



## G&G Mining Fabrication Standard Terms and conditions of sale

### Introduction

1. These Standard Terms and Conditions apply to the attached quote for the sale of G&G Mining Fabrication products. Any Special Provisions set out in the Quote (if any), and the Specifications attached to the quote form the entire agreement between the Buyer and G&G Mining Fabrication ABN 86 169 498 for the sale and purchase of the said Product(s) specified in the quote and will form the contractual ("Agreement"). Issuing a purchase order based on the G&G Mining Fabrication quote the Buyer approves the Specifications and accepts the terms and conditions set out in the quote and these Standard Terms and Conditions as follows.

If there is any variation between the terms and conditions outlined in the quote, and these Standard Terms and Conditions, Provisions outlined in the quote and the submitted specifications of the product will be honoured.

2. Capitalised terms not defined in these Standard Terms and Conditions have the meaning given to them in the quote.

### Deposit and progress payments

3. On issue of a Buyer purchase order, the Buyer must pay G&G Mining Fabrication the deposit or first instalment of a progress payment plan outlined in the quote prior to G&G Mining Fabrication processing the Buyer Purchase order. The Buyer agrees that the deposit or first instalment of progress payment plan is paid in consideration for the Buyer securing one or a series of delivery slots available in manufacturing for the Product(s). The deposit or first payment instalment will be applied by G&G Mining Fabrication to costs associated with the supply of the Product(s) to the Buyer. Unless the Agreement is terminated by G&G Mining Fabrication under clause 25 of these Standard Terms and Conditions, the deposit is not refundable.

### Payment

4. G&G Mining Fabrication is not required to deliver the Product(s) until the Buyer has paid for them in full. Payment of the Quote Price less the Deposit is due on or before delivery of the Product(s) to the Buyer. Time for payment is of the essence which could hold up delivery incurring additional cost.
5. The Buyer is required to pay the Quote Price in AUD, however if the Buyer chooses to pay in other currency the alternate currency will be USD adjusted to account for any difference in Currency Exchange Rate to equal quoted price in AUD.

International commerce is mostly negotiated in USD currency therefore "Exchange Rate" means the AUD /USD exchange rate published by the Reserve Bank of Australia on its website "www.rba.gov.au" at 4pm on the applicable date (or, if that rate is not available, the AUD /USD exchange rate published by an Australian bank at 4pm on the applicable date, selected and notified to the Buyer by G&G Mining Fabrication).

6. If G&G Mining Fabrication is not paid for the Product(s) on or before the Delivery Date, without prejudice to any other rights or remedies of G&G Mining Fabrication:
  - a. The Buyer will be liable for any costs incurred by G&G Mining Fabrication, resulting from the Buyer's default;

- b. All outstanding money payable to G&G Mining Fabrication will accrue interest compounding on a daily rate from the Delivery Date until payment of the outstanding money is received in full by G&G Mining Fabrication. The applicable rate of interest will be equal to the maximum bank overdraft rate as fixed by the Westpac bank for overdrafts (in excess) of AU\$50,000. If this rate is not available, a similar rate selected and notified to the Buyer by G&G Mining Fabrication) plus 2%.
  - c. G&G Mining Fabrication may recover the Quote Price of the Product(s) together with all costs and interest from the Buyer as a liquidated debt in a court or tribunal of competent jurisdiction irrespective of any claim that the Buyer may have against G&G Mining Fabrication for anything or matter related to the Product(s).
7. Unless otherwise stated in the quote, all pricing in the Quotation have been calculated excluding GST (as defined in the, *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*). GST will be shown in the quote as separate adder pricing.

Normally product shipped to destinations outside Australia should not be subject to GST however if GST is imposed on a supply of product to be shipped external of Australia, pursuant to the quotation, the Buyer must pay, in addition to the quoted price the GST amount.

G&G Mining Fabrication will ensure that any invoice or other request or demand for payment for supplies to the Buyer under the quotation terms, constitutes a tax invoice that should, where applicable, enable the Buyer to claim any tax credits for the GST in respect of supplies to which the invoice relates. G&G Mining fabrication will if possible assist the buyer to obtain a rebate of the GST monies paid.

