

STANDARD TERMS & CONDITIONS OF SALE

Effective 1 May 2009

BEAVER MINING SUPPLIES PTY LTD
ABN 86 009 394 521

Unless Beaver Mining Supplies Pty Ltd ABN 86 009 394 521 agree in writing that other terms and conditions apply to any particular sale or supply, all orders by Customers are accepted subject to the following terms and conditions.

1. Definitions and interpretation

In these conditions:

- (a) **Conditions** means these terms and conditions of sale.
- (b) **Contract** means a binding agreement between the Supplier and the Customer for the supply of Goods to which these Conditions apply.
- (c) **Customer** means the party who purchases or has agreed to purchase the Goods. Where more than one person is a party hereto, the word "Customer" will be read as "Customers" and this Contract will bind each of the Customers jointly and severally.
- (d) **Goods** means the goods and/or services the subject of the Contract supplied by the Supplier.
- (e) **GST** means the goods and services tax as imposed by A New Tax System (Goods and Services Tax) Act 1999.
- (f) **Supplier** means Beaver Mining Supplies Pty Ltd ABN 86 009 394 521.

2. General

- (a) These Conditions will apply to every Contract made by the Supplier unless otherwise agreed in writing by the Supplier, and no amendment will be effective unless it is in writing signed by both the Supplier and the Customer.
- (b) The Customer will be deemed to have accepted these Conditions if the Customer:
 - (i) Communicates (by writing or conduct) to the Supplier its acceptance of the Supplier's written quotation;
 - (ii) Provides to the Supplier delivery instructions for the Goods; or
 - (iii) Accepts the delivery, or part delivery, of the Goods.
- (c) The Customer agrees that it does not rely on the skill or judgement of any employee or agent of the Supplier in relation to the suitability, capabilities or performance of the Goods for a particular purpose unless indicated expressly in writing by the Supplier to the Customer.
- (d) All designs, specifications, colours illustrations, sketches, drawings and diagrams, descriptions, recommendations or suggestions submitted by the Supplier or contained in the Supplier's catalogues, brochures, price lists, trade literature and other published matter are of a generally informative nature and approximate only and none of these form part of any contract or give rise to any independent or collateral liability of any nature on the part of the Supplier.
- (e) No Contract will be a sale by sample unless the Supplier expressly agrees in writing.

3. Supplier's quotation

- (a) The Supplier may revoke, withdraw or vary a written quotation at any time prior to the Customer submitting an order which accepts the offer to sell comprised by the written quotation, in the event of any increase of the cost to the Supplier of supplying the Goods.
- (b) Unless previously withdrawn, a written quotation issued by the Supplier remains open for the placing of orders for 28 days from the date of issue.

4. Purchase price

- (a) Unless otherwise agreed the purchase price for Goods delivered within Australia:
 - (i) Excludes delivery of the Goods to the Customer; and
 - (ii) Is strictly net and excludes any GST payable on the supply of the Goods.
- (b) Notwithstanding any provision in the Contract, the Supplier may at its absolute discretion increase the price of the Goods prior to delivery if the price of any inputs which comprise whole or part of the Goods increases.
- (c) The Customer is not entitled to make any deduction from the price of the Goods in respect of any set-off or counterclaims whether arising out of this or any other contract nor will the Customer have an equitable right of set-off.
- (d) The Supplier shall be entitled to bring an action for the recovery of the price of the Goods whether or not title in the Goods has passed.

