

Terms and Conditions of Supply
(for Goods, Services and Digital Services)

1. General, scope of application

- 1.1 These Terms and Conditions of Supply apply to all business relations of "Sandvik" (also referred to as "we", "us" or the like) with its customers ("Customer"). The term Sandvik has the following meaning: the Sandvik Group entity specified in, or relevant to, the order acceptance.
- 1.2 These Terms and Conditions of Supply shall apply in particular to contracts (i) for the sale and/or delivery of movable goods ("Goods"), irrespective of whether we manufacture the Goods ourselves or purchase them from suppliers (§§ 433, 650 BGB – German Civil Code); (ii) for the supply of digital services; and for the supply of services. Unless otherwise agreed, the Terms and Conditions of Supply in the version valid at the time of the Customer's order, or in any case in the version last communicated to the Customer in text form, shall also apply as a framework agreement for similar future contracts, without us having to refer to them again in each individual case.
- 1.3 Our deliveries, services and offers are made exclusively on the basis of these Terms and Conditions of Supply; we do not recognize any terms and conditions of the Customer which contradict or deviate from our Terms and Conditions of Supply unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Supply shall apply even if we supply to the Customer without reservation in the knowledge of the Customer's terms and conditions which conflict with or deviate from our Terms and Conditions of Supply, or if the Customer refers to its terms and conditions in connection with the order and we do not expressly object to them.
- 1.4 Our Terms and Conditions of Supply shall only apply to entrepreneurs (§ 14 BGB – German Civil Code), legal persons under public law and special funds under public law ("öffentlich-rechtliches Sondervermögen").
- 1.5 Individual agreements made with the Customer in individual cases (e.g. framework agreements or quality assurance clauses) shall always take precedence. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms of the International Chamber of Commerce in Paris (ICC) in the version valid at the time of the conclusion of the contract.
- 1.6 Legally relevant declarations and notifications by the Customer regarding the contract (e.g. setting of deadlines, reminders or withdrawal) must be made in writing. Written form in the sense of our Terms and Conditions of Supply includes written and text form (e.g. letter, e-mail, fax). Legal formal requirements and further proof, in particular in the case of doubt as to the legitimacy of the person making the declaration, shall remain unaffected.
- 1.7 Insofar as reference is made below to the applicability of statutory provisions, this shall be for the purpose of clarification only. Even without such clarification, the statutory provisions shall therefore apply unless we have directly amended or expressly excluded them in our Terms and Conditions of Supply.

2. Conclusion of contract

- 2.1 Our offers are made without engagement, are non-binding and are subject to prior sale unless they are expressly designated as binding. This also applies if we have provided the Customer with samples, catalogues, other product descriptions or documents – also in electronic form – to which we reserve title and copyright.
- 2.2 The Customer's order for the Goods shall be deemed to be a binding offer to contract. Unless otherwise stated in the order, we are entitled to accept this offer to contract within two (2) weeks of receipt.
- 2.3 Acceptance of offers to contract may be declared by us either in writing (e.g. by order confirmation) or by delivery of the Goods to the Customer.
- 2.4 The documents provided by the Customer (specifications, drawings, samples, etc.) shall be authoritative for us; the Customer shall be liable for their correctness in terms of content, technical feasibility and completeness; we shall not be obliged to carry out a review of the same.

3. Prices and terms of payment

- 3.1 Unless agreed otherwise, our prices valid at the time of the conclusion of the contract shall be ex works (plus statutory value added tax).
- 3.2 Unless provided otherwise in the order acceptance, our prices are EXW (ex works the address as set out in the respective order acceptance) in accordance with Incoterms 2020 or respective current version. Packaging costs are not included in the prices, unless expressly agreed otherwise.
- 3.3 Unless provided otherwise in the order confirmation, our invoices show net amounts and shall be due and payable (without deductions) within fourteen (14) days after the date of invoice and receipt. However, we are entitled at any time, even during an ongoing business relationship, to make a delivery in whole or in part only against advance payment. We demand advance payment at the latest with the order confirmation.
- 3.4 Customer is not entitled to withhold payments based on counter-claims or off set counter-claims unless these counter-claims have been recognized by us, are undisputed or have been established by a final non-appealable court decision (res judicata). However, counter-claims of the Customer existing or arising under the same contract for defects or non-performance and/or unfinished or incomplete performance remain unaffected.
- 3.5 If it becomes apparent after conclusion of the contract (e.g. through termination of the commercial credit insurance or application for the opening of insolvency proceedings)

that our claim to the purchase price is endangered by the Customer's lack of ability to pay, we are entitled to withdraw from the contract in accordance with the statutory provisions on refusal of performance and – if necessary after setting a deadline – to withdraw from the contract (§ 321 BGB – German Civil Code). In the case of contracts for the manufacture of non-fungible Goods (custom-made products), we can declare withdrawal immediately; the statutory provisions on the dispensability of setting a deadline remain unaffected.

- 3.6 The Customer acknowledges and agrees that: (a) if variations should occur prior to delivery, the price may be amended by Sandvik; (b) if the Customer requests a variation to the Order before: (i) delivery of the Goods; or (ii) performance of the services or digital services, Sandvik may, at its discretion accept or reject such request; (c) where an order is varied, the price of the order will increase or decrease (as the case requires) by an amount agreed between the parties or, failing such agreement, by an amount determined by Sandvik acting reasonably; and (d) where the amount is to be determined by Sandvik, Sandvik will calculate the amount by reference to Sandvik's then current price list, costs, expenses, losses, and damages suffered, off-site overheads, profit and such other reasonable rates and charges in connection with the variation.

4. Facilities and Security Interests

- 4.1 Subject to Clause 4.2, if Sandvik has provided the Customer with a Facility then Sandvik may withdraw the Facility either: (a) as agreed in writing with Sandvik; or (b) otherwise, at any time and without prior notice to the Customer. The term "Facility" has the following meaning: a purchase or credit facility.
- 4.2 Sandvik reserves the right to review, at any time, the Facility (including the extent, nature, and duration of the Facility).
- 4.3 The Customer agrees that: (a) Sandvik may, from time to time, condition an order acceptance on Sandvik's timely receipt of a Security Interest; and (b) where Sandvik requires a Security Interest, Sandvik shall not be obliged to deliver, supply, or otherwise make available the related Goods, services, or digital services unless and until the Security Interest has been established to Sandvik's satisfaction. The term "Security Interest" has the following meaning: a mortgage, transfer, pledge, notarial bond, lien or security cession, or any security or preferential interest or arrangement of any kind which allows a creditor to have its claims satisfied prior to other creditors from the proceeds of an asset (including retention of title, deposit of money by way of security or a conditionally repayable deposit or flawed asset arrangement) and includes any interest which can be registered under any law of any other jurisdiction that has an analogous or similar effect. Sandvik shall be entitled to an equitable extension to any: (a) agreed delivery date; or (b) any other performance obligations, that may result from the Customer's failure to provide, or a delay in establishing, a Security Interest.

