



# **Black Diamond**

## **BD Drill Drilling Tools USA**

### **STANDARD CONDITIONS OF SALE (2013)**

“Black Diamond Drilling Tools USA LLC” means “Black Diamond Drilling Tools USA LLC” Business ID 822005 and all related corporations or assigns; “Contract” means the contract referred to in clause 2;

“Customer” means the person or entity acquiring or offering to acquire Products from Black Diamond Drilling Tools USA LLC and where there is more than one Customer, the Customer’s covenants and obligations are joint and several;

“Products” means all products, services and equipment supplied or to be supplied by Black Diamond Drilling Tools USA LLC to the Customer; “Conditions” means these Standard Conditions of Sale.

#### **1. APPLICATION OF CONDITIONS**

Unless otherwise agreed in writing by Black Diamond Drilling Tools USA LLC these Conditions will apply to all quotations, orders and offers in relation to the Products and the sale, supply, service and replacement of all Products and will take precedence over any inconsistent provisions in any Customer order.

#### **2. ORDERS AND CONTRACT**

Each order by a potential Customer is subject to acceptance or rejection by Black Diamond Drilling Tools USA LLC and is not binding on Black Diamond Drilling Tools USA LLC prior to Black Diamond Drilling Tools USA LLC’s acceptance of it. Black Diamond Drilling Tools USA LLC written acceptance of an order, the order and these Conditions will constitute the entire agreement of the parties in relation to the subject of that order (the “Contract”) and may only be varied in writing, signed by the parties.

#### **3. CREDIT**

Black Diamond Drilling Tools USA LLC may refuse to proceed with any Contract at any time if the Customer’s credit is or becomes unsatisfactory to Black Diamond Drilling Tools USA LLC.

#### **4. TITLE AND RISK**

Notwithstanding any arrangements made for the transportation of the Goods to the Customer’s nominated destination, all products sold are at the risk of the Customer from the time the Products leave Black Diamond Drilling Tools USA LLC premises. Title in the Products will not pass to the customer until payment in full for those Products, and all other goods supplied by Black Diamond Drilling Tools USA LLC, has been received by Black Diamond Drilling Tools USA LLC and all checks and other negotiable instruments have been cleared, and until that time, the Customer must promptly return Products to Black Diamond Drilling Tools USA LLC on demand. The Customer indemnified Black Diamond Drilling Tools USA LLC against loss or damage to the Products occurring prior to title passing. The Customer must keep separate Products for which it has not paid Black Diamond Drilling Tools USA LLC. Where Products which have not been paid for in full are mixed with Products that have been paid for, the onus is on the Customer to identify those Products that have been paid for and, failing identification to the satisfaction of Black Diamond Drilling Tools USA LLC, all Products that have been sold or delivered by Black Diamond Drilling Tools USA LLC to the Customer are deemed to be the property of Black Diamond Drilling Tools USA LLC. Any part of this provision that is illegal or unenforceable may be severed from these Conditions and the remainder of this provision will continue in force.

#### **5. CLAIMS**

The Customer will be deemed to have accepted the Products unless Black Diamond Drilling Tools USA LLC has received a substantiated written claim as to any defects, shortage, non-delivery or other non-conformity with the Contract within 14 days from delivery. Credits – Claims must be in writing and may attract a 20% re-stocking fee. Specially manufactured items are NOT returnable.

#### **6. PAYMENT**

Payment must be made by the Customer to Black Diamond Drilling Tools USA LLC in cash or any other form acceptable to Black Diamond Drilling Tools USA LLC, without any deduction or withholding and no right of set-off or counterclaim. **Payment is due 30- day net of delivery of product.**

Any payment outstanding after the due date specified in the relevant invoice will incur interest at the monthly rate determined by Black Diamond Drilling Tools USA LLC on the unpaid balance from the due date until the date of payment.

Without limiting the effect to the previous paragraph, and without prejudice to any of other right’s, if payment for any Product is outstanding after the due date on the relevant invoice, Black Diamond Drilling Tools USA LLC may repossess that Product. The Customer irrevocably consents to Black Diamond Drilling Tools USA LLC or its representatives entering the Customer’s premises for the purposes of that repossession. Black Diamond Drilling Tools USA LLC will not be liable for any loss or damage suffered or incurred by the Customer as a result of Black Diamond Drilling Tools USA LLC exercising its right of repossession under this clause.

#### **7. DELAY**

Any delivery and availability dates are estimates only and although Black Diamond Drilling Tools USA LLC will endeavor to meet these estimates, Black Diamond Drilling Tools USA LLC will not be liable for any delay arising from any cause whatsoever. Any failure on the part of Black Diamond Drilling Tools USA LLC to deliver within the time stated will not entitle the Customer to repudiate the Contract in whole or in part. Without limiting the above, Black Diamond Drilling Tools USA LLC, will not be under any liability in respect of any delay in delivery or completion of work arising from any force majeure occurrence not within the reasonable control of the parties, including but not limited to industrial disputes, riots, mobs, fires, floods, civil strife, embargoes, shortages of labor, materials, power, fuel or means of transportation, whether affecting Black Diamond Drilling Tools USA LLC or any supplier or sub-contractor, or for circumstances caused by reasons of law, regulations or orders of any government or competent authority. Black Diamond Drilling Tools USA LLC may delay its obligations under the Contract for as long as the conditions continue and may make partial delivery to the Customer in proportions that are reasonable under the circumstances.

