

# Terms and Conditions of Purchase (or Hire) of Equipment

Drilling Services International Pty Ltd trading as ACC Corporate ABN 660 579 122 59 ("ACC") agrees to provide the Services and /or Equipment to the customer named in the Purchase Order ("Customer ") and the Customer agrees to purchase the Services and /or Equipment from ACC in accordance with this Contract.

## 1. DEFINITIONS

In this Contract:

"Contract" means this contract and the Quotation.

"Delivery Date" means the date specified in the Purchase Order for delivery of the Services and / or Equipment, or the date revised in accordance with clause 3.

"Delivery Location" means the place for delivery of the Services and /or Equipment as specified in the Quotation, or the location revised in accordance with clause 3.

"Equipment" means the equipment specified in the Quotation.

"Force Majeure" includes but is not limited to extreme adverse weather conditions such as fire, storms, flood, earthquake or act of God; explosion, war, invasion, riot, civil disorder, rebellion or revolution; sabotage, epidemic or labour dispute, or any other circumstance beyond the control of the party effected.

"GST" means the goods and services tax levied pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the expressions used within clause 5 have the same meanings as in that Act.

"Loss" means any loss, damage, cost, expense, liability, demand, fine or penalty or other like expense.

"Payment Schedule" means the payment schedule set out in clause 5.1 or the Quotation (as applicable).

"Price" means the price for the Services and /or Equipment as specified in the Quotation.

"Purchase Order" means the document provided by the Customer to ACC in acceptance of the Quotation.

"Quotation" means the quotation provided by ACC to the Customer specifying a quote number, Equipment, Price, Payment Schedule and Specifications (if applicable).

"Services" means the services specified in the Quotation

"Shipping Confirmation" is the notification provided by ACC to the Customer that the Equipment has been shipped.

"Specification" means any specification as stated in the Quotation for the Equipment.

"Use" means installation, maintenance, application, utilization, servicing, repairing, removing, monitoring, transporting and other similar activity as applicable.

## 2. CONTRACT

2.1 The Customer's acceptance of a Quotation must be given in writing by providing a Purchase Order to ACC within 30 days of the date of the Quotation. On acceptance of a Quotation, this Contract commences. If ACC does not receive the Purchase Order within this 30-day period, the Quotation is no longer valid. If accepted in accordance with this clause, the Quotation will form part of this Contract.

2.2 If the Purchase Order is in any way inconsistent with the Quotation, ACC may then issue a new Quotation, which the Customer may then accept in accordance with clause 2.1. If the Customer does not accept the new Quotation in accordance with clause 2.1, no contract is formed. For clarity, no Customer Purchase Order terms which are inconsistent with these terms will apply to any ACC Services.

### 3. DELIVERY, TRANSFER OF TITLE AND RISK

- 3.1 ACC will make all reasonable efforts to deliver/provide the Services and / or Equipment to the Customer by the Delivery Date and to the Delivery Location. If ACC is unable to deliver by or on the Delivery Date or to the Delivery Location, then ACC will inform the Customer of the delay and the revised Delivery Date or Delivery Location (as applicable). Such revised Delivery Location will be as close as practicable to the Delivery Location listed in the Quotation.
- 3.2 ACC is not responsible for any Loss caused to the Customer or any third party by reason of any delay in delivering the Services and / or Equipment or delivery of the Services and / or Equipment to an alternate Delivery Location in accordance with clause 3.1.
- 3.3 Except as otherwise provided in the Contract, the Customer is responsible for off-loading the Equipment when delivered to the Delivery Location. All risk of loss or damage to the goods will transfer to the Customer on such delivery.
- 3.4 Title in the Equipment shall not pass to the Customer until ACC has been paid the Price and any other amounts owing to ACC in full.
- 3.5 If the Customer fails to accept delivery of any of the Services and or Equipment when the Services and or Equipment has arrived has been delivered at the Delivery Location, or ACC is unable to deliver the Services and / or Equipment in accordance with the Contract because the Customer has not provided appropriate instructions, documents, licences or authorisations:
- (a) risk in the Services and /or Equipment will pass to the Customer (including for loss or damage caused by ACC's negligence).
  - (b) the Services and /or Equipment

will be deemed to have been delivered; and

- (c) ACC may store the Equipment until the Customer collects the Equipment, whereupon the Customer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