5. Delivery period, delay in delivery, force majeure

- 5.1 Unless expressly agreed otherwise, indications of delivery times are only approximate. A delivery period shall not commence before all details of the execution of the contract have been clarified and both parties have agreed on the conditions of the order. Agreed delivery dates shall be postponed accordingly.
- 5.2 Compliance with our delivery obligations shall further be subject to the timely and proper fulfilment of the obligations incumbent on the Customer. This includes, in particular, the timely and complete delivery of the documents to be supplied by the Customer, insofar as we perform according to drawings, specifications, samples, guidelines and/or other documents of the Customer. We reserve the right to raise the defense of non-performance of the contract.
- 5.3 Default of delivery on our part shall be subject to the statutory provisions. In any case, however, a reminder is required. If we are in default of delivery, the Customer may demand lump-sum compensation for damages caused by the delay. The lump-sum compensation shall amount to 0.5 % of the net price (delivery value) for each completed calendar week of the delay, but in total not more than 5 % of the delivery value of the delayed Goods. We reserve the right to prove that the Customer did not suffer any damage at all or only a considerably lower damage than the above lump sum.
- 5.4 If we are prevented from keeping agreed delivery or performance dates as a result of force majeure, such as for instance labor disputes, governmental action, energy or raw material shortages, transport bottlenecks or hindrances, pandemics or epidemics and measures to contain them, operational hindrances, for example due to fire, water and/or machine defects, for which we are not responsible, or other disruptions in the flow of operations either at our premises or those of suppliers or subcontractors for which we are not responsible and which can be proved to have a significant impact, we are obliged to inform the Customer without undue delay ("unverzüglich"). In such cases we are entitled to extend the delivery or performance period by the period of the event of force majeure or the disruption if we have informed the Customer pursuant to the above information obligation. If delivery or performance becomes impossible as a result thereof, our obligation to supply shall become null and void to the exclusion of claims for damages. If the event of force majeure or the disruption lasts longer than a period of one hundred and eighty (180) Days or more, and if the Customer proves that subsequent performance of the contract is of no interest to him as a result of the delay, the Customer may withdraw from the contract to the exclusion of any further claims. If the event of force majeure or the disruption lasts longer than a period of one hundred and eighty (180) Days or more, we may withdraw from the contract as regards to that part which

- has not yet been performed if we have informed the Customer pursuant to the above information obligation and if we have not assumed the risk of procurement ("Beschaffungsrisiko") or a delivery guarantee. Force majeure is any external event caused by elementary forces of nature or by the actions of third parties, which is unforeseeable according to human experience and understanding, which cannot be prevented or rendered harmless by economically acceptable means, even by the utmost care reasonably to be expected in the circumstances, and which is also not to be accepted by us due to its prevalence.
- 5.5 Article 5.4 applies *mutatis mutandis* if and to the extent that we had entered into a covering transaction before the conclusion of the contract with the Customer which – if properly executed – would have enabled us to fulfil our contractual obligations in our relationship with the Customer, and we have been supplied by our suppliers incorrectly and/or belatedly and neither we nor our suppliers are at fault.
- 5.6 If we are in default of delivery, the Customer shall be entitled to set a reasonable grace period in writing and to withdraw from the contract upon expiry of this grace period without result. The setting of a grace period shall not be required if we seriously and finally refuse performance or if the respective contract is a transaction for delivery by a fixed date ("Fixgeschäft") in terms of § 323 para. 2 no. 2 BGB (German Civil Code) or § 376 HGB (German Commercial Code) or if special circumstances exist which, after weighing the interests of both parties, justify immediate withdrawal.
- 5.7 The rights of the Customer in accordance with clause 12 of these Terms and Conditions of Supply and our legal rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.
- 6. Transfer of risk, Shipping**
- 6.1 Unless indicated otherwise in the order confirmation, delivery is EXW (ex works the address as set out in the respective order acceptance) according to Incoterms 2020 or their current version. Place of delivery and place of performance shall be the address as set out in the respective order acceptance. This shall also apply if we have assumed the transport costs or incurred them for the Customer or if partial deliveries are made.
- 6.2 At the request and at the expense of the Customer, the Goods may be shipped to another destination (sale by delivery to a place other than the place of performance, "Versendungskauf").
- 6.3 If shipment has been agreed, the risk of accidental loss and accidental deterioration of the Goods shall pass to the Customer upon handover to the forwarder, carrier or other person or institution designated to carry out the shipment. This shall also apply if we have assumed the transport costs or incurred expenses for the Customer or if partial deliveries are made. If shipment or handover is delayed for reasons for which the Customer is responsible, the risk shall pass to the Customer from the day on which the Goods are ready for shipment and we have notified the Customer thereof.
- 6.4 If formal approval has been agreed, this shall be decisive for the transfer of risk. The statutory provisions of the law on contracts for work and services shall also apply accordingly to an agreed formal approval, unless provided otherwise below.
- 6.5 If acceptance is required, the Goods shall be deemed to have been accepted if
- (i) the delivery and, insofar as we also owe the installation, the installation have been completed,
 - (ii) we have notified the Customer thereof with reference to the deemed acceptance pursuant to this clause 6.5 and have requested the Customer to accept the Goods,
 - (iii) twenty (20) working days have passed since delivery or installation, and
 - (iv) the Customer has failed to accept the Goods within this period, unless the failure to accept was due to a defect notified to us which makes the use of the Goods impossible or significantly impairs their use.
- 6.6 If the Customer is in default of acceptance, this shall be deemed equivalent to handover or acceptance of the Goods.
