



Mineral Process Control (MPC) Pty Ltd

30 Furniss Rd
LANDSDALE 6065
WESTERN AUSTRALIA

Tel: +61 8 9303 2334
ABN: 42 009 416 193
www.mpcwa.com

STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

1. Definitions

- a) "Seller" means Mineral process Control (MPC) Pty Ltd; ABN 42 009 416 193.
- b) "Buyer" means any person, body corporate or entity which purchases or orders the Goods from the Seller.
- c) "Conditions" means these terms and conditions for the supply of the Goods by the Seller to the Buyer, as amended or varied in writing by the Seller.
- d) "Contract" means a contract between the Seller and the Buyer for the sale of the Goods.
- e) "Goods" means all goods and services delivered or provided by the Seller to the Buyer or to be delivered or provided by the Seller to the Buyer.

2. Application of Conditions

These Conditions apply to all orders placed by the Buyer with the Seller unless otherwise agreed in writing by a duly authorised officer of the Seller.

Any order made by the Buyer is not binding on the Seller until accepted by the Seller in writing. A Contract may be formed upon the written acceptance by the Seller of an order for the Goods by the Buyer. The Buyer acknowledges that it will be bound by these Conditions which will form part of the Contract. The Contract may only be varied with the Seller's prior written consent. To the extent any conflict exists between these Conditions and any other documentation or correspondence forming part of the Contract, these Conditions are paramount and prevail.

No terms stated by the Buyer in making an order will be binding upon the Seller unless accepted in writing by a duly authorised officer of the Seller.

These Conditions supersede all terms and conditions of sale previously issued by the Seller.

3. Seller may decline order

The Seller reserves the right, in its sole discretion, to decline any order or part thereof. Any order or part thereof not accepted is deemed cancelled. The Seller requires that any order of Goods be in writing.

4. Governing Law & Submission to jurisdiction.

All of the Conditions and the Contracts will be governed by and interpreted in accordance with the laws of the State of Western Australia.

5. Cancellation of Orders

An order accepted by the Seller cannot be cancelled without the Seller's prior written consent (in its sole discretion). No application for cancellation or delay in delivery will be considered unless made by the Buyer

in writing to the Seller. The Seller will consider an application for cancellation or delay in delivery in its sole discretion.

6. Price

Unless otherwise agreed in writing by the parties, prices are as set out in the current price list issued from time to time by the Seller plus any GST payable by the Seller and may be subject to variation by the Seller without notice.

Unless the Seller expressly advises in writing, the price for any Goods does not include the costs of delivery of the Goods. Any GST payable by the Seller in respect of the supply of the Goods will be paid by the Buyer to the Seller. The Buyer must supply the Seller with its ABN prior to, or at the time of, placing an order with the Seller.

7. Payment

The Seller will invoice the Buyer on delivery of the Goods. Orders requiring the exporting of goods require advance payment in full prior to shipping, unless otherwise agreed in writing by the seller.

Unless otherwise agreed in writing by the Seller, payment by the Buyer to the Seller will be made on or before the last day of the month following the month in which the invoice was issued. Time for payment is of the essence of the Contract. Where payments are overdue, the Seller may, in addition to any other rights it may have, in its sole discretion, either cancel orders under clause 15 or suspend delivery of outstanding Goods under clause 9.

If the invoice price is not paid by the due date, then interest will accrue on that amount from the date of delivery of the Goods until the price is paid in full. Interest will be paid at a rate of 8% per annum. Interest will accrue on a daily basis and be payable on demand.

8. Payment Default

If the Buyer defaults in payment or breaches these Conditions then it will be liable for all costs incurred by the Seller and will indemnify the Seller against any loss, liability, charge, expense, outgoing or payment which the Seller suffers, incurs or is liable for in respect of the recovery of monies owing by the Buyer to the Seller.

9. Delivery

The Seller will arrange for the Goods purchased by the Buyer to be loaded free of charge onto the Buyer's nominated carrier at the seller's premises or, delivered to another location as agreed in writing. The Seller reserves the right to make deliveries of any order by instalments. Subject to clause 14, the Seller will not be liable in any way for any failure or delay in delivery or for any loss or damage resulting directly or indirectly from any failure or delay in delivery of the Goods irrespective of whether such failure or delay is negligent or within the Seller's control or otherwise.

If, due to any act, matter or thing beyond the control of the Seller, the address for delivery is unattended, delivery cannot otherwise be effected or the Goods cannot be dispatched, the Seller, in its sole discretion, may store the Goods at the Buyer's risk and expense or take such other steps as it considers appropriate.

If the Seller delivers the Goods then, unless otherwise agreed in writing by the Seller, the Goods must be unloaded by the Buyer immediately on arrival at the specified destination.

10. The Seller reserves the right to withhold deliveries if:

(a) the Seller, in its sole discretion, considers that the financial condition of the Buyer so warrants and that such action is advisable to protect the Seller's interests; or

(b) the terms of payment for any Goods are not strictly adhered to by the Buyer.

