

# Bed Rock Hire Pty Ltd ta Bedrock Mining Equipment Terms and Conditions of Sale (v.1)

In this document ("Terms and Conditions of Sale"):

"**Application**" means the application by the Customer to BME for commercial credit;

"**Contract**" means the contract formed between BME and the Customer by an Order accepted by an Order Acknowledgement;

"**Customer**" means the person placing the Order with BME;

"**Goods**" means any goods, products, services or materials to be supplied by BME;

"**BME**" means Bed Rock Hire Pty Ltd (ABN 48 149 878 428) trading as Bedrock Mining Equipment.

"**Order**" is defined in clause 1(a);

"**Order Acknowledgement**" is defined in clause 1(b);

"**PPSA**" means the Personal Property Securities Act 2009 (Cth) as amended from time to time;

"**Specifications**" means any specification for Goods specified in the Contract;

Unless otherwise stated, an expression used or defined in the Corporations Act 2001 has the same meaning in the Terms and Conditions.

## 1. Orders, Order Acknowledgements and Contract

- a. An order or an offer to purchase can be made by the Customer in writing or verbally.
- b. An Order is accepted when the Customer receives from BME an Order Acknowledgement in writing or if writing is not received, acknowledgement verbally or delivery occurs, whichever first occurs.
- c. When an Order is accepted by an Order Acknowledgement the Contract will be wholly documented by (in the following order of precedence) first, any specific term(s) agreed in writing, second, the Order Acknowledgement and third, these Terms and Conditions.
- d. The Customer shall have no right to cancel or vary the Contract except by written agreement between the parties and then only upon terms which indemnify BME against all costs, losses, damages, charges and expenses and given the Order is irrevocable, in the event that the Customer cancels any Order before taking delivery of the Goods, the Customer shall be liable to pay immediately the total amount due under such Order and to the extent that any amounts already paid by the Customer to BME in connection therewith shall not be refundable.
- e. Previous dealings with BME and the Customer shall not have any effect on the Contract.
- f. Trade custom and/or trade usage is superseded by the Contract and shall not be applicable in the interpretation of the Contract.
- g. The Contract constitutes the entire agreement between BME and the Customer with respect to the Goods supplied under the Contract. All prior negotiations, proposals and the correspondence are superseded by that Contract and these Terms and Conditions will in all circumstances prevail over the Customer's terms and conditions of the purchase (if any)

## 2. Prices

- a. Unless otherwise agreed in writing, the price charged for the Goods shall be (i) exclusive of any transaction tax ("transaction tax" includes the goods and services tax as well as any identified or new transaction taxes that come into existence after the effective date of these Terms and Conditions), and (ii) as per the price ruling as determined by BME at the date of delivery. Any price indications or price lists are subject to alteration in accordance with the price ruling as at that date of delivery.
- b. Where a transaction tax applies to any supply made under these Terms and Conditions, BME may recover from the Customer an additional amount on account of that transaction tax.
- c. Notwithstanding any provision in the Contract, BME may increase the price of Goods until the issue of an Order Acknowledgement and prior to delivery of the Goods if the price increase results from an increase in the price of any inputs which comprise part of the Goods.

d. The Order Acknowledgement shall set out the price basis as either lump sum or schedule of rates.

- e. The Customer acknowledges and agrees that any Order not including:
  - i. a lump sum price that has been agreed in writing by BME; or
  - ii. quantities with reference to the schedule of rates for the entire supply of the Goods,shall be deemed priced on a do and charge basis (with reference to the schedule of rates) and the Customer indemnifies BME against all costs, losses, damages, charges and expenses in respect of the Order.

## 3. Delivery

- a. BME will make all reasonable efforts to have the Goods delivered to the Customer or his designated agent as agreed between the parties (or if there is no specific agreement then at BME's reasonable discretion)
- b. Delivery terms shall be subject to Incoterms 2010 and shall be set out in the Order Acknowledgment. If no Incoterm is specified, the terms of delivery shall be ex works point of collection.
- c. BME shall not be liable for:
  - i. any failure to deliver or delay in delivery for any reason;
  - ii. any damage or loss due to unloading or packaging; or
  - iii. damage to property of the Customer caused upon entering premises to deliver the Goods (if relevant).
- d. Any additional costs incurred by BME due to any failure of the Customer to accept the Goods at the date of delivery will be deemed a debt due and payable to BME.
- e. Except as required by law, BME will be under no obligation to accept Goods returned to it for any reason.

