

### 1. Definitions and Interpretation

**"Amount Payable"** means the amount of any debit balance shown on an invoice issued to the Customer; **"Business Day(s)"** means any day which is not a Saturday, Sunday or official public holiday in the Republic of South Africa; **"Day(s)"** means all calendar days, including Saturdays, Sundays and official public holidays in the Republic of South Africa; **"Connected Device"** means, *inter alia*, each of a computer, workstation, terminal, smart phone or other handheld device, IoT (internet of things) device or any other hardware from which the Newtrax software can run, be accessed and/or used; **"Connected Equipment"** means equipment including Goods, which have remote monitoring hardware and separately-licensed software installed, connected, and activated by Newtrax Group for the Customer pursuant to a Contract; **"Contract"** means the Order Acceptance, these Terms, the Quote and the Order and any other document which Newtrax has consented be attached to or incorporated by reference in the Order Acceptance, these Terms or the Quote; **"Customer"** means the person who Orders the Goods and/or Services from Newtrax and includes any permitted transferee; **"Data Protection Legislation"** means the [Protection Of Personal Information Act, No. 4 of 2013](#) and/or if directly applicable, the General Data Protection Regulation ((EU) 2016/679), and/or any national laws, regulations and legislation in relation to data privacy, as amended or updated from time to time; **"Delivery Date"** means the date for delivery of the Goods and/or Services as specified in the Contract **"Due Date"** means 30 Days from the date of invoice; **"Equipment Monitoring Service"** means the services provided by Newtrax Group in connection with receiving Input Data as further detailed in the Contract which may include, but is not limited to, availability to Connected Equipment or Connected Device data via a web managed (or similar) subscription service received following online acceptance of relevant web portal terms and conditions; **"Force Majeure"** shall be any event or circumstance beyond Newtrax Group control and shall include but not be limited to any shortage of electricity or water, lack of production, capacity or raw materials, strikes, lock outs, labour disputes, fires, floods, pandemics, acts of God or public enemy, malicious or accidental damage, delays in transport, or delays by a carrier servicer, breakdowns in machinery, non-performance or failure by any bank in relation to sending or receiving money under this Contract due to trade or compliance restrictions, trade sanctions or embargoes (including new, expanded or changed in scope), and restrictions or prohibitions by any government or any semi-government authorities or any new circumstance, act or omission of the Customer or a third party that would or is likely to result in Newtrax Group being liable or responsible to Customer or in breach (or in the reasonable opinion of Newtrax Group is likely to become in breach) of any law (including extraterritorial laws), any financing arrangements, including any loan facilities or issued notes of Sandvik AB (publ.) or any of its affiliates, or this Contract; **"Goods"** means the goods specified in the Order which Newtrax agrees to provide in the Order Acceptance; **"Incoterms"** means the latest set (currently 2020) of pre-defined international contract terms published by the International Chamber of Commerce; **"Input Data"** means data that is generated, collected, recorded or uploaded either by, from or in connection with, the Connected Equipment or the Connected Device (as applicable), including utilization information regarding the Connected Equipment and the standard industry data SAE J1939 but excluding any data or information regarding Newtrax Group's equipment control systems including how to achieve functional performance; **"Newtrax"** means Newtrax Holding Inc, or the Newtrax Group entity specified in the Contract; **"Newtrax Group"** any entity that directly or indirectly controls, is controlled by, or is under common control with Newtrax Holding Inc; **"Newtrax Data"** means aggregated and/or anonymous data which is created, generated, derived or produced by Newtrax Group based on (i) Input Data and/or Output Data, or (ii) otherwise created through the use of the Equipment Monitoring Service, such data never to contain any Personal Information; **"Newtrax Standard Warranty"** means the written Standard Newtrax Warranty in effect at the date of Order; **"Order"** means the purchase order issued by the Customer to Newtrax for the Goods and/or Services; **"Order Acceptance"** means Newtrax' written acceptance of the Order and consequent agreement to the Contract by either

