



The Customer (**You**) applies for a credit account from **DMS MINING SERVICES PTY LTD ABN 80 144 047 263 (DMS)** and submits the following information:

**1. CUSTOMER'S ACCOUNT DETAILS**

Account name to be used:

Are you:            a corporation             partnership             sole trader             trust             government

Business/Company Name:

ABN             ACN             ARBN

Trading Name:

Business Address:  State  Postcode

Postal Address:  State  Postcode

Delivery Address:  State  Postcode

Telephone:  ( )            Facsimile:  ( )            Mobile:

Email address for invoices:

Date commenced business:  Nature of business:

**2. CUSTOMER'S CREDIT DETAILS**

Bank:             BSB:             Account Number:

Credit requested (monthly) \$

Trade References (x3):

Business Name:	Contact Person:	Phone:
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

**3. FULL NAME OF SOLE TRADER, PARTNERS, TRUSTEES AND DIRECTORS**

Partners or Directors	Residential Address	Phone	DOB
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**4. TERMS AND CONDITIONS OF CREDIT**

- 1) The Customer (**You**) warrants that the information provided above is accurate, correct and complete at the time it was completed, and is supplied for the purpose of obtaining credit. In the event that there is any change to the information provided above, the Customer undertakes to advise DMS of the change immediately.
- 2) The Customer agrees that it is not entitled to any credit facilities until it receives notice in writing from DMS stating that credit facilities have been approved. Until the Customer receives such notice, any goods or services that are supplied by DMS to the Customer shall be on basis of cash up front, prior to the provision of such goods or services.
- 3) The Customer also agrees that the approved credit limit is a maximum limit which covers all current and outstanding invoices. Should the aggregate of these amounts reach the approved maximum credit limit, then any amounts exceeding this limit are strictly on cash up front basis.
- 4) The Customer can re-apply to extend or reduce the credit limit at anytime in writing. However, DMS may, without assigning any reason, refuse to extend any further credit to the Customer.
- 5) In the event of DMS granting credit facilities to the Customer then:-
  - a) All accounts are to be settled in full within 14 days from the date of invoice. Credit facilities may be suspended if payment is not made in accordance with those agreed trading terms.
  - b) Should the Customer default in making any payment in accordance with the agreed trading terms, then all monies due to DMS shall immediately become due and payable. DMS shall be entitled to and may charge interest at the rate of 2.5% per calendar month on all overdue amounts from the due date for payment until the date of actual payment.
  - c) A dishonour fee of \$25.00 shall be payable by the Customer in respect to each presentation of a cheque received from the Customer, which is not honoured upon presentation.
  - d) Any expenses and/or costs or disbursements incurred by DMS in recovering any outstanding monies including debt

- collection, agency fees, administration fees and legal costs (on a full indemnity basis) shall be paid by the Customer.
- e) It is expressly understood and agreed that this credit arrangement may be terminated at any time by DMS. In that event, all monies owing to DMS will be immediately due and payable.
  - f) DMS may at any stage during the continuance of the credit arrangement impose as a condition precedent to the grant of further credit, that the Customer give such security or additional security as DMS shall in its discretion think fit. DMS shall be entitled to withhold supply of goods, services or further credit until such security or additional security is obtained.
  - g) Should your account be outstanding in excess 60 days, DMS may elect not to take any further orders until your account is brought back into normal trading terms (14-Days).
  - h) DMS, at its absolute discretion, may suspend the provision of goods or services at anytime should DMS believe the Customer is unable or unwilling to make further payments, or may amend the credit limit until further notice.
  - i) DMS may vary all or any of the terms of credit by notifying the Customer, which notice may be endorsed on any invoice, statement, correspondence or other document as provided by DMS to the Customer.
- 6) Notwithstanding any delivery or passing of possession of the goods to the Customer, title in the goods shall remain solely and absolutely vested in DMS until such time as payment in full for all goods has been received by DMS.
  - 7) You represent to DMS that you are not aware of any information, notice or court proceedings that may lead to bankruptcy, appointment of an administrator, controller or managing controller, receiver or receiver manager or liquidator. You do not intend to enter into any scheme of arrangement with creditors either formally through a court or otherwise. None of the directors, partners or sole traders has been a director of a Company which was placed in liquidation or has been declared bankrupt or has entered into an arrangement under the *Bankruptcy Act 1966* (as amended).
  - 8) Should the Customer, as a result of an internal restructure or otherwise, change its legal status, incorporate, or permit any changes in its ownership (and in the case of a company sell, transfer or assign more than 15% of its share holding), then DMS may require the Customer to make a further application for credit, and enter into new terms and conditions of sale/hire as are current at that time.
  - 9) DMS may at any time set-off amounts owed by DMS to the Customer from the amounts owed by the Customer to DMS.
  - 10) The laws applicable to this credit arrangement are the laws of the state of Queensland.

## 5. STANDARD CONDITIONS OF SALE AND HIRE

DMS' Standard Conditions of Sale and Standard Conditions of Hire (**Conditions**) are attached with this Application. The Conditions are incorporated into each and every contract (**Contract**) for the supply of goods or services made between DMS and the Customer after the date that DMS agrees to provide credit to the Customer (**Acceptance Date**).

By signing this Application in the space provided in section 7, the Customer: (a) expressly acknowledges having received notice of the Conditions; (b) expressly agrees that the Conditions are incorporated into each and every Contract for the supply of goods and services made between DMS and the Customer after the Acceptance Date; and (c) expressly agree that if DMS varies the Conditions from time to time after the Acceptance Date and provides reasonable notice to the Customer of the variation, the Conditions as varied are incorporated into each and every contract for the supply of goods and services made between DMS and the Customer after the date of such notice.