**8. TERMINATION**

If:

- a) the Customer breaches any provision of this Contract or any other contract with Black Diamond Drilling Tools USA LLC;
- b) the Customer assigns any of its property for the benefit of creditors;
- c) the Customer becomes subject to any form of insolvency administration including, without limitation, the appointment of a receiver, receiver and manager, liquidator, provisional liquidator or administrator; or
- d) any step is taken by a mortgagee to exercise its right to take possession of the property of the Customer,

Black Diamond Drilling Tools USA LLC may terminate or suspend performance of this Contract or any other contract with the Customer or require payment of cash in advance of delivery and will be entitled to payment of any Product already delivered, work in progress and tooling costs under the Contract in question at the rate specified in the Contract or, if none is specified, at a reasonable rate. This clause does not limit any other remedy that may be available to Black Diamond Drilling Tools USA LLC including compensation for any loss or damage suffered by it.

**9. ARBITRATION**

Any dispute or difference arising in connection with this Contract must be submitted to arbitration in accordance with the Canadian Arbitration Association Rules for the Conduct of Commercial Arbitration's.

**10. WARRANTY**

The Company's express warranty is limited to defects resulting from faulty design, materials and workmanship only, fair wear and tear expected but not include freight charges, labour costs and travelling expenses incurred by company on warranty work. All parts claimed to be defective are to be returned at the customer's risk and freight paid to the company head office store or other location as authorised. The correct operation and maintenance of the equipment in accordance with the directions laid down in the operating manual supplied, is the purchaser responsibility and any contravention of these instructions will render the warranty null and void. In the case of equipment not of the company's manufacture, the company's express warranty is limited to the extent, if any of the warranty given by the manufacturer to the company or set out in any operation, Maintenance or parts manual issued with the equipment. The company's express if during the Warranty period, the customer:

- a) Makes any design change to the equipment, or
- b) Uses replacement parts other than those manufactured by Black Diamond Drilling Tools USA LLC and supplied by the company or its authorized distributors.

This warranty is, on the happening of any such event, immediately rendered null and void.

**11. WAIVER**

Any failure by Black Diamond Drilling Tools USA LLC to insist on strict compliance with the Contract or any delay by Black Diamond Drilling Tools USA LLC in exercising its remedies under the Contract will not constitute a variation or waiver of any provision of the Contract or any remedy available to Black Diamond Drilling Tools USA LLC.

**12. ENVIRONMENTAL DISCLAIMER**

The environmental management at any site on which the company's equipment is used is the responsibility of the customer. In this regard the company disclaims responsibility for any infringement which occur related to breaches of the acts, rules or regulations pertaining to environmental pollution aspects such as noise, atmospheric, water, sewer, dangerous goods, waste disposal, etc.

**13. QUOTATION**

Unless otherwise stated in writing, the company tender or quotation will be valid for a period of 30 days from date of issue, after which time acceptance of any order placed is subject to written confirmation the date of acceptance shall be the date upon which notice is writing of acceptance by the customer of a tender or quotation is received by the company.

**14. DELIVERY**

Availability of stock is as quoted, subject to receipt of prior orders from other customers. Every endeavour will be made to complete delivery within the period stated, but no liability can be accepted in regard thereto. Unless otherwise stated, the company will not accept cancellation of an order to late delivery, nor shall it be liable for consequential damage of any kind arising out of late delivery or non-delivery. Delivery may be made in one or more parcels and at different times or by separate shipments or deliveries. Each parcel shall form a separate contract, delivered and be accepted and paid for accordingly. Notwithstanding late delivery or non-delivery of any other parcel.

**15. INSURANCE**

The company will not insure any deliveries unless instructed in writing to do so. All insurance charges so incurred will be charged to the customer.

**16. INSPECTION AND CLAIMS FOR A DEFECTIVE DELIVERY**

Subject to the rights conferred on a customer under the trade practices Act 1974 (as amended), where such is applicable, the customer is responsible of immediate examination of equipment upon delivery and any deficiency or damage thereof must be reported to the company in writing within 5 days of the company is writing within 5 days of its receipt otherwise no claim for such damage or deficiency will be entertained.

**17. APPLICABLE LAW**

This Contract will be governed by and constructed in accordance with the laws of the United States of America, and Customer submits to the non- exclusive jurisdiction of the Courts of the United States of America including all courts of appeal.

Name:

Position:

Signed:

Date: