

## 1. INTERPRETATION AND PARAMOUNTCY

In these terms and conditions (the "Agreement") "You" shall refer to the person that has engaged Foremost to supply the parts and/or components ("Parts"), mining tooling ("Tooling") and/or services ("Services") (Parts, Tooling and Services are collectively, the "Work") contemplated in the quote, purchase order or invoice to which this Agreement is attached or which reference these this Agreement (the "Order"). "Foremost" shall mean Foremost Equipment LP unless another Foremost business is expressly stated as providing the parts or services in which case "Foremost" shall mean that entity. "Your Vehicle" means the vehicle described in the Order.

## 2. ACCEPTANCE

Your acceptance of delivery and/or performance of the Work or execution of a purchase order shall constitute acceptance by You of this Agreement.

## 3. CHANGES

- 3.1 You may propose changes to the Work, the delivery schedule or any other performance obligation covered by this Agreement by giving written notice to Foremost. Foremost shall be compensated and scheduling shall be adjusted, within reason, for increased costs, time and resources required as a result of any change to which Foremost agrees. No such changes shall be binding unless set out in writing, signed by a duly authorized representative of Foremost and You.
- 3.2 The nature of repairs and maintenance parts and service work can necessitate changes in the scope of the Work. Where Foremost considers a change in scope to be material and necessary or advisable, Foremost will seek your approval. Foremost shall not undertake any change which it estimates shall cost more than \$500.00 without your express authorization (which may be obtained verbally or in writing).

## 4. DELIVERY, TITLE AND RISK

Unless otherwise agreed in writing, Parts and Tooling shall be delivered and title and risk of loss shall pass Ex Works Foremost's facility in accordance with the provisions of Incoterms® 2020.

## 5. DELAYS

Foremost will use all commercially reasonable efforts to perform its obligations under this Agreement and the related Order in accordance with the delivery deadlines agreed upon by You and Foremost. Foremost shall promptly notify You of any actual or anticipated delay in delivery and take all reasonable steps to avoid or end delays without additional cost to You; provided however, Foremost shall not be held liable for losses, damages, costs and expenses resulting from a delay.

## 6. SUSPENSIONS

Foremost may without liability suspend performance of this Agreement if You fail at any time to make payment to Foremost when due. If at any time You wish to delay or suspend the Agreement, other than in relation to a default by Foremost, any such delay or suspension shall be treated in accordance with the procedure for changes to the Agreement providing for reasonable adjustments to delivery time and price. You shall be liable for any and all costs (including storage costs) resulting from any delay that You request or cause. Foremost shall not be liable for unforeseen delays or complications.

## 7. TERMINATION

- 7.1 You may terminate this Agreement and related Order by providing Foremost with thirty (30) days prior written notice. If you do, You shall pay to Foremost cancellation costs as set forth in the Order or, if such costs are not specified, then You shall pay to Foremost, in addition to all other monies received by Foremost as of the date of such notice of termination, an amount equal to any unpaid internal and third party costs incurred or accrued by Foremost prior to your termination with respect to such Work, as at the effective date of such termination plus 10% of such unpaid costs. Upon receipt and clearing of this termination payment by Foremost, You shall be entitled to take possession of the cancelled Work, on an "as is, where is" basis without the benefit of the Warranty contained herein.
- 7.2 Foremost shall have the right to terminate this Agreement and related Order immediately upon: (a) You becoming bankrupt, insolvent or making any assignment for the benefit of its creditors; or (b) any invoice becoming more than thirty (30) days past due.
- 7.3 If Foremost terminates pursuant to Section 7.2 of this Agreement, Foremost shall have the right to dispose of the Work (including Your Vehicle) for the purpose of recovering amounts owed (including interest) plus storage, collection enforcement and administration costs including costs on a solicitor and his own client basis with any surplus to go to You.

## 8. FORCE MAJEURE

Neither party shall be considered to be in default in the performance of its obligations to the extent it proves such performance has been prevented by an event of Force Majeure. "Force Majeure" means natural disasters, strikes, transportation disruptions, interruptions in the supply of raw materials including without limitation, acts of God or interference by governments or agencies of governments, health crises, pandemics or epidemics, and any circumstances beyond either party's reasonable control. Under no circumstances will lack of finances be construed to constitute an event of Force Majeure.