Where any of the Conditions are inconsistent with the terms and conditions contained in this application, then the terms and conditions of this application shall prevail to the extent of any inconsistency.

## 6. PRIVACY AUTHORITY: INDIVIDUALS & GUARANTORS

By signing this application as a sole trader, partner, trustee, director or guarantor, I personally agree that DMS may to the extent permitted by law: (a) provide any items of my personal information described in s.18E of the *Privacy Act 1988* to a credit reporting agency; (b) obtain a consumer credit report about me from a credit reporting agency to assess my credit application or proposed guarantee or to collect overdue payments; (c) give credit worthiness information about me to a person for considering whether to act as guarantor, or to a guarantor; (d) exchange credit worthiness information about me with other credit providers to assess my credit worthiness or application for credit or to notify defaults or the status of my credit. I am aware that I may request access to my personal information held by DMS.

## 7. SIGNATURES OF SOLE TRADER, ALL PARTNERS, DIRECTORS & TRUSTEES (required for all applications)

	1	2	3	4
Signature	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Position	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Date	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

THIS APPLICATION FOR CREDIT SHOULD BE WITNESSED BY AN INDEPENDENT THIRD PARTY

Witness Signature	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Witness Name	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Witness Address	<input type="text"/>			

## 8. GUARANTEE & INDEMNITY

In consideration of DMS (as defined on page 1 of this credit account application) agreeing to supply or continue to supply goods and services on credit to the Customer named below and forbearing to sue the Customer (except where provided for by any statutory provision) for any payment currently due to DMS, each guarantor named below (the **Guarantor**) unconditionally and irrevocably guarantees on demand to DMS the due and punctual payment of all debts and monetary liabilities, including without limitation, costs and expenses which are, or which may become, payable by the Customer to DMS or any related body corporate on any account and in any capacity (the **Guaranteed Moneys**) and, as a separate and independent obligation, agrees to indemnify and keep DMS and any related party indemnified from and against any claim, action, loss, damage, liability, cost, expense, outgoing or payment suffered, paid or incurred by DMS or such related body corporate in relation to the non-payment or non-recovery of the Guaranteed Moneys or as a result of any breach by the Customer of the Conditions and the conditions of credit herein. and further:

- 1) this guarantee and indemnity (the **Guarantee**) shall be a continuing obligation of the Guarantor and that the Guarantor's obligations under this Guarantee are principal obligations and are not released, discharged or otherwise affected by anything which but for this provisions;
- 2) the Guarantor irrevocably appoints DMS as the Guarantor's attorney with authority to do on behalf of the Guarantor anything the Guarantor may authorise an attorney to do;
- 3) the Guarantor agrees that a certificate issued by DMS stating any moneys owed by the Customer or Guarantor to DMS or any related body corporate or under this Guarantee shall be conclusive evidence of such amounts owing by the Customer and Guarantor;
- 4) DMS may give the Customer more credit than the Customer has asked for in this application. DMS is not required to inform the Guarantor of the amount of credit given to the Customer at any time;
- 5) no payment shall operate to discharge or reduce a liability of the Guarantor if such payment is or becomes voidable under any law relating to bankruptcy or the winding up of companies, and no discharge or release consequent upon such payment shall discharge the liability of the Guarantor under this Guarantee;
- 6) the guarantee and indemnity contained in this Guarantee are separate and independent obligations of the Guarantor and neither limits the generality of the other;
- 7) all payments which the Guarantor is required to make under this Guarantee must be made without any set-off, counterclaim, condition or deduction and are payable on demand by DMS;
- 8) the Guarantor must fully indemnify DMS for all expenses and legal costs that DMS incurs in enforcing this Guarantee;
- 9) the Guarantor must pay all taxes, duties, fees, costs and expenses in relation to the negotiation, preparation, execution, delivery, stamping, registration and discharge of this Guarantee. The Guarantor agrees to pay the GST inclusive amount of any taxable supply made under or in connection with this Guarantee; and
- 10) in this Guarantee, 'Guarantor' means the Guarantor jointly and each person who is a Guarantor severally and their respective successors and assigns, and 'related body corporate' has the meaning in the Corporations Act and includes Diversified Mining Services Limited ACN 126 482 282 and all of its related body corporates.

This Guarantee is governed by the laws of Queensland and the Guarantor irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.

Executed as an agreement.

### GUARANTOR'S PRIVACY CONSENT

I/We have each read and agree to section 6 "Privacy Authority – Individuals & Guarantors" in this Credit Account Application.

### SIGNATURE OF GUARANTORS

All company directors where the Customer is a company, all trustees where the Customer is a trust, all partners where the Customer is a partnership must give this guarantee and indemnity.

Name of commercial credit applicant	(the <b>Customer</b> )			
	1	2	3	4
Signature	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Name	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Position	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Date	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
THIS GUARANTEE SHOULD BE WITNESSED BY AN INDEPENDENT THIRD PARTY				
Witness Signature	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Witness Name	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
Witness Address	<input type="text"/>			

IF YOU DO NOT UNDERSTAND YOUR LIABILITY UNDER THIS GUARANTEE  
YOU SHOULD SEEK INDEPENDENT LEGAL ADVICE PRIOR TO SIGNING

## 1 Definitions

In this document:

'Business Day' means a day other than a Saturday, Sunday or official holiday in Brisbane.

'Buyer' means the entity identified as such in the Purchase Order.

'Conditions of Sale' means this document.

