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 have 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, 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 the General Data Protection Regulation ((EU) 2016/679), of the Equipment Monitoring Service which always includes 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 relation to 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 limited to any shortage of electricity or water, lack of production, capacity or raw materials, strikes, lock outs, labour disputes, fires, floods, accidents, interruptions or annoyances, damage, delays in transport, or delays by a carrier service, 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; “General Conditions of Sale” means these Terms and Conditions of Supply; “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 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 how to achieve functional performance; “Personal Data” has the meaning given in the General Data Protection Regulation (EU) 2016/679); “PPOD” means proof of delivery issued to the Customer by Sandvik; “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 the Sandvik Data with other data for the purpose of providing performance comparisons or benchmarking to Sandvik’s other customers; “Quote” means a quote or proposal document issued by Sandvik to the Customer for the Goods and/or Services; “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, directly or indirectly, by a Sanctioned Person; (c) a government of any country or any person on a Sanctions List; (d) a government that is the subject of a 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 any 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 3. 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 acting on behalf of, or controlling, any person acting on behalf of the Sandvik Group or any 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 Mining and Construction AB and any of its operating affiliated companies or subsidiaries directly or indirectly owned or controlled by the Sandvik Mining and Construction AB; “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 3.3. retention of title or deposit of retention by way of security or a conditionally repayable deposit or secured asset arrangement) and includes any interest which can be registered under the PPSPA 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 under any Act or for any reason by any taxing authority or any new circumstance act or omission of any 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.

2. Terms of Supply

Sandvik may accept or reject any Order in its absolute discretion and for its sole interest at any time. Where Sandvik has provided a purchase or credit facility to the Customer, Sandvik may withdraw that facility at any time without prior notice, and Sandvik reserves the right to review the extent, nature and duration of such facilities at all times. 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.

Evidence of Contract and Precedence of documents

The Contract contains the entire agreement between Sandvik and the Customer with respect to its subject matter and supersedes all prior communication and agreements. The Customer acknowledges that in entering into this Agreement, Sandvik shall not be liable to Sandvik and the Customer with respect to its subject matter and superscedes all prior communication and agreements. The Customer acknowledges that in entering into this 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 bound upon either party unless specifically and expressly agreed in writing. Nothing in the Contract shall exclude or limit liability for fraud.

These Terms apply to the exclusion of any other terms or conditions that may be sought to be invoiced by the Customer (including without limitation any terms referenced in any Order or on any online website or electronic platform), which are implied by trade, custom, practice or course of dealing. Sandvik will not supply on, and expressly rejects: the Customer’s standard terms and conditions of purchase; and any terms and conditions other than the terms and conditions stated herein.

The Customer expressly acknowledges and agrees that any Orders which are not in accordance with these Terms of Supply 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.
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. any other document attached or referred to in the Terms; 4. the Quote; 5. 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 DDP (Delivered Duty Paid - as per Incoterms 2010) 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 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 governed by clause 4.7 below.

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 the Goods. If 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’s compensation for (i) standard Goods, 15% of the purchase price; and (ii) 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. Subject to clause 4.11, if Sandvik fails to deliver the Goods under this Contract 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 omissions 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.

Orders cannot be cancelled, terminated, changed or postponed by the Customer without the prior written approval and agreement of Sandvik and Customer will indemnify Sandvik (less of any cancellation fee agreed in the Quote) for any loss, cost or damage with the exception of such obligations.

5. Liquidated Damages

5.1. Where Sandvik expressly agrees that liquidated damages payable under this Contract shall arise as consequence of any breach in relation hereto.

5.2. 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.

5.3. 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. Non-compliance of returned 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.

5.4. Customer Returns

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.

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 6.3. return of Goods. Full and final acceptance is at Sandvik’s sole discretion and is subject to the following conditions: a copy of the Return Note authorisation must accompany the Goods.

5.4. Goods will be subject to a visual and technical inspection upon receipt at the designated warehouse.

5.5. Goods returned must be undamaged, returned in original packaging (where applicable) and re-saleable as new.

5.6. Goods must not have been fitted or otherwise used in any manner.

5.7. Customer agrees to indemnify and keep indemnified Sandvik against any costs incurred by Sandvik in relation to the supply of Goods and/or Services.

5.8. 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 in full has been received from the Customer. Sandvik retains title in Goods until payment in full has been received from the Customer.

