In these Terms, unless the context otherwise requires: headings are for ease of reference only and do not affect interpretation; the singular includes the plural and vice versa; a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time; a reference to a person includes a natural person, partnership, body corporate, associated, governmental or local authority or agency or other party to a contract.

1. Definitions and Interpretation

1.1. "Amount Payable" means the amount of any debit balance shown on an invoice; "Connected Equipment" means equipment, including Goods, which has remote monitoring hardware and software installed, connected, and activated by Sandvik for the Customer pursuant to a Contract; "Day(s)" means all calendar days, including weekends and (public) holidays; "Contract" means the Order Acceptance, these Terms, the Quote and the Order and any other document which is attached to or incorporated by reference in the Order Acceptance, these Terms or the Quote; "Customer" means the person who Orders the Goods and/or Services from Sandvik and includes any permitted transferee; "Data Processors" means (i) if directly applicable, the General Data Protection Regulation (EU) 2016/679, and/or (ii) Malaysian Personal Data Protection Act 2010, as amended or updated from time to time; "Delivery Date" means the date for delivery of the Goods and/or Services as specified in the Contract; "Due Date" means for equipment sales 7 Days from the date of invoice and for parts, consumables and Services 30 Days from the date of invoice; "Equipment Monitoring Service" means the services provided by Sandvik in connection with receiving Input Data as further detailed in the Conditions of Supply; "Force Majeure" shall be any event or circumstance beyond Sandvik’s control and shall include but not be limited to: unavailability to availability of Connected data via a web managed (or similar) subscription service received following online acceptance of relevant web portal terms and conditions; "Goods" means the goods ordered or specified in the Contract; "Input Data" means data that is generated, collected, recorded or uploaded either by, from or in connection with, the Connected Equipment, including utilization 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 any know-how to achieve functional performance; "Personal Data" has the meaning given in the Data Protection Legislation; "POD" means proof of delivery issued to the Customer by Sandvik; "Purchaser" means a person that is either a Customer, a buyer, the Goods and/or Services from Sandvik and includes any permitted transferee; "Purpose" means Sandvik’s business purposes including, development, optimization, improvement, marketing, scheduling, and support of the Goods and/or Services and associated business offerings, parts deliveries, software and hardware, product support, product development and other business improvements or offerings, including aggregating the Sandvik Data with other data for the purpose of providing performance comparisons or benchmarking to Sandvik’s other customers; "Quote" means the quote or proposal document issued by Sandvik to the Customer for the Goods and/or Services; "Sanctioned Person" means: (a) any person listed on, or directly or indirectly owned or controlled by, any persons on a Sanctions List; (b) any person, owned or controlled by, acting on behalf of or for the benefit of, any person on a Sanctions List; (c) a government of any country that is the subject of Sanctions or an agency or instrumentality of, or a person directly or indirectly owned or controlled by, such a government; or (d) any person that is resident or located in, operating from, or incorporated under the laws of (as applicable) a Sanctioned Territory; "Sanctioned Territory" means Crimea, Cuba, Iran, North Korea, Syria or any other country which, after the date of this Contract, becomes the target of comprehensive, country-wide or territory-wide Sanctions; "Sanctions" means any trade or economic sanctions, laws, or regulations, imposed or enforced by any Sanctions Authority; "Sanctions Authority" means: (a) the United Nations Security Council; (b) the United States of America; and (c) the European Union, including the relevant authorities or any of the foregoing; "Sanctions List" means: (a) the Consolidated United Nations Security Council Sanctions List; (b) the Specially Designated Nationals and Blocked Persons List or the Sectoral Sanctions Identification List maintained by the US Office of Foreign Assets Control; (c) the Consolidated List of Persons, Groups and Entities subject to EU Financial Sanctions; (d) 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; or (e) any similar list maintained by, or publication of sanctions made by, any other Sanctions Authority. "Sanctioned Person" is the Sandvik Group entity specified in the Order Acceptance; "Sanvik Data" means aggregated and/or anonymous data which is created, generated, derived or produced by Sandvik based on (i) Input Data and/or Output Data, or (ii) otherwise created through the use of the Equipment Monitoring Service, such data never to contain any Personal Data; "Sandvik Group" means any subsidiary, directly or indirectly owned and/or controlled by Sandvik AB (publ); "Security Interest" means a mortgage, transfer, pledge, notarial bond, lien or security interest, 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 flayed asset arrangement); "Services" means the services specified in the Order which Sandvik agrees to provide in the Order Acceptance including, where applicable, the Equipment Monitoring Service; "Terms" means these Terms and Conditions of Supply; "Unsafe Items" means items containing or comprising hazards and incidents relating to safety, health or the environment; "Valuation" means any value-added tax, goods and services tax, consumption tax, or similar tax imposed by legislation, including the sales tax imposed by the Sales Tax Act 2018. 3.3. The Customer expressly acknowledges and agrees that any Order which it issues to Sandvik shall be an offer to procure Goods and/or Services from Sandvik under these Terms, and that upon Order Acceptance, both Sandvik and the Customer shall be bound by the terms of the Contract. A Contract for the supply of Goods and/or Services is made upon Order Acceptance. By accepting possession of any Goods or receiving the benefit of any Services, the Customer acknowledges that Goods and/or Services are supplied in accordance with the terms and conditions of these Terms. If there is any conflict or inconsistency between the parts constituting the Contract the parts will rank in the following order: 1. the Order Acceptance; 2. any other document attached or referred to in the Order Acceptance; 3. the Terms; 4. any other document
4. Delivery and Risk

