

1. **Interpretation:** In these Standard Terms and Conditions of Sale (**Standard Terms and Conditions**), the words below have the following meanings:
- 1.1 **Anything of Value** includes cash or cash equivalents, gifts, services, employment offers, loans, travel expenses, entertainment, political contributions, charitable donations, subsidies, per diem payments, sponsorships, honoraria or provision of any other asset, even if nominal in value.
- 1.2 **Consequential Loss** means any actual or expected: loss of profits; loss of revenue; loss of production; loss or denial of opportunity; loss of access to markets; loss of goodwill; loss of business reputation, future reputation or publicity; damage to credit rating; loss of use; or special, punitive, indirect, consequential, remote, abnormal or unforeseeable Loss, regardless of whether the Loss is alleged to be caused by misleading conduct, breach of contract, tort (including negligence), under statute or any other basis at Law or equity or under any theory of law.
- 1.3 **Credit Limit** means the AUD value of any credit facility extended by Minetec to the Purchaser.
- 1.4 **Duties** means any stamp, transaction or registration duty or similar charge imposed by any Government Agency and includes, but is not limited to, any interest, fine, penalty, charge or other amount imposed but excludes any income tax;
- 1.5 **Existing Arrangements** means any arrangements and agreements between Minetec and the Purchaser in effect as at the date an Order is accepted by Minetec, as agreed by Minetec in writing.
- 1.6 **Facilitating Payment** means a payment to an individual to secure or expedite the performance of a routine government action by Government Officials.
- 1.7 **Government Agency** means any government or governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.
- 1.8 **Government Official** means:
  - (a) any officer or employee of a government or any department, agency or instrument of a government (including but not limited to any Government Agency);
  - (b) any person acting in an official capacity for or on behalf of a government or any department, agency, or instrument of a government (including but not limited to any Government Agency);
  - (c) any officer or employee of a company or business owned in whole or part by a government;
  - (d) any officer or employee of a public international organisation such as the World Health Organisation or United Nations;
  - (e) any officer or employee of a political party or any person acting in an official capacity on behalf of a political party; and/or
  - (f) any candidate for political office.
- 1.9 **GST** has the meaning it does in section 195-1 of the GST Act.
- 1.10 **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended, varied or replaced from time to time.
- 1.11 **Insolvency Event**, in relation to the Purchaser, means any of the following:
  - (a) The Purchaser is unable to pay its creditors (or any class of them) in the ordinary course of business;
  - (b) A receiver, receiver and manager, administrator, liquidator or similar officer is appointed to the Purchaser or any of its assets;
  - (c) The Purchaser enters into, or resolves to enter into, a scheme of arrangement, compromise or composition with any class of creditors;
  - (d) A resolution if passed or an application to a court is taken for the winding up, dissolution, official management or administration of the Purchaser; or
  - (e) Anything having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.
- 1.12 **Intellectual Property Rights** means any and all intellectual and industrial property rights anywhere in the world, whether or not registered or capable of registration, including but not limited to the rights comprised in any patent, copyright, design, trade mark, eligible layout or similar right whether at common law or conferred by statute, rights to apply for registration under a statute in respect of those or like rights and rights to protect trade secrets, confidential information and know how, throughout the world for the full period of the rights and all renewals and extensions.
- 1.13 **Law** means any law, regulation, order, official policy, directive, request, requirement or guideline of any Government Agency and includes the interpretation, application or administration of any of the above.
- 1.14 **Minetec** means Minetec Pty Ltd trading as MINETEC PTY LTD ABN 11 094 579 567, with registered address at Technology Park, 2 Second Avenue, Mawson Lakes, South Australia, 5095, Australia.
- 1.15 **Minetec's Premises** means the address from where the Products are to be despatched to the Purchaser, or such other address as is notified by Minetec to the Purchaser.
- 1.16 **Liability** means any liability or obligation (whether actual, contingent or prospective) including any Loss, irrespective of when the acts, events or things giving rise to the liability or obligation occurred.
- 1.17 **Loss** includes any loss, damage, cost, charge, liability (including Tax liability) or expense (including legal costs and expenses).
- 1.18 **Order** means a formal purchase order for Products issued by the Purchaser to Minetec in hard copy or electronically (in a form agreed by Minetec).
- 1.19 **Order Value** means the total price charged by Minetec to the Purchaser for any Order, and including any amounts payable by the Purchaser and charged by Minetec in accordance with clause 6.2.
- 1.20 **Payment** refers to and includes any direct or indirect offer to pay, promise to pay, authorisation of payment of, or transfer of, Anything of Value.
- 1.21 **Perfected** has the meaning given to that term in the PPSA.
- 1.22 **Personnel** means, in relation to a party, the officers, employees, contractors and agents of that party, as applicable.
- 1.23 **PPSA** means the *Personal Properties Securities Act 2009* (Cth) and any regulations made under it.
- 1.24 **PPS Register** means the register established under the PPSA.
- 1.25 **Products** means products, Software and or components to be manufactured or imported by and/or otherwise procured and supplied by Minetec to or for the Purchaser, as specified in an Order
- 1.26 **Purchaser** means the entity whose name or trading name is specified on the Order, and who is the purchaser of the Products whether directly or indirectly through an agent or factor who is acting for or instructed by any person, firm or company or whose actions are subsequently to the contract ratified by the actual purchaser; which may be any Sole Trader or Partnership or Company or Trust.
- 1.27 **Quotation or Quote** means the quote, if any, issued by Minetec in writing to the Purchaser in respect of the Products and may also include but not limited to a procurement process such as an Request for Tender (RFT), Request for Proposal (RFP), Expression of Interest (EOI) or Request for Information where prices are submitted.
- 1.28 **Security Agreement** has the meaning given to that term in the PPSA.
- 1.29 **Security Interest** has the meaning given to that term in the PPSA.
- 1.30 **Services** means services to be supplied by Minetec to the Purchaser, as specified in the Order, but specifically excludes any form of consulting services.

