



## Terms and Conditions

These Terms and Conditions for the provision of credit and the supply of goods and/or services to a Customer by Coal Services Pty Limited and Mines Rescue Pty Limited ('Coal Services') apply to all Credit Account Applications, Quotations, Sale Orders, Invoices or any other document which is attached to or incorporated by reference to these Terms and Conditions.

The Customer by completing a Credit Account Application or by submitting a Purchase Order for the supply of goods and/or services by Coal Services is agreeing to be bound by these Terms and Conditions. If there is an existing agreement between Coal Services and the Customer and there is an inconsistency between the Terms and Conditions and the existing agreement, then the existing agreement prevails to the extent of the inconsistency only.

No representative or agent of Coal Services is authorised to give any guarantee or representation in addition to or contrary to these Terms and Conditions. Nothing in these Terms and Conditions shall be read or applied to exclude, restrict or modify any condition, warranty, guarantee, right or remedy implied by law (including the *Trade Practices Act 1974*) and which by law cannot be excluded, restricted or modified.

### 1. Definitions

**Approved Purpose** means the use of the Software in determining trending of results arising from gas analysis.

**Bad Data** means any data which is incorrect for whatever reason including due to improper gas sample collection or damaged or faulty equipment.

**Coal Services** means Coal Services Pty Limited (ABN 98 099 078 234) and Mines Rescue Pty Limited (ABN 15 099 078 261).

**Contract** means in the case of the supply of goods and/or services by Coal Services to the Customer, the Completed Purchase Order.

**Customer** means the person who accepts a quotation from Coal Services for the sale of goods and/or services or whose order for the goods and/or services is accepted by Coal Services.

**Delivery Date** means the date or period for the delivery of goods.

**Distributor** means any distributor appointed by Coal Services to sell goods including software as the case may be.

**Documentation** means the operating manuals, training materials and associated documentation.

**End User** means the buyer of the goods including software from the Distributor.

**Goods** means the products (including any instalment of the products or any parts for them) which Coal Services is to supply in accordance with these Terms and Conditions and agreed by the Customer by submitting a Purchase Order to Coal Services.

**Intellectual Property Rights** means all present and future intellectual and industrial property rights in the goods, software and/or service, whether conferred by statute, at common law or in equity and wherever existing, including:

- (a) Patents, designs, copyright, rights in circuit layouts, plant breeder's rights, trade marks, know how, brand names, domain names, inventions, product names, trade secrets and any other rights subsisting in the results of intellectual effort in any field, whether or not registered or capable of registration;
- (b) Any application or right to apply for registration of any of these rights;
- (c) Any registration of any of those rights or any registration of any application referred to above; and
- (d) All renewals and extensions of these rights.

**Modification** means any deletion, addition or other change in the Contract approved by the Customer in writing.

**Offsite** means any other place outside of Coal Services premises.

**Onsite** means Coal Services premises.

**Party** means either the Customer or Coal Services as the context dictates.

**Purchase Order** means the purchase order for the supply of goods and/or services provided by the Customer to Coal Services.

**Records** means in reference to maintenance provided by Coal Services to the Customer the documentation related to the maintenance of the good.

**Services** means the services to be provided to the Customer by Coal Services as agreed by the Customer by submitting a Purchase Order to Coal Services.

**Software** means the gas analysis trending software of Coal Services.

### 2. Contract Formation

These Terms and Conditions become binding when the Customer:

- (a) Completes and submits the Credit Account Application Form;
- (b) Submits a Purchase Order authorising Coal Services to supply a good and/or service;
- (c) Any other document which notifies Coal Services to supply a good and/or service.

### 3. Goods and Services

All orders for goods and/or supply of services must be in writing. Coal Services reserves the right to accept or reject any order in whole or in part for any reason, including without limitation the unavailability of any goods.

If the Customer would like to modify the order of goods and/or services, this must be received in writing via an updated Purchase Order or any other document which notifies Coal Services of the modification to the original order.