4.1. Sandvik will deliver the Goods Ex Works (as per Incoterms 2010) to the Sandvik address set out in the Order Acceptance, unless otherwise expressly stipulated in the Contract. Risk in the Goods shall pass to the Customer in accordance with the Incoterms specified in clause 6.1. Delivery may be made in one or more instalments and at different times or by separate shipments or deliveries. Adherence to the Delivery Date or delivery period is determined by the date of POD by Sandvik. The Customer’s obligation to take delivery of the Goods is a material obligation under this Contract.

4.2. If Sandvik is not able to deliver the Goods to the Customer on the Delivery Date due to the Customer’s inability, unavailability or unwillingness to accept delivery, Sandvik reserves the right to dispatch any Goods at Sandvik’s discretion or put them into storage at the expense and risk of the Customer. Such cost shall be immediately due and payable on demand, but such liability shall not affect Customer’s obligation to purchase the Goods and, at Sandvik’s discretion, Sandvik shall be entitled to claim damages for breach of such obligation.

4.3. If the Customer fails to collect or take delivery of the Goods within 3 months of the Delivery Date, Sandvik shall be entitled, without prejudice to its other rights, to terminate all or part of the Contract, to dispose of the Goods and to charge the Customer compensation for the cost of materials and labour incurred until the cancellation date, whichever is higher, to be paid by the Customer within 10 days of Sandvik issuing the corresponding invoice. The parties agree that such sums payable to Sandvik under this clause are a genuine pre-estimate of the costs and losses which Sandvik would suffer from the Customer failing to take delivery of the Goods. Should these sums be found to be a penalty or unenforceable then the Parties agree that the Customer’s liability to Sandvik will instead be general damages for breach of contract.

4.4. Sandvik will deliver the Services in accordance with the service delivery schedule provided to the Customer.

4.5. Excluding as set out in clause 4.6, the Delivery Date is estimated in good faith and while reasonable effort is made to meet an estimated Delivery Date or the service delivery schedule Sandvik will not be liable for any loss incurred as a result of delay or failure to make any supply of Goods and/or Services by the Delivery Date. Further, Sandvik will not be liable for any loss incurred as a result of any failure to observe any of these Terms due to an act or omission of the Customer.

4.6. Where Sandvik expressly agrees that liquidated damages will apply in either the Quote or the Order Acceptance, if Sandvik fails to supply the Goods and/or Services by the Delivery Date the Customer will be entitled to liquidated damages calculated at the rates stated in the Quote or the Order Acceptance. Unless otherwise expressly agreed by Sandvik in the Quote or Order Acceptance, the maximum amount of liquidated damages Sandvik will be liable for in any Contract will be no greater than 5% of the sum calculated in accordance with clause 4.7 below.

4.7. The liquidated damages shall only be calculated on the value of the Goods and/or Services which are late.

4.8. The Customer shall forfeit its right to liquidated damages if it fails to lodge a claim in writing for such damages within three months after the Delivery Date.

4.9. Subject to clause 4.10, these liquidated damages shall be the Customer’s sole remedy for Sandvik failing to deliver the Goods and/or Services by the Delivery Date. Should the rates of liquidated damages payable under 5.4. this clause be found to be a penalty or unenforceable then the Parties agree that Sandvik’s liability to the Customer instead be general damages for breach of contract. Such liability for general damages shall at no time exceed the amount of liquidated damages which would have been 5.5. due under the Contract had such liquidated damages been enforceable. The parties agree that the liquidated damages mentioned above are a genuine pre-estimate of their loss.

5. Customer Returns

5.1. Returns of Goods not affected by defects will only be accepted by Sandvik from Customer with the prior agreement of Sandvik in writing. All items which are accepted as returns will be subject to a handling charge. Subject to clause 5.1 and 12.2, and excluding as set out in clause 4.13, the following conditions apply to all returned Goods:

5.2.1. the Customer has to notify Sandvik within 7 Days from the date of POD of any damage or shortage to the Goods. If the Customer does not notify Sandvik within such time period, the Customer is deemed to have accepted the Goods unconditionally. All Goods incorrectly supplied to a Customer under a Contract will be credited in full. Freight costs to the receiving Sandvik designated warehouse will be covered by Sandvik. Notification of incorrect supply of Goods must be formally made available to Sandvik within 21 Days of POD, otherwise, the Goods will be deemed accepted by the Customer.

