

KNIGHT HAWK COAL, LLC - TERMS AND CONDITIONS

Applicable on or after January 22, 2016

WHEREAS, Knight Hawk Coal, LLC, (hereinafter "Buyer"), operates mining locations throughout Southern Illinois and desires to purchase goods and services from independent vendors and contractors;

WHEREAS, Seller (designated as the "Vendor" on the face of the Purchase Order) is in the business of selling goods and providing services;

WHEREAS, Buyer and Seller (hereinafter together "Parties"), acknowledge that Seller will provide goods to and/or provide services to Buyer;

WHEREAS, the Parties desire to enter into this Agreement to govern the terms of their relationship.

NOW THEREFORE, in consideration of the price to be paid by Buyer to Seller, for the goods and services to be supplied under this Agreement, and of the mutual covenants, benefits, and undertakings contained herein, the Parties hereto agree as follows:

1. **AGREEMENT FORMATION.** The Purchase Order ("PO"), these Terms and Conditions Agreement, and any referenced documents constitute the agreement of the parties (hereinafter "Agreement"). This Agreement may be accepted only by either written communication or by delivering the goods or performing the services ordered. **THIS AGREEMENT IS LIMITED TO THE TERMS AND CONDITIONS SPECIFIED WITHIN THIS DOCUMENT. BUYER DOES NOT AGREE TO ANY PROPOSED ADDITION, ALTERATION, OR DELETION BY SELLER. THE ISSUANCE OF ANY STATEMENT OR WRITING OF SELLER SHALL NOT ALTER, ADD TO, OR OTHERWISE AFFECT THESE TERMS AND CONDITIONS.**
2. **INVOICE.** Buyer shall have no obligation to pay for any good or service until a proper invoice is received at the "Bill to" address shown on the face of this PO. Seller may not send its invoice to Buyer until delivery of the applicable goods or completion of the applicable service.

2.1 Unless otherwise agreed to by the parties, payment terms are net forty-five (45) days. Payment terms commence on the later of the invoice date or the delivery date of the applicable goods or completion of the applicable services.

2.2 The invoice should include the following:

- (A) a valid PO Number,
- (B) Seller's full name, complete mailing address, contact name, and phone number,
- (C) Seller's remittance address if different from mailing address,
- (D) unique invoice number,
- (E) invoice date,
- (F) payment terms, and
- (G) quantity, description, unit price, extended price, all applicable taxes and freight, and total invoice amount.

2.3 Only one PO number is permitted per invoice unless otherwise agreed to by the parties. Seller shall permit Buyer and its auditors to examine, during the term of this PO and for six (6) years after completion of the work performed by Seller, all books, records, supporting documents, files and correspondence of Seller pertaining in any way to the goods delivered or service performed and the price charged thereon by Seller. Seller will refund, and Buyer may withhold payment of any invoice which is not supported by records and data required by this PO, or any payment which was not proper under the terms of this PO.

3. **INDEPENDENT CONTRACTOR.** Seller shall have complete and exclusive control of and responsibility for all of the equipment and employees utilized or employed by it, and shall accept full responsibility for the results thereof. Seller shall perform all work in the capacity of an independent contractor and nothing contained therein shall be construed to be inconsistent therewith.

4. **SUBCONTRACTS.** Seller shall obtain Company's written permission before subcontracting any portion of Work. The terms and provisions of this Agreement shall apply to any subcontractor, including, but not limited to, insurance, indemnification, Mine Safety and Health Administration (MSHA), Illinois Department of Natural Resources, Office of Mines and Minerals (IDNR), or Occupational Safety and Health Administration (OSHA) regulations, safety training, random substance abuse testing, Company's site policies, Company's rules and regulations, and environmental regulatory requirements. No subcontract relieves Seller from its obligations hereunder or binds Company unless specifically agreed to in writing by Company. Nothing in this Agreement shall create or deem any contractual relationship between any subcontractor and Company. Seller shall be solely responsible for all acts and omissions of any subcontractors.

