

Drillcube Pty Ltd Terms and Conditions of Purchase

1) SUPPLIER'S OBLIGATIONS

The Supplier must provide the Goods and perform the Ancillary Services in accordance with this Agreement, all Legislative Requirements and DC's Procedures and Policies. The Supplier must, at its own cost, obtain all approvals in performance of this Agreement. The Supplier warrants that:

- the Goods will be: fit for the purpose for which they are intended; of good merchantable quality; free from defects in materials and workmanship, unless otherwise stated, be new, and free of all liens and encumbrances;
- any Ancillary Services will be performed in a good and workmanlike manner; fit for the purpose for which they are intended and not impede or interfere with the operations on site or on DC's premises (applicable to any work required under this Agreement);
- the Supplier will at all times be suitably qualified and experienced in relation to the provision of the Goods and Ancillary Services; and
- the Supplier will at all times exercise due skill, care and diligence in the provision of the Goods and Ancillary Services.

The Supplier indemnifies, and will keep indemnified, DC and its officers, employees, agents and contractors from all loss and damage that DC may suffer by reason of a breach of any warranty by the Supplier.

2) EXCLUSIVITY

Unless otherwise agreed in writing, the Supplier does not have any exclusive right to supply DC with goods, which are of a similar or identical nature to the Goods, or with services, which are of a similar or identical nature to the Ancillary Services.

3) VARIATIONS

DC may direct the Supplier in writing to carry out a Variation and the Supplier must carry out any such Variation. The Price will, if necessary, be adjusted in respect of any Variation:

- by prior written agreement between the parties; or
- to the extent no agreement can be reached, by an amount to be determined by DC, acting reasonably.

4) QUALITY AND INSPECTION

If the Goods or Ancillary Services are not provided in accordance with this Agreement, DC may accept the Goods or Ancillary Services at a reduced Price or decline to accept the Goods or Ancillary Services and, without limiting DC's rights at law:

- require the Supplier, at its cost, to supply further Goods or perform further Ancillary Services in accordance with this Agreement;
- obtain substitute Goods or Ancillary Services from an alternative supplier in which case DC is entitled to the benefit of the indemnity set out in clause 1); or
- not obtain substitute Goods or Ancillary Services in which case DC is entitled to the benefit of the indemnity set out in clause 1), including a refund of any money that DC may have paid to the Supplier.

5) TRANSPORT, DELIVERY AND PACKAGING

All Goods must be packed, clearly marked and transported in accordance with the Order, or, if not specified in the Order, in accordance with Best Industry Practice.

The Supplier must deliver the Goods by the Delivery Date to the Delivery Address, or if no such date or address is specified, as directed by DC. DC is not obliged to receive any Goods earlier than the Delivery Date. The Supplier must comply with any other comments or special instructions or conditions as listed in the Order.

If the Supplier fails to meet the delivery requirements of this Agreement, and because of that failure DC must direct transport of the Goods by an expedited method, the cost of such expedited transport will be a debt due and payable on demand by the Supplier to DC.

6) ACCEPTANCE

DC may, within 5 Business Days following the delivery of an Item, advise the Supplier that DC does not accept the Item and give reasons for the non-acceptance. The absence of DC notifying the Supplier as to DC's non-acceptance is not to be taken as evidence that the Goods or Ancillary Services comply with this Agreement.

7) WARRANTY PERIOD

The Warranty Period shall commence at the expiration of 5 Business Days following the delivery of an Item. Subject to DC's rights at law, the Supplier must, if a Defect arises during the Warranty Period, at the Supplier's cost, repair or replace any Defective Item within the time stated by DC or, if no time is stated, within a reasonable time.

If the Defective Item is not repaired or replaced within the stated time, DC may engage others to repair or replace the Defective Item and the reasonable costs incurred by DC shall be a debt due from the Supplier to DC. On request by DC, the Supplier must assist DC to obtain any benefit from any manufacturer's warranty in respect of the Goods.

8) INSURANCE

The Supplier must, before delivering the Goods or performing the Ancillary Services, take out and maintain insurance policies which are reasonable and prudent for the Supplier to maintain in relation to the delivery of the Goods and performance of the Ancillary Services (including without limitation, any insurance policy expressly set out in the Order). The Supplier must ensure that each insurance policy expressly set out in the Order will include any terms and conditions reasonably required by DC as expressly set out in the Order, and be with an insurer and otherwise on terms acceptable to DC.

