



TERMS AND CONDITIONS

These are Terms and Conditions of all equipment and services supplied by **LONGWALL CHAIN AUSTRALIA PTY LIMITED (ABN 34 153 374 228)** ("Longwall Chain"). Except as otherwise expressly agreed upon in writing between a duly authorised officer of Longwall Chain and the Customer, these Terms and Conditions will apply notwithstanding any provisions to the contrary which may appear on any order form or other document issued by any Customer.

General

1. Quotations and proposals are valid for a period of 30 calendar days from the date of issue, after which time prices may vary in the absolute discretion of Longwall Chain. Prices are in Australian dollars (AUD) unless otherwise specified and exchange rates shown. Any variations to the exchange rate used in a quotation are to the account of the Customer. Import duty has been included at the current applicable rate. Any variation in duty due as a result of application of different duty rates or exchange rate variance is to the account of the Customer.
2. All quotations and proposals for a full days' worth of services are for services carried out during standard hours of 9am to 5pm. Any work required to be carried outside of these hours will be by agreement only and charged at an hourly rate determined by Longwall Chain in addition to costs estimate set out in the quotation or proposal.
3. All requests for services placed with Longwall Chain are subject to these Terms and Conditions and Longwall Chain may, at any time and from time to time, vary or alter these Terms and Conditions. Any such variation to these Terms and Conditions will apply upon notification by Longwall Chain to the Customer.
4. Commencement of the provision of services based on quotation is subject to approval from Longwall Chain of the Customer's Credit Application.
5. Any representation, warranty, condition or undertaking that would be implied into these Terms and Conditions by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law. Nothing in these Terms and Conditions excludes, restricts or modifies any condition, warranty, right or remedy conferred on a party by the *Competition and Consumer Act 2010* or any other applicable Australian law that cannot be excluded, restricted or modified by agreement.
6. Where the Customer has more than one proprietor, or where there is more than one Applicant under a Credit Application, the liability of those applicants or proprietors under these Terms and Conditions will be Joint and Several.
7. Customer means both the Customer in these Terms and Conditions and the Applicant under the Credit Application (if any) and the Customer named on any quote.
8. In the event of any inconsistency between these Terms and Conditions and those which may be included in, or implied by, any document forming part of a Customer enquiry, specification, order or contract, these Terms and Conditions shall prevail.
9. No terms, provisions, or conditions at variance with these Terms and Conditions shall be effective in any way unless specifically confirmed in writing by Longwall Chain.

Pricing

10. If there is any error or omission in a quotation, Longwall Chain reserves the right to amend the quotation price. This clause applies even if the quotation has been accepted by the Customer.
11. Unless otherwise stated, all prices quoted are GST exclusive. GST will be added in relation to delivery, supply and installation of all goods and services (as relevant).

Terms of Payment

12. Where the provision of services will take more than 1 week to provide, Longwall Chain may provide invoices on a weekly basis.
13. All payments due to Longwall Chain are to be made, without retention, within 30 days from the earlier of the date that which the invoice was issued to the Customer by Longwall Chain or the end of the month of delivery of the goods to the Customer's site. Payment will be considered to be made when the funds are cleared in Longwall Chain's nominated bank account.
14. If the Customer fails to make payment in accordance with the terms of clause 13, Longwall Chain will be entitled to:
 - a) charge default interest at the rate of 12% per annum on all overdue amounts (including late payment charges and amounts other than the price) calculated daily on and from the due date for payment and the parties agree that any amount so calculated is not a penalty but rather an accurate pre-estimate of the damage to be incurred by Longwall Chain. Payments received from the Customer will be credited first against any default interest, then in payment of services, and all such charges will be payable on demand;
 - b) claim from the Customer, all costs relating to any action taken by Longwall Chain to recover money due from the Customer including any legal costs and disbursements on a solicitor-client basis;
 - c) cease all work remaining to be performed by Longwall Chain under the quotation and terminate any agreement in relation to the provision of services that have not been provided prior to the Customer's default; and
 - d) require the payment of cash in advance before the provision of any further services.
15. Time for payment shall be of the essence to any Contract between the Customer and Longwall Chain.
16. If the Customer delays making payment under the terms of the Contract, Longwall Chain may, without prejudice to any other remedy, suspend supply or delivery of any goods to the Customer

until such payment is made and Longwall Chain shall be entitled to increase the Contract price to cover any extra expense incurred as a result of the Customer's default.

