

# Redpath Raiseboring General Terms and Conditions

## 1. General

These terms and conditions ("Terms") will govern the sale of Parts, Equipment and Services from Redpath Raiseboring Limited (or its affiliates as applicable, "Seller") to a buyer ("Buyer"). These Terms, together with the Price, as defined below, and the payment and delivery terms, description of Parts Buyer's name and address and any other information specifically stated in Seller's proposal, offer or quotation (any of which may be called a "Proposal") or sales order acknowledgment are the entire agreement ("Agreement") between Buyer and Seller for Parts covered by Seller's Proposal. Seller's sale of any parts is expressly conditioned on buyer's assent to these Terms.

"Parts" means any parts manufactured by or to the specifications of Seller or its affiliates for raisebore equipment.

## 2. Price

Subject to Section 3 below and unless stated otherwise in Seller's Proposal, the price Seller has quoted for the sale of Parts, "Price" is firm for 30 days from its original date, unless sooner withdrawn by Seller. Unless stated otherwise in Seller's Proposal, Prices quoted do not include taxes whether present or future direct or indirect (except for taxes levied on Seller's income), levies, duties, tariffs, or other costs associated with the sale (such as freight or other transportation costs plus margin) and Buyer must promptly pay all such amounts in full, or reimburse Seller for any such amounts Seller has paid or such other amount as indicated in Seller's Proposal. The Purchase Price excludes all costs related to the transportation and delivery of the Part including, without limitation, all packing, boxing, cartage, freight, and insurance, brokerage, and all taxes, fees, and duties related thereto. If freight is prepaid by Seller, a separate invoice may be issued for freight charges. Prices are based on Seller's good faith estimates of the costs of steel and other commodities as of the date of Seller's Proposal and Seller reserves the right to increase prices in the event of significant rises in commodity costs. If prior to delivery of any parts, new or revised government standards or regulations which would increase the cost of the parts, the prices shall be increased to compensate Seller for such increased costs.

## 3. Sales and Service

The scope of the Sale and or Services provided under the Agreement is limited to the description of Sale and or Services in Seller's Proposal.

**Repair/Rebuild Services:** If Seller repairs or rebuilds parts or components for Buyer, such Services may include installation of new, used or refurbished parts, components and/or materials, per the procedures or specifications of the Original Equipment Manufacturer. If Buyer accepts Seller's Proposal for repair or rebuild Services and, if after further inspection, Seller determines additional or different parts, components or materials should be rebuilt or replaced, Seller will notify Buyer and provide Buyer with a revised Proposal. Seller does not agree to perform any Services until Buyer accepts Seller's original or revised Proposal, as applicable; however, if Buyer requests and receives Services from Seller substantially as described in Seller's latest Proposal, Buyer will be deemed to have accepted that Proposal (including these Terms) even though Buyer may not have accepted that Proposal in writing.

Other Services that the Seller may provide include Technical Service calls, Technical and Design Consulting, Setup and Commissioning, Operating and/or Maintenance Training, Warranty and Post Warranty support.

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## 4. Shipment

Unless stated otherwise in Seller's Proposal or sales order acknowledgment, all shipments are EXW Ex Works, Seller's premises, or the part manufacturer's plant, warehouse or other designated shipping point (INCO TERMS®2010). [clarification: "Ex Works" means that the Seller delivers when it places the goods at the disposal of the buyer at the seller's premises or at the other designated place. The Seller agrees to load the goods on any collecting vehicle (carrier), however, Seller does not need to clear the goods for export, where such clearance is applicable.]

All shipment delivery dates quoted are estimates and are not guaranteed unless stated otherwise in Seller's Proposal or sales order acknowledgment and are conditioned upon Buyer promptly providing necessary releases and approvals. Unless otherwise stated in Seller's Proposal, Seller may make partial shipments and may, during periods of shortage due to causes beyond the control of Seller or its suppliers, prorate its supply of products among its customers in such manner as may be deemed equitable in the sole judgment of Seller. Buyer will be charged for export packing or other special packing if required.

## 5. Risk of Loss, Title/Security Interest

The Seller assumes the risk of loss until the carrier receives the goods, herein referred to as "Transfer of Care, Custody and Control". At this point, the buyer assumes all responsibility for the goods. The Buyer is responsible for providing and maintaining appropriate insurance coverage for the risk of loss or damage to the goods from the shipping point.

Title for the Equipment or Part will pass to Buyer to this Agreement, once the Seller has been paid in full.

## 6. Claims for Shortage

Any claims for loss, breakage or damage, obvious or concealed, are Buyer's responsibility and should be made to the carrier. Seller will render Buyer reasonable assistance in securing satisfactory adjustment of such claims. Any notices of shortages or other errors must be made in writing to Seller within five (5) days after receipt of shipment. Failure to give such notice shall constitute unqualified acceptance and a waiver of all claims for damage or shortage by Buyer.

