

1. DEFINITIONS AND INTERPRETATION

- The following expressions shall have the following meanings when used in these Terms and the Contract.
- 1.1. **Interpretation:** The Contract (and the documents comprising the Contract) shall be construed and interpreted in accordance with the following rules:
- (a) headings are for ease of reference only and do not affect interpretation;
 - (b) the singular includes the plural and vice versa;
 - (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (d) a reference to a “**person**” includes a natural person, partnership, body corporate, association, governmental or local authority or agency, or other entity;
 - (e) 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;
 - (f) the meaning of general words is not limited by specific examples introduced by the words “**including**”, “**for example**” or similar expressions;
 - (g) the rule known as *eiusdem generis* shall not apply and, accordingly, words introduced by the word “**other**” shall not be given a restrictive meaning by reason of the fact that such words are preceded by words indicating a particular class of acts, matters, or things;
 - (h) references to “**material breach**” mean that such breach (which includes anticipatory breach, as that term is defined at common law):
 - (i) is more than trivial, but need not be repudiatory; and
 - (ii) if not remedied may, or is likely to have, a serious impact on the benefit that the innocent Party would otherwise derive from the performance of the Contract in accordance with its terms,
 and the Parties agree that any breach of any one or more of Clauses 6.11 (IP Modification), 21 (Sanctions), 23.1 (Code of Conduct), 23.2 (Modern Slavery), 24 (Unsafe conditions) shall be construed as a material breach;
 - (i) any obligation in the Contract on a Party not to do something includes an obligation on that Party not to agree, allow, permit or acquiesce to that thing being done; and
 - (j) 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.
- 1.2. “**Affiliate**” means any entity which: (a) is controlled by a Party; (b) controls a Party; or (c) is under common control with a Party, where **control** 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 the equivalent power over the management of such entity, for so long as such entitlement or power exists.
- 1.3. “**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 includes, but is not limited to, trade secrets, concepts, know-how, designs, patent applications, inventions, Software, (cross) references, processes, business plans, and financial information, that a Party discloses to the other Party or its Affiliates or Representatives in writing, orally or otherwise.
- 1.4. “**Connected Equipment**” means equipment, including Goods, which have remote monitoring hardware or software installed, connected, and activated by Sandvik.
- 1.5. “**Contract**” means:
- (a) the order acceptance document;
 - (b) these Terms;
 - (c) the Contract Specifics;
 - (d) the separate terms of use applicable to the Goods provided or made available to the Customer by Sandvik in advance of the provision of the Goods (if any);
 - (e) the Quote;
 - (f) the Order (subject to Clause 3.1) or contract to which these terms and conditions have been attached or incorporated by reference; and
 - (g) any other document which is attached to or incorporated by reference in the order acceptance document, these Terms, the terms of use for the Goods (if any), or the Quote.
- 1.6. “**Contract Specifics**” means the additional commercial terms specifically applicable to the Goods.
- 1.7. “**Customer**” means the person/party which orders the rental of the Goods (and other services referred to in the Contract) and includes any permitted transferees. For the avoidance of doubt, references to “**Purchaser**” in any other documents forming the Contract (e.g., within the Digital Terms) are references to the Customer.
- 1.8. “**Data Protection Legislation**” means: (a) if directly applicable, the General Data Protection Regulation (EU) (2016/679), and/or (b) any other national laws, regulations and legislation in relation to data privacy, as amended or updated from time to time.
- 1.9. “**Day**” means calendar day.
- 1.10. “**Delivery Date**” means the delivery date specified in the Contract Specifics or, where the Contract Specifics are silent, the date (or period) for delivery of the Goods or services as specified and agreed in the Contract.
- 1.11. “**Deposit**” means the additional advance payment of Rental Fees made by the Customer, if agreed by the Parties, as set out in the Contract.
- 1.12. “**Digital Service(s)**” means: (a) the digital services provided by Sandvik, as: (i) described in the Contract; or (ii) otherwise provided in connection with the Connected Equipment; and (b) where use of the Digital Services requires the installation of related Software, the provision of such Software, which Digital Services shall be provided subject to the Digital Terms.
- 1.13. “**Digital Terms**” means the terms and conditions governing, and applicable to the use of, the Digital Services as made available by Sandvik in connection with the Contract.
- 1.14. “**Distributor(s)**” means Sandvik’s Representatives (including agents, distributors, dealers, or other intermediaries) who: (a) sell, resell, or rent Goods (including Connected Equipment), Services, or Digital Services; or (b) provide Sandvik with equipment or services, in each case in connection with the Contract.
- 1.15. “**End Inspection**” has the meaning given in Clause 15.5.1.
- 1.16. “**End Inventory**” has the meaning given in Clause 15.5.2.
- 1.17. “**Equipment Monitoring Service**” means the services provided by Sandvik in connection with receiving Input Data as may be 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 any relevant web portal terms and conditions.
- 1.18. “**Force Majeure**” means any acts, events, omissions, or circumstances beyond Sandvik’s reasonable control including:
- (a) any shortage of electricity, water, or other utilities;
 - (b) lack of production or capacity;
 - (c) a failure in public or third-party controlled telecommunications networks (including the Internet);
 - (d) strikes, lock outs, labour disputes, fires, floods, storms, epidemics or pandemics, acts of God or public enemy, malicious or accidental damage, delays in transport or delays by a carrier servicer, breakdowns in plant, machinery, non-performance or failure by any bank in relation to sending or receiving money under the Contract due to applicable Laws;
 - (e) compliance with Law, governmental order, rule, regulation or direction; or

- (f) acts or omissions of the Customer or a third party that would, or are likely to, result in Sandvik being in breach (or in the reasonable opinion of Sandvik is likely to become in breach) of any Law (including extraterritorial laws), any financing arrangements, including any loan facilities or issued notes of Sandvik AB (publ.) or any of its Affiliates, or the Contract.
- The Parties agree that a breach of the Sanctions and Export Laws does not fall within the definition of “**Force Majeure**” except, with respect to Sandvik, for Sanctions and/or embargoes that relate directly or indirectly to Sandvik’s supply chain.
- 1.19. “**Goods**”: means the Sandvik equipment and/or other components rented to the Customer under, and in accordance with, the Contract.
- 1.20. “**Initial Inspection**” has the meaning given in Clause 5.1.1.
- 1.21. “**Initial Inventory**” has the meaning given in Clause 5.1.2.
- 1.22. “**Input Data**” means data that is generated, collected, recorded, or uploaded either by, from, or in connection with, the Connected Equipment, including utilisation information regarding the Connected Equipment and the standard industry data SAE J1939 but excluding any data or information regarding Sandvik’s equipment control systems including how to achieve functional performance.
- 1.23. “**Insolvency Event**” means the Customer is or becomes subject to one or more of the following events:
- (a) it suspends or threatens to suspend payment of its debts or becomes unable to pay its debts when they are due;
 - (b) its financial position deteriorates to such an extent that, in Sandvik’s opinion, the Customer’s ability to fulfil its obligations under the Contract has been placed in jeopardy;
 - (c) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
 - (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Customer;
 - (e) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the Customer;
 - (e) a person becomes entitled to appoint a receiver over the assets of the Customer or a receiver is appointed over the assets of the Customer;
 - (f) the holder of a qualifying floating charge over the assets of the Customer has become entitled to appoint or has appointed an administrative receiver;
 - (g) a creditor or encumbrancer of the Customer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Customer’s assets and such attachment or process is not discharged within fourteen (14) Days;
 - (h) it informs any person that it is, or is presumed to be, insolvent;
 - (i) it ceases or threatens to cease to carry on business;
 - (j) it is declared bankrupt; or
 - (k) any guarantee or security given to Sandvik (including the Security Interest) in relation to the Customer is revoked or becomes unenforceable.
- 1.24. “**Intellectual Property Rights**” or “**IPR**” means:
- (a) patents, any extensions of the exclusivity granted in connection with patents, petty patents, utility models, registered designs, plant variety rights, applications for any of the foregoing (including, but not limited to, continuations, continuations-in-part and divisional applications), the right to apply for and be granted any of the foregoing, rights in inventions;
 - (b) copyrights, design rights, semiconductor topography rights, moral rights, publication rights, database rights;
 - (c) trademarks and service marks, applications for any of the foregoing, the right to apply for any of the foregoing, rights in trade names, business names, brand names, get-up, logos, domain names and URLs;
 - (d) rights in know-how, trade secrets and Confidential Information, data exclusivity rights; and
 - (e) all other forms of intellectual property right having equivalent or similar effect to any of the foregoing which may exist anywhere in the world.
- 1.25. “**Law(s)**” means:
- (a) statutes, statutory instruments, regulations, by-laws, rules, ordinances, guidance, or subordinate legislation;
 - (b) the common law and the law of equity;
 - (c) a binding court order, judgment, or decree;
 - (d) any industry code, guidance, policy or standard which, in each case, is enforceable by law or a regulator; and
 - (e) any direction, policy, rule or order that is legally binding and that is made or given by a regulator and/or Sanctions Authority.
- 1.26. “**Maintenance Manual**” has the meaning given in Clause 3.1.9.
- 1.27. “**Manuals**” means the Maintenance Manual, Operations Manual, and the Parts Manual jointly, as applicable.
- 1.28. “**Minimum Technical Requirements**” has the meaning given in Clause 11.6.
- 1.29. “**Operations Manual**” has the meaning given in Clause 3.1.7.
- 1.30. “**Output Data**” means: (a) Input Data that has been processed by Sandvik in order to provide deliverables to the Customer as part of the Equipment Monitoring Service; and (b) any other data agreed in the Contract to be provided to the Customer through Sandvik’s connectivity solutions, which (in each case) always excludes Sandvik Data and any data or information regarding Sandvik’s equipment control systems including how to achieve functional performance.
- 1.31. “**Order**” means the purchase order or request issued by the Customer to Sandvik for the rental of the Goods.
- 1.32. “**Order Acceptance**” means Sandvik’s acceptance of the Order and consequent agreement to the Contract by: (a) delivering the Goods for rental; or (b) issuing the Customer with a document named ‘*Order Acceptance*’ (or similar).
- 1.33. “**Part(s)**” means parts, consumables, and other components required to perform service and maintenance of the Goods and which shall always be Sandvik genuine parts or parts authorised by Sandvik.
- 1.34. “**Parts Manual**” means as set out in Clause 3.1.8 of these Terms, as applicable.
- 1.35. “**Party**” or “**Parties**” means Sandvik and/or the Customer, individually or jointly as the case may be.
- 1.36. “**Personal Data**” has the meaning given in the General Data Protection Regulation ((EU) 2016/679) or any other national laws, regulations and legislation in relation to data privacy, as amended or updated from time to time.
- 1.37. “**Prohibited Country**” means Afghanistan, Belarus, Cuba, Iran, North Korea, Syria, Russia, Crimea and non-government-controlled areas of the Donetsk, Kherson, Luhansk and Zaporizhzhia oblasts of Ukraine or other Ukrainian territories claimed to be annexed by Russia or any country or region which: (a) is, or whose government is, or becomes, a target of comprehensive, country-wide or territory-wide Sanctions. Sandvik reserves the right to amend the list of Prohibited Countries by written notice to the Customer.
- 1.38. “**Project IPR**” means the Intellectual Property Rights in any and all outputs, work products, or deliverables arising from, under, or in connection with the provision or receipt of any services or Goods.
- 1.39. “**Purpose**” means Sandvik’s business purposes including: development, optimisation, improvement, marketing, analysing market trends, evaluation of adoption rates, scheduling, and support of Sandvik’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 Sandvik Data with other data for the purpose of providing performance comparisons or benchmarking to Sandvik’s other customers.
- 1.40. “**Quote**” means the quote or proposal document issued by Sandvik to the Customer for the rental of the Goods (and other services referred to herein).

