



TERMS AND CONDITIONS (SALE OF DETECTORE HARDWARE)

These terms and conditions are between Portable PPB Pty Ltd (ABN 19 619 948 417), (**we, us or our**) and you, the person or entity stated in the Quote (**you or your**), together the **Parties** and each a **Party**. Together, these terms and conditions and the Quote (attachments to these Terms or the Quote) form the entire agreement under which we will provide the Goods and Services to you (**Terms**).

1. Interpretation & Definitions

1.1 In these Terms, unless the context otherwise requires:

- (a) a reference to these Terms or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (b) a reference to "Goods and Services" includes "Goods and/or Services";
- (c) a reference to any legislation or law includes subordinate legislation or law and all amendments, consolidations, replacements or re-enactments from time to time;
- (d) a reference to a natural person includes a body corporate, partnership, joint venture, association, government or statutory body or authority or other legal entity and vice versa;
- (e) no clause will be interpreted to the disadvantage of a Party merely because that Party drafted the clause or would otherwise benefit from it;
- (f) a reference to a party (including a Party) to a document includes that party's executors, administrators, successors, permitted assigns and persons substituted by novation from time to time;
- (g) words like including and for example are not words of limitation;
- (h) a reference to time is to local time in Western Australia, Australia; and
- (i) a reference to \$ or dollars refers to the currency of Australia from time to time.

1.2 In these Terms, unless the context otherwise requires:

ACL or Australian Consumer Law means the Australian consumer laws set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as amended, from time to time.

Commencement Date means the date these Terms are accepted in accordance clause 2.1.

Consequential Loss includes any consequential loss, indirect loss, real or anticipated loss of profit, loss of benefit, loss of revenue, loss of business, loss of goodwill, loss of opportunity, loss of savings, loss of reputation, loss of use and/or loss or corruption of data, whether under statute, contract, equity, tort (including negligence), indemnity or otherwise. The Parties acknowledge and agree that your obligation to pay us the Price under these Terms will not constitute "Consequential Loss" for the purposes of this definition.

Consumer Law Rights has the meaning given in clause 4.1.

Credit Agreement means the credit agreement entered into between the Parties for the provision of the Goods and Services.

Force Majeure Event means any event or circumstance which is beyond a Party's reasonable control including but not limited to, acts of God including fire, hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster, civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities, ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, any widespread illness, quarantine or government sanctioned ordinance or shutdown, pandemic (including COVID-19 and any variations or mutations to this disease or illness) or epidemic.

Goods and Services means the goods and services to be provided by us to you under these Terms, as expressly set out in the Quote, as adjusted in accordance with these Terms.

Incoterm means the Incoterms® rules 2020.

Intellectual Property means any copyright, registered or unregistered designs, patents or trade marks, domain names, know-how, inventions, processes, trade secrets or Confidential Information; or circuit layouts, software, computer programs, databases or source codes, including any application, or right to apply, for registration of, and any improvements, enhancements or modifications of, the foregoing.

Intellectual Property Rights means for the duration of the rights in any part of the world, any industrial or intellectual property rights, whether registrable or not, including in respect of Intellectual Property.

Intellectual Property Breach means any breach by you (or any of your Personnel) of any of our Intellectual Property Rights (or any breaches of third-party rights, including any Intellectual Property Rights of third parties), including using or exploiting our Intellectual Property for purposes other than as expressly stated in these Terms (including, without limitation, using our Intellectual Property for commercial purposes or on-selling our Intellectual Property to third parties).

Liability means any expense, cost, liability, loss, damage, claim, notice, entitlement, investigation, demand, proceeding or judgment (whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and/or whether present, unascertained, future or contingent and whether involving a third party, a Party to these Terms or otherwise.

Our Materials means all work, models, processes, technologies, strategies, materials, information, documentation, Specifications and services that we may provide to you under these Terms, and which may contain material which is owned by or licensed to us, and is protected by Australian and international laws.

Personnel means, in respect of a Party, any of its employees, consultants, suppliers, subcontractors or agents, but in respect of you, does not include us.

Price means the price set out in the Quote for the provision of the Goods and Services, as adjusted in accordance with these Terms, and includes any deposit set out in the Quote.

Quote means the quote (including any online quote) to which these Terms are attached or incorporated by reference.

Your Materials means all work, models, processes, technologies, strategies, materials, information, documentation and services (including Intellectual Property), owned, licensed or developed by or on behalf of you or your Personnel before the Commencement Date and/or developed by or on behalf of you or your Personnel independently of these Terms.

Please note these disclosures are a requirement under the *Fair Trading Act 1987 (NSW)*.

