

## PARTIES

**McLANAHAN CORPORATION PTY LIMITED ABN 39 105 346 030** of Cameron Park NSW 2285, Australia (**McLanahan**); and the party identified in Item 1 of the Schedule (**Client**); and the party identified in Item 2 of the Schedule (**Guarantor**)

## RECITALS:

A. **McLanahan** manufactures mineral processing equipment for the mining and quarrying industries and provides services incidental to the manufacture and supply of its equipment.

B. **McLanahan** has agreed to supply to **Client**, and **Client** has agreed to purchase the Equipment and/or the Services on the terms and conditions set out in this Agreement

## AGREEMENT:

It is therefore agreed as follows:

### 1. DEFINITION AND INTERPRETATIONS

1.1 In this agreement unless the context otherwise requires:

"Commissioning" means the process of inspection and testing of the Equipment required by law and any relevant Australian standards and codes and in accordance with sound practice certified by **McLanahan** and as specified in Item 8 of the Schedule.

"Delivery" means, in the case of Equipment Ex Works from **McLanahan's** nominated premises and on the date(s) specified in Item 6a of the Schedule. In the case of Services, the date(s) specified in Item 6b of the Schedule.

"Equipment" means the equipment described in Item 3 of the Schedule.

"Invoice" means the invoice sent to **Client** by **McLanahan** confirming acceptance of the Purchase Order and includes any subsequent invoice issued in accordance with this agreement.

"Operation and Maintenance Manual" means the unique **McLanahan** operation and maintenance manual issued to **Client** with Equipment.

"PPSA" means the Personal Property Securities Act 2009 (Cth).

"PPSR" means the Personal Property Securities Register.

"Purchase Order" means a request for the provision of Equipment and/or Services issued to **McLanahan** in accordance with this agreement.

"Purchase Price" means the price for the supply of the Equipment and/or the provision of Services to be paid in the manner specified in Item 7 of the Schedule, payable by **Client**.

"Services" means the services described in Item 11 of the Schedule.

"Specifications" means **Client** required specifications modifying the Equipment as attached to this Agreement as Annexure A being, Section 1, 1.1 Application Data Received, or otherwise approved in writing by **McLanahan** from time to time.

"Training" means the training provided by **McLanahan** on the use and operation of the Equipment.

This agreement constitutes the entire final and concluded Agreement between **Client** and **McLanahan**. It supersedes any previous arrangements, correspondence, tenders, representations, proposal, understandings and communications, whether oral or in writing.

### 2. PRICE AND SUPPLY OF EQUIPMENT AND/OR PROVISION OF SERVICES

2.1 When **Client** requires Equipment and/or Services, it shall complete and issue to **McLanahan** a Purchase Order and send the Purchase Order to the address and/or facsimile number specified in Item 5 of the Schedule.

2.2 **McLanahan** will notify **Client** of its acceptance or rejection of a Purchase Order within the period of time specified in Item 4 of the Schedule. **McLanahan's** acceptance of a Purchase Order will be by sending an Invoice to **Client**.

2.3 **McLanahan** will only commence building the Equipment and/or providing the Services upon payment of the Purchase Price or any portion if so specified.

2.4 **Client** will be permitted reasonable access and on reasonable notice to inspect the building of the Equipment.

2.5 The submission of prices by **McLanahan** in response to a tender or request for estimate or quotation does not imply acceptance by **McLanahan** of any **Client** contract terms or conditions. **McLanahan** will only be bound to supply the Equipment and/or provide the Services for the Purchase Price and otherwise in accordance with this Agreement. Under no circumstances will **Client** terms and conditions override this Agreement and this Agreement at all times shall take precedence.

### 3. DELIVER

3.1 **McLanahan** will use its best efforts to ensure that the Equipment and/or Services will be completed and by the due date for Delivery. **McLanahan** will advise **Client** when the Equipment is ready for Delivery.

3.2 **McLanahan** may deliver part of the Equipment or perform part of the Services and **Client** will be invoiced in respect of such delivery or performance.

3.3 If **Client** fails to accept Delivery within 14 business days of receiving notice from **McLanahan** that the Equipment is ready, irrespective of any other clause to the contrary the Purchase Price will be due from the date of expiry of 14 business days of that notice and **McLanahan** may store the Equipment at any available location at the **Client's** risk and expense.

### 4. COMMISSIONING AND TRAINING

4.1 Upon the Equipment being installed at **Client's** premises **McLanahan** and **Client** may undertake Commissioning and Training.

4.2 The cost of Commissioning and Training will be borne by **Client**, unless otherwise agreed in writing.

4.3 Upon completion of Commissioning, if applicable the Equipment shall be considered free from defects and fit for **Client** purpose. **Client** agrees to execute any document confirming completion of Commissioning, if so required by **McLanahan**.