'Consequential Loss' means any financial, economic or consequential loss (whether direct or indirect) including, but not limited to, special, indirect, exemplary or punitive damage, damage to goodwill, loss of access to markets, loss of actual or anticipated profit, income or revenue, damage to credit rating, loss of business reputation, future reputation or publicity, loss by reason of any shut-down or non-operation, increased cost of borrowing, capital or finance, loss of anticipated savings, pure economic loss, loss of use of productivity, loss of data, loss of opportunity, loss of business or contract, loss of use, expenses, delay, and any other consequential loss, whether caused by a breach of this Contract, or arising from or in connection with warranty, tort (including negligence), equity, strict liability, product liability, contribution, or statutory liability.

'Contract' means the contract between DMS and the Buyer for the supply of Services (including any Supplies) by DMS to the Buyer, which unless DMS expressly agrees in writing otherwise, comprises the Purchase Order and these Conditions of Sale.

'DMS' means DMS Mining Services Pty Ltd ABN 80 144 047 263 and any company within the DMS Group.

'DMS Group' means any Related Body Corporate of Diversified Mining Services Limited ACN 126 482 282 as defined in the *Corporations Act 2001*.

'Price' means the price for the Services (including any Supplies) identified as such in the Purchase Order or an amount calculated in accordance with the Schedule of Rates.

'Purchase Order' means the purchase order issued by DMS for the supply of the Services.

'Services' means the Services (including any Supplies) identified as such in the Purchase Order.

'Schedule of Rates' means the rates for the Services identified as such in the Purchase Order.

'Supplies' means any goods, materials or items supplied by DMS with the Services identified as such in the Purchase Order or incidental to the provision of the Services.

## 2 Quotation and contract

The Buyer acknowledges that the supply of Services by DMS to the Buyer is subject to these Conditions of Sale.

Unless the express terms of a quotation provide otherwise, no quotation issued by DMS constitutes an offer to supply Services referred to within the quotation. DMS may vary any aspect of a quotation issued by it, including any prices and these Conditions of Sale, at any time prior to the formation of a contract for the supply of Services referred to in the quotation.

Any purchase order or document submitted by the Buyer, whether proposing to include the Buyer's terms and conditions of trade or otherwise, either in anticipation or in response to any quotation of DMS will not have any affect or application to the Contract and no contract will be formed between DMS and the Buyer unless and until DMS accepts the purchase order and acknowledges this acceptance in writing to the Buyer.

The Buyer agrees that, except as expressly agreed in writing by DMS:

(a) any offer to supply Services by DMS is conditional on the Buyer's acceptance of these Conditions of Sale;

(b) any acceptance by DMS of an offer by the Buyer to acquire Services from DMS is given on the condition that the Buyer accepts these Conditions of Sale; and

(c) the Purchase Order and these Conditions of Sale constitutes the entire agreement between DMS and the Buyer; and

(d) any terms and conditions proposed by the Buyer in connection with the supply of Services by DMS are expressly excluded, including any term or condition in any prior or subsequent purchase order or communication from the Buyer.

## 3 Supply of Services

All times quoted to the Buyer for the supply of the Services are estimates only and under no circumstance is DMS liable for any loss, damage or delay arising from any late performance of the Services. For the avoidance of doubt, time is not of the essence of this Contract.

Where DMS supplies the Services by instalments and DMS fails to perform the Services by the quoted day for any one of the instalments, the Buyer cannot terminate this Contract with regard to the remaining Services to be supplied.

## 4 Prices

The Buyer must pay DMS the Price and any other amounts payable to DMS for the supply of the Services in accordance with these Conditions of Sale.

Unless DMS specifies otherwise in writing to the Buyer the Price and all prices quoted by DMS are exclusive of all taxes, levies, duties, and tariffs (whether direct or indirect).

If DMS is liable to pay any taxes, levies, duties, or tariffs in connection with the supply of any Services, the Buyer will pay DMS the amount for which it is liable.

## 5 Invoicing and payment

DMS will issue invoices to the Buyer for the Services weekly and for the Supplies monthly. Immediately upon issue of the invoices the Buyer acknowledges the amounts invoiced become a debt due by the Buyer to DMS.

The Buyer will pay DMS the amount specified in the invoices issued by DMS, without set off or deduction, within 14 days of issue of each invoice.

DMS may fax or email an invoice to the Buyer. The invoice will be deemed to be received on the date the invoice is faxed or emailed.

Where DMS has agreed in writing to payment by instalment, the Buyer must pay each instalment on the dates agreed. If the Buyer defaults in paying any instalment, the full amount of the Price will become immediately due for payment.

If any amount due by the Buyer is in arrears, the Buyer must pay, in addition to the consideration for the Services, interest on the amount in arrears at the rate 10% per annum, compounded monthly, until the full amount of the invoice, together with all accrued interest, has been paid.

If the Buyer disputes any amount purportedly owed by it to DMS under these Conditions of Sale, the Buyer must nevertheless still pay the amount of the invoice to DMS. After the dispute is resolved, if it is agreed or determined that DMS has been paid more than it was entitled to claim under these Conditions of Sale, the amount that has been agreed or determined will be paid by DMS to the Buyer within 30 days after the agreement or determination is made.

At DMS's option, DMS may require that all or some payments for Services be guaranteed by an

irrevocable bank guarantee in a form and from a financial institution acceptable to DMS. DMS will return any bank guarantee as soon as payment has been received in full.

## 6 Title and risk

Title to any Supplies provided with the Services do not pass to the Buyer until the Buyer pays DMS the full amount owed by the Buyer under these Conditions of Sale.

Risk in the Supplies will pass to the Buyer on delivery Free On Transport at DMS's premises.

## 7 Intellectual property

DMS retains all intellectual property and associated rights in the Services supplied and in any material or documents supplied with the Services.

The Buyer agrees that it has no right, title, licence or any interest whatsoever in or to any DMS's intellectual property.