5. **CHANGES.** Any changes to this Agreement must be in writing or electronic communications and be accepted by both Buyer and Seller. Buyer shall have no obligation to pay any of Seller's costs and expenses related to any additional work outside the scope of this Agreement that Seller performs without the prior written agreement of Buyer.

6. **WARRANTIES.** Seller warrants the following:
 - (A) unencumbered title to all goods provided hereunder and warrants that such goods are new, of merchantable quality, free from defects, fit for the purposes for which they are intended and conform to and meet the requirements of the Agreement,
 - (B) that all services shall be rendered in a safe and workmanlike manner by skilled personnel in accordance with generally accepted industry standards, and
 - (C) that it is an expert in its field and that it shall use this expertise in the performance of this Agreement.

5.1 Seller agrees to promptly correct, to the satisfaction of the Buyer, at Seller's expense and without cost to Buyer, any goods or services which fails to meet the provisions of this warranty at any time within a period of 365 days from the delivery of each item unless a longer warranty period is called for by law or in any writing, including without limitation, specifications, drawings, or proposals furnished by or to Buyer. All corrective work shall be performed at the convenience of Buyer. For the purpose of calculating warranty periods for services, delivery shall occur upon the completion of such services. All manufacturer's warranties or guarantees shall be for the benefit of Buyer.

7. **INSPECTION.** Buyer shall have the right to inspect the goods and services provided hereunder and if in its sole opinion such goods or services are not in accordance with requirements of this Agreement, proper corrections shall be made, but such inspection or failure to inspect shall not relieve Seller of its obligation hereunder. Buyer reserves the right to return, at Seller's expense, any defective or nonconforming goods and/or services. If requested by Buyer, Seller will, at Buyer's option, refund the purchase price of such defective/nonconforming goods and/or services, or correct or replace, at Seller's expense, the defective/nonconforming goods/services. All costs in connection with or as a result of such defective or nonconforming goods and/or services, including but not limited to the cost of transporting from Buyer to Seller and return shipment to Buyer will be at Seller's expense. If Seller fails to repair or replace the defective/nonconforming goods and/or services within a reasonable timeframe, Buyer may repair or replace the defective/nonconforming goods and/or services at Seller's expense. These rights shall not be deemed waived by either Buyer's receipt or acceptance of, nor payment for, the goods and/or services delivered hereunder.

8. **PERFORMANCE AND CANCELLATION. Time is of the essence.** Buyer reserves the right to cancel all or a portion of this Agreement with or without cause upon notice to Seller. If Buyer notifies Seller that Buyer has elected to cancel this Agreement, Seller shall stop all work or shipments immediately. Upon such cancellation, Buyer's only obligation shall be payment for those reasonable costs incurred by the Seller through the date of cancellation. Thereafter, any costs incurred by the Seller shall be the responsibility of Seller.

9. GENERAL INDEMNITY. Except for claims, demands or suits which are adjudicated to be attributable to Buyer's sole negligence. Seller shall, to the extent permitted by law, indemnify, defend, and save harmless, Buyer, its parent, subsidiaries and affiliates and their officers, directors, employees, agents and invitees (collectively, "Buyer Indemnitees") from and against any and all suits, causes of action, claims, demands, charges, costs, damages, expenses (including, but not limited to, attorneys' fees and costs of litigation), judgments, fines, penalties, liability or losses of any kind or nature whatsoever for illness, disease, death, bodily or personal injury, or for damage or destruction of property, loss of services, wages or profits which may be brought against them (individually or jointly) or in which they may be named a party defendant in any way arising out of the performance of this Agreement on the part of Seller, its employees or subcontractors or in any way arising out of the use by Seller of common operational areas or common areas of ingress or egress to operating areas regardless of whether such claims, demands, or suits are occasioned by the negligence of Buyer, its parent, subsidiaries or affiliates. Seller shall not be held responsible for claims, demands, or suits attributable to the sole negligence of Buyer, its parent, subsidiaries, and affiliates.