### Delivery, title and risk

8. Delivery of the Product(s) is defined as Ex works (311 Stirling Crescent, Hazelmere, Western Australia 6055). Any freight or shipment of the Product(s) by G&G Mining Fabrication to the Buyer will be outlined in the quote or be subject to separate agreement in writing between the parties.
9. Title to the Product(s) passes from G&G Mining Fabrication to the Buyer on payment of the Quote Price (plus any amounts determined under clause 7). Risk associated with the Product(s) passes from G&G Mining Fabrication to the Buyer upon the actual or constructive Delivery of the Product(s) to:
  - a. The Buyer, or any of its agents, representatives or subcontractors; or
  - b. If G&G Mining Fabrication is to arrange freight or shipment of the Product(s);
  - c. The freight or shipping subcontractor retained by G&G Mining Fabrication at the Buyer's direction.
10. G&G Mining Fabrication will use reasonable endeavours to ensure that the Product(s) are available for Delivery within the time specified in the quote. G&G Mining Fabrication makes no guarantees as to the Delivery Date and the Delivery Date can be subject to change due to unforeseen events. If the Delivery Date changes, G&G Mining Fabrication will advise the Buyer of the new Delivery Date as soon as reasonably practicable. G&G Mining fabrication accept no form of liquidated damages.
11. While title of the Product(s) remains with G&G mining Fabrication:
  - a. The Buyer has no right or claim to any interest in the Product(s);