11. Acceptance

To the fullest extent permitted by law, the Buyer has five (5) business days from the delivery of Goods to accept or reject the Goods in writing and if the Buyer fails to notify the Seller within that period, the Buyer is deemed to have accepted such Goods.

12. Return of Goods

To the fullest extent permitted by law, no Goods will be returned unless:

- a) prior authorisation has been given by the Seller;
- b) the correct invoice number is quoted on the Buyer's return docket;
- c) the returns are made within five (5) business days after delivery; and
- d) the reason for return is clearly stated on the Buyer's return docket.

The Buyer and Seller acknowledge that the Buyer holds the Goods as from the date of delivery as bailee and agent for the Seller for the purpose of sale of the Goods in the ordinary course of the Buyer's business. The Buyer will not be entitled to return the Goods to the Seller except as stated above or with the written consent of the Seller, at the discretion of the Seller. All Goods returned will be subject to a handling charge of 15% of the invoice price of the Goods and the Buyer will pay all return freight costs. Without limiting the generality of the foregoing, the Seller and the Buyer agree that, to the fullest extent permitted by law, the Buyer will not be entitled in any circumstances to return Goods which the Seller has acquired specifically for and at the request of the Buyer.

13. Risk

Risk in the Goods passes to the Buyer on delivery of the Goods or on dispatch of the relevant invoice whichever is the earlier and from that time the Buyer assumes all risk of loss and damage to the Goods including without limitation all loss or damage in the course of unloading the Goods following delivery.

14. Title to Goods

Notwithstanding any other provisions in these Conditions and notwithstanding that the Buyer has possession of the Goods, title to any and all Goods supplied by the Seller will remain with the Seller and no legal or equitable interest or property in the Goods whatsoever will pass to the Buyer until the Buyer has paid the full invoice price for all Goods supplied by the Seller under all invoices. Should the Buyer become insolvent or if a liquidator, receiver, receiver and manager, administrator or official manager is appointed in respect of the Buyer, the Seller retains title to the goods until the Seller receives full payment for those goods. The Seller retains the right to collect or otherwise arrange for the return of those goods for which payment remains outstanding.

Until title passes the Buyer must:

- (a) refrain from encumbering the Goods;
- (b) store, mark and keep appropriate records for the Goods so that they can at all times be

identified and distinguished as the property of the Seller and in particular must refrain from mixing the Goods with any Goods owned by the Buyer or any other person;

(c) allow the Seller full and free access to the Buyer's premises where the Goods are located to retake possession of such Goods if the Buyer is in any way in breach of these Conditions;

(d) not dispose of the Goods unless all of the following conditions are satisfied:

(i) the Goods are disposed to a bona fide sub-purchaser in the ordinary course of the Buyer's business;

(ii) no event as specified in clause 15(a), (b) or (c) has occurred in respect of the Buyer; and

(iii) the Buyer maintains records of all disposals of the Goods and permits inspection of the records by the Seller promptly upon request; and

(e) hold such money received by the Buyer on account of the Goods as represents the amounts owing for such Goods in trust for the Seller in a separate bank account identified as the Seller's account and hold that money on trust for the Seller until the full amount due for the Goods has been paid.

(f) not modify or otherwise alter the goods without the express permission in writing of the Seller.

The Buyer indemnifies the Seller against any claim, action, damage, loss, liability, cost, expense or payment which the Seller suffers, incurs or is liable for in respect of the Seller's exercise of its rights under this clause 13.

15. Warranty and Liability

(a) Subject to any condition, warranty or right implied or imposed by the Competition and Consumer Act 2010 (Cth) (CCA) or any other law which cannot by law be excluded by agreement, or any express provision in these Conditions, the Seller gives no warranties regarding any Goods supplied and all other implied or imposed conditions, warranties and rights are excluded. Where any condition, warranty or right is implied or imposed by law and cannot be excluded, the Seller limits its liability for breach of that implied or imposed condition, warranty or right to the fullest extent permitted by law.

(b) Subject to the qualifications in section 64A of Schedule 2 of the CCA or any other law, the Seller's liability for any breach of any implied or imposed condition, warranty or right in connection with the supply of Goods is limited to one or more of the following (at the election of the Seller):

(i) replacement of the Goods or supply of goods equivalent to the Goods;

(ii) repair of the Goods;

(iii) payment of the cost of replacing the Goods or acquiring goods equivalent to the Goods;

(iv) payment of the cost of having the Goods repaired.