### 4. Pricing and Payment

Prices quoted are exclusive of GST, which when applicable will be charged to the Customer. All prices quoted are valid for 30 days only or until earlier acceptance by the Customer, after which they may be altered by Coal Services at any time on providing notice to the Customer.

Except as otherwise stated under the terms of any quotation or in any price list of Coal Services, and unless otherwise agreed in writing between the Customer and Coal Services, all prices are given by Coal Services on an ex works basis, and where Coal Services agrees to deliver the goods including parts outside of Coal Services premises, the Customer will be liable to pay Coal Services charges for transport, packaging, taxes, duties, insurance and any other charges relating to the delivery of the goods including parts.

Payment for goods and/or services supplied must be made no more than 30 days after receipt of invoice unless otherwise agreed in writing by Coal Services.

Receipt of payment will only be issued on request.

### 5. Payment of Goods and Services Tax (GST)

If GST is imposed on any supply of goods and/or services, the Customer as the recipient of the taxable supply must pay to Coal Services an amount equal to the GST payable, subject to the Customer receiving a valid Tax Invoice in respect of the taxable supply at or before the time of payment.

Payment of the GST portion of the Tax Invoice must be made at the same time as the payment of the supply of goods and/or services.

## 6. Interest

Interest on overdue accounts shall be charged at a rate of 2% greater than the Coal Services current overdraft rate. Such interest shall be calculated on a daily basis from the due date for payment until the date Coal Services receives payment. Any amount of interest, together with the outstanding purchase price is payable by the Customer on demand, and further, the Customer expressly undertakes to pay all such interest.

## 7. Collection Expenses

Should it be considered necessary by Coal Services to incur legal and/or other expenses, in obtaining or attempting to obtain payment of any amounts due to Coal Services by the Customer, the Customer shall be liable for such expenses.

## 8. Application of Payments

Any payments tendered by the Customer to Coal Services shall be applied as follows:

- (a) First as a reimbursement for any collection expenses incurred by Coal Services in accordance with section 6.
- (b) Secondly in payment of any interest charged to the Customer on overdue accounts in accordance with section 5.
- (c) Thirdly in satisfaction of the oldest portion of the Customer's account.

## 9. Credit Account

Supply and/or credit facilities may be suspended or withdrawn by Coal Services, in its absolute discretion, at any time without notice. The Customer agrees to pay on demand all sums owing in connection with a credit facility provided by the Coal Services in the event that such credit facility is suspended or withdrawn. Liability for accounts held in more than one name is joint and several.

## 10. Provision of Services

Services may be provided on Coal Services premises or offsite, as agreed between Coal Services and the Customer.

Provision of the Service will commence when the following conditions are met:

- (a) The Customer's equipment and official documentation are provided to Coal Services;
- (b) The Participant has arrived for their appointment or training course (either provided on Coal Services premises or offsite);
- (c) A Coal Services employee has arrived offsite to perform the function as defined on the Customer's Purchase Order or modified Purchase Order or any other document which authorises Coal Services to perform the function.

If Coal Services employees are required to perform their duties offsite, the Customer must ensure the Health and Safety of the Coal Services employee and comply with any Work, Health and Safety Legislation.

## 11. Delivery of Goods, Title and Risk

Unless otherwise agreed between Coal Services and the Customer, delivery of goods, including parts will be made by the Customer collecting the goods from Coal Services premises at any time after Coal Services has notified the Customer the goods are ready for collection.

The title of goods including parts will be passed on by Coal Services to the Customer, when the following conditions are met:

- (a) When goods have been delivered to the Customer; in the case of goods delivered at Coal Services premises, at the time the Customer is notified that the goods are available for collections; and
- (b) When the goods have been paid for in full or funds cleared for the payment in full for the agreed price of the goods between Coal Services and the Customer.

