

AVD FIRE: CONDITIONS OF SALE

1. DEFINITIONS

In this Contract, “**Seller**” means Dupré Minerals Limited trading as AVD Fire, which is to supply the Goods under contract to the Buyer; “**Buyer**” means the person, firm or company with whom the Contract is made; “**Contract**” means these terms and conditions, Seller’s written acknowledgement, the Quotation and the Buyer’s order and if there is any conflict or ambiguity between the above documents, the terms and conditions contained or referenced in a document higher in this list shall have priority over one contained in a document lower in the list or in the event of telephone orders on a Buyers account, these terms and conditions shall be attached to the Seller’s Quotation and invoice; “**Contract Price**” means the total price set out in this Contract as the price payable to the Seller for the Goods; “**Goods**” means the fire and safety equipment, goods and materials (including aqueous vermiculite dispersion and battery fire blankets) supplied by the Seller, and any associated ancillary services, or any part thereof to be sold or provided by the Seller and any replaced goods; “**Quotation**” means the Seller’s offer, tender or quotation submitted to the Buyer for the Goods.

2. CONTRACT

A Quotation is subject to these terms and conditions and, unless otherwise stated in the Quotation, shall only be valid for thirty (30) calendar days from its date of issue. An order shall be treated as an offer by the Buyer to contract with the Seller and shall not be binding on the Seller until accepted in writing by the Seller. The Seller shall, at its discretion, accept the Buyer’s order using an order acknowledgement and such order acknowledgement shall be treated as acceptance of the order, at which point this Contract shall come into existence. These terms and conditions form part of this Contract to the exclusion of all other terms and conditions including any which the Buyer purports to apply under any order or other document or any which may otherwise be implied by trade, custom, practice or course of dealing.

3. PRICE AND PAYMENT

(A) The Buyer shall pay the Seller the Contract Price. If the Seller has not quoted a price in writing, the Contract Price shall be taken from the Seller’s current price list at the date of the Seller’s order acknowledgement. If the Buyer requests any change under this Contract, the change shall only be effective if the agreed change is made in writing. The Seller may vary the Contract Price if costs increase outside of the Seller’s reasonable control (including by reason of any law, order, directive, regulation or bylaw taking effect after the date of the Contract or the Buyer requesting any tests, certification, documentation or witnessing of tests not included in the Contract).

(B) The Seller shall be entitled to invoice the Buyer for each order, or each separate consignment under an order, before, on or at any time after delivery. If the Buyer fails to take delivery or otherwise suspends or delays delivery, the Seller shall be entitled to invoice from the date the Goods were tendered for delivery or would but for the suspension or delay have been tendered for delivery.

(C) Unless otherwise stated in the Quotation and subject to clause 3(F), the Buyer shall pay the Seller the total amount of each invoice in full and cleared funds to the bank account nominated in writing by the Seller within thirty (30) calendar days after the date of the relevant invoice. Unless otherwise agreed, payments shall be made in pounds Sterling. All amounts due to the Seller under this Contract shall become due immediately if this Contract is terminated. The time for payment shall be of the essence and no payment shall be deemed to have been made until the Seller has received payment in full and cleared funds. Failure to pay any instalment against a schedule of payments renders the entire Contract Price due immediately. The Buyer shall make payment without any discount, deduction, off-set or counterclaim whatsoever.

(D) If the Buyer fails to make any payment due to the Seller under this Contract by the due date for payment, then without limiting the Seller’s remedies under this Contract, the Seller shall be entitled to withhold deliveries, suspend or cease any work under this Contract or other contracts with the Buyer and/or terminate this Contract.