8.1 CLAIMS BY SELLER'S EMPLOYEES OR SUBCONTRACTORS. In addition Seller shall, to the extent permitted by law, indemnify, defend and save harmless Buyer Indemnitees from and against any and all claims, demands, or suits (including, but not limited to, claims, demands, or suits for bodily injury, illness, disease, death or for loss of services, property or wages) by any employees of Seller or its subcontractors arising out of or in consequence of performance hereunder regardless of whether such claims, demands, or suits are actually or allegedly caused by the negligence of Buyer Indemnitees or any other person or entity and regardless of whether such negligence precedes the execution of this Agreement.

8.2 RESPONSIBILITY FOR SELLER'S PROPERTY AND EQUIPMENT. Seller releases Buyer, its parent, subsidiaries and affiliates from liability for damage to any of its material, machinery, equipment or other property regardless of whether such damage is caused by the negligence of Buyer, its parent or affiliates or any other person.

8.3 INDEMNITY FOR PATENT/TRADEMARK INFRINGEMENT. Seller shall indemnify and defend Buyer from all suits or claims for any royalties or rental fees or for infringement of patents, copyrights, trade secrets, trade names, trademarks, service marks, or other proprietary rights in connection with goods or services supplied or failure to comply with laws and regulations applicable thereto and shall save Buyer harmless from all loss or expense on account thereof.

8.4 INDEMNITY SURVIVAL. These covenants of indemnity shall survive cancellation, termination or expiration of this Agreement.

10. INSURANCE. Seller has procured and shall maintain the following insurance with insurers acceptable to Buyer for the duration of this Agreement, and may be required to provide Buyer with certificates of insurance evidencing coverage prior to beginning work or moving personnel or equipment onto property controlled by the Buyer:

- (A) Statutory Workers' Compensation,
- (B) Employer's Liability with limits of not less than \$1,000,000 per accident,
- (C) Commercial General Liability with limits of not less than \$2,000,000 combined single limit for bodily injury and property damage liability including contractual liability coverage for the indemnity provisions of this Agreement and
- (D) Automobile Liability Insurance with limits of not less than \$1,000,000 combined single limit for bodily injury and property damage liability including coverage for owned, hired and non-owned vehicles.

9.1 REQUIREMENTS. All insurance policies shall contain a waiver of subrogation in favor of Buyer and all policies (except Worker's Compensation and Employer's Liability) shall name Buyer as an additional insured and shall be primary to Buyer's insurance. Insurance limits and coverages are minimum requirements and shall not be construed in any way to limit Seller's liability hereunder. Buyer's acceptance of Insurance Certificates which limit or reduce any of these insurance provisions

shall not be construed as acceptance or approval of any such changes unless such changes are specifically approved in writing by Buyer. Insurer must have a best rating of at least A-.

9.2 ACCIDENT NOTICE. Seller shall immediately provide written notice to Buyer of any accident or occurrences resulting in injury to persons or property in any way arising out of or related to Seller's operations hereunder or the operation of any of its subcontractors.

11. COMPLIANCE WITH LAWS. Seller represents and warrants that it is in compliance with all statutes, rules, regulations and orders, state, federal and local applicable to its performance and the goods and services provided hereunder, including but not limited to mandatory drug testing regulations promulgated by the Department of Transportation (Federal Highway Administration, 49 CFR Parts 40 and 391), the Drug Free Workplace Act of 1988, the Federal Coal Mine Health and Safety Act, the Occupational Safety and Health Act, the Fair Labor Standards Act of 1938, the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, the Vietnam Era Veterans Readjustment and Assistance Act of 1974, Executive Order 11625 (October 13, 1971), the Family and Medical Leave Act of 1993, and U.S. Government Policies concerning Affirmative Action Compliance Programs (41 CFR 60-250.4 (Disabled Veterans And Veterans of the Vietnam Era) and 41 CFR 60-741.4 (Handicapped Workers)), Minority Business Enterprises Subcontracting Programs, the Utilization of Minority Business Enterprises, Utilization of Small Business Concerns and Small Disadvantaged Concerns, and the Utilization of Labor Surplus Area Concerns, all as amended. **Seller shall indemnify and hold harmless Buyer, its parent, subsidiaries and affiliates and their officers, directors, employees, agents and invitees from all penalties, fines, and other charges resulting from violations or alleged violations by Seller, of such laws, rules regulations, ordinances, treaties and other requirements.**

10.1 COMPANY'S SITE POLICIES, RULES AND REGULATIONS. Seller shall comply with the current policies, rules and regulations of Company relating to security, health and safety, whether now in existence or hereafter adopted or modified. Company shall provide a copy of the applicable policies, rules and regulations upon request.

