

## 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**); and
- (b) these conditions of contract; and
- (c) such other documents as are specified in the Purchase Order.

### 2 Scope of Services

- (a) The Contractor must perform and complete the services specified in the Purchase Order (**Services**) in accordance with the Contract.
- (b) The scope of the Services includes:
  - (1) the supply of the services specified in the Purchase Order;
  - (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 Purchase Order; 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 agreement or in accordance with the lowest reasonable rates and prices.

### 3 Commencement, term and progress

- (a) Contractor must commence the performance of the Services on the date specified in the Purchase Order and complete the Services by the date specified in Purchase Order (**Completion Date**).

- (b) The Contractor must perform the Services with due expedition and without delay.
- (c) 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, representative or other contractors (**Company's Personnel**) or an event of inclement weather; and
  - (2) within seven 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.

### 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 Purchase Order (**Fee**).
- (b) The Contractor agrees that the Fee:
  - (1) will not be subject to any rise and fall, currency exchange adjustment or any other adjustment or alteration; and
  - (2) is the sole basis for consideration payable to the Contractor under this Contract, and is deemed to include all work, obligations and duties expressed or implied in this Contract.
- (c) On the last "business day" (being a day on which banks are generally open for business in Brisbane) of each calendar month, the Contractor will give the Company a claim for payment of Services performed during that month (**Payment Claim**).
- (d) The Company will assess each Payment Claim and pay the amount which the Company determines is payable in respect of the Payment Claim to the Contractor on the date that is thirty days after receipt of a Payment Claim, provided that the Company will not make payment for any goods or materials supplied by the Contractor prior to delivery of those goods or materials to the Curragh mine. If the Company does not accept the whole of the sum claimed in the Payment

Claim, the Company will provide written reasons for its assessment to the Contractor.

- (e) The Company may deduct or set off from any amount due to the Contractor any amount owed by the Contractor to the Company.
- (f) Payment by the Company to the Contractor will not constitute an admission by the Company that the Services or any part thereof have been performed to the satisfaction of the Company but will only be taken to be payment on account.
- (g) 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) comply with all relevant laws and Australian Standards;
- (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 be 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; and
- (e) in performing the Services, the Contractor will not infringe any moral rights, intellectual property rights or confidential information of any person.

### 6 Title and risk

Title and risk in any goods, documents, materials and items supplied by the Contractor passes to the Company on delivery to the mine and acceptance by the Company or payment by the Company (whichever occurs first).

### 7 Health and Safety and Environment

- (a) The Contractor must perform the Contract safely so as to protect persons and property and in accordance with the Company's health, safety and environmental protection policies.
- (b) The Contractor will immediately notify the Company in writing upon the occurrence of any accident, incident or near miss accident or incident.
- (c) Within thirty-six hours of the occurrence of any accident or incident, the Contractor must provide the Company with a report in a form approved by the Company and including a detailed chronology and description of events, root cause analysis and proposed remedial action.

### 8 Safety and Health Management Plan and inductions

- (a) The Contractor must:
  - (1) perform the Services in accordance with the Company's **Safety and Health Management Plan** copies of which are available from the Company upon request; and
  - (2) ensure that all employees, representatives, agents or subcontractors of the Contractor (**Contractor's Personnel**) comply with the Safety and Health Management Plan at all times.
  - (b) Before any work commences at the Curragh mine, the Contractor must ensure that all personnel for whom the Contractor is responsible who enter the mine complete the Company's mine site induction at the time and cost of the Contractor.

### 9 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 reasonable opinion of the Company, do not have the competence or experience necessary for the work assigned to that person or who has breached the Mine Site Safety Rules. The Contractor shall be responsible for removal and replacement of such personnel at the Contractor's cost.
- (c) The Contractor's Personnel will not under any circumstances be considered employees or agents of the Company. The Contractor must indemnify the Company against any liability, claim, loss, damage, cost or expense suffered or incurred by the Company in respect to the payment of salaries, wages, commissions, allowances and other remuneration to the Contractor's Personnel and for the deduction and payment of any taxes to tax authorities in respect to the Contractor's Personnel.
- (d) The Contractor will at all times be responsible for the provision of accommodation and messing, uniforms and safety equipment, transport to and from the mine and transport around the mine, for the Contractor's Personnel.

### 10 Contractor's equipment

The Contractor will be solely responsible for maintaining the Contractor's plant and equipment in a safe, operable and good working condition throughout the performance of the Services.

### 11 Insurance effected by Contractor

The Contractor will effect and maintain at its cost, and require its subcontractors to effect and maintain, the following insurances 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 Contractor's plant and equipment that the Contractor or the Contractor's Personnel brings onto the mine for an amount of not less than market value of such plant and equipment. Such insurance will include a waiver by the insurer of all express or implied rights of subrogation against the Company and the Company's Personnel;

(c) insurance covering liability for claims from third parties 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 \$10,000,000 and in respect of public liability must be unlimited as to the number of claims which can be made under the policy;
- (2) note the interests of the Company and the Company's Personnel; and
- (3) include a waiver by the insurer of all express or implied rights of subrogation against the Company and the Company's Personnel;
- (d) if the performance of this Contract 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 \$5,000,000 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 insurances required under this Contract are in place prior to the commencement date for the Services specified in the Purchase Order. If requested by the Company, the Contractor will provide to the Company certificates of currency for each of the policies of the insurances required by this Clause 11.

### 12 Indemnity

The Contractor must indemnify the Company 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 of a third party (including intellectual property), 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.

### 13 Intellectual Property

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 agrees that the Company will have a complete, irrevocable, permanent, assignable, non-exclusive, royalty free licence for the Company to use all such intellectual property rights for any purpose in connection with the mine, or the Company's business.

### 14 Default and termination

- (a) A Party (**First Party**) may terminate this Contract immediately by written notice to the other Party (**Second Party**) if:
  - (1) the Second Party commits a material breach of the Contract and that breach is not remedied within thirty days after the receipt of written notice of the breach from the First Party; or
  - (2) the Second Party becomes insolvent, or proceedings are commenced to appoint a liquidator in respect to the Second Party or the Second 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 Second Party's assets.
- (b) If the Contract is terminated by the Company pursuant to Clause 14(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 14(a), the Company's liability to the Contractor will be limited to the following (less amounts already paid):

- (1) the reasonable costs (but not including lost opportunity, profit or overhead) incurred by the Contractor in respect of this Contract prior to the date of termination; and
- (2) 10% of the above cost 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.

### 15 Termination for convenience

Without limitation, at any time and for any reason whatsoever the Company may terminate the whole of the Services or this Contract for its convenience by giving the Contractor fourteen days written notice. The Contractor's rights upon such a termination will be as stated in Clause 14(c).

### 16 Miscellaneous

- (a) The Contractor may not assign or subcontract the whole or any part of this Contract without the prior written consent of the Company, such consent not to be unreasonably withheld.
- (b) The Contractor will be an independent contractor to the Company. The Contractor 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 must be in writing and signed by a person duly authorised by the sender; and 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 applicable in Queensland and each party submits to the jurisdiction of the courts of that State.
- (e) Clauses 5, 12, 13 and 16 survive the expiration or earlier termination of the Contract.
- (f) This Contract embodies the entire agreement of the parties.