If the goods including parts have not been paid for in full, the Customer is entitled to take possession of the goods. However, the Customer agrees to:

- (a) Hold the goods as trustee and agent for Coal Services; and
- (b) Ensure the goods are insured and stored or identified so that they are readily distinguishable from other goods held by the Customer or other persons.

Until the amounts are paid in full for the delivered goods including parts, the Customer has the right to move, sell and otherwise use

the goods in the ordinary course of its business, subject to the following:

- (a) The Customer may sell the goods, but only as trustee and agent for Coal Services. However, the Customer can not represent to third parties that it is acting as an agent of Coal Services and Coal Services will not be bound by any contracts with third parties to which the Customer is a Party; and
- (b) The Customer must hold the proceeds it receives from any sale of the goods as trustee and agent for Coal Services.

If the Customer fails to comply with any of these Terms and Conditions then:

- (a) Upon request by Coal Services the Customer must return any goods on which there are outstanding Amounts Owning;
- (b) Coal Services may enter the premises at which those goods are stored, and seize possession of them; and
- (c) Coal Services may retain, sell or otherwise dispose of those goods.

Without limiting the meaning of Amounts Owning, if the Customer makes a payment to Coal Services at any time whether in connection with the supply of goods or otherwise, Coal Services may, at its absolute discretion, apply that payment to first satisfy obligations that are not secured, then obligations that are secured, but not by a purchase money security interest, in the order in which those obligations were incurred, and then obligations that are secured by a purchase money security interest in the order in which those obligations were incurred.

The Customer must not assign or grant a security interest in respect of any accounts owed to it in relation to the goods with Coal Services prior written consent.

The Customer consents to Coal Services affecting a registration on the Personal Property Securities Register (in any manner Coal Services considers appropriate) in relation to any security interest contemplated by these Terms and Conditions and the Customer agrees to provide all assistance reasonably required to facilitate this. The Customer waives the right to receive notice of a verification statement in relation to any registration on the Register.

Title of replaced parts removed will remain with the Customer.

Unless otherwise agreed in writing, the risk in the goods purchased shall pass to the Customer upon delivery to the Customer or its agent or a carrier commissioned by the Customer.

## 12. Failure to take Delivery of Goods

If the Customer fails to take delivery of the goods including parts or fails to give Coal Services adequate delivery instructions at the time stated for delivery (except for reasons beyond the control of the Customer) then, without prejudice to any other right or remedy available to Coal Services, Coal Services may:

- (a) Store the goods including parts until actual delivery and charge the Customer for the reasonable cost (including insurance) of storage; or
- (b) Sell the goods including parts at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Customer for the excess over the price under the Contract or charge the Customer for any shortfall below the price under the Contract.

## 13. Cancellation of Goods

No Purchase Order or similar document which has been authorised by the Customer and accepted by Coal Services may be cancelled by the Customer except with the agreement in writing of Coal Services and on the terms that the Customer indemnify Coal Services in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by Coal Services as a result of cancellation.

## 14. No Liability for Delay of Goods

Any dates quoted for delivery of goods are approximate only and Coal Services will not be liable for any delay in delivery of the goods to the Customer.

Goods may be ready for collection in advance of the quoted delivery date, in which case Coal Services will notify the Customer that the goods are ready for collection.

## 15. Software

At the request of the Customer, Coal Services may sell Software to the Customer.

The Customer (or its agents or employees) or the End User (or its agents or employees), as the case may be, must use the Software only for the Approved Purpose.

The Customer (or its agents or employees) or the End User (or its agents or employees), as the case may be, must use reasonable judgment and experience when confirming the results of the Software or the interpretation of the Software and analyse such results in light of other environmental and ventilation monitoring and not in isolation.

The Customer (or its agents or employees) or the End User (or its agents or employees), as the case may be, must have good working knowledge of Microsoft Excel in order to utilise all the software functions of the Software.

