

TERMS AND CONDITIONS OF PURCHASE

- 1. Definitions**

"Exact" means Exact Mining Services Pty Ltd ABN 13 080 117 291 or a related entity.
"Goods" means the Items comprising Products or Services as specified in the Purchase Order.
"Purchase Order" means any purchase order provided by Exact to the Supplier and incorporates these terms and conditions and all documents or specifications referred to in or attached to it.
"Supplier" means the seller or provider of the Goods specified in the Purchase Order.
- 2. Basis of Purchase**
 - 2.1 Acceptance of a Purchase Order by the Supplier includes these terms and conditions to the exclusion of any conditions on any documentation of the Supplier.
 - 2.2 Any Purchase Order must be signed by an authorised representative of Exact, supersedes any previous negotiations and constitutes an offer to purchase the Goods on the terms specified in the Purchase Order not an acceptance of any offer by the Supplier to sell the Goods.
 - 2.3 Unless and until accepted by the Supplier, the Purchase Order will lapse after a period of 1 month.
 - 2.4 Exact will not accept delivery of or make payment for Goods unless supplied by the Supplier pursuant to a Purchase Order and the Purchase Order number is specified on the Supplier's delivery form.
- 3. Price**
 - 3.1 The Purchase Order is placed on a firm price as specified in the Purchase Order and is not subject to increase unless agreed to in writing by Exact.
 - 3.2 Any price is inclusive of packaging, insurance and delivery costs. Unless otherwise indicated the prices stated on the Purchase Order shall be inclusive of GST. Payment is conditional on the Supplier providing a tax invoice to Exact with the Order No and Project details to be included in the tax invoice.
 - 3.3 Exact will make payment for the Goods within 30 days of the end of the month of (the later of) the receipt of the goods or a tax invoice for the Goods, less any reduction for part supply or part acceptance, any discount or rebate provided by the Supplier or any right of set-off for breach of warranty.
- 4. Delivery**
 - 4.1 The Supplier will deliver the Goods during normal business hours on or prior to the Expected Date and at the Delivery Address specified in the Purchase Order with receipt to be acknowledged by an authorised representative of Exact.
 - 4.2 Acceptance of the Goods is not to be deemed until Exact has had a reasonable time to inspect and Exact is entitled to reject the Goods if any defect is detected or the Goods are delivered in error or in excess of the quantity ordered.
 - 4.3 Risk and property in the Goods and any packaging shall pass to Exact on delivery unless Exact notifies the Supplier of its rejection of the Goods. The Supplier will maintain insurance on the Goods until acceptance by Exact.
 - 4.4 On rejection of any Goods Exact may return the Goods to the Supplier at the Supplier's expense.
- 5. Delay and Termination**
 - 5.1 The Supplier must give written notice to Exact of any delay in delivery beyond the control of the Supplier detailing the cause of the delay and time when the Supplier can make delivery.
 - 5.2 Exact may grant the Supplier a reasonable extension of time provided that Exact may at any time terminate the Purchase Order if Exact is relying on the delivery of the Goods and is able to source the Goods elsewhere.
 - 5.3 The Supplier will comply with any written instructions, issued by Exact at any time prior to delivery of the Goods, to delete, add, alter or otherwise vary the Purchase Order.
 - 5.4 Exact may at any time and for any reason terminate the Purchase Order for all or any part of the undelivered portion of the Goods. Exact will have no liability to the Supplier arising from any termination of this Purchase Order except to make payment for Goods actually delivered or in transit prior to such termination.
- 6. Work on premises of Delivery Address**

