



STANDARD TERMS AND CONDITIONS OF SALE

DICTIONARY

In the Standard Terms and Conditions of Supply, the words below have the following meanings:

\$ means AUD, unless specifically otherwise specified;

ACDC means the Australian Commercial Dispute Centre Limited A.C.N. 003 042 840 of Level 6, 50 Park Street, Sydney, NSW, 2000, Australia;

Agreement means these terms and conditions.

Anything of Value includes cash or cash equivalents, gifts, services, employment offers, loans, travel expenses, entertainment, political contributions, charitable donations, subsidies, per diem payments, sponsorships, honoraria or provision of any other asset, even if nominal in value.

AUD means Australian dollars;

Business Day means any day except a Saturday, Sunday or public holiday in South Australia;

Calendar Day means a calendar day with periods expressed in Calendar Days subject to extension if necessary to allow for public holidays in South Australia and/or the location where the Product (if imported) is sourced as the case may be;

Minelab or Company means Minelab Electronics Pty Limited A.C.N. 008 208 446 of 81 Graves Street, Newton, South Australia, 5074 and each of its subsidiaries, successors and assigns.

Confidential Information means all information disclosed by Minelab or The Purchaser and includes:

- (a) the fact that the parties will have, or are having, discussions, and the substance of those discussions;
- (b) financial information and other trade secrets and confidential know-how;
- (c) information regarding each party's business; and
- (d) all information generated by the parties which is based on the information referred to in these paragraphs (a) to (c) inclusive,

but excludes information that:

- (e) the parties create or develop (whether alone or jointly with any person) independently of the Confidential Information;
- (f) is public knowledge (otherwise than as a result of a breach of confidentiality by either party or any person to whom it has disclosed the information);
- (g) is rightfully known to, or in the possession or control of either party or any of its personnel and not subject to an obligation of confidentiality in accordance with the terms of this Agreement; or
- (h) becomes available to either party from a source other than the parties and which source has the right to use and disclose and is not bound by any obligation of confidentiality in respect of the same;

Credit Limit means the value of any credit facility extended by Minelab to The Purchaser;

Delivery Address means the nominated delivery address of the Purchaser advised by the Purchaser to Minelab in writing;

Duties means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes, but is not limited to, any interest, fine, penalty, charge or other amount imposed but excludes any income tax;

Existing Arrangements means any arrangements and agreements between Minelab and The Purchaser in effect as at the date an Order is submitted, as agreed by Minelab in writing;

Facilitating Payment means a payment to an individual to secure or expedite the performance of a routine government action by Government Officials;

Force Majeure Event means anything outside a party's reasonable control including, without limitation, shortages of materials, fire, storm, flood, earthquake, explosion, accident, enemy acts, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, transportation embargo or failure or delay in transportation;

Government Agency means any government or governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity;

Government Official means:

- (a) any officer or employee of a government or any department, agency or instrument of a government (including but not limited to any Government Agency);

- (b) any person acting in an official capacity for or on behalf of a government or any department, agency, or instrument of a government (including but not limited to any Government Agency);

- (c) any officer or employee of a company or business owned in whole or part by a government;

- (d) any officer or employee of a public international organisation such as the World Health Organisation or United Nations;

- (e) any officer or employee of a political party or any person acting in an official capacity on behalf of a political party; and/or

- (f) any candidate for political office;

GST has the meaning it does in section 195-1 of the GST Act;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended, varied or replaced from time to time;

Insolvency Event, in relation to The Purchaser, means any of the following events:

- (a) The Purchaser is unable to pay its creditors (or any class of them) in the ordinary course of business;

- (b) a receiver, receiver and manager, administrator, liquidator or similar officer is appointed to The Purchaser or any of its assets;

- (c) The Purchaser enters into, or resolves to enter into, a scheme of arrangement, compromise or composition with any class of creditors;

- (d) a resolution is passed or an application to a court is taken for the winding up, dissolution, official management or administration of The Purchaser; or

- (e) anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;

Intellectual Property Rights means any and all intellectual and industrial property rights anywhere in the world, including but not limited to the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect trade secrets and know how, throughout the world for the full period of the rights and all renewals and extensions;

Order means an order for Products created as the result of The Purchaser's issue of a formal purchase order to Minelab in hard copy or electronically (in a form agreed by Minelab). Issuance of an Order (whether or not a Quotation is first issued by Minelab) is deemed to constitute acceptance of these Standard Terms and Conditions by The Purchaser. In the event that a Quotation is issued by Minelab, issuance of an Order is also deemed to constitute acceptance of the Quotation by The Purchaser;

Order Value means the total price charged by Minelab to The Purchaser for any Order, and including any amounts payable by The Purchaser and charged by Minelab

