

1. Definitions and Interpretations

1.1 Definitions

Throughout this Agreement, unless the context otherwise requires;

Agreement means this agreement including the Purchase Orders and all other documents annexed to this Agreement or specifically incorporated by reference.

Affected Party means any Party which is prevented by an event of Force Majeure in carrying out its obligation under this Agreement.

Business Day means a day on which trading banks are open for business in Melbourne, Victoria, but excludes weekends and public holidays.

Claim means any claim, action, suit, demand, proceeding, notice, litigation, investigation or judgement and any actual or alleged entitlement or right of any kind arising out of this Agreement or a breach of it, or arising at common law, in equity or under any Law.

Commencement Date is set out in the Purchase Order.

Company means Century Mining Limited Limited or a Related Body Corporate if set out in a Purchase Order.

Company Representative means the duly authorised representative of the Company.

Consequential Loss means indirect loss of any kind whatsoever and includes loss of sales, loss of profit, loss of revenue, loss of goodwill or business opportunities and damage to reputation, even if a party knew or should have known of the possibility of such loss or damage.

Delivery Date means that the date on which the Supplier undertakes to deliver the Goods.

Delivery Point means the delivery point specified in the Purchase Order or as otherwise agreed.

Delivery Terms means the delivery instructions specified in the Purchase Order and as otherwise notified to the Supplier by the Company.

Force Majeure has the meaning given in clause 16.2.

Goods means the goods, materials, equipment, supplies or other items supplied by the Supplier under a valid Purchase Order.

Goods Price has the meaning ascribed to that term in clause 5.1.

Government Agency includes any federal, state, territory or local government, or any ministry, department, court, commission, board, agency, instrumentality, political subdivision or similar entity.

Government Authorisations means all approvals, consents, authorisations, permits, clearances, licences or other requirements that are required by or from any Government Agency for the Supplier to perform its obligations under this Agreement or any Purchase Order.

GST means the tax payable on Taxable Supplies under the GST Law.

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax, and includes any subordinated legislation in respect of those acts and terms used in this Agreement will, where the context requires, have the meaning ascribed to such terms in the GST Law.

Insolvency Event means, in relation to any Party, that any of the following events or circumstances has occurred:

- (a) the affected Party becomes insolvent or commits an act of bankruptcy or is declared insolvent; or
- (b) proceedings are commenced to appoint a liquidator or provisional liquidator to the affected Party, or
- (c) any trustee, receiver or receiver and manager is appointed in respect any material part of the affected Party's assets.

Law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instrument under them, and consolidations, amendments, re-enactments or replacement of any of them.

Liability means liability, loss, damage (of any nature including aggravated and punitive), cost, Claim, suit, charge, diminution in value action, statutory or equitable compensation, demand, expense or proceeding or loss of any nature and of any kind whatsoever whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising including under any Law or Government Authorisation.

Parties means the Company and the Supplier.

Party Representatives means the duly authorised representatives nominated by each Party to manage the purchase, delivery and consumption of goods supplied pursuant to a valid Company Purchase Order

Personnel means the directors, officers, employees, Suppliers and agents of the Supplier or Company or their respective Related Bodies Corporate as the context requires.

Purchase Order means a document issued by the Company for the supply of specific Goods.

Purchase Order Number means the number assigned to, and printed on, the Purchase Order by the Company.

Related Body Corporate has the meaning given in the *Corporations Act 2001* (Cth).

Site means any of the sites identified in the Purchase Order or nominated as such by the Company.

Site Induction means questionnaires and teachings given to a visitor or contractor in order to bring knowledge of Company's safety procedures to a level compliant with legislative and Company requirements.

Site Safety Requirements means the safety requirements at or associated with any Site as are imposed or required by any duly authorised by the Company to administer health and safety on its behalf.

Special Conditions means any condition of contract not specifically referenced in this Agreement or the Purchase Order but agreed on in writing by the Parties.

Specifications of Goods means those specifications of the Goods to be provided by the Supplier as confirmed in a valid Company Purchase Order.

Supply means Taxable Supply as defined in the GST Law.

