

Purchase Order Terms and Conditions Standard

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Purchase Order Standard Terms & Conditions

1. Definitions

1.1 In this Contract, unless the context otherwise requires:

Anti-Bribery & Corruption Law includes:

- (a) any anti-bribery or corruption law of the Commonwealth of Australia or a State of Australia, including Division 70 of the Criminal Code Act 1995 (Cth); and
- (b) any anti-corruption law of a country other than Australia which applies to the Principal from time to time in relation to this Contract;

Anti-Bribery & Corruption Law Violation means a situation where the Supplier or its Personnel has:

- (a) directly or indirectly offered, paid, solicited or accepted bribes in any form, including facilitation payments; or
- (b) otherwise breached an Anti-Bribery & Corruption Law,

in connection with the subject matter of this Supplier subcontract, as the case may be;

Business Day means a day on which banks are open for general banking business in Western Australia;

Carbon Costs means any cost, expenditure, impost, tax, obligation, penalty, fee or liability (present or future) lawfully incurred or to be incurred by the parties relating to the emission, removal, mitigation, reduction, avoidance or sequestration of greenhouse gases in connection with the Services, including in connection with a Carbon Emissions Scheme, and including the

cost of creating or acquiring any rights, allowances or offsets under such a scheme and the cost of any certificate or instrument required to be created, acquired or surrendered under such a scheme;

Carbon Emissions Scheme means any law which has as one of its objectives the reduction, offset or management of greenhouse gas emissions, including:

- (a) any law in replacement or substitute of the *Clean Energy Act 2011* (Cth) and its associated Acts and regulations or other emissions trading scheme that includes a requirement for the surrender of Carbon Permits in specified circumstances;
- (b) any mechanism including a tax, duty, charge, levy impost or other financial requirement relating to the reduction, offset or management of greenhouse gas emissions, fuel or energy use; and
- (c) any other requirement to undertake action to reduce, minimise or offset greenhouse gas emissions, fuel or energy use,

and includes all regulations, legislative instruments, orders, determinations, directives and guidelines (however named) made under that legislation as promulgated, supplemented or amended from time to time.

Carbon Permit means any unit, certificate, licence, authorisation or other permit (however named and however acquired) that is capable of being acquired, held, transferred, surrendered or acquitted to the satisfaction of an obligation or liability under any Carbon Emissions Scheme;



Civil Liability Act means the Civil Liability Act 2002 (WA);

Claim means any claim, action, suit, demand, proceeding, notice, litigation, investigation or judgement whether based in contract, tort, under statute or otherwise;

Commencement Date means the commencement date (if any) specified in the Order or other document annexed to this Contract specifically incorporated by reference;

Completion Date means the completion date specified in the Order or other document annexed to this Contract specifically incorporated by reference;

Confidential Information means all information (other than information already in the public domain) provided by the Principal to the Supplier, including this Contract;

Contract means the contract between the Principal and the Supplier comprised of the Order, these standard terms and conditions, any Special Conditions and all other documents annexed to this document or specifically incorporated by reference;

Contract Price means the amount payable by the Principal to the Supplier under this Contract as set out in the Order and as may be varied in accordance with this Contract;

Direct Cost means direct costs properly incurred less any trade discounts and not including depreciation, mark ups, overhead or profit;

Employee Claims means any Claim in respect of any death, injury or occupational disease of any person employed or engaged by the Supplier which arises out of, or is caused by, the supply or non-supply of the Services by the Supplier;

EPBS means the Enhance Project By-Law Scheme;

Force Majeure means any event or circumstances not within the control of the party claiming force majeure, and which by the exercise of reasonable care, that party is not able to overcome;

Good Operating Practices means the practices, methods and acts used by a contractor who in the performance of service exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced contractors engaged in the same type of services in Australia in similar conditions;

Goods means any materials, supplies, plant, equipment, or other things to be supplied as part of the Services by the Supplier to the Principal, as specified in the Order;

GST Act means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

Intellectual Property means all intellectual property rights existing anywhere in the world including any patent, design right, copyright, trade mark, protected circuit layout, trade secret, Confidential Information, or other right whether existing under statute, at common law or in equity or otherwise;

Liabilities means all liabilities, losses, damages, outgoings, costs and expenses of whatever description, and whether present, unascertained, contingent or prospective;

Modern Slavery means any activity, practice or conduct that would constitute a breach of Modern Slavery Law and covers practices such as human trafficking, slavery, involuntary servitude, forced labour, child labour and forced marriage.

Modern Slavery Law includes:

- (a) any modern slavery law of the Commonwealth of Australia or a State of Australia, including Divisions 270 and 271 of the



Criminal Code Act 1995 (Cth);
and

- (b) any applicable anti-slavery and human trafficking laws which apply to the Principal from time to time in relation to the Contract.

Personnel means the directors, officers, employees, contractors and agents of the Contractor or the Principal as the case may be;

Principal means:

- (a) Sino Iron Pty Ltd (ACN 058 429 708) of Level 7, 45 St Georges Terrace, Perth
- (b) CITIC Pacific Mining Management Pty Ltd (ACN 119 578 371) of Level 7, 45 St Georges Terrace, Perth; or
- (c) any Related Body Corporate (as defined in the Corporations Act 2001 (Cth)) of Sino Iron Pty Ltd,

as specified in the Order;

PPS Act means the Personal Property Securities Act 2009 (Cth);

PPS Register means the Personal Property Securities Register established under the PPS Act;

Order means the purchase order forming part of this Contract, also comprising the contract price, a scope of work or detailed description of the Goods and/or Services;

Safety Management Plan means the safety management plan of the Principal;

Security Interest has the meaning given to that term in section 12 of the PPS Act;

Services means the work to be performed by the Supplier as specified in this Contract, including in the Order and includes where appropriate the supply, hire or provision of any Goods and any and all other work, additions, substitutions and variations required by the

Principal or agreed between the Principal and the Supplier in writing;

Site means the Principal's premises or other place (if any) designated in the Order;

Site Access Request Process means the Principal's Internet based resource management system covering prescribed recruitment procedures, the verification and approval of project personnel, mandatory pre-mobilisation requirements, mobilisation, demobilisation of personnel and other procedures and controls;

Site Rules means all rules, regulations, directives and policies of the Principal, which are intended to be of general application to any person at the Site including those dealing with health and safety, environmental protection, fire prevention, security, alcohol and drugs and emergencies, as amended in accordance with this Contract;

Special Conditions means the special conditions (if any) set out in the Annexure to this Contract;

Supplier means the person, firm or company named in the Order who is required to supply the Services and includes all persons engaged by the Supplier, whether or not employed by the Supplier;

Taxes means all taxes including income taxes, excise duties, stamp duties, customs duties, payroll taxes, withholding taxes, import taxes, government duties, imposts, levies, charges and fees other than GST on any taxable supply made by the Supplier to the Principal;

Tax Invoice means any document or record treated by the relevant tax authority as a tax invoice or as a document entitling a recipient to an appropriate tax credit or refund;

Term means the period commencing on the Commencement Date and ending on the Completion Date,



subject to early termination under clause 13;

Third Party Claim means any Claim in respect of:

- (a) loss or destruction of, or injury or damage to, or loss of use of any real or personal property;
- (b) any personal injury to or death of any person,

arising out of, or caused by, the supply or non-supply of the Services by the Supplier.