- 6.7 The Customer shall inform us in writing if he requests a special mode of transport and/or coverage by a transport insurance policy for the dispatch; the Customer shall bear any costs thus incurred even if we have assumed the transport costs by way of exception otherwise.
- 6.8 We are entitled to make part deliveries if these are reasonably acceptable to the Customer under consideration of the Customer's interests.
- 6.9 If the Customer is in default of acceptance or if the delivery is delayed for reasons which are attributable to the Customer, we will be entitled to claim compensation for the damage incurred as a result thereof, including additional expenses, if any. In these cases, we will store the Goods at the Customer's risk and invoice the Customer for such storage.
- 6.10 If the Customer fails to collect, or take delivery of, the Goods within three (3) months of the Delivery Date, Sandvik shall be entitled, without prejudice to its other rights and remedies under the contract, to: (a) terminate all or part of the contract; (b) dispose of the Goods and, unless otherwise stated in the order acceptance, (c) claim damages incurred by Sandvik, which shall be paid by the Customer within ten (10) days of Sandvik issuing the corresponding invoice.
- 7. Packaging**
- 7.1 Unless agreed otherwise, the packaging is at our discretion. The costs of packaging are borne by the Customer.
- The packaging of our products (including transport packaging, sales packaging and outer packaging) must be disposed of properly. For this reason, we are legally obligated under Section 15 (1) of the German Packaging Act (VerpackG) to organize and monitor the proper return and recycling of our packaging.
- In the interest of an efficient and careful use of resources, in particular to avoid unnecessary transport routes, the Customer undertakes, on our behalf and in accordance with the applicable law, to dispose of the packaging of the products delivered by us (including transport packaging, sales packaging and outer packaging) properly and at its own expense.
- Upon request, the Customer provides us with evidence of the proper disposal of the packaging of the products delivered by us without undue delay and in a suitable form and shall cooperate to the required extent in packaging law procedures of the competent authorities.
- Reservation of Title**
- Until full payment of all our present and future claims arising from the purchase agreement and/or from the current business relationship with the Customer (secured claims), we reserve title to the sold Goods.
- The Goods subject to reservation of title may neither be pledged to third parties nor assigned by way of security by the Customer before complete payment of the secured claims without our explicit written consent. In the case of pledges or other third party intervention, the Customer must notify us immediately in writing so that we may file an action pursuant to § 771 ZPO (German Code of Civil Procedure). Insofar as the action was successful and the third party is unable to reimburse us the court and out-of-court costs of legal action pursuant to § 771 ZPO (German Code of Civil Procedure), the Customer shall be liable for the costs we have sustained.
- The Customer shall be entitled to resell the Goods delivered in the normal course of business. He herewith assigns to us, however, all claims amounting to the final invoice amount (including value-added tax) of our claims which accrue from the resale vis-à-vis his customers or third parties, irrespective of whether the Goods purchased have been sold again with or without further processing. After such assignment the Customer shall also remain entitled to collect this claim. Our right to collect this claim ourselves shall remain unaffected thereby. However, we undertake not to collect the claim provided that no bill or cheque protests are raised and the Customer fulfils his payment obligations arising from the proceeds received, the Customer is not in default of payment and, in particular, no application to initiate insolvency proceedings with regard to the Customer's assets has been filed. If this is the case, however, we may demand that the Customer notifies us of the claims assigned and their debtors, provides all details necessary for their collection, delivers the relevant documents and informs the debtors (third parties) of said assignment.
- The processing or conversion by the Customer of the Goods subject to reservation of title shall always be deemed to be performed for us and on our behalf. If the Goods subject to reservation of title are processed with other items/materials not belonging to us, we shall acquire co-ownership of the new article in a ratio of the value of the Goods subject to reservation of title to the other processed items/materials at the time of processing. In all other respects, the provisions applicable to the Goods subject to reservation of title shall also apply *mutatis mutandis* to the articles resulting from such processing.
- If the Goods subject to reservation of title are mixed or joined inseparably with other items/materials not belonging to us in such a way that they become major components of a uniform article, we shall acquire co-ownership of the new article in a ratio of the value of the Goods subject to reservation of title to the other mixed or joined items/materials at the time of joining or mixing. If joining or mixing takes place in such a way that the Customer's article is to be regarded as the main item, it is already agreed here and now that the Customer transfers pro-rata co-ownership to us. The Customer shall keep the jointly held property thus produced in safe custody for us. Furthermore, the same shall apply to the article resulting from such joining or mixing as to the Goods subject to reservation of title.
- The Customer is obliged to treat the Goods subject to reservation of title carefully and in particular, the Customer is obliged to adequately insure them against fire, water damage and theft at replacement value. If maintenance and inspection work is required, the Customer must carry this out in due time and at its own expense.
- In the event of loss or damage to the Goods subject to reservation of title, the Customer hereby assigns to us any claims to insurance payments existing in this connection in the amount of the final invoice (including value-added tax) of our claims with respect to the object of delivery by way of additional security in advance.
- In case of deliveries abroad, if certain measures and/or declarations by either party are necessary to ensure the effectiveness of the above mentioned reservation of title and/or certain other rights referred to in the paragraphs above, the Customer is obliged to inform us accordingly in writing or in text form and to take all necessary measures and/or make all necessary declarations without undue delay at its own expense. If the law of the country of import does not permit reservation of title to the Goods, the Customer is obliged to provide without undue delay ("unverzüglich") another appropriate security interest in the Goods or any other equivalent collateral based on equitable discretion (§ 315 BGB – German Civil Code) at its own expense.

