

1. Definitions and Interpretation

1.1. **"Affiliate"** means any entity which is controlled by a Party, which controls a Party hereto or which is under common control with a Party hereto. For purposes of this Contract, "control" of an entity means the direct or indirect ownership of more than fifty per cent (50%) of the shares or interests entitled to vote for the directors of such entity or equivalent power over the management of such entity, for so long as such entitlement or power exists; **"Amount Payable"** means the amount of any debit balance shown on an invoice; **"Confidential Information"** means any information or data, in respect of a party or its Affiliates or Representatives or their respective operations, including but not limited to reports, brochures, technical documents, specifications, part-numbers, service manuals, drawings, information, interpretations, production methods, records, operations, processes, plans, product information, price lists, market opportunities and customers containing or otherwise reflecting any information that is or may be proprietary and/or includes, but is not limited to, trade secrets, concepts, know-how, designs, patent applications, inventions, software, (cross)references, processes, business plans, financial information, that a party discloses to the other party or its Affiliates or Representatives in writing, orally or otherwise; **"Connected Equipment"** means equipment, including Goods, which have remote monitoring hardware or 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 Protection Legislation"** means (i) if directly applicable, the *General Data Protection Regulation ((EU) 2016/679)*, and/or (ii) *Privacy Act 1993* as amended or updated from time to time; and (iii) if applicable, the *Credit Reporting Privacy Code 2004*; **"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 Contract which may include, but is not limited to, availability to Connected Equipment data via a web managed (or similar) subscription service received following online acceptance of relevant web portal terms and conditions; **"Force Majeure"** shall be any event or circumstance beyond Sandvik's control and shall include but not be limited to any shortage of electricity or water, lack of production, capacity or raw materials, strikes, lock outs, labour disputes, fires, floods, epidemics or pandemics, acts of God or public enemy, malicious or accidental damage, delays in transport, or delays by a carrier servicer, breakdowns in machinery, non-performance or failure by any bank in relation to sending or receiving money under this Contract due to trade or compliance restrictions, trade sanctions or embargoes (including new, expanded or changed in scope), and restrictions or prohibitions by any government or any semi-government authorities or any new circumstance act or omission of the Customer or a third party that would or is likely to result in Sandvik being in breach (or in the reasonable opinion of Sandvik is likely to become in breach) of any law (including extraterritorial laws), any financing arrangements, including any loan facilities or issued notes of Sandvik or any of its Affiliates, or this Contract; **"Goods"** means the goods specified in the Order (including any embedded or standalone software) which Sandvik agrees to provide in the Order Acceptance; **"GST"** means goods and services tax as