VOC means verification of competence certification.

- 1.2 Where two or more persons are included in the term Supplier, then the obligations on their part will bind and be observed and performed by them jointly and each of them severally.
- 1.3 A reference to subcontractor includes a consultant or supplier.
- 1.4 The words “including” or “for example” when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.
- 1.5 Time will be of the essence of this Contract in all respects.
- 1.6 A statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- 1.7 If there is any conflict or inconsistency, this Contract will be interpreted in the manner most likely to have been intended by the Principal.

2. Acceptance of Contract

- 2.1 The Principal engages the Supplier to perform the Services, but this Contract does not confer upon the Supplier any exclusivity in respect of the Services or any services at the Site.

- 2.2 The Order when properly authorised is the only form which will be recognised by the Principal as authority for charging Services to its account.

- 2.3 Any qualification to the Supplier's acceptance of this Contract, is void and of no force or effect unless:

- (a) agreed to in writing by the Principal as a variation to this Contract; or
- (b) the qualification is the provision by the Supplier of a warranty that exceeds the requirements of this Contract.

- 2.4 In the absence of written acceptance of the terms of this Contract by the Supplier the commencement of any part of this Contract by the Supplier including delivering Goods, shall be deemed an acceptance and an agreement shall be formed only in the terms set forth in this Contract.

- 2.5 The Supplier represents and warrants it has examined the Site and thoroughly investigated and satisfied itself as to all local and other conditions affecting the performance of the Services including, without limitation, laws, geotechnical, meteorological, geological, labour, accommodation, industrial relations, fuel, power, water and transport conditions.

- 2.6 The Supplier accepts full responsibility for any information it has used, including any conclusions arrived at from the information, and agrees to notify the Principal if it finds any errors, omissions or inconsistencies in information provided by the Principal.

- 2.7 Except as prescribed by applicable law, the Principal gives no warranty of accuracy, sufficiency or otherwise in relation to information provided to the Supplier and disclaims all responsibility for such information.

- 2.8 The Supplier's failure to attend to all or any of the matters which it is



required to do or is deemed to have done under this clause 2 will not relieve the Supplier from its liability to perform its obligations under this Contract and shall not justify any claim for a variation or otherwise.

3. Price and Payment

- 3.1 The Principal must pay the Supplier the Contract Price as set out in the Order for the Services.
- 3.2 The rates set out in the Order and the Contract Price include, without limitation, all costs and expenses incurred by the Supplier in relation to the Services, including any applicable Tax, Carbon Cost, costs of adverse weather, mobilisation and demobilisation costs and the like payable in relation to provision of the Services and shall not be subject to rise and fall or to any change by reason of exchange rate fluctuations or for any other cause unless specifically stated in this Contract.
- 3.3 The Contract Price shall not exceed the amount specified in the Order unless first approved by the Principal in writing.
- 3.4 The Supplier must submit an invoice to the Principal to support the claim for payment. The invoice must be in a form acceptable to the Principal and must contain the following information:
- (a) the Order number;
 - (b) a brief description of the Services supplied;
 - (c) the period in which those Services were supplied;
 - (d) any further information stipulated in any applicable Tax legislation, or by the Principal, so that the Principal will receive the benefit of any tax credit or refund in relation to the supply of the Services; and
 - (e) such other accurate verification documentation as may be requested by the Principal.

- 3.5 Unless the Order expressly provides otherwise, the Supplier may only issue an invoice for Goods once those Goods are delivered and title passes to the Principal.
- 3.6 Subject to Clause 3.7, payment will be made by the Principal within 30 days of receipt of a properly rendered Tax Invoice, unless otherwise agreed, provided and to the extent that nothing is then in dispute in relation to the Services. For clarification, an invoice is not "properly rendered" if the invoice does not comply with the requirements in this clause 3 (including clause 3.4).
- 3.7 If the Principal disputes any amount claimed by the Supplier to be due and payable, the Principal will notify the Supplier specifying the reasons for the dispute. Payment of the disputed portion will be withheld until settlement of the dispute. The Principal will pay the undisputed portion of the invoice.
- 3.8 The Supplier acknowledges that taxation and taxes on Goods and Services, including goods and services taxes vary from time to time and the Supplier shall assist the Principal in keeping such payments on Goods and Services to the prescribed minimum. In relation to any taxation payable by the Supplier, the Supplier shall provide, where appropriate, written evidence of its tax status and any exemption from taxation.
- 3.9 The Principal may deduct from any payment or moneys due or becoming due to the Supplier all costs, charges, damages, liquidated sums, expenses and other moneys which are payable by or to be reimbursed by the Supplier to the Principal.

4. Warranties and obligations

- 4.1 The Supplier must:
- (a) commence the Services on the Commencement Date, devote sufficient time and attention to



- the proper performance of the Services and complete the Services on or before the Completion Date;
- (b) obtain all applicable permits, licences, exemptions, consents and approvals required for the Supplier to perform the Services;
- (c) give all notices, and pay all entitlements, fees, and Taxes in connection with the Services and its Personnel (including leave entitlements and income, fringe benefits, payroll and withholding taxes) unless otherwise specified in the Order;
- (d) co-operate with staff, contractors and other persons providing goods or services to the Principal and must immediately bring to the attention of the Principal any conflict which may arise in relation to the Services between the Supplier and any other person; and
- (e) comply with, and ensure that its Personnel comply with, the Site Rules and Safety Management Plan and any lawful direction by the Principal in respect of the supply of Services.
- 4.2 Without limiting any other warranty or obligation under this Contract, the Supplier represents and warrants to the Principal as follows in relation to the Services and each part of the Services:
- (a) the Services shall be performed, and any Goods shall be manufactured, to the standard of care, skill and diligence that would normally be expected of a reputable and competent organisation providing goods and/or services similar to the Goods and Services;
- (b) it and its Personnel are skilled, trained, qualified and competent to perform the Services and that they will perform the Services in accordance with Good Operating Practices in a competent, skilled and efficient manner;
- (c) the Services shall comply with all relevant statutes, regulations, by-laws and codes (including, without limitation, all relevant mines safety and inspections laws) and with best industry practices;
- (d) it has good and marketable title to any Goods and the Principal will receive title to the Goods free of any charge or encumbrance;
- (e) all information given by or on behalf of the Supplier to the Principal will be true and accurate;
- (f) it will obtain at its cost all usual trade warranties and will assign the benefit of any such warranties to the Principal (copies of which must be supplied to the Principal); and
- (g) any Goods shall:
- (i) be of merchantable quality and fit for their intended purpose (and for the purposes which the Principal has communicated to the Supplier, if any);
- (ii) be free of defects in materials, workmanship and design;
- (iii) be in good working order and condition in the manner for which they were intended;
- (iv) have a life expectancy commensurate with what would be expected of similar goods provided for



similar purposes by a competent and reputable supplier or contractor;

- (v) be performed or manufactured strictly in accordance with any manufacturing drawings, specifications or description supplied to the Supplier by the Principal;
- (vi) be free of defect or failure or malfunction (except to the extent attributable to wrongful use or failure to maintain);
- (vii) be new unless specified otherwise; and
- (viii) be free from any mortgage, lien, encumbrance or charge in favour of a third party at the time of the sale and/or delivery to the Principal.