- 8.9 We undertake to release, at Customer's request, the securities due to us if the realizable value of our securities exceeds the claims to be secured by more than 10 %; we reserve the right to select the securities to be released.
- 9. Services**
- 9.1 Sandvik shall perform the services: (a) using reasonable skill and care; (b) substantially in accordance with the service descriptions (if any) specified in the Contract; (c) in accordance with all applicable Laws that bind Sandvik as a provider of the Services; and (d) using reasonable endeavours to meet the performance dates specified in the Contract provided that the Customer acknowledges and agrees that, unless expressly agreed otherwise in the Contract: (i) any such dates will be estimates only; and (ii) time shall not be of the essence of the Contract.
- 9.2 The Customer shall, in connection with the services: (a) perform its obligations under the Contract; (b) obtain and maintain all necessary licences, consents, and permissions necessary for it to provide or make available the Customer's materials and facilities to Sandvik; (c) provide, for Sandvik, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to the Customer's premises, office accommodation, and other facilities as reasonably requested by Sandvik from time to time; (d) provide Sandvik with, in a timely manner, all reasonably requested assistance and materials requested by Sandvik in connection with the services; (e) inform Sandvik of all health and safety and security requirements that apply to the Customer's premises; (f) use the latest end-point security and versions of anti-virus definitions and software available from an industry accepted anti-virus software provider in respect of its computer systems, technology and network infrastructure that Sandvik is required to use in connection with the Services or which connect to Sandvik's own systems; (g) perform any other responsibilities (as specified in the quote, order acceptance, or elsewhere in the Contract); and (h) use the Goods and any outputs or deliverables arising from the services in accordance with Sandvik's documented instructions, together, the "**Customer Obligations**".
- 9.3 In the event of any failure by the Customer (or its personnel) to perform a Customer Obligation, Sandvik may, and without prejudice to any other right or remedy available to it, equitably adjust: (a) the estimated due date for the delivery of the services (including any deliverable) or Goods; and (b) any other timetable for delivery agreed between the parties from time to time.
- 10. Intellectual property**
- 10.1 The Customer acknowledges and agrees that the Goods, services, and digital services comprise commercially valuable, proprietary assets and trade secrets of Sandvik or its licensors, the design and development of which reflect the effort of skilled developers and the investment of considerable time and money by or on behalf of Sandvik.
- 10.2 Sandvik (or its licensors) are and will remain the owner of (a) all intellectual property rights comprised in, relating to, or created as a result of, the sale of the Goods or the provision of the services or digital services (including in all data aggregated and/or anonymous data which is created, generated, derived or produced by Sandvik through the use of the digital service (including the equipment monitoring services); (b) all intellectual property rights in adaptations, add-ons, modifications, updates, and enhancements (including those made following a request or suggestion made by or on behalf of the Customer) made to the intellectual property rights described in (a); and (c) any intellectual property rights created in connection with the performance of the contract.
- 10.3 Upon full payment of the agreed remuneration (or the respective partial amounts due), for the relevant Goods or services, Sandvik grants the Customer a non-exclusive, non-transferable, non-assignable, non-sub-licensable licence to use Sandvik's intellectual property rights (which shall exclude the digital services), strictly limited to the extent necessary for installing, and operating the Goods originally delivered by Sandvik, in accordance with manuals and use instructions supplied by Sandvik, and for receiving the services and for no other purposes whatsoever. The granting of further rights of use requires a separate agreement.
- 10.4 Unless expressly agreed otherwise between the parties in writing, the limited licence described in Clause 10.3 shall continue unless terminated in accordance with these Terms and Conditions of Supply.
- 10.5 Nothing in the contract permits the Customer to copy, reproduce, modify, adapt, alter, translate, reverse engineer, 3D copy/print, or create derivative works from any Goods or services or of Sandvik's intellectual property rights, in whole or in part, without Sandvik's prior written consent.
- 10.6 If the Customer uses any of the Sandvik's intellectual property rights in breach of the contract, Sandvik may immediately terminate or revoke such rights, in whole or in part in its sole discretion.
- 10.7 If (at any time): (a) through use of the Goods, services, or digital services; (b) by operation of applicable Law; or (c) otherwise, the Customer comes to own intellectual property rights in Sandvik's intellectual property then the Customer shall (promptly on Sandvik's request and without delay) assign (or procure the assignment of) such intellectual property rights to Sandvik and, to the extent permitted by applicable law, waive (or procure the waiver of) all moral rights (and analogous rights) worldwide in connection with such intellectual property rights.
- 11. Warranty, claims for defects**
- The parties agree that the Sandvik Warranty applicable at the date of Sandvik's acceptance of the order and consequent agreement to the contract shall: (a) if within the scope of the Sandvik Warranty, apply to the Goods supplied by Sandvik; and (b) at the Customer's request, be provided or made available to the Customer at the time of the contract. In relation to these Terms and Conditions of Supply, the term "**Sandvik Warranty**" has the following meaning: (a) the Sandvik standard warranty; and (b) if purchased in the order, the Sandvik extended warranty, in each case, as in force as at the date on which the order acceptance occurs.
- In addition to the Sandvik Warranty referred to in Clause 11.1, the statutory provisions shall apply to the rights of the Customer with respect to defects in quality or title (including wrong and short delivery as well as improper assembly/installation or defective instructions) if nothing to the contrary is determined in the following.
- In any case, the statutory provisions on the sale of consumer goods (§§ 474 et seq. BGB – German Civil Code) and the rights of the Customer arising from separately issued guarantees, in particular on the part of the manufacturer, shall remain unaffected.
- The basis of our liability for defects is primarily the agreement reached on the quality and the presumed use of the Goods (including accessories and instructions). Product descriptions or manufacturer's specifications shall only be considered as an agreement on quality in this sense if this was contractually agreed or if such descriptions or specifications were publicly announced by us (in particular in catalogs) at the time of the conclusion of the contract.
- If the quality has not been agreed upon, the statutory regulation shall be applied to determine whether there is defect (§ 434 para. 3 BGB – German Civil Code). Public statements made by the manufacturer or on his behalf, in particular in advertising or on the label of the Goods, take precedence over statements made by other third parties.
- In the case of Goods with digital elements or other digital content, we only owe provision and, if applicable, updating of the digital content insofar as this expressly results from a quality agreement pursuant to Article 8.3. In this respect, we accept no liability for public statements made by the manufacturer and other third parties.
- The Customer's right to warranty claims under this contract require that the Customer has duly discharged his obligations of inspection and notification of defects in accordance with §§ 377, 381 HGB (German Commercial Code). If the Customer fails to inspect the Goods properly and/or to give notice of defects, our liability for the defect not notified, not notified in time or not notified properly shall be excluded in accordance with the statutory provisions. This shall also apply in the case of Goods which are intended for installation, mounting or assembly if the defect only becomes apparent after such processing as a result of the breach of one of these obligations; in this case, the Customer shall in particular not be entitled to claim reimbursement of the corresponding costs ("dismantling and assembly costs"). If the contractual relationship between us and the Customer is a contract for sale and services ("Werkvertrag"), § 377 HGB (German Commercial Code) shall apply mutatis mutandis.
- If an acceptance of the Goods or an initial specimen inspection has been agreed with the Customer, a complaint about defects which the Customer could have detected during a careful acceptance or initial specimen inspection shall be excluded.
- If the delivered Goods or the work created is defective, we may select whether we shall provide subsequent performance by remedying the defect ("Nachbesserung") or by delivering a defect-free item ("Ersatzlieferung"). If the type of subsequent performance chosen by us is unreasonable for the Customer in the individual case, the Customer may reject it. Our right to refuse subsequent performance under the statutory conditions remains unaffected.
- We have the right to make the subsequent performance dependent on the Customer paying the due purchase price. However, the Customer shall be entitled to retain a part of the purchase price, which is reasonable in relation to the defect.
- The Customer shall give us the time and opportunity necessary for the subsequent performance; in particular, it shall hand over the rejected Goods for inspection purposes. In the event of a replacement delivery, the Customer shall return the defective Goods to us at our request in accordance with the statutory law; however, the Customer shall not have a claim for return. Subsequent performance does not include the dismantling, removal or deinstallation of the defective Good nor the reinstallation of a Good free of defects if we were not originally obliged to provide these services. Claims of the Customer for reimbursement of corresponding costs ("removal and installation costs") shall remain unaffected.
- We shall bear or reimburse the expenses necessary for the purpose of testing and subsequent performance, in particular transport, travel, labor and material costs and, if applicable, dismantling and installation costs, in accordance with the statutory provisions and these Terms and Conditions of Supply if there is actually a defect. Otherwise, we are entitled to demand reimbursement from the Customer for the costs incurred as a result of the unjustified demand for remedy of defects if the Customer knew or could have known that a defect actually existed.
- In urgent cases, e.g. if operational safety is endangered or in order to prevent unreasonable damage, the Customer is entitled to remedy the defect itself and to demand reimbursement from us of the expenses actually required for this purpose. We shall be notified immediately, if possible in advance, of any such self-remedy. The right of self-remedy shall not exist if we would be entitled to refuse a respective subsequent performance pursuant to the statutory law.