- 1.41. **“Related Entity”** means, in respect of any entity, any of its representatives, contractors, subcontractors, intermediaries, joint venture and consortium partners, officers, and directors and that entity’s subsidiaries, parent companies (whether direct or indirect), and subsidiaries of a parent company, provided that such entity/person: (a) is receiving or performing services hereunder; or (b) is in any other way (directly or indirectly) associated with the Contract or linked to the Customer.
- 1.42. **“Rental Fee”** means the fee payable as consideration for the rental of Goods and as set out in the Contract.
- 1.43. **“Rental Term”** means the period during which the Goods are to be rented as set out in the Contract, as extended (if applicable) in accordance with Clause 14, which term may be a project-based Rental Term.
- 1.44. **“Replacement Value”** means the value of the Goods as set out in the Contract.
- 1.45. **“Representative(s)”** means any director, employee, officer, adviser, auditor, agent, consultant, distributor, or subcontractor of a Party or its Affiliate.
- 1.46. **“Return Conditions”** has the meaning given in Clause 3.1.10.
- 1.47. **“RM Data”** means remote monitoring data (including data structures and interfaces) derived from Sandvik Data (limb (a)) that relates to and/or concerns: (a) specific equipment within the fleet; (b) how that specific equipment is being used, maintained, and/or operated; and/or (c) the conditions, routes, and/or environment within which the specific equipment operates.
- 1.48. **“Sanction(s)”** means any laws, regulations, and orders enacted, administered, implemented, imposed, or enforced from time to time by any Sanctions Authority in relation to economic, financial, customs or trade sanctions or export controls, or similar restrictive measures.
- 1.49. **“Sanctions Authority”** means: (a) the United Nations Security Council; (b) the United States of America; (c) the United Kingdom; (d) Canada; (e) Australia; (f) the European Union (and/or its individual member states); and (g) the respective governmental institutions and agencies of any of the foregoing, or any other jurisdiction that may be relevant to the performance of the Contract, or rights and obligations pursuant to the Contract (including jurisdictions relevant to any Related Entities or Affiliates, and/or to the end use of the Goods), including the Office of Foreign Assets Control of the US Department of Treasury (OFAC), the US Department of State, the Bureau of Industry and Security of the US Department of Commerce, the Office of Financial Sanctions Implementation, part of His Majesty’s Treasury (OFSI), the European Commission and the relevant national competent authorities (NCAs) within an EU member state.
- 1.50. **“Sanctions List”** means any list of Sanctions targets maintained by a Sanctions Authority, including without limitation: (a) the Consolidated United Nations Security Council Sanctions List; (b) any list maintained by the OFAC or included in the International Trade Administration’s “Consolidated Screening List”, including the Specially Designated Nationals (SDN) and Blocked Persons List; (c) 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; (d) the Consolidated List of Persons, Groups and Entities subject to EU Financial Sanctions; or (e) any similar list maintained by, or public announcement of sanctions made by, any other Sanctions Authority.
- 1.51. **“Sanctioned Person”** means any person, individual, entity, vessel, or aircraft: (a) specially designated, blocked, or otherwise individually listed or targeted by a Sanction or a Sanctions List; (b) that is resident or located in, operating from, or incorporated under the laws of a Prohibited Country; (c) that is, or is part of, the government of a Prohibited Country or any political subdivision, body, agency or instrumentality thereof, or fully or partially owned (directly or indirectly); or (d) fully or partially controlled by, or acting on behalf of at the direction of, or for the benefit of, any individual or entity on a Sanctions List (including but not limited to where the level of direct or indirect ownership amounts to 45% or more in the aggregate).
- 1.52. **“Sandvik Code of Conduct”**: Sandvik’s code of conduct (as amended from time to time), available on request.
- 1.53. **“Sandvik Data”** means: (a) any aggregated and/or anonymised data (including data structures and interfaces) which is created, generated, derived, or otherwise produced by Sandvik based on: (i) Input Data and/or Output Data, or (ii) otherwise created through the use of the Digital Service (including the Equipment Monitoring Service), such data never to contain any Personal Data; (b) all equipment navigation data (including data structures and interfaces and data concerning the movement and operation of equipment) which is created, generated, derived, or produced by Connected Equipment and collected by Sandvik (including through the Digital Service); and (c) any other data comprising Sandvik’s Confidential Information (including trade secrets) or which could be used to derive Sandvik’s Confidential Information (including trade secrets).
- 1.54. **“Sandvik Group”** means any subsidiary directly or indirectly owned and/or controlled by Sandvik AB (publ.).
- 1.55. **“Sandvik IPR”** means:
- (a) all Intellectual Property Rights comprised in, relating to, or created as a result of, the rental of the Goods or the provision of the Services or Digital Services (including in the Sandvik Data, RM Data, and any data structures and models relating to automation and machine learning, interfaces, interface definitions, open-source software, databases, and datasets);
 - (b) all IPR in adaptations, add-ons, modifications, updates, and enhancements (including those made following a request or suggestion made by or on behalf of the Customer) made to the Intellectual Property Rights described in limb (a); and
 - (c) any Intellectual Property Rights created in connection with the performance of the Contract (including all materials provided or made available by Sandvik in connection with the Contract and all Project IPR).
- 1.56. **“Scheduled Maintenance”** means the maintenance activities set out in the Maintenance Manual, and the quotation for Sandvik 365 scheduled maintenance.
- 1.57. **“Scheduled Maintenance Interval”** has the meaning given in Clause 7.5.
- 1.58. **“Site”** means the mining sites and other approved sites for use of the Goods, Services, and/or Digital Services, as specified in the Contract.
- 1.59. **“Software”** has the meaning given in Clause 11.
- 1.60. **“Stock”** means the stock of spare parts and consumables to which the Customer is granted access, if expressly stated in the Contract.
- 1.61. **“Specification”** has the meaning given in Clause 3.1.2.
- 1.62. **“Terms”** means these general terms and conditions for the rental of Goods.
- 1.63. **“Terms of Supply”** means the terms and conditions governing, and applicable to the sale of Goods (including parts and consumables) as made available by Sandvik in connection with the Contract.
- 1.64. **“Unsafe”** means unacceptable actual or potential hazards and incidents relating to safety, health, or the environment (including in breach of applicable Laws).
- 1.65. **“Variable Cost”** means: (a) global freight and insurance from Sandvik’s (or its Affiliates’) factory to country of destination port; (b) customs duties, taxes and excise levies or charges (or similar); (c) local freight and insurance from port to the relevant Sandvik (or Sandvik Affiliate) facility and/or destination site; (d) all local content requirements and options; and (e) any additional cost not included in the Rental Fee (or other charges under the Contract) at the time of the Contract.
- 1.66. **“VAT”** means any value-added tax, goods and services tax, consumption tax, or similar tax imposed by Law.
- 2. FORMATION OF CONTRACT**
- 2.1. The Customer may submit an Order to Sandvik (which Order may follow a Quote). Subject to Clause 2.2, the Order constitutes an offer (by the Customer) to rent (from Sandvik) certain Goods, subject to these Terms. Sandvik may, at its sole discretion, either: (a) accept the Order by way of an Order Acceptance (at which time the Parties shall be immediately bound by the Contract); or (b) reject the Order.

