



General Terms and Conditions for Blasting Services in the U.S.

1. **APPLICABILITY.** These General Terms and Conditions for Blasting Services in the U.S. (these “**Service Terms**”) are the only terms that govern the provision of the blasting and related services to be performed in the U.S. (the “**Blasting Services**”) and any Ancillary Products (as defined herein) by the applicable Austin Powder entity set forth on the Order Confirmation (as defined below) (“**Austin Powder**”) to the customer (“**Customer**”) named on the accompanying sales order, sales order acknowledgement, sales agreement, order confirmation, quote, credit application, and/or purchase order (the “**Order Confirmation**”). The Order Confirmation and these Service Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, regarding the provision of the Blasting Services and the corresponding Ancillary Products. This Agreement supersedes any of Customer’s general terms and conditions of purchase regardless of whether or when Customer has submitted its purchase order or such terms. Austin Powder expressly rejects Customer’s general terms and conditions of purchase, and fulfillment of Customer’s order does not constitute acceptance of any of Customer’s terms and conditions or serve to modify or amend these Service Terms. Acceptance of the Order Confirmation by Customer is a prerequisite to the provision of the Blasting Services and corresponding Ancillary Products and shall operate as an acceptance of these Service Terms which are expressly incorporated into the Order Confirmation.

2. **CUSTOMER’S OBLIGATIONS.** Customer shall: (a) cooperate with Austin Powder in all matters relating to the Blasting Services and provide such access to Customer’s premises for the purposes of performing the Blasting Services; (b) provide accurate information on the Site (as defined herein) and clearly mark all utilities, structures, access routes, property boundaries, and other sensitive receptors that may be affected by the Ancillary Products or Blasting Services at the Site; (c) provide certificates of insurance upon request; and (d) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Blasting Services before the date on which the Blasting Services are to start. If Austin Powder’s performance of its obligations under this Agreement is prevented or delayed by any act or omission of Customer or anyone acting on its behalf, Austin Powder shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any costs, charges, or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay. Austin Powder shall use reasonable efforts to meet any performance dates specified in the Order Confirmation, and any such dates shall be estimates only.

3. **CHANGE ORDERS.** If either party wishes to change the scope or performance of the Blasting Services, it shall submit details of the requested change to the other party in writing. Austin Powder shall, within a reasonable time after such request, provide a written estimate to Customer of: (a) the likely time required to implement the change; (b) any necessary variations to the fees and other charges for the Blasting Services arising from the change; (c) the likely effect of the change on the Blasting Services; and (d) any other impact the change might have on the performance of this Agreement. Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change (a “**Change Order**”). Neither party shall be bound by any Change Order unless mutually agreed upon in writing in accordance with these Service Terms. Notwithstanding

anything to the contrary herein, Austin Powder may, from time to time change the Blasting Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Blasting Services, or the fees or any performance dates set forth in the Order Confirmation.

4. **FEES AND PAYMENT.** Customer shall pay the fees set forth in the invoice. Austin Powder may, by written notice to the Customer, increase the fees of the Blasting Services to take account of any foreign exchange fluctuation, currency regulation, or other market fluctuation; changes of taxes, duties, or other charges, increase in the costs of labor, materials or other costs of manufacture; any change in delivery dates, quantities or specifications for the Ancillary Products or any delay caused by any instructions of Customer or failure of Customer to give Austin Powder adequate information or instructions. Austin Powder may invoice separate charges and costs in addition to the fees. Customer shall pay all invoices within thirty (30) days of the invoice date. Austin Powder may charge interest on any overdue amount at one-and-a-half percent (1.5%) per month, or the maximum rate permitted by law, from the due date until paid in full. If Customer elects to pay any amounts due under the invoice by credit card, Austin Powder may charge a credit card processing surcharge equal to the actual processing fee incurred by Austin Powder, not to exceed the transaction amount, or the maximum amount permitted by applicable law, whichever is less, and such surcharge will be disclosed to Customer at or before the time of payment. Customer shall reimburse Austin Powder for all costs incurred in collecting any late payments, including, without limitation, attorneys’ fees. In addition to all other remedies available under these Service Terms or at law (which Austin Powder does not waive by the exercise of any rights hereunder), Austin Powder shall be entitled to suspend any Blasting Services if Customer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof. Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Austin Powder, whether relating to Austin Powder’s breach, bankruptcy, or otherwise. Austin Powder shall have, in addition to all other rights and remedies, the right to assert, perfect, and enforce any mechanic’s lien, materialman’s lien, or similar statutory lien, as well as any consensual security interest, in all improvements, fixtures, equipment, and materials furnished by Austin Powder and incorporated into, or delivered for incorporation into, the Site and related real property, to secure full payment of all amounts due under this Agreement, and Customer shall execute all documents reasonably requested by Austin Powder to evidence and perfect such rights. All of Austin Powder’s rights and remedies hereunder are cumulative and in addition to, and not in limitation of, any rights and remedies available at law or in equity.