imposed by the *Goods and Services Tax Act 1985*; **"Input Data"** means raw data that is generated, collected, recorded or uploaded either by, from or in connection with, the Connected Equipment or performance of the Services, 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 how to achieve functional performance; **"Intellectual Property"** means including but not limited to any and all patents, copyrights, trademarks, trade dress, knowhow, trade secrets, industrial design rights, trade secrets, know-how, designs, inventions, structures and algorithms for machine learning (whether created or obtained through machine learning) and all other intellectual property rights or intellectual property (whether registered or unregistered) anywhere in the world. Intellectual Property shall also include any improvements, enhancements and derivative works based on any pre-existing Intellectual Property; **"Order"** means the purchase order issued by the Customer to Sandvik for the Goods and/or Services; **"Order Acceptance"** means Sandvik's acceptance of the Order and consequent agreement to the Contract by either delivering the Goods and/or Services or issuing the Customer with a document named 'Order Acceptance' (or similar); **"Output Data"** means Input Data that has been processed by Sandvik in order to provide deliverables to the Customer as part of the Services or Equipment Monitoring Service (as the case may be) which always excludes any data or information regarding Sandvik's equipment control systems including how to achieve functional performance; **"Personal Data"** has the meaning given in the *General Data Protection Regulation ((EU) 2016/679)*; **"POD"** means proof of delivery issued to the Customer by Sandvik; **"PPSA"** means the *Personal Property Securities Act 1999*, New Zealand or any law of any other jurisdiction that has an analogous or similar effect; **"Purchaser"** means the person who Orders 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 Sandvik's other current and future goods and services offerings, parts deliveries, software and hardware, product support, product development and other business improvements or offerings, including aggregating 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; **"Representatives"** means any director, employee, officer, adviser, auditor, agent, consultant, distributor or subcontractor of a party or its Affiliate; **"Sanctioned Person"** means any person: (a) listed on, or directly or indirectly owned or controlled by one or more persons listed on, a Sanctions List; (b) owned or controlled by, or 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) 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 enacted, administered, imposed or enforced by any Sanctions Authority; **"Sanctions Authority"** means: (a) the United Nations Security Council; (b) the United States of America; (c) the United Kingdom; and (d) the European Union, including the relevant sanctions authorities of 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 a public announcement of sanctions made by, any other Sanctions Authority; **"Sandvik"** means the Sandvik Group entity specified in the Order Acceptance; **"Sandvik 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 Sandvik AB and any of its operating affiliated companies or subsidiaries directly or indirectly owned or controlled by it; **"Sandvik Warranty"** means the Standard Warranty in force at the time of entry into the Contract; **"Security Interest"** means 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 the PPSA or any law of any other jurisdiction that has an analogous or similar effect; **"Services"** means the services specified in the Order which Sandvik agrees to provide in the Order Acceptance including, where applicable, the Equipment Monitoring Service; **Tax** means any and all taxes (including GST), fees, levies, duties and charges imposed or assessed in respect of this Agreement by all government authorities other than customs and import duty; **"Terms"** means these Terms and Conditions of Supply; and **Unsafe** means unacceptable actual or potential hazards and incidents relating to safety, health or the environment.

1.2. 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, association, governmental or local authority or agency or other entity; a reference to a legislative requirement or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and the meaning of general words is not limited by specific examples introduced by the words including, for example or similar expressions. The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that agreement shall not apply.

2. Terms of Supply

2.1. Sandvik may accept or reject any Order in its absolute discretion and for its sole interest at any time.  
2.2. Where Sandvik has provided a purchase or credit facility to the Customer, Sandvik may withdraw that facility either on the basis specified in the Contract in respect of that purchase or credit facility or, if no such basis is specified at any time without prior notice, and Sandvik reserves the right to review the extent, nature and duration of such facilities at all times.  
2.3. Sandvik may without notice suspend or terminate the supply of Goods and/or Services or the granting of any rights where any Amount Payable remain(s) unpaid after the Due Date and Sandvik can recover all costs and

losses associated with such suspension or termination action. The Customer must provide Sandvik with a Security Interest for payment as and when required by Sandvik.

**3. Evidence of Contract and Precedence of documents.**

- 3.1. The Contract contains the entire agreement between Sandvik and the Customer with respect to its subject matter and supersedes all prior communications and agreements. The Customer acknowledges that in entering into the Contract it does not rely on any communication that has not been expressly set out in the Contract. No terms and conditions submitted by either party that are in addition to, different from, or inconsistent with these Terms shall be binding upon either party unless specifically and expressly agreed in writing. Nothing in the Contract shall exclude or limit liability for fraud.
- 3.2. These Terms apply to the exclusion of any other terms or conditions that may be sought to be invoked by the Customer (including without limitation any terms referenced in any Order or on any online website or electronic platform), or which are implied by trade, custom, practice or course of dealing. Sandvik will not supply on, and expressly rejects:
  - 3.2.1. the Customer's standard terms and conditions of purchase; and
  - 3.2.2. any terms and conditions other than the terms and conditions stated herein.
- 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.
- 3.4. A Contract for the supply of Goods and/or Services is made upon Order Acceptance.
- 3.5. 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.
- 3.6. 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 attached or referred to in the Terms 5. the Quote; 6. any other document attached or referred to in the Quote; and 7. the Order.

**4. Delivery and Risk**

- 4.1. Sandvik will deliver the Goods Ex Works (per Incoterms 2020) to the 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 Incoterm 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 the right of Sandvik 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 of (i)

for standard Goods, 15% of the purchase price; and (ii) for non-standard Goods, 30% of the purchase price or 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.

