

Purchase Order Standard Terms and Conditions

TABLE OF CONTENTS

<p>1 DEFINITIONS 2</p> <p>2 NATURE OF AGREEMENT 3</p> <p>3 REPRESENTATIONS AND WARRANTIES..... 3</p> <p>4 SITE ACCESS AND SAFETY 4</p> <p>5 CONTRACTOR’S PERSONNEL 4</p> <p>6 INDUSTRIAL RELATIONS..... 4</p> <p>7 EQUIPMENT..... 4</p> <p>9 INSPECTION AND REPORTING 4</p> <p>10 DEFECTIVE GOODS AND/OR SERVICES 4</p> <p>11 FEES..... 5</p> <p>12 INVOICING AND PAYMENT 5</p> <p>13 WITHHOLDING FEES 5</p> <p>14 REPRESENTATIVES 5</p> <p>15 EXTENSION OF TIME..... 5</p> <p>16 ACCELERATION..... 5</p> <p>17 DEFAULT AND TERMINATION..... 5</p> <p>18 VARIATION TO THE SCOPE OF WORK 6</p>	<p>19 SUSPENSION 6</p> <p>20 INSURANCE..... 6</p> <p>21 TITLE AND RISK..... 6</p> <p>22 LIABILITY AND INDEMNITIES 6</p> <p>23 INTELLECTUAL PROPERTY 7</p> <p>24 CONFIDENTIALITY 7</p> <p>25 CONFLICT OF INTEREST 8</p> <p>26 TAXES..... 8</p> <p>27 ASSIGNMENT AND SUBCONTRACTING 8</p> <p>28 FORCE MAJEURE 8</p> <p>29 MODERN SLAVERY 8</p> <p>30 SANCTIONS..... 8</p> <p>31 BRIBERY AND CORRUPTION 8</p> <p>32 DISPUTE RESOLUTION 8</p> <p>33 NOTICES 8</p> <p>34 GEOCENTRIC DATUM OF AUSTRALIA 2020 (GDA 2020) COMPLIANCE 9</p> <p>35 OTHER MATTERS 9</p>
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1 Definitions

1.1 In the Agreement unless the contrary intention appears:

Agreement means the agreement between the Principal and the Contractor comprised of the Purchase Order, these Goods & Services - Standard Terms and Conditions and all other documents annexed to this document or specifically incorporated by reference (which in the event of any inconsistency, are to be construed in this order);

Confidential Information means all information (whether of a scientific, engineering, industrial, mining, technical, business, financial nature or otherwise) communicated in whatever form, including:

- (a) the terms and contents of this Agreement;
- (b) information relating to the business or operations of the Principal;
- (c) information relating to the customers, clients, employees, subcontractors of a Party or other persons doing business with that Party;
- (d) information disclosed by or on behalf of the Principal to the Contractor at any time or learnt by the Contractor in carrying out the Services, including all Principal supplied information;
- (e) all information and documents designated or marked as confidential or proprietary and disclosed by or on behalf of the Principal to the Contractor;
- (f) information which the Contractor ought to know is confidential; and
- (g) information which is by its nature confidential;

Conflict of Interest means a conflict of interest between the Principal or its Personnel, and the Contractor or its Personnel, whether that conflict of interest is perceived or actual;

Contractor means the person, firm or company named in the Purchase Order as the supplier of Goods and/or Services;

Contractor Insurance means each of the insurances the Contractor is required to effect and maintain in accordance with clause 20.1 of this Agreement.

Contractor's Background IP means the Contractor or its Personnel's Intellectual Property Rights, which:

- (a) are in existence at the date of the Purchase Order; or
- (b) come into existence after the date of the Purchase Order otherwise than in connection with the Agreement;

Contractor's Representative means the person appointed by the Contractor to act on its behalf in relation to the Agreement as notified to the Principal;

Defective Goods and/or Services means Goods and/or Services which are not in accordance with the Agreement, or are not to the quality or workmanship expected of a Relevant Contractor;

Delivery Date means (where relevant) the date the Goods must be delivered, and the Services must be completed by the Contractor as specified in the Scope of Work, or, if no such date is specified, a reasonable date from the date of the Purchase Order;

Employee Claim means any claim in respect of any death, injury or occupational disease of any Personnel of the Contractor which is caused or contributed to by the Contractor or arises out of or in connection with the Agreement;

Equipment means the equipment, tools, appliances and other property supplied by the Contractor for the purpose of supplying the Goods and/or performing the Services, and includes any Hired Equipment (if applicable);

Excluded Loss means loss of revenue and profit (other than revenue or profit derived directly from payments for Goods and/or Services under the Agreement); loss or denial of opportunity; loss of access to markets; loss of goodwill; loss of business reputation; increased overhead costs; and all other loss which is indirect, remote or unforeseeable loss;

Expiry Date means the latter of:

- (a) the date on which all of the Goods have been delivered and, if applicable, commissioned, and the Services have been provided; or
- (b) the date the Contractor has demobilised all of its Personnel and Equipment from Site as required under the Agreement (as applicable);

Financiers means at any time those persons who, at such time, have provided, or have commitments to provide, any financing facilities to the Principal or any one or more of its related entities for general corporate or any other purposes (including, without limitation, bonds, notes or other capital market issues, loans, guarantees, letters of credit and hedging facilities) and any assignee, transferee, agent, trustee or other representative at such time of any such person or persons;

Force Majeure means any one, or combination, of the following events or circumstances:

- (a) a cyclone named in accordance with the procedures determined and approved by the "World Meteorological Organisation's Tropical Cyclone

Committees" and the effects of rain-bearing depression into which any such named cyclone may weaken;

- (b) hurricane, typhoon, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster;
 - (c) civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities;
 - (d) fire caused by any of the events referred to in paragraphs (a), (b) or (c); or
 - (e) ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination,
- but excludes any such event or circumstance, or its consequences, to the extent:
- (f) it was caused by a breach of this Agreement by the affected party or the act or omission of the affected party or its Personnel;
 - (g) it was within the reasonable control of the affected party or its Personnel; or
 - (h) where the affected party is the Contractor:
 - (i) it was caused by any breakdown of the Equipment or any Defective Goods and/or Services; or
 - (ii) it could have been protected against, prevented or overcome by the Contractor had it acted as would ordinarily be expected of a Relevant Contractor.

Good Industry Practice means the practices, methods and acts engaged in or approved by a person which, in the conduct of its undertaking, exercises that degree of due diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced persons, and in respect of the Contractor, performance as would ordinarily be expected of a Relevant Contractor;

Goods and/or Services means all goods to be supplied and/or services to be performed by the Contractor in accordance with the Agreement including:

- (a) all goods and/or services set out in any applicable Purchase Order;
- (b) the provision of any Hired Equipment;
- (c) other services, functions, responsibilities and obligations that the Agreement provides that the Contractor has or will perform; and
- (d) all responsibilities and functions not specifically described in the Agreement but which are incidental to, or otherwise necessary for the Contractor to provide the Goods and/or Services under the Agreement;

GST Law means has the meaning given in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

Hired Equipment has the meaning set out in clause 8 of the Agreement;

HSES Legislation means all relevant written laws relating to health and safety, including the *Mines Safety and Inspection Act 1994* (WA), the *Occupational Safety and Health Act 1984* (WA) and any other applicable legislation relating to health and safety on the Site, and all relevant health and safety regulations, codes of practice of safety standards made pursuant to those Acts or any other legislation dealing with workplace health and safety that may apply from time to time;

Insolvency and Insolvent has the meaning given to it in the *Corporations Act 2001* (Cth);

Intellectual Property Rights means all copyright and analogous rights, all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields;

Legislation means:

- (a) any Act of Parliament in any Australian jurisdiction (including the Commonwealth) for the time being in force and all proclamations, regulations, by-laws, orders, notices, rules of court, town planning schemes, resolutions or other instruments made under any or by the authority of any such Act of Parliament or written law and having legislative effect; and
- (b) all licences, qualifications, registrations and other statutory requirements necessary for supply of the Goods and/or performance of Services under the Agreement;

Modern Slavery has the meaning given in the *Modern Slavery Act 2018* (Cth);

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth);

Net Amount means the net amount payable for the Goods and/or Services set out in the Purchase Order;

Party means the Contractor or the Principal and **Parties** means both of them;

Personnel means:

- (a) in relation to the Principal, any of the Principal's or its Related Bodies Corporates' employees, contractors, agents, consultants or representatives; and
- (b) in relation to the Contractor, any of the Contractor's or Subcontractors' or either of their Related Bodies Corporates' employees, contractors, agents, consultants or representatives;

Principal means Chichester Metals Pty Ltd (ACN 109 264 262) or its Related Body Corporate (as defined in the *Corporations Act 2001* (Cth)) specified on the Purchase Order;

Principal's Background IP means the Principal's Intellectual Property Rights which:

- (a) are in existence at the date of the Purchase Order; or
- (b) come into existence after the date of the Purchase Order otherwise than in connection with this Agreement;

Principal's Policies and Procedures means:

- (a) the Principal's policies and procedures relating to the conduct and operations of the Contractor as updated from time to time, including but not limited to those set out at the Principal's extranet (available via <https://fmgl.sharepoint.com/sites/extranet>);
- (b) "site alerts and notices" posted on Site notice boards; and
- (c) the Principal's policies and procedures provided by the Principal to the Contractor from time to time which are, or may become applicable to the Site or the Goods and/or Services; and
- (d) the policies set out in any schedule attached to the Agreement;

Principal's Property means any plant, equipment, tools, appliances, materials, drawings, data, specifications or other property and items that the Principal provides to the Contractor to enable it to perform its obligations under the Agreement;

Principal's Representative means the person appointed by the Principal to act on its behalf in relation to the Agreement as notified to the Contractor;

Project IP means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with, the provision of any Goods or Services or this Agreement;

Purchase Order means the document entitled 'Purchase Order' issued by the Principal to the Contractor for the supply of Goods and/or Services in accordance with the Agreement and includes any schedules attached to the relevant Purchase Order;

Registered Mine Manager means the person appointed from time to time as the registered mine manager at the Site for the purposes of section 33 of the *Mines Safety and Inspection Act 1994* (WA);

Related Body Corporate means any related body corporate as defined in the *Corporations Act 2001* (Cth);

Relevant Contractor means a contractor that exercises the degree of skill, quality, care, diligence and prudence that would reasonably be expected of a competent, expert and experienced contractor undertaking work, tasks, services, functions, responsibilities and obligations required for the provision of goods and/or services of a similar nature to the Goods and/or Services contemplated under this Agreement;

Sanction means any economic or financial sanction, trade embargo or similar measures imposed, enacted, administered or enforced from time to time by a Sanctions Authority;

Sanctioned Country means a country or territory which is subject to a Sanction;

Sanctioned Person means any person or entity which is:

- (a) listed on, or is owned or controlled directly or indirectly (as such terms are used in the Sanction or in any guidance in relation to the Sanction) by a person or entity listed on, a Sanctions List;
- (b) organised under the laws of, or a citizen or resident of, any Sanctioned Country; or
- (c) otherwise a target of a Sanction;

Sanctions Authority means each of the following:

- (a) the United States of America;
- (b) the United Nations;
- (c) the European Union or any present or future member state thereof;
- (d) the United Kingdom;
- (e) France;
- (f) Australia; and

- (g) the respective governmental and official institutions or agencies of any of the foregoing including the Office of Foreign Assets Control by the United States' Department of the Treasury, the United States' Department of State, the Security Council of the United Nations, Her Majesty's Treasury by the Government of the United Kingdom, the Ministry for the Economy and Finance (Directorate-General of the Treasury) of France and the Australian Sanctions Office by Australia's Department of Foreign Affairs and Trade;

Sanctions List means any of the lists of specifically designated nationals or designated persons or entities (or equivalent) held, issued or maintained by any Sanctions Authority, each as amended, supplemented or substituted from time to time;

Scope of Work means the scope of the Services to be performed and/or the Goods to be supplied as specified in the Purchase Order including documents annexed to the Purchase Order or incorporated in the Purchase Order by reference;

Site means the Principal's site or other location specified in the Purchase Order;

Subcontract means any permitted contract or other arrangement between the Contractor and any Subcontractor in relation to the performance of the Contractor's obligations under this Agreement;

Subcontractor means any person engaged by the Contractor to perform any portion of the Services or supply any part of the Goods, and includes their employees, agents, consultants and invitees;

Tax Invoice has the same meaning as in the GST Law;

Term means the period from the date of the Purchase Order until the Expiry Date (unless extended by the agreement of the Parties);

Third Party Claim means any claim by a third party in respect of:

- (a) loss or destruction of, or injury or damage to, or loss of use of any real or personal property; and/or
- (b) any personal injury to or death of any person arising out of, or caused by, any act or omission, or the supply or non-supply of the Goods and/or Services, by the Contractor or its Personnel.