5. **INTELLECTUAL PROPERTY.** All intellectual property rights (“**Intellectual Property Rights**”) in and to all documents, work product, and other materials that are delivered to Customer under this Agreement or prepared by or on behalf of Austin Powder in the course of performing the Blasting Services, including any items identified as such in the Order Confirmation shall be owned by Austin Powder, and nothing in this Agreement grants Customer any right, title, or interest in any Intellectual Property Rights except as expressly provided herein.

6. **SITE EXAMINATION AND CUSTOMER’S REGULATORY COMPLIANCE OBLIGATIONS.** Customer shall be solely responsible, at its own cost, for determining, monitoring, and ensuring compliance with all applicable foreign, federal, state, provincial, and

local laws, statutes, regulations, ordinances, codes, directives, standards, and other governmental requirements (including those of any governmental or quasi-governmental authority, utility, or permitting agency) relating to or arising out of the Blasting Services and any associated vibrations, air overpressure, noise, dust, environmental impacts, conditions or releases of hazardous substances, waste generation, and disposal, fly-rock, fumes, wind or weather effects, traffic disruption, or other off-Site or collateral impacts, as well as all other environmental, zoning, land use, health and safety, and nuisance requirements. Without limiting the foregoing, Customer shall: (a) obtain, maintain in full force, comply with, and, upon Austin Powder's request, furnish copies of all licenses, consents, approvals, notifications, and permits (including blasting, vibration, noise, environmental, right-of-way, access, and road-closure permits) required for the performance of the Blasting Services at or near the Site; (b) accurately determine and communicate to Austin Powder in writing all applicable vibration, air overpressure, noise, and similar limits or criteria imposed by any third party or governmental authority; and (c) secure all necessary permissions, easements, waivers, and rights of access from owners and occupants of adjacent or nearby properties, utilities, or facilities that may be affected by the Blasting Services. Austin Powder shall be entitled to fully rely on any permits, approvals, limits, information, markings, written regulations and processes, and signs provided by Customer for the provision of the Blasting Services to the applicable site where the Blasting Services shall be performed (the "Site"), including any Mine Safety and Health Administration training specific to the Site. Customer acknowledges that Austin Powder has relied and will rely on Customer's determinations, information, and instructions regarding conditions at the Site, regulatory and permit requirements, and applicable limits on vibrations, air overpressure, and noise, and Austin Powder shall have no responsibility to independently investigate or verify such matters or to determine what permits, consents, or regulatory requirements apply to the Blasting Services. If Austin Powder determines in its sole and reasonable discretion that it is unsafe to supply or continue supplying the Ancillary Products or Blasting Services to Customer and/or for the Site, Austin Powder may suspend or modify such activity, without liability or penalty, until it reasonably determines that such activity is safe to resume, any concerns for non-compliance have been sufficiently addressed, and any potential violations of applicable law or permit conditions have been sufficiently mitigated as the case may be, with any resulting delay, standby, or additional cost to be borne exclusively by Customer. Customer shall defend, indemnify, and hold harmless Austin Powder and its affiliates and their respective officers, directors, members, managers, suppliers, contractors, employees, and agents (collectively, the "**Austin Powder Indemnified Parties**"), from and against any and all claims, demands, suits, causes of action, liabilities, damages, fines, penalties, costs, and expenses (including reasonable attorneys' fees and expert costs) (collectively, "**Losses**"), including damage to underground or above-ground utilities, structures, or other third-party property, arising out of or related to: (i) Customer's failure to obtain or maintain any required permit, approval, license, or consent; (ii) Customer's failure to comply with any applicable legal or regulatory requirement (including environmental, vibration, noise, or nuisance requirements); (iii) Customer's failure to identify, disclose, or accurately describe the Site's conditions, nearby structures, or utilities that may be affected by any blasting; or (iv) any allegation that the Blasting Services, as performed in accordance with Customer's instructions, limits, or Site information, violated any applicable law, regulation, permit condition, or third-party right, except to the extent finally determined to have been caused solely by Austin Powder's gross negligence or willful misconduct.

