

THE PARTIES AGREE AS FOLLOWS:**1 Contract**

The contract (**Contract**) is comprised of:

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

2 Scope of Services

- (a) The Contractor must perform and complete the services specified in the Contract (**Services**) in accordance with the Contract.
- (b) The scope of the Services includes:
 - (1) the supply of the Services;
 - (2) the supply of all labour, supervision, personal protective equipment, plant and equipment, goods and materials, services and all other things necessary to perform the Services, except as may otherwise be provided in the Contract; and
 - (3) any other matter or thing which the Contractor must do in order to comply with its obligations under this Contract.
- (c) The Contractor will be responsible for mobilisation and demobilisation of all items required to be supplied or provided by the Contractor under this Contract.
- (d) The Contractor will not carry out a variation nor deviate from this Contract except as directed or permitted in writing by the Company.
- (e) The Company may direct a variation to the Services and the Contractor will comply with that direction. Variations will be priced by written agreement or in accordance with the lowest reasonable rates and prices. If the Contractor considers that it has been directed by the Company to carry out a variation to the Services, it will give notice in writing to the Company within 7 days after the direction.

3 Commencement, term and progress

- (a) The Contractor must perform the Services with due expedition and without delay, in accordance with the Contract, and must complete the Services by the date specified in the Contract (**Completion Date**). The Contractor must keep the Company informed on all aspects of the performance of the Services as required from time to time.
- (b) The Contractor will only be entitled to an extension to the Completion Date if:
 - (1) the Contractor is or will be delayed in completing the Services by the Completion Date by a delay caused by the Company or its employees, agents, representatives or other contractors (**Company's Personnel**); and
 - (2) within 7 days after that delay occurring, the Contractor gives the Company a written claim for an extension of time including details of the facts constituting the delay and the extent of the delay.
- (c) An extension of time is the Contractor's sole remedy for a delay.

4 Remuneration

- (a) In consideration of the proper and satisfactory performance of the Services, the Company will pay to the Contractor the fee specified in the Contract (**Fee**) subject to the provisions of this Contract.
- (b) The Contractor agrees that the Fee is the sole basis for consideration payable to the Contractor under this Contract, and is deemed to include all risks, obligations and liabilities expressed or implied in this Contract. Except as expressly provided for in this Contract, the Fee is not subject to rise and fall or any escalation.
- (c) Promptly following the end of the month, the Contractor will give the Company a claim for payment of Services performed during that month (**Payment Claim**).
- (d) Within 10 business days after receipt of a Payment Claim, the Company will assess the Payment Claim and will issue a notice to the Contractor which sets out the amount which the Company determines is payable and, if that amount is less than the amount claimed, written reasons for such difference (**Payment Notice**).

- (e) Following issue of a Payment Notice, the Contractor will issue a tax invoice to the Company in the amount (before GST) specified in the Payment Notice, together with the additional amount in respect of GST. The Company may at its election issue a Recipient Created Tax Invoice.
- (f) The Company will pay the Contractor the amount set out in the Payment Notice within 30 days after receipt of the Payment Claim.
- (g) The Company may deduct or set off from any amount due to the Contractor any amount owed by the Contractor to the Company.
- (h) Payment by the Company to the Contractor will not constitute an admission by the Company that any Services have been performed to the Company's satisfaction but will only be taken to be payment on account.
- (i) Unless expressly included, the consideration for any supply under or in connection with this Contract does not include GST.

5 Warranties

The Contractor warrants that:

- (a) at all times while performing the Services, it will:
 - (1) exercise due skill, care and diligence;
 - (2) use properly skilled, qualified and experienced personnel and subcontractors; and
 - (3) hold all relevant approvals and licences required for the performance of the Services (including any third party intellectual property licences); and
 - (4) comply with all relevant laws, applicable standards and codes (including any relevant standards published by the Standards Association of Australia) (**Laws**).
- (b) it has examined all information and documents provided by the Company which are relevant to the performance of the Services and is satisfied with the sufficiency of that information and documentation for the purpose of the Contract;
- (c) the Services will be fit for purpose;
- (d) the Services will be free from defects and omissions;
- (e) in relation to any goods or materials supplied by the Contractor:
 - (1) it will obtain all available warranties and assign the benefit of such warranties to the Company;
 - (2) the goods or materials will comply with all relevant Laws, will be new and of merchantable quality, free from defects and omissions and fit for purpose; and
 - (3) it has good and marketable title to the goods or materials;
- (f) in performing the Services, the Contractor will not infringe any moral rights, intellectual property rights or confidential information of any person; and
- (g) it will not, without the Company's prior written consent, refer to its appointment in any advertisement or promotional material or discuss the Services or this Contract with the media or any other third party.

6 Title and risk

Title in any goods, documents, materials and items supplied by the Contractor in performing the Services passes to the Company on the earlier of delivery to the Company or payment by the Company. Risk in any goods, documents, materials and items supplied by the Contractor in performing the Services passes to the Company on delivery and written acceptance by the Company.

7 Inspection rights

- (a) The Company or its nominee may, at all reasonable times, have access to any place where the Services are performed to inspect, examine and witness the performance of the Services. Any such involvement by the Company does not relieve the Contractor from any of its obligations under the Contract.
- (b) If, at any time, the Company informs the Contractor that it is not satisfied that the Services comply with the Contract, the Contractor must rectify the non-compliance and the Company may withhold payment until such rectification is complete.

8 Warranty period

Without prejudice to the Company's rights under the other provisions of the Contract, if, at any time during the 12 month period after completion of the Services, the Company discovers a defect in the Services, upon receipt of notice of the defect from the Company, the Contractor must, at its cost, promptly rectify the defect to the satisfaction of the Company.

9 Health and Safety

- (a) If any part of the Services is to be performed at the Curragh mine (**Mine**) then the Contractor and the Contractor's Personnel:
 - (1) enter at their own risk; and
 - (2) must perform the Services safely so as to protect persons and property, and in accordance with the Company's safety and health management system (**Safety and Health Management System**) which is available at <http://shms.curragh.com.au>. The Contractor must ensure that all officers, employees, representatives, agents or subcontractors of the Contractor (**Contractor's Personnel**) comply with the Safety and Health Management System at all times and must notify the Company if the Contractor is unable to access the website for any reason.
- (b) Before any Services commence at the Mine, the Contractor must, and must ensure that all Contractor's Personnel who enter the Mine, complete the Company's mine site induction.
- (c) The Contractor will immediately notify the Company in writing upon the occurrence of any accident, incident or near miss accident or incident.
- (d) Within 36 hours of the occurrence of any accident or incident, the Contractor must provide the Company with a written report in a form approved by the Company and including a detailed chronology and description of events, root cause analysis and proposed remedial action.
- (e) Prior to bringing any hazardous substance onto the Mine, the Contractor must ensure that the Company has approved the use of the substance at the Mine.

10 Contractor's Personnel

- (a) The Contractor will engage and provide the services of all personnel who are required to ensure that the Services are carried out efficiently and in accordance with the Contract.
- (b) The Company may require the removal from the Mine of any of the Contractor's Personnel who, in the Company's reasonable opinion, are incompetent or lack the experience necessary for the work assigned to that person, or who has breached any applicable law, standard or the Safety and Health Management System. The Contractor shall, at its cost, promptly remove and replace such personnel.
- (c) The Contractor's Personnel will not under any circumstances be considered employees or agents of the Company. The Contractor indemnifies the Company against any liability, claim, loss, damage, cost or expense suffered or incurred by the Company in respect of the payment of salaries, wages, levies, commissions, allowances and other remuneration to the Contractor's Personnel and for any payments to authorities in respect to the Contractor's Personnel (including in respect of any tax (including payroll tax), superannuation or worker's compensation insurance).
- (d) The Contractor is at all times responsible for the provision of accommodation and messing, uniforms and safety equipment and flights and transport of the Contractor's Personnel, unless otherwise expressly specified in the Contract. If accommodation and messing is supplied or arranged by, or on behalf of, the Company, the Contractor will indemnify the Company and the Company's 'related bodies corporate' (as defined in the *Corporations Act 2001* (Cth)) (**Related Entities**) against any liability, claim, loss, damage, cost or expense suffered or incurred by the Company (or the Company's Related Entities) in connection with any loss or damage to any accommodation (or any part of the accommodation) and associated facilities and services caused by or contributed to by the Contractor or the Contractor's Personnel.

11 Contractor's equipment

The Contractor must maintain the Contractor's plant and equipment in a safe, operable and good working condition throughout the performance of the Services.

12 Insurance effected by Contractor

The Contractor will effect and maintain at its cost, and require its subcontractors to effect and maintain, the following insurance policies with a reputable insurer on terms consistent with prudent risk management:

- (a) workers' compensation insurance as required by law in respect of employees of the Contractor engaged in the performance of the Services;
- (b) insurance for all items of the Contractor's plant and equipment that the Contractor or the Contractor's Personnel use in performing the Services for an amount of not less than market value of such plant and equipment;
- (c) insurance covering liability for claims for personal injury or death or damage to property arising in respect of the performance of the Services, howsoever caused. Such insurance must, unless prohibited by law:
 - (1) provide cover in respect of each and every occurrence for an amount not less than \$20,000,000 and in respect of public liability must be unlimited as to the number of claims which can be made under the policy; and
 - (2) note the Company and the Company's Personnel as interested parties.
- (d) if the performance of the Services involves the use of motor vehicles on the Mine, third party liability insurance covering all liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of such motor vehicles;
- (e) if the performance of the Services involves the provision of professional services, professional indemnity insurance providing cover to \$10,000,000 in respect of acts, errors and omissions in the performance of professional services; and
- (f) if the Services include the supply of any goods or materials, the Contractor must effect insurance covering loss, damage or destruction of the goods and materials whilst in transit.

The Contractor will ensure that all insurance policies required under this Contract are in place prior to the commencement date for the Services specified in the Contract. The Contractor will provide to the Company certificates of currency for each insurance policy required by this Contract.