- 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% 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.
- 4.10. Should the rates of liquidated damages payable under this Clause be found to be a penalty or unenforceable then the Parties agree that Sandvik's liability to the Customer will instead be general damages at law. Such liability for general damages shall at no time exceed the amount of liquidated damages which would have been 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.
- 4.11. During the continuance of an event of Force Majeure or the effect of an act or omission of the Customer, Sandvik's obligations under the Contract will be suspended and timeframes adjusted accordingly. Sandvik shall not be in breach of this Contract or otherwise liable for any failure or delay in the performance of such obligations. If there are any other consequences to the supply of the goods and services (including transport and logistics) due to circumstances outside of the service provider's control Sandvik will provide the Customer with details of the consequences. If there is any impact, such as an increase in the price of the goods and services (including transport and logistics costs), Sandvik reserves the right to pass through such cost to the Customer (acting reasonably). Any increase will be calculated in accordance with any rates in the Contract, or if there are no rates, by a reasonable amount.
- 4.12. Orders cannot be cancelled, terminated, changed or postponed by the Customer without the prior written authorisation and agreement of Sandvik and Customer will indemnify Sandvik (less of any cancellation fee agreed in the Quote) for any loss, cost or damage which arise as consequence of any breach in relation hereto.
- 4.13. The Customer must notify Sandvik in writing within 7 Days of 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.

- 4.14. 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. 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 15.2, 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;
  - 5.2.2. after notification Sandvik generates a written "Return Note" instructing the Customer to return the Goods to a Sandvik designated warehouse;
  - 5.2.3. the Customer has 14 Days from the date of the Return Note for the Goods to be received at the Sandvik designated warehouse;
  - 5.2.4. non-returnable items regardless of other criteria include: Gaskets; Seals; Belts; Hoses; Opened kits; Items made to order; Non-Sandvik Goods; Glass.
- 5.3. Sandvik will not accept any liability, risk or responsibility for returned Goods unless there has been prior written arrangement by way of a Sandvik generated Return Note. The Return Note provides preliminary approval for return of Goods. Full and final acceptance is at Sandvik's sole discretion and is subject to the following conditions:
  - 5.3.1. a copy of the Return Note authorisation must accompany the Goods;
  - 5.3.2. Goods will be subject to a visual and technical inspection upon receipt at the designated warehouse;
  - 5.3.3. Goods returned must be undamaged, returned in original packaging (where applicable) and re-saleable as new;
  - 5.3.4. Goods must not have been fitted or otherwise used in any manner;
  - 5.3.5. Goods rejected by the receiving warehouse due to non-compliance with the above conditions will be held at the warehouse pending instructions from the Customer;
  - 5.3.6. Goods that have been rejected in accordance with Clause 5.3.5. that are not collected by the Customer will be disposed of if not collected within 3 months from receipt at the Sandvik designated warehouse;
- 5.4. If the Goods are returned within 14 Days from date of the Return Note, but not later than 30 Days of date of POD, the Customer receives full credit of the invoiced value. If the Goods are returned more than 30 Days from date of POD the Customer receives no credit.
- 5.5. Freight costs to the Sandvik designated warehouse for returned Goods are the responsibility of and to the Customer's account.