7. **ENVIRONMENTAL HARM AND REMEDIATION**. If any environmental harm (excluding that which is minor, incidental, or unavoidable releases that are customary for the type of work being performed, does not exceed applicable legal or permit thresholds, or

does not trigger any reporting or corrective action requirements under applicable laws) directly results from any grossly negligent acts or omissions of Austin Powder in connection with the performance of its obligations hereunder (including the storage of Inventory (as defined herein)), Austin Powder shall promptly cause such environmental harm to be remediated, repaired, reclaimed or otherwise corrected to the extent required by applicable law or any governmental authority. Notwithstanding the foregoing, Customer shall be responsible for: (a) any releases of any pollutant, contaminant, or hazardous substances to the environment, including emissions of noxious fumes or particulates resulting from the provision of the Blasting Services or the handling, loading, use, and detonation of the Ancillary Products; (b) reporting such releases as required to appropriate governmental authority as required by applicable law; (c) properly characterizing, handling, transporting, and disposing of waste and waste materials generated as a result of such Blasting Services and Ancillary Products, including but not limited to rock debris, overburden, dust, spent blasting materials, packaging, contaminated soils, water, or residues in accordance with applicable law (and Austin Powder shall not be deemed the generator of any waste under such law); and (d) assessing, mitigating, and remediating any environmental impacts or conditions including but not limited to, dust generation, ground disturbance, fly-rock, vibration, noise, and contamination of the environment resulting from or associated with the provision of the Blasting Services, the placement of the Ancillary Products or other explosives products into boreholes in connection with the Blasting Services, and supply of Ancillary Products hereunder. Customer shall be solely responsible for, and shall defend, indemnify, and hold harmless the Austin Powder Indemnified Parties and from and against all Losses arising from or related to: (i) Customer's failure to obtain or comply with required environmental permits; (ii) the handling, storage, characterization, or disposal of waste; (iii) environmental impacts, releases of hazardous substances, or contamination of the environment associated with Blasting Services and Ancillary Products, (iv) site conditions or hazards including, fly-rock, ground vibrations, and any other impacts and (v) any regulatory actions, enforcement, or third-party claims related to environmental or safety matters. As used herein, "environmental harm" means the discharge, emission, or disposal of any pollutant, contaminant, hazardous substance, or waste into the environment (including soil, land surface or subsurface strata, surface waters, groundwaters, drinking water supplies, streams, sediments, ambient air, soil gas, plant and animal life, and any other environmental medium, attribute or natural resource) without a required permit, approval, or authorization, in excess of applicable permit limits, standards, or conditions, or otherwise in violation of applicable law.

8. **ON-SITE INVENTORY**. Austin Powder may, in its sole discretion, elect to store certain products, parts, materials, or other goods (collectively, the "**Inventory**") at the Site or such other location as the parties may mutually agree in writing (the "**On-Site Location**") for use in connection with the Blasting Services other contractual obligations of Austin Powder. Title to, and ownership of, all Inventory shall at all times remain solely and exclusively with Austin Powder, and no right, title, or interest in or to the Inventory shall pass to Customer by virtue of its delivery to or storage at the On-Site Location. Austin Powder shall retain all risk of loss, theft, destruction, or damage to the Inventory, except as expressly provided otherwise herein. Customer shall (a) provide Austin Powder, its employees, contractors, and agents with reasonable access to the On-Site Location for purposes of inspection, reconciliation, removal, or replacement of the Inventory; (b) not use, consume, move, relocate, pledge, encumber, sell, or otherwise dispose of the Inventory except as expressly authorized in advance in writing by Austin Powder; and (c) maintain the On-Site Location in a manner reasonably suitable for the safe storage of the Inventory. Customer shall exercise not less than reasonable care in the custody and safeguarding of the Inventory and shall be liable for, and shall reimburse Austin