Provision of Goods and Services

17. Any date or time quoted by Longwall Chain is an estimate only and Longwall Chain will endeavour to meet that estimate, but failure to do so will not confer on the Customer any right of cancellation on the Customer's part or render Longwall Chain liable for any loss or damages directly or indirectly sustained by the Customer as a result thereof.
18. Where delay in delivery or non-delivery is due to the Customer failing to obtain any necessary approvals, clearances or other prerequisites to delivery or arises as a result of government interference, riot, acts of public enemies, strikes, or lock out, shortages of manpower howsoever occurring fire, flood, power disturbances, shortage of raw materials, damage to machinery or dislocation of production, dislocation or delay of transport, acts of God or any other occurrence reasonably beyond Longwall Chain's control, Longwall Chain shall within 30 days of becoming aware of any such occurrence notifies the Customer in writing of Longwall Chain's inability to deliver and may terminate the contract if Longwall Chain shall so determine.
19. Additional costs will be payable where the time required to complete the services is longer than the time allowed for in the quotation or proposal.
20. Any installation of any equipment will be undertaken by the staff of the Customer for which purpose adequate numbers of suitably trained people will be made available by the Customer with adequate supporting services. Longwall Chain may provide the client with a technical employee for advice and instruction to ensure satisfactory installation.

Property and Risk

21. Where Longwall Chain has provided templates, standard operating procedures or any other document or manual, such document is provided for the sole use of the Customer. All copyright in the templates, standard operating procedures or any other document or manual remains the property of Longwall Chain. Longwall Chain agrees to licence the use of such copyright to the Customer and the Customer acknowledges that the consideration for the use of the copyright has been included in the fee charged by Longwall Chain.
22. If Longwall Chain provides a recommendation or a referral to another person or company, then Longwall Chain makes no warranty as to the suitability of that person or company. The Customer make its own enquiries as to the suitability of the person or company to its business needs.
23. To the extent permitted at law, Longwall Chain will not be liable to the Customer or any third party for liquidated damages in any form, any delay costs, consequential loss including (without limitation) any loss of profits, loss of revenue, loss of production, loss of business opportunity, loss of goodwill, loss of business reputation, economic loss or any indirect, remote and/or unforeseeable loss. The aggregate liability of Longwall Chain in damages (however arising) in respect of any act or omission of Longwall Chain's in connection with its obligations under these Terms and Conditions will not exceed the amount of one hundred dollars (AUD\$100), even if Longwall Chain has been advised by the Customer as to the possibility of such loss being incurred.