6. Freight and Insurance

6.1. Freight charges on Goods and/or Services delivered to a Customer under this Contract will be borne by the Customer. Where the Customer cannot accept delivery the Customer will be charged for the return of Goods by Sandvik to the Customer. In the event of any return of Goods to the Customer 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’s behalf.

Price and Payment

6.2. Unless otherwise specified in the Contract, all prices are quoted DDP (as per Incoterms 2010) with delivery at the address agreed in the Order Acceptance and does not include 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 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 Customer will rise 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 actual 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.

6.3. In all jurisdictions Sandvik will invoice the Customer upon delivery of the Goods and/or Services, and the Customer’s responsibility 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 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 Customer will rise 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 actual 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.

6.4. 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 in full has been received from the Customer. In the event of any return of Goods to the Customer 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’s behalf.

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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 title in those Goods is 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 of goods of that kind from the time the title in the Goods passes to the Customer until the time 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 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 party, unless otherwise agreed.

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. 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.

9.1. 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 consents to granting over the Goods.

9.2. To the extent that Sandvik is unable by law to exclude its liability, Sandvik’s obligations under this clause 9 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.

9.3.1. 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.

9.4.1. 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 this Contract is Perfected and otherwise effective; and

9.4.2. 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: 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 (whether secured by the Goods or by a security interest in the Goods); and/or 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.

9.5.1. 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.

9.5.2. 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. 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.

9.5.3. 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 s174. Act or rule of law, to the person who made the request).

9.6. 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.

10. Privacy Authority

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 to any items of personal information described in the Privacy Act 1993 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.

11. Intellectual Property and Confidential Information

11.1. Where the Customer uses any Sandvik’s Intellectual Property and Confidential Information and relating to the Goods and/or Services; and

11.2. any intellectual property rights created in connection with the performance of the Contract.

No licence is hereby granted directly or indirectly under any patent, invention, trademark, discovery, copyright or other intellectual property right held, made, obtained or owned by Sandvik, whether it exercises a particular right or power under a clause or the provisions of the PPSA referred to in the provision of the Contract or under the PPSA.

12. Undertakings Regarding the Goods

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: 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 (whether secured by the Goods or by a security interest in the Goods); and/or 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.

13. Data Protection Legislation

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 to any items of personal information described in the Privacy Act 1993 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.

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 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 all or part, without Sandvik’s prior written consent. If the Customer uses any of Sandvik’s intellectual property rights in breach of this Contract, Sandvik may immediately terminate or revoke such rights, in all or in part in its sole discretion.

The Customer agrees to use Sandvik’s Confidential Information only 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.
11.5. Each party undertakes that it shall not at any time disclose to any person any Confidential Information, except as permitted by Clause 11.6.

11.6. Each party may disclose the other party’s Confidential Information:

11.6.1. to its employees, officers, agents, consultants or subcontractors (“Representatives”) who need to know such information for the purposes of exercising the party’s rights or carrying out the obligations under or in connection with this Contract, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this Clause 11 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 11; and

11.6.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

11.7. 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.

11.8. For the purposes of this Clause 11 “Confidential Information” shall mean all information which is designated as confidential or would be regarded as being confidential by a reasonable business person or is confidential by its nature or circumstances in which it was imparted, including the business, affairs, customers, clients or suppliers of the other party or of any member of its Group, including but not limited to information relating to a party’s operations, processes, plans, product information, price lists, know-how, designs, trade secrets, software, market opportunities and customers, except to the extent such information 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; or (iii) independently developed the recipient or in the recipients lawful possession prior to receipt.

12. Data

12.1. The Customer agrees that Sandvik may collect, store, organise, and maintain 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 Input Data and Output Data in and to the Sandvik Data will be retained by Sandvik.

12.3. All rights, title and interests in and 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 to any third party computer or automation system without the prior written consent of 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 by Customer to 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 (including the EU General Data Protection Regulation). 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 where 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 EUEA 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.

12.6. The Customer agrees 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 ensure 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 to determine and ensure that the Equipment Monitoring Services are relevant for its particular business needs. Sandvik shall 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.

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 by 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 clause 12.5.

12.8. The Customer acknowledges that the Equipment Monitoring Service is personal to the Customer and any use or transfer to any third party computer or automation system, network infrastructure, nor connection to any third party computer or automation system, network infrastructure will terminate the Customer’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 Representatives comply with the confidentiality obligations contained in this Clause 11 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 11; and

12.9. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.10. 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.