delivering the Goods and/or Services or issuing the Customer with a document named 'Order Acceptance' (or similar); **"Output Data"** means Input Data that has been processed by Newtrax Group in order to provide deliverables to the Customer as part of the Equipment Monitoring Service which always excludes any data or information regarding Newtrax Group's equipment control systems including how to achieve functional performance; **"Personal Information"** has the meaning given to such term in the [Protection Of Personal Information Act, No. 4 of 2013](#); **"POD"** means proof of delivery issued to the Customer by Newtrax; **"Purpose"** means Newtrax Group's business purposes including, development, optimization, improvement, marketing, scheduling, and support of Newtrax Group's other current and future goods and services offerings, parts deliveries, software and hardware, product support, product development and other business improvements or offerings, including aggregating the Newtrax Data with other data for the purpose of providing performance comparisons or benchmarking to Newtrax Group's other customers; **"Quote"** means the quote or proposal document issued by Newtrax to the Customer for the Goods and/or Services; **"Sanctioned Person"** means any person: (a) listed on, or directly or indirectly owned or controlled by one or more persons listed on, a Sanctions List; (b) owned or controlled by, or acting on behalf of or for the benefit of, any person on a Sanctions List; (c) a government of any country that is the subject of Sanctions or an agency or instrumentality of, or a person directly or indirectly owned or controlled by, such a government; or (d) that is resident or located in, operating from, or incorporated under the laws of (as applicable) a Sanctioned Territory; **"Sanctioned Territory"** means Crimea, Cuba, Iran, North Korea, Syria or any other country which, after the date of this Contract, becomes the target of comprehensive, country-wide or territory wide Sanctions; **"Sanctions"** means any trade or economic sanctions, laws enacted, administered, imposed or enforced by any Sanctions Authority; **"Sanctions Authority"** means: (a) the United Nations Security Council; (b) the United States of America; (c) the United Kingdom; and (d) the European Union, including the relevant sanctions authorities of any of the foregoing; **"Sanctions List"** means: (a) the Consolidated United Nations Security Council Sanctions List; (b) the Specially Designated Nationals and Blocked Persons List or the Sectoral Sanctions Identification List maintained by the US Office of Foreign Assets Control; (c) the Consolidated List of Persons, Groups and Entities subject to EU Financial Sanctions; (d) the Consolidated List of Financial Sanctions Targets or List of persons subject to restrictive measures in view of Russia's actions destabilising the situation in Ukraine, maintained by the UK Treasury; or (e) any similar list maintained by, or public announcement of sanctions made by, any other Sanctions Authority; **"Security Interest"** means a mortgage, transfer, pledge, notarial bond, lien or security cession, or any security or preferential interest or arrangement of any kind which allows a creditor to have its claims satisfied prior to other creditors from the proceeds of an asset (including retention of title, deposit of money by way of security or a conditionally repayable deposit) and includes any interest which can be registered under any law of any jurisdiction that has an analogous or similar effect; **"Services"** means the services specified in the Order which Newtrax agrees to provide in the Order Acceptance, including, where applicable, the Equipment Monitoring Service; **"Terms"** means these Terms and Conditions of Supply; **"Unsafe"** means unacceptable, actual or potential hazards and incidents related to safety, health or the environment. **"VAT"** means value-added tax as contemplated in the Value Added Tax Act, No. 89 of 1991 or similar tax imposed by legislation. In these Terms, unless the context otherwise requires: headings are for ease of reference only and do not affect interpretation; the singular includes the plural and vice versa; a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time; a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity; a reference to a legislative requirement or other law includes regulations and other instruments under it and consolidations, amendments, reenactments or replacements of any of them; and the meaning of general words is not limited by specific examples introduced by the words including, for example or similar expressions. The rule of interpretation that a written agreement shall be interpreted against the party

responsible for the drafting or preparation of that agreement shall not apply.

### 2. Terms of Supply

2.1. Newtrax may accept or reject any Order in its absolute discretion and for its sole interest at any time.

2.2. Where Newtrax has provided a purchase or credit facility to the Customer, Newtrax may withdraw that facility either on the basis specified in the Contract in respect of that purchase or credit facility or, if no such basis is specified at any time without prior notice, and Newtrax reserves the right to review the extent, nature and duration of such facilities at all times.

2.3. Newtrax may without notice suspend or terminate the supply of Goods and/or Services or the granting of any rights where any Amount Payable remain(s) unpaid after the Due Date and Newtrax can recover from the Customer all costs and losses associated with such suspension or termination action which shall include *inter alia* any legal expenses incurred on an attorney and client basis. The Customer must provide Newtrax with a Security Interest for payment as and when required by Newtrax.

### 3. Evidence of Contract and Precedence of documents.

3.1. The Contract contains the entire agreement between Newtrax and the Customer with respect to its subject matter and supersedes all prior communications and agreements. The Customer acknowledges that in entering into the Contract it does not rely on any communication that has not been expressly set out in the Contract. No terms and conditions submitted by either party that are in addition to, different from, or inconsistent with these Terms shall be binding upon either party unless specifically and expressly agreed in writing. Nothing in the Contract shall exclude or limit liability for fraud.

3.2. These Terms apply to the exclusion of any other terms or conditions that may be sought to be invoked by the Customer (including without limitation any terms referenced in any Order or on any online website or electronic platform), or which are implied by trade, custom, practice or course of dealing. Newtrax will not supply on, and expressly rejects:

3.2.1. the Customer's standard terms and conditions of purchase (if any); and

3.2.2. any terms and conditions other than the terms and conditions stated herein, save for the attached standard Newtrax Group Sale and Warranty Terms and Conditions, which will apply, save where a conflict between these Terms and such Sale and Warranty Terms and Conditions exists in which case these Terms shall prevail.

3.3. The Customer expressly acknowledges and agrees that any Order which it issues to Newtrax shall be an offer to procure Goods and/or Services from Newtrax under these Terms, and that upon Order Acceptance, both Newtrax and the Customer shall be bound by the terms of the Contract.

3.4. A Contract for the supply of Goods and/or Services is made upon Order Acceptance.

3.5. By accepting possession of any Goods or receiving the benefit of any Services, the Customer acknowledges that Goods and/or Services are supplied in accordance with the terms and conditions of these Terms.

3.6. If there is any conflict or inconsistency between the parts constituting the Contract the parts will rank in the following order: 1. the Order Acceptance; 2. any other document attached or referred to in the Order Acceptance; 3. The Terms; 4. any other document attached or referred to in the Terms; 5. the Quote; 6. any other document attached or referred to in the Quote; and 7. the Order.

### 4. Delivery and Risk

4.1. Newtrax will deliver the Goods to the Newtrax address set out in the Order Acceptance. Risk in the Goods shall pass to the Customer in accordance with the Incoterm specified in clause 6.1. Delivery may be made in one or more instalments and at different times or by separate shipments or deliveries. Adherence to the Delivery Date or delivery period is determined by the date of POD by Newtrax. The Customer's obligation to take delivery of the Goods is a material obligation under this Contract.

4.2. If Newtrax is not able to deliver the Goods to the Customer on the Delivery Date due to the Customer's inability, unavailability or unwillingness to accept delivery, Newtrax reserves the right to dispatch any Goods at Newtrax' discretion or put them into storage at the sole expense and risk of the Customer. Such cost shall be immediately due and payable on demand to Newtrax, but such liability shall not affect Customer's obligation to purchase the Goods and the right of Newtrax to claim damages for breach of any obligation in terms

of this Contract.