5. Delivery

- (a) Delivery of Goods to the Customer will be deemed to be effective when the Goods are:
 - (i) Delivered to an authorised carrier for delivery to the Customer;
 - (ii) Delivered to a place stipulated as the place of delivery by the Customer; or
 - (iii) Collected by the Customer from the premises of the Supplier.
- (b) The Supplier shall not be liable on any basis whatsoever for any loss or damage to the Goods occurring after delivery is effective in accordance with Condition 5(a).
- (c) Any delivery time agreed between the Customer and the Supplier is an estimate only and not a term or condition of the Contract.
- (d) The Supplier is not liable to the Customer or the Customer's customers for the consequences of any delay in delivery.
- (e) The Supplier may make partial deliveries of the Goods by instalments and these Conditions will apply to each partial delivery.
- (f) Any claim for non-delivery of Goods must be notified to the Supplier within 21 days of the date of the invoice or the date of despatch, whichever is later.

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6. Payment and credit

- (a) All Goods supplied by the Supplier must be paid for in full by the Customer no later than 30 days from the end of the month from the date of invoice (**Due Date**) without rebate or claim for set-off.
- (b) The Supplier reserves the right to vary the terms of payment and to require payment in cash in full prior to delivery should the credit worthiness of the Customer at any time become in the Supplier's opinion unsatisfactory.
- (c) Time for payment is of the essence and the Supplier may deem a failure to pay as a repudiation of the Contract by the Customer.

7. Interest

- (a) If the Customer fails to pay the purchase price on the Due Date, in addition to any other right pursuant to these Conditions or at law, the Supplier will be entitled to interest on the outstanding amount accruing daily.
- (b) The rate of interest is 3% above the rate per annum certified by the Supplier's banker for the time being to correspond to that bank's reference, base or indicator rate for unsecured overdrafts in excess of \$10,000.

8. Retention of title

- (a) Legal and equitable title to the Goods is retained by the Supplier until full payment of all money owing by the Customer has been paid or title is properly vested in some other person by the operation of any statute.
- (b) Until title in the Goods passes to the Customer, the Customer holds the Goods as bailee and fiduciary agent of the Supplier, and the Customer agrees to accept this appointment.
- (c) The Supplier may at any time until title in the Goods passes to the Customer require that the Goods to be returned to the Supplier. The Supplier has the power to:
 - (i) Enter the Customer's premises and retake possession of the Goods without liability for trespass; and
 - (ii) Keep or resell any Goods repossessed under this Condition without prejudicing any legal rights the Supplier may have against the Customer.
 - (iii) Until title to the Goods passes to the Customer, the Customer must keep the Goods free from any charge, fee or other encumbrance whatsoever.
 - (iv) Until title to the Goods passes to the Customer, the Customer must:
 - (v) Mark the Goods conspicuously as being the property of the Supplier and ensure that any such markings are not removed; and
 - (vi) Promptly, upon request of the Supplier, identify and display the Supplier's Goods to the Supplier or the Supplier's representative.
- (d) The Supplier or the Supplier's nominee will, at any time until payment in full has been made by the Customer, have full access to all the books of accounts and the documents and papers of the Customer relating to any of the following:
 - (i) The Customer's dealings with the Supplier;
 - (ii) The Customer's dealings with the Goods; and
 - (iii) The Customer's dealings with the proceeds of sale of the Goods.

9. Resale

- (a) The Customer may agree to re-sell any Goods in its possession in the ordinary course of trading, notwithstanding that the Goods are the property of the Supplier, provided the Supplier has not required the return of the Goods under Condition 9 and provided none of the events mentioned in Condition 16 has occurred.
- (b) In the event of a sale of Goods in accordance with Condition 10(a), the Customer will hold all proceeds from the sale on trust for the Supplier until such time as all money owing by the Customer to the Supplier has been paid in full.

10. Risk

- (a) Risk in the Goods passes to the Customer on delivery in accordance with Condition 5(a). Accordingly, the Customer is responsible for any risk to Goods under the control of the Customer that are still the property of the Supplier.
- (b) The Customer must insure against the risk outlined in Condition 11(a) and will:
 - (i) Keep the Goods in the same condition as that in which they were delivered;
 - (ii) Make good any damage or deterioration; and
 - (iii) Claim under any such insurance made pursuant to this Condition as reasonably required by the Supplier.

