

## 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 Supply under the Contract

The Contractor must supply and deliver the goods specified in the Purchase Order (**Goods**) to the delivery point nominated in the Contract (**Delivery Point**) on the terms set out in the Contract and otherwise perform its obligations under the Contract in accordance with this Contract.

### 3 Commencement, progress & Delivery Date

- (a) The Contractor must deliver the Goods in full to the Delivery Point on or before the delivery date nominated in the Purchase Order (**Delivery Date**).
- (b) If the Contractor is or will be delayed in delivering the Goods by the Delivery Date, the Contractor must advise the Company in writing of the anticipated Delivery Date.
- (c) An extension to the Delivery Date will be the Contractor's sole remedy for a delay and the Contractor will not be entitled to any payment, compensation or any other remedy in respect of a delay.

### 4 Contract Price, invoicing & payment

- (a) In consideration of the due performance of the Contract and the proper and satisfactory supply and delivery of the Goods by the Contractor, the Company will pay to the Contractor the price specified in the Purchase Order (**Contract Price**), subject to the provisions of this Contract.
- (b) The Contract Price is the sole basis for consideration payable to the Contractor under this Contract, and is deemed to include all risks, liabilities and obligations expressed or implied in this Contract.
- (c) The Contractor must submit a tax invoice to the Company to support a claim for payment. The invoice must contain the Purchase Order number, a brief description of the Goods supplied, the period in which those Goods were

supplied and any other documentation reasonably required by the Company.

- (d) Subject to the Parties prior agreement the Company may in lieu of the invoice referred to in (c) above issue a recipient created tax invoice (RCTI) to support the Contractors claim for payment.
- (e) Payment will be made by the Company as per the terms of the Purchase Order, but after delivery of the Goods to the Delivery Point and, if applicable, after receipt of an accurate tax invoice provided nothing is in dispute in relation to the Goods (in which case the Company will notify the Contractor and payment of the disputed portion will be withheld until settlement of the dispute).
- (f) Unless expressly included, the consideration for any supply under or in connection with this Contract does not include GST.
- (g) Without prejudice to any other rights, the Company may deduct from any amounts which may be payable to the Contractor, any money which may be payable from the Contractor to the Company in respect of this Contract.

### 5 Warranties

The Contractor warrants that the Goods will:

- (a) comply with all relevant legislation including regulations, by-laws and other subordinate legislation;
- (b) comply with all applicable standards and codes including any relevant standards or codes published by the Standards Association of Australia;
- (c) be fit for their intended purposes;
- (d) be free of defects;
- (e) be in good working order and condition;
- (f) have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable supplier;
- (g) be new unless specified otherwise; and
- (h) be free from any encumbrance, charge or lien in favour of a third party at the time of delivery to the Company.

### 6 Warranty Period

- (a) Without limiting the Contractor's other rights under the Contract, the Contractor guarantees the Goods and each part of the Goods against

any defect or deficiency in design, workmanship or otherwise in respect of the Goods (**Defect**), under normal working conditions for a period of twelve months after the date of delivery to the Delivery Point and acceptance by the Company (**Warranty Period**).

- (b) If, during the Warranty Period, the Company discovers that the Goods have a Defect, the Contractor must repair or replace the Goods at its own expense within a reasonable period after receiving notice of the Defect from the Company.

### 7 Entry onto the Mine

Where the supply of Goods requires the Contractor to enter the Wesfarmers Curragh coal mine (**Mine**), the Contractor and all the officers, employees, representatives, agents and subcontractors of the Contractor (**Contractor's Personnel**) must, at the Contractor's cost, comply with the Company's safety and health management plan (**Safety and Health Management Plan**), which is hereby deemed to be incorporated into this Contract. Copies of the Safety and Health Management Plan are available from the Company upon request.

### 8 Inspection and Testing

The Contractor will at all times give the Company access to the Contractor's premises and the premises of any person to whom performance of any part of this Contract has been sublet by the Contractor for the purpose of inspecting and expediting the Goods or any part of the Goods.

