

1. DEFINITIONS

In these Terms, the following definitions apply:

- 1.1. "Blick" means Blick Pty Limited ACN 169 608 459 as agent for Blick LLP ABN 42 466 156 709;
- 1.2. "Business Day" has the meaning given to that term in section 2B of the Acts Interpretation Act 1901 (Cth).
- 1.3. "Confidential Information" means all material, including but not limited to, all non-public information relating to Blick and its business (including pricing information), all business-related information, these Terms and any written or oral, information, whether or not marked as confidential, that is disclosed or made available to the Customer whether directly or indirectly, through any means of communication or observation.
- 1.4. "Customer" means the person or entity including Related Body Corporate, Subsidiary, as well as its agents and/or representatives, or any other person, purchasing or receiving Goods and Services from Blick.
- 1.5. "Goods" means:
 - 1.5.1. all goods of the general description as attached to or supplied with these Terms; and
 - 1.5.2. all goods supplied by Blick to the Customer; and
 - 1.5.3. all inventory of the Customer that is supplied by Blick; and
 - 1.5.4. all Goods supplied by Blick and further identified in any invoice, purchase order or similar document issued by Blick to the Customer, which are deemed to be incorporated into and form part of these Terms; and
 - 1.5.5. all goods that are marked as having been supplied by Blick or that are stored by the Customer in a manner that enables them to be identified as having been supplied by Blick; and
 - 1.5.6. all of the Customer's present and after-acquired goods that Blick has performed work on or to or in which goods or materials supplied or financed by Blick have been attached or incorporated.
 - 1.5.7. The above descriptions may overlap but each is independent of, and does not limit, the others.
- 1.6. "Goods and Services" means all Goods, products, services and advice provided by Blick to the Customer and shall include the manufacture, repair and sale of mining and drilling equipment, industrial equipment and machinery and all associated goods and services and all charges for labour, hire charges, insurance charges, or any fee or charge associated with the supply of the foregoing by Blick to the Customer.
- 1.7. "GST" has the meaning given by section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- 1.8. "LLP" means Blick Limited Liability Partnership.
- 1.9. "PPSA" means the Personal Property Securities Act 2009 (Cth).
- 1.10. "Rate" means the higher of the ANZ Business overdraft base or the interest rate being levied on Blick to be determined by Blick, acting reasonably, rate plus 2%;
- 1.11. "Related Body Corporate" has the meaning given by the Corporations Act 2001(Cth);
- 1.12. "Security Interest" has the meaning given to that term in section 12 of the PPSA.
- 1.13. "Subsidiary" has the meaning given by the Corporations Act 2001(Cth);
- 1.14. "Terms" means these terms and conditions, as amended and/or replaced from time to time.

2. INTERPRETATION

The following rules of interpretation apply in these Terms:

- 2.1. References to "persons" include natural persons and any other body corporates (wherever incorporated or formed).
- 2.2. References to the "parties" include their respective executors, administrators, successors and permitted assignees.
- 2.3. Headings have been inserted for convenience only and will not affect the interpretation of these Terms.
- 2.4. References to the words "including", "include" or similar words do not imply any limitation.
- 2.5. References to "written" or "in writing" shall include all modes of presenting or reproducing words, figures and symbols in a visible form (including via email).
- 2.6. Unless the context requires otherwise, the singular includes the plural and vice versa;
- 2.7. Any reference to any agreement or document includes that agreement or document as amended at any time.

3. SUPPLY

- 3.1. These Terms will apply to the supply of all Goods and Services to the Customer by Blick and will prevail over any of the Customer's terms and conditions in any document between the Customer and Blick.
- 3.2. Any order of offer made by a Customer for Goods and Services shall not be binding on Blick until accepted by Blick in writing or in any such other manner as Blick, in its sole discretion, determines.
- 3.3. These Terms shall be deemed to have come into legal effect and become legally binding on the parties, by the Customer receiving a copy of these Terms from Blick (which may be via email) and on the earlier of:
 - 3.3.1. agreeing to them in writing (which may be via email);
 - 3.3.2. accepting Goods and Services from Blick; or
 - 3.3.3. giving any instructions to Blick for the supply of Goods and Services.