Taxes includes all taxes, fees, levies, duties and charges imposed or assessed in respect of the Goods under this Agreement by all local, state or national government authorities including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise tax, and stamp duty but does not include GST.

Tax Invoice has the meaning given to that term in the GST Law.

Term has the meaning given in Clause 3 of this Agreement.

Third Party Claim means any Claim in respect of:

- (a) loss or destruction of, or injury or damage to, or loss or use of any real or personal property;
- (b) any personal injury or death of a person arising out of or caused by the supply or non-supply of the Goods by the Supplier.

1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words importing a gender include all genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (e) the word 'person' includes a company, an unincorporated association, a Government Agency, or a partnership and vice versa;
- (f) reference to a Party includes its successors and permitted assigns;
- (g) an agreement, representation or warranty by two or more persons binds them jointly and severally;
- (h) a reference to anything (including but not limited to any right) includes a part of that thing;
- (i) a reference to a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law judgement, rule of law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced;

- (j) a reference to a clause, Party, annexure, exhibit, schedule or attachment is a reference to a clause, Party, annexure, exhibit, schedule and attachment to this Agreement and a reference to this Agreement includes any annexure, exhibit, schedule and attachment to it;
- (k) in the event of any conflict in terms, precedence is given to the following order: Purchase Order, these Terms and Conditions and the Special Conditions;
- (l) a reference to an obligation includes a liability and a duty and a reference to performance includes observance;
- (m) a reference to a day is reference to a calendar day;
- (n) 'including' is to be read as including but not limited to;
- (o) a reference to \$AUD or dollar is to Australian currency; and
- (p) a reference to time is to local time in Melbourne, Victoria.

2. Supply Arrangements

2.1 Provision of Goods

The Company appoints the Supplier and the Supplier accepts the appointment to provide the Goods to the Company on a non-exclusive basis during the Term in accordance with the terms and conditions of this Agreement.

2.2 Ordering Procedure

- (a) A request for Goods must be made by issue from the Company to the Supplier of a Purchase Order. Upon receipt of a Purchase Order, the Supplier must provide the Goods required under the Purchase Order (and as more particularly described in the Purchase Order or Specifications of Goods) on the terms and conditions of this Agreement.
- (b) A variation of a Purchase Order by the Supplier will only be binding on the Company if confirmed in writing by the Company Representative.

3. Term

Subject to any earlier termination provided for under this Agreement, the Term commences on the Commencement Date and continues while Goods are supplied under a valid Company Purchase Order notwithstanding any surviving terms.

4. Co-operative Approach

- 4.1 The fundamental objectives of the Parties under this Agreement are to sell and provide the Goods in accordance with the Specifications of Goods, within the agreed time and at the lowest possible cost to the Company.
- 4.2 In order to achieve this objective, the Parties commit to act with mutual co-operation based on trust, integrity and open book dealings.

5. Pricing and Payment

5.1 Price

Subject to this Agreement, Company shall pay Supplier for the supply of the Goods in accordance with the Purchase Order (**Goods Price**).

5.2 No minimum purchase

Nothing in this Agreement obliges the Company to request or acquire any minimum volume of Goods from the Supplier.

5.3 Invoice and Payment

(a) Goods

The Supplier must, within 5 days from the end of a month during which Goods were provided, provide the Company with an invoice to support the payment of the Goods Price in a form acceptable to Company and must contain the following information:

- (1) A brief description of the Goods supplied;
 - (2) The quantity of the Goods supplied;
 - (3) Any further information stipulated in any applicable GST legislation, or by the Company, so that the Company will receive the benefit of any input tax credits in relation to the supply of the Goods; and
 - (4) Such other accurate verification documentation as may be required by Company.
- (b) Subject to clause 5.4 payment will be made by Company 30 days from the invoice date after an invoice has been validly issued under this clause 5.3.
- (c) Any amounts due by the Company to the Supplier under this Agreement may be set off against any amounts due to the Company from the Supplier.
- (d) Unless otherwise agreed, all payments to be made pursuant to this Agreement shall be made by deposit to a bank account in Australia nominated in writing by the intended recipient of the payment.