## 7. Representation, Warranties and Remedies

- 7.1 The warranties and remedies in Seller's Standard Warranty Statement (either as included herein, or as contained in Seller's Proposal) shall apply with regard to the Equipment and Parts sold under the Agreement. Seller will also assign to Buyer any rights Seller obtains under warranties given by the manufacturer.
- 7.2 These warranties are Seller's sole and exclusive Warranties. Seller makes no other warranties of any kind whatsoever, express, implied, oral, written or otherwise, including without limitation, non-infringement of any Party's right, or uninterrupted, or warranties arising by custom, trade usage, promise, example or description, or the Sale of Goods Act of Ontario, all of which Seller expressly disclaims and Buyer waives. Moreover, the Seller neither assumes nor authorizes anyone else to assume for the Seller any other express warranty, obligation, or liability for the new products which it sells. The Warranty remedies set forth in Seller's Warranty statement are Buyer's sole and exclusive remedies for breach of any Warranty Seller does provide.
- 7.3 Seller warrants Parts against failures due to defects in materials and workmanship for the applicable warranty period ("Warranty Period") set forth below. Buyer acknowledges that wear and consumable parts and parts which are designed to fail in order to protect persons or equipment have an expected useful life under normal use inherently shorter than the applicable Parts Warranty Period, and are not warranted against

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such failure, except as specifically described below. If Buyer sells or otherwise transfers warranted Parts to a third party, all warranties will be void. All of Seller's warranties will also automatically end for warranted Parts that: a) are operated in excess of rated capacities, b) have not been transported, stored, installed, maintained or operated in accordance with good industry practice and Seller's operation, service and/or maintenance manuals, recommendations and instructions, or are otherwise misapplied or misused; c) have been subjected to abnormal conditions of temperature, contamination or corrosive matter, are altered or repaired in any manner not authorized by Seller or are damaged; or d) contain parts or components not supplied by Seller, and e) malfunctions or failures resulting from Buyer's negligence, modification, alteration, accident, or lack of performance of the required maintenance services.

## 7.4 New, Repaired or Rebuilt Parts

The Warranty Period shall be for a period commencing on the date of shipment from Seller and shall continue for an uninterrupted term of three (3) months or 100 meters pilot or reamed, whichever comes first, unless otherwise specified in the Proposal. This warranty shall not be suspended on the grounds of non-use, intermittent use or for any other reason.

## 7.5 Warranty Claims

No warranty claim shall be considered unless Buyer completes Seller's standard Warranty Claim Form (available upon request), or another claim form approved in writing by Seller, and submits the same to Seller within the applicable Warranty Period but in no event, no later than the earlier of (a) 10 days after Buyer learns (or in the exercise of reasonable diligence, ought to have learned) of the failure to conform with the warranty, or (b) the date on which the failed item is delivered to Seller, and unless Buyer cooperates with Seller and provides information and documentation as necessary to permit Seller to fully investigate the warranty claim. The Buyer shall return the failed item freight prepaid to Seller's designated repair facility or at the Seller's sole discretion, arrange for inspection at Seller's alternate location.

## 7.6 Remedies

If in its reasonable judgment, Seller determines that the warranty claim is valid, then Seller will at its sole option, either repair or replace the non-conforming Part. Seller will also issue a credit for reasonable freight costs prepaid by Buyer to ship the nonconforming item at Seller's request. Repaired or replaced warranted Parts will be warranted only for the remainder of the original Warranty Period. Seller does not warrant wear, except when the failure is due to non-conformity with specifications or another warranted defect causes elevated failure rates unless otherwise stated in Seller's Proposal or sales order acknowledgment.

## 7.7 The warranties above are Seller's sole and exclusive warranties. Seller makes no other warranties of any kind whatsoever, express, implied, oral, written or otherwise. The above remedies are the sole and exclusive remedies of Buyer.

## 8. Payment Terms

Unless stated otherwise in Seller's Proposal or Sales order acknowledgment, payment terms for Parts shall be net 30 days from date of invoice. The payment schedule shall be as described in Seller's Proposal. Unless stated otherwise in Seller's Proposal, the payment schedule for Parts and/or Rebuilds is as follows a) thirty five percent (35%) of Price at order entry, and b) sixty five percent (65%) at shipment.

Buyer acknowledges that all extensions of credit shall be subject to approval by Seller's Credit Department. A delinquency charge of 1.5% per month (18% per year) or the lesser legal rate, if any, may be assessed on all invoices not paid in full when due.

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## 9. Excusable Events

Seller will have the right to an equitable adjustment in the Price and the time for performance of any of its obligations based upon: (a) delays resulting from Buyer's acts or omissions or those of Buyer's contractors, subcontractors, or anyone else for whom Buyer may be liable; (b) the occurrence of any events or matters which are beyond Seller's control such as (without limitation) acts of God, fire, explosion, severe weather, civil disturbances, war, terrorism, governmental acts or omissions, strikes or labor disputes, transportation delays or non-delivery or unusual delays in delivery by Seller's suppliers; or (c) discovery of any concealed or unknown physical condition or hazardous or toxic material, waste or substance at Buyer's mine site or the Equipment assembly or other work site.

