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## GENERAL CONDITIONS OF SALE

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The General Conditions of Sale set forth herein shall be applied to and govern all offers, orders and agreements for the sale of PRODUCTS (as hereinafter defined), made, accepted or entered into by SANDVIK MINING AND CONSTRUCTION to or with any PURCHASER.

The provisions of these Conditions are severable and if any provision is held to be invalid or unenforceable, it shall be severed and the remaining provisions shall be enforced to the fullest extent possible.

Any headings are for convenience only and shall not affect the construction of these Conditions.

By placing an order with SANDVIK MINING AND CONSTRUCTION or accepting an offer by SANDVIK MINING AND CONSTRUCTION, the PURCHASER agrees to these General Conditions of Sale as set forth below:

### 1. DEFINITIONS

"SANDVIK MINING AND CONSTRUCTION" shall mean SANDVIK MINING AND CONSTRUCTION OY and/or any of its operating subsidiaries.

"PRODUCTS" or "PRODUCT" shall mean all products, equipment, goods and accessories sold by SANDVIK MINING AND CONSTRUCTION, including any manuals relating thereto.

"PURCHASER" shall mean any purchaser of PRODUCTS.

"Agreement" shall mean any agreement for the sale of PRODUCTS, whether entered into by way of the PURCHASER's order and SANDVIK MINING AND CONSTRUCTION's acceptance thereof or any other method, including these General Conditions of Sale as an integral part thereof.

"Start-Up" shall mean the first start-up of the PRODUCT, which shall be deemed to occur within thirty (30) days of delivery of the PRODUCT, if not otherwise agreed to in writing by a person duly authorised by SANDVIK MINING AND CONSTRUCTION.

"System" or "Systems" shall mean all computer control/controlled systems including automation systems and thereto related software developed, owned and/or installed by SANDVIK MINING AND CONSTRUCTION to the PRODUCTS and included as an integral part of any PRODUCT.

### 2. DELIVERY TERMS ETC.

All references to trade terms shall be interpreted in accordance with Incoterms 2000, or any revised version thereof in force at the time of entering into the Agreement.

Unless otherwise agreed in writing, quoted or stipulated dates for delivery are estimates only and despatch of an order shall not be subject to any expressed or implied time limit.

All sales shall include only those PRODUCTS, installation, training, work and services expressly specified in the Agreement and they must comply with all applicable import, export and Exchange Control regulations. For such purpose, the PURCHASER shall notify the applicable regulations to SANDVIK MINING AND CONSTRUCTION before delivery of any PRODUCTS so that SANDVIK MINING AND

CONSTRUCTION can take the regulations into account when delivering the PRODUCTS and invoicing them in accordance with clause 7 below.

### 3. PRODUCT INFORMATION

All information and data contained in brochures, drawings, catalogues, price lists and other similar documents which are either provided by SANDVIK MINING AND CONSTRUCTION or are otherwise acquired by the PURCHASER and which relate to the PRODUCTS are for information purposes only, and are binding only to the extent that the contents of any such document are expressly incorporated in writing in the Agreement.

### 4. VALIDITY OF OFFERS AND ORDERS

The Purchaser shall strictly comply with the obligations and commitments set by SANDVIK MINING AND CONSTRUCTION which are accordant with payment terms.

Inclusion by the PURCHASER of any terms inconsistent with or in addition to the terms and conditions set forth in these General Conditions of Sale in any offer or order is not binding on SANDVIK MINING AND CONSTRUCTION but shall be regarded as a counter-offer subject to the express and written acceptance by a person duly authorised by SANDVIK MINING AND CONSTRUCTION.

Unless otherwise stated herein, agreed in writing or previously withdrawn, every offer is open for acceptance for 30 days from the date of submission to the PURCHASER. No order shall be binding on SANDVIK MINING AND CONSTRUCTION unless it is confirmed on behalf of SANDVIK MINING AND CONSTRUCTION in writing by a person duly authorised by SANDVIK MINING AND CONSTRUCTION.

Any order or acceptance of any offer shall include all order terms and sufficient detailed information to allow SANDVIK MINING AND CONSTRUCTION to complete delivery. If this information is not supplied in due time, SANDVIK MINING AND CONSTRUCTION shall be free to amend the prices quoted in the offer or order to cover any subsequently realised increase in cost. The information should be provided on the order entry and specification forms supplied by SANDVIK MINING AND CONSTRUCTION where practicable.

### 5. CANCELLATION OF ORDERS OR RETURN OF PRODUCTS

Orders may not be cancelled or PRODUCTS returned other than with SANDVIK MINING AND CONSTRUCTION's prior written consent. All costs and expenses incurred by SANDVIK MINING AND CONSTRUCTION up to the time of cancellation and all loss or damage by reason of such cancellation shall be reimbursed by PURCHASER to SANDVIK MINING AND CONSTRUCTION forthwith. SANDVIK MINING AND CONSTRUCTION reserves the right to charge PURCHASER for any costs incurred due to suspension or deferment of an order.

### 6. DELIVERY AND INSPECTION DELAY

The PURCHASER will be deemed to have accepted the quantity of the PRODUCTS as being strictly in accordance with the Agreement:

(a) if, upon the conclusion of the Start-Up or upon taking into use of the PRODUCTS, whichever comes first, the PURCHASER does not notify SANDVIK MINING AND CONSTRUCTION in writing of any shortage or deficiency; or

(b) unless the PURCHASER has notified SANDVIK MINING AND CONSTRUCTION of any deficiency or shortages within fourteen (14) days of receipt.

