

To the extent permitted by law, all dealings between the Department of Regional NSW (ABN 19 948 325 463), referred to from here as **MSTC (Mine Safety Technology Centre)**, and any Customer relating to the provision of Services are subject to the following terms and conditions.

1. Definitions

In this agreement:

Claims means any actions, claims, proceedings, demands or other liability.

Customer means the person or entity who places the purchase order with the MSTC.

Fees means the monies payable for the provision of the Services as set out in our quotation or estimate agreed to by the customer.

Report means a report prepared by MSTC as part of the provision of Services that may set out information in relation to testing methods, tests, results of testing and other information, as specified by MSTC from time to time.

Services means the diagnostic and analytical testing services to be provided by MSTC as further described in the quotation.

Testing Material means any sample or material, supplied by the Customer to MSTC for the purposes of providing the agreed Services.

2. Appointment

The Customer appoints MSTC, and MSTC agrees to be appointed, to provide the Services in accordance with this Agreement.

3. Provision of Services

- a) MSTC will use reasonable endeavours to provide the Services to the Customer in a timely manner.
- b) The Customer acknowledges that MSTC may elect not to supply the Services if MSTC considers that the provision of Services may pose a safety or health risk, or where the Testing Materials are not fit for testing

(including by reason of contamination or insufficient sample size).

- c) MSTC will not provide Services before a purchase order or payment for the Services is received.

4. Customer obligations

- a) The Customer must provide MSTC with such information as may be required by MSTC to provide the Services to the Customer.
- b) The Customer must ensure that all information supplied to MSTC is accurate, complete, and understands that work may be delayed if MSTC requires additional information.
- c) For Services in connection with certification of equipment the Customer is also bound by the rules of the applicable certification scheme.

5. Testing material

- a) The Customer is responsible for the Testing Material, including the sufficiency of its quantity and form, provision of adequate information in respect of any safety or health hazards and any special procedures in connection with the handling, testing, storage, transport, disposal of the Testing Material and all costs and expenses in connection with the delivery of the Testing Materials to MSTC.
- b) The Customer acknowledges and agrees that:
 - (i) MSTC will not in any way be liable for any damage to the Testing Material;
 - (ii) the Testing Material, once in the possession of MSTC, becomes the property of MSTC;
 - (iii) the Testing Material may be altered, damaged or destroyed in the course of providing the Services and MSTC will not in any way be liable for such alteration, damage or destruction;
 - (iv) MSTC is not obliged to return the Testing Material, whether in its original form or otherwise, to the Customer, unless otherwise agreed to be returned by MSTC at the cost of the Customer; and

- (v) MSTC may in its absolute discretion, store, experiment upon, destroy or otherwise deal with the Testing Material, as it sees fit.

6. Warranties

- a) To the extent permitted by law, MSTC excludes all terms, conditions, warranties and guarantees either expressed or implied by law or statute.

7. Intellectual property

- a) All intellectual property rights in any documents, Reports and all other materials prepared by MSTC in the course of providing the Services are owned by MSTC.
- b) Subject to the payment of the Fees by the Customer in accordance with clause 11, MSTC grants the Customer a perpetual, irrevocable, non-exclusive and royalty-free licence to use the Reports for the Customer's business purposes.

8. Liability

- a) To the extent permitted by law, MSTC excludes all liability for any indirect or consequential loss or damage, or any loss of profit, business or goodwill arising in relation to the provision of the Services.
- b) To the extent permitted by law, MSTC's liability to the Customer is limited to, at MSTC's option, supplying the Services again or paying the cost of having the Services supplied again by a third party.
- c) To the extent permitted by law, the total liability of MSTC, whether in contract, tort (including negligence), under statute or otherwise will not exceed the Fees paid by the Customer to MSTC.
- d) MSTC will not be liable for any breach, failure or other act or omission arising under or in connection with this Agreement to the extent that such breach, failure or other act or omission is caused or contributed to by the Customer, its employees, agents or contractors.
- e) The Customer acknowledges and agrees that MSTC may disclose or provide Testing Material, Reports and

other materials received or generated by it under or in connection with this Agreement to any court, government body or regulator. The Customer consents to such disclosure.

