

1. **Definitions and Interpretation**

"Affiliate" means any entity which is controlled by a party, which controls a party hereto or which is under common control with a party hereto. For purposes of this agreement, "control" of an entity means the direct or indirect ownership of more than fifty per cent (50%) of the shares or interests entitled to vote for the directors of such entity or equivalent power over the management of such entity, for so long as such entitlement or power exists; **"Amount Payable"** means the amount of any debit balance shown on an invoice; **"Connected Equipment"** means equipment, including goods, which have remote monitoring hardware and/or software installed, connected, and activated by Kwatani or a Kwatani affiliate for the customer pursuant to a contract; **"Confidential Information"** means any information or data, in respect of a party or its affiliates or representatives or their respective operations, including but not limited to reports, brochures, technical documents, specifications, part numbers, service manuals, drawings, information, interpretations, production methods, records, operations, processes, plans, product information, price lists, market opportunities and customers containing or otherwise reflecting any information that is or may be proprietary and/or includes, but is not limited to, trade secrets, concepts, know-how, designs, patent applications, inventions, software, (cross) references, processes, business plans, financial information, that a party discloses to the other party or its affiliates or representatives in writing, orally or otherwise; **"Contract"** means the order acceptance, these terms, the quote and the order and any other document which is attached to or incorporated by reference in the order acceptance, these terms or the quote; **"Customer"** means the person who orders the goods and/or services from Kwatani and includes any permitted transferee; **"Data Protection Legislation"** means (i) the Protection of Personal Information Act, No. 4 of 2013, and/or (ii) if directly applicable, the General Data Protection Regulation ((EU) 2016/679) ("**GDPR**"), and/or (iii) any applicable national laws, regulations and legislation in relation to data privacy, as amended or updated from time to time; **"Day(s)"** means all calendar days, including weekends and holidays; **"Delivery Date"** means the date for delivery of the goods and/or services as specified in the contract; **"Due Date"** means (i) for all capital equipment sales or any sale to customers without a valid credit facility 50% placement of order and 50% before delivery, or (ii) for replacement equipment, parts, consumables and services, 30 days from the date of statement for customers with a valid credit facility. **"Equipment Monitoring Service"** means the services provided by Kwatani or a Kwatani affiliate in connection with receiving input data as further detailed in the contract which may include, but is not limited to, availability to connected equipment data via a web managed (or similar) subscription service received following online acceptance of relevant web portal terms and conditions; **"Force Majeure"** shall be any event or circumstance beyond Kwatani's control and shall include but not be limited to any shortage of electricity, lack of production, raw material shortages, war, strikes, lock outs, labour disputes, fires, floods, epidemics or pandemics, acts of God or public enemy, malicious or accidental damage, delays

in transport or delays by a carrier servicer, breakdowns in machinery, non-performance or failure by any bank in relation to sending or receiving money under this contract due to trade or compliance restrictions, trade sanctions or embargoes (including new, expanded or changed in scope), and restrictions or prohibitions by any government or any semi-government authorities or any new circumstance, act or omission of the customer or a third party that would or is likely to result in Kwatani being in breach (or in the reasonable opinion of Kwatani is likely to become in breach) of any new, changed or existing sanctions, embargos or laws, (including extra-territorial laws), any financing arrangements, including any loan facilities or issued notes of Sandvik AB (publ.) or any of its affiliates, or this contract; **"Goods"** means the goods specified in the order (including any embedded or standalone software) which Kwatani or a Kwatani affiliate agrees to provide in the order acceptance; **"Input Data"** means data that is generated, collected, recorded or uploaded either by, from or in connection with, the connected equipment, including utilization information regarding the connected equipment and the standard industry data SAE J1939 but excluding any data or information regarding Kwatani's equipment control systems including how to achieve functional performance; **"Intellectual Property"** means including but not limited to any and all patents, copyrights, trademarks, trade dress, knowhow, trade secrets, industrial design rights, trade secrets, know-how, designs, inventions, structures and algorithms for machine learning (whether created or obtained through machine learning) and all other intellectual property rights or intellectual property (whether registered or unregistered) anywhere in the world. Intellectual property shall also include any improvements, enhancements and derivative works based on any pre-existing Intellectual Property; **"Kwatani"** means Kwatani (Proprietary) Limited the Kwatani affiliate entity specified in the order acceptance; **"Kwatani Data"** means aggregated and/or anonymous data which is created, generated, derived or produced by Kwatani or a Kwatani affiliate based on (i) input data and/or output data, or (ii) otherwise created through the use of the equipment monitoring service, such data is never to contain any personal data; **"Kwatani Warranty"** means the Kwatani standard warranty in force at the time of entry into the contract; **Order** means the purchase order issued by the customer to Kwatani for the goods and/or services; **"Order Acceptance"** means Kwatani's written acceptance of the order and consequent agreement to the contract by either delivering the goods and/or services or issuing the customer with a document named 'Order Acceptance' (or similar); **"Output Data"** means input data that has been processed by Kwatani or the Kwatani affiliate in order to provide deliverables to the customer as part of the equipment monitoring service which always excludes any data or information regarding Kwatani's equipment control systems including how to achieve functional performance; **"Personal Information"** has the meaning given in the Protection of Personal Information Act, No. 4 of 2013; **"POD"** means proof of delivery issued to the customer by Kwatani; **"Purpose"** means Kwatani's and SRP's business purposes including, development, optimization, improvement, marketing, scheduling, and support of Kwatani and SRP's other current and