Our Disclosures: Please read these Terms carefully and contact us if you have any questions. By accepting these Terms, you agree that:

- you may be required to pay our costs if you fail to comply with certain terms in these Terms (e.g. if you fail to make payment of the Price (see clause 5.3), or if we incur costs as a result of termination of these Terms (see clauses 8.2(d));
- your failure to pay the Price in accordance with the Payment Terms may result in us recovering or repossessing the Goods, and charging you interest (see clause 5.3);
- we may set-off or deduct from any monies payable to you under these Terms, any amounts which are payable by you to us (whether under these Terms or otherwise), (see clause 5.5);
- subject to your Consumer Law Rights, you have not relied on any representations or warranties made by us prior to entering these Terms that are not included in these Terms (see clause 6.2(a));
- subject to your Consumer Law Rights, we will not refund any amounts paid by you (see clause 8.2(b));
- subject to your Consumer Law Rights, we exclude our liability for any loss or damage which is the inevitable and unavoidable part of performing the Goods and Services (see clause 9(d)); and
- subject to your Consumer Law Rights, our liability for the provision of the Goods and Services will be limited to, at our discretion us reperforming the relevant Goods and Services or, in our sole discretion, to repaying you the amount of the Price paid by you to us in respect of the provision of the relevant Goods and Services, to which the Liability relates (see clause 9(b)).

2. Acceptance

2.1 You have requested the Goods and Services set out in the Quote, and you are taken to have accepted these Terms by the earlier of:

- (a) accepting the Quote online or sending an email to us accepting the Quote (expressly or impliedly);
- (b) instructing us to proceed with the Goods and Services; and
- (c) making any payment of the Price (including any deposit).

3. Goods and Services

3.1 We agree to provide the Goods and Services to you in accordance with these Terms and all applicable laws.

3.2 We will use our commercial best endeavours to provide the Goods and Services by the dates set out in the Quote, or where no date is specified, then within a reasonable period of time.

3.3 You acknowledge and agree that in order to use the Goods, you may be required to download our software and your use of the software may be subject to the terms of our end user licence agreement.

4. Your Consumer Law Rights:

4.1 Certain legislation, including the Australian Consumer Law and similar consumer protection laws and regulations, may confer you with rights, warranties, guarantees and remedies relating to the Goods and Services which cannot be excluded, restricted or modified (**Consumer Law Rights**). Nothing in these Terms excludes your Consumer Law Rights as a consumer under the ACL.

4.2 Our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law.

4.3 You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

4.4 You agree that our Liability for the Goods and Services is governed solely by the ACL and these Terms.

4.5 Subject to your Consumer Law Rights, we exclude all express and implied warranties, representations and guarantees of any kind (whether under statute, law, equity or on any other basis) and all materials, work, goods and services (including the Goods and Services) are provided to you without warranties, representations and guarantees of any kind, except where expressly provided in these Terms.

Warranty

4.6 In addition to your Consumer Law Rights, we warrant to you that the Goods we supply to you will be free from Defects for:

- (a) the period stated on the Quote in relation to the relevant Goods; or
- (b) if no period is stated on the Quote, 12 months from the date of purchase,

(in each case, the **Warranty Period**).

4.7 **Defects** means manufacturer fault, error or defects, but not does not include defects caused by something outside our control, including environmental factors, over voltage, lightning, fire, corrosion, a critical mistake that you should have reasonably been able to avoid, user actions that are against instructions in the product's user documentation or where the Goods are used or installed other than in accordance with their designed purpose and operating environment.

4.8 Subject to your Consumer Law Rights, in relation to any Goods that have Defects within the Warranty Period:

- (a) we will pay for the return shipping of any Goods that have Defects that are brought to our attention within 30 days of receiving the shipment. After 30 days have elapsed, any returns must be sent to the location in Australia, as nominated by us, at your cost; and
- (b) we will, at our sole discretion, issue a refund, repair the Goods or replace the Goods with an equivalent or improved model.