(E) The Contract Price is exclusive of VAT, sales tax and any similar taxes together with any applicable charges, duties (including export, import and excise duties) and the costs of packing cases and materials. Any tax, charges, duties and packing costs payable shall be paid in addition to the Contract Price. When agreed by the Seller the cost of returnable containers will be reimbursed if returned in an agreed time and in an ‘as new’ undamaged condition. If the Buyer is required under any applicable law to withhold or deduct any amount from the payments due to the Seller, the Buyer shall increase the sum it pays to the Seller by the amount necessary to leave the Seller with an amount equal to the sum it would have received if no such withholdings or deductions had been made.

(F) If credit insurance against the Buyer’s failure to pay any amounts due under this Contract is unavailable or withdrawn after order acknowledgement, the Seller shall be entitled to withhold any deliveries of Goods until advance payment is made in full.

4. TITLE AND RISK

Risk in the Goods shall pass to the Buyer on delivery of the Goods. Title to the Goods shall not pass to the Buyer until the Seller receives payment in full and cleared funds for all of the Goods under this Contract.

5. SPECIFICATIONS AND PERFORMANCE

(A) The Seller does not guarantee that the illustrations, descriptions, physical or chemical properties, dimensions and other specifications relating to the Goods in the Seller’s brochures, catalogues, drawings or documents (**Specifications**) will in all cases be identical to the Goods. The Seller shall use its reasonable endeavours to notify the Buyer of any material alterations to any Specifications but the Seller reserves the right to make alterations to the Goods at any time without giving notice

to the Buyer. The Specifications are a guide only and do not constitute any guarantee, warranty or condition.

(B) The Buyer acknowledges it does not rely on the skill or judgement of the Seller or any of the Seller’s employees in relation to the suitability of the Goods for any particular purpose and it is the Buyer’s sole responsibility to satisfy itself whether the Goods are or will be suitable for any such purpose.

(C) The Goods will be subject to the Seller’s standard tests at the Seller’s facilities before despatch. The Seller shall not have any liability howsoever caused or arising for, makes no guarantee and provides no warranty in respect of the performance levels or criteria of the Goods.

6. ACCEPTANCE

The Buyer shall, within ten (10) days of the arrival of each delivery of Goods, give written notice of rejection to the Seller on account of any defect by reason of which the Buyer alleges that the Goods delivered do not comply with the Warranty which was apparent on reasonable inspection. On receipt of such notice, clause 9(B) and 9(C) shall apply to the Goods which the Buyer alleges are defective. If the Buyer fails to give such notice then, except in respect of any defect which is not apparent on reasonable inspection, the Goods shall conclusively be presumed to comply with the Warranty. Accordingly, the Buyer shall be deemed to have accepted the delivery of the Goods in question and the Seller shall have no liability to the Buyer with respect to that delivery (except in relation to liability for any latent defects).

7. DELIVERY

(A) The delivery times provided by the Seller are an indication only and depend on various factors such as availability of the Seller’s stock. Accordingly, time for delivery shall not be of the essence. Delivery of the Goods shall be in accordance with the specific incoterm stated in the Quotation and unless otherwise agreed, ex-works from the Seller’s premises or such other location as the Seller advises. The Buyer shall collect the Goods and be responsible for loading and transporting the Goods at its sole risk and liability. Any delays in the delivery of the Goods shall not entitle the Buyer to refuse to take delivery of the Goods, claim compensation or other damages, withhold payments due or terminate this Contract.

(B) The Buyer shall accept delivery of any shipment or consignment of the Goods which is within ten percent (10%) of the Contract quantity. Payment for the Goods so delivered shall be increased or decreased on a pro rata basis. The Seller is not bound to deliver the Goods in one shipment or consignment and the Buyer shall accept split deliveries or delivery by instalments. Goods are sent packed in accordance with the Seller’s normal practice. If the Buyer fails or refuses to take delivery of the Goods, the Buyer shall be liable for all costs, charges and expenses incurred including storage, handling and interest.