The Customer (or its agents or employees) or the End User (or its agents or employees), as the case may be, must not:

- (a) Alter, amend, adapt, modify, obliterate, reproduce, obscure, conceal, remove, tamper, decompile, decipher, disassemble, reverse engineer or otherwise interfere with or decrypt whole or part of the Software or the results of the Software without Coal Services prior written consent;
- (b) Exercise any copyright in respect of the Software other than as specified in the Contract and these Terms and Conditions;
- (c) Assign, transfer, sell or distribute the Software to a third party; or
- (d) Disclose to or allow any third party to use the Software in any manner.

The Customer (or its agents or employees) or the End User (or its agents or employees), as the case may be, acknowledges that:

- (a) Bad Data may affect the results of the Software and the interpretation of the Software and that such results and interpretation of the Software may be false or misleading as a result of the entry of the Bad Data into the Software; and
- (b) Coal Services is the owner of all Software Intellectual Property Rights.

## 16. Intellectual Property Rights

The Customer acknowledges and agrees that:

- (a) Nothing in the Contract or these Terms and Conditions will grant the Customer any Intellectual Property Rights; and
- (b) Coal Services grants it a non-exclusive, irrevocable licence to use all software provided as separate modules or embedded in the Product Software together with the goods. This licence will terminate when the Customer discontinues use of the Product Software.

## 17. Warranty

Coal Services acknowledges that for all goods and/or services supplied by Coal Services that:

- (a) Goods will correspond with their specifications at the time of delivery and will be free from defects in material and workmanship for a period of 12 months from delivery;
- (b) If the goods consist of consumable laboratory supplies, these supplies will correspond with their specifications at the time of delivery and will be free from defects in material and workmanship for a period of 14 days from delivery;
- (c) Services will be provided using appropriate materials of high quality; employ appropriate techniques and standards; and exercise due care, skill and attention.
- (d) Replacement parts will be of at least equal quality to the replaced parts; newly manufactured; free from defects in material and workmanship; and suitable for normal use as reasonably contemplated by the Customer.

Coal Services will meet all costs incidental to the discharge of its warranty obligations including the provision of back up equipment and any packing, freight, disassembly and/or reassembly costs.

## 18. Conditions attached to the Warranty of Goods including parts

The above warranty is given by Coal Services subject to the following conditions:

- (a) Coal Services will be under no liability in respect of any defect in the goods arising from any drawing, design or specification supplied by the Customer;
- (b) Coal Services will be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow Coal Services instructions (whether oral or in writing), misuse or alteration or repair of the goods including parts, without Coal Services written approval.
- (c) Coal Services will be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the goods including parts has not been paid by the due date for payment;
- (d) The above warranty does not extend to parts, materials, or equipment not manufactured by Coal Services, in respect of which the Customer will only be entitled to the benefit of any such warranty guarantee as is given by the manufacture to Coal Services;
- (e) Coal Services will be under no liability under the above warranty for any false or misleading results of the Software or interpretation of the Software which might arise due to the entry of Bad Data into the Software;
- (f) Coal Services will be under no liability under the above warranty for any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of the Customer or any of its officers, employees, agents or contractors in relation to the Software or the results of the Software;
- (g) Coal Services will be under no liability under the above warranty for any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from the Software or the results of the Software irrespective of whether the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or the Customer or any other person was previously notified of the possibility of the loss or damage.

## 19. Notification of Defects of Goods or Non-performance of Service

Any claim by the Customer of a defect of a good including parts or the non-performance of a service must notify Coal Services within seven (7) working days of the delivery of the goods or the completion of the service.

If a defect or failure was not apparent on reasonable inspection, the Customer must notify Coal Services within a reasonable time after discovery of the defect or failure.

## 20. Maintenance Records

Coal Services will maintain records of all Maintenance and Repair Services including:

- (a) All faults reported;
- (b) All faults detected;
- (c) All remedial action taken; and
- (d) All parts replaced pursuant to the Contract.