5. Price and Payment

- 5.1 You agree to pay us the Price in accordance with these Terms. All amounts are stated in Australian dollars and are exclusive of GST (unless otherwise stated).
- 5.2 Subject to the provisions of these Terms:
- (a) you must pay any deposit set out in the Quote to us on the Commencement Date;
 - (b) you must pay to us the Price within the timeframe set out in the Quote as determined by us.
- 5.3 If you fail to make payment of the Price or any amount payable under these Terms, we may:
- (a) after a period of 5 business days, cease providing the Goods and Services, and recover, as a debt due and immediately payable from you, our additional costs of doing so, (including legal fees, debt collector fees and mercantile agent fees);
 - (b) charge interest at a rate equal to the Reserve Bank of Australia's cash rate, from time to time, plus 2% per annum, calculated daily and compounding monthly, on any such amounts unpaid 7 days after the relevant date for payment; and/or
 - (c) recover or repossess any Goods belonging to us, and you agree to grant us such rights of access to allow us (or our Personnel) to do so.
- 5.4 Where the Parties have entered into a separate Credit Agreement, the Price (and all other amounts due and payable under these Terms) must be paid in accordance with the Credit Agreement.
- 5.5 You agree that we may set-off or deduct from any monies payable to you under these Terms, any amounts which are payable by you to us (whether under these Terms or otherwise).
6. Warranties and Representations
- 6.1 Each Party represents, warrants and agrees that:
- (a) it has full legal capacity, right, authority and power to enter into these Terms, to perform its obligations under these Terms, and to carry on its business;
 - (b) that these Terms constitute a legal, valid and binding agreement, enforceable in accordance with their terms;
 - (c) if applicable, it holds a valid ABN which has been advised to the other Party; and
 - (d) if applicable, it is registered for GST purposes.
- 6.2 You represent, warrant and agree that:
- (a) you have not relied on any representations or warranties made by us in relation to the Goods and Services (including as to whether the Goods and Services are or will be fit or suitable for your particular purposes), unless expressly stipulated in these Terms;
 - (b) you will cooperate with us, and promptly provide us with all documentation, information, and instructions as may be reasonably necessary to enable us to provide the Goods and Services in accordance with these Terms;
 - (c) the results from your use of the Goods and Services may vary depending on a variety of factors including the instrument used, your brand of pXRF or vintage of pXRF and mineralisation style;
 - (d) the information you provide to us is true, correct and complete; and
- (e) you will not infringe any third party rights in working with us and receiving the Goods and Services.
7. Title and Risk
- 7.1 As between the Parties, you agree to pay for the reasonable costs of delivering the Goods.
- 7.2 Title in the Goods will remain with us until all amounts due and payable to us under these Terms are paid in full.
- 7.3 Risk in the Goods will be transferred in accordance with the applicable Incoterm set out on in the Quote and if nothing is stated, risk in the Goods will pass to you on:
- (a) collection of the Goods at the collection location; or
 - (b) delivery of the Goods to the delivery location.
- 7.4 You agree that we hold a general lien over any Goods owned by us that are in your possession, for the satisfactory performance of your obligations under these Terms. You agree that these Terms and your obligations under these Terms create a registrable security interest in favour of us, and you consent to the security interest (and any other registrable interest created in connection with these Terms) being registered on any relevant securities register (and you must do all things to enable us to do so).
- 7.5 We will generally provide the shipment's tracking number within 24 hours of shipping the Goods. If for any reason you do not receive the tracking number notification from us in the expected time frame, it is your responsibility to contact us to obtain the tracking number. When the Goods are collected / dropped off to the carrier by us, it is solely your responsibility to monitor the shipment and coordinate and cooperate with the carrier to ensure the successful delivery of the Goods. If the Goods are not delivered due to no fault of ours, and subsequently returned to us, you are responsible for all costs associated with reshipping the Goods.
8. Term and Termination
- 8.1 These Terms will terminate immediately upon written notice by a Party (**Non-Defaulting Party**), if the other Party (**Defaulting Party**) breaches a material term of these Terms and that breach is not capable of being remedied by the Defaulting Party for the Goods and Services to be provided under these Terms.
- 8.2 Upon expiry or termination of these Terms:
- (a) we will immediately cease providing the Goods and Services;
 - (b) without limiting your Consumer Law Rights, you agree that any payments made by you to us are not refundable to you;
 - (c) you are to pay for all Goods and Services provided prior to termination, including Goods and Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under these Terms;
 - (d) by us pursuant to clause 8.1, you also agree to pay us our additional costs, reasonably incurred, and which arise directly from such termination (including legal fees, debt collector fees and mercantile agent fees); and
 - (e) subject to clause 10, upon a request from us, you agree to promptly return (where possible), or delete or destroy (where not possible to return), any information, documentation or Intellectual Property owned by us that is in your possession or control.

8.3 Termination of these Terms will not affect any rights or liabilities that a Party has accrued under it.

9. Liability

Limitation of liability: Despite anything to the contrary, to the maximum extent permitted by law:

- (a) neither Party will be liable for any Consequential Loss;
- (b) our maximum aggregate liability for any Liability arising from or in connection with the Goods and Services and these Terms will be limited to us reperforming the relevant Goods and Services or, in our sole discretion, to repaying you the amount of the Price paid by you to us in respect of the provision of the relevant Goods and Services, to which the Liability relates;
- (c) a Party's liability for any Liability under, arising from, or in connection with, these Terms will be reduced proportionately to the extent the relevant Liability was caused or contributed to by the acts or omissions of the other Party (including a failure to take reasonable steps to mitigate the relevant Liability); and
- (d) we will not be liable for, and you waive and release us from and against, any Liability caused or contributed to by any loss or damage which is the inevitable and unavoidable part of performing the Goods and Services.