- b. The Buyer cannot claim any lien over the Product(s);
  - c. The Buyer must not create any absolute or defeasible interest in the Product(s) in relation to any third party except as expressly authorised by G&G Mining Fabrication;
  - d. Where the Buyer is in actual or constructive possession of the Product(s), the Buyer:
    - i. Must not deliver any document of title to the Product(s) to any person except as directed by G&G Mining Fabrication; and
    - ii. Is in possession of the Product(s) as a bailee of those goods and owes G&G Mining Fabrication the duties and liabilities of a bailee. This bailment continues in relation to each of the Product(s) until the Quote Price (plus any amounts determined under clause 7) has been paid to G&G Mining Fabrication in full;
    - iii. The buyer must not allow any person to have or acquire any security interest in the Product(s);
    - iv. Must insure the Product(s) for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Buyer carries on business; and
    - v. Must not remove, deface or obliterate any identifying plate, mark or number on any of the Product(s).
12. Without limiting or waiving its rights under clause 25 of these Standard Terms and Conditions, if the Buyer supplies any of the Product(s) to any person before the Quote Price (plus any amounts determined under clause 7) has been paid to G&G Mining Fabrication in full, the Buyer agrees that:
- a. The Buyer holds the proceeds of re-supply of the Product(s) on trust and as agent for G&G Mining Fabrication immediately when those proceeds are receivable or are received by the Buyer;
  - b. Any accessory or item that accedes to any of the Product(s) by an act of the Buyer, or of any person at the direction or request of the Buyer, becomes and remains the property of G&G Mining Fabrication until G&G Mining Fabrication is paid the Quote Price (plus any amounts determined under clause 7) in full, at which time title of the Product(s) (including the accessory) passes to the Buyer or the relevant person; and
  - c. G&G Mining Fabrication may recover possession of the Product(s) at the Buyer's cost, including at any site owned, possessed or controlled by the Buyer and in this circumstance the Buyer agrees that G&G Mining Fabrication has an irrevocable licence to do so without incurring liability to the Buyer or any person claiming through the Buyer.
- Specification**
13. The Specification has been prepared solely based on information provided to G&G Mining Fabrication by the Buyer, information published as at the date of the quote by the OEM of the relevant equipment to which the Product(s) will be installed, and any G&G Mining Fabrication engineering measurements of the relevant equipment to which the Product(s) is or are to be installed manufactured by G&G Mining Fabrication. G&G Mining Fabrication has relied on the correctness, accuracy and completeness of the information provided by the Buyer and the information published by the relevant OEM. G&G Mining Fabrication takes no responsibility and has no liability for or in respect of the information provided by the Buyer or the information published by the relevant OEM. G&G Mining Fabrication reserves the right to make changes to the Specifications and / or the Quote Price if, at any time after acceptance of the Quote by the Buyer:
- a. Any information provided by the Buyer proves to be incorrect, inaccurate or incomplete;
  - b. New information relevant to the Product(s) is published by an OEM of the equipment or any other person, or otherwise becomes known to G&G Mining Fabrication; or
  - c. Changes to the Specifications constitute (in G&G Mining Fabrication reasonable opinion) improvements to the Product.
- Express warranty**
14. G&G Mining Fabrication warrants that:
- a. The Product(s) will be free from defects in material and workmanship for a period of 12 months or 4000 machine operating hours from the Delivery Date which ever shall occur first; and
  - b. On the Delivery Date, the Product(s) will conform to Specifications of the quote (as may be amended from time to time).
15. The Buyer will only be able to claim a breach of warranty:
- a. Under clause 14a of these Standard Terms and Conditions if the defect is detected during the warranty period set out in that clause; or
  - b. Under clause 16 of these Standard Terms and Conditions if any non-conformance with the Specifications is detected within 30 days of the Delivery Date of the Product(s) to the Buyer; and
  - c. The warranty claim is received by G&G Mining Fabrication in writing within 14 days of the Buyer becoming aware of the defect or non-conformity. The warranty claim must set out reasonable detail of the defect or non-conformance and all other information that is relevant to the claim.
16. Subject to clause 15b of these Standard Terms and Conditions, the Buyer's sole and exclusive remedy for a breach of a warranties set out at clause 14 of these Standard Terms and Conditions is, at G&G Mining Fabrication option, repair or resupply of the defective material or service, or non-conforming part (as the case may be) during G&G Mining Fabrication normal working hours.
17. G&G Mining Fabrication has no obligation under the warranties in clause 14 of these Standard Terms and Conditions for defects or non-conformance to the extent that the defect or non-conformance is caused by or occurs resulting of:
- a. Misuse of, an accident to, improper storage of, or negligent or wrongful use of, the Product(s);
  - b. Inadequate or insufficient maintenance of the Product(s) in accordance with best mining practice and/or specific G&G Mining Fabrication guidelines on maintenance of the Product(s);
  - c. Failure by the Buyer to conduct normal maintenance on a Product, including regular inspections;
  - d. Incorrect handling of material as applied to the Product;
  - e. Loading of oversize material where such loading did not follow the procedures published by G&G Mining Fabrication. Oversize material is defined as single lumps of rock that are more than double the median run of mine fragment size;
  - f. Improper adjustment, calibration or operation of the Product by the Buyer;
  - g. Installation of a Product to the equipment where that installation was performed by a person other than G&G Mining Fabrication and the set up was found to be incorrect;
  - h. Modifications, alterations or welded additions to the Product that are not approved in writing by G&G Mining Fabrications;
  - i. The Buyer's unreasonable delay in making the Product available to G&G Mining Fabrication upon written notification by G&G