Payment refers to and includes any direct or indirect offer to pay, promise to pay, authorisation of payment of, or transfer of, Anything of Value;

Perfected has the meaning given to that term in the PPSA;

PPSA means the *Personal Properties Securities Act 2009* (Cth) and any regulations made under it;

PPS Register means the register established under the PPSA;

Products means the products to be manufactured by Minelab for The Purchaser;

Purchaser or **The Purchaser** means the entity requesting that Products be supplied and sold to it by Minelab by the issuance of an Order, as listed in the Quotation (if applicable);

Quotation or **Quote** means the quote, if any, issued by Minelab to The Purchaser in respect of the Products to which these Standard Terms and Conditions of Supply are attached;

Security Agreement has the meaning given to that term in the PPSA;

Security Interest has the meaning given to that term in the PPSA;

Supply has the same meaning it does in section 9-10 of the GST Act and excludes any "GST-free supplies" and "input taxed supplies" as those terms are defined in section 195-1 of the GST Act; and

Tax or **Taxes** means any tax, levy, charge, impost, fee, deduction, compulsory loan or withholding (including corporate tax, personal income tax, fringe benefits tax, payroll tax, withholding tax, excise and import duties, GST, consumption tax, value added tax or any other taxes, levies or charges), which is assessed, levied, imposed or collected by any Government Agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any such amounts.



STANDARD TERMS AND CONDITIONS OF SUPPLY

1. Product Ordering

- 1.1 When the Purchaser wishes to purchase Products from the Company it must contact the Company in a form acceptable by the Company from time to time and place an order (**Order**). The Purchaser is responsible for ensuring the accuracy of the details of each Order.
- 1.2 The quantity and description of the Products to be supplied by the Company will be as set out in the Order (if accepted by the Company under clause 1.5, subject always to clause 1.3).
- 1.3 The Purchaser must always ensure that it has sufficient credit facilities available to it in accordance with clause 8.1 to cover the price and delivery cost for each Order.
- 1.4 The Company will use its reasonable endeavours to supply the Products to the Purchaser in accordance with Orders submitted except that it is acknowledged by the parties that the Company is not under any obligation to continue to manufacture all or any particular type of Products and is entitled to change the nature of the Products as it thinks fit.
- 1.5 No Order placed by the Purchaser will be deemed accepted by the Company unless and until accepted by the Company in accordance with clause 1.7.
- 1.6 A contract between the Company and the Purchaser for the sale by the Company, and the purchase by the Purchaser, of the Products specified in the Order will come into existence on the date the Company accepts the Order, which is to be governed by these terms and conditions to the exclusion of any other terms and conditions (**Contract**).
- 1.7 A separate Contract is entered into when the Company accepts each Order. Acceptance of each Order occurs upon shipment of the Products specified in an Order to the Delivery Address.
- 1.8 No Order which has been accepted by the Company may be cancelled by the Purchaser except with the prior written consent of the Company.

2. Delivery

- 2.1 The Company will deliver the Products the subject of each Order to the Delivery Address. The costs of delivery will be paid by the Purchaser.
- 2.2 All Products will be delivered by the Company to the Delivery Address using the Company's nominated delivery agent unless the Purchaser engages its own delivery agent and provides the Company with all necessary information (including but not limited to contact details and account numbers) at the time of placing an Order with the Company.
- 2.3 The Purchaser acknowledges that any dates quoted by the Company for the delivery of the Products are approximate only, and agrees that time and date of delivery will not be of the essence for the purposes of any Contract.
- 2.4 The Company will not be liable to the Purchaser for any direct, indirect or consequential losses, damages, liabilities, costs or expenses incurred by the Purchaser as a result of any failure by the Company to deliver the Products by any estimated or confirmed delivery date.

3. Title and Risk

- 3.1 Title in the Products the subject of each Contract will remain with the Company (despite delivery to the Delivery Address) and will not pass to the Purchaser until the Purchaser has paid to the Company all amounts owed under the relevant Contract in full.
- 3.2 If the Company has not been paid in full at the time of delivery of Products to the Delivery Address, the Purchaser:
 - (a) holds Products delivered on trust for the Company;
 - (b) grants to the Company and its employees and agents an irrevocable right to enter the premises located at the Delivery Address, any retail premises of the Purchaser and any other premises occupied by the Purchaser without notice to search for and remove Products supplied, if payments for Products are in arrears, and the Purchaser agrees that the Company and its employees and agents will not be liable to the Purchaser or any person claiming through the Purchaser for any such action taken; and
 - (c) can, as trustee for the Company, sell products to third parties in the normal course of its business subject to the terms of this Agreement provided that the Purchaser holds the book debt and proceeds of such sales on trust for the Company.
- 3.3 Risk in the Products the subject of each Contract will pass to the Purchaser upon delivery at the Delivery Address.
- 3.4 If any Products supplied are incorporated in or used as material for other goods or products or are used in such a way to make them indistinguishable or inseparable from other goods, before payment for the Products supplied has been made in full, then the legal and equitable title