future goods and services offerings, parts deliveries, software and hardware, product support, product development and other business improvements or offerings, including aggregating the Kwatani data with other data for the purpose of providing performance comparisons or benchmarking to Kwatani or SRP's other customers; **"Quote"** means the quote or proposal document issued by Kwatani to the customer for the goods and/or services; **"Representatives"** means any director, employee, officer, adviser, auditor, agent, consultant, distributor or subcontractor of a party or its affiliate; **"Sanctioned Person"** means any natural or legal person or party: (a) listed on, or directly or indirectly owned or controlled by one or more persons listed on, a sanctions list; (b) owned or controlled by, or acting on behalf of, or for the benefit of, any person on a sanctions list; (c) a government of any country that is the subject of sanctions or an agency or instrumentality of, or a person directly or indirectly owned or controlled by, such a government; or (d) that is resident or located in, operating from, or incorporated under the laws of (as applicable) a sanctioned territory; **"Sanctioned Territory"** means Crimea, Luhansk area under control of Luhansk People's Republic, and Donetsk area under the control of Donetsk People's Republic, Cuba, Iran, North Korea, the Russian Federation, Syria or any other country which, after the date of this contract, becomes the target of comprehensive, country-wide or territory-wide sanctions; **"Sanctions"** means any trade or economic sanctions, laws enacted, administered, imposed or enforced by any sanctions authority; **"Sanctions Authority"** means: (a) the United Nations Security Council; (b) the United States of America; (c) the United Kingdom; (d) the European Union; and (e) any country or government imposing sanctions applicable for a specific transaction or sale to a specific end customer including the relevant sanctions authorities of any of the foregoing; **"Sanctions List"** means: (a) the Consolidated United Nations Security Council Sanctions List; (b) the Specially Designated Nationals and Blocked Persons List or the Sectoral Sanctions Identification List maintained by the US Office of Foreign Assets Control; (c) the Consolidated List of Persons, Groups and Entities subject to EU Financial Sanctions; (d) the Consolidated List of Financial Sanctions Targets or List of persons subject to restrictive measures in view of Russia's actions destabilising the situation in Ukraine, maintained by the UK Treasury; or (e) any similar list maintained by, or public announcement of sanctions made by, any other sanctions authority; **"Sandvik Group"** means any subsidiary directly or indirectly owned and/or controlled by Sandvik AB (publ.); **"Security Interest"** means a mortgage, transfer, pledge, notarial bond, lien or security cession, or any security or preferential interest or arrangement of any kind which allows a creditor to have its claims satisfied prior to other creditors from the proceeds of an asset (including retention of title, deposit of money by way of security or a conditionally repayable deposit or flawed asset arrangement) and includes any interest which can be registered under any law of any other jurisdiction that has an analogous or similar effect; **"Services"** means the services specified in the order which Kwatani agrees to provide in the order acceptance, including, where applicable, the equipment monitoring service;

“SRP” means Business Area Sandvik Rock Processing Solutions in which Kwatani is a Business Unit; “Terms” means these Terms and Conditions of Supply; “Unsafe” means unacceptable actual or potential hazards and incidents relating to safety, health or the environment; “VAT” means any value-added tax, goods and services tax, consumption tax, or similar tax imposed by legislation (including but not limited to the Value Added Tax Act, No. 89 of 1991).

In these terms, unless the context otherwise requires: headings are for ease of reference only and do not affect interpretation; the singular includes the plural and vice versa; a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time; a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity; a reference to a legislative requirement or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and the meaning of general words is not limited by specific examples introduced by the words including, for example or similar expressions. The rule of interpretation that a written agreement shall be interpreted against the party responsible for the drafting or preparation of that agreement shall not apply. No amendment, modification, variation or waiver of any provision of the contract shall be of any force or effect unless confirmed in writing and signed by both parties.

2. Terms of Supply

2.1. Kwatani may accept or reject any order in its absolute discretion and for its sole interest at any time.

2.2. Where Kwatani has provided a purchase or credit facility to the customer, Kwatani may withdraw that facility either on the basis specified in the contract in respect of that purchase or credit facility or, if no such basis is specified at any time without prior notice, and Kwatani reserves the right to review the extent, nature and duration of such facilities at all times.

2.3. Any limit set by Kwatani on the facility shall be for Kwatani’s internal purposes only and shall not constitute a defence by the customer to a claim for payment of all amounts payable.

2.4. Kwatani may without notice suspend or terminate the supply of goods and/or services or the granting of any rights where any amount payable remain(s) unpaid after the due date and Kwatani can recover all costs and losses associated with such suspension or termination action. Kwatani may request customer to provide a security interest for payment as and when required by Kwatani. If so required, Kwatani will not process any orders until the security interest required by Kwatani has been provided by the customer in accordance with this clause.

3. Evidence of Contract & Precedence of Documents

3.1. The contract contains the entire agreement between Kwatani and the customer with respect to its subject matter and supersedes all prior communications, understandings, and agreements between the parties whether oral or written. The customer acknowledges that in entering into the contract it does not rely on any communication that has not been expressly set out in the contract. No terms and conditions submitted by either party that

are in addition to, different from, or inconsistent with these terms shall be binding upon either party unless specifically and expressly agreed in writing. Nothing in the contract shall exclude or limit liability for fraud, gross negligence and/or wilful misconduct.

3.2. These terms apply to the exclusion of any other terms or conditions that may be sought to be invoked by the customer (including without limitation any terms referenced in any order or on any online website or electronic platform), or which are implied by trade, custom, practice or course of dealing. Kwatani will not supply on, and expressly rejects:

3.2.1. the customer’s standard terms and conditions of purchase; and

3.2.2. any terms and conditions other than the terms and conditions stated herein.

3.3. The customer expressly acknowledges and agrees that any order which it issues to Kwatani shall be an offer to procure goods and/or services from Kwatani under these terms, and that upon order acceptance, both Kwatani and the customer shall be bound by the terms of the contract.