4.3. If the Customer fails to collect or take delivery of the Goods within 3 months of the Delivery Date, Newtrax shall be entitled, without prejudice to its other rights, to terminate all or part of the Contract, to dispose of the Goods and to charge the Customer compensation of (i) for standard Goods, 15% of the purchase price; and (ii) for non-standard Goods, 30% of the purchase price or the cost of materials and labour incurred until the cancellation date, whichever is higher, to be paid by the Customer within 10 days of Newtrax issuing the corresponding invoice. The parties agree that such sums payable to Newtrax under this clause are a genuine pre-estimate of the costs and losses which Newtrax would suffer from the Customer failing to take delivery of the Goods. The parties furthermore agree that the remedies contemplated in this clause 4.3 shall not exclude any other remedy to which Newtrax is entitled in terms of this Contract or otherwise in terms of any applicable law.

4.4. Newtrax will deliver the Services in accordance with the service delivery schedule provided to the Customer in the Contract.

4.5. Excluding as set out in clause 4.6, the Delivery Date is estimated in good faith and while reasonable effort is made to meet an estimated Delivery Date or the service delivery schedule Newtrax will not be liable for any loss incurred by Customer as a result of delay or failure of Newtrax to make any supply of Goods and/or Services by the Delivery Date. Further, Newtrax will not be liable for any loss incurred by Customer as a result of any failure of Newtrax to observe any of these Terms due to an act or omission of the Customer.

4.6. Where Newtrax expressly agrees in writing that liquidated damages will apply in either the Quote or the Order Acceptance, if Newtrax fails to supply the Goods and/or Services by the Delivery Date the Customer will be entitled to liquidated damages calculated at the rates stated in the Quote or the Order Acceptance, as applicable. Unless otherwise expressly agreed by Newtrax in the Quote or Order Acceptance, the maximum amount of liquidated damages Newtrax will be liable for in any Contract will be no greater than 5% calculated in accordance with clause 4.7 below.

4.7. The liquidated damages shall only be calculated on the value of the Goods and/or Services which are late.

4.8. The Customer shall forfeit its right to liquidated damages if it fails to lodge a claim in writing for such damages within three months after the Delivery Date.

4.9. Subject to clause 4.10, these liquidated damages shall be the Customer's sole remedy for Newtrax failing to deliver the Goods and/or Services by the Delivery Date.

4.10. Should the rates of liquidated damages payable under this clause be found to be a penalty or unenforceable then the parties agree that Newtrax's liability to the Customer will instead be compensatory damages. Such liability for compensatory damages shall at no time exceed the amount of liquidated damages which would have been due under the Contract had such liquidated damages been enforceable. The parties agree that the liquidated damages mentioned above are a genuine pre-estimate of their loss.

4.11. During the continuance of an event of Force Majeure, Newtrax and/or Newtrax Group's obligations under the Contract will be suspended and timeframes adjusted accordingly. Newtrax and/or Newtrax Group shall not be in breach of this Contract or otherwise liable for any failure or delay in the performance of such obligations.

4.12. Orders cannot be cancelled, terminated, changed or postponed by the Customer without the prior written authorization and agreement of Newtrax and the Customer hereby indemnifies Newtrax for any loss, cost or damage which arises as consequence of any breach in relation hereto.

4.13. The Customer shall promptly inspect the Goods upon delivery, and in any case, Customer must notify Newtrax in writing within 7 Days of date of POD of any Goods that fail to materially conform (the "Nonconforming Goods") to the specifications in the Contract. If the Customer does not notify Newtrax within such time period, the Customer is deemed to have accepted the Nonconforming Goods and Customer shall have no right to return such Goods. In the event Customer has notified Newtrax within the required time period, Customer's sole and exclusive remedy with respect to the Nonconforming Goods shall be as set forth in Section 5 herein.

4.14. All Goods incorrectly supplied to a Customer under a Contract will be credited in full. Freight costs to the receiving Newtrax designated warehouse will be covered by Newtrax. Notification of incorrect supply of Goods must be formally made available to Newtrax within 21 Days of POD, otherwise,

the Goods will be deemed accepted by the Customer.

### 5. Customer Returns

5.1. Returns of Goods not affected by defects will only be accepted by Newtrax from Customer with the prior agreement of Newtrax in writing. All items which are accepted as returns will be subject to a handling charge.

### 6. Price and Payment

6.1. Unless otherwise specified in the Contract, all prices are quoted Ex Works (EXW), as per the Incoterms, and do not include freight, insurance, taxes, customs and/or excise levies or duties (or similar). If variations should occur prior to delivery the price may be amended by Newtrax. If the Customer requests a variation to the Order before delivery of the Goods or performance of the Services, Newtrax may, at its discretion accept or reject a request to vary an Order. Where an Order is varied by Customer, Customer acknowledges that the price of the Order may increase or decrease (as the case requires) by an amount agreed between the parties, or failing such agreement, by an amount determined by Newtrax, acting reasonably. Where the amount is to be determined by Newtrax, Newtrax will calculate the amount of an increase or decrease by reference to Newtrax's relevant price list, costs, expenses, losses and damages suffered, off-site overheads, profit and such other reasonable rates and charges in connection with the variation.