4. COLLECTION AND USE OF INFORMATION

- 4.1. The Customer irrevocably authorises Blick to collect, retain and use any information about the Customer (and, if the Customer is a company, trust or other body corporate, the director(s), authorized person(s) and trustee(s) of the Customer) for the purpose of assessing the Customer's and/or the Customer's directors', authorised persons' or trustees' credit worthiness, enforcing any rights under these Terms or marketing any Goods and Services provided by Blick to any other party.
- 4.2. The Customer irrevocably authorises Blick to disclose any information obtained under clause 4.1 to any person for the purposes set out in clause 4.1
- 4.3. Where the Customer is a company, trust or any other body corporate, the Customer warrants that it has obtained the consent of its director(s), authorised person(s) and trustee(s) in respect of the authorities granted under clauses 4.1 and 4.2 relating to those individuals.

5. PRICE

- 5.1. The prices to be paid by the Customer for the Goods and Services shall be as stated in Blick's relevant quote or invoice for such Goods and Services.
- 5.2. Where no quote or invoice is given by Blick, and the price for the Goods and Services is not agreed in writing or agreed to orally between the parties, the Goods and Services shall be deemed to be sold at the then current amount as such Goods and Services are sold by Blick at the time of the contract in accordance with these Terms.
- 5.3. Where Goods have not yet been delivered to the Customer, the prices for the Goods and Services may be increased by Blick by the amount of any reasonable increase in the cost of supply of those Goods and Services that is beyond the control of Blick between the date of the contract and delivery of the Goods and Services.

6. PAYMENT

- 6.1. Payment for Goods and Services shall be made by the Customer in full prior to the Goods being dispatched to the Customer unless agreed by Blick to be provided on account in which case payment in full shall be made on or before the last day of the month following the month in which Blick's invoice is dated (each being a "due date").
- 6.2. Interest may be charged by Blick on any amount owing by the Customer after the due date at the Rate per annum, charged at a daily rate and added to the outstanding balance monthly.
- 6.3. Any expenses, disbursements and legal costs incurred by Blick in the enforcement of any rights contained in these Terms shall be paid by the Customer, including any legal fees or debt collection agency fees on a full indemnity basis.
- 6.4. Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until such negotiable instrument is paid or discharged in full to Blick's satisfaction.
- 6.5. A deposit may be required by Blick in respect of any Goods and Services and if Blick (at its sole discretion) requires the Customer to pay any deposit in advance of receipt of any Goods and Services (whether in whole or in part), but then the Customer fails to do so, there shall be no obligation on Blick to provide such Goods and Services. Subject to law, all deposits shall be non-refundable and deposits may (at Blick's discretion) include freight costs, which will also be non-refundable.

7. QUOTES

- 7.1. Where a quote is given by Blick for Goods and Services:

- 7.1.1. unless otherwise agreed between the parties, the quote shall be valid for thirty (30) days from
- 7.1.2. the date of issue unless the quote states a lesser or longer date;
- 7.1.3. the quote shall be exclusive of GST unless specifically stated to the contrary; and
- 7.1.4. Blick reserves the right to alter the quote or withdraw the quote at any time before it accepts the Customer's request to purchase the Goods and Services.

- 7.2. Where Goods and Services are required in addition to the quote the Customer agrees to pay for the additional cost of such Goods and Services and clause 5 shall apply in such circumstances.
- 7.3. If Blick notifies the Customer that an error has been made, the quote is deemed to have been withdrawn and is unable to be accepted by the Customer.