3.4. A contract for the supply of goods and/or services is made upon order acceptance.

3.5. By accepting possession of any goods or receiving the benefit of any services, the customer acknowledges that goods and/or services are supplied in accordance with the terms and conditions of these terms.

3.5.1. if there is any conflict or inconsistency between the parts constituting the contract the parts will rank in the following order: 1. the order acceptance; 2. any other document attached or referred to in the order acceptance; 3. the terms; 4. any other document attached or referred to in the terms; 5. the quote; 6. any other document attached or referred to in the quote; and 7. the order.

4. Delivery and Risk

4.1. Kwatani will deliver the goods to the address set out in the order acceptance. Risk in the goods shall pass to the customer in accordance with the Incoterm specified in Clause 6.1. Delivery may be made in one or more instalments and at different times or by separate shipments or deliveries. Adherence to the delivery date or delivery period is determined by the date of POD by Kwatani. The customer’s obligation to take delivery of the goods is a material obligation under this contract.

4.2. If Kwatani is not able to deliver the goods to the customer on the delivery date due to the customer’s inability, unavailability or unwillingness to accept delivery, Kwatani reserves the right to dispatch any goods at Kwatani’s discretion or put them into storage at the sole expense and risk of the customer. Such cost shall be immediately due and payable on demand, but such liability shall not affect customer’s obligation of purchase of the goods and the right of Kwatani to claim damages for breach of such obligation.

4.3. If the customer fails to collect or take delivery of the goods within 3 months of the delivery date, Kwatani shall be entitled, without prejudice to its other rights, to terminate all or part of the contract, to dispose of the goods and to charge the customer compensation of (i) for standard goods, 15% of the purchase price; and (ii) for completed non-standard goods or custom made to order goods 100% of the purchase price, for partially completed non-standard goods or custom made to order goods 60% of the purchase price or the cost of materials and labour incurred until the cancellation date, whichever is higher, to be paid by the customer within 10 days of Kwatani issuing the corresponding invoice. The parties agree that such

sums payable to Kwatani under this clause are a genuine pre-estimate of the costs and losses which Kwatani would suffer from the customer failing to take delivery of the goods.

4.4. Kwatani will deliver the services in accordance with the service delivery schedule provided to the customer in the contract.

4.5. Excluding as set out in Clause 4.6, the delivery date is estimated in good faith and while reasonable effort is made to meet an estimated delivery date or the service delivery schedule Kwatani will not be liable for any loss incurred by the customer as a result of delay or failure to make any supply of goods and/or services by the delivery date. Further, Kwatani will not be liable for any loss incurred by the customer as a result of any failure to observe any of these terms due to an act or omission of the customer or an event of Force Majeure.

4.6. Where Kwatani expressly agrees that liquidated damages will apply in either the quote or the order acceptance, if Kwatani fails to supply the goods and/or services by the delivery date the customer will be entitled to liquidated damages calculated at the rates stated in the quote or the order acceptance. Unless otherwise expressly agreed by Kwatani in the quote or order acceptance, the maximum amount of liquidated damages Kwatani will be liable for in any contract will be no greater than 5% calculated in accordance with Clause 4.7 below.

4.7. The liquidated damages shall only be calculated on the value of the goods and/or services which are late.

4.8. The customer shall forfeit its right to liquidated damages if it fails to lodge a claim in writing for such damages within three months after the delivery date.

4.9. Subject to Clause 4.10, these liquidated damages shall be the customer’s sole remedy for Kwatani failing to deliver the goods and/or services by the delivery date.

4.10. Should the rates of liquidated damages payable under this clause be found to be a penalty or unenforceable then the parties agree that Kwatani’s liability to the customer will instead be general damages at law. Such liability for general damages shall at no time exceed the amount of liquidated damages which would have been due under the contract had such liquidated damages been enforceable. The parties agree that the liquidated damages mentioned above are a genuine pre-estimate of their loss.

4.11. During the continuance of an event of Force Majeure or the effect of an act or omission of the customer, Kwatani’s obligations under the contract will be suspended and timeframes adjusted accordingly. Kwatani shall not be in breach of this contract or otherwise liable for any failure or delay in the performance of such obligations. If there is any other consequences to the supply of the goods and services (including transport and logistics) due to circumstances outside of the service provider’s control Kwatani will provide the customer with details of the consequences. If there is any impact, such as an increase in the price of the goods and services (including transport and logistics costs), Kwatani reserves the right to pass through such cost to the customer (acting reasonable). Any increase will be calculated in accordance with any rates in the contract, or if there are no rates, by a reasonable amount.

4.12. Orders cannot be cancelled, terminated, changed or postponed by the customer without the prior written authorisation and agreement of Kwatani and customer will indemnify Kwatani (less of any cancellation fee agreed in the quote) for any loss,