5.2.2. Return Note. The Return Note provides preliminary approval for returned Goods:

5.2.3. Goods not covered by a Return Note may not be returned without prior written authorization from Sandvik.

5.2.4. If the Goods are returned within 14 Days from date of the Return Note, the Customer receives full credit of the invoiced value. If the Goods are returned after the 14 Days from date of POD the Customer receives no credit.

5.2.5. Freight costs to the Sandvik designated warehouse for returned Goods are the responsibility of and to the Customer’s account.

Price and Payment

Unless otherwise specified in the Contract, all prices are quoted Ex Works (as per Incoterms 2010) with delivery at the Sandvik address agreed in the Order Acceptance and do not include freight, insurance, taxes customs and/or excise levies or duties (or similar). If variations should occur prior to delivery the price may be amended by Sandvik. If the Customer requests a variation to the Order before delivery of the Goods or performance of the Services, Sandvik may, at its discretion accept or reject a request to vary an Order. Where a party varies, 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. Where the amount is to be determined by Sandvik, Sandvik will calculate the amount by reference to Sandvik’s relevant Market Area Price List, costs, expenses, losses and damages suffered, off-site overheads, profit and such other reasonable rates and charges in connection with the variation.

If in any jurisdiction VAT is payable by Sandvik to a tax authority in relation to the supply of the Goods and/or Services, an amount equal to such VAT will be calculated and charged to the Customer as an additional amount. To the extent the Customer and Sandvik agree otherwise, in connection with this Contract is calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of VAT. Where a sale of Goods is treated as not subject to VAT on the basis the Customer or its freight forwarder will move the Goods from one country to another country, the Customer will provide to Sandvik, upon request, all transport documentation and/or customs documentation to demonstrate the cross-border movement of the Goods. If the Customer fails to provide such documentation or the Goods were not moved cross-border, the Customer will pay to Sandvik an amount equal to any VAT for which Sandvik is required to account to a tax authority together with any penalties and/or interest imposed on Sandvik by a tax authority in relation to that supply of Goods. Unless otherwise specified in the Contract, Sandvik will invoice the Customer upon delivery of the Goods and/or Services. The Customer will pay the whole Amount Payable on or before the Due Date without any set off, withholding or deduction. The Customer agrees that if any Amount Payable is not paid by the Due Date Sandvik shall be entitled to charge and recover interest at the rate of 1.5% per month or part thereof on the Amount Payable overdue for the period between the Due Date until payment is made in full. Payment received from the Customer is valid once honoured or funds are cleared. Should this interest be found to be a penalty or unenforceable then the Parties agree that the Customer’s liability to Sandvik will instead be general damages at law. Such liability for general damages shall not be limited to the amount of this interest which would have been due under the Contract had such interest been enforceable.