- 2.2. The Contract contains the entire agreement between Sandvik and the Customer with respect to its subject matter and supersedes all prior communication and agreements, with the exception of where the Parties have entered into a separate contract which incorporates these terms by reference. 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 (including these Terms). 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.
- 2.3. These Terms apply to the exclusion of other terms and conditions that may be sought to be invoked by the Customer (including, without limitation, any terms referenced in any order or on any website or electronic platform), or which are implied by trade, custom, practice, or course of dealing. Sandvik will not agree rentals on, and expressly rejects: (a) the Customer's standard terms and conditions relating to rentals; and (b) any terms and conditions other than the terms and conditions stated herein.
- 2.4. The Customer expressly acknowledges and agrees that any order which it issues to Sandvik shall be an offer to procure the rental of the Goods (and other services referred to herein) under these Terms and both Sandvik and the Customer shall be bound by the terms of the Contract, the terms of which prevail over any terms in the order. By accepting possession of the Goods (and receipt and use of other services referred to herein), the Customer acknowledges that the rental of the Goods (and the provision of other services referred to herein) are supplied in accordance with the terms and conditions of these Terms or any additional terms stated by Sandvik.
- 3. PRECEDENCE OF DOCUMENTS**
- 3.1. If there is any conflict or inconsistency between the parts constituting the Contract, the parts will rank in the following order of priority and shall prevail in the following order in the event of any conflict or inconsistency:
- 3.1.1. these Terms;
 - 3.1.2. the Order Acceptance;
 - 3.1.3. specification of the Goods (agreed in the Order Acceptance and/or Quote) (the "**Specification**");
 - 3.1.4. specification of the Stock, if access to the Stock has been specifically agreed by the Parties to be included in the rental of the Goods, including charges to be paid by the Customer for usage of spare parts and consumables included in the Stock;
 - 3.1.5. where applicable (e.g., to the provision of related Services or the purchase of Parts) the Terms of Supply;
 - 3.1.6. where applicable (i.e., to the provision of all Digital Services) the Digital Terms;
 - 3.1.7. where applicable any manuals shared as part of the Contract, including manual for operation of the Goods (the "**Operations Manual**");
 - 3.1.8. where applicable, any manuals for the parts, consumables, and other components of the Goods shared as part of the Contract (the "**Parts Manual**");
 - 3.1.9. the manual for service and maintenance of the Goods shared as part of the Contract (the "**Maintenance Manual**"); and
 - 3.1.10. the conditions applicable to the return of rented Goods shared as part of the Contract (the "**Return Conditions**").
- 4. DELIVERY**
- 4.1. Upon the Delivery Date, the Goods and/or the Stock shall together with the Manuals be made available to the Customer and the Customer shall take the actions required to take delivery of the Goods and/or the Stock. Unless stated otherwise in the Contract, the Goods and/or the Stock (if applicable) shall be delivered and made available to the Customer based on Incoterms 2020 Ex Works.
- 4.2. The sale and purchase of Parts shall be subject to, and governed by, the Terms of Supply.
- 4.3. In the event the Customer should fail to timely perform the actions for which the Customer is responsible, and which are required for delivery of the Goods and/or the Stock, the Customer shall immediately inform Sandvik thereof. Without limiting what is set out elsewhere in the Contract, the Customer shall compensate Sandvik for the costs and expenses incurred by Sandvik as a result thereof. In addition, the Customer acknowledges that it is obliged to pay the Rental Fee irrespective of any delay of the delivery of the Goods and/or the Stock due to circumstances attributable to the Customer. If the Customer fails to take delivery of the Goods and/or the Stock within 90 Days of the Delivery Date, Sandvik shall be entitled, without prejudice to its other rights, to terminate the Contract.
- 4.4. If Sandvik is not able to deliver the Goods and/or the Stock to the Customer on the Delivery Date due to the Customer's inability, unavailability or unwillingness to accept delivery, Sandvik reserves the right to dispatch the Goods and/or the Stock at Sandvik's discretion or put them into storage at the expense and risk of the Customer. The costs for this shall be immediately due and payable on demand. Where Sandvik expressly agrees that liquidated damages will apply in the Contract, if there is a delay in delivery for a reason attributable to Sandvik and if no suspension has been agreed upon, the Customer is entitled to liquidated damages from the date on which delivery should have taken place as follows:
- 4.4.1. **Goods:** the liquidated damages shall be payable at a rate of half a percent (0.5%) of the total contract value (rental portion) of Goods which is delayed calculated for each completed week of delay. The liquidated damages shall not exceed five (5) percent of total contract value (rental portion) of the delayed delivery.
 - 4.4.2. **Stock:** the liquidated damages shall be payable at the rate of zero-point twenty-five percent (0.25) of the net purchase price of the Stock which is delayed calculated for each completed week of delay and shall not exceed two and a half percent (2.5) of the net purchase price of the product in question.
- 4.5. The liquidated damages become due on the Customer's written demand but not before delivery has been completed or the Contract is terminated. The Customer shall forfeit its right to liquidated damages if it has not lodged a claim for such damages within 90 days after the time when delivery should have taken place.
- 4.6. Liquidated damages are the sole remedy available to the Customer for delay in delivery for a reason attributable to Sandvik.
- 4.7. The Parties agree that: (a) the liquidated damages represent a genuine pre-estimate of loss and a price adjustment by way of a refund of charges for the value of Goods or Stock not delivered on time; (b) the liquidated damages have been negotiated by Parties of similar bargaining strength and who have had the benefit of legal advice; and (c) if a court having competent jurisdiction determines that the liquidated damages are unenforceable under applicable Law, then the Customer may instead seek general damages (provided that Sandvik's liability for such general damages shall (subject to Clause 19 (Limitations of liability)) not exceed the liquidated damages that would have been payable had such liquidated damages been enforceable.
- 5. INITIAL INSPECTION AND INVENTORY**
- 5.1. Unless otherwise stated in the Contract, upon delivery of the Goods and/or the Stock, the Parties shall jointly perform:
- 5.1.1. an inspection of the Goods to confirm the status and condition of the Goods (the "**Initial Inspection**"); and
 - 5.1.2. if applicable, an inventory and inspection of the Stock to confirm the status, condition and volumes of the Stock (the "**Initial Inventory**").
- 5.2. The result of the Initial Inspection and/or the Initial Inventory shall be documented in a report and be signed by authorised representatives of both Parties. Upon execution by the Customer of the report, the Customer shall be deemed to have accepted the Goods and/or the Stock in the volumes, status and condition set out in the report.
- 6. OPERATION OF THE GOODS**
- Location of operation and scope of operation**

- 6.1. The Goods must only be operated, serviced and maintained at the Site and may not be moved from the Site unless Sandvik has given its prior written consent.
- 6.2. The Goods must only be used and operated as described in the Operations Manual or any Specification provided to the Customer by Sandvik. The Goods may under no circumstances be used on public roads nor fixed to any land, unless specifically agreed in writing by the Parties. The Customer is solely responsible for the operation and maintenance of the Goods during the Rental Term and Sandvik shall not be liable for any cost, loss or damage arising out of the operation of the Goods.
- 6.3. In the event erection and/or installation of the Goods (and/or dismantling and removal) is undertaken by the Customer, the Customer is fully responsible for such erection/installation (and/or dismantling and removal), including securing and complying with any and all permits and requirements from relevant authorities.

Status, condition and use of the Goods

- 6.4. The Customer is responsible for the status and condition of the Goods throughout the Rental Term. Subject to normal wear and tear, the Customer shall ensure that the Goods' status and condition will remain as on the Delivery Date during the entire Rental Term.
- 6.5. The Customer must operate the Goods with due care, in a workmanlike manner and in strict compliance with the Operations Manual and/or other reasonable instructions provided by Sandvik and/or the manufacturer. This includes, but is not limited to:
 - 6.5.1. exclusively using the Goods for the nature of work for which it was designed;
 - 6.5.2. ensuring that only employees who have received the proper training and hold the relevant licenses and/or certificates may operate, service, and maintain the Goods;
 - 6.5.3. maintaining all protective devices and safety equipment belonging to the Goods in good operating condition and under no circumstances overriding or disabling any of these protective devices or safety equipment; and
 - 6.5.4. not exceeding the maximum operating time specified in the Operations Manual.

Malfunction, damage to or loss of the Goods

- 6.6. The Customer shall immediately notify Sandvik:
 - 6.6.1. in the event of malfunction of, or damage to, the Goods during the Rental Term; and/or
 - 6.6.2. if the Goods are lost, destroyed, irreparably damaged during the Rental Term.
- 6.7. Such notice shall be made by providing a written report to Sandvik. The report shall be sufficiently detailed (depending on the nature of the malfunction, damage, or loss) for Sandvik to understand the malfunction, damage, or loss, the reason for this, and the relevant remedial actions.
- 6.8. Provided the malfunction, damage, or loss is not covered by Sandvik's warranty set out in Clause 16.3, the Customer shall, after instructions from Sandvik to do so, promptly and at its own cost rectify any damage, malfunction, or loss in accordance with the instructions in the Operations Manual or, if no such instructions are at hand, based on instructions by Sandvik. Any action to rectify damage, malfunction, or loss shall, in respect of spare parts and consumables, be performed by only using Parts unless otherwise approved in writing by Sandvik before the action is performed. Sandvik may, however, always request to rectify any damage, malfunction, or loss at the cost of the Customer if the Customer, in Sandvik's reasonable opinion, is not qualified or does not have the relevant resources to restore the Goods to the condition prior to the incident causing the damage, malfunction, or loss (e.g., in case of significant repairs).

Intellectual Property Rights in the Goods and the Stock

- 6.9. Sandvik is and will remain the sole owner of all the Intellectual Property Rights and Sandvik IPR comprised in and/or relating to the Goods, the Stock and services supplied under the Contract. No licence is hereby granted directly or indirectly under any patent, invention, trademark, discovery, copyright or other Intellectual Property Rights held, made, obtained or licensable by Sandvik now or in the future, other than as expressly set out in the Contract.

- 6.10. On the Delivery Date, and subject to the full payment by the Customer, of the charges (including Rental Fee) due under the Contract, Sandvik grants to the Customer a non-exclusive, non-transferable, non-assignable, non-sub-licensable licence to use Sandvik's Intellectual Property Rights comprised in the Goods, the Stock and/or services delivered by Sandvik, strictly limited to the extent necessary for installing, operating and maintaining the Goods and Stock in accordance with Manuals and instructions supplied by Sandvik and receiving the services supplied by Sandvik. The limited license will automatically terminate upon termination or expiry of the Contract.
- 6.11. Nothing in the Contract permits the Customer to copy, reproduce, modify, adapt, alter, translate, reverse engineer, 3D copy/print or create derivative works from the Goods, the Stock, services provided by Sandvik, or Sandvik IPR, in whole or in part, without Sandvik's prior written consent. If the Customer uses any of Intellectual Property Rights and/or Sandvik IPR in breach of the Contract, Sandvik may immediately terminate or revoke such rights, in all or in part, in its sole discretion.