- cost or damage which arise as consequence of any breach in relation hereto.
- 4.13.** The customer must notify Kwatani in writing within 7 days of date of POD of any damage or shortage to the goods. If the customer does not notify Kwatani within such time period, the customer is deemed to have accepted the goods unconditionally.
- 4.14.** All goods incorrectly supplied to a customer under a contract will be credited in full. Freight costs to the receiving Kwatani designated warehouse will be covered by Kwatani. Notification of incorrect supply of goods must be formally made available to Kwatani within 21 days of POD, otherwise, the goods will be deemed accepted by the customer.
- 5. Customer Returns**
- 5.1.** Returns of goods not affected by defects will only be accepted by Kwatani from customer with the prior agreement of Kwatani in writing (which acceptance and agreement are within Kwatani's absolute and sole discretion). All items which are accepted as returns will be subject to a handling charge.
- 5.2.** Subject to Clause 5.1 and 13.2, and excluding as set out in Clause 4.14, the following conditions apply to all returned goods:
- 5.2.1.** the customer has to notify Kwatani within 7 days from the date of POD;
- 5.2.2.** after notification Kwatani generates a written "Return Note" instructing the customer to return the goods to a Kwatani designated warehouse;
- 5.2.3.** the customer has 14 days from the date of the Return Note for the goods to be received at the Kwatani designated warehouse;
- 5.2.4.** non-returnable items regardless of other criteria include: gaskets; seals; glass; belts; hoses; opened kits; any custom equipment or items made to order; non Kwatani goods.
- 5.3.** Kwatani will not accept any liability, risk or responsibility for returned goods unless there has been prior written arrangement by way of a Kwatani generated Return Note. The Return Note provides preliminary approval for return of goods. Full and final acceptance is at Kwatani's sole discretion and is subject to the following conditions:
- 5.3.1.** a copy of the Return Note authorisation must accompany the goods;
- 5.3.2.** goods will be subject to a visual and technical inspection upon receipt at the designated warehouse;
- 5.3.3.** goods returned must be undamaged, returned in original packaging (where applicable) and re-saleable as new;
- 5.3.4.** goods must not have been fitted or otherwise used in any manner;
- 5.3.5.** goods rejected by the receiving warehouse due to non-compliance with the above conditions will be held at the warehouse pending instructions from the customer;
- 5.3.6.** goods that have been rejected in accordance with Clause 5.3.5. that are not collected by the customer will be disposed of if not collected within 3 months from receipt at the Kwatani designated warehouse.
- 5.4.** If the goods are returned within 14 days from date of the Return Note, but not later than 30 days of date of POD, the customer receives full credit of the invoiced value. If the goods are returned more than 30 days from date of POD the customer receives no credit.
- 5.5.** Freight costs to the Kwatani designated warehouse for returned goods are the responsibility of and to the customer's account.

Price and Payment

Unless otherwise specified in the contract, all prices are quoted ex works (as per Incoterms 2020) and do not include packaging, freight, insurance, VAT, other taxes, customs and/or excise levies or duties (or similar). If variations should occur prior to delivery the price may be amended by Kwatani. If the customer requests a variation to the order before delivery of the goods or performance of the services, Kwatani may, at its discretion accept or reject a request to vary an order. Where an order is varied, the price of the order will increase or decrease (as the case requires) by an amount agreed between the parties, or failing such agreement, by an amount determined by Kwatani, acting reasonably. Where the amount is to be determined by Kwatani, Kwatani will calculate the amount by reference to Kwatani's relevant Market Area Price List, costs, expenses, losses and damages suffered, off-site overheads, profit and such other reasonable rates and charges in connection with the variation.

6.1. If in any jurisdiction VAT is payable by Kwatani to a tax authority in relation to the supply of the goods and/or services, an amount equal to such VAT will be calculated and charged to the customer as an additional amount. To the extent that a payment to a party under or in connection with this contract is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of VAT. Where a sale of goods is treated as not subject to VAT on the basis the customer or its freight forwarder will move the goods from one country to another country, the customer will provide to Kwatani, upon request, all transport related documentation and (if applicable) customs documentation to demonstrate the cross-border movement of the goods. If the customer fails to provide such documentation within 60 days of invoicing or the goods were not moved cross-border within the timeframe prescribed the tax authorities at the time, the customer will pay to Kwatani an amount equal to any VAT for which Kwatani is required to account to a tax authority together with any penalties and/or interest imposed on Kwatani by a tax authority in relation to that supply of goods.

6.2. Unless otherwise specified in the contract, Kwatani will invoice the customer upon delivery of the goods and/or services. The customer will pay the whole amount payable on or before the due date without any set off, withholding or deduction. The customer agrees that if any amount payable is not paid by the due date Kwatani shall be entitled to charge and recover interest at the rate of 1.5% per month or part thereof on the amount payable overdue for the period between the due date until payment is made in full. Payment received from the customer is valid once honoured or funds are cleared.

6.3. The customer agrees to indemnify and keep indemnified Kwatani against any costs incurred by Kwatani in connection with the customer's failure to pay on the due date, including but not limited to legal fees on an attorney and own client scale, including collection charges, on an indemnity basis and debt collection agency fees.

6.4. A certificate under the hand of any director or manager of Kwatani as to the existence and the amount of the customer's indebtedness to Kwatani at any time, as to the fact that such amount is due and payable, the amount of interest accrued thereon and as to any other fact, matter or thing relating to the customer's indebtedness to Kwatani, shall be *prima facie* proof of its contents and of the

amount of the customer's indebtedness for the purpose of provisional sentence or summary judgment or any other proceedings of whatsoever nature against the customer in any competent court, and shall be valid as a liquid document for such purpose. It shall not be necessary to prove the appointment and authority of the person signing such certificate.

6.6. The customer acknowledges that the bank account detail of Kwatani is unlikely to change and Kwatani will notify the customer in writing on Kwatani letterhead sent by registered mail of any change in Kwatani's bank account details. Prior to the customer acting on such letter, the customer shall verify the purported change in bank account detail by telephone with the Financial Director of Kwatani and the customer shall further confirm in writing on customer's official letterhead addressed to the Financial Director referring to such telephone call and the content thereof. Prior to making payment into the new bank account, the customer shall confirm that the Financial Director has received such letter. Should payment of amounts owing be made in any manner other than as set out above, the risk and liability to ensure that payment due in terms of this contract remain vested with the customer. The customer accepts the full risk and liability should any payment be lost, stolen, or misappropriated and the customer shall immediately make a proper payment in replacement thereof.

Retention of Title

7.1. The title in, right to and benefit of (including ownership) any goods sold and delivered by Kwatani to the customer shall not pass to the customer until the total amount payable for the goods (plus all accrued interest (if any) payable under Clause 6) has been paid in full.