6.2. If in any jurisdiction VAT is payable by Newtrax to a tax authority in relation to the supply of the Goods and/or Services, an amount equal to such VAT will be calculated and charged to the Customer as an additional amount. To the extent that a payment to a party under or in connection with this Contract is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment shall be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of VAT. Where a sale of Goods is treated as not subject to VAT on the basis the Customer or its freight forwarder will move the Goods from one country to another country, the Customer will provide to Newtrax, upon request, all transport documentation and (if applicable) Customs documentation to demonstrate the cross-border movement of the Goods. If the Customer fails to provide such documentation or the Goods were not moved cross-border, the Customer will pay to Newtrax an amount equal to any VAT for which Newtrax is required to account to a tax authority together with any penalties and/or interest imposed on Newtrax by a tax authority in relation to that supply of Goods.

6.3. Unless otherwise specified in the Contract, Newtrax will invoice the Customer upon delivery of the Goods and/or Services. The Customer will pay the whole Amount Payable on or before the Due Date without any set off, withholding or deduction. The Customer agrees that if any Amount Payable is not paid by the Due Date Newtrax shall be entitled to charge and recover interest at the rate of 1.5% per month or part thereof on the Amount Payable overdue for the period between the Due Date until payment is made in full. Payment received from the Customer is valid once honored or funds are cleared.

6.4. The Customer agrees to indemnify and keep indemnified Newtrax against any costs incurred by Newtrax in connection with the Customer's failure to pay on the Due Date, including but not limited to legal fees on an attorney and own client scale, including collection charges, on an indemnity basis and debt collection agency fees.

### 7. Retention of Title

7.1. The title in any Goods sold and delivered by Newtrax to the Customer shall not pass to the Customer until the total Amount Payable for the Goods (plus all accrued interest (if any) payable under clause 6) has been paid in full.

7.2. Until title in any Goods sold and delivered by Newtrax has passed to the Customer in accordance with clause 7.1 above:

7.2.1 the Customer shall keep those Goods separated from any other goods of the Customer so that they remain readily identifiable as Newtrax's property;

7.2.2 the Customer shall not remove, deface or obscure any identifying mark or packaging on or relating to the Goods; and

7.2.3 the Customer shall notify any landlord of any premises leased by the Customer where the Goods are stored that the Goods are Newtrax's property.

7.3. In addition to all other rights which Newtrax has under the Contract or applicable laws, Newtrax will be entitled to enter the premises of the Customer (including leased premises) at any time (to the extent permissible by law) to recover possession of those Goods for which the Amount Payable has not been

made by the Due Date. It is agreed between Newtrax and the Customer that, where Newtrax enters the premises of the Customer to take possession of the Goods and it is not possible to identify which goods are Goods owned by Newtrax but are in the possession of the Customer, the Goods will be deemed sold to the Customer in the same sequence that the Customer took delivery of the Goods. If the quantity of the Goods exceeds the amount owing, Newtrax will be entitled to determine which of the Goods it claims ownership in.

7.4. The Customer must keep the Goods insured against all risks for goods of that kind from the time the risk in the Goods passes to the Customer. If requested by Newtrax the Customer will provide to Newtrax a copy of the insurance policies.

7.5. If before title to the Goods passes to the Customer, the Customer becomes subject to an Insolvency Event, then, without limiting any other right or remedy Newtrax may have, the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and Newtrax may at any time: (i) require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and (ii) if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

### 8. Warranty

8.1. The Newtrax Standard Warranty applicable at the date of the Order Acceptance shall apply to the Goods supplied by Newtrax and shall be made available to the Customer on Order Acceptance.

8.2. To the extent 8.1 does not apply, Newtrax warrants that the Goods manufactured by Newtrax shall, under proper use, be free from defects in materials and workmanship and substantially conform to the Contract for a period of twelve (12) months after installation. In this clause 8 "proper use" means installation, commissioning, operation and maintenance by Customer in accordance with Newtrax documentation and "defects" means any defect and/or omission in materials or workmanship and any material nonconformity with the specifications set forth in the Contract as determined solely by Newtrax. In no event does Newtrax give any warranty to parts or components manufactured and/or supplied by any third party, unless otherwise agreed.

8.3. Newtrax expressly excludes any liability whatsoever to any party, other than the Customer as first end user. Warranty of the Goods may not be assigned or otherwise transferred by Customer.

**8.4. SUBJECT TO CLAUSE 12.2, THE WARRANTIES SET OUT IN THIS SECTION 8 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES. NEWTRAX EXPRESSLY DISCLAIMS ALL WARRANTIES AND/OR CONDITIONS EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO WARRANTIES OF SATISFACTORY QUALITY, MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE AND ANY REMEDIES FOR CONSEQUENTIAL OR OTHER LOSS AGAINST A MANUFACTURER OF THE GOODS.** No other warranties express or implied are given unless they are expressly given by Newtrax in writing.

8.5. To the extent that Newtrax is unable by law to exclude its liability, Newtrax's obligations under this clause 8 shall be limited at Newtrax's option to making good by repair or replacement of any Goods in which any defect appears or in the case of Services the cost of providing the Services again. Any warranty claim must be notified in writing by the Customer to Newtrax within the applicable warranty period.