such Products will be and remain with Minelab until full payment of the purchase price of the Products supplied has been made and Minelab rights in respect of the Products supplied will extend to such other goods, which will at all times be stored in such a way as to indicated that they are clearly the property of Minelab. The Purchaser is authorised to sell such Products in the ordinary course of business provided that Minelab will be entitled to the benefit of all rights and interests against the third party purchasing the Products and The Purchaser will account to Minelab all moneys received from the sale until Minelab has been paid in full.

4. PPSA (Australia only)

- 4.1 The Purchaser acknowledges that until such time as full title, property and ownership of the Products passes to The Purchaser under clause 3.1, this Agreement constitutes a Security Agreement for the purposes of the PPSA, and Minelab has a Security Interest in the Products.
- 4.2 Without limiting clause 19.6, The Purchaser agrees to do such things as Minelab may require from time to time to ensure that any Security Interest of Minelab arising from or connected with this Agreement is Perfected under the PPSA for whatever period Minelab determines in its sole discretion, including signing documents and providing Minelab with all further information required to enable Minelab to register its Security Interests on the PPS Register, and to otherwise protect Minelab's position under the PPSA. The Purchaser must keep Minelab fully informed of all relevant information regarding it and its activities, including by providing not less than 14 days notice in writing of any proposed change in its name or contact details, and immediately advising Minelab of material changes in its business activities.
- 4.3 The Purchaser agrees to indemnify Minelab for all expenses incurred by Minelab in registering its Security Interests on the PPS Register, and will reimburse Minelab for all such expenses immediately upon demand.
- 4.4 The Purchaser waives its rights under section 157 of the PPSA to receive a notice in relation to the registration events to which section 157(3)(a) of the PPSA applies, including without limitation, the right to receive a copy of a verification statement confirming registration of a financing statement or financing change statement relating to the Security Interest created by this Agreement.
- 4.5 The Purchaser agrees that nothing in sections 118, 121(4), 125, 130, 142 or 143 of the PPSA will apply to this Agreement or any Security Interest in the Products created by this Agreement, and waives its rights to receive any of the following documents:
 - (a) a notice of removal of an accession under section 95 of the PPSA;
 - (b) a notice of an intention to seize collateral under section 123 of the PPSA;
 - (c) a notice of a disposal of collateral under section 130 of the PPSA;
 - (d) a statement of account under section 132(3)(d) of the PPSA;
 - (e) a statement of account under section 132(4) of the PPSA;
 - (f) a notice of retention of collateral under section 135 of the PPSA; and
 - (g) any notice from Minelab under each of the provisions listed in section 144 of the PPSA.

5. The Purchaser's Obligations

- 5.1 Minelab and The Purchaser agree that The Purchaser:
 - (a) must advise Minelab of all statutory, regulatory and other official standards and/or requirements which the Product must comply with, at the time of submitting the Order to Minelab and immediately upon becoming aware of these at any other time; and
 - (b) must provide Minelab with any other information which Minelab may request in respect of the intended application/use of the Products.

6. Defective products

- 6.1 If within 7 days of selling a Product the Purchaser is notified by the purchaser or otherwise becomes aware that at the time the Product left the Purchaser's possession the Product was damaged, missing components or was otherwise inoperable it must immediately notify the Company of this fact.
- 6.2 Following receipt of a notification by the Purchaser under clause 6.1 the Company will, at its option:
 - (a) repair or replace the faulty Product; or
 - (b) refund to the Purchaser all amounts paid by the Purchaser for the faulty Product.

7. Prices and Payment

- 7.1 The price payable by the Purchaser for the Products the subject of each Order will be the current price(s) as provided by the Company to the Purchaser and updated from time to time.