4.3 Without limiting any other warranty or obligation under this Contract, the Supplier represents and warrants to the Principal that, on the day this Contract is executed and the Commencement Date:

- (a) it has the corporate power to enter into, and to perform all of its obligations under, this Contract;
- (b) there are no contracts in existence that would affect the Supplier's ability to perform its obligations under this Contract in a timely and satisfactory manner;
- (c) this Contract been validly executed by the Supplier and constitutes valid and binding obligations of the Supplier enforceable according to its terms;
- (d) the execution of this Contract and the performance of the Services do not and will not result in the breach of any

order, writ, rule, regulation, injunction or decree of any court or government agency or any legislation; and

- (e) it is not insolvent and has not had a liquidator, administrator, receiver or receiver and manager appointed to it or any of its assets, nor entered into a scheme of arrangement (other than for the purposes of a solvent reconstruction) nor has execution been levied against any of its property.

4.4 Without limiting any other warranty or obligation under this Contract, each party that enters into this Contract as trustee of a trust (the **Trust**) represents and warrants to each other party that:

- (a) the Trust has been validly created and is in existence;
- (b) it has been validly appointed as a trustee of the Trust and is the only trustee of the Trust;
- (c) no action has been taken and, so far as it is aware, no action has been proposed, to terminate the Trust or to remove it as trustee of the Trust;
- (d) it has exercised all of its duties, powers and discretions as trustee in accordance with the terms of the trust deed constituting the Trust (the **Trust Deed**) and is not, and so far as it is aware, no allegation has been made that it is in default or in breach of its obligations under the Trust Deed;
- (e) it has the power under the Trust Deed to execute and to perform its obligations under this Contract, and has taken all necessary action under the Trust Deed to authorise such execution and the performance of such obligations;



- (f) the execution by it of this Contract and the performance of its obligations under this Contract does not and will not conflict with or constitute a default under the Trust Deed;
- (g) it has in its capacity as trustee of the Trust valid rights of indemnity against the assets of the Trust for all liabilities that it may incur in that capacity, including all liabilities that it may incur under this Contract, and all such assets are available for satisfaction of such liabilities; and
- (h) it has considered the purposes of this Contract and has determined that the entry into of this Contract is for the benefit of the beneficiaries of the Trust.

5. Performance by the Supplier

- 5.1 The parties acknowledge and agree that the relationship between the Principal and the Supplier is that of principal and independent contractor.
- 5.2 Nothing in this Contract will be deemed to constitute the Supplier nor any of its Personnel an employee, partner, agent or representative of the Principal and the Supplier nor any of its Personnel will have no authority to incur and will not incur any obligation on the part of the Principal, except with, and to the extent of, the prior written authority of the Principal.
- 5.3 The Supplier acknowledges that it is liable for payment of all allowances, Taxes, premiums and costs, including leave entitlements, holding and sick pay, payroll tax, PAYE tax, costs of insurance or other non-reimbursable costs which arise in connection with the performance of the Services.
- 5.4 The Supplier shall indemnify the Principal against all claims and liens in regard to wages that may become due and payable to its employees and the employees of any subcontractors and all claims and liens of subcontractors and contractors of goods, labour or services provided in connection with the performance of the Services.
- 5.5 If the Principal has reasonable grounds to believe that any amounts due and owing to any of Supplier's Personnel, subcontractors or suppliers have not been paid by the Supplier, then the Principal may, in its discretion, withhold from any payment otherwise due to the Supplier under this Contract an amount which the Principal reasonably believes to be due and owing but unpaid to the Supplier's Personnel, subcontractors or suppliers and the Principal shall be entitled to pay amounts so withheld to the persons entitled to receive payment from the Supplier.
- 5.6 The Supplier will only appoint or engage in the performance of any Services, Personnel who are skilled and experienced in their trades and professions, and will remove and replace any Personnel at the request of the Principal.
- 5.7 If any of the Supplier's Personnel are temporarily unavailable to provide the Services, the Supplier will at the Principal's request replace that person with another person of equal skill and qualifications as approved by the Principal.
- 5.8 The Supplier will supply everything necessary to perform the Supplier's obligations under this Contract, and to perform the Services (irrespective of whether or not the thing is expressly referred to in the Order or this Contract), and, without limiting the representations and warranties set out in clause 4, the Supplier warrants that all materials used to perform the Services will be new and of the best quality and workmanship of their respective kinds.
- 5.9 On the Completion Date, or upon termination of this Contract, the Supplier will return to the Principal any materials, equipment or other



property supplied by the Principal to the Supplier in the same condition that it was supplied save for an allowance for fair wear and tear.

5.10 The Supplier waives (and will take all necessary steps to remove) any lien, Security Interest or any other right, title or interest which it might have at any time in respect of any materials or equipment which are incorporated into, or form the whole or part of, the Services and will ensure that a similar provision is included in all contracts with subcontractors and suppliers who supply any materials and equipment to the Supplier for the purposes of this Contract.

5.11 Without limiting any requirements described in the Special Conditions, each of the Supplier's Personnel who will have access to the Site in order to perform the Services must pass the Principal's Site Access Request Process and comply with rules and policies of the Principal to the reasonable satisfaction of the Principal.

6. Supervision, testing and inspection

6.1 The Principal will determine whether the Services supplied are in accordance with this Contract and are to the standard, quality and quantity required by the Principal.

6.2 If any part, or the whole, of the Services supplied by the Supplier are, in the Principal's opinion, incomplete or are not substantially in accordance with the requirements of this Contract:-

- (a) the Principal will notify the Supplier of such deficiencies;
- (b) the Supplier must, at its cost, correct such deficiencies in the time specified by the Principal; and
- (c) if the Supplier fails to promptly correct such deficiencies, the Principal may make, or cause others to make, such

corrections and the costs so incurred by the Principal may be deducted from payments to be made to the Supplier under this Contract or otherwise recovered as a debt due from the Supplier.

6.3 If the Principal determines that any remedial, protective, repair of other like works are required to prevent:

- (a) loss or damage to the whole or any part of the Services;
- (b) loss or damage to any property;
- (c) personal injury to, or death of, any person; or
- (d) disruption to the whole or any part of the Principal's operations,

the Principal may perform, or cause others to perform, such work at the risk and reasonable expense of the Supplier.

6.4 The Supplier must provide the Principal with any information requested by the Principal in relation to the provision of the Services including as necessary to allow an audit of compliance with this Contract.

6.5 The Supplier must maintain (and retain for a period of three years following the Completion Date) a complete set of accounts and records in accordance with prudent and accepted accounting principles.