**6. Price and Payment**

- 6.1. Unless otherwise specified in the Contract, all prices are quoted Ex Works (as per Incoterms 2020) and do not include freight, insurance, customs, GST or other Taxes. If in any jurisdiction an amount of Tax is payable in relation to the supply of the Goods and/or Services, this tax will be calculated as an amount in addition to the quoted price. To the extent that Sandvik is responsible for collecting and remitting such tax to a revenue or government authority, the additional amount on account of Tax will be charged to the Customer at the same time and in the same manner as the price for the Goods and/or Services. 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 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. 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.
- 6.2. If in any jurisdiction GST is payable by Sandvik to a tax authority in relation to the supply of the Goods and/or Services, an amount equal to such GST will be calculated and charged to the Customer as an additional amount. To the extent that a payment to a party under or in connection with this Contract is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST. Where a sale of Goods is treated as not subject to GST 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 related documentation and (if applicable) 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 GST 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.
- 6.3. 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.
- 6.4. 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:
- 7.2.1. the Customer shall keep those Goods separated from any other goods of the Customer so that they remain readily identifiable as Sandvik's property;
- 7.2.2. not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 7.2.3. 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 the Goods owned by Sandvik but are in the possession of the Customer, the Goods will be deemed sold to the Customer in the same sequence that 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 Goods in its possession that 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 where the Goods are stored in order to recover them.
- 8. Warranty**
- 8.1. The Sandvik Warranty applicable at the date of Order Acceptance shall apply to the Goods supplied by Sandvik and shall be made available to the Customer at the time of Contract.
- 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 party, unless otherwise agreed.
- 8.3. Subject to Clause 15.2, 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. The Customer has the benefit of the conditions and warranties under the *Consumer Guarantees Act 1993* and nothing in these conditions is intended to exclude, restrict or modify any statutory obligation of Sandvik if that cannot be lawfully effected.
- 8.4. To the extent that Sandvik is unable by law to exclude its liability, Sandvik's obligations under this Clause 8 shall 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 to the extent permitted by law. Any warranty claim must be notified in writing by the Customer to Sandvik within the applicable warranty period.
- 9. PPSA**
- 9.1. Unless otherwise defined in these Terms, capitalised terms and expressions used in this Clause 9 have the same meaning as they have in the PPSA.
- 9.2. Sandvik may register a Financing Statement on the Register (including before that Security Interest attaches to the Goods) in respect of any Security Interest which it considers arises out of this Contract.
- 9.3. The Customer agrees that:
- 9.3.1. Sandvik's Security Interest in the Goods (pursuant to Clause 9) secures all amounts owing by the Customer to Sandvik under the Contract; and
- 9.3.2. Sandvik's Security Interest attaches to all Proceeds of the Goods.
- 9.4. 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:
- 9.4.1. ensure that the Security Interest arising under this Contract is Perfected and otherwise effective; and
- 9.4.2. assist Sandvik to exercise any right in connection with Sandvik's Security Interest.
- 9.5. If the Customer has a Security Interest in the Goods (for example, under a PPS Lease or Commercial Consignment), the Customer agrees to take all steps necessary to:
- 9.5.1. obtain the highest ranking priority possible in respect of that Security Interest (such as duly perfecting a Purchase Money Security Interest in the timeframes specified in the PPSA to ensure that it has priority and noting that the Security Interest is a Purchase Money Security Interest when registering the relevant Financing Statement); and
- 9.5.2. reduce as far as possible the risk of a third party acquiring an interest in the Goods free of Sandvik's Security Interest or the Customer's Security Interest or in priority to Customer's Security Interest.
- 9.6. The Customer agrees that any exercise by Sandvik of its rights to enforce any Security Interest in the Goods necessarily involves an exercise of all intellectual property rights relating to the Goods.
- 9.7. The Customer certifies that the Goods will be held by it in the furtherance of an enterprise to which a New Zealand business number (NZBN) has been allocated.
- 9.8. The Customer waives any right which it may have at any time (including under s148 of the PPSA) to receive a copy of a Verification Statement or any other notice contemplated by the PPSA.
- 9.9. The Customer waives any right which it may have to receive anything from Sandvik under s177 of the PPSA, and agrees not to make any request of Sandvik under that section. The Customer and Sandvik agree that neither party will disclose any information of the kind mentioned in s177(1) of the PPSA (except as provided for in s177(2) if the information requested under s177(1) is, or has already been, made available under any other Act or rule of law, to the person who made the request).
- 9.10. The Customer appoints Sandvik as its authorised representative for the purpose of obtaining, and authorises it to obtain, from the holder of any other Security Interest in the Goods any of the information referred to in 177 of the PPSA relevant to that Security Interest.
- 9.11. The parties hereby contract out of each provision of the PPSA which s107 permits, except sections 109 (which relates to a secured party's right to take possession and sell collateral), 111 (which relates to apparent possession of collateral by secured party), 114 (which relates to a notice of sale of collateral) and 120 (which relates to the retention of collateral). Nothing in this Clause or the provisions of the PPSA referred to in the preceding sentence shall derogate from the terms of the Contract. Where relevant, Sandvik may determine whether it exercises a particular right or power under a provision of the Contract or under the PPSA.
- 9.12. 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 and waives any rights which the Customer might otherwise have under sections 78 - 81 of the PPSA.
- 10. Privacy Authority**
- 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 information described in the Data Protection Legislation to a credit