- 11.14 If subsequent performance has failed or if a reasonable period of time set by the Customer for subsequent performance has expired unsuccessfully or is dispensable under the statutory law, the Customer may withdraw from the purchase agreement or reduce the purchase price in accordance with the statutory provisions. In the case of an insignificant defect, however, there is no right to withdraw from the contract.
- 11.15 Claims of the Customer for reimbursement of expenses according to § 445a para. 1 BGB (German Civil Code) are excluded, unless the last contract in the supply chain is a consumer goods purchase (§§ 478, 474 BGB – German Civil Code) or a consumer contract for the provision of digital products (§§ 445c p. 2, 327u BGB – German Civil Code). Any claims of the Customer for damages or reimbursement of futile expenses (§ 284 BGB – German Civil Code) shall exist only in accordance with Article 12, also in the case of defects of the Goods, and shall otherwise be excluded. Any limitation periods shall be subject to Article 13 below.
- 12. Liability exclusions and limitations**
- 12.1 Subject to the provisions in Article 12.2, we are only liable for damages – in the case of contractual, non-contractual or other damage claims, irrespective of the legal reason, in particular due to defects, default and impossibility, culpa in contrahendo and tort – in case of wilful intent and/or gross negligence, including wilful intent and/or gross negligence on the part of our representatives or vicarious agents. In addition, we are also liable in the case of mild negligence, including mild negligence of our representatives and vicarious agents, for damages arising from the infringement of an essential contractual duty, i.e. a duty, the satisfaction of which makes the due implementation of the contract at all possible and which the Customer can therefore usually expect to be satisfied by us (cardinal duty, "Kardinalpflicht"). If and to the extent that we are not liable for wilfully infringing a duty, the liability for damages shall, however, be restricted to the foreseeable, typical damage.
- 12.2 Claims for damages arising from injury of life or limb or health as well as claims of the Customer pursuant to the German Product Liability Act (Produkthaftungsgesetz) and the special statutory provisions governing ultimate delivery of the Goods to a consumer as well as other mandatory statutory liability regulations shall not be affected by the liability exclusions and limitations set out in Article 9. The above liability exclusions and limitations shall also not apply insofar as we have fraudulently concealed a defect or insofar as we are liable because of the assumption of a guarantee or of the risk of procurement ("Beschaffungsrisiko").
- 12.3 Articles 12.1 and 12.2 shall also apply if the Customer demands reimbursement of futile expenses instead of a claim for damages.
- 12.4 Insofar as our liability for damages is excluded or limited, this shall also apply with regard to personal liability for damages of our employees, representatives and vicarious agents which is based on the same legal reason.
- 13. Statute of limitations**
- 13.1 Claims of the Customer arising from defects in quality or title become time-barred after expiry of twelve (12) months from delivery (hand-over) of the Goods. If a formal approval ("Abnahme") has been agreed, the limitation period begins with the formal approval.
- 13.2 Mandatory provisions on the statute of limitations shall not be affected. The facilitation of limitation set out in Article 13.1 shall therefore not apply to claims based on an injury of life, limb or health, to claims based on wilful intent and gross negligence and to claims based on an assumption of a warranty or the risk of procurement ("Beschaffungsrisiko"). The longer limitation periods according to § 438 subs. 1 No. 1 BGB (German Civil Code) (real rights of a third party), §§ 438 para. 1 No. 2, 634a para. 1 No. 2 BGB (German Civil Code) (buildings, building materials and components as well as planning services for a building), § 438 subs. 3 and § 634a subs. 3 BGB (German Civil Code) (fraudulent intent) shall also remain unaffected. If the ultimate contract in the supply chain pertains to a sale of consumer goods according to § 474 BGB (German Civil Code) (i.e. if the Goods are ultimately delivered to a consumer), the limitation periods stipulated in § 445b BGB (German Civil Code) also remain unaffected.
- 13.3 The limitation periods resulting from Articles 13.1 and 13.2 for claims due to defects in quality or title shall apply *mutatis mutandis* to competing contractual or non-contractual damage claims of the Customer which are based on a defect of the Goods. If, however, in an individual case the application of the statutory limitation rules lead to an earlier statutory limitation of the competing claims, the statutory period of limitation shall apply to the competing claims. In any case, the statutory periods of limitation pursuant to the German Product Liability Act (Produkthaftungsgesetz) shall not be affected.
- 13.4 Insofar as pursuant to Articles 13.1 to 13.3 the limitation period for claims towards us is shortened, this shall apply *mutatis mutandis* to any claims of the Customer against our statutory representatives, employees, authorized representatives and vicarious agents which are based on the same legal reason.
- 14. Right of withdrawal, right of termination**
- 14.1 The Customer is only entitled to withdraw from the contract for a breach of duty on our part other than a defect if we can be made responsible for such breach of duty.
- 14.2 If the contract in question is a contract for work and services in which the contractor undertakes to bring about a particular result ("Werkvertrag") or a contract for work and services in which the contractor supplies the material from which non-fungible movable items are to be made ("Werklieferungsvertrag"), the right of the Customer to freely terminate the contract according to §§ 651, 649 BGB (German Civil Code) is excluded.
- 14.3 If an event giving rise to a termination right described in the applicable law and/or in the contract occurs, then Sandvik may, at its sole discretion, upon written notice to the Customer: (a) immediately withdraw any purchase or credit facility which may have been extended to the Customer and require the immediate payment of all moneys owed to Sandvik by the Customer, whether or not they were due for payment at that time or due for payment in the future; (b) immediately suspend the performance of the contract (including any licence granted under the contract); (c) immediately terminate (without penalty) the contract; (d) immediately take all possible action to protect its interest in the Goods and Sandvik's intellectual property rights.
- 14.4 Termination of the contract (howsoever arising) shall be without prejudice to the accrued rights and liabilities of either party as at the termination date.
- 14.5 Sandvik agrees to store and to allow the Customer to download or otherwise retrieve, Customer-specific Input Data and/or Output Data provided that such request has been made to Sandvik in writing and within a maximum of thirty (30) days from (and including) the date on the contract terminated or expired.
- 15. Goods – Return of Goods not affected by defects**
- 15.1 The Customer acknowledges and agrees that: (a) returns of Goods not affected by defects will only be accepted following our prior written agreement; and (b) all Goods accepted as returns will be subject to a handling charge.
- 15.2 Subject to Clause 15.1 (above), the following conditions apply to all Goods that the Customer seeks to return: (a) the Customer must notify us of its intention to return the Goods before the expiry of seven (7) Days from (and including) the date of the proof of delivery (following which notice, we shall generate a return note); (b) the Customer must ensure that the Goods are received by our designated warehouse before the expiry of fourteen (14) Days from (and including) the date of the return note; and (c) non-returnable items (regardless of other criteria) shall include: (i) gaskets; (ii) seals; (iii) belts; (iv) hoses; (v) opened kits; (vi) Goods made to order; (vii) non-Sandvik Goods; and (viii) glass.
- 15.3 The Customer acknowledges and agrees that, to the fullest extent permissible under applicable Law, we shall not: (a) be liable; or (b) accept any risk or responsibility, for returned Goods unless and until we have accepted the return through generation and delivery of the return note and in accordance with Clause 15.4.
- 15.4 The Customer acknowledges and agrees that: (a) the return note shall constitute Sandvik's preliminary approval for the return of the Goods; and (b) full and final acceptance of the return is at Sandvik's sole discretion and subject to the following conditions: (i) a copy of the return note must accompany the Goods; (ii) the returning Goods will be subject to a visual and technical inspection upon their receipt at Sandvik's designated warehouse; (iii) returned Goods must be: (A) undamaged; (B) in their original packaging (where applicable); and (C) re-saleable as new; and (iv) the Goods must not have been fitted or otherwise used in any manner.
- 15.5 The Customer acknowledges and agrees that: (a) Goods rejected by our receiving warehouse due to a non-compliance with the conditions specified in Clause 15.4 will be held by us pending instructions from the Customer; and (b) Goods that have been rejected by us and which have not been collected by the Customer will be disposed of if not collected by the Customer before the expiry of three (3) months from (and including) the date that we received the Goods to its designated warehouse.
- 15.6 The parties agree that, where Sandvik accepts the return of Goods, if the Goods are returned: (a) before the expiry of fourteen (14) Days from (and including) the date of the return note, but not later than thirty (30) Days from (and including) the date of the proof of delivery, the Customer shall be entitled to receive full credit for the invoiced value of the Goods in question; or (b) later than thirty (30) Days from (and including) the date of the proof of delivery, the Customer shall not be entitled to receive credit for the invoiced value of the Goods in question.
- 15.7 The parties agree that, in all cases, freight costs to our designated warehouse are for the Customer's account.
- 16. Compliance, human rights**
- 16.1 The Customer is obliged to comply with all applicable statutory provisions, in particular, with anti-corruption and money laundering laws as well as antitrust, labor and environmental protection regulations.
- 16.2 In particular, the Customer shall ensure that it complies with all applicable Laws relating to or concerning: (a) the environment and emissions; (b) occupational health and safety; (c) sustainability; (d) the operation of plant and machinery; and (e) hazards and hazardous substances, and shall have and maintain all appropriate procedures and policies required by applicable law.
- 16.3 The Customer accepts our Code of Conduct (a copy of which is available on request) as the basis of our business relationship. Our Code of Conduct is deemed to be accepted upon conclusion of the contract.
- 16.4 The Customer shall at all times comply with all applicable Laws relating to anti-bribery and anti-corruption (including anti-money laundering) including the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act as amended from time to time.
- 16.5 The Customer acknowledges and agrees to uphold the highest standards of ethical conduct in all aspects of its operations. Specifically, the Customer commits to ensuring that all employment practices, directly or indirectly involved in the fulfillment of its