6.6 The Supplier must notify the Principal within 24 hours of any injury, damage to property or the environment or other incident related to health, safety or the environment in connection with the Services or this Contract.

6.7 The Supplier will conduct tests of the Services or part thereof as may be required under this Contract and otherwise as required in accordance with the relevant Australian Standards and codes, or where there are no standards or codes, in accordance with Good Operating Practices, however if the Principal



requires a test to be carried out because the Principal believes the Services may not be in accordance with the requirements of this Contract, and where this is confirmed by the results of the test, then the Supplier will pay the Direct Costs of the test.

- 6.8 Nothing in this clause 6 limits in any way the rights and remedies of the Principal under this Contract at law or in equity, in respect of any deficiencies in the Services or any other failure by the Supplier to perform its obligations under this Contract.
- 6.9 Notwithstanding any other provision of this Contract, any inspection, audit, approval, acceptance, permission, comment, determination, direction or recommendation by, or on behalf of, the Principal will not:
- (a) constitute waiver of any default on the part of the Supplier or limitation of any rights or remedies in respect of any act or omission on the part of the Supplier;
 - (b) constitute acceptance of any act or omission on the part of the Supplier; or
 - (c) affect the Supplier's obligation to perform its obligations under this Contract.
- 6.10 To the extent permitted by law, the Principal excludes liability for, and neither the Principal nor any of the Principal's Personnel owes the Supplier, any duty of care in contract or otherwise, in relation to:
- (a) any audit or inspection; or
 - (b) any approval, acceptance, attendance, permission, comment, determination, direction or recommendation.

7. Suspension

- 7.1 The Principal may by notice in writing to the Supplier direct that the whole or any part of the supply of Services be suspended for such time as the

Principal thinks fit, and upon receipt of the notice the Supplier must immediately suspend the supply of those Services identified in the notice. When the reason for suspension no longer exists, the Principal will direct the Supplier to recommence the supply of the Services, and the Supplier must comply with that direction as soon as is reasonably practicable.

- 7.2 The Supplier must do all things reasonably necessary to reduce any cost or expense consequent upon the suspension. The Principal will pay the Supplier's reasonable costs and expenses directly referable to redundant Personnel or labour holding expenses during the period of suspension, unless the reason for the suspension is wholly or partly due to some fault on the part of the Supplier or its Personnel.
- 7.3 No suspension directed by the Principal or otherwise arising, shall affect the validity of all or any part of this Contract.

8. Delay and inability to perform

- 8.1 If the Principal is of the opinion that the Supplier will not be able to complete the Services or any part of the Services in accordance with this Contract, then the Principal (without prejudice to the Principal's other rights under this Contract) may, in its sole discretion, propose in writing a revised date for the completion of the Services (**Revised Completion Date**). If the Supplier provides written acceptance of the Revised Completion Date, the Contract will be varied such that all references to the Completion Date will be deemed to be references to the Revised Completion Date.
- 8.2 To the extent that the Supplier is unable to perform all or any part of the Services in accordance with this Contract for any reason (including Force Majeure), the Principal may, in its sole discretion, source such part of



- the Services from any third party (**Alternative Services**).
- 8.3 If the Principal exercises its rights under clause 8.2 to source Alternative Services, the Supplier will receive no consideration for such services and is responsible for all incremental costs to the Principal associated with sourcing the Alternative Services, except where the reason for the inability to perform all or part of the Services was:
- (a) due to the Supplier being subject to Force Majeure; or
 - (b) as a direct result of an act or omission of the Principal.
- 8.4 The Principal must use reasonable endeavours in exercising its rights under clause 8.2 to source the Alternative Services at the minimum cost reasonably available.
- 8.5 Nothing in this clause 8 limits in any way the rights and remedies of the Principal under this Contract at law or in equity, in respect of any failure to complete the Services or any other failure by the Supplier to perform its obligations under this Contract.

9. Force Majeure

- 9.1 If a party is prevented from carrying out the whole or any part of its obligations under this Contract by reason of an event of Force Majeure, that party must immediately give to the other party notice of the occurrence of the event of Force Majeure, and the particulars thereof including at least the estimated length of the delay in performance resulting from the Force Majeure and the steps that it intends to take to overcome or mitigate such event or circumstance.
- 9.2 Subject to clause 9.3, the obligations of either party, to the extent that they are affected by that event of Force Majeure, will be suspended during, but no longer than, the continuation of that event of Force Majeure.
- 9.3 Except as provided by this clause, a party affected by Force Majeure must

use its best endeavours to remedy or circumvent the effect of any event of Force Majeure and comply with its obligations under this Contract, provided that an affected party may conduct itself with respect to strikes, lockouts, bans, limitations of work and other industrial disturbances in such manner as that party in its absolute discretion thinks fit.

- 9.4 It is expressly agreed that the following matters shall not constitute Force Majeure:
- (a) lack of or inability to use funds for any reason;
 - (b) any occurrence which results from the wrongful act or wrongful omission of the affected party or the failure by the affected party to act in a prudent and proper manner and in accordance with good and accepted industry practices;
 - (c) any failure by the affected party to reach agreement with any third party necessary to enable the affected party to perform its obligations under this Contract;
 - (d) an event or circumstance, where the event or circumstance or its effects on the affected party or the resulting inability of the affected party to perform its obligations could have been prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence consistent with that of a reasonable and prudent operator or should reasonably have been anticipated by the affected party;
 - (e) breakdown or shortages of Supplier's equipment, goods, materials or labour;
 - (f) changes in law;
 - (g) strike or industrial action of Supplier's employees or those of subcontractors; and



- (h) adverse weather (including any cyclone or other weather event of the nature which is typically encountered in the area of the Site).
- 9.5 The Supplier agrees that the Principal may terminate this Contract in whole or in part by notice to the Supplier if any event of Force Majeure has the result that the Supplier fails to deliver the whole or any part of the Services or otherwise is unable to comply with any of its obligations under this Contract, for more than a reasonable period (determined having regard to the nature and kind of the services provided and their criticality to the Principal's business, but in no circumstances exceeding 14 days).

10. Risk and title

- 10.1 Title in any Goods supplied under this Contract passes upon delivery to the Principal or payment of the Contract Price, whichever occurs first.
- 10.2 All Goods shall be at the Supplier's risk until such Goods have been delivered to, and accepted by, the Principal at the Site.
- 10.3 Where any goods owned by the Principal are provided to the Supplier for the purposes of supplying the Services:
 - (a) property in and ownership of those goods remains with the Principal;
 - (b) the Supplier must not allow to be created or assert that there exists any Security Interest over those goods;
 - (c) the Supplier must keep the goods in good and serviceable repair; and
 - (d) the goods must only be used for the purposes for which they have been provided and in accordance with directions from the Principal.

- 10.4 The Supplier hereby waives (and will take all necessary steps to remove) any lien, Security Interest or any other right, title or interest which it might have over the Goods which are delivered to the Principal pursuant to this Contract, and the Supplier will obtain a similar waiver from any relevant Personnel.