8. RISK

- 8.1. The Goods shall remain at Blick's risk until delivery to the Customer. Upon delivery, all risk and responsibility (including for loss, theft, damage and destruction) for the Goods shall pass from Blick to the Customer.
- 8.2. Delivery of the Goods shall be deemed complete when the Customer takes possession of the Goods, whether directly from Blick or by a carrier, courier, or other bailee for purposes of transmission to the Customer.
- 8.3. Where Blick delivers Goods and Services to the Customer by instalments, and Blick fails to deliver or supply one or more instalments, the Customer shall not have the right to cancel these Terms.

9. TITLE AND SECURITY INTERESTS

- 9.1. Unless otherwise defined in these Terms, capitalised terms in this clause have the meanings given to them in the PPSA.
- 9.2. Title in any and all Goods supplied by Blick passes to the Customer only when the Customer has made payment in full for all Goods provided by Blick and of all other sums due to Blick by the Customer on any account whatsoever. Until all sums due to Blick by the Customer have been paid in full, the Customer grants to Blick a Security Interest in all Goods that it supplies to the Customer and their Proceeds, including any Accounts, Accessions and Commingled Goods.
- 9.3. If the Goods are attached, fixed, or incorporated into any property of the Customer, by way of any manufacturing or assembly process by the Customer or any third party, title in the Goods shall remain with Blick until the Customer has made payment as set out in clause 9.2, and where those Goods are mixed with other property so as to be part of or a constituent of any new property, the Customer grants to Blick a Security Interest (including a Purchase Money Security Interest, where it is able to) in the new property as security for the full satisfaction by the Customer of the full amount owing between Blick and Customer.
- 9.4. In addition to any other rights under these Terms, Blick may exercise any and all remedies set out in the PPSA including entry into any building or premises owned, occupied or used by the Customer, to search for and seize, dispose of or retain those Goods or new property in respect of which Blick has a Security Interest. In this regard, the Customer acknowledges that Sections 126, 128, and 129(1) of the PPSA relating to seizure of goods and disposal of seized goods apply.
- 9.5. If the provisions of Chapter 4 of the PPSA would otherwise apply, to the maximum extent permitted by law, the Customer agrees that Sections 129(3), 132(3)(d), 132(4), 134(1), 135, 142 and 143 of the PPSA will not apply.
- 9.6. To the maximum extent permitted by law, the Customer contracts out of, and waives any rights the Customer may have pursuant to Sections 95 and 96 and if the provisions of Chapter 4 of the PPSA would otherwise apply, Sections 117, 118, 121(4), 123, 129(2) and 130 of the PPSA.
- 9.7. Blick shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of any action taken in the exercise of its rights under this clause 9, nor liable in contract or in tort or otherwise in any way whatsoever unless by statute such liability cannot be excluded.