- reporting agency and 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 Data Protection Legislation in relation to personal information (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.
- 11. Intellectual Property**
- 11.1. Sandvik is and will remain the licensee or sole owner of all Intellectual Property comprised in and/or relating to the Goods and/or Services and any Intellectual Property created in connection with the performance of the Contract.
- 11.2. No licence is hereby granted directly or indirectly under any patent, invention, trademark, discovery, copyright or other Intellectual Property held, made, obtained or licensable by Sandvik now or in the future, other than as expressly set out in the Contract.
- 11.3. Upon Order Acceptance 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 comprised in and/or relating to the Goods and/or Services, strictly limited to the extent necessary for installing and operating the Goods originally delivered by Sandvik, for the sole purpose of operating the Goods in the course of the Customer's ordinary business, in accordance with manuals and use instructions supplied by Sandvik, and for receiving the Services. Unless otherwise specified in writing, this limited license shall continue unless terminated pursuant to these Terms.
- 11.4. Nothing in this Contract permits the Customer to:
- 11.4.1. sub-licence, copy, reproduce, modify, adapt, alter, translate, reverse engineer, 3D copy/print, make or remake, or create derivative works, or attempt to do any of those things, from any Goods or Services or of Sandvik's Intellectual Property, in all or in part, or facilitate, enable, or allow (including by silence or omission) another person to do any of those things, without Sandvik's prior written consent (at its sole discretion and which may be subject to conditions);
- 11.4.2. seek to register, assert, or claim for itself, the Intellectual Property in the Goods or Services; or
- 11.4.3. challenge the title, validity, registration, or validity of registration of Sandvik's Intellectual Property.
- 11.5. If the Customer uses any of Sandvik's Intellectual Property in breach of this Contract, Sandvik may immediately terminate or revoke such rights, in all or in part in its sole discretion.
- 11.6. The Customer must:
- 11.6.1. bring Clauses 11.3, 11.4, this 11.6 and 12 (together, the **Enduring Clauses**), to the attention of any successor of the Customer in possession or title to the Goods; and
- 11.6.2. ensure, as a condition of the transfer of possession or title, that the Customer acknowledges and undertakes to be bound by the Enduring Clauses as if the successor were in the position of the Customer under these Terms.
- 11.7. Clauses 11 and 12 will survive the expiry or earlier termination of the Contract.
- 12. Confidential Information**
- 12.1. The Customer agrees to only use Sandvik's Confidential Information to exercise its rights and perform its obligations under or in connection with this Contract. The information remains the property of Sandvik at all times.
- 12.2. Each party undertakes that it shall not at any time disclose to any third party any Confidential Information, except as permitted by Clause 12.3.
- 12.3. Each party may disclose the other party's Confidential Information:
- 12.3.1. to its Affiliates and/or Representatives who need to know the Confidential Information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract, provided that the disclosing party takes all reasonable steps to ensure that its Affiliates and/or Representatives comply with the confidentiality obligations contained in this Clause 12 as though they were a party to this Contract. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this Clause 12; and
- 12.3.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 12.4. The obligations imposed by this Clause 12 shall not apply to any Confidential Information which is (i) in the public domain other than as a result of breach of an obligation by the other party; (ii) lawfully acquired from a third party who owes no obligation of confidence in respect of the information; (iii) independently developed the recipient or in the recipient's lawful possession prior to receipt; or (iv) required by mandatory law or by order of a judicial or governmental or regulatory authority.
- 12.5. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Contract are granted to the other party or to be implied from this Contract.
- 13. Data**
- 13.1. The Customer agrees that Sandvik may collect, store, analyse and process any Input Data and Output Data in order for Sandvik to:
- 13.1.1. provide the Customer with the Equipment Monitoring Service (including any services in relation or in connection thereto provided by Representatives); and
- 13.1.2. develop Sandvik Data to use for the Purpose.
- 13.2. Unless otherwise agreed, the Customer consents to Sandvik granting Representatives permission to access and process Output Data solely for the purpose of enabling such Representative to effectively conduct services to the Customer within the scope of its engagement with the Customer, or such other services that the Customer has or may subscribe or register to (for example, as part of a digital service whereby the Representative provides such service).
- 13.3. All rights, title and interest in and relating to Sandvik Data will be retained by Sandvik.
- 13.4. 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.
- 13.5. 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.
- 13.6. 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 controller and Sandvik is the data processor for such Personal Data. For the avoidance 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 hereunder; provided that Sandvik shall remain responsible in relation to Customer for the acts and omissions of such subcontractor.
- 13.7. 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.
- 13.8. Sandvik makes no separate representation or warranty or statement concerning the Equipment Monitoring Service or Software, its 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 Equipment Monitoring Service or Software will not affect or disrupt any information technology systems. Sandvik 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 Equipment Monitoring Service for a given situation.
- 13.9. 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 Clause 13.6 except where and to the extent that such violation is due to Sandvik's breach of its obligations under Clause 13.6.
- 14. Software and Computer Control Systems**
- 14.1. Where the sale of any Goods/Services 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-assignable, non-sub-licensable, 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.
- 14.2. The Customer must not, without the prior written consent of Sandvik, modify any Software or remove it from the 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 and operating the Goods. The Customer shall ensure that its Representatives comply with this provision.
- 14.3. The Customer acknowledges that the Equipment Monitoring Service is exclusively provided to the Customer and cannot be assigned without Sandvik's prior written consent. The Customer undertakes to notify Sandvik if the Customer sells, leases, rents or otherwise assign or transfer the Connected Equipment and notify the new customer and/or user that the Equipment is connected.
- 14.4. 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 information technology equipment meeting the Minimum Technical Requirements. The