8.6. To the maximum extent permitted by law, Newtrax does not warrant and expressly excludes:

8.5.1 natural wear and tear of the Goods, normal maintenance service and replacement items such as but not limited to engine tune up, adjustments and inspections, and damage resulting therefrom;

8.5.2 natural wear and tear of Newtrax's spare parts and the damage resulting therefrom;

8.5.3 all wear parts and consumables including but not limited to seals, filters, hoses, oils, and lubricants;

8.5.4 damage caused by Customer's failure to operate the Goods properly, overloading, failure to service according to Newtrax's recommendations failure to operate the Goods within rated capacities or recommended power inputs;

8.5.5 damage which is caused by but not limited to, operating conditions such as deep and/or aggressive water, poor roadways, dust, poor ventilation, where components which are designed and manufactured according to industrial

standards, fail prematurely;

8.5.6 damage caused by Customer's failure to store, maintain or care for the Goods in accordance with Newtrax's instructions or bulletins;

8.5.7 damage caused by parts or components provided by third parties;

8.5.8 any defect or damage arising out of (i) materials provided or, (ii) designs which have been provided, specified or stipulated by the Customer, or (iii) any other defect or damage resulting from the Customer's actions or manipulation;

8.5.9 any defect or damage arising out of missing, faulty or incorrect criteria, application data or other information provided or informed to Newtrax by the Customer or its agent which Newtrax has relied upon;

8.5.10 any costs such as labor, accommodation, meals, travel and similar costs or any transportation.

8.7. This warranty shall not be suspended on the grounds of non-use, intermittent use or for any other reason.

### 9. Intellectual Property and Confidential Information

9.1. Newtrax Group is and will remain the sole owner of:

9.1.1 all the intellectual property rights comprised in and relating to the Goods and/or Services; and

9.1.2 any intellectual property rights created in connection with the performance of the Contract.

9.2. No license is granted directly or indirectly under any patent, invention, trademark, discovery, copyright or other intellectual property right held, made, obtained or licensable by Newtrax Group now or in the future, other than as expressly set out in the Contract.

9.3. Upon Order Acceptance and, subject to the full payment of the price for the Goods and/or Services, Newtrax Group grants to the Customer a non-exclusive, nontransferable, non-assignable, non-sub-licensable license to use Newtrax Group's intellectual property rights comprised in the Goods and/or Services, strictly limited to the extent necessary for installing, operating and maintaining the Goods in accordance with manuals and use instructions supplied by Newtrax Group and receiving the Services. Unless otherwise specified in writing, this limited license shall continue unless terminated pursuant to these Terms. Nothing in this Contract permits the Customer to copy, reproduce, modify, adapt, alter, translate, reverse engineer, 3D copy/print or create derivative works from any Goods or Services or of Newtrax Group's intellectual property rights, in whole or in part, without Newtrax Group's prior written consent. If the Customer uses any of Newtrax Group's intellectual property rights in breach of this Contract, Newtrax may immediately terminate or revoke such rights, in whole or in part in its sole discretion.

9.4. The Customer agrees to only use any Newtrax Group's Confidential Information only to exercise its rights and perform its obligations under or in connection with this Contract. The information remains the property of Newtrax or Newtrax Group (as applicable) at all times.

9.5. Each party undertakes that it shall not at any time disclose to any person any Confidential Information, except as permitted by Clause 9.6.

9.6. Each party may disclose the other party's Confidential Information:

9.6.1. to its employees, officers, agents, consultants or subcontractors ("**Representatives**") who need to know this information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Contract, provided that the disclosing party takes all reasonable steps to ensure that its Representatives comply with the confidentiality obligations contained in this Clause 9 as though they were a party to this Contract. The disclosing party shall be responsible for its Representatives' compliance with the confidentiality obligations set out in this Clause 9; and

9.6.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.7. Each party reserves all rights in its Confidential Information. No rights or obligations in respect of a party's Confidential Information other than those expressly stated in this Contract are granted to the other party or to be implied from this Contract.

9.8. For the purpose of this Clause 9 "**Confidential Information**" means any information which is designated as confidential or would be regarded as being confidential by a reasonable business person or is confidential by its nature or circumstances in which it was imparted, including the

business, affairs, customers, clients or suppliers of the other party or of any member of its Group, including but not limited to information relating to a party's operations, processes, plans, product information, price lists, know-how, designs, trade secrets, software, market opportunities and customers, except to the extent that such information is (i) in the public domain other than as a result of breach of an obligation by the other party (ii) lawfully acquired from a third party who owes no obligation of confidence in respect of the information; or (ii) independently developed the recipient or in the recipients lawful possession prior to receipt.

### 10. Data

10.1. The Customer agrees that Newtrax Group may collect, store, analyze and process any Input Data and Output Data in order for Newtrax Group to:

10.1.1 provide the Customer with the Equipment Monitoring Service (including any services in relation or in connection thereto); and

10.1.2 develop the Newtrax Data to use for the Purpose.

10.2. All rights, title and interest in and to the Newtrax Data will be retained by Newtrax Group.

10.3. All rights, title and interests in or relating to the Input Data and Output Data will be retained by the Customer to use for its own internal business purposes. Except as permitted by Newtrax in writing in advance, the Customer agrees not to disclose Input Data or Output Data, in whole or in part (regardless of format), to any third party outside the Customer's group of companies; provided, however, that the Customer may disclose such information to third party service providers (to the extent necessary for such service provider to be able to provide service of the Goods to the Customer) having signed reasonable confidentiality undertakings with the service provider. During the term of the Equipment Monitoring Service, Newtrax shall, upon the Customer's written request provide a copy of any customer-specific Input Data and/or Output Data stored by Newtrax from time to time. The Customer will not install any third party hardware or software in or onto the Goods, nor connect it to any third party computer or automation system without the prior written consent of Newtrax.

10.4. Newtrax shall apply the same security and confidentiality standards to the Input Data and Output Data as it applies to its own commercially sensitive data.

