

Sino Iron Pty Ltd Standard Terms & Conditions (2008)

1 Definitions

1.1 In this Agreement, unless the context otherwise requires:

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

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

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 Agreement or specifically incorporated by reference;

Principal means:

- (a) Sino Iron Pty Ltd (ABN 31 058 429 708) of Level 12, 99 St Georges Tce Perth;
- (b) CITIC Pacific Mining Management Pty Ltd (ABN 64 119 578 371) of Level 12, 99 St Georges Tce Perth; and
- (c) any Related Body Corporate (as defined in the Corporations Act 2001 (Cth)) of Sino Iron Pty Ltd;

;

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

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

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

Contract Price means the amount payable by the Principal to the Contractor under this Agreement as may be varied in accordance with this Agreement and includes, without limitation, all costs and expenses incurred by the Contractor in relation to the Services, including any applicable sales tax, customs duties, fringe benefit tax, 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 Agreement;

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 Contractor which arises out of, or is caused by, the supply or non-supply of the Services by the Contractor;

ERMS means the Principal's Internet based resource management system. The system defines and controls a range of project procedures that must be followed by the Contractor when seeking to mobilise personnel for the project. Such procedures and controls cover: prescribed recruitment procedures, the verification and approval of project personnel, mandatory pre-mobilisation requirements, mobilisation and demobilisation of personnel. ERMS also provides project managers with timely reports to monitor project performance and ensure labour readiness;

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;

GST means goods and services tax levied or imposed in Australia pursuant to the New Tax System (Goods and Services Tax) Act 1999 (Cth);

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 similar conditions;

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

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;

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

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

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

Services means the work to be performed by the Contractor as specified in this Agreement, 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 Principal or agreed between Principal and the Contractor in writing;

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

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 dealing with health and safety, environmental protection, fire prevention, security, alcohol and drugs and emergencies, as amended in accordance with this Agreement;

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

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 12;

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 Contractor.

1.2 Where two or more persons are included in the term Contractor, then the obligations on their part will bind and be observed and performed by them jointly and each of them severally.

1.3 Time will be of the essence of this Agreement in all respects.

1.4 If there is any conflict or inconsistency, this Agreement will be interpreted in the manner most likely to have been intended by Principal.

2 Acceptance of Agreement

2.1 The Principal engages the Contractor to perform the Services, but this Agreement does not confer upon Contractor 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 Contractor's acceptance of this Agreement, is void and of no force or effect unless:

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

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

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

2.6 Contractor accepts full responsibility for any information it has used, including any conclusions arrived at from the information, and agrees to notify Principal if it finds any

- errors, omissions or inconsistencies in information provided by Principal.
- 2.7 Except as prescribed by applicable law, Principal gives no warranty of accuracy, sufficiency or otherwise in relation to information provided to Contractor and disclaims all responsibility for such information.
- 2.8 Contractor'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 Contractor from its liability to perform its obligations under this Agreement and shall not justify any claim for a variation or otherwise.

3 Price and Payment

- 3.1 The Principal must pay the Contractor the Contract Price for the Services. Where no Contract Price is indicated in the Order or other document annexed to this Agreement or specifically incorporated by reference, the price payable by the Principal to the Contractor shall be a fair and reasonable price for the Services.
- 3.2 The Contract Price shall not exceed the amount specified in the Order unless first approved by the Principal in writing.
- 3.3 The Contractor 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:
- the Order number;
 - a brief description of the Services supplied;
 - the period in which those Services were supplied;
 - 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
 - such other accurate verification documentation as may be requested by the Principal.
- 3.4 Subject to Clause 3.5, 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 3.3).
- 3.5 If the Principal disputes any amount claimed by the Contractor to be due and payable, the Principal will notify the Contractor 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.
- 3.6 The Contractor acknowledges that taxation and taxes on Goods, including goods and services taxes vary from time to time and the Contractor shall assist the Principal in keeping such payments on Goods and Services to the prescribed minimum. In relation to any taxation payable by the Contractor, the Contractor shall provide, where appropriate, written evidence of its tax status and any exemption from taxation.
- 3.7 The Principal may deduct from any payment or moneys due or becoming due to the Contractor all costs, charges, damages, liquidated sums, expenses and other moneys which are payable by or to be reimbursed by Contractor to the Principal.

