

Westbay Instruments
(A Division of Nova Metrix Ground Monitoring (Canada) Ltd.)
General Terms and Conditions

The following terms and conditions (the “**Terms and Conditions**”) shall govern the sale, purchase, rental or lease of any Equipment (as the term is defined below) supplied by Nova Metrix Ground Monitoring (Canada) Limited – Westbay Instruments Division (“**Westbay Instruments**”) to a customer (“**Customer**”) and the provision by Westbay Instruments of any technical services to Customer, as applicable, to the exclusion of any other terms and conditions that Customer may attempt to impose on Westbay Instruments whether under a purchase order, order confirmation or otherwise, unless such other terms and conditions are expressly agreed upon in writing by Westbay Instruments.

Definitions

"Equipment" includes instruments, instrumentation systems, tools, probes, casings, couplings, packers, consoles, cables and all accessories, parts and assemblies thereof.

"Non-standard Equipment" means Equipment specifically manufactured or customized by Westbay Instruments to Customer specifications or requirements.

"Standard Equipment" means standard, off-the-shelf Equipment manufactured by Westbay Instruments.

"Well" includes wells, drillholes, borings, test pits, adits, tunnels, open cuts, slopes, and surface and underground openings and excavations found on exploration, construction mining, production, industrial and waste disposal sites.

General

PRICES: Published prices are in U.S. dollars unless otherwise specified, and are subject to change without notice. All invoicing will be made at the price prevailing at Westbay Instruments at the time of acceptance of Customer’s order, unless covered by a valid quotation from Westbay Instruments.

QUOTATIONS: All proposed prices and anticipated delivery times are valid for 30 days from the date that a valid written quotation is issued, unless otherwise noted in such quotation. Thereafter, they are subject to change by Westbay Instruments without notice. Unit prices are based on the quantities quoted and are subject to change if the quantity ordered differs from the quantities quoted.

DELIVERY: All deliveries of Equipment shall be made EX WORKS Westbay Instruments’ facilities. Unless otherwise agreed to by the parties in writing, Customer shall arrange for shipment and transport insurance for the Equipment. If Customer fails to arrange for transportation, Westbay Instruments will choose a method of transportation that it deems appropriate. Such charges for shipment and transport insurance shall be invoiced to Customer at cost plus 15%. In all cases Customer shall be responsible for all expenses involved in the shipment of the Equipment (including without limitation loading, freight, shipping, insurance, forwarding and handling charges). Westbay Instruments reserves the right to make partial shipments.

ACCEPTANCE: All Customer orders are subject to acceptance by Westbay Instruments, which acceptance shall be at Westbay Instruments’ sole discretion. No order shall be binding on Westbay Instruments unless and until it has been accepted in writing by Westbay Instruments.

TERMS: All invoiced charges are net cash payable in U.S. currency, within 30 days at Westbay Instruments premises, unless otherwise specified. Interest on overdue accounts will be charged at 3% per month. Customer shall pay all fees, costs and expenses incurred by Westbay Instruments in collecting overdue accounts, including solicitor's fees on a solicitor-and-client basis.

TAXES: Customer shall pay all taxes, surcharges and similar levies imposed by any federal, state, or local authority except where Customer provides a tax exemption certificate acceptable to the taxing authorities.

INTELLECTUAL PROPERTY: All intellectual property incorporated in or associated with the Equipment sold, supplied, leased or rented by Westbay Instruments to Customer and the deliverables of any technical services provided by Westbay Instruments to Customer, and any and all trademarks, patents, industrial designs, copyrights and other intellectual property rights relating to any of the foregoing, shall remain the exclusive property of Westbay Instruments or its licensors (if applicable). Customer agrees not to duplicate, reverse engineer, disassemble, decompile, or otherwise modify the Equipment sold, supplied, leased or rented by Westbay Instruments to Customer. Customer shall not remove any proprietary notices and/or branding displayed or otherwise affixed to such Equipment.