7.2. Until title in any goods sold and delivered by Kwatani has passed to the customer in accordance with Clause 7.1 above:

7.2.1. the customer shall keep those goods separated from any other goods of the customer so that they remain readily identifiable as Kwatani's property;

7.2.2. not remove, deface or obscure any identifying mark or packaging on or relating to the goods; and

7.2.3. the customer shall notify any landlord of any premises leased by the customer where the goods are stored that the goods are Kwatani's property.

7.3. In addition to all other rights which Kwatani has under the contract or applicable laws, Kwatani will be entitled to enter the premises of the customer (including leased premises) at any time (to the extent permissible by law) to recover possession of those goods for which the amount payable has not been made by the due date. It is agreed between Kwatani and the customer that where Kwatani enters the premises of the customer to take possession of the goods and it is not possible to identify which goods are goods owned by Kwatani but are in the possession of the customer, the goods will be deemed sold to the customer in the same sequence that the customer took delivery of the goods. If the quantity of the goods exceeds the amount owing, Kwatani will be entitled to determine which of the goods it claims ownership in.

7.4. The customer must keep the goods insured against all risks for goods of that kind from the time the risk in the goods passes to the customer, until the time the title in the goods passes to the customer. If requested by Kwatani the customer will provide to Kwatani a copy of the insurance policies.

7.5. If before title to the goods passes to the customer, the customer becomes subject to an insolvency event, then, without limiting any other right or remedy Kwatani may have, the customer's right to

resell the goods or use them in the ordinary course of its business ceases immediately; and Kwatani may at any time: (i) require the customer to deliver up all goods in its possession that have not been used, or irrevocably incorporated into another product; and (ii) if the customer fails to do so promptly, enter any premises of the customer or of any third party where the goods are stored in order to recover them.

8. Warranty

8.1. The Kwatani warranty applicable at the date of order acceptance shall apply to the goods supplied by Kwatani and shall be made available to the customer at the time of the contract.

8.2. To the extent that Clause 8.1 does not apply, Kwatani warrants that the goods manufactured by Kwatani shall, under proper use, be free from defects in materials and workmanship and substantially conform to the contract for a period of 3 months from the date of delivery. In this Clause 8 "proper use" means installation, commissioning, operation and maintenance in accordance with Kwatani documentation and "defects" means any defect and/or omission in materials or workmanship and any nonconformity with the contract. In no event does Kwatani give any warranty to parts or components manufactured and/or supplied by any third party, unless otherwise agreed.

8.3. Subject to Clause 13.2, the warranties set out in Clauses 8.1 and 8.2 are in lieu of all other warranties or conditions express, implied or statutory, including but not limited to warranties of satisfactory quality and fitness for a particular purpose and any remedies for consequential or other loss against a manufacturer of the goods. No other warranties express or implied are given unless they are expressly given by Kwatani in writing.

8.4. To the extent that Kwatani is unable by law to exclude its liability, Kwatani's obligations under this Clause 8 shall be limited at Kwatani's option to making good by repair or replacement of any goods in which any defect appears or in the case of services the cost of providing the services again. Any warranty claim must be notified in writing by the customer to Kwatani within the applicable warranty period.

9. Intellectual Property

9.1. Kwatani is and will remain the sole owner of all intellectual property comprised in and/or relating to the goods and/or services; and any intellectual property created in connection with the performance of the contract.

9.2. No licence is hereby granted directly or indirectly under any patent, invention, trademark, discovery, copyright or other intellectual property held, made, obtained or licensable by Kwatani now or in the future, other than as expressly set out in the contract.

9.3. Upon order acceptance and, subject to the full payment of the price for the goods and/or services, Kwatani grants to the customer a non-exclusive, non-transferable, non-assignable, non-sub-licensable licence to use Kwatani's intellectual property comprised in and/or relating to the goods and/or services, strictly limited to the extent necessary for installing and operating the goods originally delivered by Kwatani, in accordance with manuals and use instructions supplied by Kwatani, and for receiving the services. Unless otherwise specified in writing, this limited license shall continue unless terminated pursuant to these terms. Nothing in this contract permits the customer to copy, reproduce, modify, adapt, alter,

translate, reverse engineer, 3D copy/print or create derivative works from any goods or services or of Kwatani's intellectual property, in all or in part, without Kwatani's prior written consent. If the customer uses any of Kwatani's intellectual property in breach of this contract, Kwatani may immediately terminate or revoke such rights, in all or in part in its sole discretion.

10. Confidential Information

10.1. The customer agrees to only use Kwatani's confidential information to exercise its rights and perform its obligations under or in connection with this contract. The information remains the property of Kwatani at all times.

10.2. Each party undertakes that it shall not at any time disclose to any third party any confidential information, except as permitted by Clause 10.3.

10.3. Each party may disclose the other party's confidential information:

10.3.1. to its affiliates and/or representatives who need to know confidential information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this contract, provided that the disclosing party takes all reasonable steps to ensure that its affiliates and/or representatives comply with the confidentiality obligations contained in this Clause 10 as though they were a party to this contract. The disclosing party shall be responsible for its affiliates and/or representatives' compliance with the confidentiality obligations set out in this Clause 10; and

10.3.2. as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

10.4. The obligations imposed by Clause 10 shall not apply to any confidential information which is (i) in the public domain other than as a result of breach of an obligation by the other party; (ii) lawfully acquired from a third party who owes no obligation of confidence in respect of the information; (iii) independently developed the recipient or in the recipient's lawful possession prior to receipt; or (iv) required by mandatory law or by order of a judicial or governmental or regulatory authority.