4 Warranties and obligations

- 4.1 The Contractor must:
- 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;
 - obtain all applicable permits, licences, exemptions, consents and approvals required for the Contractor to perform the Services;
 - 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;
 - 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 Contractor and any other person;
- 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; and
- 4.2 Without limiting any other warranty or obligation under the Agreement, the Contractor represents and warrants to the Principal as follows in relation to the Services and each part of the Services:
- 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 services similar to the Services;
 - 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.
 - 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;
 - any Goods shall:
 - be fit for their intended purpose;
 - be free of defects in materials, workmanship and design;
 - be in good working order and condition in the manner for which they were intended;
 - 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;
 - be performed or manufactured strictly in accordance with any manufacturing drawings, specifications or description supplied to the Contractor by the Principal;
 - be free of defect or failure or malfunction (except to the extent attributable to wrongful use or failure to maintain); and
 - be new unless specified otherwise; and
 - 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.

5 Performance by Contractor

- 5.1 The parties acknowledge and agree that the relationship between the Principal and the Contractor is that of principal and independent contractor.
- 5.2 Nothing in this Agreement will be deemed to constitute the Contractor nor any of its Personnel an employee, partner, agent or representative of the Principal and the Contractor 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 Contractor 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 Contractor 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 Contractor's personnel, subcontractors or suppliers have not been paid by the Contractor, then the Principal may, in its discretion, withhold from any payment otherwise due to the Contractor under this Agreement an amount which the Principal reasonably

believes to be due and owing but unpaid to the Contractor'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 Contractor.

- 5.6 The Contractor 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 Contractor's Personnel are temporarily unavailable to provide the Services, the Contractor will at the Principal's request replace that person with another person of equal skill and qualifications as approved by the Principal. In the event of such temporary unavailability, the Contractor will not be held responsible for any delays in the completion for the Services provided the Contractor notifies the Principal in writing of the delay, and the reason for the delay, promptly after its commencement.
- 5.8 The Contractor will supply all materials and equipment required to perform the Services, and, without limiting the representations and warranties set out in clause 4, the Contractor 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 Agreement, the Contractor will return to the Principal any materials, equipment or other property supplied by the Principal to the Contractor in the same condition that it was supplied save for an allowance for fair wear and tear.
- 5.10 The Contractor waives any lien 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 Contractor for the purposes of this Agreement.
- 5.11 Without limiting any requirements described in the Special Conditions, each of the Contractor's Personnel who will have access to the Site in order to perform the Services must pass the Principal's ERMS program 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 Agreement 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 Contractor are, in the Principal's opinion, incomplete or are not substantially in accordance with the requirements of this Agreement:
- the Principal will notify the Contractor of such deficiencies;
 - the Contractor must, at its cost, correct such deficiencies in the time specified by the Principal; and
 - if the Contractor 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 Contractor under this Agreement or otherwise recovered from the Contractor.
- 6.3 If the Principal determines that any remedial, protective, repair or other like works are required to prevent:
- loss or damage to the whole or any part of the Services;
 - loss or damage to any property;
 - personal injury to, or death of, any person; or
 - 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 Contractor.
- 6.4 The Contractor will conduct tests of the Services or part thereof as may be required under this Agreement 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 Agreement, and where this is confirmed by the results of the test, then the Contractor will pay the Direct Costs of the test.

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

7 Suspension or Delay

- 7.1 The Principal may by notice in writing to the Contractor 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 Contractor must immediately suspend the supply of those Services identified in the notice. When the reason for suspension no longer exists, the Principal Representative will direct the Contractor to recommence the supply of the Services, and the Contractor must comply with that direction as soon as is reasonably practicable.
- 7.2 The Contractor must do all things reasonably necessary to reduce any cost or expense consequent upon the suspension. The Principal will pay the Contractor'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 Contractor or its Personnel.
- 7.3 No suspension directed by the Principal or otherwise arising, shall vitiate this Agreement.
- 7.4 If the Principal's Representative is of the opinion that the Contractor will not be able to complete the Services or any part of the Services in accordance with this Agreement, then the Principal's Representative (without prejudice to the Principal's other rights under this Agreement) may instruct the Contractor to work overtime (including night shifts, Saturdays, Sundays and public holidays) and to provide all necessary additional labour, supervision and plant to achieve and maintain adherence to the agreed Services delivery schedule at no additional cost to the Principal, until such time as the performance of the Services is in accordance with the agreed Services delivery schedule. The Contractor must comply with any instruction from the Principal's Representative given in accordance with this clause 7.
- 7.5 To the extent that the Contractor is unable to perform all or any part of the Services in accordance with this Agreement 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).
- 7.6 If the Principal exercises its rights under clause 7.5 to source Alternative Services, the Contractor 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:
- due to the Contractor being subject to Force Majeure; or
 - as a direct result of an act or omission of the Principal.