With respect to Standard Equipment sold, supplied, rented or leased by Westbay Instruments to Customer, Westbay Instruments agrees to indemnify and hold Customer harmless from all third party expenses or losses resulting from a claim that any such Standard Equipment or part thereof infringes any Canadian or U.S patent which was issued at the time of Westbay Instruments' acceptance of Customer's order, except that such Westbay Instruments' obligations to indemnify and hold harmless shall not apply and Westbay Instruments shall have no liability in respect of claims for infringement which result from, are related to, or are based on: (i) any misuse of any such Standard Equipment by Customer; (ii) any use of such Standard Equipment in a manner not conforming to Westbay Instruments' operation and use guidelines, manuals or instructions; or (iii) any modification of any such Standard Equipment by Customer or any third party. With respect to Non-Standard Equipment sold, supplied, rented or leased by Westbay Instruments to Customer, Customer agrees to indemnify and hold Westbay Instruments harmless against all expenses or losses resulting from a claim that any such Non-Standard Equipment or part thereof infringes the intellectual property rights of a third party.

CONFIDENTIALITY: All specifications, drawings, blueprints, tooling, molds, models, designs, reports, documentation, photographs, technical information, data and other materials and information furnished by Westbay Instruments to Customer (the "**Westbay Instruments Materials**") shall be and shall remain the exclusive property of Westbay Instruments. Customer shall keep the Westbay Instruments Materials strictly confidential using at least the same security measures and standard of care in the storage, transportation, and handling of the Confidential Information as Customer applies to its own proprietary data and information, and in any event no less than industry standard. Customer shall not reproduce, use or otherwise exploit the Westbay Instruments Materials for any purpose other than that such purpose expressly authorized by Westbay Instruments in writing. Westbay Instruments agrees to hold in strict confidence the results of any testing, work or services performed in Customer's Well.

MEASUREMENTS AND RESULTS: Measurements using Westbay Instruments equipment should be taken, recorded and interpreted by qualified personnel only. Westbay Instruments is not responsible for errors or omissions of any such personnel. Westbay Instruments does not guarantee any particular results from services to be performed under any agreement with Customer.

RISKS OF USE: Customer assumes all risks and liability whatsoever resulting from the use of any Equipment leased, rented, supplied or sold by Westbay Instruments under these Terms and Conditions, where such Equipment is installed, maintained and/or operated by Customer's personnel or any third party. **DISCLAIMER OF WARRANTIES:** EXCEPT AS EXPRESSLY PROVIDED FOR IN THESE TERMS AND CONDITIONS, THE EQUIPMENT AND THE TECHNICAL SERVICES ARE BEING SUPPLIED BY WESTBAY INSTRUMENTS TO CUSTOMER WITHOUT ANY REPRESENTATIONS, WARRANTIES OR CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, WESTBAY INSTRUMENTS EXPRESSLY DISCLAIMS ANY WARRANTY OR CONDITION ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE, AND ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. **EXCLUSIONS AND LIMITATIONS OF LIABILITY:** Westbay Instruments shall not be liable to Customer in contract, tort or otherwise for any indirect, punitive, special, incidental or consequential damages (including loss of profits or goodwill), however arising, whether based in contract, tort (including negligence), statute or otherwise, even if Westbay Instruments has been previously advised of the possibility of such damage. Notwithstanding any other provisions of this agreement, nothing in this Agreement shall exclude or limit Westbay Instruments' liability for death or personal injury resulting from Westbay Instruments' negligence, or any other acts or omissions for which the governing law prohibits the exclusion or limitation of liability. Subject to the provisions of this paragraph, Westbay Instruments' total aggregate liability for any and all damages, losses or liabilities arising under these Terms and Conditions or under any agreement for the sale, purchase, rental or lease of Equipment or for the provision of technical services, or from any Equipment or technical services supplied by Westbay Instruments to Customer, or whether arising in tort (including negligence) or restitution or for breach of statutory duty or misrepresentation or otherwise, shall be limited to the total fees paid by Customer in respect of the relevant Equipment or technical services giving rise to the liability.

MODIFICATION: No waiver or modification of these Terms and Conditions or of any agreement for the sale, purchase, rental or lease of Equipment, or for the provision of technical services, shall be binding upon Westbay Instruments unless in writing and signed by a duly authorized representative of Westbay Instruments.