Powder for, any loss of or damage to the Inventory to the extent arising out of or resulting from Customer's gross negligence or willful misconduct. Austin Powder may, upon reasonable prior notice to Customer (or without notice in the event of an emergency, safety issue, or termination or expiration of this Agreement), enter the On-Site Location during normal business hours to inspect, count, remove, or otherwise deal with the Inventory. Upon any termination or expiration of this Agreement, or upon Austin Powder's earlier written demand, Customer shall promptly make all remaining Inventory available for collection by Austin Powder and shall cooperate in good faith with Austin Powder to facilitate the orderly removal of such Inventory. Nothing in this Section shall be construed to limit Austin Powder's rights or remedies at law or in equity, including without limitation the right to seek injunctive relief to protect the Inventory.

**9. ANCILLARY PRODUCTS; INHERENTLY DANGEROUS PRODUCTS.**

As used herein, "Ancillary Products" means explosives, detonators, blasting agents, explosive chemics, boosters, accessories, equipment, consumables, and other tangible items required for, or reasonably necessary to, the safe and proper performance of the Blasting Services. Unless otherwise expressly agreed by the parties in writing, title to the Ancillary Products shall at all times remain with Austin Powder and shall not pass to Customer, regardless of whether the purchase price of the Ancillary Products is included in the fees payable by Customer or otherwise reimbursed by Customer. While the Ancillary Products are in the immediate custody and control of Austin Powder's authorized personnel, Austin Powder shall be responsible only for their safe handling in accordance with applicable law and industry standards. Austin Powder's responsibilities for the Ancillary Products are limited to such safe handling and do not expand any warranties or obligations beyond those expressly stated in this Agreement. Transportation of, and access to, the Ancillary Products shall be restricted to authorized personnel designated by Austin Powder, and Customer and its employees and other contractors and subcontractors (the "Customer Personnel") shall not interfere with or permit any unauthorized person to obtain access to such Ancillary Products. Austin Powder represents and warrants that at the time of use of the Ancillary Products in the provision of the Blasting Services, the Ancillary Products shall conform to the specifications applicable to the Blasting Services; provided, however, that any deviation from the specifications caused by the actions of Customer or any third party is expressly excluded from this warranty. Customer warrants that it is familiar with the Ancillary Products, their proper handling, storage, use and application, and the associated dangers. Customer warrants that all Customer Personnel who may access the Ancillary Products with or without Austin Powder's advance approval will be fully trained and informed (without reliance on Austin Powder) regarding the proper storage, handling, use, and application of the Ancillary Products, including how to safely and properly respond when any Ancillary Products may have misfired or failed to fully detonate. Customer further warrants that all Customer Personnel who handle or use the Ancillary Products will do so safely in accordance with all applicable laws, regulations, warnings and instructions, and currently accepted industry practice. AUSTIN POWDER MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO THE ANCILLARY PRODUCTS, WHETHER USED ALONE OR IN COMBINATION WITH ANY OTHER GOODS OR MATERIALS.