- 1.31 **Software** means any code written for the Product such as embedded software (also known as firmware), software residing within an operating system of a Product and application software (also known as software) that resides in network infrastructure.
- 1.32 **Specifications** means design, functional and other specifications for a Product, including, without limitation, any samples, drawings, descriptions of, or particulars of weight and/or dimensions of a Product.
- 1.33 **Tax or Taxes** means any tax, levy, charge, impost, fee, deduction, compulsory loan or withholding (including corporate tax, personal income tax, fringe benefits tax, payroll tax, withholding tax, excise and import duties, GST, consumption tax, value added tax or any other taxes, levies or charges), which is assessed, levied, imposed or collected by any Government Agency, and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any such amounts.
- 1.34 **Warranty** means the Minetec Warranty statement attached to these Standard Terms and Conditions as Schedule 1.
- 1.35 The singular includes the plural and vice versa.
- 1.36 A reference to a gender includes all genders.
- 1.37 A reference to a document or legislation includes a reference to that document or legislation as varied, amended, novated or replaced from time to time.
- 1.38 A reference to an individual includes a corporation, partnership, joint venture, association, authority, trust, state or government.
- 1.39 A reference to "dollars" or "\$" means the lawful currency of Australia, unless otherwise expressly indicated.
- 1.40 A provision of these Standard Terms and Conditions must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of these Standard Terms and Conditions.

## 2. Governing Terms and Conditions

These Standard Terms and Conditions apply to the sale of Products by Minetec to the Purchaser and prevail over any other terms and conditions (including but not limited to any variations to these Standard Terms and Conditions purported to be made by the Purchaser) apart from any terms, conditions or guarantees implied or provided for by applicable Law which cannot lawfully be excluded.

## 3. Basis of Sale

- 3.1 These Standard Terms and Conditions do not give rise to any obligation for the Purchaser to engage Minetec to provide any Products and or Services, nor any obligation for Minetec to provide any Products and or Services, except in relation to Products that are the subject of a contract formed in accordance with clause 3.5.
- 3.2 Any Order is an offer by the Purchaser to enter into a binding contract with Minetec, which Minetec is free to accept or decline at its absolute discretion.
- 3.3 Subject to clause 35, these Standard Terms and Conditions and the Order set out the whole agreement between the parties for the supply of the Products.
- 3.4 If any of these Standard Terms and Conditions are inconsistent with any term of the Order, the Standard Terms and Conditions shall prevail.
- 3.5 These Standard Terms and Conditions shall become binding on the parties when:
  - (a) Minetec issues the Purchaser with written acceptance of an Order; or
  - (b) Minetec notifies the Purchaser that Minetec is able to provide the Products,whichever is the earlier, at which point a contract shall come into existence between the parties.
- 3.6 Any Quotation is given on the basis that a binding contract shall only come into existence in accordance with clause 3.2. A Quotation shall be valid for the period stated in the Quotation, or where no period is stated, for 30 days from its date of issue, unless Minetec notifies the Purchaser in writing that Minetec has withdrawn it during this period.
- 3.7 Nothing in these Standard Terms and Conditions restricts Minetec from manufacturing and/or supplying products (including those identical or similar to any Product) to any other person.

## 4. Descriptions & Specifications

- 4.1 Any Specifications issued by Minetec, are issued or published solely to provide the Purchaser with an approximate idea of the Products they describe. Unless otherwise agreed in writing, they do not form part of the contract between Minetec and the Purchaser or any other contract between Minetec and the Purchaser for the supply of the Products.
- 4.2 To the extent that Minetec develops Specifications for the Purchaser in the course of performing Services, or otherwise in connection with the supply of Products, such Specifications are provided on an "as-is" basis, and Minetec does not guarantee that such Specifications are error-free, or that a product manufactured in accordance with the Specifications will be fit for the Purchaser's purposes (regardless of whether the Purchaser has informed Minetec of such purposes) or for any other purpose.