Variation means any addition, reduction or change to the Scope of Work;

Variation Proposal means a written proposal provided by the Contractor addressing the particulars of any Variation; and

Warranty Period means 12 months after the Expiry Date, unless stated otherwise in the Purchase Order.

2 Nature of Agreement

2.1 The Contractor agrees to diligently commence the supply of the Goods and/or performance of the Services from the date of the Purchase Order to ensure it supplies the Goods to the Site and/or completes the Services:

- (a) by the Delivery Date; and
- (b) in accordance with the terms of this Agreement.

2.2 The Agreement does not confer upon the Contractor any exclusivity in respect of the supply of any Goods and/or Services at the Site or otherwise.

2.3 The Contractor agrees to notify the Principal if it finds any errors, omissions or inconsistencies in information provided by the Principal. Except as prescribed by Legislation, the Principal gives no warranty of accuracy, sufficiency or otherwise in relation to information provided to the Contractor and disclaims all responsibility for such information.

2.4 Where Goods and/or Services are provided pursuant to a contract which is already in effect between the Principal and the Contractor, the terms of that contract continue to apply and the terms of this Agreement do not apply.

2.5 Any terms and conditions created or supplied by the Contractor, in respect of the Goods and/or Services, will be of no legal effect and will not constitute part of the Agreement.

3 Representations and Warranties

3.1 The Contractor represents and warrants that:

- (a) the Goods and/or Services will:
 - (i) match the description and specification in the Agreement;
 - (ii) be supplied in accordance with Good Industry Practice; and
 - (iii) comply with all applicable Legislation;
- (b) all Goods supplied will be:
 - (i) of merchantable quality;
 - (ii) fit for their intended purpose, or, where a purpose is expressly set out in the Agreement, fit for that purpose;

- (iii) manufactured strictly in accordance with any manufacturing drawings, Scope of Work or descriptions supplied to the Contractor by the Principal; and
 - (iv) free from any encumbrance, lien, mortgage, security or charge in favour of a third party or any other third-party interest, from the time of delivery to the Principal; and
 - (c) all Equipment used by the Contractor in the supply of the Goods and/or Services will be maintained in safe working condition, complies with all Legislation applicable to such Equipment, and is maintained and operated by suitably qualified and competent Personnel.
- 3.2 These warranties remain unaffected notwithstanding any information which the Principal provides to the Contractor.
- 3.3 The Contractor is deemed to have:
- (a) satisfied itself as to the nature and extent of the risks assumed by it under this Agreement; and
 - (b) gathered all information necessary to perform its obligations under this Agreement.
- 4 Site Access and Safety**
- 4.1 The Principal grants to the Contractor a non-exclusive and non-assignable licence to access the Site during the Term to perform its obligations under the Agreement.
- 4.2 The Contractor must obtain all applicable permits, licences, exemptions, consents and approvals required for the Contractor to supply the Goods and/or perform the Services.
- 4.3 In supplying the Goods and/or Services, the Contractor must, and must ensure its Personnel:
- (a) work in a safe manner and use best endeavours to achieve zero classified injuries;
 - (b) not interfere with the Principal's activities or the activities of any other person at the Site;
 - (c) be aware of and comply with all:
 - (i) applicable Legislation (including HSES Legislation);
 - (ii) the Principal's Policies and Procedures (to the extent they are applicable to the Agreement); and
 - (iii) directions given by the Principal's Representative and the Registered Mine Manager.
- 4.4 Without limiting the Contractor's other obligations under the Agreement, the Contractor must notify the Principal's Representative and the Registered Mine Manager as soon as practicable but in any event within 12 hours of any accident, injury, loss or damage which occurs at the Site.
- 5 Contractor's Personnel**
- 5.1 The Contractor must engage all personnel necessary for the supply of the Goods and/or Services under the Agreement.
- 5.2 The Contractor must employ or cause to be employed only personnel that are careful, skilled and experienced to the degree ordinarily expected of personnel engaged in the supply of goods and/or services similar to the Goods and/or Services.
- 5.3 No Contractor's Personnel may commence work on Site unless she/he has attended the induction courses required by the Principal to be attended by all persons engaged at the Site.
- 5.4 The Principal will provide accommodation and messing facilities at no cost to the Contractor for its Personnel engaged in the supply of the Goods and/or Services at the Site.
- 5.5 To the extent permitted by Legislation, during the Term and extending for a period of 6 months after the Expiry Date, the Principal's Personnel are not to be engaged or offered employment by the Contractor, without the prior written approval of the Principal.
- 6 Industrial Relations**
- 6.1 The Contractor is responsible for conducting its industrial and employee relations with its Personnel in a manner conducive to preventing any delay or disruption in the provision of the Goods and/or Services, including by taking all prudent steps to maintain harmonious and productive relations with its Personnel.
- 6.2 The Contractor must ensure that the terms and conditions of employment of all of its Personnel engaged in the supply of Goods and/or Services under the Agreement are at all times regulated by an agreement made under the *Fair Work Act 2009* (Cth).
- 6.3 The Principal may, at any time in its absolute discretion, request the Contractor to withdraw any of its Personnel from providing any part of the

Goods and/or Services and the Contractor must promptly arrange for the person to cease being involved in any way in the provision of the Goods and/or Services notwithstanding any provision in any other contract. If requested by the Principal, the Contractor must replace the person with a person of suitable ability, experience and qualifications within a time period specified by the Principal.

7 Equipment

- 7.1 The Contractor agrees to supply the Equipment at its own risk and expense and to maintain such on Site and in safe, operable, good working condition throughout the Term.
- 7.2 The Principal may reject any item of the Equipment which it determines is unsafe or unsuitable for the purposes of the Agreement. If any Equipment is so rejected then it must be either repaired or replaced to the satisfaction of the Principal within a time period specified by the Principal in writing. The Contractor must provide all spare parts and consumable items for the Equipment.
- 7.3 The Contractor agrees the Principal's Property may only be used for the purposes of fulfilling the Contractor's obligations under the Agreement, and the Contractor is liable to the Principal for any loss or damage to the Principal's Property by the Contractor's Personnel.