### 4. PAYMENT

- 4.1 The Customer must pay ACC the Price in advance prior to manufacturing / preparation or in accordance with the provided quote. The Customer must pay each tax invoice rendered by ACC for the Equipment within the time specified and using the payment method specified on the tax invoice, and otherwise in accordance with this Contract.
- 4.2 If the Customer does not pay ACC in accordance with clause 4.2, ACC may refuse to provide the Equipment.
- 4.3 No payment shall be deemed to have been received until ACC has received cleared funds.
- 4.4 ACC reserves the right to charge the customer interest on any outstanding amount if the Customer does not pay ACC in accordance with this Contract. Interest is calculated monthly at the rate of 5% per month or part thereof from the due date until the date the outstanding money is paid.

### 5. GOODS AND SERVICES TAX

- 5.1 The Price is exclusive of GST unless otherwise specified.
- 5.2 Provided that ACC has issued a tax invoice for the supply to the Customer, if GST is payable in respect of that supply, the Customer must pay ACC the amount of that GST.
- 5.3 For calculating the GST paid to ACC pursuant to clause 5.2, the Price or any part thereof which is expressed or calculated in a currency other than Australian dollars shall be converted into Australian dollars:
- (a) using the method required to be

used by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or any relevant regulation, ruling or determination under that Act; or

- (b) If no method is specified by that Act or any such regulation, ruling or determination, using the relevant mid-market exchange rate quoted by Commonwealth Bank of Australia for the date on which ACC issues the tax invoice.

## 6. LIABILITY

- 6.1 ACC makes no warranties or representations under this Contract except those expressly set out herein. ACC does not exclude or limit the application of any provision of any legislation, including the *Trade Practices Act 1974* (Cth) or other equivalent legislation in any relevant applicable jurisdiction outside Australia, where to do so would contravene the legislation or cause any part of this Contract to be void. Subject to this, ACC excludes from this Contract all conditions, warranties and terms implied by legislation or general law or custom except any implied condition or warranty the exclusion of which would contravene any legislation or cause any part of this Contract to be void.
- 6.2 Subject to clause 6.3, ACC's total liability for any direct Loss suffered by the Customer or any third party by reason of any representation or implied warranty, condition or other term or any duty at common law, or under the express terms of this Contract, arising out of or in connection with any act or omission of ACC relating to its obligations under this Contract, the supply or non-supply of Services and / or Equipment, or the Use of Equipment by the Customer is limited to the total amount paid by the Customer for the Services and / or Equipment under this Contract.
- 6.3 ACC is not liable to the Customer or any third party for any indirect, special or consequential Loss or loss of business; loss arising out of any

delay or business interruption including the cost of overheads incurred during business interruption; loss arising out of postponement, interruption or loss of production; loss arising out of any inability to produce, deliver or process hydrocarbons; loss of opportunity; loss of use; loss of access; loss of goodwill; loss of business reputation; damage to credit rating; or special damages or damages, suffered by the Customer or any third party in any way arising out of, in connection with:

- (a) this Contract or under this Contract.  
(b) any act or omission of ACC in relation to this Contract.  
(c) the supply or non-supply of the Equipment; or  
(d) from the Customer's Use of the Equipment.

- 6.4 The Customer warrants that the Customer has not relied on any representation made by ACC not expressly stated in this Contract. The Customer agrees that all Services and or Equipment marketing materials provided or available to the Customer are for guidance purposes only and cannot be relied upon by the Customer in any way. The Customer acknowledges that to the extent ACC has made any representation that is not expressly stated in this Contract, the Customer has been provided with an opportunity to independently verify the accuracy of that representation.

## 7. INSURANCE

The parties agree to each maintain appropriate insurance in relation to the supply and Use of the Equipment (as applicable).

Each Party will indemnify the other against any claim or Loss in relation to the Services and Equipment in accordance with the obligations and requirements set out in this Contract.