4.4 **McLanahan** will provide **Client** with the Operation and Maintenance Manual on the later of:

(a) Delivery; and

(b) Commissioning and Training.

### 5. TERMS OF PAYMENT

5.1 **Client** will pay the Purchase Price in accordance with this Agreement.

5.2 The Purchase Price is exclusive of any applicable levies, government charges, taxes (including any tax in the nature of a Goods and Services Tax), freight, postage, packaging and insurance.

5.3 **Client** agrees to pay **McLanahan's** Invoice within 30 days of the date of Invoice or other later time specified by **McLanahan**.

5.4 If the Invoice is not paid by the due date, **Client** agrees to pay interest from the due date to the date of receipt of payment at the rate specified in Item 9 of the Schedule. The acceptance by **McLanahan** of any interest will not preclude **McLanahan** from pursuing any additional remedies available to it under this agreement.

5.5 **Client** cannot make any deduction from the Purchase Price in respect of any set off or counter claim.

### 6. TITLE AND RISK

6.1 Risk in the Equipment and/or the Services shall pass to **Client** on Delivery.

6.2 In the event that, during the manufacture of the Equipment, **McLanahan** ceases to trade, or is wound up, title to the Equipment (that is still in the incomplete stage) will immediately pass to **Client**, proportional to the Purchase Price and **Client** may terminate this Agreement.

6.3 Except for the circumstance provided for in clause 6.2 above, title to the Equipment will not pass to **Client** until payment in full of the Purchase Price. In the event that **Client** does not make any payment, **Client** undertakes to allow **McLanahan's** representatives access to **Client** site to remove the Equipment.

6.4 In the event that **McLanahan** removes the Equipment from **Client** site in accordance with clause 6.3, **Client** foregoes any claim that they may have against **McLanahan** in respect of any monies paid under this agreement or in any way related to the supply of Equipment or provision of Services.

6.5 Until such time as the Purchase Price has been paid in full, **Client** will separately store the Equipment and in the event of its sale, any proceeds of sale so received by **Client** will be held on trust by **Client** and **Client** shall remit to **McLanahan** such part of the proceeds as represents the balance of the Purchase Price still payable to **McLanahan** for such Equipment.

### 7. PPSA

7.1 The **Client** acknowledges that this agreement creates a security interest under the PPSA and that it has received value as at the commencement of this agreement. **Client** and **McLanahan** have not agreed to postpone the time for attachment of the security interest granted to **McLanahan** under this agreement.

### 7.2 Client:

(a) must at **McLanahan's** request, promptly execute any documents and do anything required to register **McLanahan's** security interest in the Equipment on the PPSR;

(b) must indemnify, and upon demand reimburse **McLanahan** for all expenses incurred in registering a financing statement on the PPSR and enforcing its security interest;

(c) must keep full and complete records of the Equipment;

(d) must not without the prior written consent of **McLanahan**, sell, lease, dispose of, create a security interest in, mortgage or part with possession of the

Equipment or any interest in them (or purport or attempt to purport to do such a thing) or permit any lien over the Equipment;

(e) without limiting any other right **McLanahan** may have, **Client** must immediately return the Equipment if requested to do so by **McLanahan** following non-payment of any amount owing by **Client** to **McLanahan** or following breach of any other obligation of **Client** to **McLanahan**;

(f) gives **McLanahan** the right to inspect the Equipment or any part of it at all reasonable times;

(g) must not change its name, address or contact details without providing **McLanahan** prior written notice; and

(h) must not register a financing change statement or a change demand without the prior written consent of **McLanahan**.

7.3 So far as permitted by the PPSA, **Client** waives its right:

(a) to receive a copy of any verification statement or financing change statement or a statement of account on sale of the Equipment;

(b) to receive any notice required under the PPSA, including a notice that **McLanahan** intends to sell the Equipment or to retain the Equipment on enforcement of the security interest granted to **McLanahan**;

(c) to object to a proposal by **McLanahan** to retain the Equipment in satisfaction of any obligation owed by **Client** to **McLanahan**;

(d) where any Equipment becomes attached to other goods and are deemed an accession as defined in the PPSA, to not have any goods damaged when **McLanahan** removes the accession, to receive notice of removal of the accession and to apply to the court for an order concerning the removal of the accession, under the PPSA.

7.4 **Client** acknowledges that it has entered into a security agreement as defined by the PPSA and that **McLanahan** may register its security interest on the PPSR.

## 8. WARRANTY

8.1 This warranty applies for the period specified in Item 10 of the Schedule and if no period is specified, the earlier of:

(a) Eighteen (18) months from Delivery; and

(b) Twelve (12) months from Commissioning.