- 9.8. Blick may either:
- 9.8.1. resell any repossessed Goods and credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs); or
- 9.8.2. retain any repossessed Goods and credit the Customer's account with the invoice value thereof less such sum as Blick reasonably determines on account of wear and tear, depreciation, obsolescence, loss or profit and costs.
- 9.9. The following shall constitute defaults by the Customer under these Terms ("Events of Default"):
- 9.9.1. Non payment of any sum by the due date.
- 9.9.2. The Customer intimates that, or threatens that, it will not pay any sum by the due date.
- 9.9.3. Any Goods are seized by any other creditor of the Customer or any other creditor intimates or threatens that it intends to seize Goods and Services.
- 9.9.4. Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to Blick remains unpaid.
- 9.9.5. The Customer is insolvent, cannot pay its debts as and when they fall due, becomes bankrupt or is put into liquidation or a receiver is appointed to any of the Customer's assets.
- 9.9.6. The Customer fails to comply with a statutory demand made in accordance with the Corporations Act 2001.
- 9.9.7. A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
- 9.9.8. Any material adverse change occurs in the financial position of the Customer or its Guarantor(s).
- 9.10. Without limiting the Security Interest granted pursuant to clause 9.2, the Customer grants to Blick a Security Interest over all of the Customer's present and after-acquired property that Blick has performed any services on or to or in which goods or materials supplied or financed by Blick have been attached or incorporated.
- 9.11. The Customer agrees that Blick may register a Financing Statement in relation to any Security Interests granted to it pursuant to these Terms and that the Customer will do all things necessary in Blick's reasonable opinion to register the Financing Statement or Financing Change Statement on the Register as a Security Interest and/or a Purchase Money Security Interest.
- 9.12. The Customer waives its right to receive a Verification Statement in respect of any Financing Statement or Financing Change Statement in respect of any Security Interest created pursuant to these Terms.
- 9.13. The Customer must not change its name, ABN or other details required in respect of the registration or maintenance of registration of each Security Interest on the Register without first notifying Blick in writing.
- 10. PAYMENT ALLOCATION**
- 10.1. Blick may in its discretion allocate any payment received from the Customer towards any invoice that Blick determines and may do so at the time of receipt or at any time afterwards, and on default by the Customer Blick may reallocate any payments previously received and allocated.
- 10.2. In the absence of any payment allocation by Blick, payment shall be deemed to be allocated in such manner as preserves the maximum value of Blick's Security Interests granted by the Customer under these Terms.
- 11. DISPUTES**
- 11.1. To the maximum extent permitted by law, no claim relating to Goods and Services may be made by the Customer under these Terms unless it is made in writing to Blick within seven (7) days of delivery of the relevant Goods and Services.
- 12. LIABILITY**
- 12.1. The Australian Consumer Law at Schedule 2 of the Competition and Consumer Act 2010 (Cth) and other statutes that may imply warranties or conditions or impose guarantees or other obligations upon Blick which cannot by law (or which can only to a limited extent by law) be excluded or modified are expressly excluded by Blick to the maximum extent permitted by law and where are otherwise able to be limited by Blick, are limited to the fullest extent permitted by law.
- 12.2. To the maximum extent permitted by law, Blick shall not be liable for any indirect, consequential or special loss or damage of any kind whatsoever, including whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from Goods and Services provided by Blick to the Customer.
- 12.3. The Customer indemnifies Blick against all claims and loss of any kind whatsoever however caused or arising in connection with any breach by it of these Terms and any negligence of the Customer, whether any such claims or losses arise in connection with any matter, act, omission, or error by Blick its agents or employees in connection with the Goods and Services.
- 12.4. To the maximum extent permitted by law, in the event that Blick has any liability under these Terms, its maximum aggregate liability under these Terms is limited to the aggregate amount actually paid by the Customer in the 6 month period immediately prior to the liability arising.
- 13. WARRANTY**
- 13.1. No representation, guarantee, condition, warranty or premise expressed or implied by law or otherwise applies to the Goods and Services except where they are required pursuant to the Australian Consumer Law or except where expressly stated in these Terms.
- 13.2. To the maximum extent permitted by law, Blick does not provide any warranty that the Goods and Services are or will be fit and suitable for the purpose for which they are required by the Customer and shall not be liable if they are not.
- 14. COPYRIGHT AND INTELLECTUAL PROPERTY**
- 14.1. Blick owns and has copyright in all designs, drawings, specifications, software, solutions and documents produced by Blick in connection with the Goods and Services provided pursuant to these Terms and the Customer may use the Goods and Services only if paid for in full in accordance with these Terms.
- 15. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES**