9. Publicity and use

- a) The Customer must not in any way represent that MSTC supports or endorses the Customers' products, services, methods or business.
- b) MSTC cannot warrant that the Report and any test results will be admissible in any court proceedings, nor that any test results or communications as between MSTC and the Customer will be protected by privilege for the purposes of any proceedings.
- c) The Customer must not alter then distribute or publish any documents, materials or Reports prepared by MSTC.

10. Indemnity

The Customer releases and indemnifies and continues to release and indemnify after the termination of this Agreement MSTC, its officers, employees, contractors and agents against any loss or liability and all Claims (including the costs and expenses in defending the same):

- a) which may be brought against MSTC or its officers, employees, contractors or agents in connection with the Services;
- b) in connection with any failure of the Testing Material to pass any tests;
- c) in connection with any import or export restrictions, prohibitions, sanctions or governmental action that might apply to the Customer, its goods or services as a result of the Testing Material passing or failing any tests;
- d) in connection with any testing of the Testing Material by the Customer or any third party which shows a different result to that provided by MSTC; and
- e) in connection with any breach of this agreement by the Customer.

MSTC holds on trust for its officers, employees, contractors and agents the rights under this release and indemnity.

11. Fees and reports

- a) The Customer must pay MSTC the Fees in accordance with this clause 11.
- b) MSTC may provide the Customer with an electronic copy of the Reports upon completion of the Services. The Customer must pay extra Fees for any additional copies of a Report or any additional reports requested by the Customer.
- c) The Customer must pay each MSTC invoice within 30 days after receipt of that invoice.
- d) Overseas customers are required to pay invoices before MSTC provides the Services.

12. Goods and Services Tax (GST)

Unless otherwise advised by MSTC, all dollar amounts referred to in this agreement are in Australian currency. GST will be applied in accordance with the *A New Tax System (Goods and Services Tax) Act 1999* and associated legislation as amended from time to time.

13. Dispute resolution

The parties agree that if any dispute arises between them, they will make a genuine effort to resolve the dispute within 90 days after one party gives notice of the dispute to the other without resorting to litigation. If the dispute is not resolved within 90 days after notice of the dispute is given, either party may commence court proceedings. Nothing in this clause will prevent either party from seeking urgent interlocutory relief from any courts.

14. Termination

- a) A party may terminate this agreement if the other party breaches a term of this agreement and does not remedy that breach within 14 days of notice in writing requesting it to remedy the breach.
- b) To the extent permitted by law, MSTC may terminate this agreement immediately, by written notice to the

Customer, if the Customer becomes, or in the reasonable opinion of MSTC is likely to become, subject to any form of insolvency, administration, receivership, bankruptcy or liquidation.

- c) On termination, the Customer must pay MSTC all Fees for work undertaken by MSTC as at the date of termination.

15. General

- a) Neither MSTC nor the Customer is liable for any failure to observe its obligations under this Agreement where such failure is wholly or substantially due to a force majeure event.
- b) Any notice given or made under this Agreement must be in legible writing, signed by the party giving or making it and left at the address or sent by prepaid security post to the address of the recipient party.
- c) Any notice given or made in accordance with the method above is deemed to be given or made on the day the notice is left at the address of the recipient party or 2 days after the day the notice is sent by prepaid security post to the address of the recipient party. If a notice given or made under this Agreement is given or made after 5pm on a business day in New South Wales, that notice is deemed to have been given or made on the next business day in New South Wales.
- d) MSTC may assign or subcontract the Services or any part thereof in its absolute discretion. The Customer must not assign this agreement or any part thereof without obtaining MSTC's prior written consent.
- e) The lodgement of a signed quotation or purchase order constitutes an acceptance of this Agreement by the Customer.
- f) This agreement is governed by and is to be construed in accordance with the laws of New South Wales. The parties submit to the exclusive jurisdiction of the courts of New South Wales.