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# WESTERNEX

EXPLORATION, MINING AND RESOURCE INDUSTRY SUPPLIES

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## "TERMS AND CONDITIONS OF TRADING"

1. **General:** These Terms and Conditions shall apply to the exclusion of all others including any Terms and Conditions of the Customer (whether on the Customers order form or otherwise). No goods or services will be supplied by the Seller on any terms or conditions other than those set out herein and by taking delivery of the goods the Customer shall be deemed to agree to these Terms and Conditions. For the purposes of these Terms and Conditions the seller shall mean and include the party named above and or the Supplier or the goods and services sold and Customer shall mean the party to whom goods and services are sold and or in whose name an Account is maintained by the Seller.
2. **Payment:** The Customer agrees to comply with the trading terms of the Seller and payment for goods or services shall be made by the Customer to the Seller thirty (30) days from the date of the Invoice. It is agreed that if the Customer does not make payment within the period specified herein then the Customer will pay to the Seller by way of liquidated damages a default charge calculated by the application of a daily percentage rate of 0.06% on the unpaid balance of the amount due from the due date for payment until the date that the total sum due to the Seller is paid in full.
3. **Claims:** (i) The Customer will be deemed to have accepted the goods as being in accordance with its order unless it notifies the Seller in writing of its claim within 7 days of receipt of the goods. (ii) No return of allegedly defective or faulty goods will accept by the Seller unless the Seller has been given prior written authorization for the return.
4. **Force Majeure:** If for any reason beyond the control of the Seller (including without limitation as a result of any strike, trade dispute, fire, tempest, theft or breakdown), orders cannot be filled at the time stipulated by the Customer, the Seller shall be entitled to determine the Contract and the Customer shall not have any claims for damages arising out of such cancellation, without prejudice to the rights of the Seller to recover all sums owing to it in respect of deliveries made or services provided prior to the date of such determination.
5. **Warranty:** All warranties whether expressed or implied and whether statutory or otherwise with regards to the goods supplied by the Seller as to quality, fitness for purpose or any other matter are hereby excluded except in so far as any such warranties are incapable of exclusion at law. The liability of the Seller for damages arising out of the contract shall be limited to the costs of rectification of any faulty workmanship or material or the replacement of any faulty goods and the Seller accepts no responsibility or liability whatsoever including liability for negligence, goods that do not correspond with the description on the Seller's invoice and or the packaging of the goods sold or any liability for consequential loss however arising.
6. **Freight Costs:** The Seller shall not be liable for freight costs on goods returned to it by the Customer.
7. **Default:** In the event of the Customer's default under these Terms and Conditions the Customer shall pay to the Seller on demand all costs including without limitation all legal costs (on a solicitor/own client basis) all mercantile agents fees incurred by the Seller in recovering or attempting to recover all amounts outstanding and payable under these Terms and Conditions and any dishonour or bank fees incurred by the Seller relating to payments made by the Customer from time to time.
8. **Change of Ownership:** The customer agrees to notify the Seller in writing of any change of ownership of the Customer within 7 days from the date of such change and indemnifies the Seller against any loss or damage incurred by it as a result of the Customer's failure to notify the Seller of any change.
9. **Cancellation:** Orders placed with the Seller cannot be cancelled without the written approval of the Seller. In the event that the Seller accepts the cancellation of any order placed with it shall be entitled to charge a reasonable fee for any work done on behalf of the Seller to the date of the cancellation including a fee for the processing and acceptance of the Customer's order and request for cancellation.
10. **Lien:** The Customer hereby acknowledges that the Seller has a lien over all goods in its possession belonging to the Customer to secure payment of any or all amounts outstanding from time to time.
11. **Title to Goods:** (i) Notwithstanding anything to the contrary express or implied property in the goods shall remain with the Seller and shall not pass to the Customer until the Seller has received payment in full for the goods and the Customer has discharged in full all its accounts with the Seller relating to all contracts made with the Seller. (ii) If payment is made by the Customer by way of cheque, ownership shall not pass to the Customer until the cheque has been honoured. (iii) Until the goods are paid for in full the Customer shall hold the goods as a Trustee for the Seller and shall keep the goods as a fiduciary for the Seller and shall store and identify the goods in a manner that clearly shows the Seller -5 ownership thereof. (iv) in the event that the Customer fails to pay the Seller for the goods by the due date required for payment under the Seller's terms of trade, the Customer (without prejudice to the Seller's rights as an unpaid Seller or any of its other rights and remedies to retake possession of the Seller' goods from the Purchaser) hereby agrees to deliver up the goods to the Seller upon demand by the Seller and consents to the Seller retaking possession of the goods which remain unpaid and thereupon the seller shall be entitled to resell the goods to a third party. (v) The parties acknowledge that by supplying or accepting goods on the terms herein specified, it is not intended to create a charge, mortgage or other security interest over any of the goods supplied.
12. **Power to Sell Goods:** Nothing herein contained shall prevent the Customer from selling the goods to any third party provide that the proceeds of any such sale shall be held in trust by the Customer for the Seller until the Seller has received payment full for the goods.
13. **Certificate:** A Certificate signed by an officer of the Seller will be prima fade evidence of the Customer's liability to the Seller at the date of the Certificate.
14. **Jurisdiction:** The proper law of all contacts arising between the Seller and the Customer is the law of the State or Territory which the Seller's principal office is located and the parties agree that all claims and disputes relating to the goods sold shall determined in a Court of competent jurisdiction nearest such principal office and the parties irrevocably agree to submit to the non-exclusive jurisdiction of such Court.