## 8 Confidentiality

Each party must ensure that it and its employees, agents and subcontractors do not, without the prior written approval of the other, either during the supply of the Services or after the expiry of these Conditions of Sale, disclose or give to any person any Confidential Information of the other, except as required by law or the requirements of a stock exchange.

The Buyer and DMS are entitled to disclose Confidential Information to related bodies corporate, any joint venture in which the parties or any related bodies corporate have an interest and its professional advisers but only if disclosed under a similar duty of confidentiality.

Confidential Information means all written or oral communications, documents and other Information (whether on computer disk, visual presentation or otherwise) in relation to the Services and Supplies.

## 9 Force majeure

If DMS is directly or indirectly affected in the performance of any obligation under these Conditions of Sale by an event or circumstance which is beyond the reasonable control of DMS, DMS will not be in breach of (and, accordingly, will not be liable under) the Contract for not performing, or for the manner of its performance of, that obligation for the period of time during which and to the extent that DMS is so affected.

## 10 Warranties

The Buyer acknowledges that it has satisfied itself that the Services are suitable for the Buyer's purposes and acknowledges that it has not relied upon any warranty or representation from DMS concerning the Services.

Except as expressly set out in this Contract, DMS does not give and is not bound by or subject to any condition, term, warranty, representation or obligation in connection with this Contract or in connection with the Services, whether such condition, term, warranty, representation or obligation is implied by virtue of any statute, the common law, equity, custom or trade usage or otherwise.

This clause does not exclude, restrict or modify any condition, term, warranty, representation or obligation which is imposed under or by virtue of any applicable statute, statutory rule or regulation to the extent to which such condition, warranty, term, obligation or liability cannot lawfully be excluded, restricted or modified. If any condition, term, warranty, representation or obligation is implied in this Contract and cannot be lawfully excluded, to the extent permitted by law, the liability of DMS for breach of that condition, term, warranty, representation or obligation is limited to the cost of re-performing the Services.

DMS warrants that any Services supplied under this Contract will be performed by suitably qualified and experienced personnel exercising due care, skill and diligence. The warranty period for the Services is 6 months from the date of completion of the Services.

DMS warrants that any Supplies supplied under this Contract will conform in all material respects to the description of the Supplies included in the Purchase Order, and against failure due to defects in materials and workmanship affecting performance for the warranty period of 6 months from the date of providing the Supplies. Supplies not manufactured by DMS which are warranted separately by their respective manufacturers are not warranted by DMS and DMS will assign to the Buyer whatever rights DMS obtains under such warranties.

The Buyer acknowledges that its sole and exclusive remedy for non-conformance or defective Services is the correction of or the re-performance of the non-conforming or defective Services.

No warranty claim will be considered by DMS unless the Buyer completes DMS's Warranty Claim Form (available upon request) and submits it to DMS within the applicable warranty period but in no event later than 10 days after the Buyer discovers (or in the exercise of reasonable diligence, ought to have discovered) the failure of the Services to conform with the warranty.

The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract.

DMS will not name or note the Buyer as an additional insured or interested party in any of the policies of insurance maintained by DMS and will not waive any rights of subrogation.

## 13 Termination and cancellation

DMS may terminate the Contract:

- (a) immediately on written notice to the Buyer if the Buyer breaches any term of the Contract; or
- (b) for any reason in its absolute discretion on giving 14 days' written notice to the Buyer.

If DMS terminates this Contract in accordance with the previous paragraph, the Buyer will have no claim against DMS.

The Buyer may only terminate the Contract or cancel all or part of an order for Services with the written consent of DMS. If the Contract is terminated or an order is cancelled before commencement of the supply of the Services, the Buyer must pay to DMS an amount equal to 10% of the Price. If the Contract is terminated or an order is cancelled after commencement of the supply of the Services, the Buyer must pay to DMS the amount equal to the Price of the Services unless otherwise agreed by DMS in writing.

The Buyer agrees that it is in DMS's sole discretion whether or not DMS agrees to: terminate the Contract, cancel an order or part of an order, or reduce the amount payable by the Buyer on cancellation or termination.

## 14 Dispute resolution

If a party considers that a dispute has arisen in connection with the Contract that party must give the other party written notice detailing the nature of the dispute. Within 10 Business Days after a receipt of a notice of dispute, the dispute must be referred to the chief executive officers of the parties, or their delegates, to attempt to resolve the dispute and, failing resolution, to agree on an alternative method of resolving the dispute.

If the parties' chief executive officers, or their delegates, do not resolve the dispute, or agree to an alternative means of resolving the dispute, within 15 Business Days (or such other period as the parties may agree) after notice of the dispute is served, then either party may commence mediation by giving notice to the other party and referring the matter to an approved mediator.

The rules nominated by the approved mediator apply to any mediation under the Agreement and the parties must comply with those rules.

If 25 Business Days after notice of the dispute has been served (or such other period as the parties may agree), the parties have not resolved the dispute or agreed an alternative means of resolving the dispute either party may initiate proceedings in a court. Until such time neither party may initiate court proceedings except for: (a) any urgent injunctive or declaratory relief in relation to any matter arising under the Contract or (b) any debt due pursuant to clause 5 of these Conditions of Sale or otherwise under the Contract.

## 15 General

Unless DMS expressly agrees in writing otherwise, the Purchase Order issued by DMS, these Conditions of Sale constitute the entire agreement between DMS and the Buyer. The Contract supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties. To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, has no effect except to the extent expressly set out or incorporated by reference in this Contract.

The Contract may only be amended, altered, supplemented or cancelled with the prior written consent of DMS.