12.11. For the purposes of this Clause 11 “Confidential Information” shall mean all information which is designated as confidential or would be regarded as being confidential by a reasonable business person or is confidential by its nature or circumstances in which it was imparted, including the business, affairs, customers, clients or suppliers of the other party or of any member of its Group, including but not limited to information relating to a party’s operations, processes, plans, product information, price lists, know-how, designs, trade secrets, software, market opportunities and customers, except to the extent such information 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; or (iii) independently developed the recipient or in the recipients lawful possession prior to receipt.


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 remain vested in Sandvik.

13.2. 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, operating and maintaining the Goods. The Customer shall ensure that its agents, employees or other representatives also 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 assigns 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 construction of this Order (the “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.

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 licence 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 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, indirect, incidental, special or consequential loss or damages, economic loss, loss of production; loss of use; loss of sales; loss of goodwill; loss of profit or anticipated profit; or revenue, in each case whether foreseeable or not, suffered or incurred by the other party however arising, including out of a breach by the other party of this Contract, a tortious or delictual (including negligent) act or omission, in equity, a breach of a statutory duty or obligation, or otherwise (whether or not such loss or damage was foreseeable by either party). The Customer indemnifies Sandvik against any claim which may be made against Sandvik by any other person in respect of any matter for which the liability of Sandvik is excluded above.

14.2. To the extent permitted by law, at all times, Sandvik’s total aggregate liability to the Customer or any other party beneficially entitled however arising, including out of a breach by Sandvik of this Contract, a tortious or delictual (including negligent) act or omission of Sandvik, in equity, a breach of a statutory duty or obligation by Sandvik or otherwise shall be capped at 100% of the amounts paid 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 Service claimed by the Customer), except nothing in this Clause 14.2 excludes or restricts Sandvik’s liability for death or personal injury suffered or incurred by the Customer in connection with the relevant Order Acceptance.

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

15.1. 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 weapon programs or missile capable of delivering such weapons; and the Goods, or any replica of them, will not be used in any nuclear explosive activity or unassurged 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.

TERMS AND CONDITIONS OF SUPPLY

Version 4.0: November 2018
[Base Terms: New Zealand]
15.3. The Customer is responsible for complying with all applicable Sanctions, export, transfer or re-transfer of the Goods, the Customer becomes a Sanctioned Party; or
16.1.3. If the Customer breaches any certification, representation or writing if: the Customer breaches any certification, representation or undertaking described in this Section 15 or, in Sandvik's opinion the Customer's capability to adequately fulfill its obligations under the Contract has been placed in question, if there is reason to believe that the Customer has ceased or will cease to carry on business or any guarantee or security given to Sandvik is revoked or unenforceable in any jurisdiction, that provision or the contract pursuant to which it is made shall be null and void; and
16.4. The Customer agrees to provide all assistance reasonably required by Sandvik to effect its rights under this clause. The Customer must not assign, novate or otherwise deal with the Goods pursuant to these Terms without the consent of Sandvik. If Sandvik requires the Customer to assign, novate or otherwise deal with the Goods pursuant to these Terms, the Customer shall assign, novate or otherwise deal with the Goods to Sandvik immediately and shall forthwith deliver to Sandvik any instrument evidencing the assignment, novation or otherwise deal with the Goods.
16.5. If Sandvik has delivered the Goods under this clause, the Customer agrees to immediately take all possible action to protect its Goods from theft, loss or damage and to take all precautions against unlawful interference with the Goods. The Customer shall immediately notify Sandvik in writing of any such interference with the Goods. The Customer agrees to use reasonable care and skill in protecting the Goods from any such interference and to pay the costs and losses associated with such interference.
16.6. If 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 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.
16.7. Either party ("Obliging Party") may at its sole discretion, upon written notice to the other party:
16.8. 18.5. The Customer agrees to immediately and forthwith deliver to Sandvik any instrument evidencing the assignment, novation or otherwise deal with the Goods.
18.6. The Governing Law & Dispute Resolution clause does not affect the validity or termination of the contract. This does not affect the validity or termination of a 30 days following the termination of the Contract.
18.7. If the Customer is in breach of any of these Terms and conditions over which that party has control over. If a party observes or becomes aware of an Unsafe condition or activity over which that party has control, the 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).