- 7.2 The Purchaser must also pay to the Company all freight and delivery charges and other costs incurred by the Company in respect of the Purchaser's requests for Products as invoiced by the Company from time to time.
- 7.3 The Company will invoice the Purchaser for the price of the Products at the time of delivery of the Products.
- 7.4 All payments due by the Purchaser for the Products must be made in accordance with the Credit Application & Agreement as described in clause 8.1 below. All amounts owing in respect of the Products must be paid in full by the Purchaser without any setoff, withholdings or deductions and it is acknowledged and agreed that for the purposes of the Purchaser's payment obligations under this Agreement, time is of the essence.
- 7.5 Unless otherwise stated in the Quotation or where the Purchaser has not signed a Credit Application or Credit Agreement, the due date for payment by The Purchaser to Minelab for the Order (**Due Date**) is as follows:
- 30 days from the date on which the invoice was issued, if the following conditions are satisfied at the time that the Order was submitted to Minelab (i) The Purchaser has a pre-approved credit facility with Minelab and (ii) the Order Value, combined with any outstanding payments due to Minelab by The Purchaser at the time of the Order, fall within The Purchaser's approved Credit Limit; and
 - in all other cases, payment is immediately due at the time that The Purchaser places the Order with Minelab.
- 7.6 If the Purchaser fails to make any payment due to the Company by the due date, then without prejudice to any other right or remedy available to the Company, the Company can in its discretion:
- withhold any Products until such default is corrected;
 - cancel any Contract or suspend any further deliveries to the Purchaser;
 - charge the Purchaser interest (both before and after any judgement) on the unpaid amount at the rate of 10% per annum until payment is made in full; and/or
 - withdraw any credit facilities previously approved and extended to the Purchaser under the Credit Application & Agreement.
- 8. Credit Facilities**
- 8.1 The Purchaser must submit a credit application to the Company, in the form specified by the Company (**Credit Application**). If the Credit Application is approved by the Company, the terms and conditions set out in the Credit Application and supplementary terms and conditions set out in the Company's approval will comprise the terms and conditions on which the parties have agreed the Company will provide credit to the Purchaser (**Credit Agreement**).
- 8.2 The Purchaser agrees to comply with the terms of any Credit Agreement entered into by the parties.
- 8.3 The Company will only be required to supply the Purchaser with the Products for so long as the Purchaser has unused credit facilities available to it under the Credit Agreement. In no circumstances will the Company be obliged to supply the Products to the Purchaser if at any time the Purchaser reaches the Credit Limit or time limit provided to it by the Company under the terms of the Credit Agreement, or if the supply of the Products would result in the Purchaser exceeding the Credit Limit or time limit afforded to it under the Credit Agreement.
- 9. Warranty**
- 9.1 **Express warranties by Company**
- The Company's website located at www.minelab.com.au (**Company Website**) sets out the express warranties provided by the Company to end users in respect of certain Products (**Express Warranties**).
 - It is acknowledged by the Purchaser that apart from the Express Warranties and applicable Non-Excludable Guarantees, the Company makes and provides no other warranties or guarantees to end users in respect of the Products.
- 9.2 **Purchaser obligations**
- 9.3 Unless otherwise agreed in writing with the Company, the Purchaser must not make any representations or give any warranties (whether express or implied) in respect of the Products, apart from the Express Warranties. Nothing in this clause will limit or affect the Purchaser's obligations to comply with any Non-Excludable Guarantees which may apply.
- 9.4 If during the warranty period set out in an Express Warranty a retail customer makes a warranty claim and returns a Product to the Purchaser due to an alleged defect (**Express Warranty Claim**) the Purchaser must inspect the Product, note the nature of the alleged defect and contact the Company's service centre if appropriate.
- 9.5 The Purchaser must comply with all procedures and protocols notified by the Company in respect of Express Warranty Claims, including but not limited to by forwarding defective products to the Company's service centre or other location as directed by the Company, or performing such services as may be requested by the Company.
- 9.6 The Purchaser acknowledges that resolution of Express Warranty Claims is the sole responsibility of the Company, and that the Company may at its discretion agree to repair or replace faulty components of Products or provide replacement Products to claimants after inspection and assessment of the Products at issue (including by or at the Company's service centre).
- 10. Exclusion and Limitations of Liability**
- 10.1 **Applicable law unaffected**
- The parties acknowledge and agree that State and Commonwealth legislation implies certain non-excludable guarantees, warranties and conditions into particular agreements for the supply of goods and services, which cannot be excluded, restricted or modified (**Non-Excludable Guarantees**), and the Company does not exclude, restrict or modify any Non-Excludable Guarantees and nothing in this Agreement is intended or is to be construed as doing so, or affects any remedies available to the Purchaser at law and which cannot be lawfully excluded by the Company, including in respect of any of the Non-Excludable Guarantees which may be applicable.
- 10.2 **Exclusion of liability**
- Subject to clause 10.1, to the maximum extent permitted by law, the Company excludes all warranties, terms, conditions and guarantees regarding the Products and any other goods or services supplied or provided under this Agreement which are implied by law (including the general law) or custom, and the Purchaser will be solely responsible for the Products it sells to end user customers (including any consequences resulting from the use of the Products by end user customers). In no circumstances will the Company or any of its related entities be liable to the Purchaser or any other party for any loss, cost, expense or damage sustained by the Purchaser or an end user customer, or any action, claim, proceeding or demand made by the Purchaser or an end user customer in connection with the Products.
- 10.3 **Limitation of liability**
- 10.4 To the maximum extent permitted by law, the Company's liability to the Purchaser for a breach of any of the Non-Excludable Guarantees in respect of any goods or services provided to the Purchaser under this Agreement (including but not limited to the Products) is limited to any one of the following, at the option of the Company:
- in the case of goods - replacement of the goods or the supply of equivalent goods, repair of the goods, payment of the cost of replacing the goods or acquiring equivalent goods, or payment of the costs of having the goods repaired; and
 - in the case of services - the supply of the services again or payment of the cost of having the services supplied again.
- 10.5 To the maximum extent permitted by law, and subject to clause 6, the Company's liability to the Purchaser in respect of any action, claim, proceeding or demand made by an end user customer against the Purchaser in connection with the Products purchased from the Purchaser will be limited to an amount that is equal to the lowest of the following:
- the cost of replacing the Products;
 - the cost of obtaining goods equivalent to the Products; or
 - the cost of having the Products repaired.
- 11. Intellectual Property**
- 11.1 The Purchaser expressly acknowledges and agrees that Minelab is the sole proprietor and owner of all existing and future Intellectual Property Rights associated with the Products (including all modifications and improvements), and that this Agreement does not grant or transfer to it any rights to the Intellectual Property Rights associated with the Products.
- 11.2 The Purchaser must not copy, reverse engineer, improve, enhance, develop, refine, modify or otherwise alter any aspect of the Products or any Intellectual Property Rights associated with the Products, or permit or assist a third party to undertake any of these actions.
- 11.3 Notwithstanding anything to the contrary in this Agreement, The Purchaser acknowledges and agrees that Minelab will own all rights in any improvements, enhancements developments, modifications or refinements to the Products or associated Intellectual Property Rights developed or created by The Purchaser, and The Purchaser will have no claim to such materials. The Purchaser agrees that it will execute, procure and deliver to Minelab all assignments required to give effect to this clause 11.3, and hereby waives any and all rights to any such improvements, developments, enhancements modifications or refinements.