**10. EQUIPMENT RENTAL.** Customer may request the temporary rental or use of certain equipment or related items owned by Austin Powder and located at the Site (collectively, the "Equipment"). Subject to Austin Powder's prior written consent in each instance, Customer may rent such Equipment solely to the extent the rental is expressly set forth on the applicable Order Confirmation, which shall specify, at a

minimum, the Equipment subject to rental and the term of such rental. Title to and ownership of all Equipment shall at all times remain exclusively with Austin Powder, and no right, title, or interest (other than a limited right of possession and use during the stated rental term) is conveyed or transferred to Customer by virtue of any such rental. Austin Powder shall have the absolute right, in its sole discretion and without penalty, to retake possession of any or all Equipment at any time, with or without cause, upon verbal or written notice to Customer, and Customer shall promptly cooperate in facilitating such repossession. From the time Customer takes possession of any Equipment until such Equipment is actually returned to and accepted by Austin Powder, Customer shall bear all risk of loss, theft, destruction, or damage of any kind to the Equipment, regardless of cause. Customer shall, at its sole cost and expense, (a) maintain the Equipment in good operating condition and in accordance with Austin Powder's instructions and all applicable laws, and (b) promptly repair or, at Austin Powder's election, replace any piece of Equipment that is lost, stolen, destroyed, or damaged while in Customer's care, custody, or control, with replacement items of equal or better make, model, condition, and value acceptable to Austin Powder. Until any required repair or replacement is completed to Austin Powder's reasonable satisfaction, rental charges (if any) shall continue to accrue. Customer shall not sublease, lend, or otherwise permit any third party (including any subcontractor of Customer) to use the Equipment except as expressly authorized in writing by Austin Powder, and any such permitted use shall not relieve Customer of any obligation or liability hereunder. AUSTIN POWDER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR ANY OTHER MATTER WITH RESPECT TO THE TOOLS, WHETHER USED ALONE OR IN COMBINATION WITH ANY OTHER GOODS OR MATERIALS.

**11. BLASTING SERVICES LIMITED WARRANTY.** Austin Powder represents and warrants to Customer that it shall perform the Blasting Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement (the "Limited Warranty"). Austin Powder shall not be liable for a breach of the Limited Warranty unless Customer gives written notice of the defective Blasting Services, reasonably described, to Austin Powder within ten (10) days of the time when Customer discovers or ought to have discovered that the Blasting Services were defective. Austin Powder shall, in its sole discretion, either: (a) re-perform such Blasting Services (or the defective part); or (b) credit or refund the price of such Blasting Services at the pro rata contract rate. THE FOREMENTIONED REMEDIES SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND AUSTIN POWDER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY. EXCEPT FOR THE LIMITED WARRANTY, AUSTIN POWDER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE BLASTING SERVICES, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE.

**12. LIMITATION OF LIABILITY.** IN NO EVENT SHALL AUSTIN POWDER BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, PRODUCTIVITY, OR PROFIT, ANY LOSS OF DATA OR DIMINUTION IN VALUE, ANY ADDITIONAL COSTS FROM DOWNTIME, SHUTDOWN, INTERRUPTION, OR

OPERATIONAL DELAYS, OR FOR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT AUSTIN POWDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL AUSTIN POWDER'S AGGREGATE LIABILITY EXCEED THE LESSER OF (a) THE AGGREGATE AMOUNT RECEIVED BY AUSTIN POWDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO SUCH LIABILITY, OR (b) \$500,000. AUSTIN POWDER DISCLAIMS ALL OTHER LIABILITY TO CUSTOMER OR TO ANY OTHER PERSON OR ENTITY WHETHER BASED UPON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL THEORY. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, ANY ACTION AGAINST AUSTIN POWDER MUST BE BROUGHT WITHIN TWELVE (12) MONTHS AFTER THE DATE SUCH CAUSE OF ACTION ACCRUED.

13. **INSURANCE.** Austin Powder represents that it maintains commercially reasonable insurance to cover its obligations under this Agreement. Upon Customer's written request, Austin Powder will provide certificates of such insurance coverage.