10. Intellectual Property

10.1 As between the Parties:

- (a) we own all Intellectual Property Rights in Our Materials;
- (b) you own all Intellectual Property Rights in Your Materials; and
- (c) nothing in these Terms constitutes a transfer or assignment of any Intellectual Property Rights in Our Materials or Your Materials.

10.2 In the use of any Intellectual Property Rights in connection with these Terms, you agree that you must not (and you must ensure that your Personnel do not) commit any Intellectual Property Breach. Where you reasonably suspect that such a breach may have occurred, you must notify us immediately.

11. General

11.1 **Disputes:** A Party may not commence court proceedings relating to any dispute, controversy or claim arising from, or in connection with, these Terms (including any question regarding its existence, validity or termination) (**Dispute**) without first meeting with a senior representative of the other Party to seek (in good faith) to resolve the Dispute. You agree that we may obtain data from third parties, undertake lab checks and verification processes, to assist resolve the Dispute. You must provide us with and not withhold information requested by us to assist resolve the Dispute including information about size fraction, mineralisation style, known refractory ore and multi-element results.

If you are an entity in Australia: If the Parties cannot agree how to resolve the Dispute at that initial meeting, either Party may refer the matter to a mediator. If the Parties cannot agree on who the mediator should be, either Party may ask the Law Society of Western Australia to appoint a mediator. The mediator will decide the time, place and rules for mediation. The Parties agree to attend the mediation in good faith, to seek to resolve the Dispute. The costs of the mediation will be shared equally between the Parties. Nothing in this clause will operate

to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

If you are an entity outside of Australia: If the relevant Parties are unable to resolve the Dispute or agree on an alternate method to resolve the Dispute, the Dispute may be referred by either Party (by notice in writing to the other Party) to arbitration in accordance with the Australian Centre for International Commercial Arbitration (**ACICA**) rules. Once a Dispute has been referred to the ACICA, the Parties agree to be bound by the decision of the ACICA. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one. The costs of the arbitration will be shared equally between the Parties. Nothing in this clause will operate to prevent a Party from seeking urgent injunctive or equitable relief from a court of appropriate jurisdiction.

11.2 **Force Majeure:** Neither Party will be liable for any delay or failure to perform their respective obligations under these Terms if such delay or failure is caused or contributed to by a Force Majeure Event. This clause will not apply to a party's obligation to pay any amount that is due and payable to the other Party under these Terms.

11.3 **Governing law:** These Terms are governed by the laws of Western Australia, Australia. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts operating in Western Australia, Australia and any courts entitled to hear appeals from those courts and waives any right to object to proceedings being brought in those courts.

11.4 **GST:** If and when applicable, GST payable on the Price will be set out in our invoice. You agree to pay the GST amount at the same time as you pay the Price.

11.5 **Tax:** If, other than GST, any sales, value-added, use, excise, withholding and other applicable taxes (but excluding all income taxes), customs, duties and other assessments are due in order to purchase and sell the Goods and Services from us, you will be solely responsible for such taxes. In the event that you are required to withhold any taxes from the payment of the amount invoiced, you will pay the amount invoiced plus an amount equal to the applicable withholding taxes so that the net amount actually received by us is equal to the amount invoiced.

11.6 **Joint and Severe Liability:** Where you constitute two or more individuals or entities, you will each be jointly and severally liable under these Terms.

11.7 **Notices:** Any notice given under these Terms must be in writing addressed to the relevant address last notified by the recipient to the Parties. Any notice may be sent by standard post or email, and will be deemed to have been served on the expiry of 48 hours in the case of post, or at the time of transmission in the case of transmission by email.

11.8 **Publicity:** You agree that we may advertise or publicise the broad nature of our provision of the Goods and Services to you, including on our website or in our promotional material.

11.9 **Relationship of Parties:** These Terms are not intended to create a partnership, joint venture, employment or agency relationship between the Parties.

11.10 **Severance:** If any provision (or part of it) under these Terms is held to be void, invalid, illegal or unenforceable, that provision is to be read down as narrowly as necessary to allow it to be valid or enforceable, failing which, that provision (or that part of that provision) will be severed from these Terms without affecting the validity or enforceability of the remainder of that provision or the other provisions in these Terms.

11.11 **Survival:** Each clause, which by its nature survives termination, will survive the termination or expiry of these Terms.