

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 Diversified Mining Services Limited ACN 126 482 282 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.

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:

- DMS will not be liable to the Buyer for any Consequential Loss;
- DMS's liability under or in connection with this Contract is limited to 10% of the Price; and
- 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:

- public and product liability insurance;
- professional indemnity insurance;
- workers' compensation insurance; and
- motor vehicle insurance.

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

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:

- immediately on written notice to the Buyer if the Buyer breaches any term of the Contract; or
- 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 singular word includes the plural and vice versa;
- a reference to a party to the Contract or any other document includes the party's successors, permitted substitutes and permitted assigns;
- if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 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;
- 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;
- 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;
- 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;
- 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;
- a reference to 'month' means calendar month; and
- 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.