The Customer agrees to indemnify and keep indemnified Sandvik against any costs incurred by Sandvik in connection with the Customer’s failure to pay on the Due Date, including but not limited to legal fees on an attorney and own client scale, including collection charges, on an indemnity basis and debt collection agency fees.
7. Retention of Title
7.1. The title in any Goods sold and delivered by Sandvik to the Customer shall not pass to the Customer until the total Amount Payable for the Goods (plus all accrued interest if any) payable under clause 6 has been paid in full.
7.2. Until title in any Goods sold and delivered by Sandvik has passed to the Customer in accordance with clause 7.1 above:
9.1.1. the Customer shall keep those Goods separated from any other Goods of the Customer so that they remain readily identifiable as Sandvik’s property,
9.1.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and
9.1.3. the Customer shall notify any landlord of any premises leased by the Customer where the Goods are stored that the Goods are Sandvik’s property.
7.3. In addition to all other rights which Sandvik has under the Contract or applicable laws, Sandvik will be entitled to enter the premises of the Customer (including leased premises) at any time (to the extent permissible by law) to recover possession of those Goods for which the Amount Payable has not been made by the Due Date. It is agreed between Sandvik and the Customer that where Sandvik enters the premises of the Customer to take possession of the Goods and it is not possible to identify which goods are Goods owned by Sandvik but are in the possession of the Customer, the Goods will be deemed sold to the Customer in the same manner as that in which the Customer took delivery of the Goods. If the quantity of the Goods exceeds the amount owing, Sandvik will be entitled to determine which of the Goods it claims ownership in.
7.4. The Customer must keep the Goods insured against all risks for goods of that kind from the time the risk in the Goods passes to the Customer until the time the title in the Goods passes to the Customer. If requested by Sandvik the Customer will provide to Sandvik a copy of the insurance policies.
7.5. If before title to the Goods passes to the Customer, the Customer becomes subject to an Insolvency Event, then, without limiting any other right or remedy Sandvik may have, the Customer’s right to resell the Goods or use them in the ordinary course of its business ceases immediately; and Sandvik may at any time: (i) require the Customer to deliver up all its properties in which have not been resold or irrevocably incorporated into another product; and (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party (to the extent permissible by law) where the Goods are stored in order to recover them.
8. Warranty
8.1. The Sandvik Mining and Rock Technology Standard Warranty applicable at the date of Order Acceptance shall apply to the Goods supplied by Sandvik and shall be made available to the Customer upon Order Acceptance.
8.2. To the extent that clause 8.1 does not apply, Sandvik warrants that the Goods supplied shall, under proper use, be free from defects in materials and workmanship and conform to the Contract for a period of 3 months. In this clause 8 “proper use” means installation, commissioning, operation and maintenance in accordance with Sandvik documentation and “defects” means any defect and/or omission in materials or workmanship and any nonconformity with the Contract. In no event does Sandvik give any warranty to parts or components manufactured and/or supplied by any third parties (including the Customer that where Goods are supplied by the Customer).
8.3. Subject to clause 14.2, the warranties set out in clause 8.1 and 8.2 are in lieu of all other warranties or conditions express, implied or statutory, including but not limited to warranties of satisfactory quality and fitness for a particular purpose and any remedies for consequential or other loss against a manufacturer of the Goods. No other warranties express or implied are given unless they are expressly given by Sandvik in writing.
8.4. To the extent that Sandvik is unable by law to exclude its liability, Sandvik’s liability shall, where applicable, be limited at Sandvik’s option to making good by repair or replacement of any Goods in which any defect appears or in the case of Services the cost of providing the Services again. Any warranty claim must be notified in writing by the Customer to Sandvik within the applicable warranty period.
9. Security Interest
9.1. The Customer agrees that Sandvik’s Security Interest:
9.1.1. in the Goods (pursuant to clause 7) secures all amounts owing by the Customer to Sandvik under the Contract, and attaches to all proceeds of the Goods.
9.1.2. The Customer agrees to promptly do anything (for example obtaining consents, signing documents, having others sign documents, supplying information, and entering into a subordination or priority arrangements with any other secured party) which Sandvik asks it to do (at the Customer’s cost) in order to: ensure that the Security Interest arising under the Contract is perfected and otherwise effective; and assist Sandvik to exercise any right in connection with Sandvik’s Security Interest.
9.2. The Customer shall have no Security Interest in the Goods and ensure that no third party acquires an interest in the Goods free of Sandvik’s Security Interest.
9.3. To the extent permitted by law, until title passes to the Customer in accordance with these Terms, the Customer agrees not to allow or permit anything to be installed in or affixed to the Goods or affix the Goods to any other thing.
10. Privacy Policy
10.1. Where the Customer applies for credit with Sandvik, the Customer agrees and authorises Sandvik to make such enquiries as Sandvik deems necessary to assess the Customer’s application for credit. The Customer further agrees and authorises Sandvik to the extent permitted by law to provide any items of personal data described in the Malaysian Personal Data Protection Act 2010 to a credit reporting agency inside or outside Malaysia and to give credit worthiness information about the Customer to a person for considering whether to act as a guarantor or to a guarantor.
10.2. The parties must each comply with Sandvik’s policies in relation to personal data (including as such policies may change from time to time). Sandvik’s policies may be published on any medium (including online) and will otherwise be made available by Sandvik to the Customer upon receipt of a reasonable request. The Customer has read and understood Sandvik’s Personal Data Protection Notice (which is provided together with these Terms) and consent to the processing of its personal data according to the Personal Data Protection Notice.
11. Intellectual Property and Confidential Information
11.1. Sandvik is and will remain the sole owner of all the intellectual property rights comprised in and relating to the Goods and/or Services; and
11.2. any intellectual property rights created in connection with the performance of the Contract.
11.3. No licence is hereby granted directly or indirectly under any patent, invention, trademark, discovery, copyright or other intellectual property right held, made, obtained or licensable by Sandvik now or in the future, other than as expressly set out in the Contract.
11.4. Customer agrees and, subject to the full payment of the price for the Goods and/or Services, Sandvik grants to the Customer a non-exclusive, non-transferable, non-assignable, non-sub-licensable licence to use Sandvik’s intellectual property rights comprised in the Goods and/or Services strictly limited to the extent necessary for installing, operating and maintaining the Goods in accordance with manuals and use instructions supplied by Sandvik and receiving the Services. Unless otherwise specified in writing, this limited licence shall continue unless terminated pursuant to these Terms. Nothing in this 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, in writing or otherwise.
12. Data
12.1. The Customer agrees that Sandvik may collect, store, analyse and process any Input Data and Output Data in order for Sandvik to:
12.1.1. provide the Customer with the Equipment Monitoring Service (including any services in relation or in connection thereto); and
12.1.2. develop the Sandvik Data to use for the Purpose.
12.2. All rights, title and interest in and to the Sandvik Data will be retained by Sandvik.
12.3. All rights, title and interests in or relating to the Input Data and Output Data will be retained by the Customer to use for its own internal business purposes. Except as permitted by Sandvik in writing in advance, the Customer agrees not to disclose Input Data or Output Data, in whole or in part (regardless of format), to any third party outside
the Customer’s group of companies; provided, however,
that the Customer may disclose such information to third
party service providers (to the extent necessary for such
service provider to be able to provide service of the Goods
to the Customer) having signed reasonable confidentiality
undertakings with the service provider. During the term of
the Equipment Monitoring Service, Sandvik shall, upon
the Customer’s written request provide a copy of any
customer specific Input Data and/or Output Data stored by
Sandvik from time to time. The Customer will not install
any third party hardware or software in or onto the Goods,
nor connect it to any third party computer or automation
system without the prior written consent from Sandvik.