11. Insurance

- 11.1 The Supplier must provide the insurances set out in the Annexure hereto.
- 11.2 The Supplier must provide to the Principal, upon request, copies of each of the policies, and certificates of currency of each of the policies, of insurances required to be maintained pursuant to this clause 11.
- 11.3 The Supplier shall in accordance with clause 16.3 ensure that a similar provision for insurance is included in all contracts with subcontractors and suppliers who supply Services to the Principal for the purposes of this Contract.

12. Indemnity

- 12.1 The Supplier will be liable for, and will indemnify the Principal and its Personnel against, all Liabilities arising out of or in connection with:
 - (a) any Third Party Claims;
 - (b) the supply of Services or the performance or breach of this Contract;
 - (c) the presence of the Supplier or any of its Personnel on or about the Site; or
 - (d) any Employee Claims.
- 12.2 Every exemption, limitation, defence, immunity, indemnity or other benefit contained in this Contract or otherwise to which the Principal is entitled to will be held by the Principal as trustee for the benefit of, and will extend to protect, each of the Principal's Personnel.
- 12.3 It is not necessary for the Principal or its Personnel to incur expense or



make payment before enforcing a right of indemnity conferred by this Contract.

- 12.4 Each indemnity in this Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives termination.

13. Termination

- 13.1 The Principal may, at any time and for any reason, terminate this Contract by giving the Supplier 2 days' written notice.

- 13.2 Subject to clause 13.3, where this Contract is terminated pursuant to clause 13.1, the Principal's sole liability will be to pay for Services delivered prior to termination as well as any direct reasonable costs incurred by the Supplier in performing this Contract in respect of any unperformed or unpurchased services prior to the date of the notice of termination, subject to the Supplier demonstrating, to the reasonable satisfaction of the Principal, that such costs have in fact been incurred and provided that the total termination payment plus previous payments under this Contract shall not exceed the Contract Price.

- 13.3 If this Contract covers Services requiring Goods to be manufactured to the Principal's specification, upon receipt of notice of termination under clause 13.1, the Supplier must cease manufacture, supply or work and will do everything possible to mitigate all costs incurred by it from such termination. Provided that the Supplier is not in default (and has complied with the foregoing) the Principal shall pay to the Supplier the direct reasonable costs incurred by the Supplier in performing this Contract in respect of any undelivered or unpurchased goods prior to the date of the notice of termination, subject to the Supplier demonstrating, to the reasonable satisfaction of the Principal, that such costs have in fact been incurred and provided that the total termination

payment plus previous payments under this Contract shall not exceed the Contract Price.

- 13.4 The Principal may terminate this Contract immediately upon giving the Supplier notice in writing if the Supplier breaches any term of this Contract is insolvent or has a liquidator, administrator, receiver or receiver and manager appointed to it or any of its assets, enters into a scheme of arrangement (other than for the purposes of a solvent reconstruction) or has execution been levied against any of its property.

- 13.5 Where this Contract is terminated pursuant to clause 13.4, the Principal's sole liability will be to pay for Services delivered prior to termination.

- 13.6 The Supplier may terminate this Contract immediately upon giving the Principal notice in writing if the Principal:

- (a) breaches any obligation to pay the Contract Price and fails to remedy that breach within 30 days of receipt of a written notice from the Supplier identifying that breach and requiring remedy; or
- (b) is insolvent or has a liquidator, administrator, receiver or receiver and manager appointed to it or any of its assets, enters into a scheme of arrangement (other than for the purposes of a solvent reconstruction) or has execution been levied against any of its property.

14. Confidentiality

- 14.1 The Supplier must:

- (a) not, without the consent of the Principal, directly or indirectly disclose to any person or use the Confidential Information in whole or in part except to the extent necessary to fulfil its



obligations under this Contract as required by law or rule of a recognised securities exchange, provided that prior to such disclosure the Supplier gives notice to the Principal with full particulars of the proposed disclosure;

- (b) except as required by any law or with the Principal's consent, not make any public announcements or disclosures as to this Contract, or otherwise in relation to the subject matter of this Contract;
- (c) not copy or otherwise reproduce any documents containing Confidential Information except as is necessary in fulfilling its obligations under this Contract;
- (d) on termination of this Contract return all documents containing any Confidential Information including any documents created by the Supplier which contain any Confidential Information;
- (e) use its best endeavours to protect the confidentiality of the Confidential Information; and
- (f) comply with all reasonable requests by the Principal regarding the protection of the Confidential Information.

14.2 This clause 14 survives termination.

15. Intellectual Property

15.1 The Supplier warrants that in supplying the Services neither the Principal nor the Supplier will infringe the Intellectual Property of any third party and indemnifies the Principal in respect of all Liabilities resulting from any actual or alleged infringement of Intellectual Property.

15.2 All Intellectual Property created by the Supplier (either by itself or jointly with any third party), in supplying the Services or otherwise pursuant to or incidental to this Contract will be

owned by the Principal. The Supplier agrees to notify the Principal immediately of the discovery of any such Intellectual Property rights and assigns to the Principal its entire right, title and interest in all such Intellectual Property.

15.3 To the extent a licence to the Supplier's pre-existing Intellectual Property is required for the Principal's exploitation, enjoyment, use or benefit of use of the Goods and/or Services to be supplied by the Supplier to the Principal under this Contract, the Supplier grants such a licence to the Principal on a perpetual, transferable, irrevocable, non-exclusive and fully paid-up basis.

15.4 The Supplier must (at its cost) procure from each of the Supplier's Personnel, subcontractors or any third parties engaged in the provision of the Services an irrevocable and unconditional consent, in favour of the Supplier (for the benefit of the Supplier and its customers, including the Principal) which is legally enforceable by the Principal, for the Principal to reproduce, transmit, communicate, adapt, publish or do anything in relation to any materials in relation to the Services or any adaption of the materials that (but for these consents) would otherwise infringe any moral rights in those materials.

15.5 This clause 15 survives termination.

16. Assignment and subcontracting

16.1 The Supplier shall not assign, novate or subcontract all or any part of this Contract without the Principal's prior written consent which the Principal in its absolute discretion may refuse to give.

16.2 No assignment or novation is effective until the assignee has agreed in writing with the Principal to perform the Supplier's obligations under this Contract.

16.3 No subcontract shall in any way relieve the Supplier from full and



entire responsibility for the performance of its obligations under this Contract. The Supplier shall be liable for all acts, errors and omissions of its subcontractors or suppliers. The Supplier shall make any subcontract subject to the conditions of this Contract to the extent that they may be applicable.

17. Disputes

If there is any dispute between the parties concerning or arising out of this Contract, the parties shall as a condition precedent to the commencement of any proceedings, meet to attempt to resolve the dispute. If the parties fail to agree within 30 days after first meeting, either party may commence legal proceedings to resolve the dispute. Nothing in this clause 17 prevents either party from commencing any action or proceeding at any time in relation to any dispute or claim arising under or in connection with this Contract for the purpose of seeking urgent interim or interlocutory relief.