8 Equipment Hire

- (a) This clause 8 only applies if, pursuant to the Scope of Work, the Principal requires the Contractor to lease items of equipment (each item a "Hired Equipment") to the Principal on Site.
- (b) The Contractor will lease the Hired Equipment to the Principal for the duration set out in the Scope of Work.
- (c) Unless otherwise directed by the Principal, the Contractor must perform all maintenance of the Hired Equipment at its own cost and risk to ensure that the Hired Equipment is in good operating condition at all times.
- (d) The Contractor warrants that:
 - (i) it has the necessary rights, title and interest in all the Hired Equipment to enable it to lease them to the Principal on the terms of this Agreement;
 - (ii) it has insured the Hired Equipment for its full value and such insurance covers the Principal and its Personnel operating the Hired Equipment;
 - (iii) the Hired Equipment is in good, proper and safe working order and complies with all Legislation; and
 - (iv) the Hired Equipment has been properly maintained by the Contractor and has all necessary guards and safety equipment fitted.
- (e) Any Personnel provided by the Contractor to operate Hired Equipment must be suitably qualified and trained, and formally inducted to work at the Site.
- (f) Unless the Hired Equipment is being operated by or at the direction of the Contractor or its Personnel (including any commissioning of the Hired Equipment), the Principal will be responsible for loss or damage which it causes to the Hired Equipment from the latter of its delivery to the Site or its commissioning, until the Hired Equipment is returned to the Contractor at its relevant return point, as nominated in the Scope of Work. If no return point is nominated in the Scope of Work, the relevant return point shall be the area on Site where the Contractor first provided the Hire Equipment to the Principal.
- (g) At the Principal's request, the Contractor must conduct any commissioning of the Hired Equipment or supervise the Principal's commissioning of the Hired Equipment, to the Principal's satisfaction.

9 Inspection and Reporting

- 9.1 The Contractor must keep the Principal's Representative fully informed of all aspects of the provision of the Goods and/or Services.
- 9.2 Subject only to providing reasonable notice, at any time during the supply of the Goods and/or Services the Principal may inspect, examine, review and witness tests on the Goods and/or Services or their results at the Site, the Contractor's premises or at the premises of a Subcontractor.
- 9.3 If, as a result of any review, inspection, examination, or witnessing of testing, the Principal is not satisfied that the Goods and/or Services will comply in all respects with the Agreement, the Principal may exercise its rights to terminate under clause 17.3.

10 Defective Goods and/or Services

- 10.1 If upon inspection or testing during the Term and until the end of the Warranty Period, the Principal identifies Defective Goods and/or Services, it may at its election:
- (a) reject the Defective Goods and/or Services by notifying the Contractor that it is rejecting them;

- (b) direct the Contractor to make good the Defective Goods and/or Defective Services; or
- (c) make good the Defective Goods and/or Services itself; and
- and the Contractor must:
- (d) refund to the Principal any payments made by the Principal in respect of any Defective Goods and/or Services that the Principal rejects;
- (e) make good free of charge any Defective Goods and/or Services as per the Principal's request; or
- (f) reimburse the Principal for any expenses the Principal incurs in making good any Defective Goods and/or Services itself.
- 10.2 The remedies provided in this clause do not exclude any other remedies provided by law.
- 11 Fees**
- 11.1 In consideration for the supply of the Goods and/or Services, the Principal will pay the Contractor the Net Amount.
- 11.2 The rates set out in the Agreement will be the sole consideration payable to the Contractor under the Agreement, and are deemed to include all risks, liabilities and obligations expressed or implied in the Agreement or incurred in the course of the supply of the Goods and/or Services.
- 11.3 The Contractor will pay all costs, taxes, expenses and liabilities incurred by the Contractor in the course of the supply of Goods and/or Services under the Agreement.
- 12 Invoicing and Payment**
- 12.1 The Contractor must submit a Tax Invoice to the Principal at the end of each calendar month for the Goods and/or Services supplied in that month.
- 12.2 The Tax Invoice must set out particulars of all Goods and/or Services supplied by the Contractor and the amount payable by the Principal under the Agreement in respect of those Goods and/or Services, and how the amount of the Tax Invoice was calculated.
- 12.3 Subject to clause 13, the Principal will pay all Tax Invoices submitted by the Contractor by the end of the month following the month in which the Principal received the Tax Invoice (or such other period required by Legislation).
- 13 Withholding Fees**
- 13.1 The Principal may deduct from any money due or becoming due to the Contractor under the Agreement, including but not limited to:
- (a) all debts, damages, costs, expenses or any other moneys due from the Contractor or its Subcontractors to the Principal under or by virtue of any provision of the Agreement, the supply or non-supply of the Goods and/or Services, or the Contractor's presence on the Site; and
- (b) all costs, losses, charges, damages, liquidated sums and expenses which the Principal may have paid or incurred and which, or for which, the Contractor or its Personnel is or are liable to bear, pay or make reimbursement to the Principal.
- 14 Representatives**
- 14.1 Unless expressly provided otherwise, all directions or any permission given on behalf of the Principal to the Contractor will be given by the Principal's Representative (or the Principal's Representative's delegate notified to the Contractor).
- 14.2 The Contractor must comply, and ensure its Personnel comply, with the directions of the Principal's Representative and Registered Mine Manager in relation to the Contractor providing the Goods and/or Services at the Site. In any matter pertaining to the safety of persons or property or the proper compliance with any Legislation which it is the Registered Mine Manager's duty to enforce, the Registered Mine Manager's decision will be final and any directions he may give must be obeyed in the manner directed.
- 14.3 The Contractor's Representative will represent and act for the Contractor at all times during the Term. The Contractor is bound by the actions of the Contractor's Representative. Matters within the knowledge of the Contractor's Representative are deemed to be within the knowledge of the Contractor.
- 15 Extension of Time**
- 15.1 The Contractor must immediately give the Principal written notice of all incidents, circumstances or events of any nature affecting or likely to affect the Contractor's ability to deliver the Goods and/or perform the Services by the Delivery Date.
- 15.2 Within 14 days after the date of the notice issued under clause 15.1, the Contractor must give a further notice to the Principal which must include all material details of the event and mitigating actions taken by the Contractor.
- 15.3 The Principal may grant an extension of time to the Delivery Date if the supply of the Goods and/or Services has been delayed by:
- (a) Force Majeure; or
- (b) any other act or omission of the Principal's Representative, the Principal or its Personnel, but excluding acts or omissions authorised or permitted under the Agreement and which are done or omitted in accordance with the Agreement.
- 15.4 If the Principal grants the Contractor an extension of time to the Delivery Date under clause 15.3(b) only, the Principal will reimburse the Contractor for its costs actually, reasonably and properly incurred as a direct consequence of the delay (evidenced on an open book basis).
- 15.5 The Principal may, in its absolute discretion at any time by written notice to the Contractor, unilaterally extend the Delivery Date. The Principal is not required to exercise its discretion under this clause for the benefit of the Contractor.
- 16 Acceleration**
- 16.1 If in the opinion of the Principal, the Goods and/or Services will not be supplied by the Delivery Date, the Principal may direct the Contractor to increase its Personnel, Equipment, number of shifts or to take other action. The Contractor may claim all reasonably incurred costs as a result of the direction unless the direction was issued as a consequence of an act or omission of the Contractor.
- 17 Default and Termination**
- 17.1 If at any time a Party becomes Insolvent, the other Party may terminate the Agreement with immediate effect by giving written notice.
- 17.2 The Principal may, at any time, terminate the Agreement in whole or in part without cause at its absolute discretion by giving the Contractor written notice.
- 17.3 The Principal may terminate the Agreement in whole or in part and with immediate effect, by notice to the Contractor, if:
- (a) the Contractor does not remedy, or provide an acceptable plan to remedy, any identified instances of Modern Slavery within the time frame specified by the Principal;
- (b) the Contractor provides incorrect information in connection with Sanctions, breaches any provision of this Agreement relating to Sanctions or it, its Personnel, its Related Bodies Corporate, or any of their suppliers becomes a Sanctioned Person;
- (c) the Principal determines that this Agreement violates any applicable Sanction;
- (d) the Contractor or any of its Personnel commits an act of gross negligence, wilful misconduct, fraud or dishonesty in respect of any matter in connection with the Agreement;
- (e) the Contractor is in breach of any provision of this Agreement and the Principal determines that the breach is not capable of remedy;
- (f) the Contractor is in breach of any provision of the Agreement which is capable of remedy and fails to remedy that breach at its own expense and to the satisfaction of the Principal within 14 days after receipt of a notice from the Principal specifying the breach; and
- (g) the Principal is expressly entitled to exercise a right of termination under any other provision of the Agreement.
- 17.4 Without prejudice to any other rights of the Principal under the Agreement, in the event of termination under clause 17.2 only, the Principal will pay to the Contractor:
- (a) the Net Amount for Goods and/or Services provided to the Principal prior to the effective date of termination and not included in any previous payment by the Principal;
- (b) the cost of materials reasonably ordered by the Contractor for the purpose of providing the Goods and/or Services prior to the date of termination, which the Contractor is legally liable to accept and cannot otherwise utilise, but only if the materials become the property of the Principal upon payment;
- (c) reasonable and substantiated costs of demobilisation; and
- (d) reasonable costs of complying with any directions given by the Principal upon, or subsequent to, termination.
- 17.5 On the expiration or earlier termination of the Agreement, the Contractor must:
- (a) cease supply of the Goods and/or performance of the Services;
- (b) take such action as necessary or as the Principal directs, for the transfer, protection and preservation of the Principal's Property;
- (c) do its best to minimise the cost of termination to the Principal;