- obligations under the contract, are conducted in a manner that respects individual rights and freedoms. This includes, but is not limited to, the prohibition of any form of forced, compulsory, or child labor; the assurance of fair working conditions and hours; the implementation of equitable hiring and employment practices; and the provision of a safe and healthy working environment. In this respect, the Customer shall, at all relevant times, comply with the provisions of the UK Modern Slavery Act 2015 and all applicable Laws made under it or relating to it, and ensure that all of its personnel have received appropriate training on the same. The Customer shall immediately notify Sandvik in writing upon becoming aware of any information or allegations suggesting a breach of the principles, laws and regulations outlined above. This notification must include all relevant details of the alleged breach, including the nature of the breach, the parties involved, and any steps already taken by the Customer to address the situation.
- 16.6 The Customer shall ensure that neither it nor any entity within its supply chain engages in or condones any activities, practices, or conduct that could result in the facilitation of tax evasion or similar financial offenses. This includes a commitment to: (a) avoid involvement in any actions or behaviors that could be construed as facilitating the evasion of tax obligations, whether within the jurisdiction of this agreement or internationally; (b) establish and uphold, for the duration of the contract, effective measures and procedures aimed at preventing any actions or behaviors that could assist in the evasion of tax by any party, including, but not limited to, the Customer's employees or agents; (c) immediately report to Sandvik any attempts or proposals, whether direct or indirect, from any party seeking to engage the Customer in activities aimed at evading tax obligations in connection with the contract; (d) provide an annual certification to Sandvik, signed by an authorized officer of the Customer, confirming adherence to these obligations. This certification is to be submitted within twelve (12) months of the contract's effective date and annually on the anniversary of this date thereafter. This certification must affirm the Customer's compliance with the stipulated anti-tax evasion measures, covering both the Customer and all associated entities or individuals.
- 17. Sanctions, Export Laws**
- 17.1 The Customer represents and warrants that neither it nor any related entity or representative (including its related entities) is currently (or is otherwise controlled by) a Sanctioned Person or otherwise the subject or the target of any Sanctions.
- 17.2 The term "**Sanctions**" has the following meaning: any laws, regulations and orders enacted, administered, implemented, imposed, or enforced from time to time by any Sanctions Authority in relation to economic, financial, customs or trade sanctions or export controls, or similar restrictive measures, including Council Regulation (EU) No. 833/2014, as amended.
- 17.3 The term "**Sanctioned Person**" has the following meaning: any person, individual, entity, vessel, or aircraft: (a) specially designated, blocked, or otherwise individually listed or targeted by a Sanction or a Sanctions List; (b) that is resident or located in, operating from, or incorporated under the laws of a Prohibited Country; (c) that is, or is part of, the government of a Prohibited Country or any political subdivision, body, agency or instrumentality thereof, or fully or partially owned (directly or indirectly); or (d) fully or partially controlled by, or acting on behalf or at the direction of, or for the benefit of, any individual or entity on a Sanctions List (including but not limited to where the level of direct or indirect ownership amounts to 45% or more on aggregate).
- 17.4 The term "**Sanctions Authority**" has the following meaning: (a) the United Nations Security Council; (b) the United States of America; (c) the United Kingdom; (d) Canada; (e) Australia; (f) the European Union (and/or its individual member states); and (g) the respective governmental institutions and agencies of any of the foregoing, or any other jurisdiction that may be relevant to the performance of the contract, or rights and obligations pursuant to the contract (including jurisdictions relevant to any related entities or affiliates, and/or to the end use of the Goods), including the Office of Foreign Assets Control of the US Department of Treasury (**OFAC**), the US Department of State, the Bureau of Industry and Security of the US Department of Commerce, the Office of Financial Sanctions Implementation, part of His Majesty's Treasury (**OFSI**), the European Commission and the relevant national competent authorities (**NCA**s) within an EU member state.
- 17.5 The term "**Sanctions List**" has the following meaning: any list of Sanctions targets maintained by a Sanctions Authority, including without limitation: (a) the Consolidated United Nations Security Council Sanctions List; (b) any list maintained by the OFAC or included in the International Trade Administration's "*Consolidated Screening List*", including the Specially Designated Nationals (**SDN**) and Blocked Persons List; (c) the Consolidated List of Financial Sanctions Targets or List of persons subject to restrictive measures in view of Russia's actions destabilising the situation in Ukraine, maintained by the UK Treasury; (d) the Consolidated List of Persons, Groups and Entities subject to EU Financial Sanctions; or (e) any similar list maintained by, or public announcement of sanctions made by, any other Sanctions Authority.
- 17.6 The term "**Export Laws**" has the following meaning: the: (a) UK Export Control Act 2002; (b) retained EU law version of the Dual-Use Regulation (428/2009/EC); (c) retained EU law version of the Anti-Torture Regulation ((EU 2019/125); (d) retained EU law version of the Firearms Regulation (258/2012/EU); and (e) all other applicable import and export control laws of a Sanctions Authority.
- 17.7 The term "**Prohibited Country(ies)**" has the following meaning: Afghanistan, Belarus, Crimea, Iran, North Korea, Syria, Russia, non-government-controlled areas of the Donetsk, Kherson, Luhansk and Zaporizhzhia oblasts of Ukraine or other Ukrainian territories claimed to be Annexed by Russia or any country or region which is, or whose government is, or becomes, a target of comprehensive, country-wide or territory-wide Sanctions. Sandvik reserves the right to amend the list of Prohibited Countries by written notice to the Purchaser.
- 17.8 The Customer represents and warrants, on an ongoing basis, that it shall: (a) strictly comply with, and adhere to, all Sanctions; (b) not engage in any activity, practice or conduct involving a Sanctioned Person or a Prohibited Country; (c) not engage in activity, practice, or conduct in any manner that would breach Sanctions, cause Sandvik or its related entities to breach Sanctions, or that could expose it, Sandvik or their related entities to the risk of adverse measures pursuant to any Sanctions (including being designated as a Sanctioned Person); (d) not directly or indirectly (even when under threat of deterring financial liability) sell, re-sell, circumvent, transfer, retransfer, provide, export, re-export, divert, loan, lease, consign, or otherwise release or dispose of any Goods or Confidential Information to military (or military intelligence) end-users or for military (or military intelligence) end user; to, via or for the benefit of a Sanctioned Person; or to a Prohibited Country; (e) ensure that the Goods and Confidential Information will not be used, re-exported, transferred, or retransferred for any purpose connected with chemical, biological, or nuclear weapons, or missiles capable of delivering such weapons; and the Goods, or any replica of them, will not be used in any nuclear explosive activity or unsafeguarded nuclear fuel cycle. The Customer understands and acknowledges that Sandvik is not responsible for any Goods or Confidential Information that are subsequently exported or re-exported by the Customer or sold to another person and/or representative, domestic, or foreign. In the event of such a post-sale re-export, transfer or re-transfer of the Goods or Confidential Information, the Customer is responsible for complying with (and warrants and represents that it shall comply with) all Sanctions and Export Laws, including by obtaining all export licenses or authorisations where required under law (including the Sanctions) and imposing obligations equivalent to those contained in this Clause 17 on its customers with respect to all subsequent transactions involving the Goods; and (f) maintain its own policies and procedures to ensure compliance with Sanctions and Export Laws (and the Sanctions-related / Export Laws- related provisions in the contract).
- 17.9 The Customer: (a) represents and warrants that it will take all reasonable measures to ensure that its employees, subcontractors, agents, intermediaries, and Representatives will comply with the terms of the contract; (b) shall cause all subcontractors to give and enter into representations, warranties, and undertakings substantially equivalent to those set out in Clause 17.8. For the purposes of this Clause 17.9, reasonable measures includes (but is not limited to) policies, procedures, and training relating to compliance with Sanctions, Export Laws, and the Sanctions-related provisions of these Terms and Conditions of Supply; and (c) shall establish and maintain adequate internal controls and mechanisms to: (i) detect conduct by third parties in its downstream commercial chain, including possible resellers, that violates, or frustrates the purpose of, Sanctions; and (ii) ensure it obtains sufficient knowledge about the end-user to determine whether, for each contract, the Goods could be destined for an end-use which is not permitted under the Contract.
- 17.10 Nothing in the contract requires either party to take any action, or refrain from taking any action, where doing so would be prohibited by, or subject to penalty under any Sanctions, or where doing so would expose the party or its related entities to the risk of adverse measures pursuant to any Sanctions.
- 17.11 Each party agrees to take advantage of any general licence to lawfully allow for the performance of the terms of the contract if such performance is affected by Sanctions. For the avoidance of doubt, nothing in the contract, or otherwise, requires Sandvik to apply for any specific licence or authorisation in the event that performance of the terms of the contract becomes unlawful pursuant to Sanctions.
- 17.12 If the Customer breaches any representation or warranty set out in this Clause 17 or, in Sandvik's reasonable opinion, any such breach is likely to occur, the parties agree that Sandvik may terminate or suspend (at its own discretion) its relationship with the Customer immediately, and that Sandvik shall not be liable toward the Customer or any third party for any subsequent non-performance by Sandvik under the Contract, and that the Customer shall indemnify and hold Sandvik harmless from any claims, losses, damages, fines, or penalties relating to such non-performance or otherwise arising from a breach of representation or warranty.
- 17.13 The Customer shall notify Sandvik immediately (and no later than within seventy two (72) hours of knowing or suspecting the breach) of any known or suspected breach or any activities that could frustrate or breach this Clause 17 (whether by the Customer or any other entity or person) of any representation or warranty set out in the Clauses above or it becomes aware that performance of the contract, or any actions taken in relation to or pursuant to the contract have, or may lead to, a breach of this Clause 17. Further, the Purchaser shall provide all information relating to requests for any Goods, that the Purchaser suspects could violate or circumvent Sanctions, or where the provision of Goods would breach the Purchaser's commitments under the obligations above in these Clauses, including requests from or on behalf of a Sanctioned Persons or attempts to acquire any Goods in violation of Sanctions.
- 17.14 If Sandvik elects to suspend the contract pursuant to Clause 17.12: (a) Sandvik shall cease performance under the contract with immediate effect upon serving written notice to the Customer; (b) the Purchaser shall make available to Sandvik information concerning compliance with the obligations under Clause 19 within two weeks of the simple request of such information, (c) any suspension will last for a period of up to one

