

1. DEFINITIONS

- In these Terms, the following definitions apply:
- "Blick" means Blick Limited.
 - "Confidential Information" means these Terms any non-public information relating to Blick and its business (including pricing information) that the Customer may receive or obtain in connection with these Terms.
 - "Customer" means the customer, any person acting on behalf of and with the authority of the customer, or any other person, purchasing Goods and Services from Blick.
 - "Goods" means:
 - all goods of the general description as attached to or supplied with these Terms; and
 - all goods supplied by Blick to the Customer; and
 - all inventory of the Customer that is supplied by Blick; and
 - 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
 - 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
 - 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.The above descriptions may overlap but each is independent of, and does not limit, the others.
 - "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.
 - "PPSA" means the Personal Property Securities Act 1999.
 - "Security Interest" has the meaning given to that term in section 17 of the PPSA.
 - "Terms" means these terms and conditions, as amended and/or replaced from time to time.
 - "Working Day" has the meaning given to that term in section 29 of the Interpretation Act 1999.

2. INTERPRETATION

- The following rules of interpretation apply in these Terms:
- References to "persons" include natural persons and any other body corporates (wherever incorporated or formed).
 - References to the "parties" include their respective executors, administrators, successors and permitted assignees.
 - Headings have been inserted for convenience only and will not affect the interpretation of these Terms.
 - References to "clauses" are to those in these Terms.
 - References to the words "including", "include" or similar words do not imply any limitation.
 - 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).
- ## 3. SUPPLY
- These Terms will apply to the supply of all Goods and Services to the Customer by Blick.
 - 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:
 - agreeing to them in writing (which may be via email);
 - accepting Goods and Services from Blick; or
 - giving any instructions to Blick for the supply of Goods and Services.

4. COLLECTION AND USE OF INFORMATION

- The Customer irrevocably authorises Blick to collect, retain and use any information about the Customer for the purpose of assessing the Customer's credit worthiness, enforcing any rights under these Terms or marketing any Goods and Services provided by Blick to any other party.
 - 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.
 - Where the Customer is a natural person the authorities granted under clauses 4.1 and 4.2 are authorities or consents for the purposes of the Privacy Act 1993.
- ## 5. PRICE
- 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.
 - 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.
 - 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

- Payment for Goods and Services shall be made by the Customer in full on or before the 20th day of the month following the date of Blick's invoice, or on receipt of delivery of Goods and completion of Blick's relevant services to the Customer, whichever is the earlier (the "due date").
- Interest may be charged by Blick on any amount owing by the Customer after the due date at the rate of 12% per annum, charged at a daily rate and added to the outstanding balance monthly.
- 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 reasonable solicitor's fees or debt collection agency fees.
- 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.
- 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. All deposits shall be non-refundable and deposits and may (at Blick's discretion) include freight costs, which will also be non-refundable.

7. QUOTES

- Where a quote is given by Blick for Goods and Services:
 - unless otherwise agreed between the parties, the quote shall be valid for thirty (30) days from the date of issue unless the quote states a lesser or longer date;
 - the quote shall be exclusive of goods and services tax unless specifically stated to the contrary; and
 - Blick reserves the right to alter the quote because of circumstances beyond its control.
- 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.

8. RISK

- The Goods shall remain at Blick's risk until delivery to the Customer. Upon delivery, all risk and responsibility for loss, theft, damage and destruction for the Goods shall pass from Blick to the Customer. 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.
- 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

- 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.
 - 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 for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be deemed to be assigned to Blick as security for the full satisfaction by the Customer of the full amount owing between Blick and Customer.
- The Customer grants irrevocable authority to Blick to enter any premises:
 - occupied by the Customer; or
 - on which Goods are situated, at any reasonable time after default by the Customer or before default if Blick believes a default is likely and to remove and repossess any Goods and any other property to which Goods are attached or in which Goods are incorporated.
- 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.
- Blick may either:
 - 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
 - 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.
- Where Goods are retained by Blick pursuant to clause 9.5 the Customer waives the right to receive notice under s.120 of the PPSA and to object under s.121 of the PPSA.
- The following shall constitute defaults by the Customer under these Terms ("Events of Default"):
 - Non payment of any sum by the due date.
 - The Customer intimates that, or threatens that, it will not pay any sum by the due date.
 - 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.
 - Any Goods in the possession of the Customer are materially damaged while any sum due from the Customer to Blick remains unpaid.
 - 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.
 - The Customer fails to comply with a statutory demand made in accordance with section 289 of the Companies Act 1993.
 - A Court judgment is entered against the Customer and remains unsatisfied for seven (7) days.
 - Any material adverse change occurs in the financial position of the Customer.
 - Without limiting the Security Interest granted pursuant to clause 9.1, 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.
 - The Customer agrees that Blick may register a financing statement (as that term is defined in section 135 of the PPSA) in relation to any Security Interests granted to it pursuant to these Terms.
- ## 10. PAYMENT ALLOCATION
- 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.
 - 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

- 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

- The Consumer Guarantees Act 1993, the Fair Trading Act 1986 and other statutes that may imply warranties or conditions or impose 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.
- 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.
- 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.
- 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

- No representation, 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 Consumer Guarantees Act 1993 or except where expressly stated in these Terms.
- 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

- 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. CONSUMER GUARANTEES ACT

- The guarantees contained in the Consumer Guarantees Act 1993 are excluded where the Customer acquires Goods and Services from Blick for the purposes of a business in terms of section 2 and 43 of that Act.

16. PERSONAL GUARANTEE OF COMPANY DIRECTORS OR TRUSTEES

- 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, in consideration for Blick agreeing to supply Goods and Services under these Terms, agrees to 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. Any personal liability of such person(s) shall not exclude the Customer in any way whatsoever from the liabilities and obligations under these Terms.

17. CANCELLATION

- 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.
- Any cancellation or suspension of 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.

18. CONFIDENTIALITY

- Except as permitted in this clause 18, the Customer may not disclose, communicate or distribute to any third party any Confidential Information.
- The Customer will not have to observe any duty of confidentiality concerning Confidential Information that:
 - Blick gives its prior written consent to the disclosure of;
 - is required to be disclosed by law;
 - is disclosed by the Customer to its holding company, subsidiaries, employees, officers and/or professional advisers where they have agreed to comply with the Customer's confidentiality obligations under these Terms; or
 - 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.

19. NOTICES

- 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.
- Any notice or communication given under these Terms shall be deemed to have been received:
 - at the time of delivery, if delivered by hand;
 - three Working Days after the date of mailing, if sent by ordinary post or courier within New Zealand;
 - 10 Working Days after the date of mailing, if posted, couriered or delivered from outside of New Zealand;
 - 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.
- Any notice or communication received or deemed received after 5.00pm on a day which is not a Working Day in the place to which it is delivered, posted or sent will be deemed not to have been received until the next Working Day in that place.

20. MISCELLANEOUS

- 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.
- 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.
- The Customer has no right of set-off, withholding or deduction from or against a payment due to the Blick.
- 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.
- 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 then existing rights under these Terms.
- 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.
- 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.
- The Customer shall not assign all or any of its rights or obligations under these Terms without the prior written consent of Blick.
- These Terms shall be legally binding upon, and enforce 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.
- These Terms will be governed by and construed in accordance with the laws of New Zealand and the parties irrevocably submit to the non-exclusive jurisdiction of the courts of New Zealand for any matter arising under or relating to these Terms.