5.4 Dispute

If the Company disputes any amount shown on an invoice, it must notify the Supplier within 21 days of receipt of the invoice and must pay any amounts not in dispute in accordance with clause 5.3(b), provided that the payment by the Company of any amount the subject of a disputed invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment.

6. Manufacture and quality

The Goods which the Supplier sells and delivers to the Company must:

- (a) strictly meet the Specifications of the Goods;
- (b) be of merchantable quality within the meaning of the relevant sale of goods and commercial Laws and fit for any purpose held out by the Supplier or made known to the Supplier by the Company;
- (c) be free from defects in design, material and workmanship and remain so for the duration of the Defects Liability Period; and
- (d) comply with all applicable Laws and Government Authorisations.

7. Obligations

In supplying the Goods, the Supplier must, and must ensure that its Personnel:

- (a) comply with all Laws (including, without limitation, all relevant mines safety and inspections laws), directives from Government Agencies, this Agreement and with best industry practices;
- (b) obtain and strictly adhere to all applicable Government Authorisations required for Supplier to source and supply the Goods;
- (c) comply with the Company's procedures, including Site Induction and Site Safety Requirements, as applicable; and
- (d) co-operate with staff, contractors and other persons providing goods or services to Company and must immediately bring to the attention of Company any conflict which may arise in relation to the supply of Goods between Supplier and any other person.

8. Warranties

8.1 Without limiting any other warranty or obligation under the Agreement, Supplier represents and warrants to the Company (as at the date of this Agreement and on each day during the Term) that:

- (a) the Supplier will supply all Personnel involved in the delivery of the Goods with the supervision and expertise necessary for the delivery of the Goods in accordance with the Agreement;
- (b) the Goods will be: fit for purpose; of merchantable quality; free from defects in design, materials or workmanship; in safe working condition; comply with all applicable Laws; and meet the Specifications or any change to the Specifications thereafter mutually agreed by the parties in writing;
- (c) the Goods will be manufactured to the standard of care, skill and diligence that would normally be expected of a reputable and competent organisation providing goods similar to the Goods;
- (d) the Goods have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable supplier or contractor;
- (e) it has the resources to ensure sufficient and continuous supply of the Goods for the Term;
- (f) the Goods will be new unless specified otherwise;
- (g) the Goods will be delivered in accordance with the Delivery Terms and the Agreement;
- (h) the Supplier has good, marketable title to such Goods and the Company will receive title to the Goods free of any charge or encumbrance;
- (i) the Supplier will (if necessary) obtain, at its cost, all usual trade warranties, and any warranties specifically requested by the Company and on delivery of the Goods assign the benefit of these warranties to the Company and provide copies of the warranties to the Company; and

- (j) all information in relation to the Supplier's performance of the Agreement is true and correct in every respect and is not misleading or deceptive and the Supplier has not withheld from the Company any information concerning the Supplier, its experience or expertise which might reasonably be supposed to be material to the Company in determining whether or not to engage the Supplier to deliver the Goods or the price at which or the terms on which the Company would be prepared to engage the Supplier to deliver the Goods.

9. Delivery

- 9.1 The Supplier must immediately notify the Company of the date and time of each dispatch of Goods, and include the Purchase Order Number, the quantity and description of the Goods dispatched, and the expected date and time of arrival at the Delivery Point.
- 9.2 Delivery of Goods is complete when the Goods have been delivered and unloaded to the Delivery Point nominated on the applicable Purchase Order and received by the Company or its agent as evidenced by the receipt signed by the Company or its agent.
- 9.3 The Goods must be delivered by the Delivery Date or in the case where the Company specifically nominates a Delivery Date, on the Delivery Date, during the opening hours of the Site or other location which is the Delivery Point.
- 9.4 Unless otherwise agreed, time is of the essence with regards to the delivery of the Goods.
- 9.5 All goods must be packed, marked and transported as specified in the Delivery Terms and in accordance with requirements pertaining to transportation of dangerous goods (where applicable) and industry best practice.
- 9.6 The Supplier shall ensure that the Goods are adequately protected from damage and deterioration during shipment and short term storage having due regard for the conditions and environment at the Site or other location which is the Delivery Point and areas through which the Goods will traverse, to include climate, roads, and requirement for multiple handling. In packaging, marking and transporting the Goods, the Supplier must abide by applicable international and national Laws regarding the transportation of Goods and the protection of safety, health and the environment.
- 9.7 All hazardous goods must be clearly labelled. If the Goods include or constitute dangerous, hazardous or toxic items, the Supplier must include Material Safety Data Sheets and clearly mark or label the Goods with appropriate information, provide necessary shipping certification and otherwise comply with all applicable Laws and Governmental Authorisations and requirements of the Company. Costs arising from failure of the Supplier to follow proper packaging, marking and transporting procedures and instructions as specified in the Purchase Order shall be for the account of the Supplier.
- 9.8 If required by the Company, the Supplier must include with each delivery of Goods a delivery docket:
 - (a) setting out the date of dispatch, the quantity and the unit of measure of Goods shipped, Purchase Order number, line item number, delivery docket number and, if applicable, the consignment note number and freight carrier; and
 - (b) naming the Supplier as the Shipper and the Company as the Consignee.