The Buyer may not assign or transfer the Buyer's rights or obligations under the Contract without DMS's prior written consent. DMS shall in its absolute discretion assign any amount owing to it by the Buyer under this Contract to any third party or third parties.

The failure of DMS to require full or partial performance of a provision of the Contract does not affect the right of DMS to require performance subsequently. A right and remedy under the Contract may only be waived or renounced, in whole or part, in writing signed by DMS. Any such waiver is effective only if supported by consideration from the Buyer and to the extent specifically set out in that waiver. A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

A clause or part of a clause of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining clauses or parts of the clause continue in force. If any clause or part of a clause is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected.

Queensland law applies to the Contract. Each party irrevocably submits to the non-exclusive jurisdiction of the courts Queensland and courts competent to hear appeals from those courts.

## 16 Interpretation

In the Contract:

- (a) a singular word includes the plural and vice versa;
- (b) a reference to a party to the Contract or any other document includes the party's successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (e) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (f) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (g) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (h) a reference to Buyer includes a corporation, joint venture, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity purchasing or ordering Goods and Services from DMS;
- (i) a reference to 'month' means calendar month; and
- (j) this document is not to be interpreted against the interests of DMS merely because it proposed this document or some provision in it or because it relies on a provision of this document to protect itself.

## 11 Liability

The Buyer indemnifies DMS and must keep DMS indemnified, from and against any and all claims, demands, suits, liabilities, causes of action, losses, expenses, damages or penalties, including without limitation court costs and legal fees, for personal injuries or property damage, to the extent caused or contributed to by the negligence or wilful misconduct of the Buyer.

Notwithstanding anything to the contrary in the Contract:

- (a) DMS will not be liable to the Buyer for any Consequential Loss;
- (b) DMS's liability under or in connection with this Contract is limited to 10% of the Price; and
- (c) to the extent permitted by law, the rights and remedies in the Contract are the sole and exclusive rights and remedies available to the Buyer in connection with this Contract and the supply or failure to supply the Services.

DMS will have all rights and remedies set out in this Contract in addition to those otherwise available at law. All such rights and remedies are cumulative. The Buyer must pay all costs and expenses paid or incurred by DMS in enforcing its rights under or in connection with this Contract and the supply of the Services including, without limitation, legal fees and court costs.

Notwithstanding that DMS may fail to deliver the Supplies to any delivery point or carry out the Services by a specified completion date, DMS is not liable to the Buyer for any damages, whether liquidated or unliquidated.

## 12 Insurance

DMS maintains for itself the following insurances:

- (a) public and product liability insurance;
- (b) professional indemnity insurance;
- (c) workers' compensation insurance; and
- (d) motor vehicle insurance.

Other insurances can be obtained by DMS at the Buyer's cost.

## 1 Definitions

In this document:

'Business Day' means a day other than a Saturday, Sunday or official holiday in Brisbane.

'Hirer' means the entity or person identified as such in the Sales Order.

'Conditions of Hire' means this document.

'Consequential Loss' means any financial, economic or consequential loss (whether direct or indirect) including, but not limited to, special, indirect, exemplary or punitive damage, damage to goodwill, loss of access to markets, loss of actual or anticipated profit, income or revenue, damage to credit rating, loss of business reputation, future reputation or publicity, loss by reason of any shut-down or non-operation, increased cost of borrowing, capital or finance, loss of anticipated savings, pure economic loss, loss of use of productivity, loss of data, loss of opportunity, loss of business or contract, loss of use, expenses, delay, and any other consequential loss, whether caused by a breach of this Contract, or arising from or in connection with warranty, tort (including negligence), equity, strict liability, product liability, contribution, or statutory liability.

'Contract' means the contract between DMS and the Hirer for the supply of Equipment (including any Services) by DMS to the Hirer, which unless DMS expressly agrees in writing otherwise, comprises the Sales Order and these Conditions of Hire.

'DMS' means DMS Mining Services Pty Ltd ABN 80 144 047 263 and any company within the DMS Group.

'DMS Group' means any Related Body Corporate of Diversified Mining Services Limited ACN 126 482 282 as defined in the *Corporations Act 2001*.

'Equipment' means the equipment described in the Sales Order and includes any and all accessories, tools, parts, manuals, and instructions.

'Hire Period' means the period from the date of pick-up or delivery until the date of return of, and accepted receipt of the Equipment by DMS, with both of these days charged as whole days. No allowance is made for public holiday periods, inclement weather, industrial action, transport delays, Equipment breakdown or government interference.

'Hire Premises' means the address, location or site identified as such in the Sales Order where the Equipment will be located during the Hire Period.

'Insolvency Event' means (a) the Hirer ceases to carry on business or ceases to be able to pay its debts as they become due, (b) any step taken by a mortgagee to take possession or dispose of the whole or part of the Hirer's assets, operations, business, (c) any step is taken to enter into any arrangement between it and its creditors, (d) any step is taken to appoint a receiver and manager, a trustee in bankruptcy, a provisional liquidator, a liquidator, an administrator or like person to the whole or part of the Hirer's assets, operations or business, (e) where the Hirer is in partnership, any step is taken to dissolve that partnership or a partner dies.

'Price' means the price for the Equipment and Services identified as such in the Sales Order or an amount calculated in accordance with the Schedule of Rates.

'Sales Order' means a sales order issued by DMS for the supply of the Equipment and Services.

'Schedule of Rates' means the rates for the Equipment or Services or both identified as such in the Sales Order.

'Services' means the supply of maintenance services for the Equipment and any other services by DMS requested by the Hirer and stated on the Sales Order.

## 2 Quotation and contract

The Hirer acknowledges that DMS owns the Equipment and the supply of Equipment by DMS to the Hirer is subject to these Conditions of Hire.