10.5. Each party reserves all rights in its confidential information. No rights or obligations in respect of a party's confidential information other than those expressly stated in this contract are granted to the other party or to be implied from this contract.

Data

11.1. The customer agrees that Kwatani may collect, store, analyse and process any input data and output data in order for Kwatani to:

11.1.1. provide the customer with the equipment monitoring service (including any services in relation or in connection thereto provided by Kwatani or its representatives); and

11.1.2. develop Kwatani data to use for the purpose.

11.2. Unless otherwise agreed, the customer agrees that Kwatani may allow Kwatani representatives (e.g. distributors or dealers) who sell or resell goods and provide Kwatani equipment and services, permission to access and process output data solely for the purpose of enabling such third party to effectively conduct services to the customer within the scope of its dealership, or such other services that the customer have or may subscribe or register for as part of the digital service whereby the a Kwatani distributor will provide such service. The services may include monitoring equipment hours, equipment productivity or assisting or conducting aftermarket services or similar.

11.3. All rights, title and interest in and relating to the Kwatani data will be retained by Kwatani.

11.4. All rights, title and interests in or relating to the input data and output data will be retained by the customer to use for its own internal business purposes. Except as permitted by Kwatani in writing in advance, the customer agrees not to disclose input data or output data, in whole or in part (regardless of format), to any third party outside the customer's group of companies; provided, however, that the customer may disclose such information to third party service providers (to the extent necessary for such service provider to be able to provide service of the goods to the customer) having signed reasonable confidentiality undertakings with the service provider. During the term of the equipment monitoring service, Kwatani shall, upon the customer's written request provide a copy of any customer-specific input data and/or output data stored by Kwatani from time to time. The customer will not install any third-party hardware or software in or onto the goods, nor connect it to any third-party computer or automation system without the prior written consent from Kwatani.

11.5. Kwatani shall apply the same security and confidentiality standards to the input data and output data as it applies to its own commercially sensitive data.

11.6. The equipment monitoring service is a service provided by Kwatani based on input data sent by customer to Kwatani. If and to the extent input data and/or output data contains any personal data, both parties agree to comply with all applicable requirements of the data protection legislation. for the purposes of the data protection legislation, the customer is the data controller (as defined in the GDPR) or its equivalent under any applicable national laws and Kwatani is the data processor (as defined in the GDPR) or its equivalent under any applicable national laws for such personal data. For the avoidance of doubt, the customer is solely responsible to ensure that it has provided all necessary notices to relevant data subjects (as defined in the GDPR) or its equivalent under any applicable national laws and, if deemed necessary by the customer, that appropriate consents have been obtained to enable the lawful transfer and processing of input data and/or output data by Kwatani and its subcontractors as described in the contract. The customer hereby agrees that Kwatani, at its discretion, may engage any subcontractor inside or outside the EU/EEA as a sub-processor for the processing of Personal Data hereunder, provided that Kwatani shall remain responsible in relation to customer for the acts and omissions of such subcontractor.

11.7. The customer acknowledges that the equipment monitoring service is based on input data sent to Kwatani. Kwatani cannot guarantee that the equipment monitoring service completely reflects the factual condition of the connected equipment and it is the customer's sole responsibility to review the information in relation to the equipment monitoring service and confirm the actual condition of the connected equipment accordingly.

11.8. Kwatani warrants any hardware and service in accordance with the contract and otherwise in accordance with the Kwatani warranty. Kwatani makes no separate representation or warranty or statement concerning the equipment monitoring service or software, its use, performance, results obtained, integration, satisfactory quality, suitability for any customer requirements or given or intended purpose or situation, or information technology systems or its virus-free, error free or uninterrupted operation, or that the equipment monitoring service or software will not affect or disrupt any information technology systems. Kwatani does not provide any

representation or warranty as to the accuracy of any input data and/or output data and makes no statement about the suitability of the equipment monitoring service for a given situation. Unless otherwise agreed, Kwatani shall be under no obligation to store any customer specific data except for input data.

- 11.9. The customer agrees to indemnify and keep indemnified and fully reimburse Kwatani from and against any and all actions, claims (including counterclaims), proceedings, costs (including all reasonable legal costs), losses, damages, fines, penalties (including punitive or exemplary damages) and all other liabilities resulting from any obligations, acts and/or omissions by the customer under Clause 11.6 except where and to the extent that such violation is due to Kwatani's breach of its obligations under Clause 11.6.
- 12. **Software and Computer Control Systems**
- 12.1. Where the sale of any goods/services and or connected equipment comprises also software or systems ("Software") the customer is granted, during the term of a contract, a non-exclusive, non-transferable, non-sublicensable, and revocable right to use the relevant software in accordance with the terms set forth in the contract, while title to and any and all rights relating to the software shall always remain vested in Kwatani.
- 12.2. The customer must not, without the prior written consent of Kwatani, modify any software or remove it from the goods or connected equipment, make copies of the relevant software or sell, licence, transfer or otherwise dispose of or distribute the software or use it for any other purpose to the extent necessary for installing, operating and maintaining the goods. The customer shall ensure that also its representatives comply with this provision.
- 12.3. The customer acknowledges that the equipment monitoring service is exclusively provided to the customer and cannot be assigned without Kwatani's prior written consent. The customer undertakes to notify Kwatani if the customer sells, leases, rents or otherwise assign or transfer the connected equipment and notify the new customer and/or user that the equipment is connected.
- 12.4. Other than the connected equipment, the customer must have computer and network infrastructure that meets the requirements specified by Kwatani at the time of conclusion of this contract ("Minimum Technical Requirements"). The customer acknowledges and agrees that the performance of the service is dependent upon the customer's information technology equipment meeting the minimum technical requirements. the customer must throughout the term of this contract ensure that its network infrastructure meets the minimum technical requirements.
- 12.5. Where third party or open-source software is supplied the terms and conditions of such licence will form part of the contract and such license terms shall, unless otherwise expressly stated in contract, apply in lieu of these terms as regards the customer's use of such third-party software. Kwatani does not warrant any third party or open-source software and expressly excludes any liability for the same, including without limitation with regard to any infringement of any third-party intellectual property right. Where the customer has other software and hardware, the customer's warranty rights shall be contained in the relevant end user licence contracts.
- 12.6. Any license granted or implied under this contract can be revoked at any time.
- 12.7. The customer will at all times indemnify Kwatani and hold harmless and defend Kwatani and its