At the request of DC, the Supplier shall provide to the satisfaction of DC, evidence of each insurance policy. If the Supplier fails to effect or keep in force any of the insurance policies expressly set out in the Order, the Supplier must promptly notify DC of this fact, and DC may (but is not obliged to) effect and keep in force such insurance policies and recover any amounts paid in doing so as a debt due and payable on demand by the Supplier to DC. The Supplier shall not do any act or make any omission, which may provide grounds for an insurer to refuse payment of any claim made under a policy.

9) RISK, TITLE AND INDEMNITIES

Title to an Item passes to DC on the earlier of payment of the Price, delivery in accordance with this Agreement, or if applicable, on completion of installation. Risk in an Item remains with the Supplier until the expiration of 5 Business Days following the delivery of an Item, provided that if DC advises of DC's non-acceptance of an Item, risk in that Item remains with the Supplier.

The Supplier indemnifies, and will keep indemnified, DC (and its officers, employees, agents and contractors) in respect of any claim made against DC as a result of or in any way connected with the provision of the Goods and Ancillary Services (whether the claim arises in contract, in tort (including negligence), under statute or otherwise, and whether arising in connection with one or more events). The Supplier's liability pursuant to this indemnity will be reduced proportionately to the extent that DC has directly contributed to the loss. Notwithstanding any other provision in this Agreement, neither party is liable to the other for any Consequential Loss.

10) TAXES, DUTIES AND IMPOSTS

The Supplier must pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the Goods.

If GST is payable by a supplier under this Agreement, the recipient must pay to the supplier, on receiving a valid tax invoice, an amount equal to the GST payable on the supply by the supplier.

11) PRICE, INVOICING AND PAYMENT

DC must pay the Price in accordance with this Agreement. DC shall only be liable, at a maximum, for payment to the Supplier for the quantity of Goods described in the Order.

The Supplier must submit a payment claim from time to time in respect of the Goods supplied or the Ancillary Services provided, calculated in accordance with the Order, and be in the form of a tax invoice which includes the "Purchase Order No" specified in the Order, the Delivery Date, Delivery Address, the description of the Goods delivered and Ancillary Services performed (including the hours of labour, rates charged and an itemised list of materials and costs), and the Price and any goods and services tax or duty component. DC will assess such payment claim within 21 days of the end of the month in which a valid payment claim was submitted by the Supplier, and will, by that date, notify the Supplier in writing if DC does not agree with such payment claim. If such notification is given by DC:

- such notification will set out the amount of the payment claim that DC has assessed, acting reasonably, to be payable; and
- may attach a recipient-created tax invoice for the payable amount, including the "Purchase Order number and other details necessary to identify the Order.

If no such notification is given by DC within 21 days of the end of the same month in which a valid payment claim was submitted by the Supplier, DC is deemed to be required to pay the Supplier the amount due to the Supplier within 30 days of the end of the same month in which a valid payment claim was submitted by the Supplier. DC may deduct, from moneys otherwise due to the Supplier, any amounts due to DC from the Supplier whatsoever.

12) INTELLECTUAL PROPERTY

The Supplier warrants that the sale or use of the Goods will not infringe or contribute to the infringement of any IPR of any third party in either Australia or overseas. The Supplier indemnifies DC and its officers, employees, agents and contractors against any loss or damage (including legal fees and other costs in defending in action) arising out of or in connection with any breach of this clause, and is liable to DC for all costs associated with providing equivalent Goods which do not infringe any IPR of any third party.

13) DISPUTES

Where any dispute or difference (Dispute) arises between the parties which is in any way connected with this Agreement, the provision of the Goods or the performance of the Ancillary Services, either Party may issue a

written notice to the other Party identifying and describing the nature of the Dispute, and within 7 days of receipt of such notice, a senior manager of the Supplier and DC must meet to attempt to resolve the Dispute. Such senior managers must have authority to resolve the Dispute. No such Dispute may be referred to litigation (with the exception of urgent interlocutory proceedings) before a meeting is held in accordance with this clause.

14) RELEASE

Upon completion or termination of this Agreement and on acceptance of the final payment to the Supplier, the Supplier shall fully release DC (and its officers, employees, agents and contractors) from liability in relation to this Agreement. Acceptance by the Supplier of the final payment shall be deemed to constitute such release and discharge.

15) CANCELLATION

DC may terminate all or any part of this Agreement by giving written notice to the Supplier at any time prior to final delivery of the Goods or performance of the Ancillary Services. If this Agreement is so terminated, the Supplier will cease performance of this Agreement and DC will reimburse the Supplier for the Supplier's reasonable costs up to the date of termination, provided that the Supplier is not paid in total, in connection with this Agreement, more than the Price. DC will have no liability to the Supplier in the event of such termination other than the liability under this clause.