Where the Supplier fails to provide a delivery docket the Company's count will be accepted as final and conclusive on shipments.

- 9.9 If the Supplier believes that the Goods may not be delivered by the Delivery Date, the Supplier must immediately give written notice to the Company's Representative as soon as it forms, or ought to have formed, that belief.
- 9.10 The Supplier must, after consultation with the Company, and without limiting the Company's rights or remedies under this Agreement or under any Laws, take such remedial steps as necessary to expedite and accelerate the delivery of the Goods so that the Goods are delivered on or as close to the Delivery Date as reasonably practicable. The Supplier will be responsible for all costs and expenses arising from the remediation of the delay, except to the extent the Company or its Personnel contribute to any such delay.
- 9.11 If the Goods are not delivered by the Delivery Date, then, without limiting any other right or remedy the Company may have under the Agreement, at law or in equity, the Company may:
- (a) refuse to take any subsequent attempted delivery of the Goods;
 - (b) terminate this Agreement with immediate effect;
 - (c) cancel the relevant Purchase Order and obtain substitute goods from a third party supplier and recover from the Supplier any costs and expenses reasonably incurred by the Company in obtaining such substitute goods;
 - (d) cause the Supplier to obtain such goods from a third party;
 - (e) cause the Supplier to use another form of delivery (for example Air Express) nominated by the Company at the Supplier's expense;
 - (f) claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Goods on the Delivery Date provided that the Supplier will have no liability for any failure or delay in delivering the Goods to the extent that such failure or delay is caused by the Company's failure to comply with its obligations under this Agreement.
- 9.12 If the Company fails to accept delivery of the Goods at the Delivery Point on the specified Delivery Date, then, except where such failure or delay is caused by the Supplier's failure to comply with its obligations under the Contract the Goods will be deemed to have been delivered to the Delivery Point on the Delivery Date within the opening hours of the Site or other location which is the Delivery Point and the Supplier must store the Goods until delivery takes place, and charge the Company for all related costs and expenses (including insurance).
- 9.13 All Goods received in excess of Purchase Order requirements will be subject to return for credit at the Supplier's cost.
- 9.14 The Supplier must provide to the Company an Emergency Service pursuant to which the Supplier must prepare the Goods for dispatch at the Supplier's premises and make them available to a nominated transporter of the Company within three (3) hours of receiving notification by the Company, such Emergency Service must be available seven (7) days a week (including Saturdays, Sundays and Public Holidays) and twenty-four (24) hours a day.
- 9.15 If applicable, and where the Supplier's Personnel need to attend Site, it is a condition of entry to the Site that the Supplier's Personnel complete the Company's Site Induction and any other reasonable training as the Company may require from time

to time. The Company may deny access to the Site to any person who fails to complete the Site Induction to the satisfaction of the Company in its sole discretion.