- 7.7 The Principal must use reasonable endeavours in exercising its rights under clause 7.5 to source the Alternative Services at the minimum cost reasonably available.
- 7.8 Nothing in this clause 7 limits in any way the rights and remedies of the Principal under this Agreement or at law or in equity, in respect of any failure to complete the Services or any other failure by the Contractor to perform its obligations under this Agreement

8 Force Majeure

- 8.1 If a party is prevented from carrying out the whole or any part of its obligations under this Agreement 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.
- 8.2 Subject to clause 8.3, 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.
- 8.3 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 Agreement, 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.
- 8.4 It is expressly agreed that the following matters shall not constitute Force Majeure:
- lack of or inability to use funds for any reason;
 - 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;
 - 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 Agreement;
 - 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;
 - breakdown of Contractor's equipment;
 - strike or industrial action of Contractor's employees or those of Subcontractors; and
 - wet weather.
- 8.5 The Contractor agrees that the Principal may terminate this Agreement in whole or in part by notice to the Contractor if any event of Force Majeure has the result that the Contractor fails to deliver the whole or any part of the Services or otherwise is unable to comply with any of its obligations under this Agreement, 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).

9 Risk and title

- 9.1 Title in any Goods supplied under this Agreement passes upon delivery to the Principal or payment of the Contract Price, whichever occurs first.
- 9.2 All Goods shall be at the Contractor's risk until such Goods have been delivered to, and accepted by, the Principal at the Site.
- 9.3 Where any goods owned by the Principal are provided to the Contractor for the purposes of supplying the Services, property in and ownership of those goods remains with the Principal.
- 9.4 The Contractor hereby waives any liens it may have over the Goods which are delivered to the Principal pursuant to this

Agreement, and the Contractor will obtain a similar waiver from any relevant Personnel.

10 Insurance

- 10.1 The Contractor must provide the insurances set out in the Annexure hereto.
- 10.2 The Contractor 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 10.
- 10.3 The Contractor shall in accordance with clause 15.3 ensure that a similar provision for insurance is included in all contracts with sub-contractors and suppliers who supply Services to the Principal for the purposes of this Agreement.

11 Indemnity

The Contractor will be liable for, and will indemnify the Principal and its Personnel against, all Liabilities arising out of or in connection with:

- any Third Party Claims;
- the supply of Services under this Agreement;
- the presence of the Contractor or any of its Personnel on or about the Site; or
- any Employee Claims.

12 Termination

- 12.1 The Principal may at any time terminate this Agreement by giving the Contractor 5 days' written notice. If this Agreement covers standard Services, the Principal's liability will be to pay for Services delivered prior to termination. If this Agreement covers Services requiring Goods to be manufactured to the Principal's specification, upon receipt of notice of termination the Contractor must cease manufacture, supply or work and will do everything possible to mitigate all costs incurred by it from such termination. Provided that the Contractor is not in default (and has complied with the foregoing) the Principal shall pay to the Contractor:
- the reasonable costs incurred by the Contractor in performing this Agreement in respect of any undelivered or unpurchased goods prior to the date of the notice of termination; and
 - 6% of the above cost in lieu of profit, subject to the Contractor 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 Agreement shall not exceed the Contract Price.
- subject to the Contractor 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 Agreement shall not exceed the Contract Price.
- 12.2 The Principal may terminate this Agreement immediately upon giving the Contractor notice in writing if the Contractor breaches any term of this Agreement 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 levied against any of its property.
- 12.3 The Contractor may terminate this Agreement immediately upon giving the Principal notice in writing if the Principal:
- 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 Contractor identifying that breach and requiring remedy; 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 levied against any of its property.

13 Confidentiality

The Contractor 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 in fulfilling its obligations under this Agreement;
 - (b) not copy or otherwise reproduce any documents containing Confidential Information except as is necessary in fulfilling its obligations under this Agreement;
 - (c) on termination of this Agreement or on demand by the Principal return all documents containing any Confidential Information including any documents created by the Contractor which contain any Confidential Information;
 - (d) use its best endeavours to protect the confidentiality of the Confidential Information; and
 - (e) comply with all reasonable requests by the Principal regarding the protection of the Confidential Information.
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14 Intellectual Property