DC may cancel this Agreement, and will be deemed released of any liability to the Supplier, by giving written notice to the Supplier at any time if the Supplier:

- being an individual: commits an act of bankruptcy; has a petition of bankruptcy presented; or is made bankrupt; or, being a company: is insolvent; is placed under official management; a receiver, liquidator or administrator is appointed to it; or it has a winding up order made against it;
- is in breach of this Agreement; or
- if DC reasonably forms the view that the Supplier is unlikely to fulfil its obligations in accordance with this Agreement and the Supplier has not, within 5 Business Days of receiving a written request from DC to do so, satisfied DC that the Supplier will fulfil the Supplier's obligations under this Agreement.

16) GENERAL

No waiver by DC of any breach of this Agreement by the Supplier will be considered as a waiver of any subsequent breach of the same or any other provision. DC shall not be taken to have agreed to any amendment or waiver of any provision of this Agreement unless agreed in writing by DC. No terms referred by the Supplier after the date of this Agreement form part of this Agreement, unless expressly agreed to in writing by DC.

If any provision of this Agreement is held to be invalid or unenforceable in whole or in part the validity of other provisions of this Agreement and the remainder of the provision in question will not be affected.

This Agreement is governed by and to be construed in accordance with the laws of Western Australia, and the parties submit to the jurisdiction of the courts of Western Australia.

Any notice required to or which may be given under this Agreement must be in writing. A notice may be given by email, ordinary or other post, in person or left at the address of the relevant party described on the Order. A notice is taken to be received if hand delivered: (i) in the case of notices delivered to DC on site, upon written acknowledgement of receipt signed by DC, (ii) otherwise, upon written acknowledgement of receipt by an officer or other duly authorised employee, agent or representative of the receiving party; if sent by prepaid post, on the fifth Business Day after the date of posting; or if sent by email when the email system confirms transmission. A notice given after 5pm and/or on a day which is not a Business Day is treated as given on the next following Business Day.

This Agreement constitutes the entire agreement between DC and the Supplier as to its subject matter and supersedes any prior understanding or agreement between the parties. Any terms and conditions of the Supplier deviating from or inconsistent with this Agreement are expressly excluded and rejected by the Supplier. This exclusion and rejection includes any statement by the Supplier that its terms and conditions prevail. A binding contract on the terms set out in this Agreement is established immediately you accept an Order from us for Goods and/or Ancillary Services.

If there is any ambiguity or inconsistency between the Agreement Documents, the document appearing higher in the list in the "Agreement Documents" definition will have precedence to the extent of the ambiguity or inconsistency.

The Supplier will not novate, assign or transfer this Agreement without DC's prior written consent. Part 1F of the *Civil Liability Act 2002* (WA) is excluded from operation under or in connection with this Agreement.

The Supplier provides all Goods and Ancillary Services under and in relation to this Agreement as an independent contractor and not as an agent or employee of DC.

17) INTERPRETATION

In this Agreement:

Agreement means this agreement between DC and the Supplier, which comprises the Agreement Documents. **Agreement Documents** means (a) the Order; (b) these Terms and Conditions of Supply; and (c) any attachments attached to the Order and these Terms and Conditions of Supply (including without limitation, any DC Procedures and Policies).

Ancillary Services means any ancillary services to be supplied by the Supplier as described in the Order.

Business Day means any day other than a Saturday or Sunday or a public holiday in Western Australia.

DC means Drillcube Pty Ltd ACN 602 730 861 of 85 Beringarra Avenue Malaga WA 6090.

Best Industry Practice means all practices relevant to the industry applicable to the Goods and/or Ancillary Services supplied which optimise efficiency (including energy efficiency), durability and performance, and minimise environmental impacts, and are consistent with internationally recognised standards, methods, acts and the most up-to-date local and overseas practices as would be used by leading, highly skilled and experienced contractors of work in such relevant industry.

DC's Procedures and Policies means the DC procedures and policies (if any) attached to the Order. Such DC procedures and policies may be attached in hard copy, or by a document that specifies the web-site address where such DC procedures and policies are available online.

Consequential Loss means indirect loss, special loss.

Delivery Date means the date or dates stated in the Order for delivery of the Item or Items.

Delivery Address means the address or addresses stated in the Order for delivery of the Item or Items.

Defect means: (a) any Item that is not in accordance with this Agreement; (b) any Item which has been required to be delivered that has not been delivered; (c) any damage to an Item for which the Supplier is responsible under this Agreement; or (d) the supply of more or less quantity of an Item or Items than is required by this Agreement.

Goods means all Items to be supplied by the Supplier as described in the Order.

IPR means any intellectual property right in respect of any design, material, document or process and includes the right to any invention, patent, copyright, trade mark, design, name, circuit layout, trade secret or know-how. **Item** means one or more Items which form part of the Goods.