Exact grants the Supplier a non-exclusive licence to enter and access the Delivery Address for the sole purpose and for the duration required to carry out the Services in accordance with the Purchase Order.
- 7. Intellectual property rights**
 - 7.1 Exact will own any intellectual property rights developed from its use of the Goods.
 - 7.2 The Supplier assigns such intellectual property rights to Exact and agrees to execute any document reasonably required by Exact to evidence or perfect such ownership.
- 8. Specifications and Warranty**
 - 8.1 The Supplier warrants that the Goods will:
 - (a) be provided with due care and skill;
 - (b) conform to any specification, description or reference to sample in the Purchase Order or as otherwise notified to the Supplier or comprised in the Supplier's catalogue, price list or advertising matter;
 - (c) comply with all applicable legislation, regulations, codes of practice, safety rules and procedures as directed by Exact from time to time or other legal requirements including but not limited to Occupational Health Safety & Welfare and Environment Protection;
 - (d) be fit for the purpose of such Goods commonly supplied or any purpose made known by Exact;
 - (e) be of merchantable quality and free from any defect in materials or workmanship;
 - (f) carry all manufacturer's warranties; and
 - (g) not infringe any intellectual property rights of a third party.
 - 8.2 In addition to the above warranties, all Goods supplied by the Supplier are covered by:
 - (a) a warranty for materials and workmanship for a period of 24 months; and
 - (b) in respect of any proprietary items, a design warranty for a period of 60 months from the date of delivery of the end product produced by Exact in which the Goods are incorporated.
 - 8.3 Any defective Goods must be re-supplied or repaired, at Exact's discretion, and at the Supplier's cost.
 - 8.4 The Supplier indemnifies Exact and its officers, employees and agents and other users of the Goods from and against all liability, loss, damages, costs, expenses, fines, penalties or other obligations whatsoever including but not limited to damage or destruction of property and injury or death of any person arising from or connected with the Goods whether or not caused wholly or in part by any act or omission, default or negligence or wilful act of or in respect of any breach of warranty or of a term or condition of any Purchase Order by the Supplier, its officers, employees, agents or contractors.
- 9. Excess Goods**

If Exact determines that any Goods are no longer required for any reason, are excess to Exact's requirements or Exact is overstocked with Goods supplied by the Supplier on a regular basis then Exact may return such excess Goods to the Supplier and the Supplier will credit Exact's account the invoiced cost of such Goods, provided that:

 - (a) Exact pays the cost of return freight;
 - (b) the Goods are unmarked and returned in original packaging; and
 - (c) the Supplier has a reasonable prospect of selling the Goods.
- 10. Insurance**
 - 10.1 The Supplier must, at its own expense maintain the following insurance with a reputable insurer:
 - (a) public liability and product liability insurance for at least \$10,000,000;
 - (b) workers' compensation insurance in accordance with applicable legislation; and
 - (c) insurance over the Goods with a reputable insurer for full replacement cost.
 - 10.2 Upon request, the Supplier must provide to Exact evidence of the abovementioned insurance policies.
- 11. General**
 - 11.1 Any dispute which remains unresolved after discussion between both parties must be referred to mediation. The mediator and the mediation process will be agreed upon by both parties.
 - 11.2 Notwithstanding the existence of a dispute, the Supplier must continue to perform its obligations under these terms and conditions.
- 12. General**
 - 12.1 Any waiver by Exact of a breach of these terms and conditions or of any Purchase Order either in whole or in part, must be in writing and does not constitute a waiver of any subsequent breach and any such waiver is without prejudice to Exact's other rights arising from such breach.
 - 12.2 Any variation or modifications of a Purchase Order shall not apply unless agreed to in writing by Exact.
 - 12.3 Reference to Exact and the Supplier shall extend to their respective successors, administrators and permitted assigns.
 - 12.4 All notices shall be delivered in writing by delivering or posting to the address of Exact and Supplier as specified in the Purchase Order or by facsimile transmission to the facsimile number of Exact and Supplier.
 - 12.5 The Purchase Order and these terms and conditions shall be construed in accordance with the laws of South Australia and Exact and Supplier submit to the exclusive jurisdiction of the courts of South Australia at Adelaide and the Federal Court of Australia (Adelaide Registry).