WAIVER: Any waiver of, or consent to depart from, the requirements of any provision of these Terms and Conditions shall be effective only if it is in writing and signed by the party giving it, and only in the specific instance and for the specific purpose for which it has been given. No failure on the part of any party to exercise, and no delay in exercising, any right under these Terms and Conditions shall operate as a waiver of such right. No single or partial exercise of any such right shall preclude any other or further exercise of such right or the exercise of any other right.

SEVERABILITY: If any provision of these Terms and Conditions or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof.

NOTICE: Any written notice to Customer shall be deemed properly given if delivered to Customer personally, by established commercial courier, by electronic mail, by telefax, or posted in any post office in Canada, postage prepaid, addressed to Customer at its address at the time of Customer order.

ASSIGNMENT: Customer shall not assign or sublet any of its rights or obligations under these Terms and Condition, or under any any agreement for the sale, purchase, rental or lease of Equipment, or for the provision of technical services, without the prior written consent of Westbay Instruments.

GOVERNING LAW: These Terms and Conditions and any agreement for the sale, purchase, rental or lease of Equipment, or for the provision of technical services, shall be construed in accordance with the laws of the Province of British Columbia, Canada and the the laws of Canada applicable therein.

VENUE: Each party irrevocably submits and attorns to the non-exclusive jurisdiction of the courts of the Province of British Columbia with respect to any matter arising under these terms and conditions and hereby irrevocably waives any defense of forum non conveniens.

Sale and Purchase

LIABILITY FOR DELAYS: Westbay Instruments shall not be liable for any delay in delivery or for any failure to manufacture where such delay or failure is due to fire, flood, strike or other labour difficulty, act of God, act of any governmental authority, riot, embargo, fuel or energy shortage, wrecks or delays in transportation, inability to obtain necessary labour, materials, or manufacturing facilities from usual sources, or due to any other causes beyond its reasonable control. In the event of delay or failure, the delivery date shall be extended for a period equal to the time lost.

TITLE AND PASSAGE OF RISK: Title and risk of loss or damage to Equipment purchased by Customer shall pass from Westbay Instruments to Customer upon delivery.

RETURN OF EQUIPMENT: Purchased Equipment is not to be returned without Westbay Instruments' prior written consent. Freight on returned items is to be prepaid. Returned Equipment will be subject to inspection at Westbay Instruments premises prior to acceptance and a 25% restocking charge will apply. Purchased Non-Standard Equipment is not returnable.

WARRANTIES: Westbay Instruments warrants that: (a) its Equipment is free from material defects in material and workmanship when shipped; and (b) such Equipment is capable of operating as described in Westbay Instruments' technical specifications, if properly, installed, maintained and used, and if operated by competent persons certified by Westbay Instruments, or others accredited by Westbay Instruments, using only materials or accessories supplied by Westbay Instruments for a period of one (1) year after the date of delivery thereof. In the event that within one (1) year of the delivery of the Equipment, such Equipment is proved to the satisfaction of Westbay Instruments to have been defective when shipped under the conditions specified in the preceding paragraph, Westbay Instruments will, at its option, repair at its premises or furnish without charge, a replacement for such defective Equipment; provided such defective Equipment is returned to Westbay Instruments properly identified and with freight prepaid. The foregoing shall be Customer's exclusive remedy, and Westbay Instruments' sole liability and obligation in the event of any breach of the warranty set forth in the preceding paragraph. All third party components of Equipment are not within the scope of the foregoing warranty and may be subject to their respective manufacturer's warranties.

Technical Services

QUALIFIED PERSONNEL: Westbay Instruments agrees to provide personnel qualified to carry out the technical services set out in Customer's order.

CUSTOMER CONTROL OF WELL: Where Westbay Instruments provides technical services, Westbay Instruments acts as an independent contractor but the Customer shall at all times have complete care, custody and control of the Well, the premises about the Well, and the conditions created within the Well. Although Westbay Instruments personnel may be called upon to direct the performance of certain tasks by the employees of the Customer or others, Customer shall constantly retain full control over all such employees and the performance of such tasks.