7. SERVICE AND MAINTENANCE OF THE GOODS

The Customer's responsibility for service and maintenance

- 7.1. The Customer is responsible at its own cost for all service, maintenance and repairs of the Goods including all tools required for this, including Scheduled Maintenance, where applicable.
- 7.2. Service, maintenance and repairs shall be performed in accordance with the Maintenance Manual or the Sandvik-provided Specification. In addition, the Customer shall perform such other service and maintenance activities which are customarily performed on the type of goods provided by Sandvik to maintain the status and condition of the Goods. Regular maintenance activities include, but are not limited to, washing and cleaning, lubrication and greasing, checking oil levels and filters, and replacing damaged parts or parts subject to wear and tear.
- 7.3. When performing service and maintenance of the Goods, the Customer shall only use Parts, unless otherwise approved in writing by Sandvik.
- 7.4. The Customer is obliged to keep a log of all service and maintenance activities which are performed on the Goods, as well as any damage to and repairs of the Goods and provide a copy of such log to Sandvik immediately upon request.

Scheduled Maintenance

- 7.5. Where applicable, Scheduled Maintenance will be based on Sandvik's maintenance program for the Goods and will be performed within the predefined maintenance intervals/maintenance windows (each a "Scheduled Maintenance Interval") set out in the Maintenance Manual.
- 7.6. If specifically stated in the Contract that Sandvik will be responsible for performing Scheduled Maintenance, this shall also include provision of Parts required for such maintenance. The Customer shall notify Sandvik a reasonable time in advance of the Goods reaching any Scheduled Maintenance Interval in order for Sandvik to plan and perform such maintenance. The Customer acknowledges that Scheduled Maintenance may result in the Goods suffering from downtime and/or being taken out of its production. The Parties shall therefore jointly plan Scheduled Maintenance and endeavour to minimize such downtime/time out of production.
- 7.7. The Customer must at its own cost take such actions which are required for Sandvik to be able to perform Scheduled Maintenance, including but not limited to ensuring proper access to the Goods and a suitable location for maintenance and ensuring that any Customer personnel required to assist in respect of the Scheduled Maintenance are available.

8. STOCK OF SPARE PARTS AND CONSUMABLES

- 8.1. This Clause and other references in the Contract to the Stock shall only apply in the event the Parties have agreed to include access to the Stock as stated in the Contract. The Terms relating to the Goods shall apply also, *mutatis mutandis*, to the Stock unless the context clearly indicates otherwise.

- 8.2. For the purpose of ensuring a smooth operation of the Goods with a minimum of interruptions, the Customer will be granted access to the Stock. Although the categories and quantities of Stock are based on Sandvik's statistics and research, Sandvik does not warrant that the Stock will be sufficient to avoid interruptions in the operation of the Goods due to shortage of spare parts and consumables.
- 8.3. The Customer shall keep the Stock in a safe and appropriate place at the Customer's facilities to protect the Stock from damage arising from rust, oil, chemicals or dust etc. As a minimum, the Stock must always be stored in a container connected to electricity or in a warehouse. The Customer is responsible for ensuring that all parts of the Stock remain in their original condition as noted in the report under the Initial Inventory, save for consumables used and paid for and spare parts which have been replaced and paid for.
- 8.4. The Stock (and items in the Stock, to the extent practically possible) must be marked as the property of Sandvik which the Customer may not remove. If any such mark is damaged or lost, the Customer must immediately notify Sandvik and pay for any damages to the Stock, including damages to the packaging.
- 8.5. Prior to the Delivery Date, the Customer has been provided with information regarding the anticipated consumption of Stock based on the operation of Goods not exceeding the maximum operating time specified in any of the Operations Manuals. The Customer shall inform Sandvik in the event the consumption/usage of Stock would deviate from the anticipated consumption of Stock, following which the Parties may agree to increase or decrease the Stock.
- 8.6. The Customer shall, at a minimum monthly, provide a report to Sandvik of the consumption/usage of the Stock, which will be used e.g. for the purpose of invoicing the Customer for Stock usage/consumption and/or replacing the Stock. The report shall be submitted to Sandvik no later than five (5) Days before the end of each month.
- 9. SANDVIK'S INSPECTION AND INVENTORY DURING THE RENTAL TERM**
- 9.1. During the Rental Term, Sandvik will, at the interval specified in the Contract, perform an inspection, inventory and reconciliation of the Stock at the Customer's premises and with the cooperation of the Customer and/or the Customer's employees.
- 9.2. In addition, Sandvik shall upon three (3) Days' notice have access to the Site, and the relevant facilities thereof, to verify that the Goods are operated, serviced and maintained in compliance with the Contract and to ensure that the Customer complies with other relevant terms and conditions of the Contract.
- 9.3. If any non-conformances related to the Customer's responsibilities under the Contract are observed during inspections and/or inventory in accordance with this Clause 9, the Customer shall immediately rectify such non-conformances. If the Customer fails to do so, Sandvik is entitled to take any such actions at the cost and expense of the Customer.
- 10. DATA**
- 10.1. The Customer acknowledges and agrees that Sandvik may, whether as part of the Contract or Digital Services:
- 10.1.1. collect, store, analyse, and process any Input Data, Output Data, and other metrics and logs (*i.e.*, use data) collected by Connected Equipment or through the Digital Services in order for Sandvik to:
- 10.1.1.1. provide the Customer with the Digital Services (including the Equipment Monitoring Service, Support, and any services in relation or in connection therewith provided by Sandvik or its Representatives);
- 10.1.1.2. develop, plan, and implement improvements to the Digital Service or Connected Equipment; such improvements may be recommended to the Customer;
- 10.1.1.3. ensure the smooth operation (including the security) of the Digital Service or Connected Equipment;
- 10.1.1.4. enable scalability planning and performance monitoring activities to be carried out with respect to the Digital Service;
- 10.1.1.5. prepare accurate invoices;
- 10.1.1.6. evaluate adoption rates and the success of new features and releases of the Digital Service;
- 10.1.1.7. create training data;
- 10.1.1.8. evaluate current and future performance of the Digital Service or Connected Equipment; and
- 10.1.1.9. create, develop, and collect Sandvik Data to use for the Purpose; and
- 10.1.2. permit its Distributors, Affiliates, and third party suppliers permission to access and process Output Data solely in connection with the Contract and for the purpose of enabling such Sandvik Distributors, Affiliates, and third party suppliers to perform services in connection with the Contract.
- 10.2. If and to the extent Sandvik does not have direct access to the Input Data and/or Output Data, the Customer shall, on request, provide such Input Data and/or Output Data (in a format reasonably acceptable to Sandvik) promptly and without undue delay.
- 10.3. The Digital Services (including the Equipment Monitoring Service) may include:
- 10.3.1. monitoring equipment hours and/or equipment productivity; and/or
- 10.3.2. assisting or conducting aftermarket services or similar.
- 10.4. The Customer may use Input Data and Output Data for its own internal business purposes provided that the Customer shall not, without obtaining Sandvik's prior written consent, disclose or otherwise make available any Input Data or Output Data (in whole or in part and regardless of format) to any third party (excluding its Affiliates); provided, however, that the Customer may disclose Input Data or Output Data to its third party service providers who:
- 10.4.1. have a need to know the Input Data or Output Data in order to service the Connected Equipment (or other relevant Goods rented to the Customer by Sandvik or a Distributor) for and on behalf of the Customer; and
- 10.4.2. have entered into written confidentiality undertakings with the Customer that are no less protective of the Input Data and Output Data as those contained in the Contract and prevent further onward disclosure.
- 10.5. For the avoidance of doubt the Customer:
- 10.5.1. is not entitled to receive, use, or share RM Data unless expressly agreed otherwise in writing; and
- 10.5.2. acknowledges and agrees that:
- 10.5.2.1. the RM Data is commercially sensitive Confidential Information belonging to Sandvik; and
- 10.5.2.2. where Sandvik agrees to provide the RM Data, an additional fee may apply.
- 10.6. The Customer acknowledges and agrees that the Digital Services are based on Input Data sent to Sandvik and that the Customer shall be solely responsible and liable for the availability, quality, accuracy, reliability, completeness, and integrity of Input Data.
- 10.7. The Customer acknowledges and agrees that:
- 10.7.1. Input Data and Output Data (*e.g.*, machine logs and production data) is made available to the Customer through a pre-defined interface;
- 10.7.2. the Customer is responsible for pulling, configuring, and the storage of Input Data and Output Data (*e.g.*, machine logs) (including the duration of such storage); and
- 10.7.3. subject to clause 10.7.2, in normal operational circumstances and given the volume of data collected, machine logs are regularly overwritten.
- 10.8. The Customer acknowledges and agrees that:
- 10.8.1. the Equipment Monitoring Service is a Digital Service provided by Sandvik based on Input Data received by Sandvik;