representatives from and against all liabilities, costs and expenses suffered or incurred by any of those indemnified or a third party including, without limitation, all reasonable legal fees, arising out of or in connection with the delivery of or use of the software by the customer, except to the extent that any liability, loss or damage is solely and directly caused by negligence of Kwatani.

Liability

To the extent permitted by law, neither party shall be liable to the other party under any cause of action (whether arising in contract (including under any indemnity or warranty), in tort or delict (including negligence), for breach of statutory duty or otherwise) for any loss or damage that comprise: (a) punitive or pure economic cost; (b) indirect, incidental, special or consequential loss or damage; (c) economic loss; (d) loss of opportunity; (e) loss of production; (f) loss of use; (g) loss of sales; (h) loss or depletion of goodwill; (i) loss of profit; (j) loss of anticipated profit; (k) loss of revenue (excluding the charges payable to Kwatani), (l) loss of data, in each case, whether or not reasonably foreseeable or in the contemplation of the parties at the time the contract was entered into.

To the extent permitted by law, and subject to Clause 13.1, at all times, the customer indemnifies Kwatani against any claim which may be made against Kwatani by any other person in respect of any matter for which the liability of Kwatani is excluded above. Kwatani's total aggregate liability shall be capped at 100% of the amounts paid to Kwatani under the relevant order acceptance (which for the avoidance of doubt also shall include any price reduction or market value for replaced or terminated goods and/or service claimed by the customer), except nothing in this Clause 13.2 excludes or restricts Kwatani's liability for death or personal injury caused by the wilful misconduct or negligence of Kwatani suffered or incurred by the customer in connection with the goods and/or services.

Sanctions, Export Control, End-User Assurance etc.

The customer certifies from the date of this contract on an ongoing basis that: it shall not use, re-export, transfer or retransfer the goods for military end-use or to a military end user; it shall not re-export, transfer or retransfer the goods to a sanctioned person; the goods will not be used, re-exported, transferred or retransferred for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons; and the goods, or any replica of them, will not be used in any nuclear explosive activity or unsafeguarded nuclear fuel cycle. The customer understands and acknowledges that Kwatani is not responsible for any goods or products that are subsequently exported or re-exported by the customer or sold to another person and/or representative, domestic or foreign. In the event of such a post-sale re-export, transfer or re-transfer of the goods, the customer is responsible for complying with all applicable sanctions, including obtaining export licenses where required.

The customer shall strictly comply with, and adhere to, all applicable sanctions and export control regimes. Specifically, the customer shall not, directly or indirectly, sell, provide, export, re-export, transfer, divert, loan, lease, consign, or otherwise release or dispose of any goods, equipment, product, commodities, services, software, source code, or technology received under or in connection with this contract

to or via a sanctioned person or a sanctioned territory, or for use in connection with sanctioned activity or industry directly or indirectly, or for military end-use or to a military end user without having obtained prior authorization from the applicable sanctions authority or export control authority where required by applicable sanctions, export control regimes or within the applicable jurisdiction. Neither party shall be required to take any action that would cause it to violate any applicable sanctions.

If the customer breaches any certification, representation or undertaking described in this Clause 14 or, in Kwatani's reasonable opinion any such breach is likely to occur, the parties agree that Kwatani shall not be liable toward the customer or any third party for any subsequent non-performance by Kwatani under this contract and that the customer shall indemnify and hold Kwatani harmless from any claims or losses relating to such non-performance.

Kwatani shall have the right to terminate this contract immediately without liability by notifying the customer in writing if: the customer becomes a sanctioned party; or the customer breaches any certification, representation or undertaking described in this Clause 14.

Termination

If the customer is in breach of any of these terms including without limitation, a provision relating to the payment of money or if the customer becomes subject to one of the following events: it suspends or threatens to suspend payment of its debts or is or becomes unable to pay its debts when they are due or its financial position deteriorates to such an extent that in Kwatani's opinion the customer's capability to adequately fulfil its obligations under the contract has been placed in jeopardy, takes any step in connection with having any external manager or controller appointed (including any receiver, administrator, liquidator, business rescue practitioner of any kind) or informs any person that it is, presumed to be, insolvent (whether commercially or factually) or if the customer ceases or threatens to cease to carry on business or any guarantee or security given to Kwatani in relation to the customer is revoked or unenforceable ("**Insolvency Event**") then Kwatani may, at its sole discretion, upon written notice to the customer:

- 15.1.1. immediately withdraw any purchase or credit facilities which may have been extended to the customer and require immediate payment of all moneys owed to Kwatani by the customer, whether or not they were due for payment in the future;
- 15.1.2. immediately suspend performance or terminate without penalty the contract (including any license granted pursuant to Clause 9.3) in force between Kwatani and the customer;
- 15.1.3. immediately take all possible action to protect its goods and intellectual property; and/or
- 15.1.4. recover all costs and losses associated with such termination action.
- 15.2. Termination (including pursuant to Clause 2.3) shall be without prejudice to the accrued rights and liabilities of either party at the termination date.
- 15.3. If a Force Majeure event prevents, hinders or delays a party's performance of its obligations for a continuous period of more than three (3) months, then either party may terminate this contract by giving two (2) weeks' written notice to the other party.
- 15.4. Kwatani agrees to store and allow the customer to download or otherwise retrieve, customer specific input data and/or output data provided such request has been made to Kwatani in writing, and

maximum thirty (30) days following the termination of the contract.