10. Cancellation

- (a) The Company may cancel a Purchase Order in whole or in part by giving written notice to the Supplier indicating the date of cancellation (**Cancellation Date**).
- (b) As of the Cancellation Date:
 - (1) the Supplier must:
 - (A) cease the manufacture and supply of the Goods and all other work related to the supply of the Goods;
 - (B) not place any further orders or commitments; and
 - (C) take all action in relation to the cancellation that the Company may reasonably require.
 - (2) to the extent the Goods are standard or stock items and are not yet delivered or in transit, the Company will have no further obligation to the Supplier.
 - (3) if the Goods are manufactured exclusively for the Company and have been delivered or are in transit or the process of being manufactured, the Company must pay the Supplier:
 - (A) all costs and expenses incurred as a result of cancellation (as reasonably determined by the Company); and
 - (B) any other amounts otherwise due under the Agreement,

provided that the Supplier must make all reasonable efforts to mitigate all costs and expenses incurred as a result of the cancellation.
- (c) In no event will the total amount to be paid under clause (b) when added to previous payments to the Supplier exceed the Goods Price. In no event will the Company be obligated to pay any bonus, damage or other Claim asserted by the Supplier for the Supplier's expected profit on the incomplete portion of the order for the Goods.

11. Acceptance

- 11.1 The Company is not deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.
- 11.2 If any Goods delivered to the Company do not comply with the Specifications of Goods, clause 7 (as to manufacture and quality), or are otherwise not in conformity with the terms of the Agreement, then, without limiting any other right or remedy that the Company may have, the Company may reject those Goods and:
 - (a) require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense within five [5] Business Days of being requested to do so or within a different timeframe agreed to by the parties; or

- (b) require the Supplier to repay the price of the rejected Goods in full (whether or not the Company has previously required the Supplier to repair or replace the rejected Goods); and
 - (c) claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods that are not in conformity with the terms of the Agreement.
- 11.3 The Company's rights and remedies under this clause are in addition to the rights and remedies available to it in respect of the statutory conditions relating to merchantable quality and fitness for purpose by the relevant sale of good or commercial Laws.
- 11.4 The terms of the Contract will apply to any repaired or replacement Goods supplied by the Supplier.
- 11.5 If the Supplier fails to promptly repair or replace rejected Goods in accordance with clause 11.2, the Company may, without affecting its rights, obtain substitute goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier will reimburse the Company for the costs it incurs in doing so.
- 11.6 If the parties dispute whether any Goods comply with the Specifications, clause 7 (as to manufacture and quality) or the terms of the Contract, either party may refer the matter to dispute resolution in accordance with clause 14.

12. Defect Liability Period

- 12.1 The Defects Liability Period will commence on and from the date that the Goods are accepted by the Company.
- 12.2 Upon receipt of a notice from the Company of any defect or deficiency in the Goods during the Defects Liability Period, the Supplier must redesign, repair or replace the affected items or parts at no cost to the Company prior to the expiration of the time specified in the notice, such work of rectification will be subject to a separate and additional Defects Liability Period, commencing from the notification by the Company of acceptance of the work of rectification and extending for the Defects Liability Period.
- 12.3 If the Supplier fails to make the necessary redesign, repair or replacement to the Goods within the time specified, the Company may perform or cause to be performed such redesign, repair or replacement at the Supplier's risk and expense and any costs and expenses incurred by the Company will be recoverable from the Supplier as a debt due and payable.

13. Goods and Services Tax

- 13.1 The Goods Price is exclusive of GST.
- 13.2 If GST is imposed in relation to any Supply under this Agreement by one Party to another, the Party receiving the Supply (**Recipient**) must pay the amount imposed to the Party providing the Supply (**the Provider**) at the same time as the Party is required to pay the Provider for the Supply in question, provided that the Provider issues a valid tax invoice to the Recipient:

- (1) within 7 days after the occurrence of the event that causes the GST liability of the Provider on any taxable supply to the Recipient to be attributed to a particular tax period (and the Recipient is not required to make any payment for GST until the Recipient has received a valid tax invoice from the Supplier); or
 - (2) in the case of the provision of Goods by the Supplier, in accordance with the invoice requirements in clause 5.3.
- 13.3 This clause 13 does not apply if the consideration payable or to be provided by the Recipient for the supply includes GST.