## 5. Delivery

- 5.1 Unless stated in any Quotation, delivery of the Products will be ex works Minetec's premises regardless of what is stated in the Order submitted by the Purchaser.
- 5.2 Minetec shall have the right to charge the Purchaser with all costs incurred due to storage, detention, double cartage or similar causes, whether or not the costs are incurred at the Purchaser's request, if occasioned by the Purchaser's inability or failure to accept delivery of Products when delivered or ready for delivery by Minetec. Should the Purchaser for any reason be unable or fail to accept delivery of the Products Minetec shall have the right to deposit the Products in any place of storage determined by Minetec, including without limitation Minetec's Premises. Delivery to such place shall in all respects be deemed to be delivery of the Products to the Purchaser.
- 5.3 Delivery dates and times made known to the Purchaser are estimates only. Minetec shall not be liable to the Purchaser for any Loss (including any Consequential Loss) arising from late delivery.
- 5.4 The Purchaser shall not be relieved of any obligation to accept or pay for the Products by reason of late delivery or performance.
- 5.5 Where Minetec Quotes delivery within a particular period, that period shall commence from the date of receipt by Minetec of the Purchaser's Order and all information and drawings necessary, in Minetec's opinion, to enable work to be commenced.
- 5.6 Minetec reserves the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. Failure of Minetec to deliver any instalment shall not entitle the Purchaser to cancel the balance of the Order. If the Purchaser defaults in payment on any instalment, Minetec may elect to treat the default as a breach of contract relating to each other instalment.
- 5.7 Risk of damage to or destruction or loss of the Products shall pass to the Purchaser when property in the Products passes to the Purchaser on whichever shall occur first of the following:
  - (a) in accordance with clause 5.10;
  - (b) when Products are despatched from Minetec's Premises; or
  - (c) when delivery is effected or deemed to have been effected under clause 5.1 or 5.2.

- 5.8 Minetec shall not be liable for any Loss or deterioration of, or damage to, the Products from the time when the Products are put on the vehicle of a carrier notwithstanding that freight may be arranged or the carrier engaged by Minetec.
- 5.9 The Purchaser must effect and maintain adequate insurance of the Products in the name of the Purchaser and Minetec for their respective rights and interests.
- 5.10 Notwithstanding delivery and the passing of risk in the Products, the parties acknowledge and agree that the title to, and property and ownership of, the Products supplied under these Standard Terms and Conditions will not pass to the Purchaser until Minetec has received, in cleared funds, payment in full for the Products and any other sums which are or may become due to Minetec under these Standard Terms and Conditions or any other agreement or arrangement between the parties.
- 5.11 Until such time as full title, property and ownership of the Products passes to the Purchaser in accordance with clause 5.10, and while the Products remain in the Purchaser's full control and possession:
- the Purchaser must hold the Products as Minetec's fiduciary agent and bailee;
  - the Purchaser must keep the Products properly stored, protected and insured;
  - Minetec may at any time after payment is overdue require the Purchaser to deliver up the Products to Minetec and, if the Purchaser fails to deliver up the Products immediately, Minetec may enter the premises of the Purchaser and repossess them; and
  - the Purchaser must not pledge or in any way charge by way of security for any indebtedness, any of the Products which remain the property of Minetec. If the Purchaser does pledge or in any way charge by way of security for any indebtedness any of the Products for which property and ownership has not passed to the Purchaser, all moneys owing by the Purchaser to Minetec will (without prejudice to any other right or remedy of Minetec) immediately become due and payable to Minetec.
  - If any Products supplied are incorporated within a system are used in such a way to deliver the full system capability (i.e making those products inseparable from the system), before payment for the all the Products supplied has been made in full, then the legal and equitable title of all such Products will be and remain with Minetec until full payment of the purchase price of the Products supplied has been made and Minetec rights in respect of the Products supplied will extend to such other products, which will at all times be stored in such a way as to indicated that they are clearly the property of Minetec.

## 6. Prices

- 6.1 The price of the Products shall be as set out in the Quotation or, if Minetec has not issued a Quotation or the Quotation has expired, as agreed by Minetec in writing at the time Minetec confirms the Order.
- 6.2 All prices specified by Minetec in a Quotation are in Australian Dollars.
- 6.3 The Purchaser is solely responsible for payment of all freight, insurance, delivery costs, Taxes and other charges levied or payable in respect of the Products, unless otherwise agreed by the parties in writing.
- 6.4 If a Quotation has been issued by Minetec, the Purchaser acknowledges that it has been prepared by Minetec on the basis of, and in reliance upon, the information provided by the Purchaser, and further acknowledges that the provision of incomplete or misleading information by the Purchaser, unforeseen circumstances, misinterpretations, variations and similar events may result in charges additional to those set out in the Quotation being payable by the Purchaser for the Products. The Purchaser agrees to pay any such additional amounts to Minetec, in full.
- 6.5 All Quotations are given on the basis that the Purchaser's site conditions are suitable for any Services to be performed by Minetec under these Standard Terms and Conditions.