- hundred and twenty (120) Days. If, after this period, Sandvik is unable to confirm that the Customer is in compliance with this Clause 17, Sandvik may elect to terminate the contract with immediate effect; and (d) for the suspension to cease having effect, Sandvik must serve the Customer with a written notice confirming that the suspension period has come to an end.
- 18. Specific Risks**
- 18.1 The Customer agrees that: (a) given the nature of the Specified Risks; and (b) without prejudice or limitation to the generality of Clauses 5.4 to 5.5 (inclusive), Sandvik's performance or observance of its obligations under the Contract may be impacted by a Specified Risk.
- 18.2 The Customer agrees that, on the occurrence of a Specified Risk, Sandvik may, acting reasonably, require equitable changes to the Contract (including to milestones, delivery dates, and prices) to the extent necessary to compensate for the consequences of the Specified Risk.
- 18.3 The term "**Specific Risks**" has the following meaning: the availability or cost of raw materials, commodities, transportation, warehousing, energy, or other critical components or elements relevant to Sandvik's supply chain and the Goods, services, or digital Services (including as may be caused by market volatility, climate change, epidemics, or pandemics (including current and future variants of Covid-19 and other Corona strain viruses)).
- 19. Unsafe conditions**
- 19.1 The Customer shall: (a) take all steps necessary to prevent the occurrence of Unsafe conditions or activities; and (b) notify Sandvik if it observes, reasonably suspects, or becomes aware of an Unsafe condition or activity. The term "**Unsafe**" means: unacceptable actual or potential hazards and incidents relating to safety, health, or the environment (including in breach of applicable Laws).
- 19.2 If Sandvik identifies an Unsafe condition as described above, Sandvik may require the Customer to remove or, to the extent reasonably possible, mitigate the effect of the Unsafe condition, and the Customer must comply with that request promptly and without delay.
- 19.3 Sandvik reserves the right to suspend the delivery of Goods or performance of services or digital services to the Customer where any Unsafe condition exists until such time as the Unsafe condition has been rectified to Sandvik's satisfaction.
- 19.4 The Customer shall ensure that: (a) it notifies Sandvik of all Unsafe conditions or activities of which it becomes aware (including those within its control) promptly and without delay (and immediately where the Unsafe condition or activity may risk the health or safety of Sandvik's representatives); and (b) all relevant personnel are informed of, and comply with: (i) all relevant Laws; and (ii) any Sandvik protocols, codes of conduct, policies, or procedures notified to the Customer (which may include health and safety requirements, machine operation instructions or manuals, security policies, employee conduct requirements, sustainability and environment policies) from time to time in connection with the contract.
- 20. Applicable Laws Indemnity**
- 20.1 The Customer shall indemnify Sandvik, its affiliates, and their representatives and related entities (and keep such persons indemnified) for itself and on behalf of its related entities and representatives from and against all and any Liabilities suffered or incurred in any jurisdiction by Sandvik or its affiliates or any of its related entities or representatives in relation to: (a) any failure by the Customer to comply with Clause 16 and 17, in particular with the provisions regarding Sanctions, Export Laws, End-User Assurances, Anti-bribery, Modern Slavery and Anti-facilitation of tax avoidance, including Liabilities relating to any steps or actions which are required to be taken by Sandvik to remedy any such failures; or (b) a breach of the applicable Laws described therein.
- 20.2 For the purposes of this Clause 20: (a) "**Liabilities**" means all Claims which may be alleged, threatened, made or brought by or against Sandvik and/or its affiliates (or any of its related entities or representatives) and all Losses which may be suffered or incurred by Sandvik and/or its affiliates (or any of its related entities or representatives); (b) "**Claims**" means any actual or potential claims, suits, actions, proceedings or investigations (whether by any investigative body, Sanctions Authority or otherwise), demands, judgments or awards; and (c) "**Losses**" means any losses, liabilities, damages, costs, charges or expenses (including reasonable professional fees incurred in investigating or defending any claim or proceeding whether such claim or proceeding is successfully defended or not), fines or penalties; and including all Losses which it may incur in investigating, considering, responding to, disputing, defending or settling any Claim (whether or not Sandvik and/or its affiliates or any related entity or representative is an actual or potential party to such Claim) or in establishing its right to be indemnified pursuant to the Contract.
- 21. Confidential Information**
- 21.1 The Customer agrees: (a) to only use Sandvik's Confidential Information, i.e. any information or data, in respect of a party or its affiliates or representatives or their respective operations, that a party discloses to the other party or its Affiliates or Representatives in writing, orally or otherwise, to exercise its rights and perform its obligations under or in connection with the contract; and (b) that any information disclosed by or on behalf of Sandvik is, and remains, Sandvik's property at all times.
- 21.2 Each party undertakes to the other that it shall: (a) not, at any time and except as permitted by Clause 21.3, disclose any Confidential Information belonging to the other to a third party (including information concerning technical solutions or problems or the results of testing, which information shall be construed as Sandvik's Confidential Information); and (b) hold the other party's Confidential Information in confidence using at least the same degree of care (but not less than a reasonable degree of care) to safeguard and prevent disclosure to third parties as it applies to its own information of a similar nature.
- 21.3 Subject to Clause 17 (*Sanctions, Export Laws*), each party may disclose the other party's Confidential Information: (a) to its affiliates or representatives who need to know the Confidential Information for the purposes of exercising that party's rights or carrying out that party's obligations under or in connection with the contract, provided that: (i) an affiliate or representative receiving Sandvik's Confidential Information may not be a direct competitor of Sandvik without Sandvik's express prior written consent; and (ii) the party making the onward disclosure: (A) takes all steps necessary to ensure that its affiliates or representatives are aware of, and comply with, the confidentiality obligations contained in this Clause 21 as though they were a party to the contract; and (B) shall be responsible for its affiliates' or representatives' acts or omissions and compliance with the confidentiality obligations set out in this Clause 21; and (b) as may be required by law, a court of competent jurisdiction, or any governmental or regulatory authority.
- 21.4 The obligations imposed by this Clause 21 shall not apply to any Confidential Information which is or becomes: (a) in the public domain other than as a result of the breach of an obligation under the contract; (b) lawfully acquired from a third party who owes no obligation of confidence in respect of the information; (c) independently developed by the recipient without reference to the Confidential Information; (d) in the recipient's lawful possession prior to receipt; or (e) required to be disclosed by mandatory law or by order of a judicial or governmental or regulatory authority.
- 21.5 Each party reserves all rights in its Confidential Information and no rights or obligations in respect of a party's Confidential Information other than those expressly stated in the Contract are granted to the other party or shall be implied from the contract.
- Data**
- Input Data and Output Data
- 22.1 The Customer acknowledges and agrees that Sandvik may: (a) collect, store, analyse, and process any Input Data, i.e. data that is generated, collected, recorded, or uploaded either by, from or in connection with, the connected equipment, including utilisation information regarding the connected equipment and the standard industry data SAE J1939 but excluding any data or information regarding Sandvik's equipment control systems including how to achieve functional performance, Output Data, i.e. Input Data that has been processed by Sandvik in order to provide deliverables to the Customer as part of the equipment monitoring service which always excludes any data or information regarding Sandvik's equipment control systems including how to achieve functional performance, and other metrics and logs (i.e., use data) collected by the Goods in order for Sandvik to: (i) provide the Customer with the digital services (including the equipment monitoring services and any services in relation or in connection thereto provided by Sandvik or its representatives); and (ii) develop Sandvik Data, i.e. aggregated and/or anonymous data which is created, generated, derived or produced by Sandvik based on: (a) Input Data and/or Output Data; or (b) otherwise created through the use of the digital service (including the equipment monitoring service), such data never to contain any Personal Data, to use for Sandvik's business purposes; and (b) permit its distributors permission to access and process Output Data solely in connection with the contract and for the purpose of enabling such Sandvik's distributors perform services in connection with the contract.
- 22.2 The digital services (including the equipment monitoring service) may include monitoring: (a) equipment hours; and (b) equipment productivity, or assisting or conducting aftermarket services or similar.
- 22.3 The Customer may use Input Data and Output Data for its own internal business purposes provided that the Customer shall not, without obtaining Sandvik's prior written consent, disclose or otherwise make available any Input Data or Output Data (in whole or in part and regardless of format) to any third party (excluding its affiliates); provided, however, that the Customer may disclose Input Data or Output Data to its third party service providers who: (a) have need to know the Input Data or Output Data in order to service the Goods for and on behalf of the Customer; and (b) have entered into written confidentiality undertakings with the Customer that are no less protective of the Input Data and Output Data as those contained in the contract and prevent further onward disclosure.
- 22.4 Sandvik shall: (a) in connection with, and during the term of, the equipment monitoring service; and (b) following the Customer's written request, provide or otherwise make available to the Customer a copy of any Customer-specific Input Data or Output Data stored by Sandvik from time to time.
- 22.5 Except as may be permitted in separate terms of use applicable to the digital services, the Customer will not install any third party hardware or software in, or onto, the Goods, nor shall it connect the Goods to any third party computer or automation system without obtaining Sandvik's prior written consent.