12.4. 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.

12.5. The Equipment Monitoring Service is a service provided
by Sandvik based on Input Data sent to Customer by
Sandvik. 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. For the purposes of the Data
Protection Legislation, the Customer is the data
counterparty and Sandvik is the data processor for such
Personal Data. In the event of doubt, the Customer is
solely responsible to ensure that it has provided all
necessary notices to relevant data subjects and, if
deemed necessary by the Customer, that appropriate
consents have been obtained to enable the lawful
transfer and processing of Input Data and/or Output Data
by Sandvik and its subcontractors as described in the
Contract. The Customer hereby agrees that Sandvik, at
its discretion, may engage any subcontractor inside or
outside the EU/EEA as a sub-processor for the
processing of Personal Data.

12.6. The Customer acknowledges that the Equipment
Monitoring Service is based on Input Data sent to
Sandvik. Sandvik cannot guarantee that the Equipment
Monitoring Service completely reflects the factual
condition of the Connected Equipment and it is the
Customer’s sole responsibility to review the information
in relation to the Equipment Monitoring Service and
confirm the actual condition of the Connected Equipment
accordingly. Sandvik does not provide any warranty as to
the accuracy of any Input Data and/or Output Data.
Sandvik makes no statement about the suitability of the
Equipment Monitoring Service for a given situation and
the Customer acknowledges that it is its sole responsibility
and liability whatsoever for the Customer’s reliance on (and/or use
of) any Output Data or otherwise of the Equipment
Monitoring Service. Unless otherwise agreed, Sandvik
shall be under no obligation to store any Customer
specific data except for Input Data.

12.7. 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 of the Customer under
class 12.5 except where and to the extent that such
violation is due to Sandvik’s breach of its obligations under
class 12.5.


13.1. Where the sale of any Goods/Service and or Connected
Equipment comprises also software or systems
(“Software”) the Customer is granted, during the term of a
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.

13.2. The Customer must not, without the prior written consent
of Sandvik: 15. of Sandvik, remove any Software or software from
Goods or Connected Equipment, make copies of the
relevant Software or sell, licence, transfer or otherwise
dispose of or distribute the Software or use it for any other
purpose to the extent necessary for installing, operating
and maintaining the Goods. The Customer shall ensure
that also its agents, employees or other representatives
comply with this provision.

13.3. The Customer acknowledges that the Equipment
Monitoring Service is personal to the Customer and
cannot be assigned. However, the Customer undertakes to
notify Sandvik if the Customer sells, leases, rent or
otherwise assign or transfer the Connected Equipment
and notify the new customer and/or user that the
Equipment is connected.

13.4. Other than the Connected Equipment, the Customer must
have computer and network infrastructure that meets the
requirements specified by Sandvik at the time of
conclusion of this Contract (“Minimum Technical
Requirements”). The Customer acknowledges and agrees
that the performance of the Service is dependent upon the
Customer’s network infrastructure meeting the
Minimum Technical Requirements. The Customer
must throughout the term of this Contract ensure that its
network infrastructure meets the Minimum Technical
Requirements.

13.5. Where third party or open-source software is supplied the
terms and conditions of such licence will form part of the
Contract and such license terms shall, unless otherwise
expressly stated in Contract, apply in lieu of these Terms
as regards the Customer’s use of such third party software.

13.6. Any license granted or implied under this Contract can be
revoked at any time.

13.7. The Customer will at all times indemnify Sandvik and hold
harmless and defend Sandvik and its principals, agents
and employees from and against all liabilities, costs and
costs and expenses suffered or incurred by any of those indemnified
or a third party including, without limitation, 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.

14. Liability

14.1. To the extent permitted by law, neither party is liable to
the other party for any punitive or pure economic cost,
including without limitation, special or consequential loss or the
Equipment Monitoring Services are relevant for its
particular business needs. Further, Sandvik will
not assume any obligation, responsibility or liability
whatsoever for the Customer’s reliance on (and/or use
of) any Output Data or otherwise of the Equipment
Monitoring Service. Unless otherwise agreed, Sandvik
shall be under no obligation to store any Customer
specific data except for Input Data.

14.2. 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 of the Customer under
clause 12.5 except where and to the extent that such
violation is due to Sandvik’s breach of its obligations under
class 12.5.