## 8. INTELLECTUAL PROPERTY

ACC endeavours to ensure any intellectual property rights used in the Services and / or Equipment or in the manufacturing of the Equipment is owned or licensed by ACC.

Notwithstanding this, the Customer agrees that ACC is not responsible for any infringement of any intellectual property rights of any third party that may occur.

## 9. CONFIDENTIAL INFORMATION

- 9.1 Each party, except as permitted under clause 9.2, must keep all confidential information of the other party confidential and may only disclose confidential information of the other party:
- (a) to its employees, individual contractors and subcontractors who are aware and agree that the confidential information of the other party must be kept confidential, and either have a need to know or have been specifically approved in writing by the other party; or
  - (b) as required by law.
- 9.2 Notwithstanding clause 9.1, a party is not obliged to comply with clause 9.1 in relation to the confidential information of the other party if the confidential information is public knowledge, or the party became aware of the confidential information from a third party, in circumstances where there was no breach of any obligation of confidence or breach of this Contract.

## 10. SERVICES

- 10.1 ACC will supply the Services in accordance with this Contract. The Customer is solely responsible for satisfying itself as to the results of the Services or otherwise. ACC is not liable for any error or mistake made by the Customer in this respect.
- 10.2 The Customer acknowledges and accepts that ACC cannot warrant or guarantee that the Services may not be successful in meeting the Customer's goal provided that the delivery of the Services was done correctly as per the agreed procedures.
- 10.3 Subject to clause 6.1, the Customer acknowledges and accepts that

ACC provides the Services to its best ability and knowledge without warranty of any kind, express or implied, including but not limited to warranties fitness for a particular purpose.

- 10.4 Subject to clauses 6.1, the Customer acknowledges that ACC may or may not be the deliver the Services and is not liable for any defects or faults in materials, performance, process or workmanship in the Services. Where the Services are supplied via third party, ACC will endeavour to ensure the third party is delivering up to ACC and Customer's expectations.
- 10.5 Where the Services include remedial work or testing of obsolete or decommissioned Customer or end user assets, ACC will carry out such as per the agreed procedures however it will not be liable for any failure of such assets or pollution in any way related to such Services. The Customer acknowledges that all risk in relation to such assets remains with the Customer and indemnifies ACC against any claim or Loss related to the same.
- 10.6 The Customer is responsible for obtaining all necessary authorisations or approvals from all government bodies, statutory authorities, owners or occupiers of the relevant Services delivery Location to accept delivery of the Services and materials. ACC will provide the Services and/or Equipment assuming all necessary authorisations and approvals have been obtained.

## 11. PRODUCT

- 11.1 ACC will supply the Equipment in accordance with this Contract. The Customer is solely responsible for satisfying itself as to the suitability of the Equipment for the Customer's Use or otherwise. ACC is not liable for any error or mistake made by the Customer in this respect.
- 11.2 The Customer acknowledges and accepts that ACC cannot warrant or guarantee that the Specifications are, nor always will, remain the most reputable or accepted industry

standards.

- 11.3 Subject to clause 6.1, the Customer acknowledges and accepts that ACC provides the Equipment "as is" without warranty of any kind, express or implied, including but not limited to warranties of merchantability or fitness for a particular purpose.
- 11.4 Subject to clauses 6.1, the Customer acknowledges that ACC may or may not be the manufacturer of the Equipment and is not liable for any defects in materials or workmanship in the Equipment. Where the Equipment is supplied with a manufacturer's warranty then at the Customer's request and expense, ACC will endeavour to transfer the benefit of such warranty to the Customer.
- 11.5 The Customer is responsible for obtaining all necessary authorisations or approvals from all government bodies, statutory authorities, owners or occupiers of the relevant Delivery Location to accept delivery of the Equipment. ACC will not be obliged to provide the Equipment until all necessary authorisations and approvals have been obtained.
- 11.6 The Customer agrees that in its Use of the Equipment it will comply with all relevant local and national laws and regulations.