(C) If Seller agrees to deliver the Goods, any shortage or visible damage to the Goods (including packing) must be noted on the carrier’s bill of lading or delivery note at the time of delivery or within such time as to enable the Seller to comply with the carrier’s conditions of carriage. Details of any shortage or damage must be sent immediately to the Seller in writing. If the bill of lading or delivery note is signed by or on behalf of the Buyer without exception such signature shall constitute conclusive proof that the Goods were received in good order and the quantity was correct. In the case of non-delivery of a whole shipment or consignment, a written claim must be made within seven (7) days of the date of the advice note or the invoice whichever is the later.

8. DELAY IN PERFORMANCE

If the Goods are delayed as a result of the Buyer’s acts or omissions, a new date for the delayed Goods shall be provided by the Seller and the Buyer shall promptly reimburse the Seller for any additional costs and expenses it reasonably and necessarily incurs in connection with such acts or omissions (including costs and expenses relating to handling, storage, transportation, administration or interest). The Buyer accepts that the production of the Goods may be delayed by a longer period than the actual delay that the Buyer has caused or contributed to due to loss of production slots and other intervening factors. The Buyer shall not be entitled to prioritise the ordered Goods against other orders being handled by the Seller.

9. WARRANTY

(A) The Seller warrants that the Goods will be free from material defects in workmanship and materials under conditions of normal use and remain so for a period of twelve (12) months from the date the Goods were despatched, their shelf life or such period given by the Company in writing whichever is shorter (**Warranty**). The Warranty shall not apply to any materials or components forming part of the Goods which have been manufactured and supplied to the Seller by its suppliers (**Components**). Where possible and at the Buyer’s request, the Seller shall pass on to the Buyer the benefit of any warranties given to the Seller by the supplier of the Components. All other warranties or conditions (whether express or implied) as to quality, condition, description, compliance with sample or fitness for purpose whether statutory or otherwise other than those expressly set out in this Contract are excluded to the fullest extent permitted by law.

(B) If the Buyer alleges that any Goods do not comply with the Warranty, it shall notify the Seller in writing and, if requested by the Seller, return the relevant Goods (unaltered and unrepaired) to the Seller for inspection as soon as possible and at its own risk and expense. If the Seller agrees that the Goods do not comply with the Warranty, the Seller at its sole discretion shall either supply repaired or replacement Goods which comply with the Warranty or notify the Buyer that it is unable to supply repaired or replacement Goods, in which case the Seller shall grant to the Buyer a credit equal to the value of the Goods which the Seller agrees do not comply with the Warranty and for the pre-agreed transportation costs. The Seller’s reasonable

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decision as to whether the Goods comply with the Warranty shall be final. Once the Seller has complied with this clause, it shall have no further liability to the Buyer for the Goods' failure to comply with the Warranty and shall not be deemed to be in breach of this Contract.

(C) The Seller shall not be liable for the Goods failing to comply with the Warranty in any of the following events: **(i)** the defect arises because the Buyer failed to follow the Seller's written or oral instructions for the storage, handling, installation, use and maintenance of the Goods or (if there are none) good trade practice regarding the same; **(ii)** the Buyer alters (including defacing any serial, batch or identification numbers) or repairs those Goods without the written consent of the Seller; **(iii)** the Buyer fails to provide written notice to the Seller of the alleged defect within fourteen (14) days of the time when the Buyer discovers or ought to have discovered the defect; **(iv)** the defect arises as a result of fair wear and tear, erosion, corrosion or deterioration (including accelerated deterioration resulting from poor storage or environmental conditions), or the Buyer's damage or negligence, or abnormal storage or working conditions or use of the Goods with incompatible products; **(v)** the defect arises from any drawing, design or specification provided by the Buyer; **(vi)** the Buyer having failed to pay for the Goods in full.

(D) The Seller shall not be required to and has no liability whatsoever for retrieving and/or reinstalling Goods.