Unless the express terms of a quotation provide otherwise, no quotation issued by DMS constitutes an offer to supply Equipment referred to within the quotation. DMS may vary any aspect of a quotation issued by it, including any prices and these Conditions of Hire, at any time prior to the formation of a contract for the supply of Equipment referred to in the quotation.

Any sales order or document submitted by the Hirer whether proposing to include the Hirer's terms and conditions of trade or otherwise, either in anticipation or in response to any quotation issued by DMS will not have any affect or application to the Contract and no contract will be formed between DMS and the Hirer unless and until DMS accepts the Sales Order and acknowledges this acceptance in writing to the Hirer.

The Hirer agrees that, except as expressly agreed in writing by DMS:

- any offer to supply Equipment by DMS is conditional on the Hirer's acceptance of these Conditions of Hire;
- any acceptance by DMS of an offer by the Hirer to hire Equipment from DMS is given on the condition that the Hirer accepts these Conditions of Hire;
- the Sales Order and these Conditions of Hire constitutes the entire agreement between DMS and the Hirer; and
- any terms and conditions proposed by the Hirer in connection with the supply of Equipment by DMS are expressly excluded, including any term or condition in any prior or subsequent sales order or communication from the Hirer.

## 3 Delivery and commissioning

Unless stated otherwise in the Sales Order, the Hirer will be responsible for collecting, loading and delivering the Equipment to the Hirer's premises. Where delivery has been requested by the Hirer, the Hirer is responsible for the cost of delivery (including transport insurance) from the DMS premises to the Hirer's Premises including the cost of loading and unloading the Equipment.

A representative may be appointed by the Hirer for the sole purpose of checking the Equipment delivered at the time of delivery. If no representative is provided, the Hirer agrees that DMS may affect delivery at its absolute discretion without the necessity for a representative of the Hirer to be present but conclusive proof of receipt of the quantity, date and description of Equipment delivered, and delivery of the Equipment in good condition will be evidenced by the delivery docket. A pre hire inspection document will be used to confirm the condition of the equipment at the start of the hire. The cost of this inspection will be at the Hirer's expense.

Risk in the Equipment will pass to the Hirer from the time the Equipment is loaded at the DMS's depot until the time the Equipment is returned and unloaded at DMS's nominated depot.

## 4 Servicing and maintenance

DMS will conduct monthly or 250 engine hour servicing of the Equipment (whichever is more frequent) at the Hire Premises and at the Hirer's expense. The Hirer will make the Equipment available to DMS (or its nominee) at a safe and convenient location at the Hire Premises.

All other daily and weekly servicing, maintenance, adjustments and inspections of the Equipment will be the Hirer's responsibility, including all associated costs. The inspection, servicing and maintenance of the Equipment must be conducted strictly in accordance with the manufacturer's guidelines. The Hirer will be responsible for the cost of all ground engaging parts and consumables for the Equipment including, but not limited to, fuel, oils, lubricants, filters and other wear parts. All parts and consumables used on the Equipment must be genuine original products of the manufacturer, or as otherwise approved by the manufacturer guidelines or DMS. DMS may supply consumables and parts for the Equipment at the request of the Hirer and the Hirer will be separately invoiced for these consumables and parts. DMS provides no warranty in respect of these consumables and parts but will assign whatever warranties are provided by the manufacturers of those consumables and parts to the Hirer.

## 5 Breakdown and repair

DMS will only be responsible for the cost of replacing major parts and components required due to normal wear and tear. The Hirer will be responsible for all costs for any replacement parts or components damaged either directly or indirectly by:

- misuse, mishandling, negligent use or operation of the Equipment, including, but not limited to, use of the Equipment in extremely adverse environments causing premature failures to any parts or components;
- failure to operate the Equipment in accordance with the manufacturer's guidelines;
- failing to comply with the Hirer's obligations pursuant to clause 8 herein

DMS will not be liable in anyway whatsoever for delays in the Hirer's work or costs incurred by the Hirer including Consequential Loss through breakdown, failure or improper functioning of the Equipment. In the event that the Equipment is stood down for repairs that are not the responsibility of DMS, DMS will continue to invoice the Hirer at the agreed hire charge until the Equipment resumes work.

## 6 Return of Equipment

At the expiry of the Hire Period, the Hirer must return the Equipment to DMS at any depot in the region or State of hire nominated by DMS in writing. DMS will only accept receipt of the Equipment from the Hirer at the nominated depot during normal business hours. Return of the Equipment (including, but not limited to, the delivery and unloading of the Equipment and transport insurance) will be at the Hirer's cost.

Prior to the expiry of the Hire Period, DMS may agree to collect the Equipment if it receives from the Hirer a "pick-up" request at least two Business Days before collection is required and DMS has provided written agreement to collect the Equipment. DMS will record evidence of the request for pick-up on an 'advice to pick-up' register. The Hirer must record an identifying pick-up advice number to evidence its request.

The loading of Equipment to be collected by DMS is the responsibility of the Hirer and prior to collection, the Hirer must ensure the Equipment is in the same condition (including any necessary cleaning) as it was at the commencement of the Hire, fair wear and tear excepted. If it is not in the same condition, DMS will put the Equipment in such condition at the cost of the Hirer and will be a debt owing by the Hirer to DMS.

DMS retains the discretion to continue to charge the Hirer hire costs until the Equipment is returned in a clean, safe and undamaged condition or any such failure is rectified by the Hirer.

