forth in this Clause 10 are expressly in lieu of all other warranties, whether expressed or implied, including any and all warranties of merchantability and fitness for use, and all other obligations or liabilities which may be imputed to the Seller, which are specifically and expressly excluded hereunder.
- 10.2 The Seller neither assumes, nor authorises any other person to assume for it, any other liability in connection with the sale of any and all Goods and/or Services specified or contemplated by this Agreement.
- 10.3 No warranty is made with respect to any of these Goods and/or Services which have been subject to accident, negligence, alteration, improper care, improper storage, improper maintenance, abuse or misuse.
- 10.4 The Seller warrants that the merchandise sold hereunder meets the descriptions or specifications stated herein, subject to use, storage and application thereof in accordance with and based on the Seller's standard tolerances and recommendations.
- 10.5 In relation to the Seller's 'Shock Cushion Subs':
- (a) The Seller warrants that the Shock Cushion Subs will be free from defects in material and workmanship for a period of 4 months from installation on a drill rig, or 1500 hours whichever comes first;
- (b) Installation guidelines as provided by the Seller, and all on site regulatory processes, including but not limited to, occupational health and safety laws and site procedures, must be followed.
- (c) This warranty does not apply to Shock Cushion Subs which:
- (i) Have been improperly installed or fitted or for which installation and fitting instructions provided by the Seller have not been followed;
- (ii) Have not been properly maintained, or not maintained in accordance with any maintenance recommendations provided by the Seller;
- (iii) Are subject to normal fair wear and tear;
- (iv) Have been modified or repaired without the written permission of the Seller;
- (v) Have been subject to accident, abuse, misuse, neglect or damage.
- (d) In the event that the Seller accepts a claim on the above warranty, the Seller will repair using new or refurbished components or replace the Shock Cushion Sub or wholly or partly recompense the Buyer. The Shock Cushion Sub is to be returned to supplier by the Buyer within 30 days of making a claim.
- (e) The cost of shipping to the manufacturer or payment of any custom clearance fees or duties, are the responsibility of the Buyer.

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- (f) All records of installation, and use, must be available for manufacturer reference including but not limited to, drill rig information, drilled metres, installation guidelines if specified alternatively to that of the Seller.
 - (g) In the event of a change of mind on the part of a Buyer within the warranty period, any new unused Shock Cushion Sub requires a 'Returned Materials Authorisation' (RMA) form.
 - (h) Any RMA form must be obtained from and submitted to the Seller prior to return of the Goods. The Shock Cushion Sub must be in new packaged condition.
- 10.6 Confirmation of configuration may be a requirement of any warranty. In this event, a 'Drill String' or drawing will be provided to the Buyer for signed approval prior to the Buyer's order being processed.

11. ADVICE

- 11.1 Any advice, recommendation, information, assistance, or service provided by the Seller regarding the Goods and/or Services or their use and application is given in good faith.
- 11.2 The Seller shall not be liable for any consequences arising from such advice, recommendation, information, assistance, or service.
- 11.3 It is the Buyer's responsibility to verify the accuracy and reliability of the advice in relation to the intended use of the Goods and/or Services.

12. DEFAULT

- 12.1 Upon failure of the Buyer to pay any amounts due hereunder, or in the event of any breach or anticipated breach by the Buyer of any contract with Seller, or if:
 - (a) a receiver, manager, receiver and manager, trustee, administrator, controller or similar officer is appointed in respect of the Buyer or any asset of the Buyer;
 - (b) a liquidator or provisional liquidator is appointed in respect of the Buyer;
 - (c) any application (not being an application withdrawn or dismissed within 7 days) is made to a court for an order, or an order is made, or a meeting is convened, or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraphs (a) or (b);
 - (ii) winding up the Buyer; or
 - (iii) proposing or implementing a scheme of arrangement in respect of the Buyer;
 - (d) any event or conduct occurs which would enable a court to grant a petition, or an order is made, for the bankruptcy of the Buyer who is an individual or his/her estate under any insolvency laws or regulations;
 - (e) a moratorium of any debts of the Buyer or an official assignment or a composition or an arrangement (formal or informal) with the Buyer's creditors or any similar proceeding or arrangement by which the assets of the Buyer are subjected conditionally or unconditionally to the control of the Buyer's creditors is ordered, declared or agreed to, or is applied for and the application is not withdrawn or dismissed within 7 days;
 - (f) the Buyer becomes, or admits in writing that it is, or is declared to be, is deemed under any applicable law to be, insolvent or unable to pay its debts;
 - (g) any writ of execution, garnishee order, mareva injunction or similar order, attachment, distress or other process is made, levied or issued against or in relation to any asset of the Buyer;then in each such occasion, the Seller may, at its sole option:
 - (h) cancel this Agreement and any other contract with the Buyer (without waiving any of Seller's rights to pursue any remedy against the Buyer);
 - (i) claim return of any Goods in the possession of the Buyer the title of which has not passed to Buyer;
 - (j) enter the Buyer's premises or any premises of any associated company or agent where such Goods are located without liability for trespass or any resulting damage to retake possession of such Goods;
 - (k) defer any shipment hereunder;
 - (l) declare forthwith due and payable all outstanding bills of the Buyer under this Agreement or any contract; and
 - (m) sell all or any part of the undelivered Goods, without notice at public and/or on private sale, while the Buyer shall be responsible for all costs and expenses of such sale and for any deficiency.
- 12.2 The Buyer agrees to indemnify the Seller in respect of all legal costs, on solicitor and own client basis, and disbursements incurred by the Seller in enforcing or attempting to enforce this document.