16. General Provisions

- 16.1.** If a provision of these terms is found by a court or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, or unenforceable in any jurisdiction, that provision or the part of it that is illegal, invalid, or unenforceable must, to that extent and in that jurisdiction, be modified to the extent necessary to give effect to the commercial intention of the parties and, where that is not possible, treated as deleted from these terms. This does not affect the validity or enforceability of the remaining provisions (or part provisions).
- 16.2.** Nothing in these terms is intended to exclude, restrict or modify rights which the customer may have under any legislation to the extent it may not be excluded, restricted or modified by agreement.
- 16.3.** Except as otherwise expressed in these terms, no right, power, privilege or remedy conferred is intended to be exclusive of any other right, power, privilege or remedy.
- 16.4.** Neither party shall cause, permit or tolerate an unsafe condition or activity over which that party has control over. If a party observes or becomes aware of an unsafe condition, that party may request the other party to remove or, to the extent reasonably possible, mitigate the effect of the unsafe condition, and the other party must comply with that request. Kwatani reserves the right to suspend work under the contract if unsafe conditions exist, to which Kwatani's personnel (including but not limited to its representatives) may be exposed, until such time as the unsafe conditions have been rectified. Unless the customer can demonstrate that the Unsafe condition(s) have been rectified (and Kwatani did not cause the Unsafe condition or perform the Unsafe act), Kwatani is entitled to a reasonable extension of time for any delays caused by the unsafe condition(s).
- 16.5.** Customer shall comply at all times with the essence of the Sandvik Code of Conduct, a copy of which is available on request or at Sandvik official website, and with all applicable laws, statutes and regulations, in particular those related to anti-bribery and anticorruption including but not limited to the Prevention and Combating of Corrupt Activities Act No. 12 of 2004, the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act as amended from time to time. Failure to comply with this paragraph shall constitute a material breach which will entitle Kwatani to terminate the contract immediately.
- 16.6.** Kwatani may assign, novate or otherwise deal with the contract pursuant to these terms without the consent of the customer, to the extent permissible by law. The customer agrees to provide all assistance reasonably required by Kwatani to give effect to its rights under this clause.
- 16.7.** Except where prohibited by law, customer shall require its insurer (if any) to waive all rights of subrogation against Kwatani and/or its insurers.
- 16.8.** A party waives a right under these terms only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of these terms does not operate a waiver of another breach of the same term or any other term.
- 16.9.** Orders may be sent by e-mail or facsimile transmission. Any notice or demand must be in writing and shall be delivered by registered mail or by hand to the address set out in the order or sent by fax to its main fax number or sent by email to the address specified in the order. If by registered mail,

such notice or demand shall be deemed delivered 7 days after the date of posting and, if sent by fax or email, at 9.00 am (Customer time) on the next business day after transmission.

- 16.10.** To the extent permitted by law, Kwatani is under no liability in respect of goods exported without necessary licenses, authorisations or consents.
- 16.11.** No person who is not party to a contract shall have any right to enforce any term of a contract.
- 16.12.** Any dispute arising out of or in connection with this contract including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Rules of the Arbitration Foundation of Southern Africa – Commercial Arbitrations (“AFSA Rules”), which rules are deemed to be incorporated by reference into this clause. The arbitration proceedings shall be conducted as expeditiously as possible and be governed by the Arbitration Act, 42 of 1965 (as amended) but the time periods provided for in Section 23 of the Arbitration Act shall not apply the place for such proceedings shall be Sandton, Republic of South Africa and the arbitration proceedings shall be before a single arbitrator, whose decision shall be final and binding. Nothing herein shall be deemed to prevent or prohibit any party from applying to any court of competent jurisdiction for interlocutory or urgent interim relief. The arbitration proceedings, information disclosed during the arbitration proceedings and the result of such proceedings is subject to confidentiality. The language to be used in the arbitral proceedings shall be English.
- 16.13.** The governing law of the contract shall be the substantive law of South Africa without giving effect to its conflict of law's provisions.
- 16.14.** The submission to the jurisdiction of the AFSA Rules shall not limit the right of Kwatani to take proceedings against the customer in any court which may otherwise exercise jurisdiction over the customer or any of its assets.
- 16.15.** The parties agree that the United Nations Convention on contracts for the International Sale of Goods does not apply to this agreement.
- 16.16.** The customer hereby warrants to and in favour of Sandvik that it is a juristic entity with an asset value and/or annual turnover of at least R1,000,000.00 (one million rand) and accordingly:
- 16.16.1.** the provisions of the National Credit Act, No. 34 of 2005 do not apply to this contract by virtue of section 4 thereof; and
- 16.16.2.** the provisions of the Consumer Protection Act, No. 68 of 2008 do not apply to this contract by virtue of section 5 of thereof.
- 16.17.** All provisions of this contract are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. If any provision of this contract becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, it shall, only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions of this contract shall remain of full force and effect. The parties declare that it is their intention that this contract would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 16.18.** Sandvik (without prejudice to its other rights), will be entitled from time to time to deduct from any amounts due or owing by Sandvik to the customer in connection with any agreement or contract with the customer any and all amounts owed by the customer to Sandvik.
- 16.19.** The parties choose domicilium citandi et executandi for all purposes of the giving of any notice, the serving of any process and for any other

purpose arising from the contract and these terms, on the addresses stipulated in the contract as otherwise provided by a party in writing.