## 7 Post hire inspection

Upon return of the Equipment to DMS, a joint inspection of the Equipment will be conducted by representatives from DMS and the Hirer to document any damage to the Equipment at the completion of the Hire Period (excluding fair wear and tear) and the final condition of all parts, consumables and components of the Equipment. In the absence of a representative of the Hirer, the return docket will be conclusive evidence as to any damage to, condition of, or missing part or component of the Equipment. The post hire inspection document will be used to confirm the condition of the Equipment at the end of the hire but this is subject to a more detailed inspection at a DMS or appointed agent's depot. The cost of this inspection will be at the Hirers cost and expense.

The costs of repairing any damage found during or subsequent to the post hire inspection and all costs of DMS in replacing all components, consumables and wear parts to return the Equipment to the condition it was in at the commencement of the hire, will be added to DMS's invoice to the Hirer and will be a debt owing by the Hirer to DMS.

## 8 Hirer's Obligations

The Hirer will:

- prior to use of the Equipment, satisfy itself as to its condition, specification and suitability for the purpose required;
- use the Equipment for the purpose and within the capacity for which it is designed;
- not use the Equipment for any purpose other than what the Equipment was designed by the manufacturer nor use the Equipment for an rescue or recovery purposes (unless agreed to by DMS in writing);
- not move the Equipment to any location or site other than the Hire Premises without the prior written consent of DMS;
- allow DMS, or its nominee, to inspect the Equipment at any time during the Hire Period;
- ensure the Equipment is used by suitably trained and certified persons;
- maintain the Equipment in good condition, fair wear and tear accepted, and in accordance with the manufacturer's guidelines;
- ensure that the Equipment is used and maintained in accordance with applicable legislation, Australian Standards and usual industry best practices;
- not alter the Equipment from the state in which it was hired or remove, deface or cover up any plates or marks on the Equipment indicating ownership;
- prior to the return of the Equipment at the end of the Hire Period, thoroughly clean down the Equipment, failure to do so will result in the Hirer being charged a cleaning fee at a rate nominated by DMS and will be a debt owing by the Hirer to DMS;
- ensure all safety and operating instructions relating to the Equipment are observed; and

- (l) obtain all licences, consents, permits and approvals in connection with the use of the Equipment.

The Hirer has no right, title, property or interest in the Equipment except as bailee and must not sub-let, transfer, charge, dispose of or otherwise deal with any rights or interests in the Equipment.

The Hirer will bear the risk for all loss, damage to or destruction of the Equipment from any cause whatsoever except to the extent any loss, damage or destruction is caused by the negligent acts or omissions of DMS.

### **9 Prices**

The Hirer must pay DMS the Price and any other amounts payable to DMS for the supply of the Equipment and any Services in accordance with these Conditions of Hire.

Unless DMS specifies otherwise in writing to the Hirer the price and all prices quoted by DMS are exclusive of all taxes, stamp duty, levies, duties, and tariffs (whether direct or indirect).

If DMS is liable to pay any taxes, stamp duty, levies, duties, or tariffs in connection with the supply of any Equipment, the Hirer will pay DMS the amount for which it is liable.

### **10 Invoicing and payment**

The Hirer will pay DMS the amount specified in the invoices issued by DMS, without set off or deduction, within 14 days of date of each invoice. Immediately upon issue of the invoices the Buyer acknowledges the amounts invoiced become a debt due by the Hirer to DMS.

DMS may fax or email an invoice to the Hirer. The invoice will be deemed to be received on the date the invoice is faxed or emailed.

Where DMS has agreed in writing to payment by instalment, the Hirer must pay each instalment on the dates agreed. If the Hirer defaults in paying any instalment, the full amount of the Price will become immediately due for payment.

If any amount due by the Hirer is in arrears, the Hirer must pay, in addition to the consideration for the Equipment, interest on the amount in arrears at the rate 10% per annum, compounded monthly, until the full amount of the invoice, together with all accrued interest, has been paid.

If the Hirer disputes any amount purportedly owed by it to DMS under these Conditions of Hire, the Hirer must nevertheless still pay the amount of the invoice to DMS. After the dispute is resolved, if it is agreed or determined that DMS has been paid more than it was entitled to claim under these Conditions of Hire, the amount that has been agreed or determined will be paid by DMS to the Hirer within 14 days after the agreement or determination is made.

At DMS's option, DMS may require that all or some payments for Equipment be guaranteed by an irrevocable bank guarantee in a form and from a financial institution acceptable to DMS. DMS will return any bank guarantee as soon as payment has been received in full.

### **11 Force majeure**

If DMS is directly or indirectly affected in the performance of any obligation under these Conditions of Hire by an event or circumstance which is beyond the reasonable control of DMS, DMS will not be in breach of (and, accordingly, will not be liable under) the Contract for not performing, or for the manner of its performance of, that obligation for the period of time during which and to the extent that DMS is so affected.

### **12 Warranties**

The Hirer acknowledges that it has satisfied itself that the Equipment is suitable for the Hirer's purposes and acknowledges that it has not relied upon any warranty or representation from DMS concerning the Equipment.

Except as expressly set out in this Contract, DMS does not give and is not bound by or subject to any condition, term, warranty, representation or obligation in connection with this Contract or in connection with the Equipment, whether such condition, term, warranty, representation or obligation is implied by virtue of any statute, the common law, equity, custom or trade usage or otherwise.

This clause does not exclude, restrict or modify any condition, term, warranty, representation or obligation which is imposed under or by virtue of any applicable statute, statutory rule or regulation to the extent to which such condition, warranty, term, obligation or liability cannot lawfully be excluded, restricted or modified. If any condition, term, warranty, representation or obligation is implied in this Contract and cannot be lawfully excluded,

to the extent permitted by law, the liability of DMS for breach of that condition, term, warranty, representation or obligation is limited to the cost of re-supplying the Equipment.