15. Sanctions, Export Control, End-User Assurance etc.

15.1. The Customer certifies that any Software or software from
Goods or Connected Equipment, make copies of the
relevant Software or sell, licence, transfer or otherwise
dispose of or distribute the Software or use it for any other
purpose to the extent necessary for installing, operating
and maintaining the Goods. The Customer shall ensure
that also its agents, employees or other representatives
comply with this provision.

15.2. The Customer acknowledges that the Equipment
Monitoring Service is personal to the Customer and
cannot be assigned. However, the Customer undertakes to
notify Sandvik if the Customer sells, leases, rent or
otherwise assign or transfer the Connected Equipment
and notify the new customer and/or user that the
Equipment is connected.

15.3. Other than the Connected Equipment, the Customer must
have computer and network infrastructure that meets the
requirements specified by Sandvik at the time of
conclusion of this Contract (“Minimum Technical
Requirements”). The Customer acknowledges and agrees
that the performance of the Service is dependent upon the
Customer’s network infrastructure meeting the
Minimum Technical Requirements. The Customer
must throughout the term of this Contract ensure that its
network infrastructure meets the Minimum Technical
Requirements.

15.4. Where third party or open-source software is supplied the
terms and conditions of such licence will form part of the
Contract and such license terms shall, unless otherwise
expressly stated in Contract, apply in lieu of these Terms
as regards the Customer’s use of such third party software.

15.5. Any license granted or implied under this Contract can be
revoked at any time.

15.6. The Customer will at all times indemnify Sandvik and hold
harmless and defend Sandvik and its principals, agents
and employees from and against all liabilities, costs and
expenses suffered or incurred by any of those indemnified
or a third party including, without limitation, 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.

16. Termination

16.1.1. The Customer is in breach of any of these Terms
including without limitation, a provision relating to the
payment of money or if the Customer becomes subject
to one of the following events: it suspends or threatens
to suspend payment of its debts or is or becomes unable
to pay its debts when they are due, or its financial
position deteriorates to such an extent that in Sandvik’s
opinion the Customer’s capability to adequately fulfil its
obligations under the Contract has been placed in
jeopardy, or takes any step in connection with having any
external manager or controller appointed (including any
receiver, administrator, liquidator of any kind) or informs
any person that it is, presumed to be, insolvent or if the
Customer ceases or threatens to cease to carry on
carrying on business or any guarantee or security given to Sandvik
in relation to the Customer is revoked or unenforceable
(each an “Insolvency Event”) then Sandvik may, at its
sole discretion, upon written notice to the Customer:

16.1.2. Immediately suspend performance or terminate without
penalty the Contract (including any license granted
pursuant to Clause 11.2) in force between Sandvik and the Customer;

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16.1.3. Immediately take all possible action to protect its Goods and intellectual property rights; and/or

16.1.4. Recover all costs and losses associated with such termination action.

16.2. Termination (including pursuant to clause 2.3) shall be without prejudice to the accrued rights and liabilities of either party at the termination date.

16.3. If a Force Majeure event prevents, hinders or delays a party’s performance of its obligations for a continuous period of more than three (3) months, then either party may terminate this Contract by giving two (2) weeks’ written notice to the other Party.

16.4. Sandvik agrees to store and allow the Customer to download or otherwise retrieve, Customer specific Input Data and/or Output Data provided such request has been made to Sandvik in writing within thirty (30) days following the termination of the Contract.

17. General Provisions

17.1. If a provision of these Terms is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must to that extent and in that jurisdiction be treated as deleted from these Terms. This does not affect the validity or enforceability of the remaining provisions.

17.2. Nothing in these Terms is intended to exclude, restrict or modify rights which the Customer may have under any legislation to the extent it may not be excluded, restricted or modified by agreement.

17.3. Except as otherwise expressed in these Terms, no right, power, privilege or remedy conferred is intended to be exclusive of any other right, power, privilege or remedy.

17.4. The Customer shall comply at all times with the essence of the Sandvik Code of Conduct, a copy of which is available on request, and with all applicable laws, statutes and regulations, in particular those related to anti-bribery and anticorruption including the Malaysian Anti-Corruption Commission Act 2009 as amended from time to time. Failure to comply with this paragraph shall constitute a material breach which will entitle Sandvik to terminate the Contract immediately.

17.5. Sandvik may assign, novate or otherwise deal with the Contract pursuant to these Terms without the consent of the Customer. The Customer agrees to provide all assistance reasonably required by Sandvik to give effect to its rights under this clause.

17.6. Except where prohibited by law, Customer shall require its insurer (if any) to waive all rights of subrogation against Sandvik and/or its insurers.

17.7. A party waives a right under these Terms only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of these Terms does not operate as a waiver of another breach of the same term or any other term.