## 7. Payment

- 7.1 Minetec may invoice the Purchaser for the Services upon completion of the Services.
- 7.2 Unless otherwise stated in any Quotation issued by Minetec to the Purchaser, the due date for payment by the Purchaser to Minetec for the Order (**Due Date**) is as follows:
- 30 days from the date on which an invoice was issued by Minetec, if the following conditions are satisfied at the time that the Order was submitted to Minetec (i) the Purchaser has a pre-approved credit facility with Minetec and (ii) the Order Value, combined with any outstanding payments due to Minetec by the Purchaser at the time of the Order, fall within the Purchaser's approved Credit Limit; and
  - in all other cases, payment is immediately due at the time that the Purchaser places the Order with Minetec.
- 7.3 Payment of all monies due on account or Cash on Delivery (COD) are required to be made by the Purchaser by electronic funds transfer directly to Minetec's nominated bank account.
- 7.4 If the Purchaser fails to make any payment by the Due Date, then, without prejudice to any other right or remedy available to Minetec, Minetec may, in its sole discretion elect to:
- suspend any further supply of Products to the Purchaser arising from the Order;
  - cancel the Order for Products not yet supplied to the Purchaser in whole or in part by Minetec;
  - enter the property of the Purchaser in order to repossess the Products;
  - appoint a receiver or receiver and manager to do anything the Law allows a receiver or receiver and manager to do;
  - reverse any discount applied to the Purchaser's invoices that have not been paid by the Due Date;
  - charge the Purchaser interest (both before and after any judgement) on the unpaid amount at the rate of 1.5% per month (calculated on daily balances) until payment is made in full; and/or
  - withdraw any Credit Limits or credit facilities previously approved and extended to the Purchaser.
- 7.5 The Purchaser agrees to indemnify, defend and hold harmless Minetec against any and all Loss, Liability, claims, demands, suits, causes of action, damages and legal fees (on a solicitor-own client basis) or expenses or costs whatsoever arising, directly or indirectly, from any breach by the Purchaser of, or non-performance of the Purchaser's obligations under, these Standard Terms and Conditions, including without limitation any failure to make any payment by the Due Date.
- 7.6 The Purchaser agrees to pay a dishonour fee of \$50.00 in respect of each presentation of a cheque received from the Purchaser which is not honoured.

## 8. PPSA (Australia only)

- 8.1 The Purchaser acknowledges that until such time as full title, property and ownership of the Products passes to the Purchaser under clause 5.10, these Standard Terms and Conditions constitute a Security Agreement for the purposes of the PPSA, and Minetec has a Security Interest in the Products.
- 8.2 Without limiting clause 5.10, the Purchaser agrees to do such things as Minetec may require from time to time to ensure that any Security Interest of Minetec arising from or connected with these Standard Terms and Conditions is Perfected under the PPSA for whatever period Minetec determines in its sole discretion, including signing documents and providing Minetec with all further information required to enable Minetec to register its Security Interests on the PPS Register, and to otherwise protect Minetec's position under the PPSA. The Purchaser must keep Minetec fully informed of all relevant information regarding it and its activities, including by providing not less than 14 days notice in writing of any proposed change in its name or contact details, and immediately advising Minetec of material changes in its business activities.
- 8.3 The Purchaser agrees to indemnify Minetec for all expenses incurred by Minetec in registering its Security Interests on the