- Customer must throughout the term of this Contract ensure that its network infrastructure meets the Minimum Technical Requirements.
- 14.5. 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. Sandvik does not warrant any third party or open source software and expressly excludes any liability for the same, including without limitation with regard to any infringement of any third party intellectual property right. Where Customer has other Software and hardware, the Customer's warranty rights shall be contained in the relevant end-user licence Contracts.
- 14.6. Any license granted or implied under this Contract can be revoked at any time.
- 14.7. The Customer will at all times indemnify Sandvik and hold harmless and defend Sandvik and its Representatives 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.
- 15. Liability**
- 15.1. To the extent permitted by law, neither party shall be liable to the other party under any cause of action (whether arising in contract (including under any indemnity or warranty), in tort or delict (including negligence), for breach of statutory duty or otherwise) for any loss or damage that comprises: (a) punitive or pure economic cost; (b) indirect, incidental, special or consequential loss or damage; (c) economic loss; (d) loss of opportunity; (e) loss of production; (f) loss of use; (g) loss of sales; (h) loss or depletion of goodwill; (i) loss of profit; (j) loss of anticipated profit; (k) loss of revenue (excluding the charges payable to Sandvik), (l) loss of data, in each case, whether or not reasonably foreseeable or in the contemplation of the parties at the time the Contract was entered into.
- 15.2. To the extent permitted by law, and subject to Clause 15.1, at all times, Sandvik's total aggregate liability shall be capped at 100% of the amounts paid to Sandvik under the relevant Order Acceptance (which for the avoidance of doubt also shall include any price reduction or market value for replaced or terminated Goods and/or Services claimed by the Customer), except nothing in this Clause 15.2 excludes or restricts Sandvik's liability for death or personal injury caused by the wilful misconduct or negligence of Sandvik suffered or incurred by the Customer in connection with the Goods and/or Services.
- 16. Sanctions, Export Control, End-User Assurance etc.**
- 16.1. The Customer certifies from the date of this Contract on an ongoing basis that: it shall not use, re-export, transfer or retransfer the Goods for military end-use or to a military end user; it shall not re-export, transfer or retransfer the Goods to a Sanctioned Person; the Goods 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 products 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, the Customer is responsible for complying with all applicable Sanctions, including obtaining export licenses where required.
- 16.2. The Customer shall strictly comply with, and adhere to, all applicable Sanctions. Specifically, the Customer shall not, directly or indirectly, sell, provide, export, re-export, transfer, divert, loan, lease, consign, or otherwise release or dispose of any Goods, equipment, product, commodities, services, software, source code, or technology received under or in connection with this Contract to or via a Sanctioned Person or a Sanctioned Territory, or for military end-use or to a military end user without having obtained prior authorization from the applicable Sanctions Authority where required by applicable Sanctions. Neither Party shall be required to take any action that would cause it to violate any applicable Sanctions.
- 16.3. If the Customer breaches any certification, representation or undertaking described in this Clause 16 or, in Sandvik's reasonable opinion any such breach is likely to occur, the Parties agree that Sandvik shall not be liable toward the Customer or any third party for any subsequent non-performance by Sandvik under this Contract and that the Customer shall indemnify and hold Sandvik harmless from any claims or losses relating to such non-performance. Sandvik shall have the right to terminate this Contract immediately without liability by notifying the Customer in writing if: the Customer becomes a Sanctioned Party; or the Customer breaches any certification, representation or undertaking described in this Clause 16.