11.4 *Licence to use*

- (a) The Company grant to the Purchaser a limited, fee-free, royalty-free, non-exclusive, licence to use Company trade marks (**Company Marks**).
- (b) The Purchaser is not permitted to transfer or assign the licence to the Company Marks provided by the Company under clause 11.4(a), or to grant sub-licences to third parties in respect of the Company Marks or any of the Intellectual Property Rights of the Company (**Company Intellectual Property**).
- (c) The Purchaser must not use the Company Marks on or in connection with any goods or services (including but not limited to promotional merchandise) except the Products, without the prior written permission of the Company.
- (d) The Purchaser must ensure that any use it makes of the Company Marks as permitted by this Agreement (including in its implementation and observation of any marketing requirements) complies with the current branding guidelines published by the Company (**Branding Guidelines**) on the Company Website, as revised and updated from time to time.
- (e) The Purchaser acknowledges that any goodwill arising out of the use of the Company Intellectual Property by the Purchaser as permitted by this Agreement (including but not limited to all goodwill arising from the Purchaser's compliance with relevant marketing requirements) will vest in the Company immediately on creation, without the need for further action.

11.5 *Management obligations*

- (a) The Purchaser must not modify, alter or reverse engineer any of the Products and must not remove, obscure, modify, or otherwise interfere with any of the Company Marks or other trade marks, indicators of origin, security devices, brands or markers affixed to the Products at the time of delivery to the Purchaser.
- (b) The Purchaser must use its best endeavours to preserve the value and validity of the Company Intellectual Property and must do all things reasonably necessary for the protection of the Company Marks against de-registration or infringement.
- (c) The Purchaser must not at any time apply for or attempt to acquire any intellectual property that is the same as or similar to the Company Intellectual Property, including but not limited to the Company Marks.
- (d) The Purchaser must notify the Company immediately after becoming aware of any suspected or actual infringement by any person of any of the Company Intellectual Property, or unauthorised use of the Confidential Information of the Company.

12. **Confidentiality**

12.1 Each party:

- (a) may use Confidential Information of the other party solely for the purposes of this Agreement;
- (b) must keep confidential all Confidential Information of the other party; and
- (c) may disclose Confidential Information of the other party only to (i) employees and contractors who (A) are aware and agree that the Confidential Information of the other party must be kept confidential and (B) either have a need to know (and only to the extent that each has a need to know), or have been specifically approved by the other party, or (ii) as required by law or stock exchange regulation.