Legislative Requirements includes acts, regulations, by-laws and requirements of any authority having jurisdiction in connection with the supplying or delivering of the Goods or in carrying out the Ancillary Services and any relevant international standards.

Order means the "Purchase Order" that references this Agreement, which specifies the details of the parties, the Goods and any Ancillary Services to be supplied and the Price, together with any other relevant details or special conditions that apply.

Price means the "Total Price" specified in the Order, excluding any additions or deductions which may be required to be made under this Agreement.

Supplier means the Supplier described in the Order.

Variation means any change to the Goods or Ancillary Services, including: (a) any addition, increase, decrease, omission or deletion to or from the Goods or Ancillary Services; (b) any change to the Delivery Date or Delivery Address of the Goods or Ancillary Services; and (c) any change to the method or other circumstances of delivery.

Warranty Period means the period commencing in accordance with this Agreement and ending at the expiration after the period described as such in the Order (and if no such period is described in the Order, the period is 12 months).

Includes or includes are not words of limitation and like words have a corresponding meaning.

Headings are for convenience only and do not affect interpretation.

Drillcube Pty Ltd Terms and Conditions for the Supply of Goods to the Customer

Unless otherwise agreed in writing by Drillcube Pty Ltd ABN 86 602 730 861 (referred to as “we”, “us” or “our”), these terms and conditions (“Terms”) apply to all dealings about the supply of goods and products (“Goods”) from us to the customer as named in the purchase order (as applicable) or otherwise who has purchased the Goods (referred to as “you” or “your”). The parties agree as follows:

1. Order and Acceptance

- 1.1 Any terms or conditions of your order deviating from or inconsistent with these Terms are expressly excluded and rejected by us. This exclusion and rejection includes any statement by you that your terms and conditions prevail.
- 1.2 A binding contract is established immediately you instruct us to supply Goods and/or order Goods on your behalf, and you are responsible for all costs if you cancel.
- 1.3 “You” are the person, company or body that instructs us to supply the Goods, including a Consignee under a Consignment Stock Agreement with us, and you warrant you have the authorisation needed to do so. If more than one party has entered into any agreements with us they will be jointly and severally liable for all amounts owing to us.
- 1.4 You agree that if any dispute arises concerning an order including, but not limited to, changes to the order, instructions, variations, question of identity and/or authority, or the contents of telephone email or other notifications that our internal records will be prima facie evidence of what was ordered. To the extent permitted by law, you agree that any description of the Goods is given for identification purposes only, and using that description is not deemed to be a sale by description, and, from time to time, we may in our discretion substitute Goods or any part of a Good as described in an accepted order with goods of a similar standard.
- 1.5 Each order placed by you is deemed to be a representation by you that you are solvent and will remain solvent. You will inform us of any facts which could affect our decision to accept any order and /or to grant credit, such as, but not limited to, insolvency, potential insolvency or bankruptcy or the likelihood thereof. Failure to inform us of any such factors is deemed to create an inequality of bargaining position and be unconscionable, misleading and deceptive thereby rendering the person placing the order responsible to pay all money owed by you to us.
- 1.6 You will give us at least sixty (60) days’ prior written notice of any change of ownership of the site, mine and/or premises (“Site”) where we are delivering the Goods.

2. Price and Payment

- 2.1 Estimates are not quotations and are subject to change. Unless stated otherwise GST and other applicable taxes will be added to the price.
- 2.2 Quotations are based on costs at the time of the quotation and are subject to change if you do not accept the quotation within the period specified in the quotation or within 14 days if no period is shown.
- 2.3 Our price lists are subject to change without notice and we reserve the right to apply revised prices to orders not already invoiced or delivered.
- 2.4 You acknowledge and accept that it is unreasonable to expect us to have knowledge of (or control over) price increases of Goods purchased by us from our suppliers. Unless you have instructed us to purchase materials required for a written contract between us and have fully paid for such materials in advance, we reserve the right to charge you for any such price increases.
- 2.5 We may increase prices if you request changes to quantities, specifications, delivery dates and any other changes or fail to provide us with clear or adequate instructions or information.
- 2.6 We may require a non-refundable deposit before ordering Goods or supplying Goods to you.
- 2.7 Payment of Goods or services supplied (if any) must be made within 30 (thirty) days from the date of invoice unless otherwise specified on an invoice or agreed by both parties in writing.
- 2.8 Payment only occurs when cleared funds from you have been received by us for all amounts outstanding.
- 2.9 If we accept payment by credit card, we may recover any credit card fees from you.
- 2.10 Unless agreed otherwise by us in advance, Goods are invoiced to you in full (or in part for partial delivery) immediately the Goods are collected by or dispatched to you, or 7 days after we advise you that the Goods are available for collection or dispatch.
- 2.11 We may, at our discretion and without prejudice to our other rights and remedies, withhold supply and demand immediate payment of all amounts owed (even if they are not currently due) if your account is overdue or we are concerned about your ability to pay.
- 2.12 You are not entitled to set off against any money owed (or allegedly owed) to you by us or withhold payment or deduct money from an invoice because a portion of the invoice is disputed by you.
- 2.13 We can issue proceedings to recover the price of the Goods even if ownership has not passed to you.