## 4. Standard Grades of Material

- a. Subject to clause 4(b), BME will use its reasonable endeavours to:
  - i. Supply Goods having the grade of material specified in the Order Acknowledgement; and
  - ii. Ensure that the Goods' grade of material as specified in the Order Acknowledgement will, unless otherwise agreed, be in accordance with applicable Australian Standards and/or as detailed in any current, relevant price schedules, product handbooks or other product literature of BME.
- b. Goods supplied which are not manufactured by BME (or to the extent that they are not manufactured by BME) are subject to the chemical composition, physical properties and product standards of the original manufacturer, and by such warranty as specified by the original manufacturer (if any), and BME does not, unless specifically required by law, give any warranty beyond such warranty.

## 5. Payment

- a. Payment for the Goods must be made in full (without any set off) and received by BME within 30 days from date of delivery unless otherwise agreed in writing by BME. Payment is only received by BME when it receives cash or when the proceeds of other methods of payment are credited and cleared to BME's bank account.

## 6. Title and related matters

- a. The legal and equitable title to the Goods will only be transferred from BME to the Customer when the Customer has met and paid all that is owed to BME on any account whatsoever.
- b. The Customer acknowledges that until the Customer has met and paid all that is owed to BME on any account whatsoever, the Customer holds the Goods as bailee for BME and that a fiduciary relationship exists between the Customer and BME.
- c. Until BME receives full payment of all monies due to it from the Customer, the Customer shall keep the Goods separate and in good condition as a fiduciary of BME, clearly showing BME's ownership of the Goods and the Customer's sale or otherwise of them in accordance with paragraph 6e and 6f. The Customer if required, shall deliver the Goods up to BME.
- d. If the Customer defaults, in addition to clause 7.b, BME may take possession of the Goods wherever the Goods

are located and the Customer agrees that representatives of BME may enter upon the Customer's premises for that purpose.

- e. Notwithstanding paragraph 6a, the Customer may sell as fiduciary agent for BME the Goods to a third party in the normal course of the Customer's business provided that where the Customer is paid by that third party, the Customer holds the proceeds of sale to the extent of the amount owing by the Customer to BME at the time of receipt of such proceeds on trust for BME.
- f. If the Customer uses the Goods in some manufacturing or construction process of its own or some third party, then the Customer shall hold such part of the proceeds of such manufacturing or construction process as related to the Goods in trust for BME. Such part shall be deemed to equal in dollar terms the amount owing by the Customer to BME at the time of the receipt, of such proceeds.
- g. Notwithstanding the above, the Customer is still required to pay BME for Goods already delivered and for Goods manufactured or ordered to specification and not yet delivered.

## 7. Default

- a. The Customer will be in default of the Contract when:
  - i. the Customer breaches the Terms and Conditions;
  - ii. payment for the Goods has not been received by BME by the due date of payment;
  - iii. the Customer being an individual commits an act of bankruptcy or becomes an insolvent under administration;
  - iv. the Customer being a body corporate becomes an externally administered body corporate, has an application for winding up filed against it or fails to set aside or have revoked (within the time required) a statutory demand;
  - v. BME forms the opinion that the Customer's credit worthiness or credit standing alters from that indicated in its Application; and
  - vi. The Customer fails to provide the notice contemplated by clause 9.d.
- b. If the Customer defaults, BME may
  - i. Treat the whole of the Contract and any other Contract with the Customer as repudiated and exercise its rights and remedies at law as if the Customer had repudiated the Contract and BME has accepted that repudiation and elected to terminate the Contract;
  - ii. Refuse to supply any Goods to the Customer;
  - iii. Claim the return of any Goods in the Customer's possession where title has not passed to the Customer;
  - iv. Without notice to the Customer withdraw or vary any credit BME has provided to the Customer; and / or
  - v. Without notice to the Customer make all monies owing by the Customer to BME on any account immediately due and payable.

## 8. Risk

Risk in the Goods passes to the Customer upon delivery of the Goods or upon title in the Goods passing to the Customer, whichever is the earlier.

## 9. Credit

- a. BME may grant the Customer credit upon the Terms and Conditions on the basis of the Application and such other documents and information as may be required by BME.
- b. Until BME grants the Customer credit by notice in writing, BME will only supply Goods to the Customer on the basis of cash in advance.
- c. The granting of credit does not oblige BME to extend any particular amount of credit to the Customer.
- d. The Customer must notify BME in writing if there is any change in the shareholding or ownership of the Customer or any material change in the Customer's financial position.