- 10.8.2. Sandvik does not warrant (and cannot guarantee) that the Equipment Monitoring Service completely and accurately reflects the factual condition of the Connected Equipment; and
- 10.8.3. it is the Customer's sole responsibility to:
- 10.8.3.1. review the information in relation to the Equipment Monitoring Service; and
- 10.8.3.2. confirm the actual condition of the Connected Equipment.
- 10.9. 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.
- 10.10. For the purposes of the Data Protection Legislation, the Customer is the data controller and Sandvik is the data processor for such Personal Data.
- 10.11. For the avoidance of doubt, the Customer is solely responsible for ensuring that:
- 10.11.1. it has provided all necessary notices to all relevant data subjects; and
- 10.11.2. if deemed necessary by the Customer, all appropriate consents have been obtained to enable the lawful transfer to, and processing of, Input Data and Output Data by Sandvik and its Representatives (including Distributors and third party suppliers) as described in the Contract; and
- 10.11.3. all instructions it gives to Sandvik in respect of the Personal Data are and shall be lawful and in compliance with the Data Protection Legislation.
- 10.12. The Customer hereby agrees that Sandvik, at its discretion and subject to Clause 10.9, may engage any subcontractor inside or outside the UK/EU/EEA as a sub-processor for the processing of Personal Data hereunder; provided that Sandvik shall remain responsible in relation to the Customer for the acts and omissions of such subcontractors.
- 11. SOFTWARE AND COMPUTER CONTROL SYSTEMS**
- 11.1. Where the rental of any Goods or the provision of related services, Digital Services, and/or Connected Equipment also comprises the provision of software or systems ("**Software**") then, subject to any alternative licence specified in any separate terms of use applicable to the Digital Services, the Customer is granted, during the term of the 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 Sandvik).
- 11.2. The Customer shall not: without the prior written consent of Sandvik; or except to the extent expressly permitted under applicable Law:
- 11.2.1. format, convert, adapt, modify, reverse engineer, decompile, or disassemble the Digital Service or any Software or remove any Software from the Goods or Connected Equipment;
- 11.2.2. make copies of the relevant Digital Service or Software;
- 11.2.3. sell, licence, transfer, or otherwise dispose of, or distribute, the Digital Service or Software; or
- 11.2.4. use the Digital Service or Software for any other purpose than to the extent necessary for installing, operating and maintaining the Goods.
- 11.3. The Customer shall procure and ensure that its Representatives comply with Clause 11.2.
- 11.4. The Customer agrees that, as between the Parties, the Digital Service (including the Equipment Monitoring Service) is provided to the Customer only and cannot be assigned by the Customer without Sandvik's prior written consent.
- 11.5. The Customer shall notify:
- 11.5.1. Sandvik if it sells, leases, rents, or otherwise assigns or transfers the Connected Equipment; and
- 11.5.2. the new customer and/or user that the Connected Equipment is connected to Sandvik's systems.
- 11.6. Other than the Connected Equipment, the Customer must have computer and network infrastructure that meets the requirements specified by Sandvik at Order Effective Date (the "**Minimum Technical Requirements**").
- 11.7. The Customer acknowledges and agrees that:
- 11.7.1. the performance of the Digital Service (including Equipment Monitoring Service) is dependent upon the Customer's information technology equipment meeting the Minimum Technical Requirements;
- 11.7.2. the Customer must throughout the term of the Contract ensure that its computing systems (including the network infrastructure) meet the Minimum Technical Requirements.
- 11.8. The Customer acknowledges and agrees that Connected Equipment and Digital Services may contain:
- 11.8.1. third party software; and
- 11.8.2. software that is subject to open-source licences, and that such third-party software and open-source software is provided "*as is*" and "*as available*" and without any representation or warranty of any kind.
- 11.9. The Customer shall comply with any licence terms applicable to third party software and open-source software made known to it by Sandvik from time to time and agrees that such licence terms shall, unless otherwise expressly stated in the Contract, apply in lieu of these Terms as regards the Customer's use of such third-party software and open-source software.
- 11.10. Any license granted or implied under the Contract can be revoked at any time.
- 11.11. The Customer agrees to indemnify, defend, and hold harmless (and keep indemnified) Sandvik and its Representatives from and against all liabilities, costs and expenses suffered or incurred by Sandvik or its Representatives (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 the negligence of Sandvik.
- 12. INSURANCE**
- 12.1. Without limiting the Customer's indemnity obligations set out elsewhere in the Contract, and unless otherwise stated in the Contract, the Customer will maintain at its own expense the following minimum insurance coverage and any insurance required by applicable law or regulations (including in respect of the operation of the Goods) during the Rental Term and performance hereunder:
- 12.1.1. Unless otherwise stated in the Quote, Public/General Liability with minimum limits of two million United States Dollars (\$2,000,000 USD) each and every loss including:
- 12.1.1.1. any person or organization acting on behalf of the Customer;
- 12.1.1.2. bodily injury and property damage; and
- 12.1.1.3. property in the Customer's care, custody, control, or possession;
- 12.1.2. "*All Risks*" property: The Customer shall be solely responsible for the Goods rented and operated by it and will insure the Goods for the Replacement Value specified by Sandvik in the Contract. Should the Goods become lost, irrecoverable, or damaged beyond economical repair, Sandvik will be paid for the Goods;
- 12.1.3. Automobile liability (only if applicable) with minimum limits as required by applicable Law;
- 12.1.4. Work injury and employer's liability with minimum local market standard limits and in compliance with legislation of the hiring and working jurisdictions; and
- 12.1.5. Transportation covering as a minimum the replacement value of the Goods in the Customer's care, custody and control including temporary storage.
- 12.2. In respect of the insurance covers taken by the Customer under this Clause 12 and to the extent permitted by Law and/or as is customary, Sandvik, its affiliates, and their respective directors, officers, employees, and agents will be endorsed (through blanket or stand-alone endorsement) to be:
- 12.2.1. named as additional insured or granted 'Indemnity to Principal' status; and
- 12.2.2. provided waiver of subrogation.
- 12.3. The Customer will be solely responsible for premiums, deductibles and retentions.

- 12.4. Prior to the Delivery Date and at least once per year thereafter and at request, the Customer shall furnish Sandvik with certificates of insurance acceptable to Sandvik, evidencing the minimum coverage, limits, terms and conditions required herein. Failure to comply does not constitute a waiver of the insurance requirements.
- 12.5. In the event the Customer fails to take out and/or maintain the insurances, Sandvik will have the right not to deliver the Goods (if occurring prior to the Delivery Date) and/or repossess the Goods and terminate the Contract (if occurring after the Delivery Date).

13. FEES AND PAYMENT

Rental Fee

- 13.1. The Customer shall pay, without set-off, to Sandvik the Rental Fee as set out in the Contract.
- 13.2. The Rental Fee includes:
- 13.2.1. the right to use of the Goods during the Rental Term;
 - 13.2.2. inspections of the Goods, excluding any travel costs which may be charged based on actual cost;
 - 13.2.3. access to the Stock (but not any actual consumption/usage of the Stock); and
 - 13.2.4. if set out in the Contract, Scheduled Maintenance, excluding any travel costs which may be charged based on actual cost.

Taxation

- 13.3. The Parties agree that, with respect to sales tax, VAT, or other applicable taxation:
- 13.3.1. prices are quoted on a sales tax or VAT-exclusive basis;
 - 13.3.2. if in any jurisdiction sales tax or VAT is payable by Sandvik to a tax authority in relation to the supply of the Goods (including by way of rent), Stock or any services, an amount equal to such sales tax or VAT will be calculated and charged to the Customer as an additional amount;
 - 13.3.3. to the extent that a payment to a Party under or in connection with the 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 sales tax or VAT; in addition to and without limiting the above, where a supply of Goods is treated as not subject to sales tax or VAT on the basis that the Customer or its freight forwarder will move the Goods from one country to another country, the Customer will provide to Sandvik, upon request, all transport related documentation and (if applicable) customs documentation to demonstrate the cross-border movement of the Goods;
 - 13.3.5. if the Customer fails to provide the requested documentation within the period of time requested, or the documentation is not of the standard required by the relevant tax authority, or the documentation indicates that:
 - 13.3.5.1. the Goods were not moved cross-border and/or
 - 13.3.5.2. the Goods were not moved cross-border within the period of time required by law or tax authority practice; and/or
 - 13.3.5.3. the Goods were moved by a Party other than the Customer or its freight forwarder without the written approval of Sandvik,
 the Customer will pay to Sandvik an amount equal to any sales tax or VAT for which Sandvik is required to account to a tax authority together with any penalties and interest imposed on Sandvik by a tax authority in relation to that supply of Goods; and
 - 13.3.6. this Clause 13.3 will continue to apply after expiry or termination of the Contract.

Charges for Stock

- 13.4. Where applicable, Sandvik will charge the Customer for usage/consumption of the Stock. Unless the Parties agree otherwise, invoicing will be done on a monthly basis as set out in the Contract and will be based on the Customer's reporting of usage/consumption. In the event the report provided by the Customer deviates from the actual usage/consumption of Stock, the Customer shall pay additional usage/consumption fees plus interest from the date of the actual usage/consumption.

Maintenance fees etc.

- 13.5. In the event that the Customer fails to properly perform maintenance of the Goods resulting in Sandvik exercising its right to perform such actions, Sandvik's costs for such maintenance will be charged and invoiced together with the Rental Fee for the month following the month when such maintenance was performed. If Scheduled Maintenance is not included in the Rental Fee, Sandvik's costs for such maintenance will be charged and invoiced in the same way as other maintenance as set out in this Clause.

Fees for other services

- 13.6. During the Rental Term, the Parties may agree that Sandvik shall provide additional services to the Customer, such as training and consultancy services. Any agreement that such additional services shall be provided shall be documented in writing by the Parties, together with the terms and conditions for such services. Invoicing of such additional services will be charged and invoiced separately as set out in any such agreement.

Other chargeable costs

- 13.7. In the event the Customer has failed to provide such assistance or take actions required for Sandvik to perform its obligations hereunder, or to exercise its rights hereunder, Sandvik shall have the right to charge the Customer for any costs and expenses incurred as a consequence thereof, e.g., if the Customer has failed to provide assistance and provide access to Sandvik for Scheduled Maintenance and inspections. Any such costs and expenses shall be added to the invoice for the Rental Fee the month subsequent to the month the cost or expense was incurred.
- 13.8. If there are any other consequences to the supply of the Goods, the Stock and/or services (including transport and logistics) due to circumstances outside of Sandvik's control, Sandvik 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 of sub-suppliers (including transport and logistics costs), Sandvik reserves the right to pass through such cost to the Customer (acting reasonably). Any increase will be calculated in accordance with any rates in the Contract, or if there are no rates, by a reasonable amount.

Deposit

- 13.9. In the event the Parties have agreed that a Deposit shall be paid by the Customer (as set out in the Contract), Sandvik shall have the right to recover compensation for any claims or other right to compensation Sandvik may have hereunder against the Customer through a set-off against the Deposit by notifying the Customer thereof in writing. After expiry of the Rental Term, and provided no claims or other right to compensation is at hand or is evidenced through the End Inspection and/or End Inventory, the Deposit (or the remainder thereof) shall be refunded to the Customer as a reduction of the last payment of Rental Fees, compensation for Stock or as otherwise agreed by the Parties, but in no event prior to completion of the End Inspection and/or End Inventory.