## 9. WARRANTY

- 9.1 The warranty period for the Work is ninety (90) days from the date the Work was completed (the "Warranty Period"). With respect to Parts and Tooling sold outside of North America only, the Warranty Period shall begin on the shipping date of the Part and Tools and continue for one-hundred twenty (120) days.
- 9.2 For the duration of the Warranty Period, Foremost warrants that the Services performed, and the Parts and Tooling manufactured by Foremost, shall be free of defects of material or workmanship (the "Warranty").
- 9.3 Notwithstanding the foregoing, Parts and Tooling not manufactured by Foremost are sold and conveyed to You "as is, where is" without any Foremost Warranty; however, Foremost will provide reasonable assistance to You to make claims for warranties as provided by such original part or component manufacturers.
- 9.4 The following conditions do not constitute a defect under this warranty:
  - 9.4.1. conditions resulting from normal wear and tear or minor aesthetic damage or defects;
  - 9.4.2. conditions resulting from improper storage, use or any negligent acts or omission by You or any third party;
  - 9.4.3. conditions resulting from failure by You or any third party to properly install, service, and/or maintain the Parts, Tooling and/or Vehicle;
  - 9.4.4. conditions or damages resulting from or caused by accident or incident or any other sources affecting the newly installed Part, including but not limited to foreign object damage or the failure of a Part other than the Part newly installed by Foremost.
- 9.5 Failure to use, maintain, operate, and/or rebuild in accordance with the operations guide shall void any warranties herein.
- 9.6 Any claimed defects must be discovered during the Warranty Period. Foremost must receive written notice of the discovery no later than ten (10) days after discovery of the defect. The notice must include sufficient information to substantiate the warranty claim.
- 9.7 Foremost hereby disclaims all representations or warranties, except as specifically set forth in this Agreement, either expressed or implied, including, without limitation, any warranty of title, condition, design, operation, freedom from infringement, absence of latent or other defects, quality of material or workmanship, merchantability or fitness for purpose.

## 10. INDEMNITY AND LIMITATION OF LIABILITY

- 10.1 YOU HEREBY INDEMNIFY AND HOLD HARMLESS FOREMOST AGAINST ANY AND ALL CLAIMS, SUITS, ACTIONS, PROCEEDINGS (WHETHER ACTUAL OR THREATENED), LOSSES, DAMAGES, COSTS AND EXPENSES, FINES, CHARGES AND/OR PENALTIES, INCLUDING SOLICITOR'S FEES AND DISBURSEMENTS (ON A SOLICITOR AND HIS OWN CLIENT BASIS), NOT DUE TO FOREMOST'S BREACH OF WARRANTY, INCLUDING BUT NOT LIMITED TO BREACH OF THIRD PARTY INTELLECTUAL PROPERTY, DAMAGE TO PROPERTY, PARTS, OR THE COMPONENTS, INJURY OR DEATH TO YOU OR YOUR COMPANY'S PERSONNEL OR THIRD PARTIES, RESULTING FROM (OR WHICH MAY LIKELY HAVE RESULTED FROM) THE USE, MISUSE, MODIFICATION, FAILURE TO PROPERLY MAINTAIN, OVER-USE, OVERLOADING OR USE IN ABNORMAL CONDITIONS OF THE PARTS AND/OR COMPONENTS AND REGARDLESS OF JOINT OR CONCURRENT NEGLIGENCE, BREACH OR STRICT LIABILITY OF FOREMOST ("INDEMNIFIED CLAIMS"). YOU HEREBY RELEASE, REMISE AND FOREVER DISCHARGES FOREMOST IN RESPECT OF ANY AND ALL INDEMNIFIED CLAIMS.
- 10.2 NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT OR ANY OTHER OBLIGATION OF FOREMOST, EXPRESS OR IMPLIED, TO CONTRARY, TO THE FULLEST EXTENT PERMITTED BY LAW, FOREMOST SHALL NOT BE LIABLE IN ANY EVENT, WHETHER IN CONTRACT, TORT, STATUTE, OR ANY OTHER LEGAL THEORY OR PRINCIPLE, TO YOU FOR ANY INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, LOSS OF PROFIT, ECONOMIC LOSS, LOSS OF OPPORTUNITY, LOSS OF REPUTATION, LOSS OF USE, OR ANTICIPATED SAVINGS ON COSTS OR EXPENSES. IN ANY EVENT FOREMOST'S LIABILITY TO YOU SHALL BE LIMITED TO ONE-THIRD OF THE PRICE PAYABLE BY YOU STATED IN THE ORDER.

## 11. LIENS

Without limitation to any lien rights that Foremost may have at law, including pursuant to any act, regulation or rule, You hereby grant to Foremost a first security interest and charge in and to Your Vehicle and the Parts to be installed as part of the Work, and in any and all proceeds derived therefrom as security for payment of all obligations arising in connection with this Agreement or any other amounts owed from time to time to Foremost by You. Such security interest shall survive regardless of whether Foremost has released possession of Your Vehicle Parts and Tooling. You waive the requirement of Section 11 of the Personal Property Security Act (Alberta) to deliver a copy of the security agreement.