- (d) immediately cease using all items of applicable Principal's Property, Principal's Background IP and Project IP; and
- (e) within 14 days after termination or expiration, return to the Principal (or if requested, erase and/or destroy) all copies in any form of the Principal's Background IP and Project IP in the possession or control of the Contractor and/or its Personnel.
- 18 Variation to the Scope of Work**
- 18.1 The Principal may by written notice direct a Variation and the Contractor must perform and be bound by such Variation. The Principal is not obliged to request a Variation Proposal in accordance with this clause.
- 18.2 The Principal may request that the Contractor prepare a Variation Proposal in accordance with this clause. The Contractor must as soon as practical (but no later than 7 days) after receiving such request, submit the Variation Proposal to the Principal addressing the effect on and value of the proposed Variation.
- 18.3 The Contractor may initiate and submit a Variation Proposal to the Principal. Following receipt of a Variation Proposal under this clause, the Principal may either:
- (a) direct the Contractor to perform the Variation in accordance with the Variation Proposal; or
- (b) advise that it does not wish to proceed with the Variation.
- 18.4 If under clause 18.3 the Principal directs the Contractor to perform a Variation, the Principal will reimburse the Contractor for its costs actually, reasonably and properly incurred as a result of the Variation.
- 19 Suspension**
- 19.1 The Principal has the right, at any time and for any reason, to suspend the Agreement or any part of the Agreement immediately. When the Contractor receives a notice of suspension from the Principal, it must suspend the performance of its obligations until such time as the Principal directs that the Agreement is no longer suspended.
- 20 Insurance**
- 20.1 The Contractor must, before commencing the supply of Goods and/or Services, effect and maintain the following insurances:
- (a) Workers Compensation insurance. The Contractor must insure its liability against all Employees Claims and the insurance must:
- (i) comply with all statutory requirements including providing any compulsory statutory workers' compensation benefits;
- (ii) provide common law liability as required by law in Western Australia, or the relevant legal jurisdiction as applicable to the Contractor; and
- (iii) unless otherwise prohibited by law, provide a Principal's indemnity extension for statutory and common law benefits including a waiver of subrogation in favour of the Principal and its Related Bodies Corporate;
- (b) Industrial Disease insurance. Where the Goods and/or Services requires any of the Contractor's Personnel to attend any Site, effect and maintain an Industrial Disease policy (available online at ICWA) in accordance with the applicable legislation; and extend the Workers Compensation policy to include an industrial disease common law extension;
- (c) Public and Product Liability insurance. The Contractor must insure against all Third Party Claims and the insurance must:
- (i) provide cover for general public and products liability to a limit of not less than \$20,000,000 in respect of any one occurrence arising out of the same or original cause and unlimited in the aggregate for public liability as to the number of claims but limited in the aggregate to \$20,000,000 for products liability; and
- (ii) include an indemnity and waiver in respect of any vicarious liability of the Principal;
- (d) Motor Vehicle insurance. If the Scope of Work requires the Contractor to use or provide use of motor vehicles, the Contractor must ensure that all motor vehicles used or brought onto the Site are kept licensed in accordance with any Legislation and insured against Third Party Claims under a comprehensive motor vehicle third party liability policy. This policy must include a cross liability clause and a waiver of subrogation in favour of the Principal. The limit of liability must be not less than \$30,000,000.00 for any one occurrence and unlimited as to the number of occurrences;
- (e) Professional Indemnity insurance. Where the Services include professional services as nominated in the Agreement, the Contractor must take out professional indemnity insurance in respect of the supply of the Services to cover for liability to a limit of not less than \$5,000,000 (with a maximum deductible of \$100,000) in relation to any one claim, and \$10,000,000 in the aggregate;
- (f) Equipment insurance. The Contractor must insure all items of the Equipment (including the Hire Equipment) that the Contractor brings onto Site for an amount of not less than its full replacement value (unless otherwise insured to the satisfaction of the Principal). Where the Contractor is attending the Site, the insurance must:
- (i) include a Principal's indemnity in favour of the Principal with respect to the liability incurred as a result of the acts or omissions of the Contractor; and
- (ii) include a cross liability clause and waiver of subrogation in favour of the Principal;
- (g) Marine Transit insurance. If the Scope of Work provides that the Contractor is responsible for transportation of Goods to the Site (or another delivery point as nominated by the Principal in writing), the Contractor must affect goods in transit (carrier) insurance to cover all liabilities for loss or damage to such Goods for 100% of the replacement value; and
- (h) any other insurances required by Legislation or regarded as Good Industry Practice.
- 20.2 The Contractor must provide evidence of the currency of insurance to the Principal at any time upon request.
- 20.3 The Contractor must ensure any Subcontractor engaged by the Contractor in relation to the Goods and/or Services effects and maintains the insurances nominated in this clause 20.
- 20.4 The Contractor is responsible for paying the deductible for any of the Contractor Insurance in the event that there is a deductible payable and the Principal was not responsible for the loss or damage giving rise to the insurance claim.
- 20.5 If the Contractor fails to effect or maintain any of the Contractor Insurance, or have any Subcontractor effect or maintain any insurances, as specified in this clause, then the Principal may at the Contractor's cost:
- (a) effect and maintain that insurance;
- (b) pay the necessary premiums; and
- (c) recover from the Contractor the amount paid by the Principal under this clause.
- 21 Title and Risk**
- 21.1 Title in any Goods passes to the Principal on the earlier of when the Principal pays for the relevant Goods or when such Goods are delivered to the Site.
- 21.2 To the extent permitted by law, the Contractor enters onto the Site and supplies the Goods and/or Services under the Agreement at its own risk. Risk in any Goods remains with the Contractor until delivery to the Principal.
- 22 Liability and Indemnities**
- 22.1 The Contractor is liable for and must hold harmless and indemnify on demand the Principal, its Personnel, and its Related Bodies Corporate, from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, defects and costs and expenses of any nature, including legal fees and expenses, arising in any manner out of or in any way in connection with the acts or omissions of the Contractor or its Personnel under or in connection with the provision of the Goods and/or Services or this Agreement (including the infringement of any third party's Intellectual Property Rights), whether or not the acts or omissions are in tort (including negligence), breach of contract or otherwise regarding the Agreement, except to the extent that the loss is caused by the negligence, acts or omissions of the Principal or its Personnel.
- 22.2 Notwithstanding anything in the Agreement to the contrary but subject to clause 22.3, neither Party will be liable to the other for any Excluded Loss.
- 22.3 The exclusion of liability in clause 22.2 does not apply in relation to liability of the Contractor:
- (a) in respect of the injury or death of any person;
- (b) in respect of any Third Party Claims;
- (c) in respect of any Employee Claims;
- (d) for any act or omission of fraud, criminal act, dishonesty, wilful misconduct or misrepresentation of the Contractor and/or any of its Personnel;
- (e) for any penalty imposed for breach of Legislation or licence in connection with the supply of the Goods and/or Services by the Contractor;
- (f) for breach of clauses 23, 24, 30.1, 30.2 or 31;