12.2 Each party must notify the other party immediately once it becomes aware of any breach of confidentiality and must take all reasonable steps necessary to prevent further unauthorised use or disclosure of the Confidential Information.

13. **Taxes and Government Charges**

- 13.1 The amounts payable by The Purchaser to Minelab for, or in connection with this Agreement do not include any amounts on account of Taxes and Duties. The Purchaser shall be solely liable for and shall pay, when due and payable, all Taxes and Duties which may be imposed in relation to the Products, or which is assessed or chargeable in respect of this Agreement and any associated documents or transactions.
- 13.2 The Purchaser agrees to indemnify Minelab in respect of any liability for Taxes and Duties, and shall pay any Taxes and Duties notified to it by Minelab immediately upon request. The Purchaser must provide Minelab with all necessary tax invoices, receipts and other documentation as required by Minelab in accordance with applicable laws, legislation and regulations.
- 13.3 In the case of GST payable in Australia, if applicable, The Purchaser must pay to Minelab an additional amount on account of GST equal to the amounts payable by The Purchaser for the Supply multiplied by the

prevailing GST rate. Notwithstanding anything to the contrary in this clause, The Purchaser is not required to pay any additional GST amount until such time as The Purchaser has been provided with a tax invoice by Minelab, which is in an approved form for GST purposes.

13.4 The additional amounts due to Minelab on account of Taxes and Duties are payable at the same time and in the same manner as the price and any other amounts payable by The Purchaser are required to be paid to Minelab under this Agreement.

14. **Government Approvals**

14.1 Minelab agrees, at its cost, to use its reasonable endeavours to obtain all necessary export licences, clearances and other consents and approvals from Government Agencies which are necessary for the sale and supply/export of the Products to The Purchaser. The Purchaser agrees to complete and provide to Minelab any documentation required by Minelab to obtain any required approvals and consents.

14.2 The parties agree that Minelab's obligations under this Agreement are conditional upon Minelab being issued all necessary export licences, clearances and other consents and approvals by the relevant Government Agencies. In the event that Minelab is unable to secure all necessary licences, clearances, permits, approvals and other necessary consents from appropriate Government Agencies, Minelab shall be entitled to immediately terminate this Agreement by written notice, and Minelab shall not be required to supply the Products to The Purchaser. In no circumstances shall Minelab be liable to The Purchaser or any other person for any loss or damage (including without limitation indirect or consequential loss or loss of profits) arising in connection with Minelab's failure to obtain any necessary documentation from Government Agencies required for the sale and supply/export of the Products to The Purchaser, or the termination of this Agreement pursuant to this clause 14.2, and The Purchaser unconditionally frees, releases and discharges Minelab and its officers, agents, contractors and employees from any claim or cause of action arising in connection with Minelab's failure to obtain any export licence, clearances and other necessary consents and approvals from appropriate Government Agencies.

14.3 The Purchaser is solely responsible, at its sole cost and expense, for ensuring that the Products meet the requirements of any country into which they are imported, and must obtain and maintain any necessary import licences and permits, and all other clearances and consents from Government Agencies required for the acquisition and use of the Products by The Purchaser (including but not limited to customs approvals and clearances). Minelab shall supply The Purchaser with any documents reasonably requested by The Purchaser for the purposes of complying with its obligations under this clause 14.3.

14.4 Minelab may at any time require that The Purchaser supply it with copies of licences, permits, clearances and approvals issued by Government Agencies and obtained by The Purchaser as required by clause 14.3, and The Purchaser agrees to immediately comply with any such request. If at any time Minelab becomes aware that The Purchaser has failed to comply with its obligations under clause 14.3, it may immediately terminate this Agreement by written notice, and all outstanding amounts shall become immediately due and payable by The Purchaser. The Purchaser agrees to indemnify, defend and hold harmless Minelab against any and all claims, demands, suits, causes of action, damages and legal fees (on a solicitor-own client basis) or expenses or costs whatsoever arising, directly or indirectly, from any failure by The Purchaser to comply with its obligations under clauses 14.3 or 14.4.