## 12. RETURNS

- 12.1 Where ACC considers that loss of or damage to the Equipment has occurred during transport or delivery of the Equipment, ACC shall, at its option, repair and / or replace the Equipment, but shall not otherwise be liable in respect of such Loss consequent thereon.
- 12.2 Unless any Loss referred to in clause 1 1.1 is notified in writing by the Customer to ACC within 24 hours of arrival of the Equipment to the Delivery Location, ACC will not be liable for such loss or damage.
- 12.3 If ACC forms the view that the damage was caused through the

fault of the Customer, or the Customer reports the damage to ACC after this 24-hour period has elapsed, any replacement or repair costs are the sole responsibility of the Customer.

- 12.4 The Equipment must not be returned to ACC without ACC's express permission in writing. Duly authorised returns shall be sent to ACC's premises at the Customer's expense. Any Equipment which has been returned by the Customer without ACC's written permission may be stored by ACC at the Customer's expense and risk.

## 13. FORCE MAJEURE

- 13.1 If performance by a party of any obligation under this Contract (other than an obligation of the Customer to make payment) is prevented, restricted or delayed by an event of Force Majeure which:
- (a) is beyond the control of the party affected.
  - (b) was not reasonably foreseeable and occurred without the fault or negligence of the party affected; and
  - (c) by the exercise of reasonable diligence, the party affected is unable to prevent or overcome,

then that party shall be excused from and will not be liable for failure in performance to the extent of that prevention, restriction or delay and the time for performance shall be extended accordingly, subject to the terms of clause 12.2.

- 13.2 If performance is delayed for more than four (4) months by Force Majeure and the parties have not agreed upon a revised basis for continuing the work at the end of the delay, then either party may after that period and while the cause of the non-performance still exists terminate this Contract by not less than 30 days' notice in writing to the other party.

## 14. NOTICES

- 14.1 Any notice or communication under this agreement (Notice) must be in writing, signed by a person duly

authorised by the sender, and emailed and faxed to the recipient's address as specified (as amended by Notice from time to time) in this Contract.

- 14.2 A Notice given in accordance with this clause is taken to be received, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight business hours after the transmission, the recipient informs the sender that it has not received the entire Notice, but if the delivery, receipt or transmission is not on a business day or is after 5.00pm on a business day, the Notice is taken to be received at 9.00am on the next business day.

#### 15. TERMINATION, SUSPENSION AND AMENDMENT OF PURCHASE ORDER

- 15.1 After the Customer has provided a Purchase Order in acceptance of a Quotation, the Customer cannot terminate or suspend the supply of the Services and / or Equipment or amend the Purchase Order under any circumstances except with the prior written agreement of ACC. If ACC agrees, the Customer guarantees and indemnifies ACC against all Loss or damage suffered because of the termination, suspension or amendment.
- 15.2 ACC may at any time give written notice to the Customer to terminate this Contract with such termination being effective from the date of the notice. ACC will then refund all monies paid by the Customer to ACC less any reasonable costs and outlay.

#### 16. GENERAL

- 16.1 The Customer may not assign, transfer or sub- contract any of its rights or obligations under this Contract without the prior written consent of ACC.
- 16.2 The parties agree that the Quotation overrides these terms and conditions to the extent of any inconsistency, and that this Contract takes precedence over any terms

and conditions of purchase of the Customer.

- 16.3 If any provision of this Contract is held invalid, unenforceable or illegal for any reason, this Contract shall remain otherwise in force apart from such provision which shall be deemed deleted.
- 16.4 No right under this Contract shall be deemed to be waived except by notice in writing signed by each party. A waiver by a party of any of its rights under this Contract does not operate as a waiver of any other right or as a future waiver of that or any other rights.
- 16.5 This Contract may only be varied by written agreement between the parties.
- 16.6 This Contract constitutes the entire agreement between the parties and no warranties, representations, terms, obligations or covenants of any nature not contained in it shall be of any effect.
- 16.7 Each party must, at its own cost, do or cause to be done all acts and things necessary or desirable to give effect to this Contract and refrain from doing acts and things that could hinder performance by any party of this Contract.
- 16.8 This Contract is governed by the laws applicable in Western Australia, and the parties accept and submit to the exclusive jurisdiction of Western Australia.