- Mining Fabrication of the need for a Product inspection, variation or modification;
- j. Consequential damage to a Product resulting from G&G Mining Fabrication being unable to access a Product where written notification for Product inspection, variation or modification has been sent to the Buyer by G&G Mining Fabrication;
  - k. Damage resulting from a deficiency in design, materials or workmanship of a third party (not including G&G Mining Fabrication) that is not discoverable by reasonable care or inspection prior to delivery of the Product(s) by G&G Mining Fabrication;
  - l. The Product being used in combination with another item that the Buyer or end user knew or should reasonably have known, was defective, was not designed for use with the Product, was in a damaged state, or was being operated in a way that would reasonably cause damage to the Product;
  - m. The information provided by the Buyer to G&G Mining Fabrication in respect of the supply of the Product (including regard to the Specifications) being incorrect, inaccurate or incomplete;
  - n. Damage resulting from corrosion;
  - o. Normal wear and tear; or
  - p. Repairs to a Product that are not approved by G&G Mining Fabrication in writing.
18. G&G Mining Fabrication liability in respect of a breach of warranty does not cover costs associated with:
- a. The removal or reinstallation of a Product from or to the equipment;
  - b. Freight or shipping of a Product to and from the place at which warranty work is performed;
  - c. Freight or shipping of parts, materials or equipment;
  - d. Replacement of wear and/or impact liner plates or GET;
  - e. Replacement of items attached to the product, including (but not limited to) lubrication equipment, attachment pins, bushings and locating hardware, consumable parts including on trucks, rock ejector assemblies, mud flaps, mounting brackets, rubber seating pads and attaching hardware & shims, body safety up cable and attachments;
  - f. Travel, and associated accommodation and sundries, for G&G Mining Fabrication employees required to perform warranty work;
  - g. Equipment rental charges associated with the performance of warranty work including cranes and elevated work plate forms.
  - h. Duplicating G&G Mining Fabrication service people medical fitness certification over valid certification already in place.
  - i. Extended safety induction requirements consisting more than lost time of two hours, or requirement for addition safety equipment not normally used for the task at hand.
  - j. Lost time of more than two hours waiting to gain access to the product to be repaired.
- Such costs will be separately invoiced by G&G Mining Fabrication to the Buyer.
- Liability**
19. G&G Mining Fabrication is not liable for any loss whatsoever arising from the late delivery of the Product(s), and accepts no responsibility for any transaction, schedule or project plan of the Buyer that is jeopardised resulting in late delivery of the Product(s).
20. The Buyer indemnifies G&G Mining Fabrication and agrees to keep G&G Mining Fabrication indemnified against all claims, losses, actions, damages, costs and expenses (including without limitation the cost of defending and settling any action, claim or demand) that may be made against or incurred by G&G Mining Fabrication arising out of a breach of this Agreement by the Buyer, its agents or servants, or use or operation of the Product by the Buyer or any other person.
21. The *Trade Practices Act 1974* (Cth), the *Fair-Trading Act 1987* (WA) and similar legislation in force in other Australian states and territories imply certain terms, conditions and warranties (“prescribed terms”) into contracts for the supply of certain goods and services and prohibits the exclusion, restriction or modification of certain terms, conditions and warranties. Some prescribed terms permit a supplier to limit its liability for a breach of the prescribed terms. Except as provided by the prescribed terms (but only to the extent that a prescribed term applies to the supply of goods or services under this Agreement):
- a. The liability of G&G Mining Fabrication in respect of a breach of a prescribed term relating to the Product(s) or any part of the Product(s) is limited (at the option of G&G Mining Fabrication) to the replacement or repair of the Product(s) or part thereof, or payment of the cost of repairing or replacing the Product(s) or any part of the Product(s); and
  - b. Other than as set out paragraph 16 and clauses 17 of these Standard Terms and Conditions, the Buyer does not have under any circumstances any cause of action against or right to claim or recover from G&G Mining Fabrication for, or in respect of, any loss or damage of any kind whatsoever, caused directly or indirectly by:
    - i. Any defect in material or workmanship of, or any other defect whatsoever in, or unsuitability for any purpose of, the Product(s) or any part of the Product(s); or
    - ii. Default or negligence (or other form of tort) on the part of G&G Mining Fabrication or of any employee, contractor or agent of G&G Mining Fabrication or of any person for whom G&G Mining Fabrication has legal responsibility relating to the supply of, or otherwise concerning the Product(s) or any part of the Product(s).
22. Subject to clause 21 of these Standard Terms and Conditions, other than as set out in clauses 14 to 19 of these Standard Terms and Conditions and to the maximum extent permitted by law, G&G Mining Fabrication is not liable for any claims of whatever nature, whether in contract, warranty, tort (including negligence), product liability or otherwise for any damages (including special, consequential, incidental, resultant, indirect, punitive or exemplary damages) arising out of, connected with or resulting from the supply, use, operation or resale of the Product(s) under this Agreement.
23. The Buyer acknowledges that:
- a. G&G Mining Fabrication has not supplied any sample of the Product(s) to the Buyer;
  - b. If the Buyer sells the Product(s) to any person by reference to a sample, that sample has not been supplied to that person by G&G Mining Fabrication; and
  - c. Any sale by sample by the Buyer to any person (including any ‘consumer’ within the meaning of the *Trade Practices Act 1974* (Cth)) is not referable to the sale or supply of the Product(s) by G&G Mining Fabrication to the Buyer under this Agreement.
- Excusable delay**
24. Notwithstanding any other provision in this Agreement, G&G Mining Fabrication will not be responsible for nor be deemed to be in default under this Agreement on account of any delay in performance under this Agreement due to any acts of God; war, warlike operations, acts of