18. Local Content

- 18.1 The Supplier shall, in performance of this Contract, except in those cases where the Supplier can demonstrate it is impracticable so to do, use goods and services available within Western Australia or if such goods and services are not available then, except as aforesaid, use goods and services otherwise available within Australia.
- 18.2 The Supplier shall keep the Principal informed on a regular basis as determined by the Principal from time to time or otherwise as required by the Principal during the currency of this Contract of any services (including any elements of the project investigations design and management) and any works, materials, plant, equipment and supplies that they may be proposing to obtain from or have carried out or permit to be obtained from or carried

out outside Australia together with their reasons therefore and shall as and when required by the Principal consult with the Principal with respect thereto.

- 18.3 The Industry Capability Network Western Australia (www.icnwa.org.au) maintains a national network of offices and identifies Western Australian and Australian companies capable of supplying goods and services against an enquirer's specified criteria. The Supplier shall, as far as it is reasonable and economically practical to do so, utilise ICNWA's Project Connect service to maximise Australian content and participation.

- 18.4 The Supplier shall in accordance with clause 16.3 ensure that a similar provision for local content is included in all contracts with subcontractors and suppliers who supply Services to the Principal for the purposes of this Contract.

19. Indigenous Employment Opportunities

- 19.1 The Supplier acknowledges the Principal's commitment to the employment of Aboriginal people in connection with the project. The Supplier is encouraged to adopt a proactive policy with respect to the employment of Aboriginal people in connection with this Contract and, in particular, to:
- adopt Indigenous employment and equal opportunity strategies associated with the contract;
 - demonstrate a commitment to Aboriginal employment and local Aboriginal community capacity building; and
 - demonstrate a commitment to support Aboriginal enterprises where possible, including, but not limited to, the engagement of Aboriginal enterprises as subcontractors.



19.2 The Supplier shall in accordance with clause 16.3 ensure that a similar provision for indigenous employment is included in all contracts with subcontractors and suppliers who supply Services to the Principal for the purposes of this Contract.

20. Customs Duty and EPBS

20.1 The rates set out in the Order include all customs duties, and all other charges payable for any materials or equipment to be supplied by the Supplier with the Services in accordance with this Contract. The Principal may reduce any customs duties payable in relation to this Contract through the EPBS. The Supplier must pass on to the Principal any customs duties savings as a result of the EPBS and any other concessions on customs duties.

20.2 The Supplier must co-operate fully with and assist the Principal in the reduction of customs duties payable under this Contract.

20.3 Section 152(1)(a) of the Customs Act 1901 (Cth) does not apply to this Contract.

21. PPS Act

21.1 Words used in this Contract which have a defined meaning in the PPS Act have the same meaning as in the PPS Act unless the context otherwise indicates.

21.2 Where the Principal determines that a Security Interest is created the Supplier must, at its own cost, take all action required by the Principal which is reasonably necessary in the opinion of the Principal to:

- (a) enable the Principal to register the Security Interest on the PPS Register and perfect the Security Interest with the highest ranking priority possible under the PPS Act, including enabling the Principal to have possession or control of the subject of any Security Interest,

where it is possible to do so under the PPS Act;

- (b) maintain the effectiveness of, and protect the priority of, the Security Interest under the PPS Act; and
- (c) enable the Principal to exercise its rights in connection with the Security Interest.

21.3 For the purposes of section 275(6) or any other provision of the PPS Act, the Supplier and the Principal agree that no information may be disclosed in accordance with section 275(1) of the PPS Act.

21.4 The Principal is not required to provide any notice under the PPS Act unless the notice is required by the PPS Act and cannot be excluded.

22. GST

22.1 Terms used in this clause 22 have the meanings used in the GST Act. The following terms have the meanings set out below:

- (a) **GST Supplier** means, in respect of a particular supply made under this Contract, the party entitled to payment for that supply.
- (b) **Recipient** means, in respect of a particular supply made under this Contract, the party providing consideration for that supply.

22.2 The Supplier must be registered for GST purposes and must notify the Principal immediately if at any time it is not registered.

22.3 Except as otherwise expressly provided in the Order, any amount payable or consideration to be provided under this Contract for a supply (as reduced in accordance with clause 22.5) (**Agreed Amount**) is exclusive of GST.

22.4 Any additional amount will be payable by the Recipient, equal to the amount of GST payable on that supply as calculated by the GST Supplier in



accordance with the GST Law and payable at the same time and in the same manner as for the Agreed Amount.

- 22.5 If, for any reason, the GST payable by the GST Supplier in respect of a supply it makes under this Contract (incorporating any increasing adjustments or decreasing adjustments relating to that supply) varies from the additional amount it receives from the Recipient under clause 22.3 in respect of that supply, the GST Supplier will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate).
- 22.6 Notwithstanding any other provision of this Contract, any amount payable for a supply made under this Contract which is calculated by reference to a cost, expense or other amount paid or incurred by a party will be reduced by an amount equal to any Input Tax Credits to which that party is entitled to in respect of that cost, expense or other amount.
- 22.7 Notwithstanding any other provision of this Contract the Principal is not obliged to pay any amount to the Supplier unless and until the Supplier issues a Tax Invoice and (if required) an adjustment note in respect of that amount.

23. Requirement for ACN

Unless section 12-190(1)(b) of the A New Tax System (Pay as You Go) Act 1999 (Cth) applies, the Supplier is required to be registered for an ACN and must notify the Principal of its ACN. If for any reason the Supplier ceases to be ACN registered, the Supplier must notify the Principal within 7 days.

24. No Consequential Loss

- 24.1 Subject to clause 24.2 but notwithstanding anything else in this Contract to the contrary, neither the Principal nor the Supplier shall be liable to each other for any consequential loss or damages of

any nature whatsoever whether based on contract, warranty, tort (including negligence) or otherwise including (but not limited to) those arising out of delay, loss of product, loss of production, business interruption, loss of revenue or loss of profits howsoever arising and the Principal and the Supplier agree that such loss or damages will not be claimed as direct loss or damage.

- 24.2 Nothing in this Contract limits the Supplier's liability to the Principal for any loss or liability in connection with personal injury, death, property damage, breach of Intellectual Property rights, Third Party Claims or fraud of the Supplier or its Personnel.

25. Business ethics

- 25.1 The Supplier represents and warrants that, in connection with this Contract, neither it nor its Personnel have done anything that would be an Anti-Bribery & Corruption Law Violation, that it will at all times comply with the Anti-Bribery & Corruption Laws and it has appropriate procedures in place to ensure that it and its Personnel comply with Anti-Bribery & Corruption Laws.
- 25.2 The Supplier must properly record all transactions in relation to this Contract and maintain accurate books and records for an appropriate period of time.
- 25.3 If the Principal determines, acting reasonably, that the Supplier has breached this clause 25 it may terminate this Contract without liability and without regard to any waiting periods or cure periods specified in this Contract.
- 25.4 The Supplier must require its subcontractors to agree to and comply with contractual provisions substantially identical to those contained in this clause 25.