- 14.1 The Contractor warrants that in supplying the Services neither the Principal nor the Contractor will infringe the Intellectual Property of any third party.
 - 14.2 All Intellectual Property created by the Contractor (either by itself or jointly with any third party), in supplying the Services or otherwise pursuant to or incidental to this Agreement will be owned by the Principal. The Contractor 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.
 - 14.3 To the extent a licence to the Contractor'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 Contractor to the Principal under this Agreement, the Contractor grants such a licence to the Principal on a perpetual, transferable, irrevocable, non-exclusive and fully paid-up basis.
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15 Assignment and subcontracting

- 15.1 The Contractor shall not assign, novate or subcontract all or any part of this Agreement without the Principal's prior written consent which the Principal in its absolute discretion may refuse to give.
 - 15.2 No assignment or novation is effective until the assignee has agreed in writing with the Principal to perform the Contractor's obligations under this Agreement.
 - 15.3 No sub-contract shall in any way relieve the Contractor from full and entire responsibility for the performance of its obligations under this Agreement. The Contractor shall be liable for all acts, errors and omissions of its subcontractors or suppliers. The Contractor shall make any sub-contract subject to the conditions of this Agreement to the extent that they may be applicable.
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16 Disputes

If there is any dispute between the parties concerning or arising out of this Agreement, 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 16 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 Agreement for the purpose of seeking urgent interim or interlocutory relief.

17 Local Content

- 17.1 The Contractor shall, in performance of the Agreement - except in those cases where the Contractor can demonstrate it is impracticable so to do, use goods and services available within Western Australia or if such goods and services is not available then, except as aforesaid, use goods and services otherwise available within Australia.
 - 17.2 Contractor 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 Agreement 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.
 - 17.3 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 Contractor 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.
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18 Indigenous Employment Opportunities

- 18.1 The Contractor acknowledges the Principal's commitment to the employment of Aboriginal people in connection with the project. The Contractor is encouraged to adopt a proactive policy with respect to the employment of Aboriginal people in connection with the Agreement and, in particular, to:
 - (a) adopt Indigenous employment and equal opportunity strategies associated with the contract;
 - (b) demonstrate a commitment to Aboriginal employment and local Aboriginal community capacity building; and
 - (c) demonstrate a commitment to support Aboriginal enterprises where possible, including, but not limited to, the engagement of Aboriginal enterprises as sub-contractors or Contractors.
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19 Customs Duty and Enhanced Project Bylaw Scheme

- 19.1 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 Contractor with the Services in accordance with the Agreement. The Principal intends to reduce any Customs Duties payable in relation to this Agreement through the Enhanced Project Bylaw Scheme. The Contractor must pass on to the Principal any Customs Duties savings as a result of the Enhanced Project Bylaw Scheme and any other concessions on Customs Duties.
 - 19.2 The Contractor must co-operate fully with and assist the Principal in the reduction of Customs Duties payable under this Agreement.
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20 No Consequential Loss

- 20.1 Subject to clause 20.2 but notwithstanding anything else in this Agreement to the contrary, neither the Principal nor the Contractor 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 Contractor agree that such loss or damages will not be claimed as direct loss or damage.
- 20.2 Nothing in this Agreement limits the Contractor's liability to the Principal for any loss or liability in connection with

personal injury, property damage, third party claims or fraud of the Contractor or its personnel.

21 General

- 21.1 This Agreement may be varied only by agreement in writing signed by the parties.
- 21.2 If any part of this Agreement is, or becomes, void or unenforceable, that part is, or will be, severed from this Agreement 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.
- 21.3 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.
- 21.4 This Agreement 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.
- 21.5 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and contains all of the representations, warranties, covenants and agreements of the parties in relation to the subject matter of this Agreement as at the date of this Agreement.
- 21.6 All notices and other documents given pursuant to this Agreement must be in writing and may be given by personal delivery or prepaid post to the party to whom the notice is addressed at its address shown in this Agreement or such other address as it may have notified to the other party