Payment terms

- 13.10. Unless otherwise stated in the Contract, the Rental Fee will be invoiced in advance, monthly by the 15th Day of each month and shall be paid within seven (7) Days from the invoice date as stated on the invoice.
- 13.11. In addition to the Rental Fee, and if this is agreed by the Parties (as set out in the Contract), the Customer shall pay the Deposit prior to the Delivery Date as security for any claims hereunder which Sandvik may have against the Customer.
- 13.12. Usage of items in the Stock will be charged on a usage/consumption basis, based on the charges set out in the Contract. The charges for usage/consumption of items in the Stock will be invoiced monthly in arrears by the 15th Day of each month and shall be paid within thirty (30) Days from the invoice date stated on the invoice.

Interest

13.13. In the event of late payment, Sandvik shall be entitled to charge late payment interest at the higher of a rate of one and a half percent (1.5%) or the highest rate allowed under the applicable Law per month or part thereof on the amount payable and overdue for the period from the due date of payment and the date when payment has been made in full. The Customer agrees to indemnify and keep Sandvik indemnified against all costs incurred by Sandvik 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.

Pricing Uniformity

13.14. Unless otherwise stated in the Contract, the Parties acknowledge and agree that from the date of the Contract:

13.14.1. the Rental Fee is considered a fixed price and will not be changed during the Rental Term (except where the Rental Term is for a period of more than 12 months), subject only to discounts or adjustments applied in accordance with the relevant agreed formula in the Contract or as otherwise agreed by the Parties in writing;

13.14.2. the Rental Fee (and other charges under the Contract) does not include Variable Costs, or the price of any factory fitted optional extras, which the Customer shall pay in addition to the Rental Fee (and other charges under the Contract) and which are subject to change during the Rental Term provided that Sandvik must, and must procure that its Affiliates will not, change or increase the cost payable by the Customer in respect of any Variable Cost (other than any Variable Costs comprising customs duties, taxes and excise levies or charges, which may be subject to change at any time) that is specified in a written quotation or similar, for a period that is [60] days following the date of receipt of such quotation; and

13.14.3. if the Customer places a rental order in respect of a quotation that includes a Variable Cost after the expiry of the 60 day period, Sandvik and the relevant Affiliates will, use reasonable commercial endeavours to apply the same Variable Cost (other than any Variable Costs comprising customs duties, taxes and excise levies or charges, which may be subject to change at any time) as set out in the relevant quotation as the price payable by the Customer (as applicable) in respect of such Goods ordered, provided that Sandvik or the relevant Affiliate retains the right to adjust the Variable Cost (other than any Variable Costs comprising customs duties, taxes and excise levies or charges, which may be subject to change at any time) specified in any quotation or relevant document if there have been changes in market conditions, input costs, or other economic factors. If an increase to such Variable Cost amount specified in a quotation or relevant document is proposed to be implemented by Sandvik or respective Affiliate, Sandvik or the respective Affiliate (as applicable), must provide the Customer with documentation and an adjusted quotation ensuring that such documentation contains necessary and appropriate information to validate the proposed adjustment to the Variable Cost component of the relevant order prior to processing the final order for the relevant Goods unless otherwise agreed under special circumstances.

13.15. In the event of any conflict between the provisions of Clause 13.14 and the provisions of any Incoterm specified in the Contract, the provisions of Clause 13.14 shall prevail.

14. TERM AND TERMINATION

14.1. Unless stated otherwise in the Contract, the Rental Term shall be as specified in the Contract and automatically terminate at the end date. If the Customer wishes to extend the Rental Term, it shall request an extension of the Rental Term in writing from Sandvik. Unless otherwise stated in the Contract or the Quote, if the Customer wishes to terminate prior to the expiry of the Rental Term, the Customer shall provide a written notice thereof to Sandvik in accordance with the following notice periods:

14.1.1. thirty (30) Days' notice period where the Rental Term is under three (3) months;

14.1.2. sixty (60) Days' notice period where the Rental Term is between three (3) to six (6) months; and

14.1.3. ninety (90) Days' notice period where the Rental Term is for seven (7) months or more.

14.2. Either Party may immediately terminate the Contract by giving written notice in the event the other Party materially breaches its obligations under the Contract and such breach is incapable of remedy or, if the breach is capable of remedy, has failed to remedy such breach within 14 Days from receiving a written notice from the non-defaulting Party in which the material breach is described.

14.3. Sandvik may immediately terminate the Contract by giving written notice to the Customer in any of the following events:

14.3.1. suffers or becomes subject to an Insolvency Event;

14.3.2. the Customer fails to perform payments to Sandvik as set out herein and has failed to do so within 7 Days after a written notice from Sandvik;

14.3.3. the Customer fails to take out or maintain any insurances for which the Customer is responsible hereunder, fails to ensure and maintain any permits or other requirements required to erect, install or operate the Goods (and the business in which it is used) or fails to operate the Goods in compliance with relevant laws and regulations; or

14.3.4. the Customer takes any action, or omits to take any action, which may reasonably endanger the safety or condition of the Goods or result in a risk of loss or damage to property or personal injury when operating the Goods.

14.4. For the avoidance of doubt, if Sandvik has performed its right to terminate the Contract as set out in Clauses 14.2 or 14.3, Sandvik is entitled to the remainder of the total Rental Fees (payable under the Contract for the Rental Term in addition to any other remedies under the Contract.

15. RETURN OF THE GOODS AND THE STOCK

General

15.1. Upon expiration of the Rental Term or earlier termination of the Contract, the Customer shall return the Goods and/or the Stock to Sandvik in accordance with the Return Conditions in the Contract and Sandvik shall have the right to immediately repossess the Goods and/or the Stock, regardless if the Customer disputes any such early termination of the Contract by Sandvik. Return of the Goods and/or the Stock shall be based on Incoterms 2020 DDP, site designated by Sandvik.

15.2. If the Customer has not returned the Goods and/or the Stock three (3) Days after the expiration of the Rental Term or earlier termination of the Contract, to the extent allowed by and in accordance with the applicable Law Sandvik is entitled to itself repossess and collect the Goods and/or the Stock, and may enter the Customer's premises if needed, at the Customer's cost and expense. The Customer shall, at its own cost and expense, provide such assistance and grant such access as is needed for repossession of the Goods and/or the Stock.

15.3. When returning the Goods and/or the Stock, the Customer shall also return all loose accessories (if any) belonging to the Goods listed in the report of the Initial Inspection.

15.4. Before the return of the Goods, the Customer must have taken such actions which are required for the Goods to be proper and clean, and where applicable, in accordance with the Maintenance Manual and the Return Conditions, and such other actions which are to be performed prior to returning the Goods as set out in the Contract.

Inspection and inventory upon expiry or termination of the Rental Term

15.5. Upon expiry or termination of the Rental Term, the Parties shall jointly perform:

15.5.1. an inspection of the Goods to confirm the status and condition of the Goods (the "End Inspection"); and

15.5.2. an inventory and inspection of the Stock to confirm the status, condition and volumes of the Stock (the "End Inventory").

15.6. The result of the End Inspection and the End Inventory shall be documented in a report and be signed by representatives of both Parties.

- 15.7. If the status and condition of the Goods deviates from the status and condition of the Goods on the Delivery Date, save for normal wear and tear, and/or the Customer has not cleaned the Goods in accordance with the Maintenance Manual or the provided Specifications and the Return Conditions, the Customer is obliged to pay any costs that Sandvik may have for restoring and/or cleaning the Goods.
- 15.8. If the End Inventory shows that the actual usage/consumption of the Stock is in excess to the reports provided by the Customer, Sandvik has the right to invoice for such deviations.
- 15.9. After the End Inspection Sandvik will render a final invoice based on Rental Fee and any other applicable charges.
- 15.10. Where the Customer requires Sandvik to buy-back any Stock during the Rental Term, the Sandvik Buy-Back Policy reflected in the Contract shall apply.

16. WARRANTIES BY SANDVIK

Title and quiet enjoyment

- 16.1. Sandvik warrants that it has and will (either itself or through another Sandvik group company) retain ownership of the Goods throughout the Rental Term and will not encumber or create any interest in the Goods which will negatively impact the rental of the Goods.
- 16.2. Subject to the terms and conditions set out herein, Sandvik warrants that throughout the Rental Term, neither Sandvik nor any person lawfully making a claim through Sandvik, will interfere with the Customer's quiet use, possession and enjoyment of the Goods and/or the Stock.

Status and condition of the Goods

- 16.3. Subject to the terms and conditions set out herein, including the Customer's obligation with respect to operation, service and maintenance of the Goods, Sandvik warrants that the Goods will in all material aspects comply with the Specification during the Rental Term. For the avoidance of doubt, Sandvik's warranty does not cover any errors or malfunctions which have been documented in the report when the Rental Term commences, or which were otherwise known to the Customer upon commencement of the Rental Term.
- 16.4. The warranty in Clause 16.3 is conditional upon the Customer providing a written notice thereof immediately after identifying any error or malfunction of the Goods which is covered by Sandvik's warranty, such written notice to include a description of the error or malfunction which is sufficiently detailed for Sandvik to take relevant actions to remedy the error or malfunction by repairing the Goods, and if this is not possible, replacing the Goods.
- 16.5. Upon receipt of the Customer's written notice, and provided that the error or malfunction is covered by Sandvik's warranty, Sandvik will as soon as possible commence remedial actions to remedy the error or malfunction. The terms and conditions for Scheduled Maintenance with respect to e.g., access to the Goods and the Customer's facilities will apply *mutatis mutandis* to any such remedial actions by Sandvik.
- 16.6. In the event any error or malfunction which is covered by Sandvik's warranty occurs, the Customer shall take any reasonable actions required to mitigate the effects of error or malfunction (e.g., with the purpose not to cause any damage or loss to the Goods) and cease using the Goods, unless continued operation (potentially with certain restrictions) has been approved in writing by Sandvik.
- 16.7. Sandvik's warranty does not cover errors or malfunctions resulting from:
- 16.7.1. normal wear and tear;
 - 16.7.2. accidents;
 - 16.7.3. negligent handling of the Goods or failure to handle the Goods in a professional and workmanlike manner;
 - 16.7.4. use of spare Parts and consumables not approved by Sandvik and defects in spare Parts and consumables not provided by Sandvik; and/or
 - 16.7.5. a need to replace consumables.