26. Privacy



26.1 Each party agrees to comply with their obligations under the Privacy Act 1988 in respect of personal information (as defined in that Act) obtained by or disclosed to them pursuant to this Contract.

26.2 This clause 26 survives termination.

27. VOC

27.1 The Supplier acknowledges and agrees that:-

- (a) Prior to mobilising to Site, the Supplier must ensure that its Personnel have completed all necessary VOC training and assessments required in order to use or operate any fixed plant, mobile equipment and/or vehicles where this may be required as part of the Services.
- (b) The Principal will only accept VOC provided by registered training organisations or registered Worksafe training providers who are on the Principal's preferred vendor list.
- (c) The Supplier will be responsible for all costs and expenses associated with the Supplier's compliance with the Principal's VOC requirements and the Supplier agrees that it will not be entitled to back charge such costs and expenses to the Principal.
- (d) VOC training and assessments which are not completed by the Supplier in accordance with this clause 27 will not be accepted by the Principal and the relevant Personnel will not be permitted to operate fixed plant and/or mobile equipment on Site until the VOC training and assessment has been completed in accordance with the Principal's requirements.

27.2 VOC training and assessments will only be provided by the Principal's training department, or persons

authorised by the Principal's training department (at its cost), if:-

- (a) the Services will be performed by the Principal's Personnel; or
- (b) the Supplier's Personnel will only use or operate the Principal's equipment while performing the Services; or
- (c) the Principal's Representative authorises the Principal's training department to provide the VOC training and assessment at no cost to the Supplier; or
- (d) the fixed plant, mobile equipment or vehicles to be used or operated by the Supplier's Personnel are unique to the Principal and only available on Site.

28. Notice

28.1 Unless expressly stated otherwise in this Contract, all notices, certificates, consents, approvals, waivers and other communications (**Notices**) in connection with this Contract must be:

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;
- (c) signed or authorised by a duly authorised representative of the Principal or the Supplier (as appropriate); and
- (d) marked for the attention of the person referred to in the Order or notified by the party receiving the Notice.

28.2 Notices sent by email:

- (a) are taken to be signed by the named sender; and
- (b) need not be marked for attention in the way stated in clause 28.1(d). However, the email must state the first and last name of the sender.

28.3 Notices must be:



- (a) left at the address set out or referred to in the Order;
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Order;
- (c) sent by fax to the fax number set out or referred to in the Order;
- (d) sent by email to the address set out or referred to in the Order; or
- (e) given in any other way permitted by law,

however, if the intended recipient has notified a changed address, fax number or email address, then Notices must be to that address, fax number or email address.

28.4 Notices are taken to be received:

- (a) if sent by post, 3 Business Days after posting (or 7 Business Days after posting if sent from one country to another);
- (b) if sent by fax, at the time shown in the transmission report as the time that the whole fax was sent; or
- (c) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

28.5 Despite clause 28.4, if Notices are received or taken to be received under clause 28.4 after 5.00pm or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

29. Governing Law

Each Party submits to the non-exclusive jurisdiction of the courts of Western Australia (including the Federal Court) and courts of appeal from them. Each Party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

30. General

30.1 This Contract may be varied only by agreement in writing signed by the parties.

30.2 If any part of this Contract is, or becomes, void or unenforceable, that part is, or will be, severed from this Contract so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

30.3 A failure to exercise or delay in exercising any right, power or privilege by any party will not operate as a waiver of that right, power or privilege. A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of that right, power or privilege, or the exercise of any right, power or privilege. Any waiver must be in writing.

30.4 This Contract is governed by and is to be construed according to the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia and the courts of the Commonwealth of Australia.

30.5 This Contract constitutes the entire agreement between the parties with respect to the subject matter of this Contract and contains all of the representations, warranties, covenants and agreements of the parties in relation to the subject matter of this Contract as at the date of this Contract.



- 30.6 For the purposes of section 4A of the Civil Liability Act the Supplier and the Principal have made express provision in this Contract for their rights, obligations and liabilities under this Contract and to the maximum extent permitted by law they exclude the operation of the Civil Liability Act to the extent it would affect the operation of those express provisions.
- 30.7 Without limiting clause 30.6, Part 1F of the Civil Liability Act does not apply to any claim arising under or in connection with this Contract.
- 30.8 Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Contract and the transactions contemplated by it.



Annexure A - Special Conditions

1. Insurances

1.1 Supplier insurances

The Supplier is required, at its cost, to effect and maintain on an annual basis throughout the Term and any additional period specified in the Contract, with an insurer(s) acceptable to the Principal:

- (a) material damage insurance of the Supplier's plant and equipment, the Goods against physical loss, damage or destruction from any insurable risk with a limit of liability of not less than the full reinstatement or replacement value of the Supplier's plant and equipment and the Ancillary Goods, together with costs of demolition and removal of debris and consultants' fees;
- (b) General Public and Products Liability insurance covering Liabilities relating to death, bodily injury and loss of and/or damage to property in the amount of \$20,000,000 in respect of any one occurrence and in the aggregate with respect to Products Liability;
- (c) Comprehensive Motor Vehicle insurance at market value and third party liability insurance in the amount of \$20,000,000 for any one claim and any one event;
- (d) workers' compensation and employers' liability insurances covering all Liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee of the Supplier or any person deemed to be an employee of the Supplier;

- (e) where applicable to the Supplier or requested by the Principal, Professional Indemnity Insurance in respect of professional services in the amount of no less than \$5,000,000 per claim and \$10,000,000 in the aggregate. Such insurance must be maintained for at least 7 years following the termination of the Contract; and
- (f) such other insurance(s) as the Principal determines reasonably necessary or as required by Law, in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract, **(Supplier Insurances)**.

1.2 Endorsement of Supplier Insurances

- (a) The insurances outlined in Clauses 1.1(b) and 1.1(c) and (if applicable) 1.1(f) must, unless prohibited by Law, be endorsed to:
 - (i) include the Principal as a named insured for the Supplier's act, error or negligence arising out of the performance of the Contract;
 - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
 - (iii) waive all express or implied rights of subrogation against the Principal arising out of the performance of the Contract; and
 - (iv) include a clause that provides that a breach of a condition or term of



insurance by one insured will not adversely affect the cover provided to another insured under the policy.

- (b) In addition, the insurance outlined in Clause 1.1(b) must, unless prohibited by Law, be endorsed to cover "goods in the physical and legal control of the Supplier" for an amount not less than the value of the "goods" held off the Site.
- (c) The insurance outlined in Clause 1.1(d) must, unless prohibited by Law, be endorsed to:
 - (i) indemnify the Principal against any liability which it may incur to the Supplier's employees, arising by virtue of the applicable workers' compensation statute or regulations for act benefits and at common law;
 - (ii) extend to include employees underground if any of the work under the Contract is to be performed underground;
 - (iii) provide cover in respect of each and every claim for an amount not less than the minimum statutory requirements; and
 - (iv) waive all express or implied rights of subrogation against the Principal and its Personnel.