10.5. The Equipment Monitoring Service is a service provided by Newtrax Group based on Input Data sent by Customer to Newtrax Group. If and to the extent Input Data and/or Output Data contains any Personal Information, both parties agree to comply with all applicable requirements of the Data Protection Legislation. For the purposes of the Data Protection Legislation, the Customer is the data controller and Newtrax and /or Newtrax Group (as applicable) is the data processor for such Personal Information. For the avoidance of doubt, the Customer is solely responsible to ensure that it has provided all necessary notices to relevant data subjects and, if deemed necessary by the Customer, that appropriate consents have been obtained to enable the lawful transfer and processing of Input Data and/or Output Data by Newtrax Group and its subcontractors as described in the Contract. The Customer hereby agrees that Newtrax Group, at its discretion, may engage any subcontractor as a sub-processor for the processing of Personal Information hereunder; provided that Newtrax Group shall remain responsible in relation to Customer for the acts and omissions of such subcontractor.

10.6. The Customer acknowledges that the Equipment Monitoring Service is based on Input Data sent to Newtrax Group. Newtrax cannot guarantee that the Equipment Monitoring Service completely reflects the factual condition of the Connected Equipment and it is the Customer's sole responsibility to review the information in relation to the Equipment Monitoring Service and confirm the actual condition of the Connected Equipment accordingly, Newtrax does not provide any warranty as to the accuracy of any Input Data and/or Output Data. Newtrax makes no statement about the suitability of the Equipment Monitoring Service for a given situation and the Customer acknowledges that it is its sole responsibility to determine and ensure that the Equipment Monitoring Services are relevant for its particular business needs. Further, Newtrax Group will not assume any obligation, responsibility or liability whatsoever for the Customer's reliance on (and/or use of) any Output Data or otherwise of the Equipment Monitoring Service. Unless otherwise agreed, Newtrax Group shall be under no obligation to store any Customer specific data except for Input Data.

10.7. The Customer agrees to indemnify and keep indemnified and fully reimburse Newtrax from and against any and all actions, claims (including counterclaims), proceedings, costs (including all reasonable legal costs), losses, damages, fines, penalties (including punitive or exemplary damages) and all other liabilities resulting from any obligations, acts and/or omissions by the Customer under clause

10.5 except where and to the extent that such violation is due to Newtrax's breach of its obligations under clause 10.5.

### 11. Software and Computer Control Systems

11.1. Where the sale of any Goods/Service and or Connected Equipment comprises also separately-licensed software or systems ("**Software**") the Customer is granted, during the term of a Contract, a non-exclusive, non-transferable, non-sublicensable, and revocable right to use the relevant Software in accordance with the terms set forth in the separate end user terms, while title to and any and all rights relating to the Software shall always remain vested in Newtrax.

11.2. The Customer must not, without the prior written consent of Newtrax, modify any Software or remove it from the Goods or Connected Equipment, make copies of the relevant Software or sell, license, transfer or otherwise dispose of or distribute the Software or use it for any other purpose to the extent necessary for installing, operating and maintaining the Goods. The Customer shall ensure that also its agents, employees or other representatives comply with this provision.

11.3. The Customer acknowledges that the Equipment Monitoring Service is personal to the Customer and cannot be assigned. However, the Customer undertakes to notify Newtrax if the Customer sells, leases, rents or otherwise assigns or transfers the Connected Equipment and notify the new customer and/or user that the such equipment is Connected Equipment as contemplated in this Contract.

11.4. Other than the Connected Equipment, the Customer must have computer and network infrastructure that meets the requirements specified by Newtrax at the time of conclusion of this Contract ("**Minimum Technical Requirements**"). The Customer acknowledges and agrees that the performance of the Service is dependent upon the Customer's information technology equipment meeting the Minimum Technical Requirements. The Customer must throughout the term of this Contract ensure that its network infrastructure meets the Minimum Technical Requirements.

11.5. Where Software is licensed and/or third party or open-source software is supplied the terms and conditions of such license(s) will form part of the Contract and such license terms shall, unless otherwise expressly stated in Contract, apply in lieu of these Terms as regards the Customer's use of the Software and/or such third party software.

11.6. Any license granted or implied under this Contract can be revoked at any time.

11.7. The Customer will at all times indemnify Newtrax and hold harmless and defend Newtrax and its principals, agents and employees from and against all liabilities, costs and expenses suffered or incurred by any of those indemnified or a third party including, without limitation, all reasonable legal fees, arising out of or in connection with the delivery of or use of the Software by the Customer, except to the extent that any liability, loss or damage is solely and directly caused by negligence of Newtrax.

### 12. Liability and Indemnity

12.1. **TO THE EXTENT PERMITTED BY LAW, NEITHER PARTY IS LIABLE TO THE OTHER PARTY FOR ANY PUNITIVE OR PURE ECONOMIC COST, INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE; ECONOMIC LOSS; LOSS OF OPPORTUNITY; LOSS OF PRODUCTION; LOSS OF USE; LOSS OF SALES; LOSS OF GOODWILL; LOSS OF PROFIT OR ANTICIPATED PROFIT; OR LOSS OF REVENUE, IN EACH CASE WHETHER FORESEEABLE OR NOT, SUFFERED OR INCURRED BY THE OTHER PARTY HOWSOEVER ARISING, INCLUDING OUT OF A BREACH BY THE OTHER PARTY OF THIS CONTRACT, A DELICTUAL OR INTENTIONAL (INCLUDING NEGLIGENT) ACT OR OMISSION, A BREACH OF A STATUTORY DUTY OR OBLIGATION, OR OTHERWISE (WHETHER OR NOT SUCH LOSS OR DAMAGE WAS FORESEEABLE BY EITHER PARTY). PROVIDED, HOWEVER, THE FOREGOING LIMITATION WILL NOT APPLY TO EITHER PARTY'S CLAIMS IN CONNECTION WITH THE GOODS SUBJECT TO THESE TERMS (I) FOR DEATH OR**

### PERSONAL INJURY OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY;

### (II) RESULTING FROM FRAUD, WILFUL MISCONDUCT OR GROSS NEGLIGENCE; OR (III) FOR BREACH OF THE CONFIDENTIALITY OBLIGATIONS IN THE CONTRACT.