15. **Anti-Bribery and Corruption Requirements**

15.1 It is a material term of this Agreement that The Purchaser must comply with the following:

- (a) The Purchaser must comply fully at all times with all applicable laws and regulations, including but not limited to applicable anti-corruption laws of the territory in which The Purchaser conducts business with Minelab.
- (b) The Purchaser must not, and covenants that it will not, in connection with the performance of this Agreement, directly or indirectly promise, authorise, ratify, offer to make or make, or take any action, in furtherance of any Payment of Anything of Value to any individual, or to an intermediary for payment to any individual, including a Government Official, for the purpose of influencing or inducing or as a reward for any act, omission or decision to secure an improper advantage or to improperly assist The Purchaser or Minelab in obtaining or retaining business.
- (c) The Purchaser must not, and covenants that it will not, in connection with the performance of this Agreement, directly or indirectly promise, authorise, ratify or offer to make or make any Facilitating

- Payment to any individual, or to an intermediary for payment to any individual, including a Government Official.
- (d) The Purchaser must not contact, or otherwise meet with any Government Official with respect to any transactions required under this Agreement, without the prior written approval of Minelab and, when requested by Minelab, only in the presence of a Minelab designated representative.
- (e) The Purchaser represents that it has not been convicted of or pleaded guilty to a criminal offence, involving fraud or corruption; that it is not now, to the best of its knowledge, the subject of any government investigation for such offences, and that it is not now listed by any government agency as debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for government procurement programs.
- (f) The Purchaser represents and warrants that except as disclosed in writing:
- (i) it does not have any interest which directly or indirectly conflicts with its proper and ethical performance of this Agreement; and
 - (ii) it will maintain arms length relations with all third parties (including Government Officials) with which it deals for or on behalf of Minelab or in the performance of this Agreement.
- 15.2 The Purchaser agrees that Minelab may make full disclosure of information relating to a possible violation of the terms of this clause 15 at any time and for any reason to any competent government bodies and its agencies (including Government Agencies), and to whomsoever Minelab determines in good faith has a legitimate need to know.
- 15.3 Minelab will be entitled to terminate this Agreement (without payment of compensation to The Purchaser) immediately on written notice to The Purchaser, if The Purchaser fails to perform its obligations in accordance with the terms of this clause 15. Minelab will not be responsible or liable for any loss or damages whatsoever arising from or in connection with this clause 15, whether sustained by The Purchaser or any other party.
- 16. Insurance**
- 16.1 The Purchaser must take out and maintain at all times, with reputable insurers, valid and enforceable insurance policies in respect of the following:
- (a) product and public liability insurance, for an amount not less than \$10 million per incident or event;
 - (b) all necessary statutory workers compensation insurance; and
 - (c) such other risks that a reasonable, prudent person carrying on the business of The Purchaser would be likely to insure against.
- 17. Termination**
- 17.1 Minelab may terminate this Agreement with immediate effect by written notice to The Purchaser if:
- (a) The Purchaser is the subject of an Insolvency Event; or
 - (b) at the time of termination, a Force Majeure Event has persisted for greater than 40 Business Days.
- 17.2 The Purchaser may terminate this Agreement with immediate effect by written notice to Minelab if Minelab breaches any material term of this Agreement, which is capable of remedy, and fails to remedy the breach within 30 Business Days after receiving a notice requiring it to do so.
- 17.3 Without limiting Minelab's other rights under this Agreement, Minelab may terminate this Agreement with immediate effect by written notice to The Purchaser if:
- (a) The Purchaser breaches any term of this Agreement, which is capable of remedy, and fails to remedy the breach within 30 Business Days after receiving a notice requiring it to do so;
 - (b) The Purchaser breaches any term of this Agreement and such breach is not capable of remedy; or
 - (c) The Purchaser repeatedly breaches any term of this Agreement and, within 30 Business Days after receiving a notice requiring it to do so, fails to satisfy Minelab that a breach of that term will not recur.
- 17.4 Termination of this Agreement will not affect any accrued rights or remedies a party may have as at the date of termination, unless explicitly stated otherwise in this Agreement.
- 17.5 Either Party may terminate this document for convenience with immediate effect by giving the other Party 30 calendar days written notice.
- 18. Dispute Resolution**
- 18.1 A party will not commence arbitration or court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement (**Dispute**) unless it has complied with this clause.
- 18.2 A party claiming that a Dispute has arisen will notify the other party of the Dispute in writing.
- 18.3 Each party to the Dispute will ensure that during the 30 Calendar Day period after a notice is given under clause 18.2 (or a longer period agreed between the parties) the chief executive officers (or equivalents) of the parties will use their best reasonable endeavours to resolve the dispute in good faith.
- 18.4 If after fourteen (14) days the parties are unable to resolve the Dispute under clause 18.3, the parties will attempt to settle the dispute by mediation conducted in accordance with the Commercial Mediation Guidelines of the ACDC.
- 18.5 The parties shall attempt to agree on the appointment of a mediator for the purposes of mediation of the Dispute pursuant to clause 18.4, and if the parties cannot agree on the identity of a mediator within seven (7) Calendar Days, the mediator will be appointed by ACDC within seven (7) Calendar Days thereafter. Mediation will be held within seven (7) Calendar Days of the appointment of the mediator.
- 18.6 Each party will bear its own costs of resolving a Dispute under this clause 18, and will bear equally the costs of any mediator required to be engaged.
- 18.7 If mediation does not proceed within the timetable set out in clauses 18.4 and 18.5, or is not successful in resolving the Dispute, the parties will be entitled to terminate the Dispute resolution process by giving notice in writing to all other parties and commence arbitration or court proceedings in respect of the Dispute. Nothing in this clause 18 prevents a party from seeking urgent interlocutory relief.
- 18.8 Nothing in this clause 18 prevents or limits The Purchaser from exercising its rights and requiring remedies from Minelab in respect of a breach of a Non-Excludable Condition (subject always to clause 9.1 above).
- 19. Miscellaneous**
- 19.1 *Interpretation* - In these Standard Terms and Conditions of Supply:
- (a) the singular includes the plural and vice versa;
 - (b) the word person includes a firm, a body corporate, an unincorporated association, body or organisation established pursuant to international treaty, intergovernmental body, or government authority and other official authority;
 - (c) a reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time;
 - (d) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, but not limited to, persons taking by novation) and permitted assigns; and
 - (e) headings are inserted for convenience and do not affect the interpretation of these Standard Terms and Conditions of Supply.
- 19.2 *Survival* - The provisions of clauses 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18 and 19 of these Standard Terms and Conditions of Supply survive the expiry or termination of this Agreement.
- 19.3 *Force Majeure* - If a Force Majeure Event precludes Minelab from partially or wholly complying with its obligations under this Agreement then:
- (a) as soon as reasonably practicable after that Force Majeure Event arises, Minelab must notify The Purchaser of the Force Majeure Event, and Minelab's obligation to perform in accordance with this Agreement will be suspended for the duration of the actual delay arising directly out of the Force Majeure Event or 40 Business Days, whichever is shorter, provided that Minelab does everything reasonably possible to mitigate the effects of the Force Majeure Event.
 - (b) If a Force Majeure Event persists for greater than 40 Business Days, Minelab shall be entitled to terminate this Agreement in accordance with clause 17.1(b).
- 19.4 *Governing Law* - This Agreement will be governed by and construed in accordance with the laws applicable in South Australia. The parties submit to the exclusive jurisdiction of the courts of South Australia in respect of matters arising out of or in connection with this Agreement (including Disputes). The parties agree that the *United Nations Convention on Contracts for the International Sale of Goods* (adopted at Vienna, Austria on 10 April 1980) (including as incorporated into South Australian law by the *Sale of Goods (Vienna Convention) Act 1986 (SA)*) will not apply to this Agreement.
- 19.5 *No Assignment* – The Purchaser must not assign or otherwise deal with its rights and obligations under this Agreement without the prior written approval of Minelab, to be provided by Minelab in its reasonable discretion.