8.2 **McLanahan** warrants that the Equipment, and all components of the Equipment, will be:

(a) Manufactured in accordance with the materials indicated in the Operation and Maintenance Manual and the design tolerances are those which will be strictly adhered to. No warranty is provided for Equipment designed by **McLanahan** which does not operate as required, or at all, due to incorrect specifications, sample material or other information provided by the Client

(b) New, unless expressly stated to the contrary in this agreement;

(c) Free from all liens, charges and encumbrances of any kind;

(d) The property of **McLanahan**;

(e) Free from defects or omissions in materials or workmanship, and capable of safe and reliable operations;

8.3 For those components included in the Equipment offered that are not of **McLanahan** manufacture, warranty is limited to that provided by the original equipment manufacturer.

8.4 This warranty is void if the Equipment, in any way is modified or added to without the written approval of **McLanahan**, or if not operated in accordance with the Operation and Maintenance Manual.

8.5 The **McLanahan** warranty does not extend to any loss of profits or other consequential loss and liability ceases at the expiration of the warranty period. **McLanahan's** liability in respect of any failures, or defect in, the Equipment or its components or Services will be limited to making good any defects which appear therein under proper use, and arise solely from faulty design, materials or workmanship.

8.6 Transport costs incurred in returning Equipment to **McLanahan** for repair or inspection will be borne by **Client**.

## 9. CONFIDENTIALITY

9.1 This Agreement and all information contained herein and incidental to including quotations, brochures, drawings, etc are the property of **McLanahan**. **Client** agrees that it will not reverse engineer or modify the Equipment and will indemnify **McLanahan** as a consequence of a breach of this clause.

9.2 All information is confidential subject to copyright protection and is given to **Client** for the purposes of this Agreement. All information must be returned to **McLanahan**.

9.3 None of the information herein may be copied, exhibited or communicated to others in any way without the prior written consent of **McLanahan** provided that this restriction does not apply to any disclosure of information:

(a) To an employee, agent, consultant or contractor of **Client** involved in the purchasing, Commissioning or operation of the Equipment; or

(b) Which at the time of the disclosure was in the public domain other than by breach of this Agreement; or

(c) That is required by law to be communicated to a person who is authorised by law to receive that information.

## 10. FORCE MAJEURE

10.1 **McLanahan** will be relieved from its obligation to supply any Equipment and/or provide any Services under this Agreement if it is prevented from doing so by forces beyond its control. **Client** will not be entitled to any compensation or to terminate this Agreement because of such failure by **McLanahan**. **McLanahan** agrees to recommence supply of Equipment and/or provide the Services as it is reasonably able.

## 11. INDEMNITY AND LIMITATION OF LIABILITY

11.1 The parties agree to indemnify the other party and its servants and agents from and against any and all actions, claims, demands, cost, losses, damages, and expenses which may be brought against the other party as a result of any act or omission, negligent or otherwise, by each other.

11.2 Neither party will be liable to the other for any loss of profits, loss of production or consequential or indirect loss or damages.

11.3 **McLanahan's** liability for any claim whether under this Agreement or otherwise is limited to either the value of any insurance policy **McLanahan** is required to maintain under this agreement or 50% of the value of the relevant Purchase Order.

## 12. SAFETY

12.1 **McLanahan** is responsible for safety related to and during the supply of the Equipment and/or the provision of Services. **McLanahan** must protect the Equipment, **McLanahan** sub-contracted personnel and property until Delivery.

12.2 **McLanahan** must comply with any law relating to safety of workers and any occupational health and safety procedures or directions issued by **Client** at **Client** site.

## 13. TERMINATION

13.1 **McLanahan** may terminate this Agreement on giving written notice to **Client** if **Client**:

(a) fails to pay any monies owing on any due date; or

(b) shall have a receiver, liquidator, manager, administrator, or other like person appointed or shall pass a resolution for winding up or enters into a scheme of arrangement with creditors (other than for the purpose of amalgamation or reconstruction) or the occurrence of any analogous process in any jurisdiction.

13.2 If this Agreement is terminated by **Client**, **Client** will pay **McLanahan** the balance of the Purchase Price as follows:

(a) **McLanahan's** direct costs incurred to date of the termination by means of an open book review of **McLanahan's** direct costs for the supply of Equipment and/or provision of Services. **Client** shall pay the direct costs taking into account **Client** progress payments, to the date of termination. In the event that the total of **Client** progress payment to the date of termination exceed the assessed direct costs, **McLanahan** shall refund this excess money;

(b) **Client** agrees to pay the cost of materials reasonably ordered by **McLanahan** for the supply of Equipment and/or provision of Services under this Agreement which **McLanahan** is liable to accept.

13.3 Clauses 5 (Terms of Payment), 6 (Title and Risk), 7 (PPSA), 8 (Warranty), 9 (Confidentiality) and 11 (Indemnity and limitation of liability) survive termination of this Agreement.