- (g) for any loss arising from an occurrence which should be covered by a policy of insurance in the name of the Contractor required under the Agreement; or
- (h) which, by law, the Contractor cannot contract out of.
- 23 Intellectual Property**
- 23.1 The Principal acknowledges that the Contractor remains the owner of the Contractor's Background IP.
- 23.2 The Contractor acknowledges that the Principal remains the owner of the Principal's Background IP.
- 23.3 The Contractor grants to the Principal a perpetual, irrevocable, non-exclusive and royalty free licence for the Principal and the Principal's Personnel to use, adapt, modify and copy the Contractor's Background IP to the extent necessary to:
- complete the installation of, maintain, operate, make improvements to, repair and alter the Goods; and
 - exercise the Principal's rights with respect to the Project IP.
- 23.4 The Principal may assign or grant a sub-licence of the licence granted to it under clause 23.3.
- 23.5 The Contractor acknowledges and agrees that all Project IP is vested in the Principal and is the Principal's property as and when created and the Contractor hereby assigns all rights, title and interest in and to the Project IP to the Principal.
- 23.6 The Principal grants to the Contractor a non-exclusive, non-transferable, revocable and royalty free licence to use the Principal's Background IP and Project IP for the sole purpose of providing the Goods and/or Services.
- 23.7 The Contractor must not disclose, reproduce or otherwise deal with the Project IP or Principal's Background IP, or allow any other person to do the same, for any purpose other than to provide the Goods and/or Services.
- 23.8 The Contractor agrees that any Subcontract it enters into in relation to this Agreement must contain a condition that the Subcontractor agrees to assign to the Principal:
- use of any Contractor's Background IP as stipulated in clause 23.3; and
 - all Intellectual Property Rights in any Project IP created by it for the purposes of this Agreement.
- 23.9 The Contractor agrees to:
- notify the Principal as soon as it becomes aware of any suspected, threatened or actual infringement of any Intellectual Property Rights in the Project IP or the Principal's Background IP;
 - provide all assistance the Principal may request to protect the Intellectual Property Rights in the Project IP or the Principal's Background IP; and
 - provide all assistance in defending or prosecuting (as the case may be) any such infringement.
- 23.10 To the extent that any person has Moral Rights in the Contractor's Background IP or the Project IP, the Contractor must obtain or procure all consents or waivers from the individual creator necessary to ensure that the Principal may do or authorise any acts or omissions consistent with:
- the licence granted in relation to the Contractor's Background IP under clause 23.3; and
 - the Principal's ownership of the Project IP under clause 23.5, without infringing any Moral Rights.
- 23.11 The Contractor warrants that:
- it owns the Intellectual Property Rights in the Contractor's Background IP and that the use of the Contractor's Background IP does not and will not infringe any rights of third parties (including, without limitation, any Intellectual Property Rights);
 - the provision of the Goods and/or Services does not and will not infringe the rights (including Intellectual Property Rights) of any third party;
 - it will, at no further cost to the Principal, procure all licences and consents to use any Intellectual Property Rights of a third party which are necessary to provide the Goods and/or Services;
 - the Project IP does not and will not infringe any rights of third parties (including, without limitation any Intellectual Property Rights); and
 - the Contractor has the right to assign all Project IP to the Principal in accordance with clause 23.5.
- 23.12 The Contractor's obligations set out in this clause 23 survive the suspension, termination, expiry or completion of this Agreement. If the Contractor sells any of the Contractor's Background IP or any enhancement to the Contractor's Background IP then the Contractor must ensure that these obligations bind each successor in title to the Contractor's Intellectual Property Rights, so far as is relevant to, or required by, this Agreement.
- 24 Confidentiality**
- 24.1 The Contractor acknowledges:
- the Confidential Information is valuable to the Principal and has commercial value;
 - the Principal will suffer loss if the Contractor discloses, or permits the disclosure of, any of the Confidential Information in contravention of this Agreement; and
 - that the Confidential Information remains the property of the Principal at all times and the Contractor and the Contractor's Personnel do not have any proprietary or other interest in the Confidential Information.
- 24.2 The Contractor must, subject to the terms of this Agreement, at all times:
- keep the Confidential Information secret and preserve its confidential nature;
 - not use Confidential Information for any purpose other than the purpose of performing the Services;
 - not reverse engineer, decompile or disassemble any Confidential Information; and
 - only copy or reproduce Confidential Information for the purpose of performing the Services, or with the written consent of the Principal.
- 24.3 The Contractor must not disclose any Confidential Information to any person except:
- with the prior written approval of the Principal, which consent may be withheld in its discretion;
 - to its Personnel, its Related Body Corporate and their Personnel but only to the extent necessary for the performance of the Services;
 - to its legal advisors, financial advisors or legal advisors of its financial advisors;
 - if it is required to do so by Legislation, a Government Authority or by a stock exchange; or
 - to any third party but only to the extent necessary for the performance of the Services.
- 24.4 The Contractor must ensure that any Contractor's Personnel directly or indirectly involved in any capacity in the performance of the Services or that has, or may have, access to any Confidential Information must, prior to being provided with access to any such Confidential Information, execute an undertaking in a form approved by the Principal and deliver the executed undertaking to the Principal before the information is provided to or accessed by the Contractor's Personnel.
- 24.5 The Contractor must ensure that any of its Personnel or any third party receiving Confidential Information under this clause 24 from the Contractor does not disclose that information. The Contractor is, and remains, liable for any breaches of confidentiality by the Contractor's Personnel.
- 24.6 If the Contractor becomes aware of any unauthorised access to, use or disclosure of Confidential Information, or any suspected or possible breach of this Agreement, the Contractor must do the following:
- immediately notify the Principal in writing giving details of the suspected or possible breach;
 - do everything necessary to remedy the unauthorised access to, use or disclosure of the Confidential Information, or to prevent the suspected or possible breach of the confidentiality provisions in this Agreement;
 - comply with all lawful written Directions from the Principal in relation to the actual, suspected or possible breach of this Agreement; and
 - give the Principal all assistance required in connection with proceedings which Principal may institute against any person for breach of confidence or otherwise.
- 24.7 The Principal may disclose this Agreement, the Fees and all information relating to this Agreement without the consent of the Contractor to:
- any professional advisors of the Principal including to its legal advisors or financial advisors;
 - the professional advisors of the Principal's financial advisors;
 - the Principal's Financiers, potential Financiers and any advisors to the Principal's Financiers or potential Financiers;

