

**1 Definitions**

In this agreement, unless the contrary intention appears:

**ABC Law** includes:

- (a) any anti-bribery and corruption law of the Commonwealth of Australia or the State of Western Australia (including any applicable common law, law of equity, any written law, statute, regulation or other legally enforceable instrument made under statute or by any government agency);
- (b) the United States Foreign Corrupt Practices Act;
- (c) the UK Bribery Act;
- (d) the Canadian Corruption of Foreign Public Officials Act, the Criminal Code of Canada, the Extractive Measures Transparency Act, and sub-federal laws including Quebec's Anti-Corruption Act;
- (e) the Argentine Anti-Corruption Law No 27401; and
- (f) any anti-bribery and corruption law of a country other than Australia, which applies to you or us in relation to this agreement.

**agreement** means the agreement constituted by these general terms and conditions and the relevant purchase order.

**authorised signatories** means the designated representative of each party duly authorised.

**business day** means a day other than a Saturday, Sunday or a gazetted public holiday in Western Australia.

**defective goods** means goods which are not in conformity with this agreement.

**defective services** mean services or the results of any services which are not in conformity with this agreement.

**Galaxy's website** means the relevant page(s) of Galaxy Resources Limited's website at [www.gxy.com](http://www.gxy.com)

**goods** means the goods, if any, described in the purchase order.

**government authority** means any national, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body, having jurisdiction over the goods or services or the site.

**GST** has the same meaning as in the GST Act.

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

**industrial matter** means industrial action of any sort, whether threatened or actual, involving your employees working at or in connection with the site.

**insolvent** means, with respect to a party, insolvent (as defined in the *Corporations Act 2001* (Cth)), in liquidation or provisional liquidation, receivership, bankruptcy (protective or otherwise) or under administration, unable to pay its debts as and when they fall due or otherwise insolvent, or that has entered into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors or in respect of which any analogous event has occurred.

**intellectual property rights** includes, without limitation, all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trademarks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**IpsO Facto Stay** means any limitation on enforcement of rights or self-executing provisions in a contract, agreement or arrangement pursuant to sections 415D, 415F, 434J, 434L, 434LA, 451E, 451G or 451GA of the *Corporations Act 2001* (Cth).

**law and laws** means any statute, ordinance, code, law, decree, circular, rule or regulation by any government authority.

**licences** means all licences, qualifications, registrations and other statutory requirements necessary for the supply of goods or services under this agreement.

**month** means a calendar month.

**MSI Act** means the *Mines Safety and Inspection Act 1994* (WA).

**party** means you or us.

**parties** means you and us.

**personal information** means personal information, as that term is defined in the *Privacy Act 1988* (Cth), that is provided, obtained or accessed in the course of performing this agreement.

**personnel** means the employees, agents, contractors or subcontractors of a party (but our personnel do not include your personnel).

**policies and procedures** means any of our policies, procedures, standards, codes, rules, manuals, protocols, plans or directives and similar documents (as may be amended from time to time by us), and include:

- (a) our corporate code of conduct and all corporate governance policies made available on Galaxy's website;
- (b) our fitness for work, health and safety, environmental, quality, equal

opportunity and harassment and anti-bribery and corruption policies which are provided or notified by us to you or made available on Galaxy's website; and

- (c) all our other policies, procedures, standards, codes, rules, site rules, manuals, protocols, plans or directives (and similar documents) which are provided or notified by us to you or made available on Galaxy's website.

**price** means the price specified in the purchase order.

**privacy laws** means:

- (a) the *Privacy Act 1988* (Cth);
- (b) any laws (to the extent that such legislation applies to the parties or any other recipient of personal information) from time to time in force in any relevant jurisdiction affecting privacy, personal information or the collection, handling, storage, processing, use or disclosure of personal data; and
- (c) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made, issued or registered under any of the legislation referred to in paragraphs (a) and (b) above, as amended from time to time.

**purchase order** means the purchase order for goods and/or services issued by us to you from time to time containing amongst other things, a description of the goods and/or services and the price.

**related body corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**services** means the services, if any, described in the purchase order.

**site** means our Mt Cattlin mine site in Ravensthorpe Western Australia or such other site or location for delivering the goods or providing the services detailed in the purchase order.

**site rules** means the site rules (if any) made available on Galaxy's website or otherwise provided or notified by us to you (as may be amended by us from time to time).

**taxes** means any and all present and future sales, use, personal, property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on our net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.

**tax invoice** has the same meaning as in the GST Act.

**you** means the person named in the purchase order as the supplier of the goods or services and "your" has the corresponding meaning.

**We and us** means Galaxy Lithium Australia Ltd and any of our related bodies corporate named in the purchase order or which elect to take the benefit of this agreement in accordance with clause 23.1 and "our" has the corresponding meaning.

**2 Supply of goods or services**

- 2.1 In consideration of payment of the price by us, you must supply the goods or services to us in accordance with the agreement.
- 2.2 We intend to contract for the goods and/or services only on the terms of the agreement, and not on any other terms. Accordingly, the provision of terms by you will not bind us, will be of no legal effect, and will not constitute a contract or part of this agreement irrespective of any act by us or by any of our personnel, including execution of any document incorporating (including by reference) any term or terms.
- 2.3 Before you supply the goods and/or services, you acknowledge that you have read and understood the general terms and conditions before making a supply under this agreement. If you make a supply under a purchase order or any other form of order or request by us to supply goods or services, whether or not in writing, you will be deemed to have agreed to these general terms and conditions.
- 2.4 You must supply the goods and/or services to us in accordance with this agreement.
- 2.5 In the event of any ambiguity or uncertainty in respect of a purchase order, such ambiguity or uncertainty must be referred to us immediately and a corrected purchase order obtained prior to delivery.
- 2.6 We will provide you with access to our site to the extent necessary for you to provide the goods or services.
- 2.7 In providing the goods or services you must, and you must ensure that your personnel:
  - (a) use best endeavours not to interfere with any of our activities or the activities of any other person on our site, and ensure that our

- site is left secure, clean, orderly and fit for immediate use;
- (b) supply the goods or perform the services in a safe manner and by appropriately qualified and skilled personnel undertaking all activities, functions and tasks safely and continuously, with all due skill and care, and avoiding all undue risk to the environment;
  - (c) comply with all applicable laws and the requirements of any government authority and ensure that you possess all relevant authorisations, permits and licences to provide the goods or services;
  - (d) without limiting paragraph (c) above, comply with:
    - (i) all applicable occupational health, safety and environmental laws, guidelines and codes of practice including, without limitation, the *Occupational Safety and Health Act 1984* (WA) and/or the MSI Act;
    - (ii) our health and safety policy, environmental policy and occupational health standards, and all other occupational health, safety and environmental guidelines, rules, directions and procedures provided or notified by us to you or made available on Galaxy's website (as may be amended by us from time to time);
    - (iii) any induction requirements in relation to the site provided or notified by us to you or made available on Galaxy's website (as may be amended by us from time to time);
    - (iv) all of our other policies and procedures;
    - (v) our site rules; and
    - (vi) all directions and orders given by our representatives when you are on our site;
  - (e) provide us with regular reports, or more frequently on request, in a form approved by us, in relation to any occupational health and safety issues in relation to the goods or services and on request by us prepare and provide to us any information and documents you are required to prepare or maintain under any laws including laws concerning occupational health, safety and the environment; and
  - (f) provide us all such information and assistance as we reasonably require in connection with any investigation arising from or in connection with the supply of the goods or services.
- 2.8 We may, at any time, require you to provide evidence of compliance with your obligations under paragraphs 2.7 (b), (c) and (d).
- 2.9 The agreement does not affect in any way us procuring the same, or similar, goods or services from other suppliers.
- 2.10 You will be deemed to have made your own independent assessment of the conditions of the site, to the extent that it is relevant to the provision of the goods or services, and to have taken into account all local and other conditions affecting the performance of the goods or services and all information which is relevant to the risks, contingencies and other circumstances which could affect your performance of the goods or services.
- 2.11 We do not warrant, guarantee or make any representation about the accuracy or adequacy of any information, data or documents made available to you as to the existing conditions at the site or otherwise in connection with the provision of the goods or services under this agreement and we disclaim all responsibility whatsoever in relation to the provision of such information.

**4 Delivery**

- 4.1 Unless otherwise specified, you are responsible for ensuring that the goods are properly and safely packed and delivered (including off-loading) to the place and within the time period specified in the purchase order. If no time period is specified in the purchase order, the order is for delivery within 72 (seventy two) hours of receipt of the purchase order. The goods delivered must be free of any right or interest of any person (including any encumbrance), other than the right and interest of you to be paid the price.
- 4.2 We will be entitled to refuse delivery outside of the agreed delivery time. In no circumstances will you have any claim in respect of damages or losses arising directly or indirectly from rejection by us of a delivery outside the agreed delivery time.
- 4.3 In the event that you are not in a position to comply with a purchase order whether in respect of the quantity of the goods or services, time of delivery or otherwise, you are required to notify us immediately and delivery should not be executed before a suitable amendment to the purchase order is made by us. We may in such circumstances either cancel or amend the purchase order.
- 4.4 You must include a packing list in each package of goods delivered and the packaging must be marked with the purchase order number.

**5 Inspection and acceptance**

- 5.1 We must have a reasonable time to inspect the goods after delivery.
- 5.2 You must provide to us, at our request, progress reports on the performance of the services. A progress report must be detailed enough to allow us to ascertain whether the services are in conformity with this agreement.
- 5.3 At any time during the performance of the services we may inspect or witness tests on the services or their results.
- 5.4 Any payment or the signing of delivery receipts before inspection does not constitute acceptance of the goods or services.
- 5.5 If upon inspection we find any goods to be defective goods or any services or their results to be defective services, we may exercise our rights under clause 12.
- 5.6 We may reject and return to you (in the case of goods) any goods or services which are not in conformity with this agreement even if we have accepted or paid for those goods or services.
- 5.7 You must refund to us, when requested, any payments made by us in respect of goods or services which we reject, and which are not replaced or re-performed free of charge under clause 12.2.

**6 Title and risk**

- 6.1 Title to and risk in the goods does not pass to us until we take delivery of, inspect and accept the goods.
- 6.2 You warrant that you have complete ownership of the goods free of any liens, charges and encumbrances and will provide the goods to us on that basis and we will be entitled to clear, complete and quiet possession of the goods.

**7 Price**

- 7.1 We agree to pay you the price in accordance with this agreement for the goods or services.
- 7.2 The price is inclusive of all costs incurred by you in supply of the goods and performance of the services including all charges for packaging, packing, insurance and delivery of the goods in accordance with this agreement and the cost of any items used or supplied in conjunction with the services. The price is also inclusive of all duties and taxes except GST.
- 7.3 The price may not be increased without our prior consent. We have the right to refuse to give our consent.
- 7.4 In the event that the price reflected in the purchase order is incorrect, you must notify us and ensure that an amended purchase order reflecting the correct price is obtained prior to delivery. Payment must be made as per the price reflected on the copy of the purchase order in our possession.

**8 Invoicing and payment**

- 8.1 You must submit tax invoices to us (by providing them to our representative referred to in the purchase order or as advised by us in writing if there is no representative referred to), no earlier than (as applicable):
  - (a) upon delivery and acceptance of the goods as set out in clause 6.1, unless we specifically agreed to make a partial or full upfront down payment in which case the invoice should reflect the amount we agreed to pay upfront;
  - (b) at the completion of the services, unless the purchase order states that progress payments are to be made; and
  - (c) where progress payments are to be made for the provision of services, at the end of each month (or other period specified in a purchase order) for services performed by you in that month or that period (as the case may be).

- 8.2 When submitting your tax invoice under clause 8.1 it must include the following details:
- (a) a reference to a valid purchase order;
  - (b) a detailed description of the goods or services supplied;
  - (c) an individual reference number for us to quote with remittance payment;
  - (d) the price relating to goods or services, broken down to reflect any price components on the purchase order;
  - (e) the amount of any GST; and
  - (f) our representative name and site (if applicable).

- 8.3 Subject to you complying with this clause 8, we will pay all invoices rendered to us by you except where we dispute the invoice, in which case:
- (a) we will pay the undisputed part of the relevant invoice (if any) and withhold the balance pending resolution of the dispute; and
  - (b) if the resolution of the dispute determines that we are to pay an amount to you, we will pay that amount upon resolution of that dispute.

- 8.4 Where a compliant invoice is submitted:
- (a) during the month in which the goods were supplied or the services the subject of the invoice were completed; or
  - (b) within 5 business days after the end of that month,
- the invoice will be paid by the end of the month following the month in which the goods were supplied or the services provided. All invoices received outside this time will be paid at the end of the month following the month in which the invoice was received.

- 8.5 If any supply made under this agreement is or becomes subject to GST, the party to whom the supply is made must pay to the party making the supply in addition to any consideration payable an additional amount on account of GST. If any party is required to reimburse or indemnify the other party for a cost, expense or liability (**Cost**) incurred by the other party, the amount of that Cost for the purpose of this agreement is the amount of the Cost incurred less the amount of any credit or refund of GST which the party incurring the Cost is entitled to claim.

- 8.6 If we are entitled to an exemption or concession concerning any tax or import duty or import tariff with respect to the goods or services, you must use all reasonable endeavours to apply for that concession or exemption and as far as possible promptly pass on to us the benefit of that concession or exemption.

- 8.7 No interest or any other monies will be payable by us in respect of any invoice rendered to us by you under clause 8.1 which remains due and payable and unpaid.

- 8.8 We may withhold, retain or set off from any payment due to you under this agreement any amounts we deem necessary to protect us against any costs, charges, expenses or damages which you may be liable to us for in connection with this agreement or otherwise.

- 8.9 Unless otherwise agreed, any money payable is to be paid in Australian currency.

- 8.10 If the purchase order involves the supply of services on a cost plus or per hour basis we have the right to conduct an audit of the basis of your charges using your records. This right continues for twelve months after we pay the relevant invoice.

**9 Suspension and termination**

- 9.1 To the extent permitted by law, we may at any time suspend performance of your obligations under this agreement by giving you notice. When you receive a notice of suspension from us you must suspend performance of the relevant obligations until such time as we direct you to resume performance of those obligations by notice in writing. Where the suspension of your obligations by us under this clause is not as a result of:

- (a) any default or action by you; or
- (b) an event or circumstance which is beyond the control and without the fault or negligence of us and which by the exercise of reasonable diligence we are unable to prevent (excluding any shortage of labour or materials),

but is a result of the acts or omissions of us or our personnel, and continues for a cumulative period of 7 days, we will reimburse you within a reasonable time of receipt by us of a detailed breakdown of your claim for the direct, verifiable and reasonable costs incurred by you as a consequence of the suspension.

- 9.2 A party may immediately terminate this agreement by notice in writing to the other party if the other party:
- (a) breaches any term under this agreement and such breach is not able to be remedied;

- (b) breaches any term under this agreement and such breach is not remedied within 14 days of notice being given to the party to remedy the breach;
- (c) breaches any law relating to the supply of the goods or services;
- (d) becomes insolvent; or
- (e) is convicted of a criminal offence.

- 9.3 In addition to any other rights of termination available to us, we may terminate this agreement by giving 14 days' notice to you, in which case (subject to our other rights under this agreement) we must reimburse you for all verifiable:

- (a) work in progress;
  - (b) goods or services supplied or completed; and
  - (c) expenses incurred up to the date of the notice of termination,
- which are incurred in compliance with this agreement, and which cannot be reversed or mitigated by you applying best efforts.

- 9.4 In addition to clauses 9.2 and 9.3 we may terminate this agreement with immediate effect by notice in writing to you if any information supplied by you relating to the purchase order, your details or any other material fact, is materially incorrect.

- 9.5 If this agreement is terminated pursuant to clauses 9.2, 9.3 or 9.4, you must cease the supply of the goods or services the subject of the purchase order and you must deliver all goods or services in progress or completed as we may request.

- 9.6 Unless expressly stated otherwise, termination of this agreement for any reason does not affect the rights or obligations of a party which have accrued prior to termination.

**10 Independent contractor**

Both parties acknowledge that you are our contractor and not our agent or employee.

**11 Warranties**

- 11.1 You warrant on a continuing basis:
- (a) that the goods or services will:
    - (i) be provided in a timely and professional manner in accordance with this agreement;
    - (ii) be free from any defect in design, performance, workmanship and makeup;
    - (iii) be rendered with due care and skill and be of high quality and workmanship and otherwise satisfactory;
    - (iv) be provided by appropriately qualified, competent, skilled, experienced and professional personnel;
    - (v) be fit for the purpose intended by us and disclosed to you;
    - (vi) be free from any claim of any nature by any third party;
    - (vii) not infringe or contribute to the infringement of any intellectual property rights; and
    - (viii) without limiting the foregoing, conform with this agreement;
  - (b) any information supplied by you relating to this agreement, or the goods or services is true and correct;
  - (c) you have read and understood our site rules, as well as any other details relating to site access contained in this agreement, and you will comply with any conditions contained therein; and
  - (d) you have read and understood our policies and procedures, and you will comply with any conditions contained therein.

**12 Defects**

- 12.1 If we find any of the goods to be defective goods, or any of the services or their results to be defective services, we may, at our option:

- (a) return the defective goods to you;
- (b) reject the defective services by notifying you that we are rejecting them;
- (c) make good or replace the defective goods; or
- (d) re-perform or make good the defective services.

- 12.2 At our option and request, you must:

- (a) repair free of charge or, at our option, replace free of charge any defective goods that we return to you;
- (b) re-perform free of charge or make good free of charge any defective services that we reject; or
- (c) reimburse us for any expenses we incur in making good any

defective goods or services.

12.3 You are not liable for any defect or fault in the goods or services to the extent that it is caused by our negligence or the negligence of our personnel.

**13 Insurance**

13.1 Without limiting you or your personnel's obligations to comply with the requirements of any laws, at your own expense, must procure and maintain, (and see to all your subcontractors procuring and maintaining), the following insurance policies and coverages (except where the purchase order indicates they are not applicable and subject to any amendment to the amount of any insurance coverage in the purchase order):

(a) Workers' compensation (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 where common law claims are allowed outside of the statutory scheme, for employer's liability at common law, for not less than \$50,000,000 for each occurrence, for the death of or injury to:

- (i) any person employed by you in connection with this agreement; and
- (ii) any person who is a worker of you or any of your subcontractors in connection with this agreement and who may be deemed under statute to be a worker of ours.

This policy must be endorsed (except where precluded by law) to include a principal's indemnity extension, indemnifying us against any liability (act benefits and/or at common law) and contain a waiver of subrogation of rights by the insurer in favour of us.

(b) Public and products liability insurance for an amount not less than twenty million dollars (\$20,000,000) for any one occurrence (but limited to twenty million dollars (\$20,000,000) in the aggregate in relation to products liability insurance) 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,

arising out of or in the course of or caused by the execution, provision or purported provision of goods or services under this agreement.

This policy must be endorsed to:

- (i) contain a principal's indemnity extension, indemnifying us in respect of any vicarious liability arising out of the acts or omissions of you;
- (ii) include a cross liability clause;
- (iii) extend to cover worker to worker injury liability risks;
- (iv) 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
- (v) extend to include liability arising out of the use of unregistered motor vehicles and/or unregistered mobile plant and equipment used in connection with this agreement.

(c) If provision of the goods or services requires you to:

- (i) provide or use plant and equipment – plant and equipment insurance covering loss of or damage, for its replacement value (unless otherwise insured to the satisfaction of us);
- (ii) transport goods to or from site – goods in transit insurance covering loss of or damage during transit, regardless of whether we have paid for those goods, for its replacement value;
- (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 third party insurance, for an amount of not less than thirty million dollars (\$30,000,000) 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 five

million dollars (\$5,000,000) for any one claim but limited to ten million dollars (\$10,000,000) in the aggregate. The policy is to remain in full effect for a period of not less than three (3) years after termination of the agreement or completion of your obligations under this agreement.

13.2 Before commencing the provision of goods or services you must provide us certificates of currency for the 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.

13.3 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 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 us of certificates of currency or copies of policies will be taken as a representation by us 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;
- (c) 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
- (d) you must immediately advise us of any material change or cancellation of the insurances referred to in clause 13.1.

13.4 The effecting of insurance as required under clause 13.1 will not in any way limit your obligations or responsibilities under this agreement.

**14 Liability and indemnities**

14.1 You enter our site at your own risk.

14.2 You are liable for and must indemnify us and our personnel from and against any liability and any loss or damage of any kind whatsoever arising out of or in connection with any breach of this agreement or negligent act or omission by you or your personnel, except to the extent that such liability or loss or damage directly arises from our own negligent act or omission or breach of this agreement.

14.3 Each indemnity in this agreement is a continuing obligation separate and independent from other obligations under this agreement and survives termination or expiry of this agreement.

14.4 Neither party is liable to the other party for any loss of use, loss of revenue, loss of profit, loss of product or production, loss of business opportunity or loss of goodwill arising out of or in connection with this agreement.

14.5 Part 1F of the *Civil Liability Act 2002 (WA)* is excluded from operation with respect to any dispute, claim, action or matter under or in connection with this agreement.

**15 Confidentiality**

15.1 You and your personnel must not (except to the extent necessary to comply with your obligations under this agreement) disclose to any person any information supplied by or on behalf of, or relating to, us or any of our related bodies corporate, and any other information which you or any other person has obtained or prepared in connection with the negotiations preceding this agreement or the performance of this agreement (**confidential information**).

15.2 Any confidential information disclosed by you under this agreement must only be disclosed to a recipient who has agreed to keep the confidential information confidential on terms no less onerous than those imposed on you under this agreement.

15.3 Nothing in this agreement prohibits disclosure of information which is in the public domain otherwise than as a result of a breach of this clause, is received from a third party provided that it was not acquired by that third party as a result of a breach of this agreement or is required to be disclosed by law, the rules of any relevant stock exchange or any governmental body, authority or agency having authority (except that this does not permit the disclosure of information under section 275(4) of the *Personal Property Securities Act 2009 (Cth)* unless section 275(7) applies).

15.4 If requested by us at any time, you must immediately return to us, or destroy or delete, as we direct, all originals and copies of our confidential information in your custody, power or control, including by deleting all confidential information from any computer or other storage device into which it was programmed, recorded or stored by or on your behalf.

15.5 The obligations in this clause 15 survive termination of this agreement.

**16 Privacy**

You warrant on a continuing basis that you will comply with any privacy laws in carrying out your obligations under this agreement.

**17 Intellectual property**

The parties will each retain their intellectual property rights existing prior to the date of this agreement. The intellectual property rights resulting from the provision of services under this agreement will vest in us. We have a non-exclusive, royalty free licence to use, modify, adapt or sublicense any intellectual property rights owned by you to the limited extent necessary for us to exercise our rights or perform our obligations under this agreement or to enjoy the benefit of the services provided to us under this agreement. You must do all things reasonably necessary to give full effect to the rights and obligations contained in this clause 17.

**18 Assignment and subcontracting**

- 18.1 Subject to clause 18.2, neither party may assign its rights or obligations under this agreement without the prior written consent of the other party (which may not be unreasonably withheld).
- 18.2 We have the right to assign any or all of our obligations or rights under this agreement at any time to any one of our related bodies corporate.
- 18.3 You may not subcontract your obligations under this agreement without our prior written consent. Our consent will be conditional upon the subcontract including provisions that the subcontractor must:
  - (a) comply with all relevant terms of this agreement including, without limitation, the confidentiality obligations in clause 15;
  - (b) not assign or subcontract without our written consent; and
  - (c) effect and maintain insurance on the same terms as you are required to in this agreement.
- 18.4 We may assign, mortgage, charge or otherwise grant security over our right, title and interest in, to, under or in connection with this agreement in favour of any financier to secure, among other things, any funding arrangements (including project finance or working capital or hedging), without your consent or approval.

**19 Business ethics**

- 19.1 You will at all times act in our best interests, consistent with the standards of care applicable to the provision of goods or the performance of the services and in so doing, must exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with our interests.
- 19.2 Neither you, nor any of your personnel, are expected, permitted or authorised to take any action on our behalf, including any action which could violate any laws.
- 19.3 All financial statements, reports and applications for payment which are rendered by you under this agreement must completely and accurately reflect the facts about all the relevant activities, transactions and circumstances handled for our account.
- 19.4 You will not pay any commission or fee or grant any rebate or other remuneration, gratuity or undue hospitality to any of our personnel or the personnel of our related bodies corporate.
- 19.5 All payments to you under a purchase order will be solely by cheque or bank transfer made directly to you or your account and no payment will be in cash, by bearer instrument or made to any person other than you.
- 19.6 You acknowledge for the purposes of this clause 19 that none of our personnel or the personnel of our related bodies corporate does or will have authority to give any express or implied direction, whether written or oral, authorising you to make any commitment to any third person on our behalf in violation of any law.
- 19.7 You must immediately notify us in writing of any and all violations of this clause 19 upon becoming aware of those violations.

**20 Anti-bribery and corruption**

- 20.1 You will:
  - (a) comply with all applicable ABC Laws;
  - (b) not engage in or tolerate any form of bribery or corruption whatsoever whether direct or indirect, including, without limitation, the making of (or authorisation of) an offer, payment or promise to pay anything of value to unlawfully influence any person, including in the form of money, property, gifts, promises to give, or anything else of value;
  - (c) not do, or omit to do, anything that may cause us to be in breach of any applicable ABC Laws;
  - (d) from time to time, as required by us, provide us with such information as we reasonably require to satisfy us that you have complied, and are in compliance, with all applicable ABC Laws;

and

- (e) otherwise comply with our policies and procedures (including our anti-bribery and corruption policy).

20.2 You warrant that you, and any related body corporate, has not breached any applicable ABC Laws in connection with this agreement or a purchase order.

20.3 In the event that we reasonably believe that you have breached this clause 20, we may terminate this agreement at our sole discretion (without prejudice to any other remedy available to us) by written notice. In the event of termination in accordance with this clause, you are not entitled to receive any compensation or other remuneration in respect of the termination. For the avoidance of doubt, any breach of this clause 20 by you shall be deemed to be incapable of remedy.

20.4 You must:

- (a) maintain adequate internal controls over all transactions in relation to this agreement, or made on behalf of us;
- (b) properly record all transactions in relation to this agreement or made on behalf of us; and
- (c) maintain accurate books and records in relation to each transaction for a period of no less than 7 years from the date of such transaction.

**21 Health, Safety and Environment**

21.1 You must ensure that each of your personnel accessing the site takes all reasonable measures to protect persons and property, avoids unnecessary disturbance and interference with the passage of people and vehicles, prevents nuisance and unnecessary noise, complies with any health and safety requirements applicable to the site as notified by us to you and acts in a safe and lawful manner while at the site.

21.2 You must also ensure that, in relation to the provision of goods, services or personnel to the site:

- (a) none of your personnel does any act or omission that exposes, or has the potential to expose any person to any risk to health or safety or hazards arising from any such act or omission;
- (b) any appliance, component, equipment, facility, goods, material, machinery, plant or tool used in the provision of the services is safe and without risk to health, safety and welfare;
- (c) appropriate safety equipment is provided to and used by your personnel;
- (d) you implement and maintain appropriate system of work and that the working environment is safe and without risks to health, safety and welfare; and
- (e) you provide all information, instruction, training and supervision as may be necessary to ensure that the services are provided without any hazard or risk to health, safety and welfare.

21.3 You acknowledge and agree that the following matters are prohibited and are "safety principles" that apply to all services:

- (a) not using any form of load restraint, if applicable;
- (b) not adhering to exclusion zones during unloading or loading, if applicable;
- (c) supply, possession or consumption of alcohol or illegal drugs on the site;
- (d) allowing anyone to work in an environment that is a risk to their safety; and
- (e) not following any danger tag or isolation procedures, or interfering with any safety devices.

21.4 You must promptly provide us with any information requested in connection with the performance or otherwise of your obligations under this clause 21, such information to be in the form and substance required by us.

21.5 Without derogating from your obligations under any other provision of this agreement, if any accident or incident relating to health, safety or welfare occurs in connection with your performance under this agreement:

- (a) You must notify us immediately of details of the accident or incident;
- (b) if requested by us you must, within 24 hours of the request or such longer time as may be permitted by us, provide a written report to us, in a form and with the content required by us, detailing the accident or incident, its cause and the steps you propose to prevent any recurrence; and
- (c) you must comply with any directions which we may give relating to the accident or incident including as to the prevention of any recurrence.

- 21.6 You acknowledge that we have entered, or may enter, into agreements with various third parties (including local Aboriginal communities) in respect of archaeological, heritage and native title issues applicable to the site and its surrounds, including as required by archaeological, heritage and native title laws.
- 21.7 You must not liaise (including any form of communication) with any of those parties without our prior written approval.
- 21.8 You must ensure your personnel do not damage or destroy an item on the site or its surrounds which is of an archaeological, heritage or native title nature or disturb any designated area identified in site drawings or otherwise notified to you, without our prior written approval.
- 21.9 If your personnel discover any item on the site or its surrounds which is of an archaeological, heritage or native title nature, you must promptly inform us in writing and seek instructions from us in dealing with such an item.

**22 Your employees and personnel**

- 22.1 You must immediately notify us on becoming aware of any industrial matter that may affect supply of the goods or services, and must meet with us, as soon as practicable after that notification, for the purpose of discussing and agreeing on any necessary or appropriate action to be taken to resolve the industrial matter.
- 22.2 You must at all times during the provision of the goods or services use your best endeavours to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst your personnel at our site.
- 22.3 You shall pay your employees involved in supply of the goods or services such wage rates and allowances and observe and meet such terms and conditions of employment as are prescribed from time to time by any applicable agreement or laws.
- 22.4 You shall not allow any of your personnel on site without having first received our approval. To enable such approval to be considered and given, you shall not later than 72 hours prior to the desired time of access to the site, submit to us such completed and signed forms and certificates as requested by us. We will, as soon as possible after receipt of the said forms and certificates, notify you whether or not approval is given for that person to work on site. The issue of an approval will be at our absolute discretion.
- 22.5 Random alcohol and drug testing may be carried out on site. You will procure that all of your personnel comply with, at minimum, all our policies and procedures relating to that testing. The time required to participate in any such testing regime is not recoverable from us.
- 22.6 We reserve the right to direct you to remove from site and/or replace any of your personnel working on site and upon receipt of such request you shall immediately comply therewith. We may exercise this right in our sole discretion and shall not be required to give an explanation for doing so. If we require, you shall immediately replace the person concerned with another person with appropriate skill and experience.
- 22.7 You shall require all personnel entering the site to be identified in an approved manner and shall at all times prevent the entry of unauthorised persons to the site. We may at any time refuse to admit any person to the site.
- 22.8 You shall ensure that your personnel have the required licences and certification for the equipment each individual operates from time to time. Evidence thereof shall be produced to us upon request.
- 22.9 You shall ensure that all of your personnel have health assessments in accordance with all applicable laws.
- 22.10 On arrival at site, your personnel must successfully undergo any approved site induction and pass any induction assessment conducted by us before commencing work. Such inductions are held on days and at times nominated by us. You shall bear all labour and other costs of your personnel attending such inductions.

**23 Other matters**

- 23.1 You agree that our related bodies corporate may, by written notice to you, elect to take the benefit of this agreement as if they were named as parties to it.
- 23.2 In this agreement unless the contrary appears:
  - (a) no rule of contract interpretation applies to the disadvantage of one party on the basis that it put forward this agreement or any part of it;
  - (b) if a period of time is specified and dates from a given day or a day of an act or event, it is to be calculated exclusive of that day;
  - (c) the singular includes the plural and vice versa; and
  - (d) the words "including" and "include" are a reference to "including, but not limited to".

- 23.3 This agreement is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter. Any terms and conditions contained in or relating to any other documents, including any of your documents, in respect of the goods or services are expressly excluded.
- 23.4 You must ensure that your personnel comply with this agreement as if they were parties to it and you are liable for any acts, omissions and breaches of this agreement by your personnel.
- 23.5 Any of our rights under this agreement can only be waived by us in writing.
- 23.6 This agreement may not be varied except in writing signed by the authorised signatories of both parties. Any variation will only be applicable to the specific purchase order for which the terms and conditions are varied and will not apply to past or future purchase orders nor oblige us to agree to such a variation for any other purchase orders.
- 23.7 We may exercise a right, remedy or power in any way we consider appropriate.
- 23.8 If we do not exercise a right, remedy or power at any time, this does not mean that we cannot exercise it later.
- 23.9 The rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.
- 23.10 Any provision of this agreement which is void or unenforceable is to be read down or severed to the extent it is possible to do so without affecting the validity or enforceability of this agreement.
- 23.11 The provisions of this agreement are subject to any Ipso Facto Stay which may operate to prevent the enforcement of rights under this agreement. To the extent that there is any conflict between the provisions of this agreement and the Ipso Facto Stay, this agreement is to be interpreted subject to the Ipso Facto Stay.
- 23.12 In the event of any conflict between any special condition prescribed in the purchase order and these general terms and conditions, the special condition prescribed in the purchase order will take precedence.
- 23.13 If any dispute arises with regard to any matter in connection with this agreement, the parties must meet to review such dispute and to arrive at an amicable and negotiated solution with regard to it. If the parties are unable to negotiate and agree on an amicable settlement of the dispute, within seven days after such meeting, either party may refer the dispute to arbitration in accordance with and subject to, the Resolution Institute's Arbitration Rules. Unless the parties agree upon an arbitrator, either party may request a nomination from the Chair of the Resolution Institute. Notwithstanding the existence of a dispute, each party must continue to perform the agreement. For disputes in which the quantum is less than \$50,000, arbitration must take place using the submission of documents alone unless both parties agree otherwise.
- 23.14 Nothing in clause 23.13 will prevent a party from seeking urgent injunctive relief or similar interim relief from a court.
- 23.15 All notices under the agreement must be sent to the named party representatives at the respective addresses in the purchase order, or as amended by each party in writing. All such notices so addressed will be deemed duly given:
  - (a) upon delivery, if delivered by courier or by hand (against receipt);
  - (b) three days after posting, if sent by certified or registered mail, return receipt requested; or
  - (c) in the case of an email, on the date of its dispatch, unless it is sent after 5pm (WST) in which case it is deemed to have been received at 9am on the next business day, or unless the sender receives an automated message that the email has not been delivered.
- 16.2 This agreement applies to the supply of goods or services by you which are contained in a purchase order even if that supply proceeds the issuance of the purchase order.

**24 Governing law and jurisdiction**

- 24.1 This agreement is governed by the laws of Western Australia, Australia.
- 24.2 Each party submits to the non-exclusive jurisdiction of the courts of Western Australia.