Exclusion of other warranties

- 16.8. Sandvik's warranties set out in Clauses 16.1 to 16.3 are the sole and exclusive warranties made by Sandvik and any other warranties in relation to the Goods and/or the Stock, including with respect to the use, suitability, fitness for a particular purpose or otherwise, are hereby excluded to the greatest extent possible under law.

17. TRANSITION OF RISK OF LOSS AND DAMAGE TO THE GOODS

- 17.1. The Customer shall have the risk and responsibility for any loss or damage or reduction in value of the Goods and/or the Stock, except if caused by ordinary wear and tear, from the Delivery Date and until the day of return of the Goods and/or the Stock, regardless of reason for any such loss or damage or reduction in value of the Goods and/or the Stock.

18. TITLE TO THE GOODS AND STOCK

- 18.1. The Customer agrees that Sandvik retains title and ownership to the Goods during the Rental Term. Any modifications approved by Sandvik and made to the Goods during the Rental Term, such as installed accessories or spare Parts, shall be deemed part of the Goods and the title and ownership shall automatically transfer to Sandvik upon installation. Sandvik will retain the title to the Stock, irrespective of any consumption by the Customer. If Sandvik so requests, the Customer shall attach and maintain on the Goods and/or the Stock a visible plate or marker indicating Sandvik's ownership of the Goods and/or the Stock.
- 18.2. The Customer shall not, wholly or partly, assign, pledge, sub-lease, create nor permit any security or encumbrance over or otherwise dispose of the Goods and/or the Stock. Should any lien, mortgage, security interest, pledge or other encumbrance be asserted against the Goods or the Stock, the Customer agrees to immediately notify Sandvik in writing thereof and take all necessary steps to protect the Goods and/or the Stock against such actions and, at the Customer's expense, to take such actions which are required to immediately release such mortgage, lien, security interest, claim, encumbrance.

19. LIMITATIONS OF LIABILITY

- 19.1. Nothing in the Contract shall limit or exclude (or seeks to limit or exclude):
- 19.1.1. either Party's liability to the other (to a greater extent than is permitted by applicable Laws) for any loss or damage resulting from:
 - 19.1.1.1. death or personal injury caused by negligence;
 - 19.1.1.2. fraud or fraudulent misrepresentation; or
 - 19.1.1.3. any other matter in respect of which loss or damage may not be limited or excluded under applicable Laws;
 - 19.1.2. the Customer's liability to Sandvik:
 - 19.1.2.1. to pay the Rental Fees (including the price, freight, insurance, sales tax, VAT, other taxes, customs or excise levies or duties (or similar)) or any agreed amounts payable; or
 - 19.1.2.2. for loss or damage arising: (a) under an indemnity given in the Contract; (b) from a breach of applicable Laws (including arising from contravention of Export Laws, Sanctions, or Data Protection Legislation); or (c) from any breach of Clause 25 (Confidential Information).
- 19.2. To the extent permitted by applicable Law and except for any indemnity claim made under Clauses 21 and/or 22, neither Party is liable to the other Party for any punitive or pure economic cost, indirect, incidental, special, or consequential loss or damage; economic loss; loss of opportunity; loss of production; loss of use; loss of sales; loss of goodwill; loss of profit or anticipated profit; or revenue or any cost or expense incurred to avoid any of the foregoing, in each case whether foreseeable or not, suffered or incurred by the other Party howsoever arising, including out of a breach by the other Party of the Contract, a tortious or delictual (including negligent) act or omission, in equity, a breach of a statutory duty or obligation, or otherwise (whether or not such loss or damage was foreseeable by either Party).

- 19.3. To the extent permitted by Law, and subject to Clauses 19.1 and 19.2, Sandvik's total aggregate liability to the Customer (and to any third party claiming under or through the Customer): (a) in each successive period of twelve (12) months commencing at the start of the Rental Term (a "Contract Year"); and (b) in respect of all causes of action (including claims) arising in that Contract Year (determined at the date when the liability giving rise to the cause of action first arose), shall not exceed the sum equivalent to the total Rental Fees paid under the Contract for the Contract Year in question.
- 20. FORCE MAJEURE**
- 20.1. During the continuance of an event of Force Majeure or the effect of an act or omission of the Customer, Sandvik's obligations under the Contract will be suspended and timeframes adjusted accordingly. Sandvik shall not be in breach of the Contract or otherwise liable for any failure or delay in the performance of such obligations. Any event of Force Majeure of Sandvik does not relieve the Customer from its obligation to pay the Rental Fees payable under the Contract.
- 21. SANCTIONS, EXPORT LAWS, AND END-USER ASSURANCE ETC.**
- 21.1. The Customer represents and warrants that neither it nor any Related Entity or Representative (including its Related Entities) is currently (or is otherwise controlled by) a Sanctioned Person or otherwise the subject or the target of any Sanctions.
- 21.2. The Customer represents and warrants, from the Effective Date and on an ongoing basis, that it shall: (a) strictly comply with, and adhere to, all Sanctions; (b) not engage in any activity, practice or conduct involving a Sanctioned Person or a Prohibited Country; (c) not engage in activity, practice, or conduct in any manner that would breach Sanctions, cause Sandvik or its Related Entities to breach Sanctions, or that could expose it, Sandvik or their Related Entities to the risk of adverse measures pursuant to any Sanctions (including being designated as a Sanctioned Person); (d) not directly or indirectly (even when under threat of deterring financial liability) sell, re-sell, circumvent, transfer, retransfer, provide, export, re-export, divert, loan, lease, consign, or otherwise release or dispose of any of the Goods or Confidential Information to military (or military intelligence) end-users or for military (or military intelligence) end use; to, via or for the benefit of a Sanctioned Person; or to a Prohibited Country; (e) ensure that the Goods and Confidential Information 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 Sandvik is not responsible for any Confidential Information 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 Confidential Information, the Customer is responsible for complying with (and warrants and represents that it shall comply with) all Sanctions and Export Laws, including by obtaining all export licenses or authorisations where required under law (including the Sanctions) and imposing obligations equivalent to those contained in this Clause 21 on its customers with respect to all subsequent transactions involving the Goods); and (f) maintain its own policies and procedures to ensure compliance with Sanctions and Export Laws (and the Sanctions-related / Export Laws- related provisions in the Contract).
- 21.3. The Customer: (a) represents and warrants that it will take all reasonable measures to ensure that its employees, subcontractors, agents, intermediaries, and Representatives will comply with the terms of the Contract; (b) shall cause all subcontractors to give and enter into representations, warranties, and undertakings substantially equivalent to those set out in Clause 21.2. For the purposes of this Clause 21.3, reasonable measures includes (but is not limited to) policies, procedures, and training relating to compliance with Sanctions, Export Laws, and the Sanctions-related provisions of these Terms; and (c) shall establish and maintain adequate internal controls and mechanisms to: (i) detect conduct by third parties in its downstream commercial chain, including possible resellers, that violates, or frustrates the purpose of, Sanctions; and (ii) ensure it obtains sufficient knowledge about the end-user to determine whether, for each contract, the Goods could be destined for an end-use which is not permitted under the Contract.
- 21.4. Nothing in the Contract requires either Party to take any action, or refrain from taking any action, where doing so would be prohibited by, or subject to penalty under any Sanctions, or where doing so would expose the Party or its Related Entities to the risk of adverse measures pursuant to any Sanctions.
- 21.5. Each Party agrees to take advantage of any general licence to lawfully allow for the performance of the terms of the Contract if such performance is affected by Sanctions. For the avoidance of doubt, nothing in the Contract, or otherwise, requires Sandvik to apply for any specific licence or authorisation in the event that performance of the terms of the Contract becomes unlawful pursuant to Sanctions.
- 21.6. If the Customer breaches any representation or warranty set out in this Clause 21 or, in Sandvik's reasonable opinion, any such breach is likely to occur, the Parties agree that Sandvik may terminate or suspend (at its own discretion) its relationship with the Customer immediately, and that Sandvik shall not be liable toward the Customer or any third party for any subsequent non-performance by Sandvik under the Contract, and that the Customer shall indemnify and hold Sandvik harmless from any claims, losses, damages, fines, or penalties relating to such non-performance or otherwise arising from a breach of representation or warranty.
- 21.7. The Customer shall notify Sandvik immediately (and no later than within seventy two (72) hours of knowing or suspecting the breach) of any known or suspected breach (whether by the Customer or any other entity or person) of any representation or warranty set out in the clauses above or it becomes aware that performance of the Contract, or any actions taken in relation to or pursuant to the Contract have, or may lead to, a breach of this Clause 21. Further, the Customer shall provide all information relating to requests for any Goods, that the Customer suspects could violate or circumvent Sanctions, or where the provision of Goods would breach the Customer's commitments under the obligations above in these clauses, including requests from or on behalf of a Sanctioned Persons or attempts to acquire any Goods in violation of Sanctions.
- 21.8. If Sandvik elects to suspend the Contract pursuant to Clause 21.6: (a) Sandvik shall cease performance under the Contract with immediate effect upon serving written notice to the Customer; (b) any suspension will last for a period of up to one hundred and twenty (120) days. If, after this period, Sandvik is unable to confirm that the Customer is in compliance with this Clause 21, Sandvik may elect to terminate the Contract with immediate effect; and (c) for the suspension to cease having effect, Sandvik must serve the Customer with a written notice confirming that the suspension period has come to an end.

- 21.9. Sandvik shall have the right to track the location of the Goods and/or Stock throughout the entire Rental Term to ensure compliance with Sanctions and regulatory requirements. This tracking shall be used solely for verifying the geographical location of the Goods and/or Stock and ensuring adherence to relevant Sanctions. Additionally, Sandvik reserves the right to conduct audits, which may include checking the location of Goods and/or Stock, to verify compliance with these requirements. The Customer acknowledges and agrees to this tracking and auditing and shall not interfere with or disable any tracking devices or technologies installed on Goods and/or Stock. All data collected during the rental period will be handled in accordance with applicable laws.
- 22. INDEMNITIES**
- 22.1. In addition to indemnity provisions set out elsewhere in the Contract, the Customer will defend, indemnify, and hold harmless Sandvik from and against any and all costs, losses and expenses (including court costs, attorney fees, interest and penalties) resulting from any third party claim (including Customer employees, consultants and contractors) made against Sandvik if such claim is caused by the Customer failing to comply with the terms and conditions of this Contract, or applicable U.S. Federal and State law.
- 22.2. The indemnity in Clause 22.1 includes any claim made against Sandvik by a third party (including Customer employees, consultants and contractors) based on any law which designates Sandvik as a responsible party, *inter alia* claims based on the Swedish Product Liability Act (Sw. Produkts akerhetslag (2004:451)) if such claim would not have been made if the Customer would have complied with the terms and conditions of the Contract.
- 23. COMPLIANCE WITH SANDVIK CODE OF CONDUCT**
- 23.1. **Code of conduct and compliance with anti-bribery Laws:** The Customer shall at all times comply with:
- 23.1.1. the Sandvik Code of Conduct (a copy of which is available on request); and
- 23.1.2. all applicable Laws relating to anti-bribery and anti-corruption (including anti-money laundering) including the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act as amended from time to time).
- 23.2. **Modern slavery:** Without prejudice to any other provision within the Contract, the Customer shall, at all relevant times:
- 23.2.1. comply with the Sandvik Code of Conduct relating to modern slavery or human trafficking as is notified to the Customer by Sandvik from time to time;
- 23.2.2. immediately notify Sandvik in writing if it has reason to believe that it, or any member of its supply chain, is in breach of, or is likely to breach any provisions of this Clause 23.2 (or would do so if it were a Party to the Contract);
- 23.2.3. retain detailed, accurate, and continuously maintained records setting out:
- 23.2.3.1. its staff hiring procedures;
- 23.2.3.2. its supplier and sub-contractor selection processes,
- and shall promptly provide copies of such records to Sandvik at Sandvik's request.
- 24. UNSAFE CONDITIONS OR ACTIVITIES**
- 24.1. The Customer shall ensure that it complies with all applicable Laws relating to or concerning: (a) the environment and emissions; (b) occupational health and safety; (c) sustainability; (d) the operation of plant and machinery; and (e) hazards and hazardous substances, and shall have and maintain all appropriate procedures and policies required by applicable Law.
- 24.2. Notwithstanding the generality of Clause 24.1, the Customer shall: (a) take all steps necessary to prevent the occurrence of Unsafe conditions or activities; and (b) notify Sandvik if it observes, reasonably suspects, or becomes aware of an Unsafe condition or activity.
- 24.3. If Sandvik identifies an Unsafe condition as described in Clause 24.2, Sandvik may require the Customer to remove or, to the extent reasonably possible, mitigate the effect of the Unsafe condition, and the Customer must comply with that request promptly and without delay.
- 24.4. Sandvik reserves the right to suspend the delivery or rental of Goods or performance of any services or Digital Services to the Customer where any Unsafe condition exists until such time as the Unsafe condition has been rectified to Sandvik's satisfaction.
- 24.5. The Customer shall ensure that: (a) it notifies Sandvik of all Unsafe conditions or activities of which it becomes aware (including those within its control) promptly and without delay (and immediately where the Unsafe condition or activity may risk the health or safety of Sandvik's Representatives); and (b) all relevant personnel are informed of, and comply with: (i) all relevant Laws; and (ii) any Sandvik protocols, codes of conduct, policies, or procedures notified to the Customer (which may include health and safety requirements, machine operation instructions or manuals, security policies, employee conduct requirements, sustainability and environment policies) from time to time in connection with the Contract.
- 25. CONFIDENTIAL INFORMATION**
- 25.1. The Customer agrees: (a) to only use Sandvik's Confidential Information to exercise its rights and perform its obligations under or in connection with the Contract; and (b) that any information disclosed by or on behalf of Sandvik is, and remains, Sandvik's property at all times.
- 25.2. Each Party undertakes to the other that it shall: (a) not, at any time and except as permitted by Clause 25.3, disclose any Confidential Information belonging to the other to a third party (including information concerning technical solutions or problems or the results of testing, which information shall be construed as Sandvik's Confidential Information); and (b) hold the other Party's Confidential Information in confidence using at least the same degree of care (but not less than a reasonable degree of care) to safeguard and prevent disclosure to third parties as it applies to its own information of a similar nature.
- 25.3. Subject to Clause 21 (Sanctions, Export Laws, and End-User assurance etc.), each Party may disclose the other Party's Confidential Information: (a) to its Affiliates or Representatives who need to know the Confidential Information for the purposes of exercising that Party's rights or carrying out that Party's obligations under or in connection with the Contract, provided that: (i) an Affiliate or Representative receiving Sandvik's Confidential Information may not be a direct competitor of Sandvik without Sandvik's express prior written consent; and (ii) the Party making the onward disclosure: (A) takes all steps necessary to ensure that its Affiliates or Representatives are aware of, and comply with, the confidentiality obligations contained in this Clause 25 as though they were a Party to the Contract; and (B) shall be responsible for its Affiliates' or Representatives' acts or omissions and compliance with the confidentiality obligations set out in this Clause 25; and (b) as may be required by Law, a court of competent jurisdiction, or any governmental or regulatory authority.
- 25.4. The obligations imposed by this Clause 25 shall not apply to any Confidential Information which is or becomes: (a) in the public domain other than as a result of the breach of an obligation under the Contract; (b) lawfully acquired from a third party who owes no obligation of confidence in respect of the information; (c) independently developed by the recipient without reference to the Confidential Information; (d) in the recipient's lawful possession prior to receipt; or (e) required to be disclosed by mandatory Law or by order of a judicial or governmental or regulatory authority.
- 25.5. Each Party reserves all rights in its Confidential Information and no rights or obligations in respect of a Party's Confidential Information other than those expressly stated in the Contract are granted to the other Party or shall be implied from the Contract.
- 26. MISCELLANEOUS**

- 26.1. **Exclusive and cumulative remedies:** Except as otherwise expressly provided in these Terms (including as a sole or exclusive remedy): (a) no right, power, privilege, or remedy conferred is intended to be exclusive of any other right, power, privilege, or remedy; and (b) remedies provided under the Contract shall be cumulative and in addition to, and not in lieu of, any other remedies available to either Party at Law, in equity, or otherwise.
- 26.2. **Notices:** Any notice or demand under the Contract shall be: (a) given in writing; and (b) delivered by registered mail, courier, or by hand to the address set out in the Order or, with the exception of the service of legal proceedings, sent by email to the address specified in the Order. A notice given in accordance with this Clause 26.2 shall be deemed to have been received: (a) if delivered by hand or courier on a business day (for the recipient) before 17:00 p.m. recipient's time, on the date of delivery; (b) if delivered by hand or courier on a business day (for the recipient) on or after 17:00 p.m. recipient's time, the business day (for the recipient) following the date of delivery; (c) if delivered by registered mail, seven (7) business days after the date of posting; or (d) email, at 9.00 a.m. (recipient's time) on the business day (for the recipient) immediately following transmission.
- 26.3. **Third party rights:** A person who is not a Party to the Contract may not enforce any of its terms.
- 26.4. **No partnership or agency:** The Parties agree that nothing in the Contract is intended to create: (a) a partnership; (b) the relationship of principal and agent; or (c) the relationship of employer and employee, between the Parties.
- 26.5. **Notification of claims:** The Customer shall always notify Sandvik of any claim under the Contract as soon as reasonably possible and may under no circumstance, except as provided for in mandatory legislation, bring a legal action arising out of or related to the Contract more than two (2) years after the cause of action arose.
- 26.6. **Translations:** Where the Customer has been provided a translated copy of these Terms in a language other than English, in the event of any conflict arising between the English language version and the translated language version, the relevant translated version shall be deemed to be amended to conform with and be consistent with the relevant English version of the Contract.
- 26.7. **No waiver:** Neither Party shall be deprived of any right under the Contract because of its failure to exercise any right under the Contract or failure to notify the infringing Party of a breach in connection with the Contract. Notwithstanding the foregoing, rules on complaints and limitation periods shall apply.
- 26.8. **Severability:** In the event any provision of the Contract is wholly or partly invalid, the validity of the Contract as a whole shall not be affected, and the remaining provisions of the Contract shall remain valid. To the extent that such invalidity materially affects a Party's benefit from, or performance under, the Contract, it shall be reasonably amended.
- 26.9. **Assignment:** Neither Party has the right to transfer or assign any of its rights and obligations under the Contract, except that Sandvik may assign the Contract to any Affiliated company which has the same ultimate parent company as Sandvik. In addition, and without any requirement to assign the Contract, Sandvik may assign any rights it has under the Contract (without assigning its obligations hereunder), including the right to make any claims against the Customer under the Contract, to any affiliated company which has the same ultimate parent company as Sandvik.
- 26.10. **Governing Law and Dispute Resolution:** The Contract and all non-contractual obligations in connection with the Contract shall be governed by the laws of State of Delaware, without giving effect to its conflict of laws provisions. Any dispute, controversy or claim arising out of or in connection with the Contract, or the breach, termination or invalidity thereof, shall be finally settled by arbitration in accordance with the American Arbitration Association (AAA) in accordance with its Commercial Arbitration Rules then in effect. In the former case, the Arbitral Tribunal shall be composed of three arbitrators. The language to be used in the arbitral proceedings shall be English.
- Judgment on the award rendered by the Arbitral Tribunal may be entered in any court having jurisdiction thereof. The Parties agree that arbitration shall be the sole and exclusive forum for resolving disputes under this Agreement and waive any right to trial by jury or to participate in a class action.

Each Party shall bear its own costs and expenses of arbitration, except as otherwise provided in the arbitrator's award.