13. FORCE MAJEURE

- 13.1 If the Seller shall be prevented from producing or effecting deliveries of the Goods and/or Services (or any of them) by reason of any of the

following causes beyond the control of the Seller, then, in each such case, the obligation of the Seller to effect deliveries hereunder shall be suspended until after such prevention shall cease to continue, namely: act of god, insurrection, riot, was hostilities, terror attacks, warlike operations, piracy, arrests, restraints or detentions by any competent authority, strikes or combinations or lock-out of workmen, fire, floods, droughts, earthquakes, permanent or temporary delay or inability to obtain labour, material or services through Seller's usual and regular sources, or any other circumstances (whether of a nature similar to those specified, or not).

- 13.2 Should any deliveries under this Agreement be suspended under this clause, the Buyer shall nevertheless accept delivery and pay for such Goods as the Seller shall be able to deliver in accordance with the period(s) of shipment named in this Agreement.
- 13.3 The Seller shall not be liable for, and be relieved from, any loss or damages of any kind resulting from the causes mentioned above.

14. CANCELLATION

- 14.1 Orders manufactured in whole or in part, to the specifications of the Buyer, may not be cancelled, except with the Seller's written consent and on terms which will indemnify the Seller against all losses.

15. SERVICE EXCHANGE

- 15.1 Ownership of Goods returned to the Seller for the purpose of the Seller's service exchange program will revert to the Seller upon the arrival of such Goods at the Seller's warehouse.

16. ENTIRE AGREEMENT

- 16.1 This Agreement merges and incorporates the entire terms and conditions for the sale of the Goods and/or Services.
- 16.2 No modification or alteration of any provision hereof shall become valid and effective except upon a written instrument duly signed by the Seller.
- 16.3 No waiver by either party of any default of the other party shall be deemed a waiver of any subsequent or other default.

17. NO ASSIGNMENT

- 17.1 No rights of the Buyer hereunder or arising out of this Agreement may be assigned without the express written consent of the Seller.

18. ARBITRATION

- 18.1 Any dispute arising out of or in the connection with this Agreement shall be settled by arbitration in New South Wales.
- 18.2 Should the parties fail to agree on the identity of the nominated arbitrator within 15 days following demand by either of the parties, the Chairman of the local Bar Association shall appoint same within 21 days following an application by either of the parties to that end.
- 18.3 This provision shall survive any termination or cancellation of any of the terms and conditions herein and shall be regarded as a separate and independent arbitration agreement between the Buyer and Seller for all purposes and intents in connection with the subject matter specified on the face of the Tax Invoice.

19. LAW & JURISDICTION

- 19.1 This Agreement is enforceable both within and outside of Australia and is governed by the laws of New South Wales.
- 19.2 Any disputes will be subject to the jurisdiction of the courts in New South Wales, whether the Agreement is domestic or international.

20. EXPORT COMPLIANCE

- 20.1 The Buyer shall comply with all applicable laws, rules, and regulations with respect to, but not limited to, the use of the Goods.
- 20.2 The Buyer expressly agrees to abide by all applicable foreign export restrictions or similar rules.
- 20.3 The Buyer shall not transfer, export or re-export any of the Goods.
- 20.4 The Seller shall be under no obligation to notify the Buyer of any changes or updates to any laws, regulations, controls, restrictions or lists contemplated.
- 20.5 The Buyer shall immediately inform the Seller of any export restrictions.

21. INTELLECTUAL PROPERTY

- 21.1 The intellectual property and design elements of the Goods and/or Services purchased by the consumer remain the property of the Seller.
- 21.2 "Intellectual Property" shall mean any and all the Seller's (Lessor's) copyrights, patents, trade names, logos, software, documentation, technical and manufacturing techniques, concepts, methods, designs, specifications and other proprietary information relating to the Goods and/or Services.