LIABILITY: Where Westbay Instruments provides technical services, Customer shall defend, indemnify and save Westbay Instruments harmless from all claims, loss, damage, demands, expenses and liabilities for injury or damage alleged to have been caused by Westbay Instruments' operations including, without limitation, (a) personal injury (including death); (b) subsurface damage or injury to the Well and surface damage arising out of such subsurface damage, irrespective of the cause; (c) economic

loss and business interruption; and (d) damage attributable to spillage of pollutants or contamination and the cost of control and removal thereof. Customer's indemnity shall apply whether such claims are made by Customer, by Customer's employees, or by third parties.

LOSS AND DAMAGE OF EQUIPMENT: Customer agrees to pay for all damage to Westbay Instruments' equipment which occurs in the Well, except where such damage results from gross or wilful negligence on the part of Westbay Instruments personnel. Customer also agrees to make every reasonable effort to recover any of Westbay Instruments' equipment lost in the Well and to assume entire responsibility for fishing operations undertaken to recover such lost equipment. Westbay Instruments personnel are not authorized to do anything, other than consult in an advisory capacity, in connection with any such fishing operations. Customer shall reimburse Westbay Instruments for the reasonable value of any of its lost equipment.

LIABILITY FOR DELAYS: Westbay Instruments shall not be liable for any loss, costs, expenses or damages resulting from any delay in arrival of its personnel at the site, or in commencement of work where such delay is due to causes not within Westbay Instruments' reasonable control. Customer acknowledges that the availability of certain personnel is subject to scheduling amongst customers. Accordingly, Westbay Instruments shall not be liable for any delay resulting from a rescheduling or an extension of time on a prior scheduled order.

TRAVEL AND ACCOMMODATION: Customer shall be responsible for all costs of travel, meals, and accommodation from the time Westbay Instruments personnel leave Westbay Instruments premises until the time they return to same. All such costs, unless prepaid, will be billed at actual cost plus 15%.

RESCHEDULING: Westbay Instruments will reschedule a Customer order, without penalty, if a written request to reschedule is received thirty (30) days prior to the scheduled arrival of personnel. On less than thirty (30) days' notice to reschedule, Westbay Instruments may invoice Customer for rescheduling charges of up to 15% of the total contract price.

Lease/Rental Equipment

LIABILITY: Customer shall indemnify and save Westbay Instruments harmless from all loss, damage, claims, demands, and liabilities that may arise directly or indirectly from or in connection with Customer's possession, use or operation of Westbay Instruments' equipment. Customer's indemnity shall apply whether such claims are made by Customer, by Customer's employees, or by third parties.

LOSS AND DAMAGE OF EQUIPMENT: Westbay Instruments' equipment is designed to operate under conditions normally encountered in a Well. Equipment may be damaged by hazardous Well conditions such as, excessive temperatures and pressures, corrosive gases, fluid or chemicals, or deviations in the hole. Customer agrees to pay for all damage to Westbay Instruments' equipment occurring in the Well, except where such damage results from gross or wilful negligence on the part of Westbay Instruments personnel. Customer also agrees to make every reasonable effort to recover any of Westbay Instruments' equipment lost in the Well and to assume entire responsibility for fishing operations undertaken to recover such lost equipment. Westbay Instruments personnel are not authorized to do anything, other than consult in an advisory capacity, in connection with such fishing operations. Customer shall reimburse Westbay Instruments for the reasonable value of any of its lost equipment.

LIABILITY FOR DELAYS: Westbay Instruments shall not be liable for any loss, costs, expenses or damages resulting from any delay in manufacture, in shipment to the site, or in commencement of work where such delay is due to causes not within Westbay Instruments reasonable control. Customer acknowledges that the availability of certain equipment is subject to scheduling amongst customers and that Westbay Instruments exercises its best judgement in scheduling to allow sufficient time for completion of each installation. Accordingly, Westbay Instruments shall not be liable for any delay resulting from a rescheduling or an extension of time on a prior scheduled order.

TITLE AND PASSAGE OF RISK: Title and ownership of all Equipment on rental or lease shall remain with Westbay Instruments. When a Customer leasing Equipment exercises an option to purchase, title shall pass from Westbay Instruments to Customer upon receipt by Westbay Instruments of all monies required to purchase the Equipment. Lease or rental Equipment shall be used by Customer only at the site and in the operations designated by Customer in its order to Westbay Instruments.

WARRANTIES: Westbay Instruments represents that its lease/rental Equipment are free from material defects in materials and workmanship when shipped.