If PURCHASER fails to accept delivery at the delivery time he shall nevertheless pay any part of the purchase price which becomes due on delivery as if delivery had taken place.

If delay in delivery is caused by any of the circumstances mentioned in clause 21 below or by act or omission on the part of the PURCHASER including suspension due to late payment or anticipated non-performance, the time for delivery shall be extended by a period which is reasonable having regard to all circumstances. This provision applies regardless of whether the reason for delay occurs before or after the agreed time for delivery.

If there is a delay in delivery for a reason attributable to SANDVIK MINING AND CONSTRUCTION, and if no suspension has been agreed upon between SANDVIK MINING AND CONSTRUCTION and PURCHASER on the basis of anticipated delay, the PURCHASER is entitled to liquidated damages from the date on which delivery should have taken place. The liquidated damages shall be payable at a rate of 0.5 percent of the purchase price calculated for each completed week of delay. The liquidated damages shall not exceed 7.5 percent of the purchase price of the delayed delivery. If only part of the PRODUCTS is delayed, the liquidated damages shall be calculated on that part of the purchase price which is attributable to such part of the PRODUCTS as cannot in consequence of the delay be used as intended by the parties. The liquidated damages become due at the PURCHASER's written demand but not before delivery has been completed or the Agreement is terminated. The PURCHASER shall forfeit his right to liquidated damages if he has not lodged a claim for such damages within six months after the time when delivery should have taken place.

Liquidated damages is the only remedy available to the PURCHASER in case of delay on the part of SANDVIK MINING AND CONSTRUCTION.

### 7. PRICES AND PAYMENT

Unless otherwise agreed, all quoted prices are for delivery Ex Works SANDVIK MINING AND CONSTRUCTION's plant. If other delivery terms are agreed upon, SANDVIK MINING AND CONSTRUCTION reserves the right to increase the price quotation to cover any additional costs.

Unless otherwise agreed, all prices charged by SANDVIK MINING AND CONSTRUCTION are strictly net. Prices do not include any federal, provincial, state or local sales, use or other taxes, which taxes will be added to the sales price for PURCHASER's account, unless the PURCHASER provides an exemption certificate. The PURCHASER shall also always pay all import, customs and other duties, taxes and fees as well as the costs of carrying out customs formalities payable upon importation.



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If after the conclusion of any Agreement SANDVIK MINING AND CONSTRUCTION shall incur additional costs (including but not limited to taxes, duties, charges and other similar payments) by reason of any change in law or its interpretation or due to a requirement or order of any authority or on account of any similar reason, such additional costs shall be charged to the PURCHASER in such a manner as SANDVIK MINING AND CONSTRUCTION sees fit, so that SANDVIK MINING AND CONSTRUCTION receives the same amount for the PRODUCTS as it would have received had no such additional amounts become payable.

Payment for all PRODUCTS with a destination in the country of the manufacturer shall be made within thirty (30) days after the date of despatch.

All export PRODUCTS shall be paid for in cash in the agreed currency upon the presentation of shipping documents, or the PRODUCTS shall be secured by the PURCHASER's Irrevocable Letter of Credit in favour of SANDVIK MINING AND CONSTRUCTION or its designee. This Letter of Credit must be acceptable in content to SANDVIK MINING AND CONSTRUCTION, consistent with the terms of the Agreement, be irrevocable, be issued by or secured by a major bank acceptable to SANDVIK MINING AND CONSTRUCTION. All bank charges and reimbursement commissions, including confirmation commission are to be paid by the PURCHASER.

Payment shall be made in full without any deductions, counterclaims, or set off. Expenses incurred in remitting payments are the PURCHASER's responsibility.

If PURCHASER is in default in any payment, SANDVIK MINING AND CONSTRUCTION may declare all payments for PRODUCTS delivered immediately due and payable with the maximum legal interest thereon from the due date of the payment, stop all further deliveries and suspend all SANDVIK MINING AND CONSTRUCTION's further performance of the Agreement until payments are brought current, require return of the shipment at the PURCHASER's expense and/or require advance payment for future shipments.

Interest on overdue payments shall be the maximum legal interest rate from the due date.

If the PURCHASER has not paid any amount within one (1) month from its due date SANDVIK MINING AND CONSTRUCTION shall be entitled to terminate the Agreement by notice in writing to the PURCHASER and to claim compensation for the loss incurred.

## 8. WARRANTY

SANDVIK MINING AND CONSTRUCTION shall remedy defects in material or workmanship of the PRODUCTS pursuant to the provisions of the attached Schedule 1 SANDVIK MINING AND CONSTRUCTION EQUIPMENT WARRANTY and Schedule 2 SANDVIK MINING AND CONSTRUCTION SPARE PARTS WARRANTY, whichever is applicable to the PRODUCTS. These are the only warranties applicable to the sales of any PRODUCTS and replace any other warranties or liabilities against deficiencies or defects, hidden or otherwise, and any other obligation or liability relating to or arising out of on the basis of defects in the PRODUCTS, unless otherwise agreed by both SANDVIK MINING AND CONSTRUCTION and the PURCHASER. In no event does SANDVIK MINING AND CONSTRUCTION give any warranty to parts or components manufactured and/or supplied by any third party, unless otherwise agreed between SANDVIK MINING AND CONSTRUCTION and the relevant manufacturer/supplier.

In order to be able to avail himself of the rights under this clause, the PURCHASER shall inspect the PRODUCTS and notify SANDVIK MINING AND CONSTRUCTION in writing of the inspection and possible defects in material or design without delay and not later than (14) fourteen days from receipt of the PRODUCTS. The PURCHASER shall ensure that SANDVIK MINING AND CONSTRUCTION shall have the opportunity to verify that the PRODUCTS

are duly covered by SANDVIK MINING AND CONSTRUCTION's warranty and to inspect and remedy any alleged defects.

SANDVIK MINING AND CONSTRUCTION'S above mentioned warranty shall expire and become void immediately, if the PURCHASER or any other purchaser or user of the PRODUCTS removes or tampers with or adds any parts or components of or to the PRODUCTS or replaces the original parts or components of the PRODUCTS with any other parts or components, irrespective of whether these are manufactured or supplied by SANDVIK MINING AND CONSTRUCTION or another party, or modifies the PRODUCTS in any way, unless SANDVIK MINING AND CONSTRUCTION'S prior written approval therefore is obtained.

SANDVIK MINING AND CONSTRUCTION's warranty shall also expire and become void immediately, if any System is removed from the relevant PRODUCT, or the System or related software are modified or otherwise tampered with as referred to under clause 10 below, or used for any other purpose or in any other manner than that specified in the Agreement.

In the event that SANDVIK MINING AND CONSTRUCTION's warranty expires due to the reasons set forth above, SANDVIK MINING AND CONSTRUCTION shall no longer be obligated to repair, service or maintain the PRODUCTS or Systems in accordance with the relevant warranty. SANDVIK MINING AND CONSTRUCTION may, however, if it sees fit, carry out such maintenance and repair work as it deems necessary also thereafter and is entitled to receive payment for such work in accordance with its usual charges.

In the event that the PURCHASER wishes to return any PRODUCTS or any parts of the PRODUCTS to SANDVIK MINING AND CONSTRUCTION because of defects in the PRODUCTS or parts, or due to the PRODUCTS or parts having been damaged, the PURCHASER shall notify SANDVIK MINING AND CONSTRUCTION of its such intention without delay, and SANDVIK MINING AND CONSTRUCTION shall then arrange for the carriage of such PRODUCTS or parts to SANDVIK MINING AND CONSTRUCTION'S plant at SANDVIK MINING AND CONSTRUCTION's own cost. No PRODUCTS or parts may be returned by the PURCHASER to SANDVIK MINING AND CONSTRUCTION without SANDVIK MINING AND CONSTRUCTION's prior written consent, and SANDVIK MINING AND CONSTRUCTION will not accept any liability for costs incurred by the PURCHASER in connection with returning PRODUCTS or parts, or otherwise, without such consent.

## 9. INTELLECTUAL PROPERTY

SANDVIK MINING AND CONSTRUCTION assumes no duty to indemnify the PURCHASER for any infringement of patents, trademarks, registered designs, copyright or any other intellectual property unless:

- (a) the indemnity in no way arises from a design or instruction furnished by the PURCHASER;
- (b) the PRODUCTS are not used in any manner, for any purpose, or in any country not specified by or disclosed to SANDVIK MINING AND CONSTRUCTION; and
- (c) prompt notice is given to SANDVIK MINING AND CONSTRUCTION in writing at the earliest possible date of any claim made or action threatened or brought against PURCHASER.

SANDVIK MINING AND CONSTRUCTION reserves the right to conduct any litigation that may ensue and all negotiations for the settlement of any claim relating to any intellectual property right relating to the PRODUCTS.

PURCHASER warrants that any design or instruction furnished by it to SANDVIK MINING AND CONSTRUCTION do not and will not infringe or cause SANDVIK MINING AND CONSTRUCTION to infringe in the execution of the order or otherwise any patents, trademarks, registered designs, or any

other intellectual property rights of any third party.

PURCHASER agrees that it shall indemnify SANDVIK MINING AND CONSTRUCTION against all claims, demands, damages, penalties, costs and expenses for which SANDVIK MINING AND CONSTRUCTION may become liable by reason of any infringement of patents, trademarks, registered designs, or any other intellectual property rights and arising out of SANDVIK MINING AND CONSTRUCTION'S performance of PURCHASER's order if the PRODUCTS are constructed in accordance with PURCHASER's detailed drawings or designs submitted to SANDVIK MINING AND CONSTRUCTION.

## 10. SOFTWARE AND COMPUTER CONTROL(ED) SYSTEMS

Where the sale of any PRODUCT comprises also Systems, of which SANDVIK MINING AND CONSTRUCTION is the copyright holder, the PURCHASER shall only be granted the right to use the relevant System in accordance with the terms set forth in these Conditions and in the Agreement, while title to and any and all rights relating to the System shall remain vested in SANDVIK MINING AND CONSTRUCTION.

The PURCHASER must not, without the prior written consent of SANDVIK MINING AND CONSTRUCTION, modify any System or remove it from the PRODUCT, make copies of the relevant software or sell, transfer or otherwise dispose of or distribute the System or use it for any other purpose or in any other manner than that defined in the Agreement. The PURCHASER shall ensure that also its agents, employees or other representatives comply with this provision. SANDVIK MINING AND CONSTRUCTION shall be entitled to verify at its discretion that the PURCHASER complies with the above at any given time and the PURCHASER agrees to allow the representatives of SANDVIK MINING AND CONSTRUCTION to carry out such inspections as they see fit for such purpose.

In case of the PURCHASER's or its agent's, employee's or other representative's breach of or failure to comply with the provisions concerning the Systems, SANDVIK MINING AND CONSTRUCTION shall not be liable for any personal injury or damage to property, nor any direct, indirect or consequential damage or loss that may be caused to the PURCHASER or any third party as a result of such breach or failure or by the PRODUCT or its use.

The PURCHASER shall fully indemnify and hold SANDVIK MINING AND CONSTRUCTION harmless against any claims, losses or damage that SANDVIK MINING AND CONSTRUCTION may incur as a consequence of the PURCHASER's said breach or failure. As the amount of damage incurred by SANDVIK MINING AND CONSTRUCTION due to such a breach or failure may be extremely difficult to determine, the remedy available to SANDVIK MINING AND CONSTRUCTION therefore shall be either liquidated damages payable by the PURCHASER in the minimum amount of EUR 150,000 or its equivalent in another currency to be separately agreed, or if SANDVIK MINING AND CONSTRUCTION shall be able to prove that the amount of the actual damage suffered by it is higher, the PURCHASER shall pay to SANDVIK MINING AND CONSTRUCTION the amount of the damage in full.

## 11. PROPRIETARY INFORMATION

In addition to information and documents relating to Systems, all drawings, patterns and manufacturing specifications supplied by SANDVIK MINING AND CONSTRUCTION remain SANDVIK MINING AND CONSTRUCTION's property and may not be copied or disclosed to any third party without SANDVIK MINING AND CONSTRUCTION's prior written consent.

In the event of disclosure of proprietary information of SANDVIK MINING AND CONSTRUCTION by the PURCHASER, the PURCHASER shall be liable for all damage



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incurred by SANDVIK MINING AND CONSTRUCTION as a consequence of any such unauthorised disclosure.

SANDVIK MINING AND CONSTRUCTION will provide the PURCHASER with the documentation and instructions necessary for the operation and maintenance of the PRODUCTS at the latest with the despatch of the PRODUCTS.

## 12. LOCAL LAWS AND REGULATIONS

The PURCHASER shall, upon the request of SANDVIK MINING AND CONSTRUCTION, assist to the best of its ability in obtaining information concerning the local laws and regulations of the PURCHASER's jurisdiction applicable to the PRODUCTS, and any related taxes and payments.

## 13. ADDITIONAL CHARGES

In the event of suspension of work on PURCHASER's instructions or through PURCHASER not having given SANDVIK MINING AND CONSTRUCTION adequate instructions, the price of the PRODUCTS shall be increased to cover any extra expense incurred by SANDVIK MINING AND CONSTRUCTION.

Any work carried out by SANDVIK MINING AND CONSTRUCTION after the expiry for any reason whatsoever of SANDVIK MINING AND CONSTRUCTION's applicable warranty shall be charged to the PURCHASER in accordance with SANDVIK MINING AND CONSTRUCTION's list of charges current at the time.

## 14. PACKING

Unless otherwise agreed, packing will be in accordance with the standard practice of SANDVIK MINING AND CONSTRUCTION. For Ex Works shipments, a vehicle shall be provided by the PURCHASER for the packing. For F.O.B. shipments, the PRODUCTS shall be packed, at SANDVIK MINING AND CONSTRUCTION's option and expense, in a shipping container or flat rack, depending on the size of the PRODUCTS. SANDVIK MINING AND CONSTRUCTION shall be responsible for ensuring that protection from sea water is provided where necessary. An additional amount may be added to the purchase price for any additional packing requested by the PURCHASER. SANDVIK MINING AND CONSTRUCTION reserves the right to alter its said packing practice if deemed necessary because of the nature of a particular PRODUCT or any requirements of the PURCHASER.

## 15. PERFORMANCE AND TESTING

SANDVIK MINING AND CONSTRUCTION PRODUCTS are inspected, and where practical, submitted to standard tests at the SANDVIK MINING AND CONSTRUCTION works before despatch.

Any performance figures provided by SANDVIK MINING AND CONSTRUCTION are based on prior experience and are indicative only. SANDVIK MINING AND CONSTRUCTION will accept liability for subsequent failure to meet the figures only if SANDVIK MINING AND CONSTRUCTION has specifically warranted the performance figures in a written document signed by a duly authorized officer of SANDVIK MINING AND CONSTRUCTION.

SANDVIK MINING AND CONSTRUCTION makes no representation or warranty that any PRODUCTS have sufficient and suitable capacity and performance or are fit for any purpose of the PURCHASER, including any particular purpose which SANDVIK MINING AND CONSTRUCTION may have actual or constructive knowledge of.

If the PRODUCTS comprise of parts or components or computer control systems, including related software manufactured or supplied by any third party, SANDVIK MINING AND CONSTRUCTION does not warrant the capacity or performance thereof, and

it shall not be liable for any failure of or damage caused to any PRODUCT by such component, unless the component has been accepted or tested by SANDVIK MINING AND CONSTRUCTION in advance to ascertain its suitability with the PRODUCT to achieve such performance or capacity as is normal in the experience of SANDVIK MINING AND CONSTRUCTION.

Unless otherwise agreed in writing, if special tests in the presence of the PURCHASER are required, these shall be made at the PURCHASER's works and SANDVIK MINING AND CONSTRUCTION shall be entitled to make an additional charge for carrying out such tests. In the event of PURCHASER's delay in attending such tests, after (7) seven days' notice that the PRODUCTS are ready for tests, the tests will proceed in the PURCHASER's absence and shall be deemed to have been made in the PURCHASER's presence.

## 16. SAMPLES

Any samples submitted by SANDVIK MINING AND CONSTRUCTION must be paid for or returned to SANDVIK MINING AND CONSTRUCTION's premises at the PURCHASER's expense within one (1) month from date of despatch of the samples by SANDVIK MINING AND CONSTRUCTION.

## 17. STORAGE

If SANDVIK MINING AND CONSTRUCTION does not receive sufficient forwarding instructions to enable it to despatch the PRODUCTS within fourteen (14) days after notification by SANDVIK MINING AND CONSTRUCTION that the PRODUCTS have been tested as provided in clause 15 hereof or that the PRODUCTS are ready for despatch, PURCHASER shall take delivery of the PRODUCTS at SANDVIK MINING AND CONSTRUCTION'S plant without delay or arrange for appropriate storage of the PRODUCTS. The PRODUCTS shall after SANDVIK MINING AND CONSTRUCTION'S such notice or the PURCHASER'S taking of delivery or placing the PRODUCTS in storage, whichever is the earliest, be at PURCHASER's sole risk. SANDVIK MINING AND CONSTRUCTION is prepared, however, if its storage facilities permit, to store the PRODUCTS at PURCHASER's sole risk making a charge for such storage until the PRODUCTS are despatched. Such charge shall be calculated as agreed from case to case and be in addition to the agreed purchase price of the PRODUCTS. Payment of the purchase price and the additional charge for the PRODUCTS shall be due as if despatched at the time agreed in the Agreement. Any charges for storage or demurrage after despatch must be paid by PURCHASER.

## 18. CHANGES IN DESIGN

SANDVIK MINING AND CONSTRUCTION reserves the right, but is not obliged, to modify the design and construction of PRODUCTS before delivery is made in order to incorporate improvements or to substitute material equal or superior to that originally specified. Any major changes in design however require the prior approval of the PURCHASER.

## 19. RETENTION OF TITLE AND RISK OF LOSS

SANDVIK MINING AND CONSTRUCTION RETAINS OWNERSHIP OF, TITLE TO, AND THE RIGHT TO REPOSSESS AND/OR DISPOSE OF ANY PRODUCTS SOLD TO THE PURCHASER UNTIL THE PURCHASE PRICE OF THE PRODUCTS AND ANY OTHER AMOUNTS DUE TO SANDVIK MINING AND CONSTRUCTION FOR THE PRODUCTS ARE PAID FOR IN FULL to the extent that such retention of property is valid under the applicable law. If required by SANDVIK MINING AND CONSTRUCTION, the PURCHASER shall provide insurance for SANDVIK MINING AND CONSTRUCTION'S benefit to protect SANDVIK MINING AND CONSTRUCTION'S interest against loss or damage until all amounts due have been paid in full. Ownership of and title to the PRODUCTS (exclusive of Systems

relating thereto) shall pass to PURCHASER when SANDVIK MINING AND CONSTRUCTION has received the above sums in full.

In the event that retention of title is not valid under the applicable law, SANDVIK MINING AND CONSTRUCTION reserves a purchase money security interest in the PRODUCTS sold until the purchase price and any other amounts due in connection with the PRODUCTS are paid in full.

Unless otherwise agreed, the risk of loss of the PRODUCTS shall pass to the PURCHASER at the agreed delivery time in accordance with the agreed terms of delivery. If not otherwise agreed all deliveries shall be Ex Works.

If, in the case of delivery agreed to be Ex Works, SANDVIK MINING AND CONSTRUCTION, at the request of the PURCHASER, undertakes to send the PRODUCT on PURCHASER's behalf to its destination, the risk for the PRODUCTS shall pass not later than when the PRODUCT is handed over to the first carrier.

PURCHASER shall not pledge or permit others to pledge the PRODUCTS in any manner.

In the event legal action is necessary to enforce any of PURCHASER's obligations under any Agreement, SANDVIK MINING AND CONSTRUCTION shall be entitled to recover court costs and reasonable attorney's fees from the PURCHASER.

## 20. LIMITATION OF SANDVIK MINING AND CONSTRUCTION'S LIABILITY

The PURCHASER shall be solely responsible for providing accurate information to SANDVIK MINING AND CONSTRUCTION on the intended use of the PRODUCTS and on the environment and conditions in which the PRODUCTS will be used. The PURCHASER shall also be responsible for complying with the requirements of local authorities. Accordingly, SANDVIK MINING AND CONSTRUCTION shall not be liable for any costs, loss or damage that may arise due to such information not being correct or due to the PURCHASER using the PRODUCTS in another manner or operating them in other conditions than those that it has notified to SANDVIK MINING AND CONSTRUCTION.

The PURCHASER acknowledges that SANDVIK MINING AND CONSTRUCTION has no control over and is not responsible for the manner in which any PRODUCT is used or otherwise dealt with by the PURCHASER or any subsequent purchaser or user. Accordingly, SANDVIK MINING AND CONSTRUCTION shall not be liable for any personal injury or damage to property caused by the PRODUCTS or resulting directly or indirectly from the installation, maintenance, use or operation of the PRODUCTS, or the failure of the PRODUCTS to comply with any applicable safety laws or regulations after delivery to the PURCHASER. Nor shall SANDVIK MINING AND CONSTRUCTION be liable for any damage to products manufactured by the PURCHASER, or to products of which the PURCHASER's products form a part unless otherwise separately agreed in writing between SANDVIK MINING AND CONSTRUCTION and the PURCHASER.

The PURCHASER shall be fully responsible for ensuring that all warning labels required by the jurisdiction where the PRODUCTS are used are affixed and that all applicable safety and operation procedures are followed. The PURCHASER shall also be responsible for ensuring that the personnel operating the PRODUCTS is properly trained to operate the PRODUCTS and aware of all the necessary safety instructions and that all necessary warning labels are continuously adhered to.

The PURCHASER shall indemnify, defend, and hold SANDVIK MINING AND CONSTRUCTION harmless against any claims by any third parties (including but not limited to the PURCHASER'S employees, agents, distributors and other representatives) and shall reimburse to SANDVIK MINING AND CONSTRUCTION any and all sums that SANDVIK MINING AND CONSTRUCTION may be obligated



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to pay on the basis of such claims, whether for personal injury or damage to property caused by the PRODUCTS while the PRODUCTS are in the possession of the PURCHASER or due to any of the events or circumstances described above in this clause 20.

Finland or any other competent jurisdiction.

## **21.FORCE MAJEURE**

Neither SANDVIK MINING AND CONSTRUCTION nor the PURCHASER shall be considered in default or liable under the Agreement because of the following circumstances: wars, riots, hostilities, public disorder, strikes, lockouts or other industrial disputes, epidemics, fires, floods, acts of God, governmental restrictions and actions such as expropriations, requisitions, confiscations, import and export embargoes and currency restrictions, inter alia, acts or orders of any court or other authority of competent jurisdiction, shortage of water, power, labour, transport facilities or necessary materials or supplies, default or failure of carriers, breakdown or loss of production, or any other circumstances beyond the reasonable control of either party (Force Majeure).

A circumstance referred to in this clause which had occurred prior to the formation of the Agreement shall give a right to suspension only if its effect on the performance of the Agreement could not be reasonably foreseen at the time of formation of the Agreement.

As soon as either party knows its performance under the Agreement is likely to be affected by force majeure the affected party shall give written notice to the other party setting out all relevant details of the delay within the earlier of: (a) two weeks of the time that the party acquired knowledge of the cause of the delay or failure or (b) one month of the cause of the delay or failure arising.

Regardless of what might otherwise follow from the Agreement, either party shall be entitled to terminate the Agreement by notice in writing to the other party if performance is suspended by Force Majeure for more than six months.

## **22.CONSEQUENTIAL LOSSES**

SANDVIK MINING AND CONSTRUCTION shall have no liability towards the PURCHASER for loss of production, loss of profit, loss of use, loss of contracts or for any consequential, economic or indirect loss or damage whatsoever.

## **23.ARBITRATION AND APPLICABLE LAW**

These Conditions and the Agreement shall be governed by and interpreted and construed in accordance with the laws of the country of the SANDVIK MINING AND CONSTRUCTION entity which has entered into the Agreement.

Any disputes arising from or relating to these Conditions or the Agreement, or the performance of the parties' obligations thereunder, shall be finally settled in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce by one arbitrator, or if the parties so agree three, appointed in accordance with said rules, supplemented as necessary by the procedural rules of the law of the country of the SANDVIK MINING AND CONSTRUCTION entity, which has entered into the Agreement. Unless otherwise agreed the proceedings shall be conducted in the English language.

Notwithstanding the above, the PURCHASER and SANDVIK MINING AND CONSTRUCTION agree that all monetary claims not exceeding one hundred thousand euros (EUR 100,000) or its equivalent in another currency may be brought before the general courts of





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## APPENDIX 1

### SANDVIK MINING AND CONSTRUCTION STANDARD EQUIPMENT WARRANTY

1. SANDVIK MINING AND CONSTRUCTION (as defined in clause 1 of the General Conditions of Sale) warrants new drill rigs, LHDs, face shovels, dump trucks and automation systems supplied by SANDVIK MINING AND CONSTRUCTION to be free from defects in material and workmanship.
2. The warranty periods for
  - a) top hammer drill rigs twelve (12) months, except hydraulic rock drills twelve (12) months or one thousand (1000) percussion hours, whichever comes first;
  - b) down the hole drill rigs twelve (12) months or two thousand (2000) engine hours whichever comes first, except down the hole hammer three (3) months;
  - c) hydraulic rock drills mounted on used drill rig six (6) months or five hundred (500) percussion hours, whichever comes first;
  - d) pneumatic rock drills six (6) months or ten thousand (10,000) drilled meters, whichever comes first;
  - e) the warranty periods for LHDs, face shovels and dump trucks are twelve (12) months or two thousand (2000) operating hours, whichever comes first.
  - f) onboard automation within the machine (LHD, truck, drilling rig, etc.) follows the warranty terms of the basic machine: twelve (12) months or 2000 operating hours, whichever comes first.
  - g) automation system excluding onboard automation: twelve (12) months after commissioning is completed (Site Acceptance Test completed and signed-off) or eighteen (18) months after shipment of components, whichever comes first.

All the above mentioned periods are calculated from the date of start-up inspection at the first end user. Under no circumstances will the warranty period exceed eighteen (18) months from the delivery to PURCHASER. Any liability whatsoever to any party other than the first end user is expressly disclaimed.

The unit start-up inspection form shall be filled in and sent to SANDVIK MINING AND CONSTRUCTION representative within fourteen (14) days from start-up inspection. The engine warranty registration shall be completed with local engine representative. All engine warranties shall be handled with local engine representative.

The completed warranty registration form must be received by SANDVIK MINING AND CONSTRUCTION representative before any claims for warranty will be processed.