Coal Services will make copies of the records available to the Customer immediately upon request. If subsequent requests for copies of the records are made by the Customer, the Customer will reimburse Coal Services for out-of-pocket expenses arising directly from the requirement to supply subsequent copies of the records.

## 21. Export Terms

The Customer will be responsible for complying with any legislation or regulations governing the importation of the goods into the country of destination and for the payment of any duties on them.

Except as otherwise stated and unless otherwise agreed in writing between the Customer and Coal Services, all prices for goods for export are given by Coal Services on an ex works basis, and where Coal Services agrees to deliver the goods other than at Coal Services premises, the Customer will be liable to pay Coal Services charges for transport, packaging, taxes, duties, insurance and any other charges relating to the delivery of the goods.

The Customer will be responsible for arranging for testing and inspection of the goods at Coal Services premises before shipment. Coal Services will have no liability for any claim in respect of any defect in the goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.

Save for any written agreement between Coal Services and the Distributor, the Customer undertakes not to offer the goods for resale.

## **22. Indemnity and Release**

To the maximum extent permitted by law, the Customer releases and discharges Coal Services from all liability whether in contract, tort or otherwise for any loss, damage (including consequential loss or damage), expense of any kind arising directly or indirectly out of the supply of goods and/or services. The Customer indemnifies and keeps indemnified Coal Services against any liability, loss, damage, expense, cost, claim or proceedings arising directly or indirectly out of or in connection with the supply of goods and/or services or any other cause whatsoever.

## **23. Force Majeure**

Coal Services shall not be liable for any failure or delay to supply goods and/or services due to a cause beyond its reasonable control including but not limited to acts of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of Coal Services or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

## **24. Confidentiality**

The Customer and Coal Services will not, with the prior written approval of either Party, disclose the others Confidential Information.

The Customer and Coal Services will not be in breach of this clause where either Party is legally compelled to disclose the other Parties Confidential Information.

The Customer and Coal Services will take all reasonable steps to ensure that its employees and agents, and any sub-contractors engaged for the purpose of the Contract, do not make public or disclose the other Parties Confidential Information.

The Customer and Coal Services must comply with all areas of the *Privacy Act 1988*.

The Customer and Coal Services shall keep in complete secrecy all Confidential Information entrusted to either Party and shall not use or attempt to use any such information which may cause either loss directly or indirectly to the Customer and/or Coal Services.

This clause will survive the termination or expiry of the Contract between the Customer and Coal Services.

## **25. Jurisdiction**

The Contract and these Terms and Conditions are governed by and must be construed in accordance with the laws of New South Wales, Australia, and where applicable, the Commonwealth of Australia. The Customer submits to the non-exclusive jurisdiction of the Courts of New South Wales in respect of all matter or things arising out of the Contract and these Terms and Conditions.

## **26. Ownership**

This contract is made in respect of the owners and/or directors of the Customer as at the date of the application. The Customer agrees to notify Coal Services in writing within seven (7) days of any change whatsoever in ownership structure, and further indemnifies Coal Services against any loss or damage that may result from the Customer's failure to notify Coal Services of any such change. If there is a change in ownership of the Customer which Coal Services in its discretion deems to be material, Coal Services may suspend or withdraw all credit facilities and require that the Customer complete and submit a new Credit Account Application.

## **27. Waiver**

Coal Services may only waive a breach of Contract in writing signed by an authorised Coal Services Representative and any such waiver is limited to the instance referred to in writing (or if no instance is referred to in writing, to past breaches only).

## **28. General**

The invalidity or unenforceability of any provision of these Terms and Conditions shall not affect the validity or enforceability of the remaining provisions. Clerical errors are subject to correction and do not bind Coal Services. Headings are for ease of reference only and do not form part, or affect the interpretation of these Terms and Conditions.

Dated: 27 March 2014