

## PURCHASE ORDER TERMS AND CONDITIONS

The parties agree as follows;

### 1 Parties and Contract

1.1 This Contract is comprised of;

- (a) the purchase order to which these terms and conditions of contract are annexed (**Purchase Order**);
- (b) these terms and conditions; and
- (c) such other documents which are incorporated into the Contract by reference, (together, the **Contract**).

1.2 The parties to this Contract include;

- (a) The KOP Ventures Pty Ltd (ABN 35 604 932 676) (**Company**); and
- (b) The contractor supplying the Goods or performing the Services, or both as identified in the Purchase Order (**Contractor**), (each a party and together the parties).

1.3 The extent permitted by Law and to the extent the Contractor's terms and conditions are supplied to the Company in respect of the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order (even if any representative of the Company signs those terms and conditions or annexes the terms and conditions to this Purchase Order); and

1.4 Where this Purchase Order relates to Goods and/or Services the subject of a contract between the Contractor and the Company, the terms of that contract apply to the extent of any inconsistency with these Purchase Order Terms and Conditions.

### 2 Scope

2.1 The Contractor must supply and deliver the Goods or perform the Services or both in accordance with the terms of this Contract. The Contractor's obligations, include;

- (a) supplying all labour, supervision, personal protective equipment, plant and equipment, goods, materials, services and all other things necessary to supply the Goods and perform the Services, except as otherwise provided in the Contract; and
- (b) complying with all other obligations set out in this Contract.

2.2 For the purposes of this Contract;

- (a) **Goods** mean those goods as specified and described in the Purchase Order; and
- (b) **Services** mean those services as specified and described in the Purchase Order (including any part of the specified services and any ancillary services).

2.3 The Contractor must, in supplying the Goods or

performing the Services;

- (a) not interfere with the Company's activities or the activities of any other person at the Delivery Point or the Site and ensure that our site is left clean;
- (b) be aware of and comply with, and ensure that the Contractor's Personnel are aware of and comply with:
  - (i) all applicable Laws;
  - (ii) all Site Standards and Procedures to the extent that these documents are applicable to the supply of the Goods or the performance of the Services by the Contractor; and
  - (iii) all lawful directions and orders given by the Company's representative or any person authorised by Law or the Site Standards and Procedures to give directions to the Contractor;
- (c) ensure that the Contractor's Personnel entering the Site perform the Services or deliver the Goods in a safe manner and in a way that does not prejudice safe working practices, safety and care of property and continuity of work at the Site;
- (d) provide all such information and assistance as the Company reasonably requires in connection with any statutory or internal health and safety, environment or community investigation in connection with the Purchase Order, the supply of the Goods or the performance of the Services;
- (e) on request by the Company, provide to the Company and its Personnel any information and assistance required to identify, evaluate, implement and report on any matter required by Law in respect of anything used, produced or created in connection with the performance of the Contractor's obligations under this Purchase Order; and
- (f) comply with any induction requirements in relation to the Site notified by the Company.

2.4 The Contractor is responsible for mobilisation and demobilisation to and from the Gabanintha (Mine) or other location nominated in the Purchase Order of its personnel and all other items required to be supplied by the Contractor under this Contract;

2.5 The Contractor must not carry out a variation nor deviate from this Contract except as directed or permitted in writing by the Company; and

2.6 The Company may direct a variation to the scope of the Contract (provided that the variation is not fundamentally different to the original scope of Contract) and the Contractor must comply with that direction. Variations will be priced by written agreement or in accordance with the lowest reasonable rates and prices. If the Contractor considers that it has been directed by the Company to carry out a variation, it must give notice in writing to

the Company within 7 days after the direction.

### **3 Commencement, Progress and Completion**

- 3.1 The Contractor must deliver the Goods to the Delivery Point on or before the Delivery Date or complete the Services by the date specified in the Contract (**Completion Date**) or both. The Contractor must keep the Company informed on all aspects of the performance of the Contract as required from time to time;
- 3.2 The Contractor must ensure that the goods are suitably packed to avoid damage in transit or in storage and in such a way to comply with any applicable Laws;
- 3.3 Packages must be marked with the Purchase Order number, item number, Delivery Point, contents, quantity, date and method of dispatch and weight of each package;
- 3.4 The Contractor is only entitled to an extension to the Delivery Date for delivery of the Goods or the Completion Date for delivery of the Services (as applicable) if it;
  - (a) is or will be delayed in delivering the Goods by the Delivery Date or completing the Services by the Completion Date or both due to a delay caused by the Company; and
  - (b) within 7 days after any delay caused by the Company, the Contractor gives the Company a written claim for an extension of time including details of the facts constituting the delay and the extent of the delay.
- 3.5 An extension to the Delivery Date or the Completion Date is the Contractor's sole remedy for a delay. Nothing in this clause 3 will cause the Delivery Date or the Completion Date to be set at large.

### **4 Contract Price**

- 4.1 In consideration or payment of the Contract Price by the Company, the Contractor must supply the Goods and /or provide the Services to the Company in accordance with, and as specified in, this Contract;
- 4.2 The Contract Price is the sole basis for payment to the Contractor under this Contract and is deemed to include all risks, liabilities and obligations expressed or implied in this Contract. Except as expressly provided for in this Contract, the Contract Price is not subject to rise and fall or any escalation;
- 4.3 The Contract Price is inclusive of;
  - (a) all charges for packaging, packing, insurance and delivery of the Goods in accordance with this Purchase Order;
  - (b) the cost of any miscellaneous services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in the performance of (and in conjunction with) the Services;

- (c) the Contractor's compliance with its obligations under this Purchase Order; and
- (d) all Taxes.

### **5 Invoicing and Payment**

- 5.1 On delivery of the Goods and/or completion of the Services, the Contractor must provide to the Company:
  - (a) a Contractor Reference Document;
  - (b) if the Company directs, an Invoice which meets all the requirements of a valid invoice for Consumption Tax purposes in a relevant jurisdiction, which must include the information set out in clause 5.3.
- 5.2 The Contractor must provide the Contractor Reference Document and the invoice using an electronic invoicing system if directed to by the Company;
- 5.3 Any Contractor Reference Document or Invoice must include the following details;
  - (a) a reference to this Purchase Order and the relevant contract (if any) including the line item numbers on this Purchase Order and the contract number;
  - (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services and the relevant quantity of the Goods and/or Services;
  - (c) an individual reference number for the Company to quote with remittance of payment;
  - (d) the Contract Price relating to the Goods and/or Services, broken down to reflect the same Contract Price components on this Purchase Order, including the amount of any applicable Consumption Tax; and
  - (e) Company operation, Site and Company contact name.
- 5.4 If the Company requests, the Contractor must provide the Company with all relevant records to calculate and verify the amount set out in any Contractor Reference Document or any Invoice;
- 5.5 The Company must pay all Invoices that comply with clause 5.3 within 25 days (or such other period as the Company's Representative and Contractor's Representative agree) of the date on which the relevant invoice is generated (in the case of a recipient created tax invoice) or the date on which the relevant invoice is received from the Contractor (in all other cases), except where the Company;
  - (a) is required by Law to pay within a shorter time frame, in which case the company must pay within that time frame;
  - (b) exercises any right to retain, withhold, reduce or set-off any amount due to the Contractor;
  - (c) disputes the Contractor Reference Document or Invoice, in which case;

- (i) to the extent permitted by Law, the Company may withhold payment of the disputed part of the Contractor Reference Document or Invoice pending resolution of the dispute; and
- (ii) if the resolution of the dispute determines that the Company must pay an amount to the Contractor, the Company must pay that amount upon resolution of that dispute; or
- (iii) is required by Law to withhold a portion of payment for services rendered by a foreign contractor.

5.6 The Company may reduce any payment due to the Contractor under this Purchase Order by any amount which the Contractor must pay the Company, including costs, charges, damages and expenses and any debts owed by the Contractor to the Company on any account whatsoever. This does not limit the Company's right to recover those amounts in other ways;

5.7 Payment by the Company to the Contractor will not constitute an admission by the Company that any Goods or Services have been delivered or performed to the Company's satisfaction (as applicable) and will only be taken to be payment on account.

## 6 Warranties

The Contractor warrants that:

- 6.1 at all times while performing its obligations under the Contract, it will:
- (a) exercise due skill, care and diligence expected of a skilled and experienced professional contractor;
  - (b) use properly skilled, qualified and experienced employees, agents and subcontractors (**Personnel**);
  - (c) hold all relevant approvals and licenses required for the performance of the Contract (including any third-party intellectual property licenses);
  - (d) comply with all relevant laws, applicable standards and codes (including any relevant standards published by the Standards Association of Australia) and
  - (e) without limiting the Contractor's obligations under clause 6.1(d), comply with any applicable Australian law, Code of Practice or Australian Standard that deals with occupational health and safety, workers' compensation, workplace rehabilitation and workplace insurance, including but not limited to the *Mines Safety and Inspection Act 1994 (WA)*, the *Occupational Health and Safety Act 1984 (WA)* and their associated regulations, codes of practice and guidelines and any Law made to replace or modernise these Laws, as applicable to the location where the Contractor is performing its obligations under this Contract;
- 6.2 it has examined all information and documents provided by the Company in connection with the

Contract and is satisfied with the sufficiency, clarity and suitability of that information and documentation for the purpose of performing its obligations under the Contract;

6.3 the Goods and Services supplied will:

- (a) match the description of the Goods and Services in this Purchase Order;
- (b) if the Contractor gave the Company a sample of the Goods before the Company issued this Purchase Order, the Goods correspond with the sample;
- (c) if the Contractor provided the company with a demonstration of the Services before the Company issues this Purchase Order, the Services correspond in nature and quality with the services that achieved that result;
- (d) comply with all applicable Laws;
- (e) be new and of merchantable quality;
- (f) be fit for their intended purposes set out in or which an experienced professional contractor would reasonably infer from the Purchase Order;
- (g) to the extent that the Services are design Services, the works being designed will be fit for their intended purpose as described in this Purchase Order;
- (h) any items which the Contractor uses or supplies in conjunction with the Services are of merchantable quality and comply with any standards specified in this Purchase Order and are fit for their usual and any purpose as described in this Purchase Order;
- (i) the Company has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must pursue any manufacturer's warranties on the Company's behalf if the Company so requests); and
- (j) be free from defects and omissions.

6.4 The Goods will;

- (a) be in good working order and condition;
- (b) have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable supplier;
- (c) be new unless specified otherwise;
- (d) be free from any encumbrance, charge or lien in favour of a third party at time specified in this Contract for title to pass to the Company;
- (e) be packaged and marked in accordance with the Company's requirements set out in the Contract, and
- (f) it will obtain all available warranties from its subcontractors and suppliers in relation to the Goods and Services and will assign the benefit of such warranties to the Company (and the

Company has the full benefit of any manufacturer' warranties).

## **7 Warranty Period**

7.1 Without limiting the Contractor's other obligations or warranties provided under the Contract, the Contractor guarantees the Goods and Services and each part of the Goods and Services against any defect or deficiency in design, workmanship or otherwise (Defect), under normal working conditions for a period of 12 months after the date of delivery and written acceptance of the Goods by the Company or the Completion Date of the Services, as applicable (Warranty Period),

7.2 If, during the Warranty Period, the Company finds any Defects in the Goods or Services (other than a Defect caused by the negligence of the Company), the Company may;

- (a) reject the Goods with the Defect and return them to the Contractor, in which case the Contractor must replace the Goods free of charge and reimburse the Company for any expenses incurred;
- (b) reject the Services with the Defect, in which case the Contractor must re-perform the Services free of charge; or
- (c) make good or engage another contractor to make good the Defect, in which case the Contractor must reimburse the Company for any expenses incurred.

7.3 If the Contractor does not replace the Goods pursuant to clause 7.2(a) or re-perform the Services pursuant to clause 7.2 (b) and (a):

the Company has already paid the Contractor for the Goods or Services with the Defect; the Contractor must repay the Company, the Price for those Goods or Services; or

(b) The Company has not already paid the Contractor for the Goods or Services with the Defect, the Company is not liable to pay the Contractor for those Goods or Services.

7.4 The acceptance of any Goods or Services with a Defect by the Company will not bind the Company to accept any other Goods or Services with a Defect and does not affect any of the Company's other rights under this Purchase Order or at Law; and

7.5 Where the Contractor has made good any Defect under this clause, those Goods or Services will be subject to the same Warranty Period as the original Goods or Services, from the date the Contractor made good the Defect.

## **8 Acceptance and change of Purchase Order**

8.1 The Contractor may request changes to this Purchase Order, by written notice to the Company contact specified in this Purchase Order, in response to which the Company may issue a changed Purchase Order. If the Company is unable or does not wish to accept the requested changes, the Company will cancel this Purchase Order.

## **9 Ending this Purchase Order**

9.1 The Company may cancel this Purchase Order for any reason upon written notice to the Contractor, and:

- (a) subject to clause 5, the Company must pay for any part of the Goods delivered or Services performed prior to the cancellation;
- (b) if the Contractor has shipped any Goods before the cancellation but the Goods have not been delivered to the Delivery Point at the date of cancellation, the Company may either:
  - (i) subject to clause 5, accept those Goods when delivered, and pay the Contract Price for them; or
  - (ii) return the Goods to the Contractor at the Company's expense;
- (c) if the Contractor has not shipped the Goods at the time of cancellation, on receiving the written notice of cancellation the Contractor must stop manufacture of the Goods in accordance with and to the extent specified in the notice, and do everything possible to mitigate any costs incurred in relation to the Goods; and

9.2 if clause 9.1(b)(ii) or 9.1(c) applies:

- (a) to the extent that the Goods were manufactured or fabricated in accordance with any specification prepared by the Contractor for the Company, the Company must reimburse the Contractor in respect of any expenditure reasonably incurred by the Contractor prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and which the Contractor is not able to recoup in some other way; and
- (b) the Contractor is not entitled to the Contract Price of those Goods or Services, or to any compensation for that cancellation other than as specified in clause 9.1(a).

## **10 Health and Safety**

10.1 Where the supply of Goods or Services requires the Contractor to enter the Mine, the Contractor and the Contractor's Personnel:

- (a) enter at their own risk; and
- (b) must perform the Services safely so as to protect persons and property, and in accordance with the Company's safety management system (**SMS**).

10.2 Before any work commences at the Mine, the Contractor must ensure that all Contractor's Personnel who enter the Mine have completed the Company's Mine site induction process;

10.3 The Contractor must consult, cooperate and coordinate activities with all other persons who have a duty under the applicable safety Laws in relation to the same matter;

10.4 The Contractor must immediately notify the Company upon the occurrence of any accident, incident or near miss accident or incident;

10.5 Within 24 hours of any accident or incident in which the Contractor was involved, the Contractor must provide the Company with a written report in a form approved by the Company and including a detailed chronology and description of events, root cause analysis and proposed remedial action; and

10.6 Prior to bringing any hazardous substance onto the Mine, the Contractor must ensure that the Company has approved the entry and use of the substance at the Mine.

## 11 Contractor's Personnel

11.1 The Contractor must engage and provide the services of all personnel who are required to ensure that the Services are carried out efficiently and in accordance with the Contract;

11.2 The Company may require the removal from the Mine of any of the Contractor's Personnel who, in the Company's reasonable opinion, is incompetent or lacks the experience necessary for the work assigned to that person, or who has breached any applicable Laws or the SMS. The Contractor shall, at its cost, promptly remove and replace such Personnel;

11.3 The relationship between the Company and the Contractor is that of principal and contractor. The Contractor and the Contractor's Personnel will not under any circumstances be considered servants, employees, or agents of the Company;

11.4 The Contractor indemnifies the Company against any liability, claim, loss, damage, cost or expense suffered or incurred by the Company in respect of the payment of salaries, wages, levies, commissions, allowances and other remuneration to the Contractor's Personnel and for any payments to authorities in respect of the Contractor's Personnel (including in respect of any tax (including payroll tax), superannuation or workers' compensation insurance)

11.5 The Contractor is at all times responsible for the provision of accommodation and messing, uniforms and safety equipment and flights and transport of the Contractor's Personnel, unless otherwise expressly specified in the Purchase Order. If accommodation and messing is supplied or arranged by, or on behalf of, the Company, the Contractor indemnifies the Company against any liability, claim, loss, damage, cost or expense suffered or incurred by the Company in connection with any loss or damage to any accommodation (or any part of the accommodation) and associated facilities and services caused or contributed to by the Contractor or the Contractor's Personnel.

11.6 The Contractor is responsible for the management of all industrial relations matters relating to the Contractor's Personnel and must keep the Company informed of any potential disputes with any Contractor's Personnel or unions.

## 12 Contractor's Equipment

12.1 The Contractor must maintain all its plant and equipment in a safe, operable and good working condition throughout the performance of the Contract.

Such plant and equipment must at all times comply with the relevant standards incorporated in the SMS.

12.2 The Contractor is at all times responsible for the provision of diesel fuel (**Fuel**), unless otherwise expressly specified in the Purchase Order. If Fuel is supplied by the Company for the Contractor's plant and equipment, then:

- (a) Fuel will only be supplied for the Contractor's plant and equipment engaged in the performance of the Services at the Mine;
- (b) only a reasonable quantity of Fuel will be made available, as determined by the Company;
- (c) vehicles and equipment which are registered for public road use and which regularly travel off the Mine will not be entitled to use Fuel supplied by the Company;
- (d) the Contractor must keep accurate records of all Fuel supplied and shall, if requested by the Company, assist in the Company's monthly reconciliation of Fuel usage at the Mine; and
- (e) the Company may audit any records of the Contractor relating to the consumption of Fuel for the purpose of determining whether there has been compliance with the Contract. If an audit reveals the Contractor's Fuel consumption exceeds the quantity reasonably required to perform the Services, having regard to its plant and equipment engaged in the performance of the Services, the price of the excess Fuel consumed (calculated on the basis of actual price per litre paid by the Company) will be a debt due to the Company from the Contractor.

## 13 Inspection and Testing

13.1 The Contractor must, upon reasonable written notice, provide the Company or its nominee access to the Contractor's premises, and arrange for access to any subcontractor premises, for the purpose of inspecting Goods and Services and ensuring compliance with the Contract. Any such inspection by the Company does not constitute acceptance or relieve the Contractor from any of its obligations under the Contract.

## 14 Title and Risk

14.1 Title in each part of the Goods passes to the Company upon the earlier of delivery to the Delivery Point or payment of the applicable portion of the Contract Price.

14.2 Upon delivery of the Goods to the Delivery Point, if the Company is satisfied that the Goods comply with the Contract, the Company will (without prejudice to its rights under the Contract or at law) issue a certificate of acceptance. All Goods will be at the Contractor's risk until delivery to the Delivery Point and written acceptance of the Goods by the Company.

14.3 If, upon Delivery of the Goods, the Company is not satisfied that the Goods comply with the Contract, the Company may:

- (a) reject the Goods, in which case the Company is not obliged to make payment for the Goods and is entitled to a refund of any payment made; or
- (b) direct the Contractor, at its cost, to promptly rectify the non-compliance to the Company's satisfaction and the Company may withhold payment until such rectification is complete.

## 15 Confidentiality, Privacy and Data Protection

- 15.1 The Contractor must not, without the Company's prior written consent, refer to its appointment in any advertisement or promotional material or discuss the Goods or Services with any third party.
- 15.2 The Contractor must keep all information provided by or on behalf of the Company (including this Contract), including any information which relates to the business or affairs of the Company or its 'related bodies corporate' (as defined in the Corporations Act 2001 (Cth)) (together, **Related Entities**), confidential and must not disclose such information to a third party without the Company's prior written consent.
- 15.3 The Contractor agrees to be bound by applicable privacy and data protection Laws with respect to any act done or practice engaged in by the Contractor for the purposes of this Contract in the same way and to the same extent as the Company would have been bound in respect of that act or practice had it been directly done or engaged in by the Company.
- 15.4 Each party must (and must procure that its Personnel) comply with any applicable privacy or data protection Laws (including in any jurisdiction where the Services may be provided) and all guidelines issued by applicable privacy offices (and any similar regulatory bodies).
- 15.5 The rights and obligations under this clause 15 continue after the termination of this Purchase Order.

## 16 Intellectual Property

16.1 The Contractor warrants that:

- (a) in performing its obligations under the Contract, the Contractor will not infringe any intellectual property rights (including patents, utility models, trademarks, copyrights, eligible layout rights, designs, rights under licences, or other like rights), whether registered, registrable or unregistered (**Intellectual Property Rights**) or any other rights (including moral rights) of any person;
- (b) the Goods and Services, and the use of the Goods and Services by the Company or any person authorised by the Company, will not infringe the Intellectual Property Rights or any other rights of any person; and
- (c) the Contractor is entitled to grant the licence under clause 16.3..

16.2 The Contractor indemnifies the Company against any liability, claim, loss, damage, cost or expense arising out of any claim, action or demand made against the Company on grounds that the Goods or

Services, or the use of the Goods or Services by the Company, infringes the Intellectual Property Rights or any other rights of any person;

16.3 To the extent that the Contractor brings any pre-existing Intellectual Property Rights to the performance of the Contract or any Intellectual Property Rights are created in the performance of this Contract or are vested in the Contractor or the Contractor's Personnel, the Contractor hereby grants to the Company a world-wide, irrevocable, perpetual, assignable, non-exclusive, royalty free licence for the Company to use, reproduce and modify all such Intellectual Property Rights for any purpose in connection with the Mine, the Company's business or the business of the Company's Related Entities; and

16.4 The Company owns all right, title and interest in all information, goods and materials supplied to the Contractor by the Company under the Contract, and grants the Contractor a revocable, royalty free, non-exclusive licence to use any Intellectual Property Rights in such information, goods and materials to the extent required and for the sole purpose of performing its obligations under the Contract.

## 17 Insurance

17.1 You at your own expense must procure and maintain all insurances required by law and the following insurance policies:

- (a) workers' compensation insurance (including occupational disease where required by law) and employer's indemnity insurance which complies with the relevant laws covering all claims and liabilities under any statute and at common law (where applicable) for the death of or injury to any person employed by you or any of your personnel in connection with this agreement;
- (b) public liability insurance for an amount of twenty million dollars (\$20,000,000) to cover your legal liability in respect of occurrences resulting in:
  - (i) death of or bodily injury (including illness) to any third party; and
  - (ii) damage to property not belonging to nor held in trust by nor in the care, custody or control of you,
- (c) if provision of the goods or services requires you to:
  - (i) provide or use plant and equipment – plant and equipment insurance for a reasonable amount specified by us;
  - (ii) transport goods to or from site – goods in transit insurance for a reasonable amount specified by us;
  - (iii) use motor vehicles – motor vehicle insurance covering all mechanically-propelled vehicles that are registered or capable of being registered for road use, including insurance which is compulsory

under applicable laws and comprehensive and third-party insurance, for an amount of twenty million dollars (\$20,000,000) in respect of any one accident or series of accidents arising out of one event; or

- (iv) provide directly or indirectly professional services - professional indemnity insurance for an amount of ten million dollars (\$10,000,000).

17.2 The workers' compensation policy referred to in clause 17.1(a) must be endorsed (except where precluded by law) to include a principal's indemnity extension, indemnifying us against any liability which we may incur to such employees, such endorsement to contain a waiver of subrogation of rights by the insurer in favour of the Company.

17.3 The public liability policy referred to in clause 17.1(b) must be endorsed to:

- (a) contain a principal's indemnity extension;
- (b) extend to cover worker to worker injury liability risks;
- (c) extend to cover goods in care, custody and control for an amount not less than the market value of all plant and equipment supplied by us; and
- (d) extend to include liability arising out of the use of unregistered motor vehicles.

17.4 The insurance policies referred to in clause 17.1(c) (as applicable) must be endorsed to:

- (a) contain a principal's indemnity extension; and
- (b) extend to include bodily injury gap cover in respect of registered motor vehicles.

17.5 Before commencing the provision of goods or services you must provide us certificates of currency for any insurances required to be held by you and your sub-contractors under this agreement. All costs incurred by us as a consequence of you not maintaining such insurances will be a debt due from you to us.

17.6 General provisions as to insurance to be effected by you:

- (a) you must ensure that every subcontractor engaged by you maintains insurance in the same manner as you;
- (b) the insurances arranged by you and your sub-contractors must be subject to approval by the Company as to the adequacy and terms of insurance protection required and their continued existence and you must provide all such documentation, information and assistance as may be required by the Company in this regard;
- (c) the sole responsibility for ensuring that insurance to be arranged by you and any sub-contractor hereunder is actually effected and at all times remains current, will at all times remain with you. No approval by us as to the adequacy in terms of insurance protection nor sighting by the

Company of certificates of currency or copies of policies will be taken as a representation by the Company, that such insurance is adequate or be raised or pleaded in bar to any action against you for default in performing in any of the requirements under this clause;

- (d) you must at all times be responsible for complying with and abiding by the terms and conditions of the insurances arranged by you and for the payment of all excesses or deductibles under the terms of such insurances; and
- (e) you must immediately advise the Company, of any change or cancellation of the insurances referred to in clause 17.1.

17.7 The effecting of insurance as required under clause 17.1 will not in any way limit your obligations or responsibilities under this agreement.

## **18 Books and Records**

18.1 The Contractor represents, warrants and agrees that it will;

- (a) keep and maintain accurate and reasonably detailed books and financial records of expenses and receipts in connection with its performance under, and payments made or received in connection with, this Purchase Order; and
- (b) upon request, as soon as reasonably practicable but no later than 7 calendar days, provide any information and reasonable assistance to the Company to audit any books and financial records to verify compliance with the Contractor's representations, warranties and undertakings under this Purchase Order, and otherwise reasonably co-operate with the Company's investigation of any related matters.

## **19 Indemnity and Limits of Liability**

19.1 The Contractor indemnifies the Company and the Company's Related Entities (Company Group) against any liability, claim, loss, damage, cost or expense suffered or incurred in connection with any claim made against any member of the Company Group in respect of:

- (a) death or personal injury to any person (including the Company's Personnel or the Contractor's Personnel); and
- (b) damage to or loss of property (including intellectual property) of any person, arising out of or in connection with any act or omission by the Contractor or the Contractor's Personnel, including a breach of this Contract, tort (including negligence) or breach of a statutory or equitable duty.

19.2 Subject to clause 19.3 and clause 19.4, neither party is liable to the other for any loss of actual or anticipated profits, loss of loss of overhead, loss of goodwill, loss of opportunity or loss of production howsoever caused, including negligence.

19.3 Clause 19.2 does not limit the Contractor's liability in respect of:

- (a) any death or injury to any person or loss or destruction of, or any damage to or loss of use of any real or personal property;
- (b) any breach of clauses 15, 16 or any obligation to indemnify the Company under this Contract;
- (c) any obligation to rectify Defects; or
- (d) amounts recoverable under any policy of insurance required to be taken out by the Contractor under the Contract or which would have been recoverable had Contractor complied with its obligations under clause 17.

19.4 Clause 19.2 does not limit either party's liability in respect of fraud or any act or omission which was deliberate and wrongful, or involved reckless disregard or wanton indifference to the likely harmful consequences.

## 20 Default and Termination

20.1 Either party may terminate this Contract immediately by written notice to the other party if:

- (a) the other party commits a material breach of the Contract and that breach is not remedied within 30 days after the receipt of written notice of the breach from the first party; or
- (b) the other party becomes insolvent or an order is made to wind the party up, or proceedings are commenced to appoint a liquidator in respect of the other party or the other party is placed under administration (whether voluntary or otherwise) or any trustee, receiver or receiver and manager is appointed in respect of any material part of the other party's assets.

20.2 If the Contract is terminated by the Company under clause 20.1, the rights and liabilities of the parties will be the same as they would have been at law had the Contractor repudiated the Contract and the Company elected to treat the Contract as at an end and recover damages.

20.3 If the Contract is terminated by the Contractor pursuant to clause 20.1, the Company's liability to the Contractor will be limited to the following (less amounts already paid):

- (a) the outstanding and unpaid portion of the Contract Price earned by the Contractor up to the date of the termination (which must be established by actual progress);
- (b) the reasonable cost of demobilisation from the Mine, provided the Contractor take reasonable steps to mitigate such costs; and
- (c) the reasonable costs (excluding profit and overhead) incurred by the Contractor in complying with any directions of the Company upon termination, provided however that the total termination payment plus previous payments under this Contract will not exceed the Contract Price.

## 21 Force Majeure

21.1 If a party is prevented from performing its obligations

under this Contract by an event of Force Majeure, it will as soon as practicable notify the other party in writing of the event, the estimated delay and the steps intended to be taken in order to mitigate the event.

21.2 On and from the date of notice given in accordance with clause 21.1, the affected party will not be liable for delay in performance of the Services or supply of the Goods or the non-performance of this Contract which is caused by an event of Force Majeure, provided the affected party takes all reasonable steps to mitigate the cause and result of the Force Majeure and resumes performance as soon as possible.

21.3 Each party will bear its own costs of any event of Force Majeure and its own costs for any delays caused by any event of Force Majeure.

21.4 Either party may terminate this Contract by giving written notice to the other party if the whole or substantially the whole of a party's obligations under this Contract are prevented due to an event of Force Majeure which continues uninterrupted for more than ninety (90) days consecutively.

21.5 In this clause 21, **Force Majeure** means any event or circumstance not within the control of the party claiming Force Majeure, and which by the exercise of a standard of care and diligence consistent with that of a reasonable and prudent operator, that party is not able to overcome

## 22 Dispute Resolution

22.1 If either party considers a dispute has arisen under this Contract, it may issue a dispute notice to the other party which sets out the details of the dispute. In the event of a dispute, a senior representative from each party with authority to resolve the dispute must meet to resolve the dispute. If no agreement is reached within 20 business days after a dispute notice is issued, either party may commence legal proceedings. Without limiting clause 5, during a dispute, the parties must continue to perform their obligations under this Contract.

## 23 Compliance

23.1 The Contractor must:

- (a) at all times comply with all applicable Laws relating to modern slavery, anti-bribery and improper payments including but not limited to the Criminal Code Act 1995 (Cth) (Australia), the Foreign Corrupt Practices Act 1977 (United States) and the Bribery Act 2010 (United Kingdom) (**Relevant Requirements**);
- (b) operate in a manner consistent with the United Nations (UN) Universal Declaration of Human Rights and the UN Guiding Principles on Business and Human Rights;
- (c) not give or offer or promise to give, receive, or agree to accept, any payment, gift or other benefit or advantage which violates a Relevant Requirement;
- (d) have and maintain in place throughout the term of this Contract its own policies and procedures,

including adequate procedures under the Relevant Requirements, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate;

- (e) not prepare, approve or execute any contract or other document or make any record in connection with this Contract that the Contractor knows, or ought to reasonably know, is false, inaccurate or misleading;
- (f) promptly report to the Company any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Contract which will or may be in breach of the Relevant Requirements; and
- (g) procure, and shall be responsible for, the observance and performance of the Relevant Requirements by all persons performing services or providing goods (including the Goods) in connection with this Contract on behalf of the Contractor or under its supervision or control; and
- (h) not engage in any conduct that is unlawful or is otherwise restricted or prohibited under any applicable competition Law in relation to the terms and conditions of this Contract.

## 24 GST

24.1 In this clause 24:

- (a) **GST** has the same meaning as in the GST Law;
- (b) **GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such GST and includes any subordinate legislation in respect of those Acts.

24.2 Words used in this clause 24 which have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.

24.3 Unless expressly included, the consideration for any supply under, or in respect of, this Contract does not include GST.

24.4 To the extent that any supply made under, or in respect of, this Contract is a taxable supply, the recipient must pay, in addition to the consideration provided under this Contract for that supply (unless it expressly includes GST) an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The recipient must pay the additional amount at the same time as the consideration to which it is referable.

24.5 Whenever an adjustment event occurs in relation to any taxable supply to which clause 24.3 applies:

- (a) the supplier will determine the amount of the GST component of the consideration payable; and
- (b) if the GST component of that consideration differs from the amount previously paid, the amount of the difference will be paid by, refunded

to or credited to the recipient, as the case may be.

24.6 If either party is entitled under this Contract to be reimbursed or indemnified by the other party for a cost or expense incurred in respect of this Contract, the reimbursement or indemnity payment will not include any GST component of the cost or expense for which an input tax credit may be claimed by the party being reimbursed or indemnified, or by its representative member.