- (d) the auditor of the Principal; or
- (e) a bona fide prospective purchaser of the Principal or the business of the Principal provided that such bona fide prospective purchaser agrees to keep the terms of this Agreement confidential in accordance with this clause 24.

25 Conflict of Interest

- 25.1 The Contractor must, and must ensure its Personnel, declare any Conflict of Interest prior to entering into any agreements with the Principal, and in any event as soon as a Conflict of Interest comes to the attention of the Contractor.

26 Taxes

- 26.1 If GST has application to any supply made by the Contractor under or in connection with the Agreement, the Contractor may, in addition to the consideration payable or to be provided for the supply, subject to issuing a Tax Invoice, recover from the Principal an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable or to be provided by the Principal for the supply by the prevailing GST rate.
- 26.2 Should any taxes (other than GST) be levied on, in respect of, or in relation to, the Goods and/or Services these will be to the Contractor's account. The Contractor will be responsible for the payment of those taxes and will provide documentary evidence of the payment of those taxes if made on the Principal's behalf.

27 Assignment and Subcontracting

- 27.1 The Contractor must not assign or subcontract any part or the whole of its obligations under the Agreement except with the prior written consent of the Principal (which must not be unreasonably withheld).

28 Force Majeure

- 28.1 If a Party is prevented from carrying out the whole or any part of its material obligations under the Agreement by reason of Force Majeure, that Party must immediately give written notice to the other Party. The affected Party must keep the other Party informed of any changes in the circumstances causing the Force Majeure.
- 28.2 The obligations of the affected Party, so far as they are materially affected by Force Majeure, will be suspended for the period that the Force Majeure persists and the affected Party will not be in default under the Agreement. The affected Party must use its best endeavours to remedy or mitigate the effect of any Force Majeure and comply with its obligations under the Agreement.
- 28.3 Where the affected Party is the Contractor, the Principal is not liable or obliged to provide any financial relief to the Contractor as a result of a Force Majeure.
- 28.4 Notwithstanding any provision of the Agreement, if the Force Majeure causes the suspension of the Contractor's obligations for a continuous period of 3 months or a cumulative period of 6 months in any 12-month period, either Party may terminate the Agreement by written notice to the other Party.

29 Modern Slavery

- 29.1 The Principal works to comply with the requirements of the *Modern Slavery Act 2018* (Cth) and expects the same of its contractors.
- 29.2 The Contractor warrants that:
- (a) it investigates the risk of Modern Slavery within its operations, and those of its supply chain;
 - (b) it assesses and addresses risks regarding Modern Slavery, including implementing appropriate due diligence and remediation programs;
 - (c) it will notify the Principal as soon as possible of any confirmed instances of Modern Slavery and the actions undertaken by the Contractor to remedy the issue;
 - (d) it has all the necessary processes, procedures, investigations and compliance systems in place to undertake the actions in clauses 29.2(a) to 29.2(c);
 - (e) upon request, the Contractor will provide evidence to the satisfaction of the Principal which validates the Contractor's compliance with this clause;
 - (f) upon request, the Contractor will permit the Principal's Personnel or its nominated representatives to undertake verification activities to validate the Contractor's compliance with this clause, including access to the Contractor's premises and records as required; and
 - (g) it will include a clause similar to this clause 29.2 in all contracts it enters into with its suppliers.
- 29.3 In the event that the Contractor does not remedy, or provide an acceptable plan to remedy, any identified instances of Modern Slavery within the time

frame specified by the Principal, the Principal reserves the right to terminate this Agreement in accordance with clause 17.3(a).