3. This warranty does not cover:
  - a) natural wear and tear of the equipment, normal maintenance service such as engine tune-ups, adjustments and inspections or normal replacement items (such as service filters), and damage resulting therefrom;
  - b) consumables such as seals, filters, hoses, v-belts, tyres, fittings, screws, bolts, washers and rock drill connecting pieces, chucks, diaphragms;
  - c) parts which can be repaired or corrected with minimum action such as changing of seals, tightening or adjustment;
  - d) damage caused by breakage of the shank adaptor (excluding material or workmanship failure in genuine SANDVIK shank adaptor);

- e) damage caused by the PURCHASER's failure to store, maintain or operate the equipment properly, or due to overloading or failure to pay proper attention to service and operating instructions or caused by accident;
- f) damage caused by negligence or failure of PURCHASER to maintain the equipment in accordance with SANDVIK MINING AND CONSTRUCTION's maintenance recommendations, documents of servicing may be required;
- g) damages, which are caused by operating conditions such as deep and/or aggressive water, dust, poor ventilation, where components, which are designed and manufactured according to industrial standards fail prematurely;
- h) any defect or damage in materials or design provided by the PURCHASER, which are a consequence of PURCHASER'S action or stipulation affecting quality or structure;
- i) any parts or components manufactured or supplied by third parties or damage caused by such parts or components to the PRODUCTS;
- j) any costs such as labour, travel and similar costs or any transportation;
- k) any indirect or consequential damage including but not limited to loss of profit, loss of production, loss of use of equipment.

**Warranty claims worth under fifty euros (EUR 50) or its equivalent in another currency are not considered by SANDVIK MINING AND CONSTRUCTION representative.**

4. Under no circumstances and in no conditions, shall SANDVIK MINING AND CONSTRUCTION's liability whether in respect of one claim or in the aggregate, arising out of any contract, exceed the purchase price payable under the contract for such part in which the liability shall arise.
5. No claim will be considered, and this warranty will be considered null and void, if other than GENUINE SANDVIK MINING AND CONSTRUCTION SPARE PARTS are used in the equipment or if GENUINE SANDVIK MINING AND CONSTRUCTION SPARE PARTS are dismantled and used in another product than the PRODUCT originally supplied to the PURCHASER by SANDVIK MINING AND CONSTRUCTION.
6. Warranty claims should be sent in writing using a "SANDVIK MINING AND CONSTRUCTION Warranty Claim" form. Warranty claims concerning the failure in rock drills should also include the "Drifter Failure Report" form. The forms shall be completely filled in and delivered to SANDVIK MINING AND CONSTRUCTION within fourteen (14) days from the time when the PURCHASER discovers or should have discovered the alleged defect. Only one failure should be reported for each claim. The warranty claim form should be sent to your local SANDVIK MINING AND CONSTRUCTION representative.

SANDVIK MINING AND CONSTRUCTION representative:

Street address:

City and State:

ZIP Code:

Country:

Phone number:

Telefax number:

Contact person:

E-mail address:

7. The obligation of SANDVIK MINING AND CONSTRUCTION under this warranty is limited at PURCHASER's option, to

- a) replace the part, free of charge, DDP (delivered, duty paid, Incoterms 2000) at the place of business of the SANDVIK MINING AND CONSTRUCTION representative or

- b) refund the part at its stock replenishment order price.

The warranty of a replaced or repaired part expires at the same time as the original warranty of the supplied equipment.

The PURCHASER shall retain the claimed part until claim is settled, for SANDVIK MINING AND CONSTRUCTION's inspection and on request the alleged defective part shall be sent as directed by SANDVIK MINING AND CONSTRUCTION and at SANDVIK MINING AND CONSTRUCTION'S cost to a destination designated by SANDVIK MINING AND CONSTRUCTION. No part may be returned to SANDVIK MINING AND CONSTRUCTION without SANDVIK MINING AND CONSTRUCTION'S prior written consent. After warranty handling, the title to the defective parts shall be transferred to SANDVIK MINING AND CONSTRUCTION.

Parts return addresses:

Return parts to your local SANDVIK MINING AND CONSTRUCTION representative.

APPEAL PERIOD FOR EACH SANDVIK MINING AND CONSTRUCTION'S DECISION IN WARRANTY CLAIM IS THIRTY (30) DAYS AS OF THE DATE OF DECISION AFTER WHICH THE SAID DECISION IS FINAL.

8. This warranty is in lieu of all other warranties or conditions express, implied or statutory, including, but not limited to warranties of merchantability and fitness for a particular purpose. No other warranties express or implied are given unless they are expressly given by SANDVIK MINING AND CONSTRUCTION in writing.

This warranty shall not be suspended on the grounds of non-use, intermittent use or for any other reason.



01.02.2008

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## APPENDIX 2

### SANDVIK MINING AND CONSTRUCTION STANDARD SPARE PARTS WARRANTY

1. SANDVIK MINING AND CONSTRUCTION (as defined in clause 1 of the General Conditions of Sale) warrants new spare parts supplied by SANDVIK MINING AND CONSTRUCTION to be free from defects in material and workmanship in accordance with industry standards current at the time of sale when the parts are used as a part of SANDVIK MINING AND CONSTRUCTION PRODUCTS.
2. The warranty periods are as follows:
  - a) hydraulic rock drills mounted on used drill rig six (6) months or five hundred (500) percussion hours, whichever comes first;
  - b) pneumatic rock drills six (6) months or ten thousand (10,000) drilled meters, whichever comes first;
  - c) for other spare parts the warranty period is three (3) months.