1.3 Sub-contractors' insurance

The Supplier must ensure that its sub-contractors have the benefit of, or effect and maintain insurances similar to, the Supplier Insurances required to be effected by the Supplier.

1.4 Insurance terms

- (a) At least 5 Business Days prior to the Commencement Date the Supplier must provide the Principal with an insurance certificate of currency or such evidence as the Principal may reasonably require that the Supplier and its Sub-contractors are insured in accordance with the Contract.
- (b) In the event that the Supplier fails to, or fails to ensure that its sub-contractors, effect or keep in force any of the insurances required pursuant to the Contract, the Principal may do one or more of the following:
 - (i) effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Supplier;
 - (ii) refuse the Supplier and its Personnel access to all or any part of the Site; or
 - (iii) treat the failure to insure as a default under the Contract.
- (c) All Supplier Insurances must not be varied to the detriment of the Principal or its Personnel, cancelled or allowed to lapse unless the Supplier has received a written consent from the Principal.

1.5 Notification under Supplier's policy

If the Supplier becomes aware of an event which may give rise to a claim involving the Principal under any policy of insurance affected by the Supplier as required by this Clause 1, the Supplier must notify the Principal and must ensure that the Principal is kept fully informed of subsequent action or developments concerning the claim.



1.6 Insurance claims and payment of insurance excess

- (a) The Supplier will be responsible for the payment of any excess or deductible relating to the insurances affected by the Supplier and the Supplier will not be entitled to recover from the Principal any excess or deductible so paid by the Supplier.
- (b) The Supplier will be responsible for the payment of any excess or deductible relating to the insurances affected by the Supplier where the Principal makes a claim under such policy, to the extent that the Principal determines that the Supplier or any of its Personnel were responsible for the loss or damage.

1.7 Survival of Clause

This Clause 1 will survive the expiry or earlier termination of the Contract.

For Sole Traders

Clause 1.1 of the annexure shall not apply where the Supplier is a sole trader and unable to obtain workers' compensation insurance.

For Geo Services

In the case of professional services (as nominated on the Order) in the nature of geological, geophysical or geotechnical services, the professional indemnity insurance maintained must have a limit of indemnity of not less than \$500,000.

2. For use for Hire of Goods

Notwithstanding anything contained in the standard terms & conditions, the following provisions apply where the Services comprise the hire of Goods by the Principal:

- 2.1 Without limiting any other warranty or obligation under this Contract, the Supplier warrants that it has provided to the Principal all information relating to:

- (a) the operating instructions or other relevant documentation for the Goods;
- (b) any dangers associated with the Goods;
- (c) the manufacturer's specifications; and
- (d) any procedures necessary to ensure that persons properly using the Goods are not exposed to hazards.

- 2.2 Unless otherwise stated on the Order, the Supplier must provide the following maintenance services to ensure that the Goods are available for use and operation by the Principal at all times in accordance with this Contract:

- (a) compliance with the recommended maintenance procedures set out in the technical manuals and operating instructions for the Goods;
- (b) execution of all service and repair activities, including scheduled periodic services, minor and major repairs, mutually agreed accident damage and mutually approved modifications;
- (c) supply and maintenance of spare parts, materials, lubricants and consumables (other than petroleum fuels); and
- (d) compliance with any statutory maintenance requirements.

- 2.3 Upon:

- (a) delivery of the Goods to the Site, the Principal shall determine and record the condition of the Goods. The Principal shall provide a copy of this record to the Supplier; and
- (b) the expiry of the Term and prior to the Goods being returned to the Supplier:



- (i) the Goods will be inspected by the Principal and the Supplier; and
 - (ii) the Principal and the Supplier shall agree any material change in the condition of the Goods from that previously recorded.
- 2.4 The Principal and the Supplier acknowledge that title and risk in the Goods remains with the Supplier at all times during the Term.
- 2.5 If the Goods comprise motor vehicles, the Supplier must insure those Goods in accordance with clause 1.3 of the annexure.
- 3. For Services on Site**
- 3.1 Subject to the compliance by the Supplier with the terms of this Contract, the Principal must give the Supplier non-exclusive access to the Site as and when reasonably required to enable the Supplier to supply the Services.
- 3.2 The Supplier shall be responsible for:
 - (a) mobilisation to the Site of the Supplier's equipment, the Supplier's Personnel, the Supplier's facilities and all other items required to be supplied or provided by the Supplier under this Contract. Mobilisation includes all unpacking time, upon arrival on-Site, and until commencement of Services; and
 - (b) demobilisation of the above upon completion of the Services. Demobilisation includes all packing up and office/laydown area, Site clean-up from completion of the Services and departure from Site.
- 3.3 The Supplier acknowledges and agrees with the Principal that:
 - (a) the Principal remains in possession of the Site at all times; and
 - (b) the Principal retains overriding control of the Site and all persons within the Site.
- 3.4 Where the supply of Services requires the Supplier to enter the Site, the Supplier and its Personnel must comply with the Site Rules, Safety Management Plan and any other policies and procedures of the Principal relevant to activities occurring on the Site.
- 3.5 It is the Supplier's responsibility to ensure it is aware of, and familiar with, the most recently amended, updated or replaced Site Rules, Safety Management Plan, policies and procedures of the Principal; and bringing to the attention of its Personnel the information contained in those items.
- 3.7 The Supplier, before mobilising Site-based Personnel, must comply with the Principal's Site Access Request Process and rules and policies of the Principal.
- 3.8 The Supplier and the Supplier's Personnel must continue to be in compliance with Site Rules, Safety Management Plan, policies and procedures and Site Access Request Process during the provision of the Services and should non-compliance occur:
 - (a) the Principal may, in its discretion, deny or restrict access to the Site;
 - (b) the Supplier must correct the non-compliance promptly;
 - (c) the Supplier must take any necessary steps to avoid it happening again; and
 - (d) the Supplier must remove the person responsible for the non-compliance from the Site or any other premises of the Principal.
- 3.9 On reasonable request from the Principal for health, safety or environment reasons, the Supplier must remove and replace any Personnel, equipment or materials



from the Site at its cost. If not removed within 7 days, the Principal may remove the items at the Supplier's cost.

4. Modern Slavery Compliance

- 4.1 The Supplier represents and warrants that neither it nor its Personnel has or will engage in Modern Slavery and will ensure that it has appropriate policies and procedures in place to prevent the breach of Modern Slavery Laws in any of its operations or supply chain.
- 4.2 The Supplier must notify the Principal as soon as possible (and in any case, within 5 days) of becoming aware of any actual or potential breach of Clause 4.1.
- 4.3 The Principal may, on reasonable notice and at its sole expense,

conduct an audit of the Supplier operations and/or supply chains for the purpose of verifying the Supplier's compliance with Modern Slavery Laws. The Supplier will do all things reasonably requested of it to facilitate the administration of this audit.

- 4.4 If any issues are identified in the audit undertaken under clause 4.3 which in the reasonable opinion of the Principal would constitute a breach by the Principal of a Modern Slavery Law, the Supplier must take immediate steps to remedy the issue.