3. Delivery

- 3.1 Delivery of Goods takes place when you collect the Goods from our premises or those of our warehouse/storage contractor.
- 3.2 If you request us to deliver the Goods to your Site or to any other Site or to a third party or request that a carrier collects the Goods, delivery takes place when the Goods leave our premises or those of our warehouse/storage contractor and the third party and/or carrier is deemed to be your agent.
- 3.3 Unless otherwise specified in our quotation, you are responsible for all delivery costs.
- 3.4 We reserve the right to deliver part orders at our discretion.
- 3.5 You are not relieved from your obligations to us if there is any delay in delivery. Unless previously agreed in writing by us, in these Terms, time of delivery is not of the essence, and we are not responsible for any losses or alleged losses occurring as a consequence of any delay, or inability to deliver or otherwise complete your order.
- 3.6 For Goods delivered in instalments each delivery will be a separate contract and will be invoiced separately.
- 3.7 A certificate purporting to be signed by your officer or employee confirming delivery is prima facie evidence of delivery as is any signed delivery docket.

4. Documentation

Because brochures, publications, guides and all other documents provided by us are compiled by or on behalf of the manufacturers of the Goods, you agree it’s unreasonable for us to warrant they are free from errors or omissions. All documentation written or compiled by us are for guidance purposes only and we do not warrant they are free from errors or omissions, which we will endeavour to fix. You agree we are not responsible for any claims and liabilities that may arise from you using the documentation, and using the documentation is at your own risk.

5. You and Your Distributors Are Not Agents

You and/or any independent distributor or reseller are not agents of us and will not enter into agreements or represent themselves as agents, officers or representatives of us to any parties whatsoever.

6. Incorporating the Goods

If you, or any other parties, convert, transform or incorporate the Goods into other goods we are not responsible for any resulting losses and claims.

7. Suitability, Representations and Opinions

- 7.1 You are solely responsible for ensuring that Goods ordered from us are suitable for the purposes they were ordered for and indemnify and keep us indemnified from all claims and costs from any parties whatsoever as a result of you failing to select Goods to the correct specifications.
- 7.2 We accept no responsibility for any misuse, abuse or neglect by you or any other parties who use the Goods in any manner or in any environment other than those recommended in writing by us and/or the manufacturer and/or in contravention of any laws, regulations or guidelines.
- 7.3 If you request our help in the selection of Goods all such help will not be considered as advice or a warranty or an expert opinion or a declaration of fitness for purpose unless you have in advance and in writing totally informed us of all facts, risks, operating/end-use environment and all changes that may occur thereto. Unless you have advised us in writing of what we consider as being all relevant information, without limitation, we accept no responsibility and you indemnify us from any and all claims made by you or any other parties.

8. Safety of Sites, Mines and Premises

- 8.1 From time to time our personnel and the personnel of our distributors, stockists, contractors, service agents and all others who may be defined as acting for or on our behalf may be on your Site or any Site under your control. You will ensure you act in accordance with law, provide a safe Site, and promptly notify us in writing of all hazards, potential hazards and obstructions (without limitation) that may be countered on any Site that is visited by all such persons acting for or on behalf of us and you indemnify us from all claims for personal injury and any other claims made by all such persons and/or their employers. This indemnity obligation survives termination of these Terms.

9. Intellectual Property

- 9.1 All intellectual property rights including, but not limited to, patents and processes, to Goods and/or services developed by us remain with us.
- 9.2 All intellectual property rights that apply to all other Goods supplied by us remain with the manufacturer/developer of those Goods. As it would be unreasonable to expect us to have any knowledge of the true owners of such rights we accept no responsibility for inadvertent infringements of any such property rights.

10. Claims and Returns

- 10.1 All claims must be notified to us within 14 days of delivery (time being of the essence) specifying the alleged defect and no claims will be accepted by us thereafter except those specified by statute.
- 10.2 No Goods will be accepted for return unless agreed in writing by us prior to return and then only upon conditions acceptable to us. Returns are at your entire risk for loss or damage and unless otherwise agreed by us beforehand. You will pay the insurance and freight costs.