14. **ASSUMPTION OF RISK; GENERAL INDEMNIFICATION.** Customer acknowledges that (a) it is familiar with and assumes all risks and liability associated with the Blasting Services and Ancillary Products and (b) even the exercise of due care in blasting may not prevent injuries or damage to Customer, Customer's employees or property, or third parties. Customer also acknowledges and agrees that Customer's choice of the Blasting Services and Ancillary Products (or election not to purchase the Ancillary Products that may mitigate risk) may result in adverse consequences. Customer shall defend, indemnify, and hold harmless the Austin Powder Indemnified Parties from and against any and all Losses that Austin Powder may incur, directly or indirectly, arising from or related to (i) Customer's purchase of the Blasting Services and, to the extent applicable, any handling, ownership, possession, storage, further processing, transportation, disposal, sale or other use of the Ancillary Products, whether used alone or in combination with or incorporated into other goods or materials, (ii) Customer's violation or alleged violation of any law or regulation, (iii) Customer's breach of this Agreement, (iv) Customer's use of the Equipment, or (v) the use of the Ancillary Products or the performance of the Blasting Services not directly caused by Austin Powder's breach of the Limited Warranty.

15. **ACCIDENTS AND INVESTIGATIONS.** In the event of any type of accident or incident, including but not limited to, fly-rock, a misfire or unplanned detonation, or any other accident located on or near the Site (each, an "Incident"), whether or not the Incident results in any injury to any people, equipment or property or lost production time and where the Incident involves any Blasting Services or Ancillary Products, the parties agree to cooperate in good faith to investigate the Incident in accordance with each party's respective internal investigation policies for reporting such Incident. Further, neither party shall hinder the other party with any rescue efforts necessary in the event of any Incident and shall fully cooperate with the other party in the event of any such rescue efforts. The parties agree to allow appropriate first responders to take all necessary steps in an Incident. The parties further agree to work together to develop new procedures or practices to reduce the risk of a similar Incident occurring in the future. Customer will give Austin Powder reasonable access to the site where

the Incident occurred and to the individuals involved in the Incident for the purpose of developing new procedures or practices.

16. **COMPLIANCE WITH LAW.** Each party shall comply with all applicable laws, regulations, and ordinances, including any regulatory compliance requirements. Neither party shall directly or indirectly hinder the other from fulfilling any regulatory reporting obligations that are required in the event of regulatory violations, ensuring full cooperation with any regulatory requirements or investigations. Each party shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement.

17. **TERMINATION.** In addition to any remedies that may be provided under this Agreement, Austin Powder may terminate this Agreement with immediate effect upon written notice to Customer, if Customer: (a) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Customer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of these Service Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization, or assignment for the benefit of creditors.

18. **WAIVER.** No waiver by Austin Powder of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Austin Powder. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

19. **CONFIDENTIAL INFORMATION.** All non-public, confidential or proprietary information of each party, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by one party (as "Discloser") to the other party (as "Recipient"), whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement (collectively, "Confidential Information") is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Discloser in writing. Upon Discloser's request, Recipient shall promptly return all Confidential Information received from Discloser. Discloser shall be entitled to injunctive relief for any violation of this section. This section does not apply to Confidential Information that is: (a) in the public domain; (b) known to Recipient at the time of disclosure without an obligation of confidentiality; (c) rightfully obtained by Recipient on a non-confidential basis from a third party; or (d) independently developed by Recipient without use of or reference to Discloser's Confidential Information.

20. **EXPORT CONTROL.** In addition to other compliance obligations contained herein, Customer represents and warrants that it will comply fully with all applicable laws and regulations governing the export, reexport, or transfer of the Ancillary Products including, without limitation, the laws of the United States and any other jurisdiction having authority over the transaction. Such laws expressly include, but are not limited to, U.S. export control laws and regulations, U.S. economic sanctions laws administered by the U.S. Department of the Treasury's Office of Foreign Assets Control, the U.S. Foreign Corrupt Practices Act, and any laws or regulations applicable to the handling, storage, transport, or use of the Ancillary Products. Customer agrees that it will not, directly or indirectly, sell, export, reexport, trans-ship, or otherwise provide the Ancillary Products to any individual, entity, destination, or for any use prohibited by such laws and regulations or without obtaining all required authorizations from the appropriate governmental authorities. No Ancillary Product shall be: (a) re-

exported, trans-shipped, sold, or otherwise transferred to any country other than the country to which Austin Powder has expressly authorized shipment, except as permitted under applicable U.S. law and with Austin Powder's prior written consent; or (b) e-exported, trans-shipped, sold, or otherwise transferred to any person or entity in the authorized destination if such transfer would violate any applicable law, regulation, sanction, or anti-corruption requirement.