- PPS Register, and will reimburse Minetec for all such expenses immediately upon demand.
- 8.4 The Purchaser waives its rights under section 157 of the PPSA to receive a notice in relation to the registration events to which section 157(3)(a) of the PPSA applies, including without limitation, the right to receive a copy of a verification statement confirming registration of a financing statement or financing change statement relating to the Security Interest created by these Standard Terms and Conditions.
- 8.5 The Purchaser agrees that nothing in sections 118, 121(4), 125, 130, 142 or 143 of the PPSA will apply to these Standard Terms and Conditions or any Security Interest in the Products created by these Standard Terms and Conditions, and waives its rights to receive any of the following documents:
- (a) a notice of removal of an accession under section 95 of the PPSA;
  - (b) a notice of an intention to seize collateral under section 123 of the PPSA;
  - (c) a notice of a disposal of collateral under section 130 of the PPSA;
  - (d) a statement of account under section 132(3)(d) of the PPSA;
  - (e) a statement of account under section 132(4) of the PPSA;
  - (f) a notice of retention of collateral under section 135 of the PPSA; and
  - (g) any notice from Minetec under each of the provisions listed in section 144 of the PPSA.
- 9. Returns and Claims Related to Delivery**
- 9.1 Unless otherwise agreed in writing between the parties, returned Products, if accepted by Minetec, will only be credited if returned by the Purchaser within 14 days from the date of the relevant invoice.
- 9.2 Unless otherwise agreed in writing between the parties, returned Products, if accepted by Minetec, will attract a restocking fee on the Products returned by the Purchaser of no less than 20% of the purchase price of the returned Products or any additional sums and/or charges as determined and advised by Minetec in its sole discretion
- 9.3 Claims related to delivery, including short delivery and damaged Products, must be received in writing within 7 days of delivery for Minetec's consideration.
- 10. Warranty**
- 10.1 Minetec agrees to provide the Warranty in respect of the Products and the Services.
- 10.2 The Warranty will not apply in the event of termination of this agreement by Minetec pursuant to clauses 19 and 30.8.
- 11. Lien**
- Minetec shall have a general lien in respect of all sums due from the Purchaser upon any Products to be supplied to the Purchaser and any other goods upon which work has been done or is being done by Minetec, and if the Purchaser is in breach of these Standard Terms and Conditions, upon expiry of 7 days written notice to the Purchaser Minetec may sell such goods by auction or private treaty and apply the proceeds towards the satisfaction of any sums due to Minetec, including all costs incurred in exercising the lien and right of sale and all storage and selling costs.
- 12. Cancellation & Delays**
- 12.1 No Order may be cancelled except with the consent in writing of Minetec.
- 12.2 Minetec reserves the right to cancel any Order in whole or in part and resell the Products by notice to the Purchaser upon any one or more of the following events occurring:
- (a) an order is made, or an effective resolution is passed for the winding up of the Purchaser or a meeting is summoned or convened for the purpose of considering such a resolution otherwise than for the purpose of amalgamation or reconstitution or a provisional liquidator is appointed;
  - (b) any person appoints a receiver or receiver and manager over the whole or any part of the undertakings or assets of the Purchaser;
  - (c) the Purchaser enters any arrangement or composition with any of its creditors;
  - (d) the Purchaser is placed under administration or a meeting is summoned or other step is taken for the purpose of placing the Purchaser under administration and appointing an administrator;
  - (e) the Purchaser is unable to pay its debts as they fall due or otherwise commits any act of bankruptcy within the meaning of the *Bankruptcy Act 1996* (Cth) or any equivalent act outside of Australia;
  - (f) the Purchaser fails to comply with any of its obligations under these Standard Terms and Conditions;
  - (g) Minetec considers that it is, or may be, unable to satisfy the Order within a reasonable time or at all; or
  - (h) Products stored pursuant to clause 5.2 remain uncollected or the Purchaser fails to give satisfactory instructions for the dispatch of the Products after a period of 48 hours from notification to the Purchaser that they are ready for collection.
- 12.3 In the event of cancellation the Purchaser shall be liable to indemnify Minetec for any costs and expenses incurred prior to cancellation and for reasonable cancellation charges to be fixed by Minetec and shall have no claim against Minetec for any Loss or Liability arising from or in relation to the cancellation whatsoever.
- 12.4 In the event of any delay caused by the Purchaser, the Purchaser will reimburse Minetec at the rate stipulated in the Quotation.
- 13. Hazards**
- When work of any kind is carried out by Minetec or Minetec's Personnel on the premises of the Purchaser or its agents or customers, Minetec shall not be liable for any Loss occasioned to the Purchaser or its Personnel arising from any cause connected in any way with any hazards or perils attaching to or imported into such premises, or to the buildings, machinery, plant or materials thereon or the nature or methods of the work being done or from any other cause whatsoever, unless the Purchaser notifies Minetec in writing prior to commencement of such work of any hazards or perils.
- 14. Testing and Inspection**
- 14.1 Testing and inspection by or on behalf of or the Purchaser of any Products to be manufactured and/or imported by Minetec for the Purchaser under these Standard Terms and Conditions must be conducted at Minetec's Premises or other premises agreed to by Minetec.
- 14.2 All costs and fees incurred by Minetec in connection with such testing and inspection (other than those specifically included in a Quotation) will be an extra charge payable by the Purchaser. Subject to clause 20.1, no claim for defective workmanship, material or design can be made by the Purchaser after approved testing and inspection by or on behalf of the Purchaser.
- 15. After-sales Support**
- 15.1 Except to the extent otherwise specified in these Standard Terms and Conditions, or as otherwise agreed by Minetec in writing, Minetec shall have no obligation to provide maintenance or technical support services in relation to any Product supplied to the Purchaser.

15.2 Minetec may offer, at its absolute discretion, to provide maintenance and support services in respect of one or more Products. If it does so, and if the Purchaser wishes to acquire such services, the nature, scope and terms of such services will be described in an "Operational Support Plan" to be executed by the parties.

#### 16. The Purchaser's Obligations

16.1 Unless otherwise specified in a Quotation, Quotations are for goods and labour only and exclude any engineering design and documentation, installation and maintenance Services, ancillary items, and site specific inductions.

16.2 Minetec accepts no Liability for the incorrect assembly by the Purchaser (or the Purchaser's Personnel) of the Products and/or any other equipment supplied by Minetec to the Purchaser.

16.3 If Minetec has contracted to provide on-site installation Services, the Purchaser shall provide:

- (a) flights to and from the site installation is to occur;
- (b) onsite meals and accommodation for duration of the onsite works; and
- (c) all major safety equipment for installation.

16.4 When Minetec is involved in on-site work, the manner in which such work is carried out shall be at the sole discretion of Minetec. The Purchaser will indemnify Minetec against any Loss or Liability of Minetec and/or its Personnel arising from any cause connected in any way to Minetec's activities on the site.

16.5 Minetec and the Purchaser agree that the Purchaser:

- (a) is solely responsible for consideration and validation of the design and functionality of the Products, to confirm suitability for particular applications, as desired by the Purchaser;
- (b) must advise Minetec of all statutory, regulatory and other official standards and/or requirements which the Products must comply with, at the time of submitting the Order to Minetec and immediately upon becoming aware of these at any other time; and
- (c) must provide Minetec with any other information which Minetec may request in respect of the intended application/use of the Products.

#### 17. Intellectual Property Rights

17.1 The Purchaser expressly acknowledges and agrees that Minetec is the sole proprietor and owner of all existing and future Intellectual Property Rights associated with the Products (including all modifications and improvements) and that these Standard Terms and Conditions do not grant or transfer to it any rights to the Intellectual Property Rights associated with the Products.

17.2 The Purchaser warrants that Specifications furnished to Minetec shall not be such as will cause Minetec to infringe any patent, registered design, trademark or copyright or involve the unauthorised disclosure of confidential information in the execution of the Purchaser's Order. The Purchaser agrees to indemnify and hold harmless Minetec and each of its Personnel against any infringement or threatened infringement or allegation of unauthorised use of patents, trademarks, registered designs, copyright or confidential information arising out of the manufacture or use of the Products.

