

General Conditions (version April 2013)

- 1) **Definitions and Interpretation**
 - (a) In these General Conditions
 - (i) “Relevant Agreement” means an agreement for the supply of goods and/or services by Focus Mining Services to the Customer that the parties have agreed will be governed by these General Conditions, whether expressly or impliedly;
 - (ii) “GST” means a goods and service tax, value added tax or similar tax.
 - (b) These General Conditions apply to a Relevant Agreement except to the extent that they are inconsistent with terms of any any Focus Mining Services quotation or other terms or conditions relating to the Relevant Agreement that have been agreed to in writing by Focus Mining Services and the Customer.
 - (c) Nothing stated in these General Conditions or in any Focus Mining Services quotation or other terms or conditions agreed to by the parties will exclude, limit, restrict or modify the rights, entitlements and remedies conferred upon the Customer, or the liabilities imposed upon Focus Mining Services, by the Competition and Consumer Act 2010 (Cth) or any commonwealth, state or territory law to the extent that such law renders void or prohibits such exclusion, limitation, restriction or modification (“*Entrenched Rights and Liabilities*”).
- 2) **Quotation and acceptance**

Unless otherwise stated in the relevant Focus Mining quotation;

 - (a) the offer made by Focus Mining Services in the quotation will be valid for a period of thirty days from date of issue; and
 - (b) the offer will expire unless Focus Mining Services receives the Customer’s unconditional written acceptance of the offer before expiry of the validity period.
- 3) **Price**

Unless otherwise stated in the relevant Focus Mining Services quotation or other terms and conditions agreed to by the parties in writing, quoted prices:

 - (a) are in Australian dollars;
 - (b) are for delivery at the premises of Focus Mining Services in Wembley, Western Australia and such prices:
 - (i) include any import duty;
 - (ii) do not include the freight or related insurance for transport of goods from the above premises to any other premises requested by the Customer.
 - (iii) do not include any sales tax, GST, excise, levy, fee, rate or charge levied by any government or any governmental, semi-governmental or other body authorized by law that is imposed on or in respect of or in relation to anything supplied, done or performed in connection with the Relevant Agreement..
- 4) **GST**
 - (a) All sums of money payable under a Relevant Agreement are exclusive of GST, unless it is clearly stated that they are intended to be GST inclusive.
 - (b) Where a supply is made under a Relevant Agreement for which GST is payable, the stated consideration for the supply is increased by an amount equal to the stated consideration multiplied by the rate of GST prevailing at the time the supply is made and a valid tax invoice must be provided.
 - (c) If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit to which the other party is entitled for the loss, cost or expense and then increased in accordance with Clause 4)(b), if applicable.
- 5) **Terms of payment**
 - (a) Unless otherwise stated in the relevant Focus Mining Services quotation or other terms or conditions agreed to in writing by the parties, terms of payment are:
 - (i) For goods: cash on delivery;

- (ii) For services other than services under Preventative Maintenance Survey Plans: Cash on completion of the services;
- (iii) For payments under Preventative Maintenance Service Plans: 7 days after service unless otherwise stated in the agreement recording the plan.
- (b) Where a Relevant Agreement relates to more than one item of goods or to the provision of services on more than one occasion, delivery of the goods /performance of the services may be made in more than one tranche and the Customer will pay Focus Mining Services the agreed price for each tranche (or, where there is no agreement on the precise cost of any component of a tranche, a reasonable proportion of the total price under the Relevant Agreement) at the times stipulated in 5)(a) above for each tranche.
- (c) If any payment under a Relevant Agreement is not made on due date:
 - (i) all amounts owing by the Customer to Focus Mining Services (whether or not under the Relevant Agreement and whether or not they have otherwise become due) will become immediately due and payable;
 - (ii) all amounts due and payable to Focus Mining Services will bear interest of 18% per year, calculated on daily balance from due date to date of payment; and
 - (iii) the Customer agrees to indemnify and keep indemnified Focus Mining Services against any costs incurred by Focus Mining Services in connection with recovering such payment including, without limitation, legal fees on an indemnity basis and debt collection agency fees.
- (d) If the Customer forwards any payment to Focus Mining Services by post or via any other courier or intermediary, whether such payment be in cash or by cheque or otherwise, such courier or intermediary will be deemed to be the Customer's agent for that purpose.
- (e) The Customer agrees that a certificate purporting to be signed by a manager, accountant or credit controller of Focus Mining Services and certifying the amount due to Focus Mining Services by the Customer at any time will be prima facie proof (until the contrary is proved) of such amount due.

