

**K92 MINING LIMITED**  
**General Terms and Conditions**  
**(Goods)**

Each Purchase Order placed by K92 Mining Limited (**K92**) for the Goods is subject to these general terms and conditions and the terms of the applicable Purchase Order, and is conditional upon the Supplier's agreement to such terms. The Supplier will be deemed to have agreed to be bound by such terms by accepting the Purchase Order and delivering the Goods to K92.

**1. DEFINITIONS**

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In these Standard Purchase Terms, the following definitions apply:

**"Agreement"** means the agreement between Supplier and K92 for the purchase and sale of Goods.

**"Customs Services"** means the Papua New Guinea Customs Services (or any successor organization).

**"Delivery Date"** means the date of delivery for Goods or performance of Services as specified in a Purchase Order.

**"Delivery Point"** means the location identified by K92 in the Purchase Order to which the Supplier is to deliver the Goods or such other delivery area or point which is specified in writing by K92.

**"Goods"** means the goods that are required to be delivered by Supplier pursuant to a Purchase Order, and include all materials, component parts, packaging and labelling of such goods.

**"GST"** means *Goods and Services Tax Act 2003* (PNG).

**"Indemnified Parties"** means K92's affiliates, and their respective officers, directors, employees, consultants and agents.

**"Inspection Period"** means 90 days.

**"PNG"** means Papua New Guinea.

**"Purchase Order"** means the purchase order between K92 and Supplier for the purchase and sale of Goods, to which these Standard Purchase Terms are attached or are incorporated by reference.

**"Specifications"** means the requirements, attributes and specifications for the Goods that are set out in the applicable Purchase Order. Specifications also include: (a) documentation published by Supplier relating to the Goods; (b) operational and technical features and functionality of the Goods; (c) standards and (d) K92 business requirements that are expressly set out in a Purchase Order.

**"Supplier"** means the party indicated on the face page of the Purchase Order that is contracting with K92 for the sale of Goods.

**“Warranty Period”** means in respect of any Goods, the longer of: (i) the express written warranty period provided by Supplier for the Goods; and (ii) the period commencing on the date of acceptance by K92 of such Goods and ending on the date that is one (1) year from that date.

## **2. AGREEMENT**

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The Agreement consists only of: (a) these Standard Purchase Terms; (b) the applicable Purchase Order; and (c) any Specifications or other documents expressly referenced in the Purchase Order. K92’s acceptance of payment for the Goods will not constitute K92’s acceptance of any additional or different terms unless otherwise accepted in writing by K92. If there are any conflicts or inconsistency between the documents constituting the Agreement, then unless otherwise expressly provided, the documents will rank in the order of precedence in accordance with the order in which they are listed in this Section 2.

## **3. DELIVERY OF GOODS**

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### **3.1 Delivery**

Supplier agrees to supply and deliver the Goods to K92 on the terms set out in this Agreement.

Supplier must, at its own expense, pack, load, and deliver Goods to the Delivery Point and in accordance with the invoicing, delivery terms, shipping, packing, and other instructions printed on the face of the Purchase Order or otherwise provided to Supplier by K92 in writing. No charges will be allowed for freight, transportation, insurance, shipping, storage, handling, demurrage, cartage, packaging or similar charges unless provided for in the applicable Purchase Order or otherwise agreed to in writing by K92.

### **3.2 Time is of the essence**

Time is of the essence with respect to delivery of the Goods. Goods must be delivered by the applicable Delivery Date. Supplier must immediately notify K92 if Supplier is likely to be unable to meet a Delivery Date. At any time prior to the Delivery Date, K92 may, upon notice to Supplier, cancel or change a Purchase Order, or any portion thereof, for any reason, including, without limitation, for the convenience of K92 or due to failure of Supplier to comply with this Agreement, unless otherwise noted.

### **3.3 Title and risk**

Title and risk of loss or damage will pass to K92 upon receipt of Goods at the Delivery Point, unless otherwise agreed to by K92 in writing. K92 has no obligation to obtain insurance while Goods are in transit from Supplier to the Delivery Point.

Supplier must follow all instructions of K92 and cooperate with K92’s customs broker as directed by K92 (including by providing requested shipping documentation) with respect to all Goods that originate from sources or

suppliers based outside PNG. The Supplier must comply with all the requirements of the Customs Services with respect to the importation of Goods from outside PNG.