## 10. Confidentiality

Buyer agrees that the contents of Seller's Proposal and any drawings, specifications, computer programs, technical data, and other documents Seller furnishes, including any intellectual property rights in them: (a) will be retained in confidence and not disclosed to third parties; (b) will remain Seller's exclusive property, and (c) will be used by Buyer only in connection with the Agreement and not in any manner Seller has not authorized. Buyer also agrees that Buyer will return such materials to Seller upon Seller's request, retaining only a single copy strictly for archival purposes. The obligations of this section shall survive the termination of, and/or completion of Seller's performance under, the Agreement.

## 11. Release and Indemnification

Subject to Seller's warranty obligations under the Agreement, Seller and Buyer each release the other from liability for or damage to each other's material, machinery, equipment or other property. Seller and Buyer each agree to indemnify and hold harmless the other, their respective officers, directors, employees and agents from and against any claim (including costs, reasonable litigation expenses and legal fees, on a solicitor and his own client basis, and other expenses) for personal injury to or death of any person or damage to property of third parties, to the extent directly caused by negligent acts or omissions of the indemnifying party, its agents or employees, arising out of the sale, installation, se or provision of Parts or the performance of Services, or activities of the indemnifying party in connection with the same.

## 12. Limitation of Liability

Buyer and Seller each waive all claims against each other (and against each other's affiliates, contractors, subcontractors, consultants, employees, agents and vendors) for any loss of profits or revenues (other than the portion of the price that represents seller's profit under the agreement), loss of opportunity or productivity, increased operational or capital costs or exemplary or punitive damage (all of these whether direct or indirect) or any other consequential, special, indirect or incidental damages of any kind. In no event will seller be liable to buyer for any damages of any kind under any legal theory (including, but not limited to, tort, indemnity or contribution), in an aggregate amount greater than the price of the Parts and/or Repair/Rebuild services sold under the agreement that gave rise to the claim.

Seller will not bear the cost of any errors, misunderstanding or deficiencies of the Parts sale. Therefore, no claims will be accepted based on the assertion of the Buyer that it was not aware of the provisions or conditions covered by the agreement or had otherwise omitted to examine or investigate in its decision to purchase.

## 13. Governing Law

This Agreement will be construed and enforced in accordance with the laws of the Province of Ontario, Canada without giving effect to, that Province's conflicts of laws principles or the United Nations Convention on Contracts for the International Sale of Goods. Each of the parties hereby irrevocably and unconditionally submits and attorns

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to the exclusive jurisdiction of the courts of Ontario, Canada and all courts having jurisdiction to hear appeals therefrom for the resolution of any disputes arising under or relating to this Agreement.

## 14. Modification, Waiver and Severability

Seller objects to and rejects any modifications of, or additions to, or substitutions for, the Agreement unless Seller has specifically agreed to them in writing through its authorized representative (in a change order or otherwise). None of Seller's rights or remedies will be waived, in whole or in part, unless Seller expresses such waiver in writing, and none of Seller's rights or remedies will be impaired if Seller delays or fails to exercise them, or exercises them partially. Unless expressly stated otherwise in Seller's Proposal, Seller may without liability to Buyer (a) furnish substitutes for materials which cannot be reasonably obtained because of any restrictions, voluntarily or compulsorily established by or in connection with any governmental authority or program, or (b) make design modifications which do not adversely affect product use or performance. If any section in this Agreement shall be held to be invalid, illegal or unenforceable, such section shall be enforced to the fullest extent permitted by applicable law, and the validity, legality, and enforceability of the remaining sections shall not in any way be affected or impaired.

## 15. Compliance with Regulations

Seller will perform its obligations under the Agreement in accordance with Seller's good faith interpretation of applicable national codes and regulations. Seller will not be liable for injuries resulting from the removal, defeat or modification of instructions, notices or warnings, guards or safety devices that Seller furnishes or recommends. Buyer's diversion or use of any products sold under the Agreement contrary to applicable Canadian, United States or local import or export laws is prohibited. Buyer must secure and pay for any and all permits, licenses and governmental fees, inspections and approvals necessary for the installation and use of the Parts.

## 16. Patents

Seller will indemnify, defend, and hold Buyer harmless from any and all claims, actions, damages, costs, expenses and reasonable attorneys' fees arising out of any third party claim of infringement of any patent alleged to have occurred as a result of the use of the Part but only if (a) Buyer promptly notifies Seller in writing of the claim or threatened claim; (b) Buyer gives Seller sole control of the defense and settlement of the claim; and (c) Buyer cooperates fully in the defense of the claim as Seller may request, at Seller expense. Seller will not have to indemnify, defend or hold Buyer harmless if the claim or threatened claim relates to (i) any modification of such Part by anyone other than Seller, or (ii) the use of Parts not provided by Seller. This paragraph states the entire liability of Seller and the exclusive remedy of Buyer for claims of patent infringement.

## 17. Cancellation

Parts orders cannot be cancelled without Seller's prior consent. As a condition of Seller's consent to any order cancellation for Equipment, If Seller has incurred any costs, such costs shall be recoverable from the Buyer.