## 10. Intellectual Property

- a. The Customer warrants to BME that all documents provided by the Customer are accurate and that BME is entitled to use all such documents for the purposes of

the Contract and that such use does not infringe any third party's intellectual property rights.

- b. The Customer indemnifies BME against all costs, losses, damages, charges and expenses suffered and incurred by BME as a result of documents provided by the Customer to BME for the purposes of or in the course of the supply of the Goods breaching a third party's intellectual property rights.
- c. If the Customer receives any confidential information from BME the Customer may not use or disclose such information unless it receives the prior written consent of BME, such information enters the public domain (other than as a result of a breach of this paragraph) or the use or disclosure is required by law.

#### 11. Force Majeure

BME is not liable for failure to perform the Contract to the extent and for so long as its performance is prevented or delayed because of circumstances outside of BME's control including but not limited to a failure of BME's plant and equipment or the non-performance, omission or failure of a supplier or subcontractor to BME.

#### 12. Representations and Fitness for Purpose

- a. Except as expressly provided to the contrary in the Contract, all representations, warranties, terms and conditions in relation to the Goods (whether implied or otherwise) are hereby excluded to the maximum extent permitted by law.
- b. The Customer agrees that if it is aware (or should be aware) that the Goods, the subject of an Order, are for a particular purpose (including, but not limited to, use as a component part of another product) or are required to possess special or uniform characteristics, the Customer will clearly specify that purpose or those characteristics in any such Order.

#### 13. Limitation of Liability

- a. BME shall not be liable to the Customer for any consequential, special, incidental or indirect loss, loss of profits, lost production, loss of anticipated savings and loss of opportunity arising from or in connection with the supply of the Goods.
- b. The total liability of BME to the Customer arising out of, under or in connection with the Contract, is limited, in aggregate, to 100% of the Contract price.

#### 14. Defects

- a. Subject to clause 12, BME warrants the materials and workmanship comprising the Goods for a limited period of twelve months from the date of delivery of the Goods.
- b. If BME is in breach of a Contract BME's liability is strictly limited to, at the option of BME:
  - i. the cost of replacement of the defective Goods; or
  - ii. the repair of the defective Goods.
- c. The warranty given in clause 14a excludes any defects caused by fair wear and tear, improper delivery, installation and commissioning, mis-operation or maintenance practices of the Customer not meeting the standard of best practice.
- d. Any warranty in connection with defective Goods is void should the Customer not notify BME within 3 business days on the earlier occurring of when it ought to have become or became aware of the defect in the Goods.
- e. For the avoidance of doubt the costs and expenses associated with the removal, delivery, installation or commissioning of Defective Goods or replacement Goods or repaired Goods shall be strictly borne by the Customer.

#### 15. Waiver

BME waives a right under a Contract only by written notice that it waives that right. A waiver is limited to the specific instance to which it relates and to the specific purpose for which it is given.

#### 16. Severance

- a. If a provision of a Contract would, but for this clause, be unenforceable:
  - i. The provision must be read down to the extent necessary to avoid that result;
  - ii. If the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract.

#### 17. Variation

BME may vary the Terms and Conditions of Sale without notice to the Customer.

#### 18. Costs

The Customer must pay BME all costs and expenses incurred by BME in connection with the Contract including legal expenses (on a solicitor-client basis), stamp duty and costs incurred in the recovery of monies owing by the Customer to BME or in otherwise enforcing BME's rights against the Customer under the Contract.

#### 19. Applicable Law

This document is governed by the laws of the State of New South Wales, Australia.

#### 20. BME may Assign

Without notice to the Customer, BME may assign to any person this document and any Contract or part of the Contract.

#### 21. Measures

- a. Any and all statements made by BME as to weight, length, quantity or other characteristics of Goods are approximate and BME may supply goods on an actual or calculated basis.
- b. A calculated basis will be in accordance with the applicable Australian Standards.
- c. BME's statements as to weight, length, quantity or other characteristics are final and BME is not liable for any errors in such statements unless the Customer gives BME:
  - d. Written notice of any error within 14 days of delivery;
  - e. A reasonable opportunity to examine and re-test the Goods before they are used or dealt with.