## 14. DISPUTE RESOLUTION

14.1 Any party may give written notice of a dispute arising in relation to the performance of this agreement to another party ("Dispute Notice"). A party giving a Dispute Notice agrees to provide details of the history, identifying the particulars of the dispute and give reasons why the party is disputing the issue.

14.2 At the expiry of five (5) business days from the date of the Dispute Notice, unless the dispute has been otherwise settled, the dispute may be submitted to the dispute resolution process set out in this clause 14.

14.3 Any dispute submitted to the dispute resolution process will be dealt with in the following manner:

(a) the dispute will be referred to the parties' relevant contact persons ("Contract Representatives"). The Contract Representatives will attempt to settle the dispute within five (5) business days of the referral;

(b) if the parties' Contract Representatives are unable to resolve the dispute within those five (5) business days, or such other period as agreed in writing, the dispute will be referred to the parties' respective senior management;

(c) if the parties' senior management are unable to resolve the dispute within a further five (5) business days, or such other period as agreed in writing, the issuer of the Dispute Notice may notify the other party by written notice that it requires the dispute to be referred to mediation and the dispute, upon the issue of that notice, will be referred to mediation;

(d) unless otherwise agreed by the parties, the mediator will be appointed by the President of the Law Society of New South Wales, Australia (or such other body as carries on the functions of that body) or his nominee;

(e) the mediator must conduct the proceedings in accordance with the rules specified by the Law Society of New South Wales for the conduct of mediation;

(f) the mediator will not have the power to order the parties to take steps to achieve settlement including at a conference conducted by the mediator.

14.4 Each party will be responsible for their own costs and expenses, legal or otherwise, incurred during the dispute resolution process. Any mediation fees will be paid equally between the parties.

14.5 Each party may be represented by a duly qualified legal practitioner or other representative in the mediation.

#### 15. GUARANTOR

The **Guarantor** acknowledges that **McLanahan** agreed to supply the Equipment and/or Services to the **Client** at the request of the **Guarantor**. The **Guarantor** guarantees to **McLanahan**, the payment of all monies payable under this Agreement from time to time and the performance of all other covenants and obligations under this Agreement.

#### 16. GENERAL

16.1 This Agreement shall be governed by and construed and interpreted in accordance with the laws of the jurisdiction specified in Item 12 of the Schedule. The parties submit to the jurisdiction's courts. If no jurisdiction is specified the jurisdiction is Australia.

16.2 If any provision of this Agreement is held by any court or other competent authority to be void or unenforceable in whole or part, this Agreement shall continue to be valid as to the other provisions thereof and the remainder of the affected provisions.

16.3 This Agreement may be signed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same document.

#### SCHEDULE

ITEM 1: CLIENT DETAILS	[company name]		
ITEM 2: GUARANTOR DETAILS	[insert Director details]		
ITEM 3: EQUIPMENT	As per Section 2, 2.1 Machine Selection		
ITEM 4: TIME PERIOD TO ACCEPT PURCHASE ORDER	[Insert number of days/weeks]		
ITEM 5: PURCHASE ORDERS TO BE SENT TO	McLanahan Corporation 27 Kalinya Close Cameron Park NSW 2285 Australia sales@mcclanahan.com.au		
ITEM 6a: Delivery Date Equipment ITEM 6b: Delivery Date for Services	For Tender Documents – As per details in Section 3, 3.1 Tender Pricing		
ITEM 7: PAYMENT TERMS		Purchase Price %	Time Frame
	1 <sup>st</sup> Payment	25%	of Purchase Price upon submission of [Purchase Order] / [Invoice].
	2 <sup>nd</sup> Payment	25%	of Purchase Price on evidence of purchase of long lead time items
	3 <sup>rd</sup> Payment	25%	of Purchase Price at Factory Acceptance Test
	4 <sup>th</sup> Payment	25%	of Purchase Price before [dispatch from McLanahan workshop] / [completion of Commissioning].
ITEM 8: COMMISSIONING	Stage 1: Factory Acceptance Testing (FAT) Stage 2: 'No load' commissioning at client's site Stage 3: Full commissioning at client's site [Detail whichever commissioning process is agreed. Where possible limit to FAT. Include a summary of factory acceptance testing (i.e. extent of assembly, systems to be operated etc.)]		
ITEM 9: INTEREST RATE	Late payments will incur interest at the Commonwealth Bank of Australia's published corporate overdraft reference rate plus one per cent (1%).		
ITEM 10: WARRANTY PERIOD	[insert warranty period if different from Clause 8.1 above]		
ITEM 11: SERVICES	As per Section 3, 3.1 Tender Pricing		
ITEM 12: GOVERNING LAW	NSW Australia		