### 9 Title and risk

- (a) Title in each part of the Goods passes to the Company in accordance with the Incoterms or terms of trade listed in the Purchase Order, or if not listed, upon delivery to the Delivery Point or payment of the applicable portion of the Contract Price (whichever occurs first).
- (b) All Goods will be at the Contractor's risk until delivery to the Delivery Point and written acceptance of the Goods by the Company.
- (c) When the Goods have been delivered to the Delivery Point, the Company will, as soon as reasonably practicable, inspect the Goods. If the Company is satisfied that the Goods have been delivered in accordance with the Contract, the Company will (without prejudice to its rights under the Contract) issue a certificate of acceptance to the Contractor.

### 10 Confidentiality

The Contractor may not, without the prior written consent of the Company, 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.

### 11 Intellectual Property

- (a) The Contractor warrants, represents and will ensure that:
  - (1) in performing the Contract, the Contractor will not infringe any patents, utility models, copyrights, eligible layout rights, designs or other like rights, whether registered, registrable or unregistered (**Intellectual Property Rights**), Confidential Information or moral rights of any person;
  - (2) the use of the Goods by the Company will not infringe the Intellectual Property Rights, Confidential Information, moral rights or any rights of any person; and
  - (3) the Contractor is entitled to licence the Intellectual Property Rights without reference to any third party.
- (b) The Contractor indemnifies the Company from any liability arising from any claim that the Goods or the use of the Goods infringe the Intellectual Property Rights of another person.
- (c) To the extent that any Intellectual Property Rights are created in the design, manufacture, supply and delivery of the Goods or otherwise in the performance of this Contract or are vested in the Goods, the Contractor grants to the Company an irrevocable, complete, permanent, assignable, non-exclusive, royalty free, worldwide licence for the Company to use all such Intellectual Property Rights for any purpose in connection with the Mine, the Company's business or the business of the Company's Related Entities.

### 12 Insurance

The Contractor will effect and maintain at its cost the following insurances with a reputable insurer on terms consistent with prudent risk management:

- (a) insurance against loss, damage or destruction of the Goods until delivery to the Delivery Point (including whilst in transit). Unless prohibited by law, such insurance must:
  - (1) be effected for the replacement cost of the Goods;

- (2) name the Company and the Company's Personnel as interested parties; and
  - (3) include a waiver by the insurer of all express and implied rights of subrogation against the Company and the Company's Personnel;
- (b) workers' compensation insurance as required by law in respect of employees of the Contractor engaged in the performance of this Contract;
- (c) insurance for all items of the 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;
- (d) insurance covering liability for claims for personal injury or death or damage to property arising in respect of the performance of this Contract, 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) include a waiver by the insurer of all express or implied rights of subrogation against the Company and the Company's Personnel;
- (e) if the performance of this Contract involves the use of motor vehicles at 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 on the Mine; and
- (f) if the performance of this Contract involves the performance 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.

The Contractor will ensure that all insurances required under this Contract are in place prior to the commencement date for this Contract specified in the Purchase Order. The Contractor will provide to the Company certificates of currency for each of the policies of the insurances required by this Clause 12.

### 13 Indemnity

The Contractor must 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 in connection with any claim against the Company (or its Related Entities) in respect of:

- (a) death or personal injury to any person (including the Company's Personnel or the Contractor's Personnel); or
- (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 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 thirty 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 of 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 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 Contract Price.
  - (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 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 occurrence, the estimated delay and steps intended to be taken in order to mitigate the event or circumstance.
  - (b) Neither party will be liable for delay in supply of the Goods or the non-performance of this Contract which is caused by an event of Force Majeure, provided the affected party takes all reasonable steps to mitigate the cause and result of the Force Majeure and to resume performance as soon as possible.

In this clause 15, **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 if not able to overcome.

### 16 Termination for convenience

Without limitation, at any time and for any reason whatsoever the Company may terminate this Contract for its convenience by giving the Contractor 48 hours written notice. The Contractor's rights upon such a termination will be as stated in Clause 14(c), and (d).

### 17 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) Subject to Clause 4(e), the Contractor acknowledges that it is liable for payment of any tax, levy, charge, impost, duty (including import or customs) excise, fee, tariff or deduction, premiums and costs, costs of insurance and other non-reimbursable costs which arise in respect of the supply of the Goods.
- (d) 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.
- (e) This Contract is governed by the laws applicable in Queensland and each party submits to the exclusive jurisdiction of the courts of Queensland.
- (f) Clauses 1, 5, 6, 10, 11, 13 and 17 survive the expiration or earlier termination of the Contract.
- (g) This Contract embodies the entire agreement of the parties.