11. Warranties

To the extent permitted by law:

- 11.1 You acknowledge and agree that all Goods purchased from us are on an “as is” basis and, other than the express warranty, if any, provided by the manufacturer of those Goods, we have no further warranty obligations whatsoever apart from those prescribed by law, and use of the Goods by you (or by any other parties who use the Goods, as applicable) is entirely at your own risk.
- 11.2 The warranty for defective materials and workmanship on Goods manufactured by us is strictly limited to the period specified by us from time to time.
- 11.3 All warranty claims must be notified to us within the manufacturer’s warranty period (time being of the essence) specifying the alleged defect and no claims will be accepted by us thereafter except those specified by statute.
- 11.4 All warranties exclude damage or loss attributable to events beyond our and/or the manufacturer’s control such as, but not limited to, neglect, misuse, fire, explosion, accidents, exposure to the elements, power surges and interruptions, flood, rock falls, inadequate storage and/or failure by you to comply with our and/or the manufacturer’s instructions.
- 11.5 We have no warranty or any other obligations if you have not fully paid for the Goods by the due date for payment.

12. Force Majeure

We are not liable for any default or delay due to any act of God, war, utility and equipment failures, terrorism, industrial action, fire, flood, storm, tempest and all other events beyond our control without exception.

13. Risk and Insurance

13.1 All risks pass to you upon delivery as defined in these Terms and it is your responsibility to arrange insurance.

13.2 If any Goods are damaged, destroyed or stolen prior to payment being received by us, we are entitled to payment in full immediately upon demand by us.

14. Our Liability

Our maximum liability for any and all claims will not exceed the price received by us in respect of the Goods. We are not liable for any further payments either to you or to any other parties for any alleged losses, damages, indirect and/or consequential loss and/or expense except where you are defined as a consumer within the meaning of the Commonwealth *Competition and Consumer Act 2010* and amendments thereto.

15. Confidential Information

With the sole exception of information that is in the public domain, both parties will keep all information exchanged with each other strictly confidential and undertake not to disclose any such information to any other parties whatsoever save for the sole purpose of completing your order. This requirement is ongoing and survives all other agreements between us and you.

16. Default, Interest, Costs and Penalties

- 16.1 We may charge interest at 2.5% a month from the day the account becomes overdue and compounded monthly until all outstanding money has been paid in full.
- 16.2 If an account is more than thirty days overdue, administration costs of \$50 or 10% (whichever is greater) up to a maximum of two hundred and fifty dollars (\$250.00) will be charged to you and payable immediately.
- 16.3 You indemnify and reimburse us for all costs and disbursements in collecting outstanding debts from you which will include dishonour fees, full legal costs on a solicitor-client basis, collection agency costs, investigators costs, court, judgement enforcement and bailiff fees, search agent costs, time, travel and all other collection costs without exception.
- 16.4 If you breach any of your obligations contained in these Terms, we may exercise all our rights plus suspend or terminate the supply of Goods/ and we are not responsible for any alleged loss or damage suffered by you or any other parties as a result of us exercising our rights.

Drillcube Pty Ltd Terms and Conditions for the Supply of Goods to the Customer

17. Security for Payment

17.1 If we allow you extra time to pay money or perform obligations for which no guarantees or other securities have been provided, we may require security for payment including a guarantee by a director or other persons connected with you.

17.2 Any requirement for security or guarantees is without prejudice to any other rights or remedies we may have and does not affect the reservation of title to Goods/ supplied to you.

18. Personal Property Securities Act 2009 ("PPSA") and Personal Property Securities Register ("PPSR")

18.1 You (and/or distributor, dealer, storage, warehousing, forwarding organisation and all other parties storing or otherwise in possession of our Goods) acknowledge and agree that these Terms create a Security Interest in our Goods ("Secured Property"), and to avoid doubt, the proceeds of sale of the Secured Property for the purposes of the PPSA.

18.2 You consent to us registering a Security Interest on the PPSR including, but not limited to, a Purchase Money Security Interest (PMSI) in a manner we deem appropriate for Goods sold to or otherwise provided to you in accordance with these Terms and/or any other agreements with us and you agree to provide all assistance required by us to register such Security Interests.

18.3 You acknowledge and agree that if any part of the Secured Property becomes your inventory, you will not permit any other Security Interests to be raised in respect of the Secured Property unless we have perfected the Security Interest prior to your possession of the Secured Property.

