



INNOVATIVE MINING SYSTEMS
GENERAL TERMS & CONDITIONS

TERMS & CONDITIONS

INTRODUCTION

- a) These terms and conditions of sale set out the agreement ("Contract") between you the purchaser ("Purchaser") and Innovative Mining Services Pty Ltd and its wholly owned and controlled subsidiaries ("IMS") throughout the World when you purchase Goods from IMS;
- b) The Goods and Services offered and supplied by IMS are subject to the terms and conditions of sale set-out below and any additional terms in an accepted quotation/proposal issued by IMS;
- c) Any terms and conditions issued by IMS in a quotation shall take precedent to the extent of any inconsistency with this Contract, but all other general terms and conditions of sale shall prevail;
- d) the issue of a purchase order, invoice or associated document to IMS unconditionally binds the Purchaser to this Contract in its entirety and without alteration;
- e) these terms and conditions can only be altered or amended by written agreement between the authorised representatives of IMS and the Purchaser; and
- f) this Contract will be construed and interpreted in accordance with the laws of Western Australia and the parties submit to the exclusive jurisdiction of the courts of that State.

PAYMENT

- a) The quotation, purchase order and invoice shall specify the progress payment milestones according to the following payment schedule:
 - i) 100% - on delivery;
 - ii) Negotiated alternative payment terms
- b) Payment, unless otherwise specified on quotation and invoice, must be made within 30 days from the date of the invoice;
- c) If payment is not made on or before the due date, IMS may withhold supply or service; and charge interest on all amounts owing by the Purchaser to IMS on a daily basis at a rate equal to 3% per month; and
- d) payment shall become immediately due if the Purchaser makes default in paying IMS or if the Purchaser performs an act of administration or becomes bankrupt or commits any act of bankruptcy or compounds with its creditors or has judgement entered against it in any court or, being a company, an administrator, a provisional liquidator/liquidator, receiver and/or manager appointed.

PRICING

Subject to any arrangements agreed and confirmed in writing with IMS, any price provided to the Purchaser by IMS are:

- a) valid for thirty (30) calendar days from the date of quotation by IMS;
- b) IMS may increase the price for any quotation that is not accepted by the Purchaser by within the 30 day validity period;
- c) unless otherwise stated all prices quoted by IMS are net, exclusive of any relevant in country Goods and Services Tax (GST) and/or Value Added Tax (VAT) and/or any other taxes and duties levied on supplies;
- d) IMS shall be eligible to claim a price adjustment to any Contract price due to any force majeure event; and
- e) both parties shall be eligible to claim a price adjustment in accordance with an agreed rise and fall mechanism.

TITLE

- a) Until full payment has been made by the Purchaser for any Goods purchased from IMS covered by this agreement, and any other sums whatsoever outstanding from the Purchaser to IMS from time to time covered by this agreement, IMS shall retain title of the Goods;
- b) The property in the Goods shall not pass to the Purchaser and the Purchaser shall keep the Goods as bailee for IMS (returning the same to IMS upon request). The Goods shall nevertheless be at risk of the Purchaser from the time of delivery;
- c) IMS is irrevocably authorised to enter any premises where the Goods are kept (without liability for trespass or any resulting damage), and to use the name of the Purchaser and to act on its behalf, if necessary, to recover possession of the Goods;
- d) IMS may recover possession of Goods supplied to the value of monies outstanding to IMS;
- e) Pending payment in full for the Goods, the Purchaser must not:
 - i) supply any of the Goods to any person outside of its ordinary or usual course of business;
 - ii) must not allow any person to have or acquire any security interest in the Goods; and
 - iii) must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the buyer carries on business;
- iv) Despite (b.) above, if the Purchaser supplies any of the Goods to any person before all moneys

payable by the Purchaser have been paid to IMS, the Purchaser agrees that:

- f) it holds the proceeds of re-supply of the Goods on trust for and as agent for IMS immediately when they are receivable or are received; and
- g) it must either pay the amount of the proceeds of re-supply to IMS immediately when they are received or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for IMS.