24. As security for payment, the Customer (and where applicable each Guarantor) agrees to grant Longwall Chain a Security Interest (as defined in the Personal Property Securities Act 2009 (Cth) (PPSA) in the outstanding payments and all after acquired property and an irrevocable right to register this interest against it or its property (as the case may be) on the Personal Property Securities Register established under Chapter 5 of the PPSA (Register) including (without limitation) where applicable, as a purchase money security interest. The Customer grants Longwall Chain an irrevocable right to search the Register from time to time in relation to it or its property. The Customer agrees for the purposes of the PPSA and to the extent permitted by law, Sections 95, 121(4) 128, 129, 130, 132(3)(d), 132(4), 135 and 143 of the PPSA may have no application to these arrangements and Longwall Chain may not be required to give notice under section 135 of the PPSA (at the determination of Longwall Chain). If Longwall Chain receives any notice in relation to the Customer under section 64 of the PPSA, all outstanding payments will become immediately due and payable. The Customer agrees to pass such resolutions, execute and sign any documents or forms, as required from time to time to formalise, affirm or perfect the said Security Interest.
25. To secure payment of all monies which may become payable to Longwall Chain, the Customer hereby charges all of its real property (including all real property acquired after the provision of these Terms and Conditions) whatsoever and wheresoever situated and all of its estate and interest therein, in favour of Longwall Chain with the payment of all sums of money whether present future or contingent to which it may become liable to pay to Longwall Chain and the Customer covenants to deliver to Longwall Chain within 7 days of written demand a memorandum of mortgage in registrable form, payable on demand and incorporating the covenants contained in Memorandum No.Q860000 registered at the Land and Property Management Authority in New South Wales and authorises and consents to Longwall Chain taking all action necessary to give effect to this security including the lodgement of a caveat upon title of the Customer's real property. The Customer hereby irrevocably appoints Longwall Chain and any person nominated by Longwall Chain (including without limitation any credit manager or solicitor engaged by Longwall Chain) severally as its lawful attorney with power to execute sign, seal and deliver (which delivery may be subject to such Terms and Conditions as the attorney thinks fit) such mortgage or other document to give effect to this security.
26. Title to any goods delivered by Longwall Chain to the Customer will not pass to the Customer until such time as the goods subject of the contract and all monies owing to Longwall Chain on any account whatsoever have been paid ("**the Debts**"). Notwithstanding this, risk in the goods pass to the Customer at the date of delivery. Part shipment and part deliveries by Longwall Chain are permitted. Upon the happening of any event, which constitutes part shipment or part delivery of any goods, then the risk in any goods shipped or delivered passes to the Customer. Claims for short shipment in any consignment must be made to Longwall Chain in Australia in writing within 7 (seven) days of the receipt of consignment by the client.
27. Until the Debts have been paid:
 - a) the Customer shall hold the Goods as Bailee for Longwall Chain and shall safely and securely store the goods separately from other goods of the Customer in such a manner as to show clearly that the goods are the property of Longwall Chain .
 - b) the Customer shall indemnify Longwall Chain against any

claim, action, proceeding, damage, loss, cost, expense or liability incurred or suffered by Longwall Chain arising out of the possession, use or disposal of the goods by the Customer or repossessions or attempted repossession by Longwall Chain.

- c) the Customer shall insure the goods for their full replacement value.
- d) The Customer shall not sell the goods.

28. In the event that:

- a) the Debts are not paid in accordance with these conditions and other agreement between Longwall Chain and the Customer.
- b) Longwall Chain receives notice of or reasonably believes that a third person may attempt to levy execution against the goods or;
- c) an Insolvency Event occurs then Longwall Chain may at any time, without notice to the customer and without prejudice to any other rights which it may have against the Customer, terminate any Contract relating to the goods and any bailment and enter upon any premises occupied by the Customer where Longwall Chain reasonably believes the goods may be stored, repossess the goods without being liable for any damage caused, and subsequently dispose of the goods at Longwall Chain's discretion.

29. In the event the goods shall be placed in storage, a warehouse receipt shall have the same validity, as any Bill of Lading required to be submitted for payment concerning goods.

30. If there is any undue delay to shipping arrangements made by the Customer (beyond the control of Longwall Chain), or if the Customer wishes to provide shipping space and fails to do so after 14 (fourteen) days from being requested to do so by Longwall Chain, then Longwall Chain may amend the planned program contained in the quotation or proposal.

31. If an Insolvency Event occurs, the Customer shall bear the onus of providing that goods supplied by Longwall Chain in the Customer's possession (whether mixed with other goods or not) have been paid in full by the Customer. If the Customer is unable to prove to the satisfaction of Longwall Chain that the goods identified as Longwall Chain goods have been paid in full by the Customer, then those goods shall be deemed to relate to unpaid invoices outstanding from time to time and such goods are deemed to be the property of Longwall Chain and may be repossessed by Longwall Chain.