17.3 Copies of drawings, plans, Specifications and any other written or printed matter submitted to the Purchaser shall remain the property of Minetec and the information contained in such documents shall be treated as strictly confidential and shall not be used to the advantage of the Purchaser or the detriment of Minetec. The sale and purchase of the Products does not confer on the Purchaser any Intellectual Property Rights or confidential information which is the property of Minetec. Minetec shall be under no obligation to disclose the methods, techniques, designs or know-how used by Minetec in the supply of the Products under these Standard Terms and Conditions.

#### 18. Taxes and Government Charges

18.1 The amounts payable by the Purchaser to Minetec for, or in connection with these Standard Terms and Conditions do not include any amounts on account of Taxes and Duties. The Purchaser shall be solely liable for and shall pay, when due and payable, all Taxes and Duties which may be imposed in relation to the Products, or which is assessed or chargeable in respect of these Standard Terms and Conditions and any associated documents or transactions.

18.2 The Purchaser agrees to indemnify Minetec in respect of any Liability for Taxes and Duties, and shall pay any Taxes and Duties notified to it by Minetec immediately upon request. The Purchaser must provide Minetec with all necessary tax invoices, receipts and other documentation as required by Minetec in accordance with applicable Laws, legislation and regulations.

18.3 In the case of GST payable in Australia, if applicable, the Purchaser must pay to Minetec an additional amount on account of GST equal to the amounts payable by the Purchaser for the Supply multiplied by the prevailing GST rate. Notwithstanding anything to the contrary in this clause, the Purchaser is not required to pay any additional GST amount until such time as the Purchaser has been provided with a tax invoice by Minetec, which is in an approved form for GST purposes.

18.4 The additional amounts due to Minetec on account of Taxes and Duties are payable at the same time and in the same manner as the price and any other amounts payable by the Purchaser are required to be paid to Minetec under these Standard Terms and Conditions.

#### 19. Termination

19.1 Minetec may terminate these Standard Terms and Conditions with immediate effect by written notice if the Pruchaser:

- (a) Is the subject of an Insolvency Event; or
- (b) At the time of termination, a Force Majeure event has persisted for greater than 40 business days.

19.2 The Purchaser may terminate these Standard Terms and Conditions with immediate effect by written notice to Minetec if Minetec breaches any material term of these Standard Terms and Conditions, which is capable of remedy, and fails to remedy the breach within 30 business days after having received a notice requiring it to do so.

19.3 Without limiting Minetec's other rights under these Standard Terms and Conditions, Minetec may terminate these Standard Terms and Conditions with immediate effect by written notice to the Purchaser if:

- (a) The Purchaser breaches any term of these Standard Terms and Conditions, which is capable of remedy, and fails to remedy the breach within 30 business days after receiving a notice requiring it to do so;
- (b) The Purchaser breaches any term of these Standard Terms and Conditions and such breach is not capable of remedy; or
- (c) The Purchaser repeatedly breaches any term of these Standard Terms and Conditions and, within 20 business days after receiving a notice requiring it to do so, fails to satisfy Minetec that a breach of that term will not recur.

19.4 Termination of these Standard Terms and Conditions will not affect any accrued rights or remedies a party may have as at the date of termination, unless explicitly stated otherwise in the Standard Terms and Conditions.

19.5 Notwithstanding the above, Minetec by in its sole an absolute discretion terminate these Standard Terms and Conditions for any reason, without cause, by providing the Purchaser with 60 days prior written notice.

#### 20. Limitation of Liability and Indemnity

20.1 Minetec does not exclude or limit the application of any provision of any applicable statute, legislation or other regulation