18.4 To avoid doubt, the following definitions of the PPSA apply to these Terms: Financing Statement, Financing Change Statement and Security Interest have the same meaning as defined by the PPSA and a Security Agreement is a security agreement created between you and us in the PPSA.

18.5 You acknowledge and agree that by placing orders for Goods, these Terms constitute a Security Agreement for the purposes of the PPSA in such Goods and create a Security Interest in Goods previously supplied which have not been fully paid for and for Goods to be supplied in the future and, to avoid doubt, the sale proceeds of the Secured Property.

18.6 You agree to do everything we request including, but not limited to, signing and completing documents without delay to register and/or perfect any Security Interest and for us to exercise our rights in connection with the Secured Property and as proof that you have complied with these Terms.

18.7 You indemnify and reimburse us on demand for any losses and costs incurred by us in relation to the PPSA, including any registration, or any response to an amendment, demand or a request under section 275 of the PPSA.

18.8 You agree not to register or permit a third party to register a Financing Statement, a Financing Change Statement or any other document in respect of a Security Interest on Goods supplied by us that have not been fully paid for without our prior written consent being obtained.

18.9 You agree to promptly tell us of any material change in your methods and policies of utilising, installing, selling and/or reselling Goods supplied by us which would change the nature of proceeds of such sales.

18.10 With regard to sections 95, 96, 115, 125 and any other parts of the PPSA and amendments thereto, both parties agree that, to the extent allowed by the PPSA, these do not apply to any Security Interests created by these Terms. Furthermore, you waive your rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) together with verification statements unless all such notices are a requirement of the PPSA in which case all notices or documents must be given in accordance with the PPSA.

18.11 To the extent permitted by the PPSA the provisions of sections 127, 129(2) & (3), 132, 134(2), 135, 136(3), (4) & (5) and 137 will not apply to the enforcement of our Security Interests.

18.12 With regard to sections 142 & 143 of the PPSA you waive your rights as a grantor and/or a debtor under the PPSA.

18.13 You unconditionally approve any actions taken by us under clauses 18.1 to 18.12.

19. Passing of Title/Reservation of Title

19.1 Notwithstanding delivery of the Goods and the passing of risk to you (and/or distributor, dealer, storage, warehousing, forwarding organisation and all other parties storing or otherwise in possession of our Goods) title remains with us until all money has been paid in full and you have fulfilled all of your obligations to us.

19.2 Until all events in 19.1 occur title in the Goods and other property of us that may be in your possession remains with us as unpaid vendor and/or owner of the Goods/property and you may only hold the Goods/property as fiduciary agent and bailee for our benefit. Whilst holding our Goods/property as fiduciary agent/bailee, you must ensure they remain identifiable as our Goods/property and safely store and insure them for loss or damage for our benefit and keep all proceeds of sale in a separate account that is clearly identified as being the sale proceeds of our Goods/property into which no other money will be paid. However, failure to deposit the proceeds of sale into a separate account or to keep such money separate will not affect your obligation to deal with the proceeds as trustee/fiduciary agent/bailee of the proceeds for us.

19.3 For Goods on which title has not passed to you, we can instruct you to return them (or any part of them) to us if your obligations under these Terms have not been fulfilled.

19.4 You will not charge the Goods in any way or grant or otherwise give any interest in the Goods until clean title passes to you.

19.5 If we become aware of a breach of these Terms by you or of you suffering an insolvency event (or likelihood of such an event) we, and/or any representative of ours, may as your invitee enter upon or into the Site where we may believe the Goods and other property are stored to inspect and/or remove them and we are not responsible for any alleged loss or damage as a consequence of such inspection and/or removal and without being exposed to any claim by you or any other parties for trespass, detinue, conversion, or for any other reasons.

19.6 We can issue proceedings to recover the price of the Goods even if ownership has not passed to you.

20. Consignment Stock

20.1 If we agree to supply you (or distributor, dealer, storage, warehousing, forwarding organisation and all other parties storing or otherwise in possession of our Goods) with stock on a deferred payment or Consignment basis ("Consignment Stock") all such Consignment Stock will be stored separately from other goods in "as new" condition and be readily identified as our property by not removing identifying marks, labels or original packaging.

20.2 You will insure the Consignment Stock for all risks as specified by us from time to time and provide us with proof of insurance immediately upon request.

20.3 If any part of the Consignment Stocks are damaged, destroyed, stolen or seized by any parties you will immediately inform us and will immediately upon demand (time being of the essence) pay the full purchase price to us.

20.4 Payment for Consignment Stock sold or released to other parties by you will be made strictly in accordance with our instructions, time being of the essence as to this obligation.