10.2 IDNR REQUIREMENTS. Seller shall be responsible for providing Independent Contractor Supervisor Papers in order to supervise on mine property as required by Illinois Department of Natural Resources, Office of Mines and Minerals.

10.3 MSHA REQUIREMENTS. Seller recognizes that Company is subject to the regulatory requirements of the Mine Safety and Health Administration (MSHA) and that certain vendors and contractors who perform Work on mine property are subject to safety training requirements of MSHA. These requirements are set out in 30 CFR (Code of Federal Regulations), Part 48. Seller shall certify to Company that Seller has received the required MSHA Training and shall present to Company a current MSHA Form 5000-23 verifying the completion of safety training. If Company is required to pay any MSHA assessment resulting from Seller's failure to accurately certify the completion of training or for any other violations by Seller, Company shall be entitled to reimbursement from Seller for any amount paid to MSHA. Reimbursement may be made by making deductions from amounts owed Seller. Upon acceptance of this Agreement and prior to the start of Work, Seller shall fully comply with 30 CFR Part 45. The Seller shall provide written documentation to Company pursuant to 30 CFR Part 45.4.

10.4 NOISE. Seller shall comply with the provisions of 30 CFR Part 62 regarding Occupational Noise Exposure, and specifically 30 CFR Part 62.150, requiring Seller to establish a Hearing Conservation Program. Seller shall provide Company with a copy of its Hearing Conservation Program upon request. Seller shall forever protect, indemnify, defend and save harmless Company, its officers, directors, agents and employees from and against the failure of Seller or Seller's subcontractors to comply with 30 CFR Part 62.

10.5 HAZARD TRAINING. Seller shall receive hazard training at the worksite.

10.6 NOTICE OF NON-COMPLIANCE. Seller shall notify Company immediately concerning any notice, claim, assertion, violation or finding of non-compliance with any law, regulation, permit or order and Seller shall furnish Company with all information requested by Company. Seller shall file any reports or other documents, whether mandatory or permissible, with the applicable government agency to properly establish and serve notice of Seller's sole and exclusive responsibility for all aspects of its Work and for the health and safety of its employees, agents and subcontractors.

10.7 NON-COMPLIANCE. If Company determines that Seller is not acting in a timely manner or is not taking sufficient action to comply with any laws, regulations, permits or orders, Company may, but shall not be obligated to, take whatever action or perform whatever work it deems necessary to obtain compliance. If Company pays any fines, penalties, or incurs other costs and expenses as a result hereof, Seller shall reimburse Company for such fines, penalties, costs or expenses or Company may deduct the costs thereof from amounts owed Seller under this Agreement.

10.8 CERTIFICATION. Seller certifies that it is currently in compliance with the requirements herein, and shall remain in compliance for the duration of this Agreement.