## 25 Miscellaneous

25.1 The Contractor must not assign or subcontract the whole or any part of this Contract without the Company's prior written consent.

25.2 The Company may assign or novate this Contract or any right, benefit, obligation or liability under or in respect of this Contract without the consent of the Contractor.

25.3 Subject to clause 24, the Contractor is liable for payment of any tax, levy, charge, impost, duty (including import or customs excise), fee, tariff or deduction, premiums and costs, costs of insurance and other non-reimbursable costs which arise in respect of the supply of the Goods or Services or otherwise in performance of the Contract.

25.4 All notices and other documents required to be given under the Contract:

- (a) must be in writing and signed by an authorised person; and
- (b) may be delivered by post, hand or email to the party to whom the notice is addressed at its address stated in the Contract or notified to the other party by notice.

25.5 Notices by email will be regarded as received at the time which is 12 hours after the time the email was sent, unless the sender receives a return email notification that the email was not delivered, undeliverable or similar.

25.6 This Contract is governed by the laws applicable in Western Australia and each party submits to the exclusive jurisdiction of the courts of Western Australia.

25.7 Each party agrees that Part 1F of the *Civil Liability Act 2002* (WA), to the extent that the same may be lawfully excluded, is excluded from operation with respect to any dispute or action brought by one party against the other party arising out of or in connection with the parties agree that is expressly excluded.

25.8 Clauses 1, 2.3, 4.2, 5.6, 6, 7, 11.4, 11.5, 13, 14, 15, 16, 17.6, 19.2 -19.3 , 20 , 2 1, 23 and 24 survive the expiration or earlier termination of the Contract.

25.9 This Purchase Order (including representations, warranties, promises, statements and documents provided by the Contractor as part of the Company's vendor pre-qualification and/or business partner pre-clearance process (as applicable)) constitutes the entire agreement between the parties in respect of its subject matter and supersedes all other prior

agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter (if any) made or given prior to the date of this Purchase Order.

- 25.10 If there is any inconsistency in or between any of the documents comprising the Contract, the document imposing the greater or higher standard applies and, to the extent this does not resolve the inconsistency, these terms and conditions prevail over the other document to the extent of the inconsistency.
- 25.11 The expressions 'including', 'includes' and 'include' are not expressions of limitation but have the meaning as if followed by 'without limitation'.
- 25.12 If any provision of this Contract is, or becomes, void or unenforceable, that provision is, or will be, severed from this Contract so that all provisions that are not, or do not become void or unenforceable remain in full force and effect and are unaffected by that severance.
- 25.13 No failure, delay or relaxation by any party in exercising any rights conferred under this Contract will operate as a waiver of such right. Any waiver must be in writing and signed by the party granting the waiver.
- 25.14 This Contract may be executed in any number of counterparts.
- 25.15 Headings and bold type are for convenience only and do not affect the interpretation of this agreement.

**26 Definitions**

- 26.1 Consumption Tax means value-added Tax, sales Tax and services Tax or any Tax analogous thereto, but excludes any statutory late payment interest or penalties.
- 26.2 Company means the entity named as such in this Purchase Order
- 26.3 Contractor means the party or parties named as such in the Purchase Order.
- 26.4 Contract Reference Document means a delivery document, dispatch note, time sheet, claim form or such other document which evidences the delivery of the Goods or the performance of the services.
- 26.5 Defect means any aspect of the Goods or services not in accordance with this Purchase Order, or any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup of the Good or Services.
- 26.6 Delivery Date means the delivery date specified as such in the Purchase Order.
- 26.7 Delivery Point means the place for delivery of the Goods specified on this Purchase Order.
- 26.8 Invoice means an invoice submitted by the Contractor in accordance with Clause 5.1
- 26.9 Law means all legislation including regulations, by-laws, orders awards and proclamations with which a party is legally required to comply, together with all

Authority requirements, guidelines, consents, certificates, licenses, permits and approvals (including conditions in respect of those consents, certificates, licenses permits and approvals) with which a party is legally required to comply.

- 26.10 Personnel means directors, employees, agents, contractors or subcontractors but a reference to the Company's Personnel excludes the Contractor.
- 26.11 Purchase Order means this purchase order for Goods and/or Services issued by the Company to the Contractor from time to time containing, amongst other things, a description of the Goods and/or Services.
- 26.12 Site means the place described as such in this Purchase Order as the place for the use or storage of the Goods by the Company or for the performance of the Services.
- 26.13 Site Standards and Procedures means all the Company's standards, policies and procedures that are of general application at the Site in relation to matters concerning safety, health, the environment, industrial relations and personal conduct.

Signed for and on behalf of the Contractor as acceptance of these Terms and Conditions

Signature

Witness

Date