30 Sanctions

- 30.1 The Contractor hereby warrants and represents that the Contractor and all of its Personnel, Related Bodies Corporate, Subcontractors and suppliers:
- (a) are not a Sanctioned Person;
 - (b) are not violating any Sanctions applicable to it; and
 - (c) are not engaging with a Sanctioned Person.
- 30.2 If the Contractor:
- (a) provides incorrect information in connection with the Sanctions;
 - (b) breaches any provision of this Agreement relating to Sanctions; or
 - (c) its Personnel, its Related Body Corporate, or any of its suppliers or Subcontractors becomes a Sanctioned Person,
- it must immediately give notice to the Principal and the Principal may:
- (d) immediately terminate this Agreement and any or all Purchase Orders under clause 17.3(b); and
 - (e) claim compensation from the Contractor for any damages or losses which it suffers.

- 30.3 Without limiting any remedy to which the Principal might otherwise be entitled, the Principal may terminate this Agreement if it determines that the Agreement violates any applicable Sanction.

31 Bribery and Corruption

- 31.1 The Contractor must not, and must procure that its Personnel do not:
- (a) pay or accept any commissions or fees, or make or accept any payments or rebates to or from any employee or officer of the Principal or its Related Bodies Corporate, or favour any of those persons with gifts or entertainment of unusual or substantial value, or enter into any business arrangements with any of those persons, that would result in a detriment to the Principal or is contrary to fair dealing; and
 - (b) provide or offer to provide a benefit (which is not legitimately due) to a public official (including a foreign public official) in order to retain or obtain a business advantage.

- 31.2 The Contractor must, and must ensure that its Personnel, immediately report to the Principal any offer, payment, rebate or other benefit, or any receipt of any payment, benefit or rebate of the kind referred to in clause 31.1.

32 Dispute Resolution

- 32.1 If an issue or dispute arises in connection with the Agreement, the Parties agree, prior to the initiation of any legal proceedings, to use their reasonable endeavours to reach a resolution of the dispute.
- 32.2 If the dispute has not been resolved within 30 days after the Parties first convene to resolve the dispute, either Party may commence legal proceedings in connection with that dispute in any Western Australian court of competent jurisdiction.
- 32.3 Despite the existence of a dispute, the Contractor must continue without delay to perform its obligations under the Agreement.
- 32.4 Nothing in this clause prevents either Party from applying to a court for urgent injunctive relief.

33 Notices

- 33.1 Any notice, approval, consent or other communication in relation to the Agreement must:
- (a) be in writing and signed by the Party sending it (or on that Party's behalf);
 - (b) be marked for the attention of:
 - (i) in the case of a notice to the Principal, the Principal's Representative;
 - (ii) in the case of a notice to the Contractor, the Contractor's Representative; and
 - (iii) be left at or sent by prepaid ordinary post to the last notified address of the Party, or sent by email to the last notified email address of the Party.
- 33.2 A notice, approval, consent or other communication is taken to be received by the addressee:
- (a) upon actual receipt when hand delivered;

- (b) in the case of email, at the time in the place to which it is sent equivalent to the time shown on the automatic receipt notification received by the Party sending the email; or
- (c) in the case of posting, three business days after posting to an address within Australia and on the fifth business day after the date of posting by airmail to an address outside of Australia.

34 Geocentric Datum of Australia 2020 (GDA 2020) Compliance

- 34.1 On and from 1 October 2020, to the extent that the use of coordinate datum is applicable to the supply of Goods and/or Services, the Contractor must reference the applicable coordinate datum in its reports, deliverables and metadata. For clarity, and by way of example only, such reference may be in the form "Datum GDA1994, Projection MGA zone50", "Datum GDA2020 Projection MGA zone 50", "Datum GDA1994 LatLong", or "Datum GDA2020 LatLong".

35 Other Matters

- 35.1 **Survival** – Clauses 3, 10, 20, 22, 23, 24, 30, 31, 33, 34 and 35 survive the expiry or earlier termination of the Agreement.
- 35.2 **Agreement terms** – The terms and conditions of the Agreement may not be varied, unless agreed upon by both Parties and documented in writing.
- 35.3 **Waiver** – Waiver of any right arising from a breach of the Agreement must be in writing and executed by the Party granting the waiver. Failure by the Principal to exercise a right, remedy or power at any time will not be construed in any way to affect the enforceability of that right, remedy or power in any other instance, or the enforceability of the Agreement as a whole.
- 35.4 **Governing law and jurisdiction** – The Parties accept the laws of the State of Western Australia as the governing law of the Agreement submit to the exclusive jurisdiction of the Courts of the State of Western Australia.

35.5 Ipso Facto Amendments

- (a) For the purpose of this clause 35.5, Ipso Facto Amendments means:
- (i) the amendments to the *Corporations Act 2001* (Cth) set out in Part 2 of the *Treasury Laws Amendment (2017 Enterprise Incentives No.2) Act 2017* (Cth); and
 - (ii) any regulations, declarations or legislative instruments, prescribed, made or declared pursuant to sections 415D, 434J or 451E of the *Corporations Act 2001* (Cth).
- (b) Clause 17.1 is subject to the Ipso Facto Amendments to the extent that they apply to this Agreement. In the event the Ipso Facto Amendments apply, the Principal may withhold or deny any advance payment or other form of credit the Contractor would otherwise be entitled to.

- 35.6 **Entire Agreement** – The Agreement as amended or varied from time to time represents the entire agreement between the Parties and supersedes all prior arrangements whether written or oral in relation to the Services.

35.7 Relationship between the Parties –

- (a) The Principal and the Contractor are independent contracting parties and nothing in the Agreement will make either Party an agent or legal representative of the other for any purpose whatsoever. Nor does the Agreement grant either Party any authority to assume or to create an obligation on behalf or in the name of the other Party.

The Principal is not responsible to the Contractor or any of its Personnel for any payments in respect of any employment related expenses including wages, annual leave, sick leave, long service leave, superannuation, workers' compensation, accidents, sickness, or lift insurance.