(E) The Goods are sold without any warranty in respect of the effectiveness of the Goods at putting out and/or containing a fire. If the Contract is for the supply of aqueous vermiculite dispersion ("AVD"), the Buyer acknowledges and agrees that the Seller has merely supplied AVD and has no involvement in the design, sizing with respect to the application and risk, installation, the supply of the discharge systems or how the AVD is used in the fire extinguishers or other equipment, product, appliance or items supplied by the Buyer ("**Buyer's Equipment**") and the Seller has no liability whatsoever in connection with the Buyer's Equipment.

(F) If the Seller is requested to provide any design advice or guidance to the Buyer (including the suitability of the Buyer's Equipment for a particular purpose), the information or views provided orally or in writing by the Seller are solely a matter of opinion, indicative and for general information purposes only ("**Opinion**"). The Seller shall provide the Opinion in good faith but the Seller shall not have any liability whatsoever or howsoever caused or arising for and makes no guarantee or representation and provides no warranty of any kind, expressed or implied, regarding the accuracy, reliability and validity of the Opinion. Any reliance the Buyer places on the Opinion is at its own risk and the Buyer shall indemnify and hold the Seller harmless from any liability in connection with the Opinion. If the Buyer requires any design advice or guidance that it can rely upon (including the validation of the Opinion provided by the Seller), the Buyer shall obtain such advice and guidance from a third party.

10. LIABILITY

(A) Nothing in this Contract shall limit or exclude the Seller's liability for: death or personal injury resulting from the Seller's negligence, fraud or fraudulent misrepresentation, breach of the terms implied by section 12 of the Sale of Goods Act 1979 or where and to the extent it is otherwise not lawful for the Seller to exclude or limit the liability concerned.

(B) Subject to clause 10(A) but notwithstanding anything else to the contrary in this Contract, the Seller's aggregate liability to the Buyer arising out of or in connection with this Contract whether for breach of contract, for breach of duty, in tort (including negligence), by way of indemnity or in respect of any theory of liability or cause of action shall in all circumstances be limited to a sum not exceeding the total of one hundred and fifteen percent (115%) of the Contract Price.

(C) Subject to clause 10(A), the Seller shall not have any liability arising out of or in connection with this Contract whether for breach of contract, for breach of duty, in tort (including negligence), by way of indemnity or in respect of any theory of liability or cause of action, for **(i)** any consequential, indirect, special or exemplary loss or damage, **(ii)** to the extent not covered by clause 10(C)(i) above, any loss of profit, loss of goodwill, loss of income, loss of use of plant, property or any other asset or facility, loss of or damage to property, downtime, loss of production, loss of contracts with any third party, loss of product, financial or economic loss, loss of business opportunity, third party losses, business interruption, environmental damage or other like risks, or **(iii)** to the extent not covered by clause 10(C)(i) above, any loss of or damage to property or any failure of the Buyer's Equipment sold in conjunction with or incorporating the AVD or the Goods failing to put out and/or containing a fire, whether or not such loss or damage is foreseeable at the date of execution of this Contract or at any time and whether under the express or implied terms of this Contract or at law or in any other way.

11. FORCE MAJEURE

The Seller is not liable for any loss or damage caused by delay in performance or non-performance of any of its obligations which is beyond the Seller's reasonable control including an act of God or natural disaster; war; shipwreck; civil disturbance; epidemic or pandemic; governmental or public authority actions, restrictions, prohibitions or enactments of any kind (such as lockdown or quarantine measures); import or export regulations or prohibitions including sanctions; strike, lock-out or trade dispute (whether involving its own employees or those of other); difficulties in obtaining workmen or materials including oil, gas, coal, electricity or any other fuel or raw material; breakdown of machinery; fire or accident; non-availability or delay of vessels or transport. Should any such event occur the Seller at its own option may cancel, terminate or suspend or initially suspend then cancel the Contract without

incurring any liability whatsoever.

12. INSURANCE AND INDEMNITIES

(A) The parties shall maintain sufficient insurance cover with a reputable insurance company and will, on request by the other, produce certificates of insurance as evidence that insurance is in place.