12.2. SUBJECT TO CLAUSE 12.1, AND TO THE EXTENT PERMITTED BY LAW, AT ALL TIMES, NEWTRAX'S TOTAL AGGREGATE LIABILITY TO THE CUSTOMER SHALL BE CAPPED AT 100% OF THE AMOUNTS PAID UNDER THE RELEVANT ORDER ACCEPTANCE.

12.3. The Customer shall indemnify, defend and hold harmless Newtrax from and against all claims, damages, losses, costs and expenses arising out of or resulting from the Customer's or Customer's subcontractors and/or employees' failure to install, commission, operate, store or maintain the Goods and/or Services, inconsistent with the Newtrax documentation.

### 13. Sanctions, Export Control, End-User Assurance etc.

13.1. The Customer certifies from the date of this Contract on an ongoing basis that: it shall not use, re-export, transfer or retransfer the Goods for military end-use or to a military end user; it shall not re-export, transfer or retransfer the Goods to a Sanctioned Person; the Goods will not be used, re-exported, transferred or retransferred for any purpose connected with chemical, biological or nuclear weapons, or missiles capable of delivering such weapons; and the Goods, or any replica of them, will not be used in any nuclear explosive activity or unsafeguarded nuclear fuel cycle. The Customer understands and acknowledges that Newtrax is not responsible for any Goods or products that are subsequently exported or re-exported by the Customer or sold to another person and/or representative, domestic or foreign. In the event of such a post-sale re-export, transfer or re-transfer of the Goods, the Customer is responsible for complying with all applicable Sanctions, including obtaining export licenses where required.

13.2. The Customer shall strictly comply with, and adhere to, all applicable Sanctions. Specifically, the Customer shall not, directly or indirectly, sell, provide, export, reexport, transfer, divert, loan, lease, consign, or otherwise release or dispose of any Goods, equipment, product, commodities, services, software, source code, or technology received under or in connection with this Contract to or via a Sanctioned Person or a Sanctioned Territory, or for military end-use or to a military end user without having obtained prior authorization from the applicable Sanctions Authority where required by applicable Sanctions. Neither Party shall be required to take any action that would cause it to violate any applicable Sanctions.

13.3. If the Customer breaches any certification, representation or undertaking described in this Section 13 or, in Newtrax's reasonable opinion any such breach is likely to occur, the Parties agree that Newtrax shall not be liable toward the Customer or any third party for any subsequent non-performance by Newtrax under this Contract and that the Customer shall indemnify and hold Newtrax harmless from any claims or losses relating to such non-performance.

13.4. Newtrax shall have the right to terminate this Contract immediately without liability by notifying the Customer in writing if: the Customer becomes a Sanctioned Party; or the Customer breaches any certification, representation or undertaking described in this Section 13.

### 14. Breach

14.1. Except as otherwise expressed in these Terms, should either of the parties commit a breach of any provision of this Contract and fail to remedy such breach within 10 (ten) Business Days after receiving written notice from any of the other Party (the "Aggrieved Party") requiring the party in breach (the "Defaulting Party") to do so, then the Aggrieved Party shall be entitled, without prejudice to the Aggrieved Party's other rights in law and in terms of this Contract (including any right to claim damages) to claim immediate payment and/or specific performance by the Defaulting Party of the Defaulting Party's obligations at the date of default.

14.2. The Defaulting Party shall be liable for all costs and expenses, calculated on an attorney and own client scale and including counsel's costs on brief, incurred as a result of or in connection with the default.

### 15. Termination

15.1. If the Customer is in breach of any of these Terms including without limitation, a provision relating to the payment of money or if the Customer becomes subject to one of the following events: it suspends or threatens to suspend payment of its debts or is or becomes unable to pay its debts when they are due or its financial position deteriorates to such an extent that in Newtrax's opinion the Customer's capability to

adequately fulfil its obligations under the Contract has been placed in jeopardy, takes any step in connection with having any external manager or controller appointed (including any receiver, administrator, business rescue practitioner, liquidator of any kind) whether provisionally or finally, or informs any person that it is, presumed to be, insolvent or if the Customer ceases or threatens to cease to carry on business or any guarantee or security given to Newtrax in relation to the Customer is revoked or unenforceable ("Insolvency Event") then Newtrax may, at its sole discretion, upon written notice to the Customer:

15.1.1. Immediately withdraw any purchase or credit facilities which may have been extended to the Customer and require immediate payment of all moneys owed to Newtrax by the Customer, whether or not they were due for payment in the future;

15.1.2. Immediately suspend performance or terminate without penalty any Contract (including any license granted pursuant to Clause 9.3) in force between Newtrax and the Customer;

15.1.3. Immediately take all possible action to protect its Goods and intellectual property rights; and/or

15.1.4. Recover all costs and losses associated with such termination action.

15.2. Termination (including pursuant to clause 2.3) shall be without prejudice to the accrued rights and liabilities of either party at the termination date.

15.3. If a Force Majeure event prevents, hinders or delays a party's performance of its obligations for a continuous period of more than three (3) months, then either party may terminate this Contract by giving two (2) weeks' written notice to the other Party.

15.4. Newtrax agrees to store and allow the Customer to download or otherwise retrieve, Customer specific Input Data and/or Output Data provided such request has been made to Newtrax in writing, and maximum thirty (30) days following the termination of the Contract.

15.5. Any provision of this Contract which contemplates performance or observance subsequent to any termination or expiration of this Contract shall survive any termination or expiration of this Contract and continue in full force and effect.