13 Indemnity

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

- (a) death or personal injury to any person (including the Company's Personnel or the Contractor's Personnel); and
- (b) damage to or loss of property (including intellectual property), of any person (including the Company and the Company's Related Entities)

arising in connection with any wrongful act or omission by the Contractor or the Contractor's Personnel, including a breach of this Contract, tort (including negligence) or breach of a statutory or equitable duty.

14 Intellectual Property

- (a) The Company owns all right, title and interest in all information, goods and materials supplied to the Contractor by the Company under the Contract, and grants the Contractor a revocable, royalty free, non-exclusive licence to use any intellectual property rights in such information, goods and materials to the extent required to perform the Services.
- (b) To the extent that any intellectual property rights are created in the performance of the Services, or vested in the Services or any goods, materials, documents or data provided by the Contractor or the Contractor's Personnel in the performance of the Services, the Contractor hereby grants to the Company a world-wide, irrevocable, perpetual, assignable, non-exclusive, royalty free licence for the Company to use, reproduce and modify all such intellectual property rights for any purpose in connection with the Contract, Mine or the Company's business.

15 Default and termination

- (a) Either Party may terminate this Contract immediately by written notice to the other Party if:
 - (1) the other Party commits a material breach of the Contract and that breach is not remedied within 30 days after the receipt of written notice of the breach from the first Party; or

- (2) the other Party becomes insolvent, or proceedings are commenced to appoint a liquidator in respect to the first Party or the other Party is placed under an official management or administration (whether voluntary or otherwise) or any trustee, receiver or receiver and manager is appointed in respect of any material part of the other Party's assets.
- (b) If the Contract is terminated by the Company pursuant to Clause 15(a), the rights and liabilities of the Parties will be the same as they would have been at law had the Contractor repudiated the Contract and the Company elected to treat the Contract as at an end and recover damages.
- (c) If the Contract is terminated by the Contractor pursuant to Clause 15(a), the Company's liability to the Contractor will be limited to the following (less amounts already paid):
 - (1) the outstanding and unpaid portion of the Fee earned by the Contractor up to the date of the termination; the reasonable cost of demobilisation, provided that the Contractor uses its best endeavours to minimise such costs; the reasonable costs (excluding lost opportunity, profit and overhead) of complying with any directions given by the Company, upon, or subsequent to, termination; and
 - (2) 10% of the above costs in lieu of profit and overhead, provided however that the total termination payment plus previous payments under this Contract will not exceed the Fee.
- (d) Under no circumstances will the Contractor be entitled to recover any damages for loss of actual or anticipated profits, loss of use, loss of overhead, unrecovered overheads, loss of opportunity or loss of revenue whatsoever.

16 Force Majeure

- (a) If a Party is prevented from performing its obligations under this Contract by an event of Force Majeure, it will as soon as practicable notify the other Party in writing of the event, the estimated delay and steps intended to be taken in order to mitigate the event.
- (b) Neither Party will be liable for delay in performance of the Services or the non-performance of this Contract which is caused by an event of Force Majeure, provided the affected Party takes all reasonable steps to mitigate the cause and result of the Force Majeure and resume performance as soon as possible.

In this clause 16, **Force Majeure** means any event or circumstance not within the control of the Party claiming Force Majeure, and which by the exercise of a standard of care and diligence consistent with that of a reasonable and prudent operator, that Party is not able to overcome.

17 Termination for convenience

The Company may terminate the whole or any part of this Contract for its convenience at any time by giving the Contractor at least 14 days prior written notice. The Contractor's rights upon such a termination will be as stated in Clauses 15(c) and (d).

18 Miscellaneous

- (a) The Contractor may not assign or subcontract the whole or any part of this Contract without the Company's prior written consent, (not to be unreasonably withheld).
- (b) The Contractor is an independent contractor and will not for any purpose be considered a servant, employee or agent of the Company.
- (c) All notices and other documents given or required to be given pursuant to the Contract:
 - (1) must be in writing and signed by a person duly authorised by the sender; and
 - (2) may be delivered by prepaid post, by hand, by facsimile or email to the Party to whom the notice is addressed at its address shown in this Contract or such other address as it may have notified to the other Parties.
- (d) The Contract is governed by the laws of Queensland and each Party submits to the jurisdiction of the courts of that State.
- (e) Clauses 1, 4(g), 5, 8, 13, 14, 15(b), 15(c), 15(d) and 18 survive the expiration or earlier termination of the Contract.

- (f) This Contract embodies the entire agreement of the Parties. Any amendment must be in writing and signed by the Parties.
- (g) If there is any inconsistency between any of the documents comprising the Contract, then:
 - (1) the document imposing the greater or higher standard applies; and
 - (2) to the extent that clause 18(g)(1) does not resolve the inconsistency, these conditions of contract prevail over the other document to the extent of the inconsistency.
- (h) The Company's rights, remedies and powers in the Contract are in addition to any rights, remedies and powers provided at law.