21. **FORCE MAJEURE**. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Customer to make payments to Austin Powder hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) natural disaster, flood, fire, earthquake, epidemic, pandemic or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages, disputes, or slowdowns, or other industrial disturbances; (h) shortage of adequate materials, internet, power or transportation facilities; (i) mechanical breakdown of manufacturing facilities; (j) interruption of or delay in transportation or inability to obtain any material used in or equipment needed for the production, handling, storage or transportation of the Ancillary Products, provided, however, the quantities so affected may be eliminated from this Agreement and this Agreement shall otherwise remain in full force and effect; and (k) other similar or dissimilar events beyond the reasonable control of the impacted party. The impacted party shall use commercially reasonable efforts to end the failure or delay and ensure the effects of such Force Majeure Event are mitigated to the extent commercially practicable. The impacted party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. Notwithstanding anything to the contrary herein, if Austin Powder's supply of material is limited by any cause beyond Austin Powder's control, Austin Powder shall have the right to prorate its available supply over its own manufacturing requirements and its commitments to its customers in such manner as it deems fair and equitable and Customer shall not be deemed in breach of its purchase obligations under this Agreement during any period of curtailed delivery by Austin Powder.

22. **ASSIGNMENT**. Customer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Austin Powder. Any purported assignment or delegation in violation of this section is null and void. No assignment or delegation relieves Customer of any of its obligations under this Agreement.

23. **THIRD-PARTY BENEFICIARIES**. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. Nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

24. **RELATIONSHIP OF THE PARTIES**. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other fiduciary relationship between the parties.

25. **DISPUTE RESOLUTION**. Any dispute arising out of or in connection with the agreement shall be addressed through the following escalation process before either party initiates litigation: (a) The parties shall first attempt in good faith to resolve the dispute through discussions between their respective day-to-day business representatives within ten (10) business days after written notice of the dispute; (b) if the dispute is not resolved at that level, either party may

escalate the matter by written notice to a senior executive of each party, who shall meet (in person or by video/telephone conference) and attempt in good faith to resolve the dispute within twenty (20) business days after such escalation notice; (c) if the dispute remains unresolved after completion of the executive-level discussions, either party may, but is not required to, propose mediation under mutually agreed rules and a mutually agreed mediator; if the parties do not agree to mediation within fifteen (15) business days, or if mediation is conducted and fails, either party may pursue any remedies available at law or in equity. Nothing in this section shall prevent either party from seeking interim or conservatory relief from a court of competent jurisdiction at any time.

26. **GOVERNING LAW AND VENUE**. This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio, without regard to any choice of law rule or principle that would direct the application of the laws of an alternative jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal or state courts located in the State of Ohio, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

27. **WAIVER OF JURY TRIAL**. Each party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal action, proceeding, cause of action, or counterclaim arising out of or relating to this Agreement.

28. **NOTICES**. All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and addressed to the parties at the addresses set forth on the face of the Order Confirmation or to such other address that may be designated by the receiving party in writing. All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees prepaid), electronic transmission (with confirmation of transmission), or certified mail (return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the notice has complied with the requirements of this section.

29. **PUBLICITY**. Neither party shall issue any information, publication, document, or article for publication or media releases or other publicity relating to the Blasting Services for Customer without the prior written approval of the other party. Notwithstanding the foregoing, Austin Powder may use drones to record each shot conducted on the Site. Austin Powder shall own all recordings made by such drones, and Customer consents to the use of drones for this purpose.

30. **SEVERABILITY**. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

31. **SURVIVAL**. The following provisions of these Service Terms shall survive any termination or expiration of this Agreement: (a) all indemnification obligations, including but not limited to general indemnification, indemnification for use of Equipment, and environmental indemnity; (b) limitation of liability; (c) waiver of consequential, incidental, and punitive damages; (d) confidentiality obligations; and (e) any other provisions that by their nature are intended to survive termination or expiration of this Agreement.

32. **AMENDMENT AND MODIFICATION**. This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.

[end of document]