11. Warranty

- (a) The Supplier will, at its option, refund the purchase price, replace the Goods or issue credit for the purchase price to the Customer for any goods found to be defective by reason of faulty materials or poor workmanship provided that:
 - (i) The Supplier is notified in writing within 7 days of the discovery of any defects by the Customer and in any event not later than 14 days from the date of delivery;
 - (ii) The defective Goods are returned to the place nominated by the Supplier, at the expense of the Customer; and
 - (iii) Examination by the Supplier of the Goods establishes to the Supplier's satisfaction that defects exist and have not been caused by misuse, neglect, alteration, accident or abnormal conditions.
- (iv) Any warranty contained in Condition 12(a) is in addition to any warranty that is implied by the Trade Practices Act 1974 (Cth) that cannot be excluded from these Conditions.

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12. Exclusion of liability

- (a) Save as provided in these Conditions the Supplier is not liable for any indirect or consequential loss or damage of any kind however caused. All conditions, warranties or other terms express, implied, statutory or otherwise are excluded from these Conditions.
- (b) If Condition 13(a) above is held to be wholly or partly ineffective:
 - (i) The Supplier shall not be liable on any claim for damages for any such breach where the claim is not made in writing and notified to the Supplier within fourteen (14) days of the date of delivery of the Goods or within seven (7) days after the Customer learns of the facts giving rise to the claim, whichever first occurs; and
 - (ii) The Customer's claim is limited to the reasonable cost of remedying the breach, provided that the Supplier will first be afforded the opportunity to carry out the remedial work itself.

13. Force majeure

- (a) The Supplier is not liable for any delay in performance or for non-performance in whole or in part of its obligations under the Contract directly or indirectly resulting from causes beyond the control either of the Supplier or of the Supplier's suppliers.
- (b) If an event occurs as outlined in Condition 14(a) the Supplier may without liability cancel or vary the terms of the Contract including, but not limited to, extending the time for performing the Contract.

14. Indemnity

- (a) The Customer indemnifies the Supplier against any costs, claims, demands, expenses, penalties or liability which the Supplier may pay or incur arising out of or in connection with the use, processing, storage or sale of the Goods.

15. Breach and Customer's insolvency

- (a) The Supplier may determine the Contract, without prejudice to any other claim or action against the Customer, if:
 - (i) The Customer defaults in, or commits a breach of, any of its obligations to the Supplier;
 - (ii) The Customer enters into any negotiations for an arrangement or composition with its creditors;
 - (iii) The Customer commits any act of bankruptcy or if any petition in bankruptcy is presented against it;
 - (iv) Any resolution is proposed or petition presented to appoint a liquidator or provisional liquidator of the Customer;
 - (v) A receiver of the Customer's assets or undertaking, in whole or in part, is appointed;
 - (vi) A "controller" (as defined in section 9 of the Corporations Act 2001 (Cth)), manager, trustee, administrator or similar officer is appointed in respect of the Customer or any asset of the Customer; or
 - (vii) The Customer is deemed to be unable to pay its debts within the meaning of Section 460(2) of the Corporations Act 2001 (Cth).

16. Cancellation of order

- (a) The Customer may not terminate the Contract by cancelling any order except with the written consent of the Supplier and on terms which will indemnify the Supplier against all losses.

17. Assignment

- (a) The Customer must not assign or transfer or purport to assign or transfer the Contract or any benefit under the Contract to any person.

18. Waiver

- (a) The Supplier can only waive a right or obligation under this Contract by written notice to the Customer.

19. Variation

- (a) The Supplier may vary the Conditions at any time without notice to the Customer.

20. Sub-contract

- (a) The Supplier has the right to sub-contract the performance of the Contract in whole or in part.

21. Jurisdiction

- (a) All Contracts will be construed in accordance with the law of Western Australia.
- (b) Any disputes arising under a Contract are to be determined by the Courts of Western Australia.

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