(c) Subject to clauses 14(a) and (b) and despite any implication arising from any other provisions of these Conditions:

(i) to the fullest extent permitted by law, the Seller will only be liable for a safety defect (as defined in the CCA) in any Good if the Buyer notifies the Seller in writing of the safety defect (as defined in the CCA) in any such Good within five (5) business days after the date of receipt and the Seller accepts such liability;

(ii) the Seller is not liable to the Buyer, its servants, agents or contractors, in contract, in tort (including negligence), under any statute (to the fullest extent permitted by law) or otherwise for, or in respect of, any indirect or consequential loss or damage including without limitation financial loss or expense including loss of opportunity, loss of profits or loss of goodwill suffered by the Buyer or any other person arising directly or indirectly out of or in anyway attributable to the Goods, or their delivery, or the performance of the Contract for the sale of the Goods upon these Conditions even if that loss or damage was in the contemplation of the parties at the time of entry into the Contract; and

(iii) subject to clause 11, the aggregate liability of the Seller in contract, in tort (including negligence), under statute (to the fullest extent permitted by law) or otherwise for, or in respect of, any loss or damage arising directly or indirectly out of or in anyway attributable to the Goods, or their delivery, or the performance of the Contract will not exceed 10% of the amount payable to the Seller under the Contract.

(d) Where the Seller elects to replace the Goods the Seller will credit the cost of the Goods being replaced and will replace them as soon as possible with other Goods of the same or equivalent kind at the price charged for the original Goods and otherwise upon the same terms and conditions as those to which the original Goods were subject.

16. Termination by the Seller

Without prejudice to any of its other rights, powers or remedies, the Seller may cancel any order for the delivery of Goods and terminate any contract governed by these Conditions if:

(a) the terms of payment for any Goods delivered to the Buyer by the Seller have not been strictly adhered to by the Buyer;

(b) the Buyer defaults under any of its obligations under these Conditions; or

(c) the Buyer becomes insolvent, commits an act of bankruptcy or, being a company, a liquidator, provisional liquidator, receiver, receiver and manager, administrator or official manager is appointed in respect of the Buyer, a mortgagee goes into possession of the Buyer's assets or business, an application is made to appoint a liquidator or to have the company wound up, the Buyer is made subject to the supervision of a court or enters into a scheme of arrangement with its creditors or if anything analogous occurs in respect of the Buyer, in which case, the Seller will be released from all liability under the Contract.

The Seller will be entitled to payment for all Goods delivered up to the effective date of termination.

Termination of a Contract is without prejudice to the rights of the Seller accruing up to the date of termination.

17. Intellectual Property

The supply of Goods to the Buyer does not constitute a transfer of any intellectual property rights in the Goods or any part thereof. The Buyer must not do anything inconsistent with or in infringement of such intellectual property rights. The Seller does not warrant that the supply by it and the use by the Buyer of the Goods does not and will not infringe the intellectual property rights of any third party.

18. Seller's Obligations

(a) Notwithstanding any other provision of these Conditions, if the Buyer breaches a term of a Contract, the Seller is not bound to perform its obligations under that Contract until the breach is remedied by the Buyer.

(b) The Seller is not liable for any failure to observe its obligations under these Conditions where such failure is wholly or substantially due to a force majeure event, which includes any cause beyond the control of the Seller, including strike, industrial action, war, sabotage, terrorist activity, national emergency, blockade or governmental action, inaction or request, and act of God.

19. PPSA

(a) Unless the context requires otherwise, terms and expressions used in this clause have the meanings given to them in, or by virtue of, the Personal Property Securities Act 2009 (Cth) (PPSA).

(b) The Buyer grants the Seller a security interest in all Goods to which Seller retains title under these Conditions.

(c) The Buyer must:

(i) promptly sign any documents and provide all information reasonably required by the Seller to register a financing statement or financing change statement on the Personal Property Securities Register or that the Seller may require in connection with such registrations;

(ii) notify the Seller in writing of any proposed change to its name or address at least 7 days before the change takes effect;

(iii) indemnify, and upon demand reimburse, the Seller for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register, releasing any goods from a security interest perfected by such registration or any other action taken by the Seller to comply with the PPSA (including complying with a demand given under section 178 of the PPSA) or to protect its position under the PPSA;

(iv) not register a financing change statement in respect of a security interest without the prior written consent of the Seller; and

(v) immediately notify the Seller of any material change in its business practices of selling the goods which would result in a change in the nature of proceeds derived from such sales.

(d) Any time the Buyer makes a payment to the Seller, irrespective of whether the payment is made under or in connection with a particular supply of goods, the Seller may apply that payment in any manner and order it sees fit.

(e) Sections 96 and 125 of the PPSA do not apply to the security agreement created by these Conditions.

(f) The Buyer waives its rights to receive a verification statement in accordance with section 157 of the PPSA.

(g) The Buyer:

(i) waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), and 135 of the PPSA and its rights as a grantor and a debtor under sections 142 and 143 of the PPSA; and

(ii) agrees that where the Seller has rights in addition to those in chapter 4 of the PPSA, those rights will continue to apply and, in particular, will not be limited by section 123 of the PPSA.