6) Passing of title and risk

- a) Goods supplied pursuant to a Relevant Agreement are at the Customer's risk from the time of the first to occur of the following:
 - i) the physical delivery of goods to the Customer or as directed by the Customer (including delivery to a carrier, bailee or agent of the Customer); or
 - ii) the passing of title in the goods to the Customer; or
 - iii) the date on which Focus Mining Services notifies the Customer that the goods are available for collection by the Customer at the agreed place of delivery..
- b) The Company and the Customer expressly agree that title to goods supplied under a Relevant Agreement will not pass to the Customer until the full consideration payable by the Customer to Focus Mining Services (for all goods and services to be supplied under the Relevant Agreement) have been paid in full. Until then:
 - i) the Customer shall be a bailee only of all such goods;
 - ii) the Customer must store such goods separately and marked in such a manner as to show clearly that such goods are the property of Focus Mining Services; and
 - iii) Focus Mining Services will be entitled to register its interest in the goods as a Security Interest under the *Personal Property Securities Act 2009 (Cth)* and the Customer undertakes to comply promptly with all reasonable requests by Focus Mining Services for information, assistance and cooperation for the purposes of achieving such registration and perfecting its Security Interest under that Act.

7) Description of goods

Unless otherwise specified in the relevant Focus Mining Services quotation or other terms or conditions agreed by the parties in writing, all specifications, drawings and particulars of weights and dimensions provided by Focus Mining Services in respect of goods the subject of the Relevant Agreement are to be regarded as approximate only. Descriptions and illustrations contained in catalogues, price lists and other written material are intended merely to present a general and approximate description of available goods and do not constitute a warranty or representation by Focus Mining Services, nor do they constitute terms or conditions of the Relevant Agreement.

- 8) **Time limit for claiming defective supply**
Subject to any Entrenched Rights and Liabilities, the Customer agrees that all goods delivered under a Relevant Agreement will be conclusively deemed to have been received by the Customer in accordance with the Relevant Agreement in good condition and all services rendered will be deemed to have been performed in accordance with the Relevant Agreement and in a proper and workmanlike manner unless the Customer makes written objection to Focus Mining Services within 7 days of supply of such goods or services.
- 9) **Exclusion and voiding of Warranties**
- (a) Subject to any Entrenched Rights and Liabilities and except for any express warranties referred to in the relevant Focus Mining Services quotation or other terms or conditions agreed to in writing by the parties, all express and implied warranties, guarantees and conditions under statute or general law as to merchantability, quality or suitability for any purpose or as to design, assembly, installation or materials or workmanship or otherwise of goods the subject of a Relevant Agreement are hereby expressly excluded.
 - (b) Except as otherwise specified in the relevant Focus Mining Services quotation or other terms or conditions agreed to in writing by the parties, any warranty mentioned in such quotation or other terms or conditions:
 - (i) is limited to defects resulting from faulty design, materials and workmanship only (and does not include fair wear and tear or any freight or transport charges or other costs or expenses incurred by the Customer).
 - (ii) extends only to the first user and terminates on transfer of title or possession of the relevant goods by the Customer to any other person; and
 - (iii) is voided if the Customer:
 - 1. has failed to operate, maintain and store any equipment the subject of the warranty in accordance with the directions laid down in the specified operating manual;
 - 2. alters the relevant goods in any way or attaches to the goods any replacement part other than a part supplied or approved in writing by the manufacturer of the goods or by Focus Mining Services;
- 10) **Limitation of liability**
Subject to any Entrenched Rights and Liabilities:
- a) any liability of Focus Mining Services for a breach of any condition, warranty or guarantee implied in a Relevant Agreement pursuant to any law will be limited:
 - (i) in the case of goods, to the replacement of the goods or the supply of equivalent goods or the repair of the goods or the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired, whichever may be determined by Focus Mining Services to be appropriate in the circumstances; and
 - (ii) in the case of services, to supplying the services again or payment of the cost of having the services supplied again, whichever may be determined by Focus Mining Services to be appropriate in the circumstances.
 - (b) Focus Mining Services records that, where a Relevant Agreement provides for commissioning or demonstration of equipment by Focus Mining Services:
 - (i) the authority of the employees and other agents engaged by Focus Mining Services to provide such services is strictly limited to commissioning and technical instruction in the specific equipment supplied by Focus Mining Services; and
 - (ii) Focus Mining Services accepts no responsibility for any losses or claims arising from any act or advice that falls outside the scope of such authorised services.
 - (c) Focus Mining Services will not be liable to the Customer, for any consequential, indirect, special or other loss or damage that does not arise naturally from Focus Mining Services' breach of a Relevant Agreement (including lost profits and economic loss);
 - (d) in any claim, suit or action against Focus Mining Services in connection with a Relevant Agreement, whether for breach of contract, negligence or otherwise, any damages recoverable must be reduced, to the extent that is lawful, just and equitable, having regard to relevant acts or omissions of the Customer, its servants or agents; and
 - (e) in no circumstances will the liability of Focus Mining Services to the Customer in connection with a Relevant Agreement exceed the total consideration payable by the Customer under that Relevant Agreement.