- (including the *Competition and Consumer Act 2010* (Cth) and its Schedules and Regulations) where to do so would contravene that statute, legislation or regulation or cause any part of this clause to be void and nothing in these Standard Terms and Conditions is to be interpreted as doing so.
- 20.2 Subject always to clause 20.1, to the extent permitted by Law, Minetec excludes from these Standard Terms and Conditions:
- (a) all conditions, warranties, guarantees and terms implied by statute, general Law, international convention or custom, except any implied term, condition, guarantee or warranty the exclusion of which would contravene any statute or cause this clause to be void (**Non-excludable Condition**);
  - (b) all Liability to the Purchaser for Consequential Loss arising out of or in connection with these Standard Terms and Conditions, even if Minetec knew such loss was possible, or such loss was otherwise reasonably foreseeable, and including without limitation Consequential Loss suffered as a result of claims by any third person, such as a customer of the Purchaser; and
  - (c) all Liability to the Purchaser in negligence for acts or omissions of Minetec and/or its Personnel arising out of or in connection with these Standard Terms and Conditions.
- 20.3 To the extent permitted by Law, Minetec will not be responsible for any consequences of any modification to the Products (whether or not authorised) or for any Loss or Liability arising from such actions. The Purchaser agrees to indemnify, defend and hold harmless Minetec against any and all Loss, Liability, claims, demands, suits, causes of action, damages and legal fees (on a solicitor-own client basis) arising, directly or indirectly, from any modification of the Products, and unconditionally frees, releases and discharges Minetec and its Personnel from any claim or cause of action arising in connection with such matters, to the fullest extent permitted by applicable Law.
- 20.4 To the extent permitted by Law, Minetec will not be liable or otherwise responsible for any Loss, Liability, accident, damage or injury arising in connection with the Products, or any failure of the Products to operate in the manner required by the Purchaser, whether or not caused by a defect or fault in the Products or due to Minetec's negligence. The Purchaser unconditionally frees, releases and discharges Minetec and its Personnel from any claim or cause of action arising in connection with the use of the Products by the Purchaser or any person to whom the Purchaser re-sells or supplies the Products or any good that includes or incorporates a Product, to the fullest extent permitted by applicable Law.
- 20.5 To the extent permitted by Law, Minetec shall not be liable to the Purchaser for any Loss or Liability of any kind whatsoever (including without limitation, any liquidated damages) in relation to Minetec ceasing work on Orders or holding the work of the Purchaser until payment is made pursuant to clause 7.
- 20.6 To the extent permitted by Law, Minetec's Liability to the Purchaser for breach of any Non-excludable Condition which is applicable (and other than one implied by sections 51, 52 or 53 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) is limited to any one of, at Minetec's option, in the case of goods, repairing or replacing the goods in respect of which the breach occurred, supplying equivalent products, payment of the cost of replacing the goods or acquiring equivalent products, or payment of the cost of having the goods repaired, and in the case of services, the supplying of the services again or payment of the cost of having the services supplied again.
- 20.7 Notwithstanding anything to the contrary in these Standard Terms and Conditions, and to the extent permitted by Law, Minetec's maximum Liability to the Purchaser for any cause of action or claim in connection with the Products or these Standard Terms and Conditions shall be limited to a total aggregate amount equal to the Order Value of the Order in connection with which the cause of action or claim arose.
- 20.8 The Purchaser indemnifies Minetec from and holds it harmless against all Loss and Liability directly or indirectly incurred or suffered by Minetec as a result of compliance or adherence by Minetec with any instructions of the Purchaser in relation to the Products and from and against all actions, proceedings, claims or demands made against Minetec as a result of such compliance or adherence, or arising from any of the following:
- (a) as a result of the Purchaser's failure to:
    - (i) bring to the attention of any potential users of the Products any dangers associated with the Products;
    - (ii) take reasonable precautions to detect any matters in relation to which Minetec may become liable, and/or to avoid or mitigate such Liability where reasonable to do so; or
    - (iii) otherwise comply with any Laws, rules, standards or regulations applicable in relation to the Products or the installation or use of the Products;
  - (b) as a result of any other negligence or other breach of duty by the Purchaser; or
  - (c) as a result of any compliance or adherence by Minetec with any instruction of the Purchaser in relation to the Products or their use or manner of fabrication, installation, maintenance or servicing.
21. **Subcontracting**  
Minetec may subcontract the production, manufacture or supply of the whole or any part of the Products without notifying the Purchaser.
22. **Force Majeure Event**  
If Minetec is partially or wholly precluded from complying with its obligations under these Standard Terms and Conditions by any circumstances beyond its reasonable control, including, but not limited to, strikes, lock-outs, accidents, war, fire, flood, explosion, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery, shortage or unavailability of raw materials from normal source of supply, act of God or any order or direction of any local, State or Federal Government, Government authority or instrumentality (**Force Majeure Event**), Minetec's obligation to perform under these Standard Terms and Conditions shall be suspended for the duration of the actual delay arising directly out of the Force Majeure Event.
23. **Waiver**  
Failure by Minetec to insist upon strict performance of any term, warranty or condition of these Standard Terms and Conditions shall not be deemed a waiver of any rights Minetec may have and no express waiver shall be deemed a waiver of any subsequent breach of any term, warranty or condition.
24. **Variation**  
A variation or modification of these Standard Terms and Conditions must be in writing and signed by an authorised representative of each party.
25. **Notices**
- 25.1 Any notices required or authorised to be given or served upon a party pursuant to these Standard Terms and Conditions shall be in writing and shall be delivered personally or sent by facsimile or post to the relevant party at its address as appearing in the Quotation (in the case of Minetec) or in the Order or last known address (in the case of the Purchaser).
- 25.2 A notice given or served in accordance with clause 25.1 shall be deemed to have been received:
- (a) in the case of a notice delivered personally, upon delivery;
  - (b) in the case of a notice sent by facsimile transmission, upon receipt of a successful transmission report; and

(c) in the case of a notice sent by post, within 2 business days of sending.

**26. Severability**

If any provision of these Standard Terms and Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Standard Terms and Conditions and the remainder of the provision in question will not be affected.

**27. Minetec's Rights**

The rights and remedies of Minetec under these Standard Terms and Conditions shall be in addition to, and shall not derogate from any other rights or remedies to which it may be entitled.

**28. Charging Clause**

28.1 To secure payment of all monies which are or may become payable by the Purchaser to Minetec under these Standard Terms and Conditions the Purchaser (or where the Purchaser is comprised of two or more persons then each person jointly and severally) hereby charges with the due payment of all of those monies all of the Purchaser's interest in real property wherever located both present and future and the Purchaser consents to Minetec lodging a caveat or caveats over such property to protect its interest.