- 19.6 *Further Action* - Each party must (a) do all acts necessary or desirable to give full effect to this Agreement, and (b) refrain from doing anything which might prevent full effect being given to this Agreement.
- 19.7 *Variation* - A variation or modification of this Agreement must be in writing and signed by an authorised representative of each party.
- 19.8 *Severability* - If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Agreement and the remainder of the provision in question will not be affected.
- 19.9 *No Waiver* - No waiver by a party of any breach of this Agreement by another party shall be considered as a waiver of any subsequent breach of the same or any other provisions.
- 19.10 *Entire Agreement* - This Agreement constitutes the entire agreement between the parties about its subject matter and subject to the remainder of this clause, supersedes all previous representations, understandings and agreements in connection with that subject matter. This Agreement overrides any terms for the sale and supply of Products tendered to Minelab by The Purchaser, irrespective of whether such terms are tendered before or subsequent to the date of the Order. However, the parties agree that the Existing Arrangements continue in full force and effect, and that nothing in this Agreement supersedes, alters or otherwise affects the Existing Arrangements. In the event of an inconsistency between the obligations of the Parties under this Agreement and any Existing Arrangements, the Existing Arrangements prevail to the extent necessary.
- 19.11 *Relationship* - The relationship between the parties is and will remain that of independent contractors, and nothing in this Agreement constitutes the parties as partners or joint venturers or constitutes any party as the agent of another party or gives rise to any other form of fiduciary relationship between the parties.
- 19.12 *Notices* - Notices by a party must be delivered by (i) prepaid post (ii) facsimile or (iii) hand, and sent to the address of the receiving party specified in the Order. Notices shall be deemed to have been received by hand upon delivery, by post within two (2) Business Days of sending and by facsimile upon receipt of a successful transmission report.