11) Termination on default

If :

- a) the Customer fails to make any payment owing under a Relevant Agreement by due date and remains in default for more than 3 business days after receiving notice of such default from Focus Mining Services; or
- b) prior to payment to Focus Mining Services of the full consideration payable under a Relevant Agreement for all goods and services to be supplied to the Customer, the Customer:
 - i) disposes of the whole of any part of its business or assets other than in the ordinary course of business;
 - ii) ceases carrying on its principal business;
 - iii) ceases to be able to pay its debts as they become due;
 - iv) has any of its assets taken possession of by a creditor;
 - v) is declared bankrupt, goes into liquidation whether voluntary or otherwise, has a voluntary administrator, receiver or receiver and manager appointed, or an application is made to a court for an order or an order is made for any of the above,

then

- c) Focus Mining Services may by notice to the Customer immediately terminate the Relevant Agreement and/or any other agreement between Focus Mining Services and the Customer for the supply of goods and/or services;;
- d) without prejudice to any other rights or remedies it may have, Focus Mining Services may immediately re-take possession of all goods supplied under the Relevant Agreement (and/or any such other agreement it has terminated) and the Customer irrevocably authorizes Focus Mining Services and its agents to enter upon any premises where the relevant goods might reasonably be expected to be situated and to take possession of and remove them; and
- e) the Customer will indemnify Focus Mining Services for all expenses thereby incurred.

12) Termination for force majeure

The price offered by Focus Mining Services for the supply of goods or services to the Customer is based on the charges of Focus Mining Services' suppliers, plus duty and landing and other inward charges and costs, including foreign exchange costs, prevailing at the date of the offer. If there is any significant increase in such charges, duty or costs or if Focus Mining Services is unable to supply any of the goods or services under a Relevant Agreement by the agreed date for delivery due to circumstances beyond the reasonable control of Focus Mining Services such as (but not limited to) strikes or lock-outs, unavailability of goods or material, riots, fires, floods, breakdowns, Acts of God or governments, whether occurring within or outside Australia, then Focus Mining Services will be entitled to terminate the Relevant Agreement and recover possession of any goods already delivered against repayment of any payment made by the Customer under the Relevant Agreement, and thereafter neither party will have any claim against the other in connection with the Relevant Agreement.

13) Environmental disclaimer

The environmental management at any site on which goods sold under a Relevant Agreement are used is the responsibility of the Customer. In this regard Focus Mining Services disclaims responsibility for any infringement of environmental laws including (but not limited to) noise, water, sewerage, dangerous goods and waste disposal.

14) Jurisdiction

- a) Each Relevant Agreement is governed by the law applicable in the State of Western Australia.
- b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the State of Western Australia.

15) Entire Agreement

No variation to the terms and conditions of a Relevant Agreement (including, but not limited to, any of these General Conditions) will be binding unless recorded in writing and signed by both parties..