12. ENVIRONMENTAL REGULATIONS. Seller agrees to comply with all environmental regulations governing its operations. If Buyer is required to pay any environmental assessment or penalty or is charged with any other environmental violation resulting from Seller's failure to comply with environmental regulations pertaining to its operation, Seller shall indemnify Buyer for any penalties, assessments or amounts paid by Buyer related thereto.
13. LABOR ARRANGEMENTS. If Seller's operations obstruct or interrupt Buyer's (including its affiliates' and subsidiaries) operations or threaten to obstruct or interrupt such operations because of any labor dispute, Buyer may, in its discretion, suspend Seller's operations and terminate this Agreement immediately without written notice, if this Agreement is terminated under this section, an equitable settlement of accounts through the date of termination shall be made.
14. ASSIGNMENT OR PUBLICATION. Seller shall not assign all or any part of this Agreement, or release, publish or communicate to others any information with respect to this Agreement without the written consent of Buyer.
15. PAYMENT. C.O.D. shipments and Drafts shall not be honored. Payments shall be made by check or wire, at which time Seller shall furnish to Buyer a waiver of lien, if requested.
16. PRICE. In no case will Buyer be billed at prices higher than those shown on the PO without notification to Buyer and acceptance by Buyer. Unless otherwise indicated on the face of the PO, including but not limited to estimated price, all prices include freight, packing, handling and taxes. All goods are purchased F.O.B. the "Ship to" location indicated on the PO, regardless of whether specific shipping methods or separate charges for freight are set forth on the face of the PO, and risk of loss shall pass to Buyer upon the completion of unloading at the "Ship to" location. Seller warrants that the prices shown on the face of this PO are no less favorable than those extended to other similar buyers.
17. STANDARDS. Buyer subscribes to the highest level of business practices.
18. WORK ON BUYER'S PREMISES. If any work under this Agreement is to be performed on Buyer's premises by Seller, its subcontractors, agents or employees, Buyer and Seller may be required to execute Buyer's Indemnification Agreement or Buyer's General Service Agreement, and said Indemnification Agreement or General Service Agreement **shall supercede this Agreement.**
19. AUDIT. Buyer shall have the right at its expense to audit Seller's records that may in Buyer's sole judgment have any bearing on or pertain to any business conducted between the parties, including all documents, books, papers, and other data except as concerns Seller's profit margin or merchandise or services

purchased. Seller shall cooperate fully in furnishing all such requested records. Audits will be conducted in accordance with generally accepted audit practices.

20. RECOUPMENT. Buyer shall have the right to recoup monies, costs, or expenditures made by Buyer where Seller has either failed to perform any of its obligations, including general performance obligations or payment obligations, or where Buyer has had to make expenditures or has incurred costs resulting therefrom. This right of recoupment may be made by making deductions from amounts owed to Seller or by making deductions, if applicable from any retainage hereunder. This right of recoupment may be exercised at any time during the term of this Agreement or upon termination hereof. When exercising this right of recoupment, Buyer shall provide supporting documentation or invoices. This recoupment shall not be deemed to be liquidated damages or shall be in addition to any other remedies to which Buyer may be entitled.
21. SETOFF. Seller hereby irrevocably assigns to Buyer the accounts and general intangibles hereunder, and agrees to permit Buyer, its parent(s), subsidiaries or affiliates thereof, to counterclaim, or setoff from any sums due Seller from payments to be made hereunder, any amounts owed to Buyer, its parent(s), subsidiaries or affiliates thereof. The right of counterclaim or setoff shall include, but not be limited to, other contractual payments or obligations whether related or unrelated hereto, any cash advances which Buyer, its parent(s), subsidiaries or affiliates thereof may have made to Seller, and amounts paid for Seller, including, but not limited to taxes, black lung payment, workers' compensation, engineering work, equipment lease payments, reclamation, construction or other work performed on behalf of Seller, agency fees, or statutory or regulatory assessment.
22. GOVERNING LAW. For all purposes this Agreement shall be governed by the procedural and substantive laws of the State of Illinois. The terms on the face of the PO shall govern any conflicting terms.
23. FORCE MAJEURE. Buyer and Seller shall not be liable for any delay or future performance that is beyond the reasonable control of such part and without its fault or negligence due solely to acts of God, provided, the affected party shall have given notice to the non-affected party of any such cause for delay or anticipated delay promptly following the commencement thereof and shall have used the affected party's best efforts to perform as expeditiously as possible. If Buyer believes that the delay or anticipated delay in Seller's deliveries may impair Buyer's ability to meet its production schedules or may otherwise interfere with Buyer's operations, Buyer may at its option, and without liability to Seller, may immediately terminate this PO.
24. SEVERABILITY. Invalidity or unenforceability of one or more provisions of this Agreement shall not affect any other provision of this Agreement.