17.8. Orders may be sent by e-mail or facsimile transmission. Any notice or demand must be in writing and shall be delivered by registered mail or by hand to the address set out in the Order, or sent by fax to its main fax number or sent by email to the address specified in the Order. If by registered mail, such notice or demand shall be deemed delivered 7 Days after the date of posting and, if sent by fax or email, at 9:00 am (Customer time) on the next business day after transmission.

17.9. To the extent permitted by law, Sandvik is under no liability in respect of Goods exported without necessary licenses, authorisations or consents.

17.10. No person who is not a party to a Contract shall have any right to enforce any term of a Contract.

17.11. Neither party shall cause, permit or tolerate an Unsafe condition or activity over which that party has control over. If a party observes or becomes aware of an Unsafe condition, that party may request the other party to remove or, to the extent reasonably possible, mitigate the effect of the Unsafe condition, and the other party must comply with that request. Sandvik reserves the right to suspend work under the Contract if Unsafe conditions exist, to which Sandvik’s personnel (including but not limited to its directors, employees, contractors or subcontractors) may be exposed, until such time as the Unsafe conditions have been rectified. Unless the Customer can demonstrate that the Unsafe condition(s) have been rectified (and Sandvik did not cause the Unsafe condition or perform the Unsafe act), Sandvik is entitled to a reasonable extension of time for any delays caused by the Unsafe condition(s).

18. Governing Law & Dispute Resolution

18.1. Any dispute arising out of or in connection with this Contract (including any question regarding its existence, validity or termination) shall be governed by the laws of Malaysia. The parties irrevocably submit to the non-exclusive jurisdiction of the courts of Malaysia.

18.2. The submission to the jurisdiction of Malaysian courts shall not limit the right of Sandvik to take proceedings against the Customer in any court which may otherwise exercise jurisdiction over the Customer or any of its assets.

18.3. If either party determines there is any dispute or difference between them arising out of or in connection with this Contract (including interpretation of this Contract and conduct of the parties prior to this Contract) (in this clause called “dispute”) then the party identifying the dispute must give written notice to the other party, detailing the dispute (“Dispute Notice”). Within 14 Days of the Dispute Notice, each party must nominate a representative (with authority to resolve the dispute) and the representatives must meet at least once to attempt to resolve the dispute.

18.4. If the parties have not resolved the dispute under clause 18.3, then within 28 Days of the Dispute Notice, Sandvik may refer the dispute to binding arbitration, by notice to the Customer. The Customer has agreed to be bound to such arbitration, which shall be in accordance with the Arbitration Rules of the Asian International Arbitration Centre, in effect on the date of the Contract (the “AIAC Rules”), and shall be conducted in English.

18.5. Where clause 18.5 applies, the seat of the arbitration shall be Kuala Lumpur, unless Sandvik and the Customer mutually agree to another location, and the arbitration shall be conducted by a single arbitrator jointly selected by the parties, and in the event the parties cannot agree on the selection of the arbitrator within 35 Days from the Dispute Notice, an arbitrator shall be appointed pursuant to the AIAC Rules.

18.6. If Sandvik does not refer the dispute to arbitration within the time contemplated under clause 18.5, then either party may refer the dispute to litigation.

18.7. Despite the existence of a dispute under this clause, the parties must continue to perform their obligations under this Contract and (a) a party is not prevented from commencing a court proceeding relating to any dispute where that party seeks urgent interlocutory or declaratory relief; and (b) Sandvik is not prevented from commencing a court proceeding to recover any payment due under clause 6.
PRIVACY NOTICE:
Sandvik’s Personal Data Protection Notice

The purpose of this notice is to set out the principles governing Sandvik’s use of personal information which Sandvik obtains about you.

Sandvik AB (publ), reg. no. 556000-3468, Box 510, SE-101 30 Stockholm, Sweden ("Sandvik AB") and the Sandvik Group take your privacy and the security of your personal information very seriously. It is Sandvik AB’s aim that you, if your personal information is processed by Sandvik AB, at all times shall feel confident that your privacy is respected and that due care is taken regarding your personal information.

Data user
Sandvik AB is the data user of the personal data that is submitted by you. Sandvik AB will comply with the Malaysian Personal Data Protection Act 2010 (the “Act”).

Personal data collected
Sandvik AB collects personal information such as first name, last name, e-mail address and country of residence and other information which is voluntarily submitted by you or collected from the CTOS database. All provision of such personal data is on a voluntary basis. If you decide not to provide Sandvik AB with any of your personal data, Sandvik AB may not be able to provide you with the products / services requested, which may in certain circumstances affect Sandvik AB’s business relationship with you.

Purpose of the processing
The personal information provided by you will be processed for the purpose of providing the information and services you requested as well as for marketing, sales and product development purposes.

Transfer and sharing of personal information
Sandvik AB may give personal information within the Sandvik group of companies and to third parties, located within as well as outside Malaysia, such as a distributor of our products in order to process your orders and fulfill your requests.

Right to access and rectification
Under the Act you have a right of access and rectification in relation to your personal information. We may impose a fee for such access request to your personal data as prescribed by the Personal Data Protection Department from time to time.