All the above mentioned periods are calculated from the date of delivery to the end user. Any liability whatsoever to any party other than the first end user is expressly disclaimed.

The engine warranty registration shall be completed with local engine representative. All engine warranties shall be handled with local engine representative.

The warranty of a replaced or repaired part expires at the same time as the original warranty of the supplied equipment.

3. This warranty does not cover:
  - a) natural wear and tear of the part or PRODUCTS, normal maintenance service such as engine tune-ups, adjustments and inspections or normal replacement items (such as service filters), and damage resulting therefrom;
  - b) consumables such as seals, filters, hoses, v-belts, tyres, fittings, screws, bolts, washers and rock drill connecting pieces, chucks, diaphragms;
  - c) parts which can be repaired or corrected with minimum action such as changing of seals, tightening or adjustment;
  - d) damage caused by breakage of the shank adaptor (excluding material or workmanship failure in genuine SANDVIK shank adaptor);
  - e) damage caused by the PURCHASER's failure, to store, maintain or operate the spare part or PRODUCTS properly, or due to overloading or failure to pay proper attention to service and operating instructions or caused by accident;
  - f) damage caused by negligence or failure of PURCHASER to maintain the spare part or PRODUCT in accordance with SANDVIK MINING AND CONSTRUCTION's maintenance recommendations, documents of servicing may be required;
  - g) damages, which are caused by operating conditions such as deep and/or aggressive water, dust, poor ventilation, where components, which are designed and manufactured according to industrial standards fail prematurely;
  - h) any defects in materials provided by the PURCHASER or any defects caused by design stipulated by the PURCHASER;

- i) any parts or components manufactured or supplied by third parties or damage caused by such parts or components to the PRODUCTS;
- j) any costs such as labour, travel and similar costs or any transportation;
- k) any indirect or consequential damage including but not limited to loss of profit, loss of production, loss of use of equipment.
4. In order to be able to avail himself of the rights under this Warranty, the PURCHASER shall notify SANDVIK MINING AND CONSTRUCTION in writing without delay of any defects that have appeared and shall give SANDVIK MINING AND CONSTRUCTION every opportunity of inspecting and remedying them.
5. On receipt of notification of a warranted defect, SANDVIK MINING AND CONSTRUCTION shall remedy the defect at its own discretion and expense.

The completed warranty registration form must be received by SANDVIK MINING AND CONSTRUCTION representative before any claims for warranty will be processed.

**Warranty claims worth under fifty euros (EUR 50) or its equivalent in another currency are not considered by SANDVIK MINING AND CONSTRUCTION representative.**

6. Under no circumstances and in no conditions, shall SANDVIK MINING AND CONSTRUCTION's liability for any singular or aggregate claim arising under any contract or otherwise exceed the contract purchase price of the part from which the liability arises.
7. No claim will be considered, and this warranty will be considered null and void, if other than GENUINE SANDVIK MINING AND CONSTRUCTION SPARE PARTS and all consumables as originally installed by SANDVIK MINING AND CONSTRUCTION are used in the PRODUCT.
8. Warranty claims should be sent in writing using a "SANDVIK MINING AND CONSTRUCTION Warranty Claim" form. Warranty Claims concerning the failure in rock drills should also include the "Drifter Failure Report" form. The forms shall be completely filled in and be delivered to SANDVIK MINING AND CONSTRUCTION within fourteen (14) days from the time when the PURCHASER discovers or should have discovered the alleged defect. The date of the Spare Part delivery to the end user must be proved in writing. Only one failure should be reported for each claim. The warranty claim form should be sent to your local SANDVIK MINING AND CONSTRUCTION representative.

SANDVIK MINING AND CONSTRUCTION  
representative:

Street address:

City and State:

ZIP Code:

Country:

Phone number:

Telefax number:

Contact person:

E-mail address:

9. The obligation of SANDVIK MINING AND CONSTRUCTION under this warranty is limited at PURCHASER's option, to

- a) replace the part, free of charge, DDP (delivered, duty paid, Incoterms 2000) at the place of business of the SANDVIK MINING AND CONSTRUCTION representative or
- b) refund the part at its stock replenishment order price.

The PURCHASER shall retain the claimed part until claim is settled for SANDVIK MINING AND CONSTRUCTION's inspection and on request the alleged defective part shall be sent as directed by SANDVIK MINING AND CONSTRUCTION and at SANDVIK MINING AND CONSTRUCTION'S cost to a destination designated by SANDVIK MINING AND CONSTRUCTION. No part may be returned to SANDVIK MINING AND CONSTRUCTION without SANDVIK MINING AND CONSTRUCTION's prior written consent. After warranty handling, the title to the defective part will be transferred to SANDVIK MINING AND CONSTRUCTION.

Parts should be returned to your local SANDVIK MINING AND CONSTRUCTION representative.

APPEAL PERIOD FOR EACH SANDVIK MINING AND CONSTRUCTION'S DECISION IN WARRANTY CLAIM IS THIRTY (30) DAYS AS OF THE DATE OF DECISION AFTER WHICH THE SAID DECISION IS FINAL.

This warranty is in lieu of all other warranties or conditions express, implied or statutory, including, but not limited to warranties of merchantability and fitness for a particular purpose. No other warranties express or implied are given unless they are expressly given by SANDVIK MINING AND CONSTRUCTION in writing.

This warranty shall not be suspended on the grounds of non-use, intermittent use or for any other reason.