- 15.1. If the Customer is a company, trust or any other body corporate, then the director(s), authorised person(s) or trustee(s) that agree to these Terms on behalf of the Customer ("Guarantor"), in consideration for Blick agreeing to supply Goods and Services under these Terms, each agree to unconditionally and personally guarantee (as primary obligor, and not merely as surety) the payment of any and all monies now or hereafter owed by the Customer to Blick and indemnifies Blick against non-payment by the Customer and any other breach of these Terms by the Customer. Any personal liability of such person(s) shall not exclude the Customer in any way whatsoever from the liabilities and obligations under these Terms.
- 15.2. This guarantee and indemnity remains in full force:
- 15.2.1. despite termination of these Terms until Blick has received in full all amounts it is entitled to under these Terms;
- 15.2.2. even if the Guarantor ceases to be a director, authorised person or trustee of the Customer, unless otherwise released by Blick in writing; and
- 15.2.3. despite any variation to these Terms, any indulgence granted to the Customer, or the insolvency, bankruptcy, appointment of an administrator, receiver, liquidator or manager, or any equivalent event in respect of the Customer.
- 16. CANCELLATION**
- 16.1. Blick shall, without any liability, and without any prejudice to any other right it has in law or equity, have the right by notice to suspend or cancel in whole or in part its obligations under these Terms for the supply of Goods and Services to the Customer if the Customer fails to pay any money owing after the due date or if any Event of Default occurs in relation to the Customer.
- 16.2. Any cancellation or suspension of Blick's obligations under these terms shall not affect Blick's claim for money due at the time of cancellation or suspension or for damages for any breach of these Terms by the Customer or obligations that it owes to Blick.
- 17. CONFIDENTIALITY**
- 17.1. Except as permitted in this clause 17, the Customer may not disclose, communicate or distribute to any third party any Confidential Information.
- 17.2. The Customer will not have to observe any duty of confidentiality concerning Confidential Information that:
- 17.2.1. Blick gives its prior written consent to the disclosure of;
- 17.2.2. is required to be disclosed by law;
- 17.2.3. is disclosed by the Customer to its holding company, Subsidiaries, employees and/ or professional advisers where they have agreed to comply with the Customer's confidentiality obligations under these Terms; or
- 17.2.4. at the time of disclosure is in, or subsequently enters, the public domain otherwise than by breach of any duty of confidentiality under these Terms.
- 18. NOTICES**
- 18.1. All notices and other communications to be given under these Terms must be in writing and be delivered to the physical address or email address from time to time designated by that party in writing to the other party for such purpose.
- 18.2. Any notice or communication given under these Terms shall be deemed to have been received:
- 18.2.1. at the time of delivery, if delivered by hand;
- 18.2.2. three Business Days after the date of mailing, if sent by ordinary post or courier within Australia;
- 18.2.3. 10 Business Days after the date of mailing, if posted, couriered or delivered to or from outside of Australia;
- 18.2.4. if sent by email, on the date and time at which it enters the recipient's information system, as evidenced (if required by the recipient, where delivery is disputed) in a confirmation of delivery report from the sender's information system which indicates that the email was sent to the email address of the recipient.
- 18.3. Any notice or communication received or deemed received after 5.00pm on a day which is not a Business Day in the place to which it is delivered, posted or sent will be deemed not to have been received until the next Business Day in that place.
- 19. MISCELLANEOUS**
- 19.1. These Terms constitute the entire agreement and understanding of the parties relating to the matters dealt with in these Terms and supersede and extinguish any previous agreement (whether oral or written) between the parties in relation to such matters.
- 19.2. The parties each warrant and represent that they have full power and authority to enter into these Terms and to assume the rights and obligations under them.
- 19.3. Blick shall not be liable for delay or failure to perform its obligations if the cause of the delay or failure is beyond its control.
- 19.4. Blick may from time to time, by written notice to the Customer, amend, supplement, vary, or replace these Terms provided that such it does not materially affect or prejudice the Customer's existing rights under these Terms.
- 19.5. Failure by Blick to enforce any of the terms and conditions contained in these Terms shall not be deemed to be a waiver of any of the rights or obligations Blick has under this contract.
- 19.6. If any provision under these Terms shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.7. The Customer shall not assign all or any of its rights or obligations under these Terms without the prior written consent of Blick.
- 19.8. These Terms shall be legally binding upon, and enure for the benefit of, the parties (irrespective of any change of control or change of directors, managers or executives) and their respective successors and any permitted assignees or transferees.
- 19.9. These Terms will be governed by and construed in accordance with the laws of Victoria, Australia and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of Victoria, Australia for any matter arising under or relating to these Terms.