15.6. If there is no fixed term stipulated in the Contract, then the Contract shall continue indefinitely, subject to cancellation in accordance with the Contract and/or these Terms.

### 16. General Provisions

16.1. If a provision of these Terms is wholly or partly invalid or unenforceable in any jurisdiction, that provision or the part of it that is invalid or unenforceable must to that extent and in that jurisdiction be treated as deleted from these Terms. This does not affect the validity or enforceability of the remaining provisions. Nothing in these Terms is intended to exclude, restrict or modify rights which the Customer may have under any legislation to the extent such rights may not be excluded, restricted or modified by agreement.

16.2. Except as otherwise expressed in these Terms, no right, power, privilege or remedy conferred is intended to be exclusive of any other right, power, privilege or remedy.

16.3. Neither party shall cause, permit or tolerate an Unsafe condition or activity over which that party has control over. If a party observes or becomes aware of an Unsafe condition, that party may request the other party to remove or, to the extent reasonably possible, mitigate the effect of the Unsafe condition, and the other party must comply with that request. Newtrax reserves the right to suspend work under the Contract if Unsafe conditions exist at Customer's location where Services are being performed, to which Newtrax's personnel (including but not limited to its directors, employees, contractors or subcontractors) may be exposed, until such time as Newtrax determines the Unsafe conditions have been rectified by the Customer. Unless the Customer can demonstrate that the Unsafe condition(s) have been rectified, Newtrax is entitled to a reasonable extension of time for any delays caused by the Unsafe condition(s).

16.4. The Customer shall comply at all times with the essence of the Sandvik AB Code of Conduct, a copy of which is available to Customer on request, and shall comply with all applicable laws, statutes and regulations, in particular those related to anti-bribery and anticorruption including the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004, the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act as amended from time to time. Failure to comply with this paragraph shall constitute a material breach which will entitle Newtrax to terminate the Contract immediately.

16.5. Newtrax may assign, novate or otherwise deal with the

Contract pursuant to these Terms without the consent of the Customer, to the extent permissible by law. The Customer agrees to provide all assistance reasonably required by Newtrax to give effect to its rights under this clause. Customer may not assign or transfer the Contract or any interest therein, in whole or in part, to any third party without the prior written consent of Newtrax not to be unreasonably withheld or delayed by Newtrax.

16.6. Except where prohibited by law, Customer shall require its insurer (if any) to waive all rights of subrogation against Newtrax and/or its insurers.

16.7. A party waives a right under these Terms only if it does so in writing. A party does not waive a right simply because it fails to exercise the right, delays exercising the right or only exercises part of the right. A waiver of one breach of these Terms does not operate as a waiver of another breach of the same term or any other term.

16.8. Orders shall be sent by e-mail; any notice or demand must be in writing and delivered by registered mail or by hand to the address set out in the Order or sent by email to the address specified in the Order. If by registered mail, such notice or demand shall be deemed delivered 7 Days after the date of posting and, if sent by email, at 9.00 am (Customer time) on the next Business Day after transmission.

16.9. To the extent permitted by law, Newtrax is under no liability in respect of Goods exported without necessary licenses, authorizations or consents.

16.10. Subject to clause 15.6, no person who is not party to a Contract shall have any right to enforce any term of a Contract.

16.11. Any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination, shall be governed by the laws of the Republic of South Africa. The parties specifically disclaim the application of the UN Convention on Contracts for the International Sale of Goods to the interpretation or enforcement of the Contract.

16.12. Any dispute, controversy or claim arising out of or in connection with the Contract and/or these Terms shall be finally settled by arbitration in accordance with the Rules of the Arbitration Foundation of Southern Africa – Commercial Arbitrations. The arbitration proceedings shall be conducted as expeditiously as possible and be governed by the Arbitration Act, Act 42 of 1965 (as amended) (the "Arbitration Act") but the time periods provided for in Section 23 of the Arbitration Act shall not apply hereto. The language to be used in the arbitral proceedings shall be English. The place for such proceedings shall be Sandton, Republic of South Africa and the arbitration proceedings shall be before a single arbitrator, whose decision shall be final and binding. Nothing herein shall be deemed to prevent or prohibit any party from applying to any court of competent jurisdiction for interlocutory or urgent interim relief. The arbitration proceedings, information disclosed during the arbitration proceedings and the result of such proceedings is subject to confidentiality.

16.13.

16.14. The parties hereto confirm their express intention that the Contract, as well as all other documents related thereto, including notices, be drawn up in the English language only and declare themselves satisfied therewith.

16.15. The Customer hereby warrants to and in favour of Newtrax that it is a juristic entity with an asset value and/or annual turnover of at least R2,000,000.00 (two million Rand) and accordingly:

16.15.1. the provisions of the National Credit Act, No. 34 of 2005 do not apply to this Contract by virtue of section 4 thereof; and

16.15.2. the provisions of the Consumer Protection Act, No. 68 of 2008 do not apply to this Contract by virtue of section 5 of thereof.

16.16. All provisions of this Contract are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. If any provision of this Contract becomes unenforceable, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatsoever, it shall, only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions of this Contract shall remain of full force and effect. The parties declare that it is their intention that this Contract would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.

16.17. Newtrax (without prejudice to its other rights), will be entitled from time to time to deduct from any amounts due or owing by Newtrax to the Customer in connection with any agreement or contract with the Customer any and all amounts owed by the Customer to Newtrax.

16.18. The parties choose *domicilium citandi et executandi* for all purposes of the giving of any notice, the serving of any process and for any other purpose arising from the Contract and these Terms, on the addresses stipulated in the Contractor as otherwise provided by a party in writing.