#### **4. INSPECTION; ACCEPTANCE AND REJECTION**

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All shipments of Goods will be subject to K92's right of inspection under the Inspection Period following the delivery of the Goods at the Delivery Point to undertake such inspection and upon such inspection K92 must either accept the Goods or reject them. K92 must have the right to reject any Goods that are delivered in excess of the quantity ordered or are damaged or defective. In addition, K92 shall have the right to reject any Goods that are not in conformance with the Specifications or any term of this Agreement. Transfer of title to K92 of Goods shall not constitute K92's Acceptance of those Goods. K92 must provide Supplier within the Inspection Period notice of any Goods that are rejected, together with the reasons for such rejection. If K92 does not provide the Supplier with any notice of rejection within the Inspection Period, then K92 will be deemed to have provided acceptance of such Goods. K92's inspection, testing, or acceptance or use of the Goods must not limit or otherwise affect Supplier's warranty obligations with respect to the Goods, and such warranties must survive inspection, test, acceptance and use of the Goods.

K92 is entitled to return rejected Goods to the Supplier at the Supplier's expense and risk of loss for, at K92's option, either: (i) full credit or refund of all amounts paid by K92 to Supplier for the rejected Goods; or (ii) replacement Goods to be received within the time period specified by K92. Title to rejected Goods that are returned to Supplier shall transfer to Supplier upon such delivery and such Goods shall not be replaced by Supplier except upon written instructions from K92. Supplier must not deliver Goods that were previously rejected on grounds of non-compliance with this Agreement, unless delivery of such Goods is approved in advance by K92, and is accompanied by a written disclosure of K92's prior rejection(s).

#### **5. PAYMENT TERMS**

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Prices for the Goods will be set out in the Purchase Order. Price increases or charges not expressly set out in the Purchase Order shall not be effective unless agreed to in advance in writing by K92. Supplier will issue all invoices on a timely basis. All invoices delivered by Supplier must meet K92's requirements, and at a minimum shall reference the applicable Purchase Order. K92 will pay the undisputed portion of properly rendered invoices thirty-five (35) days from the invoice date (unless otherwise agreed by K92 in writing). The Supplier agrees that K92 has the right to withhold payment of any invoiced amounts that are disputed in good faith until the parties reach an agreement with respect to such disputed amounts and such withholding of disputed amounts shall not be deemed a breach of this Agreement nor shall any interest be charged on such amounts.

## **6. GOODS AND SERVICES TAX**

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If any payment (or part of the payment) made by a party to another party under or relating to this Agreement constitutes consideration for a taxable supply for the purposes of *Goods and Services Tax Act 2003* or any similar tax, the amount to be paid for the supply (or the taxable part of the supply) will be increased so that the net amount retained by the party receiving payment after remittance of that GST is the same as if the party was not obliged to charge or collect GST in respect of that supply. To the extent that GST is chargeable on a taxable supply, the party collecting the tax agrees to provide a tax invoice to the party chargeable for the amount of the taxable supply.

## **7. NOTICES**

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### **7.1 Address**

Any notice provided under this Agreement must be in writing and given by facsimile or delivered to the address of each party specified in the Details (or such other address notified in writing to the other party).

### **7.2 Delivery**

Any such notice:

- (a) which is confirmed by email receipt from the customers representative or
- (b) which is sent by facsimile, shall be deemed to be served upon generation of a transmission report by the sender's facsimile machine confirming the complete and error-free transmission to the correct facsimile number for the recipient.

## **8. PRODUCT WARRANTIES**

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Supplier warrants to K92 that during the Goods Warranty Period all Goods provided must be: (i) of merchantable quality; (ii) fit for the purposes intended; (iii) unless otherwise agreed to by K92, new; (iv) free from defects in design, material and workmanship; (v) in strict compliance with the Specifications; (vi) free from any liens or encumbrances on title whatsoever; (vii) in conformance with any samples provided to K92; and (viii) compliant with all applicable federal, provincial, and municipal laws, regulations, standards, and codes.

## **9. INTELLECTUAL PROPERTY WARRANTY**

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Supplier further warrants to K92 that at all times all Goods will not be in violation of or infringe any intellectual property rights of any person.

## **10. WARRANTY REMEDIES**

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In the event of breach of any of the warranties, and without prejudice to any other right or remedy available to K92 (including K92's indemnification rights),

the Supplier will, at K92's option and Supplier's expense, refund the purchase price for, or correct or replace the affected Goods, within 14 days after notice by K92 to the Supplier of the warranty breach. All associated costs, including costs to inspect the Goods, transport the Goods from K92 to Supplier, and return shipment to K92, and costs resulting from supply chain interruptions, will be borne by Supplier. If Goods are corrected or replaced, the Supplier's warranties in the Agreement will continue as to the corrected or replaced Goods for a further Goods warranty period commencing on the date of Acceptance of the corrected or replaced Goods by K92. If Supplier fails to repair or replace the Goods within the time periods required above, K92 may repair or replace the Goods at the Supplier's expense.

In the event that any Goods provided by Supplier to K92 are subject to a claim or allegation of infringement of intellectual property rights of a third party, the Supplier must, at its own option and expense, without prejudice to any other right or remedy of K92 (including K92's indemnification rights), promptly provide K92 with a commercially reasonable alternative, including the procurement for K92 of the right to continue using the Goods in question, the replacement of such Goods with a non-infringing alternative satisfactory to K92, or the modification of such Goods (without affecting functionality) to render them non-infringing.