28.2 Upon demand by Minetec, the Purchaser agrees to immediately execute a mortgage or other instrument in terms satisfactory to Minetec to further secure the Purchaser's indebtedness to Minetec.

28.3 Should the Purchaser fail within a reasonable time of such demand to execute such mortgage or other instrument then the Purchaser appoints irrevocably the credit manager or a duly authorised officer of Minetec to be the Purchaser's lawful attorney to execute any such mortgage or other instrument.

**29. Credit Limit**

29.1 Any Credit Limit is solely for the benefit of the Purchaser.

29.2 The obligations of the Purchaser under these Standard Terms and Conditions remain unchanged if the Credit Limit is exceeded or not specified at any time.

**30. Anti-Bribery and Corruption Requirements**

It is a material term of these Standard Terms and Conditions that The Purchaser must comply with the following:

30.1 The Purchaser must comply fully at all times with all applicable Laws and regulations, including but not limited to applicable anti-corruption Laws of the territory in which The Purchaser conducts business with Minetec.

30.2 The Purchaser must not, and covenants that it will not, in connection with the performance of these Standard Terms and Conditions, directly or indirectly promise, authorise, ratify, offer to make or make, or take any action, in furtherance of any Payment of Anything of Value to any individual, or to an intermediary for payment to any individual, including a Government Official, for the purpose of influencing or inducing or as a reward for any act, omission or decision to secure an improper advantage or to improperly assist The Purchaser or Minetec in obtaining or retaining business.

30.3 The Purchaser must not, and covenants that it will not, in connection with the performance of these Standard Terms and Conditions, directly or indirectly promise, authorise, ratify or offer to make or make any Facilitating Payment to any individual, or to an intermediary for payment to any individual, including a Government Official.

30.4 The Purchaser must not contact, or otherwise meet with any Government Official with respect to any transactions required under these Standard Terms and Conditions, without the prior written approval of Minetec and, when requested by Minetec, only in the presence of a Minetec designated representative.

30.5 The Purchaser represents that it has not been convicted of or pleaded guilty to a criminal offence, involving fraud or corruption; that it is not now, to the best of its knowledge, the subject of any government investigation for such offences, and that it is not now listed by any government agency as debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for government procurement programs.

30.6 The Purchaser represents and warrants that except as disclosed in writing:

(h) it does not have any interest which directly or indirectly conflicts with its proper and ethical performance of these Standard Terms and Conditions; and

(i) it will maintain arms length relations with all third parties (including Government Officials) with which it deals for or on behalf of Minetec or in the performance of these Standard Terms and Conditions.

30.7 The Purchaser agrees that Minetec may make full disclosure of information relating to a possible violation of the terms of this clause 30 at any time and for any reason to any competent government bodies and its agencies (including Government Agencies), and to whomsoever Minetec determines in good faith has a legitimate need to know.

30.8 Minetec will be entitled to terminate these Standard Terms and Conditions (without payment of compensation to The Purchaser) immediately on written notice to The Purchaser, if the Purchaser fails to perform its obligations in accordance with the terms of this clause 30. Minetec will not be responsible or liable for any Loss or Liability whatsoever arising from or in connection with this clause 30, whether sustained by the Purchaser or any other party.

**31. Change of Ownership**

The Purchaser undertakes to notify Minetec in writing within 7 days of any change in the constitution or ownership of the Purchaser's business, at the time when such change occurs and if the Purchaser fails to notify Minetec of such change, agrees to remain liable for all transactions charged to the existing account until new credit facilities have been approved for the new applicant. The Purchaser further agrees to immediately finalise the entire balance owing, whether due or not, and whether the new credit facility has been approved or not for the new applicant.

**32. Non-Solicitation**

The Purchaser understands and acknowledges that it will not solicit, procure the services of, engage or employ any of Minetec's employees for the term of these Standard Terms and Conditions and for a period of 6 months thereafter without Minetec's prior written consent.

**33. Benefit of indemnities**

To the extent that any indemnity under these Standard Terms and Conditions is expressed to be granted in favour of Minetec's Personnel, Minetec holds the benefit of such indemnity on trust for its Personnel.

**34. Applicable Law**

This Standard Terms and Conditions shall be subject to and interpreted in accordance with the Laws in the State of South Australia, Australia. In the event that legal proceedings are commenced, the parties agree to these proceedings being heard in a court of competent jurisdiction in the locality in which the head office of Minetec conducts its business.

**35. Entire Agreement**

These Standard Terms and Conditions constitute the entire agreement between the parties about their subject matter (without limiting clause 20.1 in any way) and subject to the remainder of this clause, supersede all previous representations, understandings and agreements in connection with that subject matter. These Standard Terms and Conditions overrides any terms for the sale and supply of the Products tendered to Minetec by the Purchaser, irrespective of whether such terms are tendered before or subsequent to the date of the Order. However, the parties agree that the Existing Arrangements continue in full force and effect, and that nothing in these Standard Terms and Conditions supersedes, alters or otherwise affects the Existing Arrangements. In the event of an inconsistency between the obligations of the Parties under these Standard Terms and Conditions and any Existing Arrangements, the Existing Arrangements prevail to the extent necessary.



SCHEDULE 1 – Minetec Warranty Statement