#### 22. Shortages

- a. The Customer will inspect and check all Goods received as soon as practicable upon unloading. No claim by the Customer for shortages of goods may be made unless such claim is notified to BME within forty-eight (48) hours of such inspection.
- b. BME will endeavour to rectify any shortages as soon as practicable after receiving notice but will not suffer any liability from or in respect of such rectification.

#### 23. PPSA

- a. The Customer agrees with BME that they will treat the security interest in the Goods created by these Terms and Conditions as a continuing and subsisting security with priority over a registered general security and any unsecured creditors.
- b. A term used in this clause 23 has the same meaning as given in the PPSA.
- c. In consideration of BME supplying the goods to the Customer, at the request of the Customer, the Customer, by agreeing to these these Terms and Conditions:
  - i. Grants to BME, at BME's discretion, a security interest or purchase money security interest (PMSI) in the Goods;
  - ii. Agrees that any of the Goods or proceeds of sale of the Goods coming into existence after the date of these Terms and Conditions will come into existence subject to:
    1. The security interest or PMSI granted in these Terms and Conditions; and
    2. The terms of these Terms and Conditions; without the need for any further action or agreement by any party;
  - iii. Agrees that the Customer has received valuable consideration from BME and that it is sufficient; and
  - iv. Agrees that the security interest or PMSI has attached or will attach to all Goods supplied now or in the future to the Customer when the Customer takes possession of the Goods and that the attachment of the security interest or PMSI has not in any way been deferred or postponed from the date of these Terms.
- d. BME may, by notice to the Customer at any time, require the Customer to take all steps that BME considers necessary or desirable to:
  - i. Ensure that these Terms and Conditions or any security interest or PMSI arising under them, are enforceable against the customer or any third party; and
  - ii. Protect, perfect, record, or better secure the position of BME under these Terms and Conditions as a first ranking security.
- e. BME reserves the right to register a financing statement in respect of any goods supplied by BME to the Customer under these Terms and Conditions (and in respect of which credit has been extended by BME to the Customer).

#### f. The Customer:

- i. Waives the right to receive a copy of any notice, verification statement confirming registration of a financing statement or a financing change statement relating to the security interest or PMSI under these Terms and Conditions, unless the notice or statement is required by law and cannot be excluded; and
  - ii. Agrees to comply with any notice from BME under this clause at the Customer's cost and expense.
- g. The Customer agrees:
    - i. Not to allow any person to register a financing statement over any of the Goods supplied by BME without the prior written consent of BME; and
    - ii. That it must immediately notify BME if it becomes aware of any person taking steps to register a financing statement in relation to the Goods.
  - h. The Customer agrees to perfect and maintain any security interest or PMSI that it may have in the Goods under the PPSA.
  - i. The Customer must not allow the Goods to become accessions or commingled with other Goods unless BME has first perfected any security interest or PMSI that BME has in relation to the Goods.
  - j. If BME perfects any security interest or PMSI that BME has in relation to the Goods, the Customer must not do anything that could materially adversely affect:
    - i. BME's business; or
    - ii. In the opinion of BME, BME's security position under these Terms and Conditions.
  - k. The Customer irrevocably grants to BME the right to enter on the Customer's property or premises, without notice, and without being in any way liable to the Customer or to any third party. If BME has cause to exercise any of BME's rights under section 110 of the PPSA, and the Customer indemnifies BME from any claims made by any third party as a result of that exercise.
  - l. If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising out of these terms, BME and the Customer agree that each of the provisions of the PPSA which section 115 of the PPSA permits parties to contract out of, other than sections 117, 118, 134(1) and 135, do not apply to the enforcement of that security interest.
  - m. Despite any statement to the contrary by the Customer, every payment to BME in respect of the Goods must be taken as a payment:
    - i. First, of the amounts held by the Customer in trust or subject to a security interest, to the extent that the security interest is not a PMSI;
    - ii. Secondly, of amounts subject to a security interest, to the extent that it is a PMSI;
    - iii. Thirdly, for any Goods that the Customer has sold but for which it has not received the proceeds; and
    - iv. Fourthly, for whatever Goods the Customer has not sold as BME elects.
  - n. If the Customer becomes insolvent, without prejudice to any other rights of BME:
    - i. The Customer's right to sell the Goods in the ordinary course of business in accordance with the PPSA and any other rights of the Customer in respect of the Goods immediately cease; and
    - ii. The Customer must immediately return to BME the Goods in which title has not passed as provided for under clause 6.a.