DMS warrants that any Equipment supplied under this Contract will be free from defects affecting performance and will conform in all material respects to the description of the Equipment in the Sales Order.

The Hirer acknowledges that its sole and exclusive remedy for non-conformance or defective Equipment is the re-supply of the non-conforming or defective Equipment or the repayment of any hire charge applicable to the period when the Equipment could not be used solely by reason of the non-conformance or defect. In the case of Equipment being unavailable through normal wear and tear breakdown DMS must be immediately notified in writing. If the equipment is not operational again through some direct fault of DMS within 48 hours of the written notification hire charges will cease until rectification has taken place.

### **13 Liability**

The Hirer indemnifies DMS, its employees, servants and agents ("Indemnified Parties"), and must keep the Indemnified Parties, indemnified, from and against any and all claims, demands, suits, liabilities, causes of action, losses (including financial loss), expenses (including lawyers' fees and expenses on a solicitor/client basis), damages or penalties of any nature incurred by the Indemnified Parties arising out of, or as a result of, a breach of this Contract by the Hirer or any negligent act or omission of the Hirer, its employees, servants and agents, including:

- (a) physical loss of or damage to the Equipment or other property of DMS; and
- (b) damage, expense, loss or liability in respect of personal injury, disease, illness or death.

Notwithstanding anything to the contrary in the Contract:

- (c) an Indemnified Party will not be liable to the Hirer, or any third party, for any loss or damage (including, but not limited to, Consequential Loss) howsoever caused by the Equipment or the Hirer's use of the Equipment;
- (d) DMS's liability under or in connection with this Contract is limited to the resupply of the Equipment or Services or the Price (at the sole election of DMS); and
- (e) to the extent permitted by law, the rights and remedies in the Contract are the sole and exclusive rights and remedies available to the Hirer in connection with this Contract and the supply or failure to supply the Equipment.

DMS will have all rights and remedies set out in this Contract in addition to those otherwise available at law. All such rights and remedies are cumulative. The Hirer must pay all costs and expenses paid or incurred by DMS in enforcing its rights under or in connection with this Contract and the supply of the Equipment including, without limitation, legal fees and court costs.

Notwithstanding that DMS may fail to deliver the Equipment to any delivery point or carry out the Services by a specified date, DMS is not liable to the Hirer for any damages, whether liquidated or unliquidated.

### **14 Insurance**

The Hirer must effect and maintain from a reputable insurance company insurance, in the joint names of the Hirer and DMS, covering against the replacement value of the Equipment from the time the Equipment leaves DMS's depot until the Equipment is returned to DMS's depot for the full replacement value of the Equipment. The Hirer must provide DMS with a copy of a certificate of currency for each insurance policy (as well as a copy of each insurance policy when requested by DMS) required by the Hirer under this clause prior to the Equipment leaving DMS's depot and at any other time requested by DMS during the Hire Period. DMS may refuse to release the Equipment to the Hirer until the Hirer has provided DMS with the required certificates of currency.

### **15 Termination and cancellation**

DMS may terminate the Contract:

- (a) at any time without notice to the Hirer if the Hirer breaches these Conditions of Hire or fails to pay the Price when due;
- (b) suffers an Insolvency Event; or
- (c) for any reason in its absolute discretion on giving 14 days' written notice to the Hirer.

If DMS terminates this Contract in accordance with the previous paragraph, the Hirer will have no claim whatsoever against DMS and DMS may continue to render hire charges in accordance with the Schedule of Rates until the Equipment is returned to DMS's depot.

The Hirer may only terminate the Contract or cancel all or part of an order for Equipment with the written consent of DMS. If the Contract is terminated or an order is cancelled before commencement of the supply of the Equipment, the Hirer must pay to DMS an amount equal to 10% of the full value of the proposed Price. If the Contract is terminated or an order is cancelled after commencement of the supply of the Equipment, the Hirer must pay to DMS the amount equal to the remaining value of the Price of the Equipment unless otherwise agreed by DMS in writing.

The Hirer agrees that it is in DMS's sole discretion whether or not DMS agrees to terminate the Contract, cancel an order or part of an order, or reduce the amount payable by the Hirer on cancellation or termination.

### **16 General**

The Contract supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties. To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, has no effect except to the extent expressly set out or incorporated by reference in this Contract.

The Contract may only be amended, altered, supplemented or cancelled with the prior written consent of DMS.

The Hirer may not assign or transfer the Hirer's rights or obligations under the Contract without DMS's prior written consent. DMS will in its absolute discretion assign any amount owing to it by the Hirer under this Contract to any third party or third parties.

The failure of DMS to require full or partial performance of a provision of the Contract does not affect the right of DMS to require performance subsequently. A right and remedy under the Contract may only be waived or renounced, in whole or part, in writing signed by DMS. Any such waiver is effective only if supported by consideration from the Hirer and to the extent specifically set out in that waiver. A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

A clause or part of a clause of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining clauses or parts of the clause continue in force. If any clause or part of a clause is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected.

Queensland law applies to the Contract. Each party irrevocably submits to the non-exclusive jurisdiction of the courts Queensland and courts competent to hear appeals from those courts.

### **17 Interpretation**

In the Contract:

- (a) a singular word includes the plural and vice versa;
- (b) a reference to a party to the Contract or any other document includes the party's successors, permitted substitutes and permitted assigns;
- (c) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (d) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (e) a reference to Hirer includes a corporation, joint venture, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity purchasing or ordering Services and Equipment from DMS;
- (f) this document is not to be interpreted against the interests of DMS merely because it proposed this document or some provision in it or because it relies on a provision of this document to protect itself.