14. Dispute Resolution

14.1 Notice of Dispute

- (a) Subject to clause 14.4, if a dispute between the Supplier and the Company arises out of or in connection with this Agreement (**Dispute**) then, subject to clause 14.2, a party may give the other party a notice (**Notice of Dispute**) specifying the Dispute and requiring its resolution under this clause 14.
- (b) During the existence of any Dispute, the parties must continue to perform all of their obligations under this Agreement without prejudice to their position in respect of such Dispute.

14.2 Time of Notice

The Supplier must not submit a Notice of Dispute in respect of a Claim for any extra costs, loss or damage unless the claim has previously been submitted to and determined in writing by the Company's Representative. Where a Claim has been submitted to the Company and has not been determined by the Company's Representative within 28 days then the Claim will be deemed to have been rejected by the Company at the end of that time and a Notice of Dispute may be given.

14.3 Escalation

- (a) If the Dispute remains unresolved 7 days after receipt of the Notice of Dispute, the Supplier's Representative must meet with the Company's Representative to resolve the Dispute.
- (b) If the Dispute is not resolved within 30 days after receipt of the Notice of Dispute, then either party may commence legal proceedings in an appropriate court to resolve the matter.

14.4 Urgent interlocutory relief

Nothing in this clause prevents a party from seeking urgent interlocutory relief.

15. Termination and suspension

15.1 Termination by either party

- (a) Either Party may terminate this Agreement by written notice if the other Party breaches an Essential Term of this Agreement and has not remedied the breach within 30 days after the non-defaulting Party gives written notice of the breach and the non-defaulting Party's requirement to remedy the breach.

- (b) Either Party may terminate this Agreement by written notice where an Insolvency Event has occurred in respect of the other Party.

15.2 Termination by the Company

- (a) In addition to the rights of the Company as provided for elsewhere in the Agreement the Company may at any time for any reason and without cause and at its absolute discretion terminate the Agreement in whole or in part by giving the Supplier not less than 30 days' notice.
- (b) In the event of termination by the Company under clause 15.2(a) above (and provided that the Supplier has not in any way committed a breach or repudiation of the Essential Terms) the Company will pay to the Supplier all amounts due and payable by the Company to the Supplier for the Goods delivered prior to the termination becoming effective, which shall be accepted by the Supplier in full and final settlement of all and any rights and remedies of the Supplier in respect of termination of the Agreement by the Company. All Goods for which the Supplier is paid in accordance with this Clause shall be delivered to, and become the property of the Company.
- (c) Upon payment by the Company to the Supplier in accordance with clause 15.2(b), the Supplier shall waive any Claims for damages, loss, expenses and costs (including loss of any anticipated profits) which the Supplier may otherwise have had on account of the termination of the Agreement by the Company, and acknowledges that the Company be released from all further obligations to the Supplier pursuant to the provisions of the Agreement from the date on which termination is effective (other than as contemplated in this clause 15.2).

15.3 Effects of Termination

Any termination under this clause 15:

- (1) Applies prospectively to prevent any dispatch of Goods by the Supplier under these terms after the termination but will not apply to any Goods dispatched by the Supplier (whether delivered to the Company or not) before the termination date; and
- (2) Will not affect any accrued rights or obligations of the Company or the Supplier prior to the termination.

16. Force Majeure

16.1 No liability for inability to perform resulting from Force Majeure

- (a) During the period when a party is affected by Force Majeure (**Affected Party**), either party shall be excused from performance and shall not be in default in respect of any obligation under this Agreement to the extent that the failure to perform such obligation relates to a Force Majeure.
- (b) For the avoidance of doubt, the Company shall be excused from its payment obligations if the Force Majeure prohibits or materially inhibits its ability to conduct its usual mining or milling operations.

16.2 Meaning of Force Majeure

- (a) In this agreement, **Force Majeure** means any event not within the control of the Affected Party and which by the exercise of due diligence, the Affected Party is not reasonably able to prevent or overcome, and which prevents the Affected Party from complying with its obligations under this agreement, or which prohibits or materially inhibits the Company conducting its usual mining or milling operations.
- (b) Force Majeure includes but is not limited to:
 - (1) acts of God, including epidemics, landslides, earthquakes, cyclones, and unusually severe weather;
 - (2) strikes, labour disputes or other industrial disturbances;
 - (3) acts of the enemy including wars, blockades or insurrections;
 - (4) acts of terrorism;
 - (5) riots and civil disturbance;
 - (6) Laws of any Government Agency not resulting from any wrongful act or omission of the affected party; and
 - (7) refusal or delay in obtaining any necessary consents or approvals from any Government Agency, provided that the affected party has acted in a competent and timely manner in endeavouring to secure same.

16.3 Notification of Force Majeure

- (a) An Affected Party must as soon as reasonably practicable notify the other party of:
 - (1) the occurrence and details of any Force Majeure;
 - (2) the estimated delay in performance resulting from the Force Majeure; and
 - (3) where possible, the proposed method of remedying or abating the Force Majeure.
- (b) An Affected Party must promptly notify the other party of any changes in or cessation of the occurrence or effects of Force Majeure.

16.4 Reasonable diligence to overcome

An Affected Party must use all reasonable diligence to overcome the effect of Force Majeure as quickly as possible.

16.5 Termination due to an event of Force Majeure

- (a) If an event of Force Majeure is operative for a period of 60 days, the Company may give the Supplier a notice of termination with immediate effect.

- (b) After termination under clause 16.5(a) the Company will pay to the Supplier all amounts due and payable by the Company to the Supplier for the Goods provided to the date of termination.

17. Indemnity and Insurance

17.1 The Supplier must indemnify (and keep indemnified), defend and hold harmless the Company and its Related Bodies Corporate from and against all Liabilities that any of them suffer, sustain or incur, (including Third Party Claims) arising from any one or more of the following:

- (a) the performance, non-performance or breach by the Supplier or its Personnel of any of the Supplier's obligations (including any warranty) under this Agreement or a Purchase Order;
- (b) the negligence or any act or omission of, or misconduct by the Supplier or its Personnel arising out of or in any way connected or related to the performance and non-performance of this Agreement or a Purchase Order;
- (c) the entry onto and the activities undertaken on and in, the Site, by the Supplier and its Personnel;
- (d) the illness, injury or death of any of the Supplier's Personnel arising out of or in any way related to this Agreement;
- (e) any Claim made against the Company and its Related Bodies Corporate by any of the Supplier's Personnel in respect of any Law,

provided that the Supplier is not be obliged to indemnify, defend or hold harmless the Company and its Related Bodies Corporate for any Liability pursuant to clause 18.1 to the extent that the Liability arises directly from the negligence of the Company and its Related Bodies Corporate.

17.2 Neither party is liable to the other for Consequential Loss.

17.3 Prior to commencing the provision of Goods the Supplier must hold, and if requested, provide to the Company certificates of currency for:

- (a) public liability insurance, such insurance:
 - (i) covering liability relating to death, bodily injury, loss of property and damage to property for the amount not less than \$20,000,000;
 - (ii) insuring the Goods against loss or damage during manufacture, pending delivery and in transit to the Delivery Point specified in the Purchase Order and until accepted by the Company;
 - (iii) must contain a waiver of the insurer's rights of subrogation to the Company rights);
- (b) compulsory motor vehicle third Party liability insurance for all Supplier's vehicles, if such vehicles are used for the purposes of the Agreement;

- (c) insurance for third Party property damage by Supplier's vehicles for an amount of not less than \$20,000,000;
- (d) workers compensation insurances; and
- (e) journey cover insurance.

17.4 The insurances referred to in this clause 17 must be maintained by the Supplier for the Term of this Agreement.

18. Risk and title

- (a) Risk in the Goods will pass to the Company once the Goods have been delivered to the Company in accordance with clause 9.
- (b) Title in the Goods will pass to the Company upon payment of the Goods.

19. Records

The Supplier must:

- (a) maintain a true, correct and complete set of records, books and accounts, relating to the costs and expenses for which the Supplier seeks compensation or reimbursement prepared in accordance with generally accepted accounting principles and accounting standards in Australia; and
- (b) make them available at no cost to the Company for audit, inspection, and copying by the Company or its designated representative during the term of this Agreement and for a period of two (2) years or as required by Law, whichever is the greater following any termination or completion of this Agreement.

20. Assignment

- (a) Neither Party shall, without the prior written consent of the other Party, assign, mortgage or charge any or all of its rights or obligations under or pursuant to this Agreement.
- (b) Notwithstanding clause 20(a) Company may assign its rights or obligation under this Agreement to any Related Body Corporate without the prior written consent of Supplier.

21. Governing Law

This Agreement shall be governed by the laws of Victoria. Each Party submits to the non-exclusive jurisdiction of courts of Victoria.

22. Confidentiality

Subject to any requirement at law, the details of this Agreement are confidential and must not be disclosed without the written consent of the other Party.

23. Entire Agreement

This Agreement constitutes the entire agreement between the two Parties in relation to the subject matter and supersedes all prior negotiations, conditions,

representations, proposals, understandings and agreements whether written oral which are excluded and negated save and except for such conditions or representations that cannot be excluded by virtue of the *Competition and Consumer Act 2010* (Cth) or any applicable Law.

24. Variation and Waiver

- 24.1 No failure, delay, relaxation or indulgence on the part of either Party in exercising any power or right conferred upon such Party under this Agreement shall operate as waiver of any such power or right, nor shall any single or partial exercise of any such power or right preclude any other future exercise of such power or right or the exercise of any other power or right under this Agreement. No variation, modification or waiver of any provision of this Agreement shall have any effect unless expressly agreed in writing by the Parties, and then only in specific instances, and for the purpose for which, and to the extent to which it is made or given.
- 24.2 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part or validity of the other provisions of this Agreement and the remainder of the provision in question will not be affected.

25. Relationship of the Parties

- (a) The Parties acknowledge and agree that the relationship between Company and Supplier is that of principal and independent contractor.
- (b) Nothing in this Agreement will be deemed to constitute Supplier nor any of its Personnel as an employee, partner, agent or representative of Company and Supplier nor any of its Personnel will have no authority to incur and will not incur any obligation on the part of Company, except with, and to the extent of, the prior written authority of Company.
- (c) The Supplier shall be responsible for and must from time to time as required by law pay all compulsory superannuation, payroll tax, income tax and any other government levies and charges incurred in connection with providing the Goods, and indemnifies and will keep indemnified the Company from and against all losses, liabilities, damages, claims, proceedings, demands, costs and expenses however arising that the Company or its servants, agents or Suppliers suffer, sustain or incur by reason of the Supplier's breach of any part of this clause 25.

26. Counterparts

- (a) This Agreement may be executed in counterparts.
- (b) All counterparts, taken together, constitute one instrument.

27. Essential Terms and Survival

- (a) The provisions in clauses 12, 13, 15, 17, 19, 20, 21, 22, 23 and 28 and the Special Conditions, as well as any other provision which, by its general terms, may be reasonably intended to survive, survive the expiration or termination of this Agreement or any Purchase Order.
- (b) The provisions in clauses 6, 7, 8, 9 and 17.3 are essential terms of this Agreement.

28. Notices

- (a) Any notice or other communication to or by any Party shall be in writing, in English, signed and addressed to the address of the recipient shown in Purchase Order. Any communication shall be deemed duly given or made in the case of:
- (1) being personally served on a Party, when delivered;
 - (2) being left at the Party's current address for service, when delivered;
 - (3) being sent to the Party's current address for services by pre-paid ordinary mail, on the second Business Day after posting;
 - (4) if the address is outside Australia, by being sent to the Party's current address by pre-paid airmail on the tenth Business Day after posting;
 - (5) A facsimile transmission to the Party's current number for service, upon a transmission report being printed by the sender's facsimile machine stating that the document has been sent to the Recipient's facsimile number.
 - (6) if delivered by email, the day that the sender's computer reports that the message has been delivered to the email address of the addressee **and** receipt is confirmed by the sender. For the avoidance of doubt `replying to the email or acting on information contained in the email would serve as confirmation of receipt. It is incumbent on the sender of any electronic communication to confirm it has been received by the intended recipient.
- (b) If delivery is not made before 4.00pm on a Business Day, it shall be deemed to be received on the next Business Day in that place.

A Party may from time to time change its address or numbers for service by written notice to the other Party.