DELIVERY & RISK

Risk and liability for insurance for Goods in transit will be determined by the relevant INCOTERMS2020 specified in the quotation and purchase order. The delivery schedule is from receipt of PO referencing the proposal number and mutually agreed terms and conditions.

CLAIMS

All claims, in relation to Goods and Services (other than those for a breach of a condition) must be made in writing within 7 days of delivery.

RETURNS

No Returns other than those permitted for a breach of a condition or warranty will be accepted without a return authorisation from IMS, and the original invoice or delivery docket no. and serial number, where applicable, must be quoted on all correspondence. The requirements of this clause operate to the fullest extent permitted by law.

CANCELLATION

In the event of cancellation by the Purchaser, the Purchaser is liable to compensate IMS for the full value (price) of all work performed / expense incurred at the time of cancellation. Compensation will reflect all direct and indirect costs as well as the associated sales margin i.e. price. ("Cancellation Costs").

TERMINATION

IMS may immediately terminate the Contract without penalty by written notice should the Purchaser:

- a) fail to perform or breaches any term of this Agreement and does not remedy that breach within 14 days of receiving notice;
- b) the Purchaser ceases to carry on business;
- c) to the extent permitted by law, IMS reasonably suspects the Purchaser is unable to pay its debts;
- d) the Purchaser is involved in insolvency proceedings or processes (including but not limited to liquidation, provisional liquidation, administration, having a receiver or manager appointed, being taken under S459F(1) of the

Corporations Act 2001 (Cth) to have failed to comply with a statutory demand;

- e) IMS may terminate the Contract for convenience by providing 15 days written notice, and refund the Purchaser for any payments for incomplete Services; and
- f) accrued rights or remedies are not affected by termination.

WARRANTY

a) IMS Engineering Limited and its wholly owned and controlled subsidiaries ("IMS") warrants that the Goods and Services supplied are free from material defect in materials, design and workmanship, and in conformity with the technical specifications detailed in the product design documentation;

b) IMS's warranty service work is offered in accordance with IMS's standard warranty terms and conditions are available on request;

c) This warranty applies for:

- i) All IMS Manufactured Product, a period of 6 months from date of delivery or installation, when installed by IMS or its duly authorized agent/s and such installation forming part of the agreed purchase price of the product;
- ii) all other IMS Designed Product, a period of 6 months from date of delivery;
- iii) IMS Spare Parts, 3 months from date of invoice, not including third-party sourced parts; and
- iv) IMS Repairs, 3 months from date of final invoice, subject to the Product being repaired not being fatigued, stressed by age or operation in any way;

d) For the purposes of this warranty "delivery" shall be defined by the INCO Term agreed between IMS and the Purchaser at the time of placing the purchase order;

e) A reference to Product/s in these warranty terms and conditions does not include Purchaser sourced and supplied components forming a part of the Product; and

f) The benefits to the Purchaser given by the warranties set out in this clause are in addition to other rights and remedies of the Purchaser under relevant legislation applicable to the territory in which the Product is supplied.

SPECIFICATIONS

a) Specifications, including but not limited to drawings, sketches, illustrations, measurements, etc, provided or published by IMS on the website, brochures, email, quotation, tender submission or any other means of conveyance whatsoever are to be regarded as approximate representations only and IMS will not be

liable for any errors, omissions, correctness, accuracies or completeness, nor any claim or damages arising from the Purchaser's reliance on such representations, until both parties have approved in writing the proposal directly relevant to the purchase order;

b) IMS prepares the Specifications and Drawings based on information provided by the Purchaser, or their agents published information, and, where applicable, IMS's own inspection and measurement of the relevant equipment for which Goods are to be manufactured or Services supplied. The Purchaser shall indemnify and hold IMS harmless from any errors, omissions, incorrectness, inaccuracies or incompleteness of any such information provided by the Purchaser or the OEM Manufacturer of the equipment;

c) The Customer is responsible for providing IMS with accurate measurements of all fitment points, to enable the design of the IMS product intended to be fitted, including any potential obstruction, interference or hinderance to the fitment and operation of the IMS product on the host equipment; and

d) The Purchaser agrees that IMS reserves the right to amend or alter the specifications and the price of the Goods and/or Services to be supplied in the following instances:

- i) the Purchaser requires a change or alteration to the specification after acceptance of IMS's quotation or acceptance of the Purchaser's purchase order;
- ii) the Purchaser provides incorrect, inaccurate or incomplete information; and

LIABILITY

a) IMS's liability for a breach of a condition or warranty implied for the Goods or Services supplied under this Contract is limited to, the fullest extent permitted by the law in each jurisdiction, is limited at IMS's discretion to:

- 1) in the case of Goods, any one or more of the following:
 - i) the replacement of the Goods or the supply of equivalent Goods;
 - ii) the repair of the Goods;
 - iii) the payment of the cost of having the Goods repaired; or
 - iv) the payment of the cost of replacing the Goods. Goods

2) in the case of Services:

- i) the supplying of the Services again; or
- ii) the payment of the cost of having the Services supplied again, whichever is the lowest amount

b) in the case of late delivery, IMS will not be liable to the Purchaser for any loss whatsoever, including delay damages, delay penalties, liquidated damages, or performance guarantees;

c) in the case of consequential loss, IMS shall not be liable to the Purchaser, at law, equity, statute or otherwise; and

d) in the case of limitation of liability, notwithstanding anything to the contrary in these conditions of elsewhere in the Contract, IMS's maximum liability to the full extent permitted by law is limited to 3% of the purchase order value.

INDEMNITY

The Purchaser shall indemnify and hold harmless IMS and its subsidiaries and its respective officers, agents, employees and Contractors (Indemnitee(s)) from and against all expenses, costs, charges, taxes, fees, damages, penalties, liabilities, claims, and losses, to the full extent permitted by the law, as a result of:

- a) Injury or death of any person;
- b) Damage to or destruction to property;
- c) Breach of the Contract by the Purchaser or its affiliates; and
- d) Use of the Goods or any modification to the Goods not authorised or recommended by IMS, contrary to any applicable law, and not in accordance with the safe operating practices for the Goods.

PURCHASERS LIABILITY

a) Purchaser will remain liable for all Goods supplied by IMS to the Purchaser notwithstanding any change in the proprietorship of such Purchaser until such change has been notified to and accepted by IMS and the said proprietor(s) expressly released from their obligations hereunder.

COMPLIANCE

a) The Goods to be supplied by IMS must not be exported, reexported or transhipped in violation of any applicable export control laws and regulations promulgated and administered by the government of the country claiming jurisdiction over the parties or transactions. The Goods to be supplied by IMS must not knowingly be applied in the design, development, production, stockpiling or use of the weapons of mass destruction, such as nuclear, chemical and biological weapons or missiles to deliver any such weapons, nor for

any use supporting these weapons activities. The Purchaser further certifies that these Goods will not be sold or disposed of to any party intending to use the products and/or technologies for any purpose or activity specified above.

CONFIDENTIALITY

The Purchaser must:

- a) keep confidential, and not use or disclose, any Confidential Information, except as permitted by this Contract;
- b) immediately notify the Purchaser if it becomes aware of any loss or unauthorised use, access, copying or disclosure of any Confidential Information;
- c) use Confidential Information only for the purposes of performing the relevant obligations or exercising the relevant rights arising under or pursuant to this Contract;
- d) disclose Confidential Information only to its employees, directors and officers who have a specific need to access that Confidential Information, but then only to the extent they need for the purpose of performing the relevant obligations or exercising the relevant rights arising under or pursuant to this Contract; and
- e) The obligations in this clause do not apply to:
 - i) any disclosure of information to legal advisers or accountants who are under a duty of confidence;
 - ii) any disclosure made with the Purchaser's prior written consent, which can be withheld in its discretion and may be given subject to conditions;
 - iii) any disclosure required by Law (including any purchase order of a court of competent jurisdiction) or the rules of any stock exchange or statutory duty; and
 - iv) information which is, at the relevant time, in the public domain other than as a result of a breach of confidence.