If you want to obtain such information, or request that your data is edited or erased, please contact Sandvik AB using the following contact information:

Business Controller / Finance Manager
Sandvik AB; (publ)
Box 510, SE-101 30 Stockholm, Sweden
Phone: +60 3 7842 3700
Email: privacy@sandvik.com

Complaints or queries
Sandvik AB try to meet the highest standards when collecting and using personal data. For this reason, we take any complaints we receive about this very seriously. We encourage people to bring it to our attention if they think that our collection or use of information is unfair, misleading or inappropriate. We also welcome any complaints we receive about this very seriously. Sandvik AB try to meet the highest standards when collecting and using personal data. We encourage people to bring it to our attention if they think that our collection or use of information is unfair, misleading or inappropriate. We also welcome any complaints we receive about this very seriously.

If you have a complaint or a question or if you want to limit Sandvik AB’s processing of your personal data, please contact the Business Controller / Finance Manager at privacy@sandvik.com or +60 3 7842 3700.

Conflict
In the event of a conflict between the terms in the English Privacy Notice and the corresponding Bahasa Malaysia version, the terms in the English Privacy Notice will prevail.

NOTIS PRIVASI:
Notis Perlindungan Data Peribadi Sandvik ini

Tujuan notis ini adalah untuk menyatakan prinsip-prinsip yang mengawal bagaimana Sandvik akan menggunakan maklumat peribadi mengenai anda yang diterima oleh Sandvik.


Pengguna data
Sandvik AB adalah pengguna data untuk data peribadi yang dibekalkan oleh anda. Sandvik AB akan mematuhi Akta Perlindungan Data Peribadi 2010, Malaysia ("Akta" tersebut).

Data peribadi yang dikumpul
Sandvik AB mengumpul maklumat peribadi seperti nama depan, nama keluarga, alamat e-mail dan negara masing-masing dan maklumat lain yang dibekalkan oleh anda secara sukarela atau yang dikumpul daripada pangkalan data (database) CTOS. Segala pembekalan data peribadi tersebut adalah secara sukarela. Sekiranya anda memilih untuk tidak membeikan Sandvik AB dengan data peribadi anda, Sandvik AB mungkin tidak dapat membeikan anda dengan produk / perkhidmatan yang anda minta dan ia mungkin akan, dalam seselangkah kes, menjejaskan perhubungan perniagaan Sandvik AB dengan anda.

Tujuan pemprosesan
Maklumat peribadi yang dibekalkan oleh anda akan diproses untuk tujuan pembekalan maklumat dan perkhidmatan yang diminta oleh anda dan juga untuk pemarsaran, jualan dan tujuan-tujuan pembangunan produk.

Pemindahan dan perkongsian maklumat peribadi
Sandvik AB mungkin akan membeikan maklumat peribadi dalam kalangan kumpulan syarikat Sandvik AB dan kepada pihak-pihak ketiga yang bertempat di dalam dan di luar Malaysia, contohnya seperti pengedar produk kami, untuk memproses pesanan anda dan memenuhi permintaan anda.

Hak akses dan pindaan
Di bawah Akta tersebut, anda mempunyai hak akses dan pindaan terhadap maklumat peribadi anda. Kami mungkin akan mengenakan f fee atas permintaan akses data peribadi anda, sepertimana yang ditetapkan dari semasa ke semasa oleh Jabatan Perlindungan Data Peribadi.

Sekiranya anda ingin mendapatkan maklumat tersebut, atau meminta bahawa data anda diubah atau dipadam, sila hubungi Sandvik AB melalui butir-butir perfuburan yang berikut:

Pengawal Perniagaan / Pengurus Kewangan
Telefon: +60 3 7842 3700
Emel: privacy@sandvik.com

Aduan atau pertanyaan
Sandvik AB berusaha untuk mencapai standar yang tertinggi dalam pengumpulan dan penggunaan data peribadi. Oleh sebab itu, kami memandangkan serius terhadap sebarang aduan yang diterima oleh kami mengenai perkara ini. Kami menggalakkan orang supaya memaklumkan kepada kami sekiranya mereka berpendapat bahawa pengumpulan atau penggunaan maklumat oleh kami adalah tidak adil, mengelirukan atau kurang sesuai. Kami juga menyiapkan sebarang cadangan untuk menambah baik prosedur kediam.

Sekiranya anda ada aduan atau pertanyaan atau sekiranya anda ingin menghakankan pemprosesan data peribadi anda oleh Sandvik AB, sila hubungi Pengawal Perniagaan / Pengurus Kewangan di privacy@sandvik.com atau +60 3 7842 3700.

Konflik
Dalam keadaan berlakunya sebarang konflik antara Notis Privasi ini dalam Bahasa Inggeris dengan Notis Privasi ini dalam Bahasa Malaysia yang sepadan dengannya, tema-terma Notis dalam Bahasa Inggeris akan menggantungnya.