## 12. SET-OFF

Foremost shall be entitled at all times to a right of equitable set-off in respect of any amounts owing at any time from You to Foremost (or any of Foremost's affiliates and subsidiaries) against any amount payable at any time by Foremost (or any of its affiliates and subsidiaries) to You.

## 13. DEPOSIT AND CANCELLATION CHARGES

Any deposit or cancellation fee required by Foremost is a non-refundable, good faith and genuine pre-estimate of liquidated damages and not a penalty.

## 14. PAYMENT

Unless otherwise specified in the Agreement, all prices herein are expressed and shall be payable in Canadian dollars. You shall pay cash on delivery. All past due invoices shall accrue interest on the amount unpaid from time to time from the due date until paid at eighteen percent (18%) per annum, compounding monthly. You shall be responsible for all freight, insurance, and packaging in respect of the import, export and delivery of Work (as per Incoterms® 2020) to You.

## 15. TAXES AND DUTIES

You shall be responsible for all applicable customs, duties and goods and services, value added, or other similar taxes, as well as any income tax or franchise tax related to Work pursuant to applicable laws.

## 16. INTELLECTUAL PROPERTY

You acknowledge and agree that there is no license, transfer or grant of any intellectual property right, including any patent right, trademark or industrial design right, by virtue of this Agreement or the sale of Work to You hereunder beyond the right to use the Parts and Tooling provided hereunder.

## 17. SUBJECT TO EXPORT APPROVAL

- 17.1 Foremost's obligations to fulfill this Agreement shall be subject in all respects to Foremost obtaining, in a timely manner all requisite export permits and approvals and continued compliance with the laws, rules and regulations referred to in ss.17.3 below ("Export Permission").
- 17.2 If at any time Export Permission is denied or any investigation, claim or proceeding is brought in connection with Export Permission which obstructs or delays export for 180 days or longer, the provisions of Section 7 (Termination) shall apply "mutatis mutandis" and this Agreement shall be terminated without further liability to Foremost.
- 17.3 You represent, warrant and certify that the sale of the Work to You (including without limitation, our agents, successors and assigns) and thereafter ultimately to the end-user, does not contravene the Corruption of Foreign Public Officials Act, (Canada), the Extractive Sector Transparency Measures Act, (Canada), the Proceeds of Crime (Money Laundering) and Terrorist Financing Act, (Canada), the Criminal Code, (Canada), the Foreign Corrupt Practices Act, (United States), the United Nations Act, (Canada) the Special Economic Measures Act, (Canada), the Export and Import Permits Act, (Canada), the Freezing Assets of Corrupt Foreign Officials Act, (Canada) or any directives, rules or regulations thereunder or similar law having jurisdiction over the transaction, or any law, sanction, rule, prohibition or restriction imposed by the United States Office of Foreign Assets Control, the United States Bureau of Industry and Security, or any similar or equivalent law or agency of Canada, the United States or any international ally of Canada or the United States having jurisdiction or effecting Canadian policy with respect to the transaction.

## 18. GOVERNING LAW AND JURISDICTION

- 18.1 This Agreement and related Order shall be governed by and interpreted pursuant to the laws of the Province of Alberta and the federal laws of Canada applicable therein, without regard to its rules on conflict of laws.
- 18.2 The parties hereby agree that any dispute, action or proceeding hereunder shall be brought in the courts of the Province of Alberta and the parties consent and submit to the jurisdiction of the courts of the Province of Alberta. The United Nations Convention on the International Sale of Goods shall not apply.

## 19. INTERPRETATION

This Agreement and related Order shall be construed and interpreted in the English language only. The parties confirm that it is their express wish and intention that this Agreement, as well as any other documents relating to the Order, including notices, appendices, orders, confirmations, quotations, schedules and authorizations ("Order Documents"), have been and shall be drawn up in the English language only. To the extent that any Order Documents are translated into or otherwise proposed in any other language, the English language version shall prevail to the extent of any of any conflict, discrepancy, inconsistency, ambiguity or difference of any kind between the English language version and any such translated version. Any such translated version shall not be considered evidence of any intention or interpretation whatsoever. This Agreement and related Order supersedes all prior

communications, negotiations, representations, understandings and agreements (whether oral or written) which are made prior to the date of this Agreement. For greater certainty: (i) any acknowledgement, or other communication issued by You in connection with this Agreement and related Order shall be construed only to be for record and accounting purposes; and (ii) any terms and conditions stated in such communication shall not be applicable to this Agreement and related Order.