- 22.6 Sandvik shall apply the same security and confidentiality standards to the Input Data and Output Data as it applies to its own commercially sensitive data.
- Equipment Monitoring Service
- 22.7 The Customer acknowledges and agrees that: (a) the equipment monitoring service is a digital service provided by Sandvik based on Input Data received by Sandvik; and (b) Sandvik does not warrant (and cannot guarantee) that the equipment monitoring service completely and accurately reflects the factual condition of the connected equipment; and (c) it is the Customer's sole responsibility to: (i) review the information in relation to the equipment monitoring service; and (ii) confirm the actual condition of the connected equipment.
- 22.8 If, and to the extent, Input Data and/or Output Data contains any personal data, both parties agree to comply with all applicable requirements of the data protection legislation.
- 22.9 For the purposes of the data protection legislation, the Customer is the data controller and Sandvik is the data processor for such personal data.
- 22.10 For the avoidance of doubt, the Customer is solely responsible for ensuring that: (a) it has provided all necessary notices to all relevant data subjects; and (b) if deemed necessary by the Customer, all appropriate consents have been obtained to enable the lawful transfer to, and processing of, Input Data and/or Output Data by Sandvik and its representatives (including distributors) as described in the contract.
- 22.11 The Customer hereby agrees that Sandvik, at its discretion and subject to Clause 22.8, may engage any subcontractor inside or outside the EU/EEA as a sub-processor for the processing of personal data hereunder; provided that Sandvik shall remain responsible in relation to the Customer for the acts and omissions of such subcontractors.
- 22.12 Except as expressly set out in the contract, Sandvik: (a) makes no separate representation, warranty, or statement concerning the digital service, equipment monitoring service, or software, their use, performance, results obtained, integration, satisfactory quality, suitability for any Customer requirements or given or intended purpose or situation, or information technology systems or its virus-free, error free or uninterrupted operation, or that the digital service, equipment monitoring service, or software will not affect or disrupt any information technology systems; (b) does not provide any representation or warranty as to the accuracy of any Input Data and/or Output Data and makes no statement about the suitability of the digital service or equipment monitoring service for a given situation; and (c) shall be under no obligation to store any Customer-specific data except for the Input Data.
- 22.13 The Customer agrees to indemnify (and keep indemnified) and fully reimburse Sandvik from and against any and all actions, claims (including counterclaims), proceedings, costs (including all reasonable legal costs), losses, damages, fines, penalties (including punitive or exemplary damages) and all other liabilities resulting from any obligations, acts and/or omissions by the Customer under this Clause 22 except where and to the extent that such violation is due to Sandvik's breach of its obligations under Clause 22.6.
- 23. Software**
- 23.1 Where the sale of any Goods, services, digital services, or connected equipment also comprises the provision of software or systems ("**Software**") then, subject to any alternative licence specified in any separate terms of use applicable to the digital services, the Customer is granted, during the term of the Contract, a non-exclusive, non-transferable, non-sublicensable, and revocable right to use the relevant Software in accordance with the terms set forth in the contract (while title to and any and all rights relating to the Software shall always remain vested in Sandvik).
- 23.2 The Customer shall not: without the prior written consent of Sandvik; or except to the extent expressly permitted under applicable law: (a) format, convert, adapt, modify, reverse engineer, decompile, or disassemble the digital service or any Software or remove any software from the Goods or connected equipment; (b) make copies of the relevant digital service or Software; (c) sell, licence, transfer, or otherwise dispose of, or distribute, the digital service or Software; or (d) use the digital service or Software for any other purpose than to the extent necessary for installing, operating and maintaining the Goods.
- 23.3 The Customer shall procure and ensure that its representatives comply with Clause 23.2.
- 23.4 The Customer acknowledges and agrees that, as between the parties, the digital service (including the equipment monitoring service) is provided to the Customer only and cannot be assigned by the Customer without Sandvik's prior written consent.
- 23.5 The Customer shall notify: (a) Sandvik if it sells, leases, rents, or otherwise assigns or transfers the connected equipment; and (b) the new customer and/or user that the connected equipment is connected to Sandvik's systems.
- 23.6 Other than the connected equipment, the Customer must have computer and network infrastructure that meets the requirements specified by Sandvik at the date on which the acceptance of the order occurs (the "**Minimum Technical Requirements**").
- 23.7 The Customer acknowledges and agrees that: (a) the performance of the digital service (including equipment monitoring service) is dependent upon the Customer's information technology equipment meeting the Minimum Technical Requirements; (b) the Customer must throughout the term of the contract ensure that its computing systems (including the network infrastructure) meets the Minimum Technical Requirements.
- 23.8 The Customer acknowledges and agrees that connected equipment and digital services may contain: (a) third party software; and (b) software that is subject to open-source licences, and that such third party software and open-source software is provided "as is" and "as available" and without any representation or warranty of any kind.
- 23.9 The Customer shall comply with any licence terms applicable to third party software and open-source software made known to it by Sandvik from time to time and agrees that such licence terms shall, unless otherwise expressly stated in the contract, apply in lieu of these Terms and Conditions of Supply as regards the Customer's use of such third party software and open-source software.
- 23.10 Any licence granted or implied under the contract can be revoked at any time.
- 23.11 The Customer agrees to indemnify, defend, and hold harmless (and keep indemnified) Sandvik and its representatives from and against all liabilities, costs and expenses suffered or incurred by Sandvik or its representatives (including, without limitation, against all reasonable legal fees, arising out of or in connection with the delivery of or use of the Software by the Customer) except to the extent that any liability, loss or damage is solely and directly caused by negligence of Sandvik.
- 24. Jurisdiction, applicable law, severability, notices**
- 24.1 Any notice or demand under the contract shall be delivered by registered mail, courier, or by hand to the address set out in the order or, with the exception of the service of legal proceedings, sent by email to the address specified in the order. A notice given in accordance with this provision shall be deemed to have been received: (a) if delivered by hand or courier on a business day (for the recipient) before 17:00 p.m. recipient's time, on the date of delivery; (b) if delivered by hand or courier on a business day (for the recipient) on or after 17:00 p.m. recipient's time, the business day (for the recipient) following the date of delivery; (c) if delivered by registered mail, seven (7) Days after the date of posting; or (d) email, at 9.00 a.m. (recipient's time) on the business day (for the recipient) immediately following transmission.
- 24.2 Any disputes arising out of or in connection with the contract or its validity shall be finally settled in accordance with the Arbitration Rules of the German Arbitration Institute (DIS) without recourse to the ordinary courts of law. The arbitral tribunal shall be comprised of three members. The seat of the arbitration shall be Essen and its language shall be English. However, Sandvik as plaintiff reserves the right to resort to the ordinary German courts of law instead and to commence legal action in the courts of Essen or any other court which may have jurisdiction over the Customer or any of its assets.
- 24.3 The contract and any claims arising out of or in connection with its subject matter or formation shall be governed by and construed in accordance with the laws of the Federal Republic of Germany, excluding its conflict of law rules. The application of the UN sales law (CISG - United Nations Convention on Contracts for the International Sale of Goods) is excluded.
- 24.4 Should any provision of these Terms and Conditions of Supply or any individual provision of any other agreements be or become invalid or unenforceable, the validity of the remaining provisions or agreements shall not be affected thereby.