- 17. Termination**
- 17.1. If 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, 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 business or any guarantee or security given to Sandvik in relation to the Customer is revoked or unenforceable ("**Insolvency Event**") then Sandvik may, at its sole discretion, upon written notice to the Customer:
- 17.1.1. Immediately withdraw any purchase or credit facilities which may have been extended to the Customer and require immediate payment of all moneys owed to Sandvik by the Customer, whether or not they were due for payment in the future;
- 17.1.2. 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;
- 17.1.3. Immediately take all possible action to protect its Goods and Intellectual Property; and/or
- 17.1.4. Recover all costs and losses associated with such termination action.
- 17.2. Termination (including pursuant to Clause 2.3) shall be without prejudice to the accrued rights and liabilities of either party at the termination date.
- 17.3. 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.
- 17.4. 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, and maximum thirty (30) days following the termination of the Contract
- 18. General Provisions**
- 18.1. If a provision of these Terms is found by a court or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, or unenforceable in any jurisdiction, that provision or the part of it that is illegal, invalid or unenforceable must, to that extent and in that jurisdiction, modified to the extent necessary to give effect to the commercial intention of the parties and, where that is not possible, treated as deleted from these Terms. This does not affect the validity or enforceability of the remaining provisions (or part provisions).
- 18.2. 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.
- 18.3. 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.
- 18.4. 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 Representatives 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).
- 18.5. 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 UK Bribery Act 2010, the US Foreign Corrupt Practices Act and the Secret Commissions Act 1910 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.
- 18.6. Sandvik may assign, novate or otherwise deal with the Contract pursuant to these Terms without the consent of the Customer, to the extent permissible by law. The Customer agrees to provide all assistance reasonably required by Sandvik to give effect to its rights under this Clause. The Customer must not assign, novate or otherwise deal with its rights under the Contract pursuant to these Terms except with the prior written consent of Sandvik.
- 18.7. Except where prohibited by law, Customer shall require its insurer (if any) to waive all rights of subrogation against Sandvik and/or its insurers.
- 18.8. 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 a waiver of another breach of the same term or any other term.
- 18.9. 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.
- 18.10. To the extent permitted by law, Sandvik is under no liability in respect of Goods exported without necessary licenses, authorisations or consents.
- 18.11. No person who is not party to a Contract shall have any right to enforce any term of a Contract.

**19. Governing Law & Dispute Resolution**

- 19.1. 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 New Zealand
- 19.2. 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**").
- 19.3. 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.
- 19.4. If the parties have not resolved the dispute under Clause 19.3, 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 current Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc., in effect on the date of the Contract (the "AMINZ Protocol").
- 19.5. Where Clause 19.4 applies, the seat of the arbitration shall be Wellington, 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 by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.
- 19.6. If Sandvik does not refer the dispute to arbitration within the time contemplated under Clause 19.4, then either party may refer the dispute to litigation.
- 19.7. 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.
- 19.8. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.