

**1. Definitions and Interpretation**

1.1. **"Amount Payable"** means the amount of any debit balance shown on an invoice; **"Day(s)"** means all calendar days, including weekends and 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; **"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; **"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, acts of God or public enemy, malicious or accidental damage, delays in transport, breakdowns in machinery, restrictions or prohibitions by any government or any semi-government authorities or embargoes or any act or omission of the Customer or a third party that would or is likely to result in Sandvik being in breach of any law or this Contract; **"Goods"** means the goods specified in the Order which Sandvik agrees to provide in the Order Acceptance; **"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); **"POD"** means proof of delivery issued to the Customer by Sandvik; **"Quote"** means the quote or proposal document issued by Sandvik to the Customer for the Goods and/or Services; **"Sandvik"** means Sandvik Mining and Construction AB and/or any of its operating affiliated companies within the Sandvik Group; **"Sandvik Group"** means any subsidiary directly or indirectly owned and/or controlled by Sandvik; **"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 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; **"Terms"** means these Terms and Conditions of Supply; **"Unsafe"** means unacceptable actual or potential hazards and incidents relating to safety, health or the environment. 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 finance 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.

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. 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 Terms; 2. any other document attached or referred to in the Terms; 3. the Order Acceptance; 4. any other document attached or referred to in the Order Acceptance; 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 to the Sandvik address set out in the Order Acceptance. 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 of 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.

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.

4.12. 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. Orders cannot be cancelled or postponed by the Customer without the prior written authorisation of Sandvik.

4.13. 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.

- 5.2. 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 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 EXW(as per Incoterms 2010) and do not include freight, insurance or taxes. 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. 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.
- 6.3. 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. Warranty**
- 7.1. The Sandvik Mining and Rock Technology Standard Warranty applicable at the date of Order shall apply to the Goods supplied by Sandvik and shall be made available to the Customer upon Order Acceptance.
- 7.2. 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.
- 7.3. Subject to clause 12.2, 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 warranties of satisfactory quality and fitness for a particular purpose and any remedies for consequential or other loss against a manufacturer of the Goods. No other warranties express or implied are given unless they are expressly given by Sandvik in writing.
- 7.4. 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. Any warranty claim must be notified in writing by the Customer to Sandvik within the applicable warranty period.
- 8. Intellectual Property**
- 8.1. Sandvik is and will remain the sole owner of:
- 8.1.1. all the intellectual property rights relating to the Goods and/or Services; and
- 8.1.2. any intellectual property rights created in connection with the performance of the Contract.
- 8.2. 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 residing in or provided with the Goods and/or Services to the extent necessary for installing, operating and maintaining the Goods and/or Services. Unless otherwise specified in writing, this limited license shall continue unless terminated pursuant to these Terms.
- 8.3. The Customer shall not reproduce, modify, adapt, alter, translate, reverse engineer or create derivative works from any Goods or Services, in all or in part, without Sandvik's prior written consent.
- 8.4. Sandvik may collect and store, and you agree to allow Sandvik reasonable access to collect, any data generated by the Goods and Services.
- 8.5. Sandvik may use any of the data it collects or stores for its business purposes including optimising Sandvik's goods and services offerings, parts deliveries; product support, product development and other business improvements.
- 9. Liability**
- 9.1. 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 damage; economic loss; loss of opportunity; 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 howsoever 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).
- 9.2. To the extent permitted by law, at all times, Sandvik's total aggregate liability to the Customer shall be capped at 100% of the amounts paid under the relevant Order Acceptance, except nothing in this Clause 9.2 excludes or restricts Sandvik's liability for death or personal injury or property damage suffered or incurred by the Customer in connection with the relevant Order Acceptance.
- 10. Termination**
- 10.1. 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 suspends or threatens to suspend payment of its debts or is or becomes unable to pay its debts when they are due, has 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 then Sandvik may, at its sole discretion, upon written notice to the Customer:
- 10.1.1. 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;
- 10.1.2. Immediately suspend performance or terminate without penalty any Contract (including any license granted pursuant to Clause 8.2) in force between Sandvik and the Customer;
- 10.1.3. Immediately take all possible action to protect its Goods and intellectual property rights; and/or
- 10.1.4. Recover all costs and losses associated with such termination action.
- 10.2. Termination (including pursuant to clause 2.2) shall be without prejudice to the accrued rights and liabilities of either party at the termination date.
- 11. General Provisions**
- 11.1. If a provision of these Terms is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must to that extent and in that jurisdiction be treated as deleted from these Terms. This does not affect the validity or enforceability of the remaining provisions.
- 11.2. 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.
- 11.3. 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.
- 11.4. 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 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).
- 11.5. Customer shall comply at all times with the Sandvik Code of Conduct and with all applicable laws, statutes and regulations, in particular those related to anti-bribery and anticorruption including but not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act 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.

- 11.6. 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.
- 11.7. A party waives a right under these Terms only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of these Terms does not operate a waiver of another breach of the same term or any other term.
- 11.8. Except for Orders which may be sent by e-mail or facsimile transmission, any notice or demand must be in writing and delivered by registered mail or by hand to the address set out in the Order. If by registered mail, such notice or demand shall be deemed delivered 7 Days after the date of posting.
- 11.9. The Customer agrees to keep confidential all information of a confidential nature which is disclosed to or obtained by the Customer and relates to the Goods and/or Services supplied. The information remains the property of Sandvik at all times.
- 11.10. To the extent permitted by law, Sandvik is under no liability in respect of Goods exported without necessary licenses, authorisations or consents.
- 11.11. No person who is not party to a Contract shall have any right to enforce any term of a Contract.
- 11.12. The Contract and any claims arising out of or in connection with its subject matter or formation (including non-contractual disputes or claims) shall be governed by the laws of Chile without taking into the consideration the International Sales of Goods Act.
- 11.13. Each party irrevocably agrees that the courts of Chile shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract of its subject matter or formation (including non-contractual disputes or claims).
- 11.13.1. The submission to the jurisdiction of Chile Courts shall not limit the right of Sandvik to take proceedings against the Customer in any court which may otherwise exercise jurisdiction over the Customer or any of its assets.