INTELLECTUAL PROPERTY (IP) RIGHTS

a) means all existing and future intellectual property rights of IMS throughout the world, whether registered or unregistered, including (but not limited to) patents, copyright, circuit layouts, registered designs, trademarks or service marks, logos, brands, trade, business or company names, indication of source or appellation of origin, trade secrets, ideas, concepts, source code, materials, know-how and techniques, Confidential Information, and any application or right to apply for registration of, or to assert or waive, any of the rights referred to here (other than provided by the Purchaser to IMS); and

b) Where IP rights are expressly granted in writing by IMS, the following clauses apply:

- i) IMS grants the Purchaser a limited, perpetual, non-exclusive, non-transferable, revocable, royalty-free license to use the IP disclosed and provided by the IMS for the sole purpose of using the Goods as intended for such period as the Purchaser owns and operates the Goods;
- ii) The Purchaser may only use IP for the operation, maintenance and repair of the Goods and IMS accepts no liability whatsoever for any other use. The Purchaser must not upgrade or modify the Goods and IP in any way, including decompile, copy, disassemble, reverse engineer or derive software source code or otherwise do anything which conflicts with the licensed use of the IP provided under this clause; and
- iii) The Purchaser agrees to indemnify IMS for any loss or damage, or any commercial undertaking the Purchaser or associated third party make, from the breach of this clause

FORCE MAJEURE

a) Neither Party shall be liable for any failure or delay of performance of this agreement if such failure or delay is due to circumstances beyond the reasonable control and not due to fault or negligence of that Party, including such causes as acts of God, flood, fire, explosion, strikes, lockouts, riots, civil commotion, war, accident, epidemics, breakdown of machinery, perils of the sea, lack of shipping or shipping space; delay or interruption to road, rail, and sea transportation; delays in quarantine and clearance approvals; default by Contractors or sub-Contractors; disruption to supply of electrical power or fuel; direction of any government or semi-governmental body or authority; or any other event that is beyond the control or not caused by the Party's fault or negligence, as the case may be, but excluding any unavailability of or delay in ability to access or transfer money. (Force Majeure Event);

b) The existence of a Force Majeure Event shall promptly be communicated in writing by the Party affected thereby to the other party, in any case, within 10 days of becoming aware of the event. Such party may then require and shall thereupon receive adequate substantiating evidence as to the existence and effect of such Force Majeure Event and thereafter the time for performance of this agreement or so much thereof as cannot be performed in consequence of the Force Majeure Event shall be extended for a period equivalent to the period for which the Force Majeure Event continues to exist;

c) If a Force Majeure Event subsists for a period of 60 consecutive days, either Party may request renegotiation of this agreement to amend such provisions of this agreement (i.e. price and delivery) as have become

inequitable by reason of the continued subsistence of that Force Majeure Event and such renegotiation shall be conducted in good faith by the Parties; and

d) If the Parties fail to reach agreement within 14 days, IMS may terminate this agreement by giving notice to the Purchaser.

GENERAL





a) The terms and conditions of this Contract take precedence and supersede all other discussions, representations, arrangements written or oral, without limitation, including any terms, conditions or qualifications provided by the Purchaser in the purchase order, unless specified in IMS's quotation or expressly agreed and authorised in writing by authorised representative of IMS before IMS's acceptance of the purchase order;

b) If any term or condition is altered, amended or removed from this Contract, the remaining terms and conditions of the Contract will remain in force, and the amended Contract terms, conditions, and incorporated schedule will form the whole and complete Contract;

c) In carrying out its obligations under this Contract, each party is acting as an independent Contractor to the other party. Nothing in this Contract creates a partnership, trust or agency between the parties or imposes any fiduciary duties on either party in relation to the other, unless expressly stated; and

d) The United Nations Convention on Contracts for the International Sales of Goods (1980) does not apply to this Contract.



-  13000 MINING (1300 064 646)
-  info@innovativemining.com.au
-  www.innovativemining.com.au
-  38 Boulder Road, Malaga WA 6090