terrorism, insurrections or riots; fires; floods or explosions; serious accidents; epidemics or quarantine restrictions; delay or default by contractors or sub-contractors; any act of government (including delays in approvals or clearances), governmental priorities, allocation regulations or orders affecting materials, facilities or incomplete or completed Product(s); strikes, labour disputes or other industrial action causing cessation, slow-down or interruption of work; delay or default in freight, shipping or logistics; or inability after due and timely diligence to procure materials, accessories, equipment or parts; or any other cause to the extent it is beyond G&G Mining Fabrication control or not occasioned by G&G Mining Fabrication fault or negligence, as the case may be.

#### Termination

25. Should the Buyer:

- a. Fail to perform or observe any of the terms of this Agreement (including payment terms) or enter into an agreement or arrangement with its creditors; or
- b. Being an individual, commit an act of bankruptcy; or
- c. Being a company, resolve or be ordered to be wound up, become insolvent (as defined in the *Corporations Act 2001* (Cth)) in G&G Mining Fabrication reasonable opinion, or has a liquidator, receiver, receiver and manager or official manager appointed over all or any part of its assets,

G&G Mining Fabrication may by written notice to the Buyer immediately terminate the Agreement. Upon termination of this Agreement by G&G Mining Fabrication under this clause, G&G Mining Fabrication will be entitled to cease the supply of the Product(s), retain the Deposit and recover from the Buyer any other sum due from the Buyer at the time of termination in respect of any loss or damage suffered by G&G Mining Fabrication.

26. G&G Mining Fabrication may by written notice to the Buyer immediately terminate the Agreement for convenience. If G&G Mining Fabrication terminates the Agreement for convenience, G&G Mining Fabrication must refund the Deposit to the Buyer.

#### General

27. These Standard Terms and Conditions supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Product(s) or any part of the Product(s). written or oral, including, without limitation, those relating to the performance of the Product(s) or any part of the Product(s) or the results that ought to be expected from using the Product(s).

28. The provisions of this Agreement are express provisions for the rights, obligations and liabilities of G&G Mining Fabrications and the Buyer with respect to matters to which the *Civil Liability Act 2002* (WA) applies and, to the maximum extent permitted by law, the provisions of the Agreement exclude, modify and restrict the provisions of the *Civil Liability Act 2002* (WA) to the extent of their inconsistency with the Agreement.

29. The terms and conditions of the United Nations Conventions on Contracts for the International Sale of Goods do not apply to this Agreement.

30. To maximum extent permitted by law, any terms and conditions that may be implied into this quote Agreement by *Sale of Goods Act 1895* (WA), or similar legislation in force in any other Australian state or territory, do not apply to this Agreement.

31. The failure of any party to enforce a provision of this Agreement or to exercise any of its rights expressed in this Agreement is not a waiver of such provisions or rights and does not affect the enforcement of this Agreement. No waiver under this clause operates as an estoppel against the party seeking to rely on this clause. The exercise by any party of any of its rights expressed in this Agreement does not preclude or prejudice such party from exercising the same or any other rights it may have irrespective of any previous action taken by that party.

32. The Buyer warrants to G&G Mining Fabrication that it validly exists under the laws of its place of incorporation or registration and that it has the power to enter into and perform its obligations under this Agreement and to carry out the transactions contemplated by this Agreement.

33. No rule of construction will apply in the interpretation of the Agreement to the disadvantage of one party on the basis that that party put forward or drafted the Agreement.

34. The Buyer acknowledges and agrees that it has been given the opportunity to obtain legal advice regarding the meaning and operation of the Agreement.

35. This Agreement is not assignable or transferrable by either party in whole or in part except with the prior written consent of the other party.

36. Except as expressly stated otherwise in this Agreement, the rights of a party to this quote Agreement are cumulative and are in addition to any other rights of that party.

37. This Agreement is governed by the law of Western Australia and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia. Each Party waives any objection that it may now or in the future have the venue of any proceedings, and any claim that it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within the jurisdiction specified in this clause.