(B) The Buyer agrees to release, defend, indemnify and hold the Seller harmless from and against all claims, losses, damages, costs including legal costs, expenses and liabilities of every kind and nature for, arising by reason of or in connection with this Contract or any associated order to the extent that such claims, losses, damages, costs including legal costs, expenses and liabilities (i) relate to proceedings brought under the Health and Safety at Work etc. Act 1974 (including any statutory modifications or any regulations, orders, codes or directions made thereunder) or any similar or equivalent legislation in any other relevant jurisdiction, (ii) where the Buyer has provided a drawing, design or specification, relate to any infringement or alleged infringement of any intellectual property rights owned or controlled by a third party the Goods do not comply with any applicable legislation, regulations or other requirements, (iii) are in excess of the limitation of liability assumed by the Seller in clause 10(B) or (iv) are excluded in clause 10(C).

13. TERMINATION

The Seller may terminate or suspend this Contract by giving written notice to the Buyer at any time if any of the following events occurs: **(a)** if Buyer is found to be insolvent, liquidated, a receiver is appointed or applied for or any event analogous to those described in this clause occurs; **(b)** if this Contract is suspended for more than thirty (30) calendar days in the aggregate for any reason; **(c)** the Buyer breaches any obligations in this Contract or any other contract between the parties; or **(d)** the Seller discovers a technical problem relating to Buyer's specification, design and/or materials during production which renders performance of the Contract, in the Seller's opinion, unacceptable. Upon the termination or suspension of this Contract for any reason whatsoever, the Buyer shall pay the Seller the Contract Price or any portion thereof for all Goods completed or in progress at the date of the termination or suspension and reimburse the Seller for those costs reasonably incurred by the Seller as a direct result of the termination or suspension of this Contract or any portion thereof including its reasonable cancellation costs.

14. GENERAL

(A) The Buyer shall not without the Seller's written consent assign or transfer the whole or part of the benefit or burden of this Contract.

(B) No waiver of any Contract term by the Seller is deemed a further or continuing waiver.

(C) All intellectual property rights (including patents, trademarks, copyrights, designs, business and domain names) in the Goods shall remain the absolute property of the Seller and the Buyer shall not have any rights to the Seller's intellectual property. The Buyer acknowledges that it shall not, by virtue of this Contract or otherwise, obtain or claim any right, title or interest in or to the intellectual property rights in the Goods. The Buyer shall not use or permit any third party to use the Goods in any manner that is prejudicial to the Seller, including copying or reverse engineering the Goods. All intellectual property rights produced, created, developed or acquired under or in connection with this Contract shall vest in the Seller.

(D) Any notices served by email or fax must be confirmed by first class post addressed to the relevant party's registered office and are deemed served the next working day after despatch.

If any provision or part of a provision of this Contract is held to be invalid, illegal or unenforceable it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. Any modification to a provision under this clause shall not affect the validity, legality and enforceability of the rest of this Contract.

(E) The Buyer acknowledges that in entering into this Contract it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Contract. Any samples, drawings, Specifications, descriptive matter or advertising produced by the Seller and any descriptions or illustrations contained in the Seller's catalogues, brochures or price lists are produced for the sole purpose of giving an approximate idea of the Goods described therein and do not form part of this Contract.

(F) This Contract constitutes the entire agreement between the parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

(G) No variation of this Contract shall be effective unless it is in writing, agreed by both parties and signed by a director of the Seller.

(H) Unless the context otherwise requires, words in the singular shall include the plural and vice versa. Any words following the terms **including**, **include** or similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

15. LAW AND JURISDICTION

(A) This Contract and any dispute arising out of or in connection with it shall be governed by the law of England and Wales.

(B) Each party agrees that the courts of England have exclusive jurisdiction to settle any disputes arising out of or in connection with this Contract.