## **11. INTELLECTUAL PROPERTY RIGHTS**

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All intellectual property rights must vest in K92 free and clear of all liens and encumbrances on receipt of payment by Supplier.

## **12. CONFIDENTIALITY**

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Supplier must safeguard and keep confidential any and all information relating to K92 obtained by it or provided to it by K92 in connection with this Agreement, and shall use such information only for the purposes of carrying out its obligations under this Agreement.

## **13. INSURANCE**

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The Supplier represents and warrants to K92 that it has in place with reputable insurers such insurance policies in coverage amounts that would be maintained by a prudent supplier of goods similar to the Goods provided, including, as applicable, professional errors and omissions liability insurance and comprehensive commercial general liability insurance (including product liability coverage, all-risk contractors' equipment insurance, and automobile liability insurance). In addition, Supplier will take out and maintain, at its own cost, such insurance policies and coverages as may be reasonably required by K92 from time to time. Supplier will promptly deliver to K92, as and when requested, written proof of such insurance. If requested, K92 will be named as an additional insured under any such policies. If requested by K92, such insurance will provide that it cannot be cancelled, or materially changed so as to affect the coverage provided under this Agreement, without the insurer providing at least 30 days prior written notice to K92.

## **14. INDEMNITIES**

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Supplier must indemnify, defend and hold harmless K92 and the Indemnified Parties from and against any claims, fines, losses, actions, damages, expenses, legal fees and all other liabilities brought against or incurred by K92 Indemnified Parties or any of them arising out of: (a) death, bodily injury, or loss or damage to real or tangible personal property resulting from the use of or any actual or alleged defect in the Goods, or from the failure of the Goods to comply with the warranties; (b) any claim that the Goods infringe or violate the intellectual property rights or other rights of any person; (c) any intentional, wrongful or negligent act or omission of Supplier or any of its Affiliates or subcontractors; (d) Supplier's breach of any of its obligations under this Agreement; or (e) any liens or encumbrances relating to any Goods.

## **15. LIMITATION OF LIABILITY**

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Except for supplier's obligations under section 14, and except for damages that are the result of the gross negligence or wilful misconduct of a party, in no event will either party be liable to the other party or any other person for any indirect, incidental, consequential or aggravated damages, including but not limited to, any lost profits, goodwill, or business opportunity for any matter relating to this agreement.

## **16. FORCE MAJEURE**

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In the event a party is unable to perform its obligations under the terms of this Agreement because of acts of God, strikes, equipment or transmission failure or damage reasonably beyond its control, or other causes reasonably beyond its control, such party shall not be liable for damages to the other for any damages resulting from such failure to perform or otherwise from such causes.

## **17. RELATIONSHIP**

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K92 and Supplier are independent contracting parties and nothing in this Agreement makes either party the agent or representative of the other for any purpose whatsoever.

## **18. FURTHER ASSURANCES**

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The parties shall sign such further and other documents, cause such meetings to be held, resolutions passed and do and perform and cause to be done and performed such further and other acts and things as may be necessary or desirable in order to give full effect to this Agreement and every part thereof.

## **19. SEVERABILITY**

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If the whole or any part of a provision of this Agreement is void, unenforceable or illegal for any reason whatsoever, in whole or in part, such invalidity or

unenforceability shall attach only to such provision or part thereof and the remaining part thereof and all other provisions shall continue in full force and effect.

## **20. WAIVER**

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No waiver of any provision of this Agreement shall be enforceable against that party unless it is in writing and signed by that party.

## **21. ASSIGNMENT**

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Supplier may not assign or subcontract this Agreement, in whole or in part, without K92's prior written consent. Supplier's permitted assignment or subcontracting of this Agreement or any part thereof will not release Supplier of its obligations under this Agreement, and it will remain jointly and severally liable with the assignee or subcontractor for any obligations assigned or subcontracted. The acts of omissions of any subcontractors of Supplier will be deemed to be the acts and omissions of the Supplier. K92 may assign this Agreement, in whole or in part, to any Affiliate of K92, without the consent of Supplier. This Agreement shall ensure to the benefit of and be binding upon the parties and their respective legal personal representatives, heirs, executors, administrators, assigns or successors.

## **22. SURVIVAL**

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Any provision of this Agreement which expressly or by implication from its nature is intended to survive the termination or completion of the Agreement will continue in full force and effect after any termination, expiry or completion of this Agreement.

## **23. ENTIRE AGREEMENT**

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This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, arrangements, understandings and negotiations on that subject matter.

## **24. GOVERNING LAW**

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The laws of Papua New Guinea apply to this Agreement and the Goods supplied. The parties submit to the exclusive jurisdiction of the courts of PNG.