20.5 You acknowledge and agree that all Consignment Stock will be held solely as bailee for us and you will not charge or otherwise pledge any Consignment Stock as security on any document whatsoever including the Personal Property Securities Register (PPSR) and will not permit any other parties (other than us and/or our nominees) to pledge Consignment Stock as any form of Security Interest on the PPSR or any other mortgage, guarantee, chattel or charge document.

20.6 If we require you to return the Consignment Stock then unless agreed otherwise by us, we will pay the freight and insurance costs.

21. Set Off and Application

21.1 We may set off against any money owed to you an amount equal to the total of all money at such time then owed by you or on your behalf to us.

21.2 We may apply any money received from or on behalf of you to any and all amounts owed by you as we see fit and you waive any rights of notification of any such allocation.

22. No Waiver

No waiver by us of any rights or provisions of these Terms will at any time be deemed or implied to limit or exclude any of our rights against you under these Terms.

23. Privacy Act

You and/or the guarantor/s agree and consent to us obtaining and exchanging credit information from your suppliers and/or other parties nominated by you and for us to obtain reports and other information from credit reporting agencies and other sources on credit information about you in relation to credit provided by us and your ability to pay your bills as and when they fall due.

24. Cancellation/Indemnity

24.1 We can cancel your orders and discontinue delivery without notice if you breach any conditions of these Terms or become or are in jeopardy of becoming insolvent and all outstanding money owing to us is payable immediately together with money owing to third parties for contracts entered into by us on your behalf.

24.2 To the extent permitted by law:

(a) you indemnify us from and against any loss or damage we suffer, incur or are responsible for which arising out of or in relation to:

(i) any breach of any conditions of these Terms by you;

(ii) you becoming or are in jeopardy of becoming insolvent; and/or

(iii) any enforcement by us or on our behalf of any security interest arising under these Terms;

(b) you release and discharge us from:

(i) all claims and demands on us by you or any third party; and

(ii) any loss or damage whatsoever and whenever caused to you,

arising directly or indirectly from, or incidental to, use of the Goods by you or any third party supplied with the Goods by you; and

(c) we are not otherwise liable to you for:

(i) any indirect or consequential loss or special damage whatsoever incurred or suffered by you or any third party in relation to the Goods and/or any matter under these Terms; and

(ii) where our liability cannot be excluded it is limited as set out in clause 14 and your sole remedy for any direct loss or breach of these Terms by us, is termination of these Terms and/or repair, replacement or refund of the relevant Goods where required by law.

In this clause 24.2, 'us', 'we' or 'our' refers to and is taken to mean 'us and our personnel, contractors and representatives' and this clause 24.2 survives termination of these Terms.

25. Restructure

25.1 You will notify us in writing of any change in your structure, including any change in ownership or sale of any material part of your business within 7 days of any such change. You are liable to us for all purchases and for all contracts that we have entered into with our suppliers or any other parties on your behalf until such notice is given.

25.2 We reserve the right to review or withdraw any credit facilities granted to you and to review or cancel all contracts upon any change in your structure, change in ownership or sale of any material part of your business.

26. Notices

Notices from us to you are served when delivered by hand, sent by mail, document exchange or email and will be treated as given when: if delivered by hand when delivered; if sent by mail or document exchange, 5 business days after posting; if sent by email when the email system confirms transmission. A notice given after 5pm and/or on a day which is not a Business Day is treated as given on the next following Business Day. In this clause, a "Business Day" means a day other than a Saturday, Sunday, or public holiday in Perth, Western Australia.

27. Disputes

If a dispute arises between us and you and a solution thereto is contained in these Terms then such solution is a binding full and final settlement of the dispute. If no solution to the dispute exists in these Terms and the dispute cannot otherwise be resolved within 30 days from the date of the dispute then either party can refer the matter to a mediator. If neither party can agree on the mediator the dispute will be referred to a mediator in accordance with the "Governing Law and Changes to Terms" clause herein. The full costs of the mediation are your responsibility if in the opinion of an expert/mediator you have been unreasonable, otherwise, the parties will equally contribute to the cost of the mediation.

28. Severability

If any part of these Terms is found to be unenforceable for any reason then that provision will be severed from these Terms and will not affect the enforceability of any other part of these Terms.

29. Governing Law, Changes to Terms, Subcontracting

29.1 The laws of Western Australia apply to these Terms and to all contracts or other agreements between us and you and are subject to the jurisdiction of the courts of Western Australia.

29.2 These Terms can only be amended with our written consent.

29.3 We reserve the right to alter these Terms and such changes will be effective from the date these changes are notified to you. You will be deemed to have accepted these Terms and any changes thereto upon placing further orders with us.

29.4 We may license or sub-contract all or any part of our rights and obligations without your consent.