32. An "Insolvency Event" shall occur when:

- a) the Customer is late or fails to make any of the payments to Longwall Chain in accordance with Longwall Chain's payment terms.
- b) an application or order is made, a resolution is made or proposed or other steps are taken for the winding up, dissolution, official management or voluntary administration of the Customer (other than a voluntary liquidation for amalgamation or reconstruction purposes).
- c) The Customer enters into an arrangement, compromise or composition or assignment for the benefit of its creditors or any class of them.

d) The Customer ceases, suspends or threatens to cease or suspend the conduct of its business or disposes of or threatens to dispose of its assets other than in the ordinary course of business.

e) The Customer is deemed unable to pay its debts as and when they fall due, or stops or suspends payments of its debts.

f) A receiver, manager, administrator, liquidator, or other officer is appointed to the customer or any part of its property, or a third party attempts to levy execution against the Customer's property or the goods, or the Customer (being a natural person) commits an act of bankruptcy.

Consumer Law

33. If any service, including any templates, standard operating procedure or any other document or manual supplied pursuant to these Terms and Conditions are supplied for personal, domestic or household uses as services to the Customer as a "consumer" within the meaning of that term in the Australian Consumer Law as amended or relevant state legislation then the Customer will have the benefit of certain non-excludable rights and remedies in respect of the products and nothing in these Terms and Conditions excludes or restricts or modifies any condition, warranty, right or remedy which pursuant to the Australian Consumer Law or similar legislation is so conferred.

34. If any service, including any templates, standard operating procedure or any other document or manual supplied, is a service NOT supplied for personal, domestic or household use as goods or services to the Customer as a "consumer" within the meaning of that term as indicated in clause 33 above, then to the extent permitted at law, Longwall Chain will not be liable to the Customer or any third party for liquidated damages in any form, any delay costs, consequential loss including (without limitation) any loss of profits, loss of revenue, loss of production, loss of business opportunity, loss of goodwill, loss of business reputation, economic loss or any indirect, remote and/or unforeseeable loss. Longwall Chain's aggregate liability in damages (however arising) in respect of any act or omission in connection with its obligations under these Terms and Conditions will not exceed the amount of one hundred dollars (AUD\$100), even if Longwall Chain has been advised by the Customer as to the possibility of such loss being incurred. To the extent that Longwall Chain cannot exclude liability for breach of any condition or warranty, Longwall Chain's liability is limited to (at Longwall Chain's option):

- a) The resupply of services; or
- b) Refund of any payment in lieu of resupply.

35. No additional express warranty for defects or otherwise are provided for our products. Consumers may rely upon their statutory rights and remedies under the Australian Consumer Law.

36. Longwall Chain can be contacted in relation to claims as follows:

- a) Telephone Number: 02 9618 7664
- b) Email Address: admin@longwallchain.com.au
- c) Mailing address: 7 Moorlands Road, Ingleburn, 2565

37. Any cost incurred in contacting us or delivering the product to us will be borne by you.

Force Majeure

38. Longwall Chain will not be liable for any failure or delay in supply of services where such failure or delay is wholly or partly due to any cause or circumstances whatsoever outside the reasonable control of Longwall Chain including, but not limited to war, strikes, lockouts, industrial disputes or unrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of plant, shortage of supplies or labour, storms or tempest, vandalism or riot, civil commotions or accidents of any kind (each an Event of Force Majeure). Longwall Chain's obligations will be suspended until the Event of Force Majeure ceases to cause the failure or delay (as the case may be). The Customer will not be relieved of any obligation to make payment to Longwall Chain regardless of any party being affected by an Event of Force Majeure.