Annexure A - Special Conditions

Insurance

- I.1 The Contractor must insure its liability against all Employee Claims. The insurance must:
- comply with all statutory requirements including providing any compulsory statutory workers' compensation benefits including industrial disease insurance relevant to the applicable Site;
 - provide common law liability to a limit of not less than \$50,000,000 in relation to any one occurrence and unlimited as to the number of occurrences; and
 - be extended to indemnify the Principal as principal for Employee Claims.
- I.2 The Contractor must insure against all Third Party Claims. The insurance must:
- provide cover to an amount of \$20,000,000 in respect of any one claim and unlimited as to the number of claims;
 - include the Principal as an additional insured;
 - include a cross liability endorsement that:
 - all agreements and endorsements except limits of liability shall operate in the same manner as if there were a separate policy of insurance covering each party insured; and
 - a failure by any insured party to observe and fulfil the terms and conditions of the policy shall not prejudice the rights of any other insured party; and
 - provide a waiver by the insurer of all rights of subrogation, action or relief against any of the insured parties.
- I.3 The Contractor must ensure that all items of the Contractor's equipment used or brought onto the Site are insured and that items which are licensed as motor vehicles, or which are required to be so licensed, are kept licensed in accordance with any laws, and insured against Third Party Claims under a comprehensive motor vehicle third party liability policy. The limit of liability shall be not less than \$10,000,000 any one occurrence and unlimited as to the number of occurrences. In addition, where the use of vehicles is required to be insured by virtue of any act or ordinance relating to the use of such vehicles, Contractor shall ensure full compliance with such requirements.
- I.4 Where the Services include professional services (as nominated on the Order), the Contractor must arrange and maintain, at its own expense, for the duration of this Agreement, professional indemnity insurance for a limit of indemnity of not less than \$2,000,000.

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.
- SC1 Without limiting any other warranty or obligation under this Agreement, the Contractor warrants that it has provided to the Principal all information relating to:
- the operating instructions for the Goods;
 - any dangers associated with the Goods;
 - the manufacturer's specifications; and
 - any procedures necessary to ensure that persons properly using the Goods are not exposed to hazards.
- SC2 Unless otherwise stated on the Order, the Contractor 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 Agreement:
- compliance with the recommended maintenance procedures set out in the technical manuals and operating instructions for the Goods;
 - execution of all service and repair activities, including scheduled periodic services, minor and major repairs, mutually agreed accident damage and mutually approved modifications;
 - supply and maintenance of spare parts, materials, lubricants and consumables (other than petroleum fuels); and

- compliance with any statutory maintenance requirements.
- SC3 Upon:
- 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 Contractor; and
 - the expiry of the Term and prior to the Goods being returned to the Contractor:
 - the Goods will be inspected by the Principal and the Contractor; and
 - the Principal and the Contractor shall agree any material change in the condition of the Goods from that previously recorded.
- SC4 The Principal and the Contractor acknowledge that title and risk in the Goods remains with the Contractor at all times during the Term.
- SC5 If the Goods comprise motor vehicles, the Contractor must insure those Goods in accordance with clause I.3 of the annexure.
- SC6 Except as amended by this Special Condition, clause 10 of the standard terms & conditions applies.

For Sole Traders

Clause I.1 of the annexure shall not apply where the Contractor 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.

For Services on Site

- S.1 Subject to the compliance by the Contractor with the terms of this Agreement, the Principal must give the Contractor access to the Site as and when required to enable the Contractor to supply the Services.
- S.2 The Contractor shall be responsible for:
- mobilisation to the Site of Contractor's equipment, Contractor's Personnel, Contractor's facilities and all other items required to be supplied or provided by Contractor under this Agreement. Mobilisation includes all unpacking time, upon arrival on-Site, and until commencement of Services.
 - demobilisation of the above upon completion of the Services. Demobilisation includes all packing up and office/laydown area, Site cleanup from completion of the Services and departure from Site.
- S.3 The Contractor acknowledges and agrees with the Principal that:
- the Principal remains in possession of the Site at all times;
 - the Principal retains overriding control of the Site and all persons within the Site.
- S.4 Where the supply of Services requires the Contractor to enter the Site, the Contractor 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 as notified by the Principal to the Contractor from time to time, which are incorporated into this Agreement.
- S.5 The parties acknowledge the notification described in paragraph S.4 above may occur by the Principal posting those items on its website. The Contractor is responsible for bringing to the attention of its Personnel the information contained in those items.
- S.6 The Principal may amend its Site Rules, Safety Management Plan and any other of its policies and procedures described in paragraph S.4 by posting amendments or updated copies of those items on its website. The Contractor must comply with such amendments from the time that notice of the amendments are published.

- S.7 The Contractor, before mobilising Site-based Personnel, must comply with the Principal's ERMS program.
- S.8 Contractor and Contractor's Personnel must continue to be in compliance with ERMS during the provision of the Services and should non-compliance occur the Contractor must:
- (a) correct the non-compliance promptly;
 - (b) take any necessary steps to avoid it happening again; and
 - (c) remove the person responsible for the non-compliance from the Site or any other premises of the Principal.