Termination

39. If the Customer fails to comply with any of these Terms and Conditions or the Credit Application Terms (if applicable) being a natural person or persons commits any act of bankruptcy or being a corporation passes a resolution for winding up or liquidation (other than for the purpose of reorganisation or reconstruction) or enters into any composition or arrangement with creditors or if a receiver, manager, receiver manager or administrator is appointed for any property or assets of the Customer or becomes liable to be wound up by reason of insolvency or if any petition is presented for its winding up, or if a Liquidator or Provisional Liquidator is appointed, Longwall Chain may, in addition to exercising all or any of its rights against the Customer, suspend any further deliveries and immediately enter premises occupied by the Customer to recover possession of any products not paid for in accordance with these Terms and Conditions without in any way being liable to the Customer or any person claiming through the Customer.

Governing Law & Jurisdiction

40. The Customer agrees that these Terms and Conditions will be construed according to the Laws of the State of New South Wales. The Customer consents to any proceedings being instituted and heard by any appropriate Court sitting in the State of New South Wales applying the Laws of New South Wales.

Agreements with Customer outside of Australia

41. Clauses 41 to 45 (inclusive) only apply where the Customer is based outside of Australia and does not have a presence in Australia.
42. For the purposes of clauses 41 to 45 (inclusive), where commencing with a capital letter:
- FJA means the Foreign Judgments Act 1991 (Cth).
 - New York Convention means the Convention of the Recognition and Enforcement of Foreign Arbitral Awards.
 - UNCITRAL means the United Nations Commission on International Trade Law Arbitration Rules.
43. If the Customer is located outside of Australia and without a presence in Australia and is located in a country to which the FJA applies, the Customer acknowledges that Longwall Chain can enforce any order of any Australian Court granted in favour of Longwall Chain and against the Customer or the Guarantor pursuant to the FJA.

44. If the Customer is not located in a country to which the FJA applies, but the Customer is located in a "Contracting State" as defined by the New York Convention then any dispute or difference whatsoever arising out of or in connection with these Terms and Conditions must be submitted to arbitration in accordance with, and subject to, the UNCITRAL. The appointing and administering body shall be The Institute of Arbitrators and Mediators Australia or its replacement. There must be one arbitrator, the language of the arbitration must be English, the place of the arbitration must be Sydney, Australia.
45. The Customer agrees to be bound by the arbitration and to submit to the UNCITRAL

Defects and Liability

46. Subject to clause 47, Longwall Chain will repair or at your option replace defective goods supplied (fair wear and tear excluded) by Longwall Chain which arise solely from faulty material or workmanship within the Defects Liability Periods specified in warranties provided with the goods.
47. Defects Liability Periods are subject to the following factors, failing which any claim shall be deemed to be waived and absolutely barred:
- Operation and maintenance of any goods and equipment must be in accordance with both Longwall Chain's directions (whether written or otherwise) and the manufacturer's advice and warranties provided with the goods.
 - Foreign Particles other than Coal (e.g. rock/stone/ loose objects) conveyed must not exceed the described geological information made available to Longwall Chain at the time of tender, and must not exceed 15% of that described size on a regular basis.
 - Chain pre-tension must be maintained at recommended levels on the Armoured Faced Conveyor and Beam Stage Loader in accordance with the manufacturer's instructions and in accordance with both Longwall Chain's directions (whether written or otherwise).
 - You acknowledge that mining environments may cause varying rates of metal corrosion.
 - Claims must be made in writing to Longwall Chain within the relevant Defects Liability Period and the defective part must be promptly returned by you to Longwall Chain's premises at your cost unless otherwise arranged. The repaired or new parts will be delivered to you at Longwall Chain's cost.
 - This Defects Liability Period shall not apply to any defect arising from misuse or failure to comply with the manufacturer's instructions, from Longwall Chain's instructions or directions (whether written or otherwise) or from fair wear and tear or to any parts that ordinarily would be expected to need replacement within 6 months (e.g. consumable items).
 - Should any item of equipment supplied and warranted by Longwall Chain be modified by or for the customer without the written approval of Longwall Chain, any warranty or Defects Liability Period on the modified item or equipment will cease