



STANDARD TERMS AND CONDITIONS OF PURCHASE

- 1. SUPPLY OF GOODS AND/OR SERVICES**
- 1.1 In consideration of payment of the Price by the Company, the Contractor must supply the Goods to the Company and/or perform the Services for the Company in accordance with the Purchase Order (which includes these Standard Terms and Conditions of Purchase).
- 1.2 To the extent the Contractor's terms and conditions are supplied with the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of the Purchase Order (even if any representative of the Company signs those terms and conditions or annexes the terms and conditions to the Purchase Order).
- 1.3 Where the Purchase Order relates to Goods and/or Services the subject of a contract between the Contractor and the Company, the terms of that contract apply to the extent of any inconsistency with these Standard Terms and Conditions of Purchase.
- 1.4 The Contractor must, in supplying the Goods or performing the Services:
- (a) not unduly interfere with the Company's activities or the activities of any other person at the Delivery Address;
 - (b) be aware of and comply with and ensure that the Contractor's Personnel are aware of and comply with:
 - (i) all applicable Laws;
 - (ii) all Site Standards and Procedures, to the extent that they are applicable to the supply of the Goods or the performance of the Services by the Contractor; and
 - (iii) all lawful directions and orders given by the Company's representative or any person authorised by Law to give directions to the Contractor;
 - (c) ensure that the Contractor's Personnel entering the Company's premises perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
 - (i) safe working practices;
 - (ii) safety and care of property; and
 - (iii) continuity of work;
 - (d) provide all such information and assistance as the Company reasonably requires in connection with any statutory or HSEC investigation in connection with the supply of the Goods or the performance of the Services; and
 - (e) on request by the Company, provide to the Company and the Company's Personnel any information and assistance required to identify, evaluate, implement and report on any matter required by Law, including:
 - (i) producing written reports;
 - (ii) recommending efficiency
- opportunities;
- (iii) collecting data; and
 - (iv) monitoring or metering,
- in respect of anything used, produced or created in connection with the performance of the Contractor's obligations under this Agreement.
- 2. DELIVERY**
- 2.1 The Contractor must deliver the Goods to the Delivery Address.
- 2.2 The Contractor must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- 2.3 Packages must be accompanied by a delivery note specifying the Purchase Order number, item number, destination, contents, quantity and date.
- 2.4 The Contractor must provide the Company at its request with copies of all Deliverables, plans, designs, drawings, specifications, reports, data and other information relating to the provision of the Goods and/or Services.
- 3. TIME FOR PERFORMANCE**
- 3.1 The Contractor must complete the delivery of the Goods to the Delivery Address, or complete the performance of the Services, by the Date for Completion.
- 3.2 Unless otherwise expressly agreed in writing by the Company, time shall be strictly of the essence in relation to performance of the Purchase Order by the Contractor.
- 3.3 Unless otherwise specified in the Purchase Order:
 - (a) if the Contractor fails to comply with clause 3.1, the Company's Representative shall certify, as due and payable to the Company, liquidated damages in the amount of 0.5% of the Price for every day after the Date for Completion until and including the earliest of the date the Goods are delivered to the Delivery Address or performance of the Services is completed; and
 - (b) liquidated damages payable are solely in relation to the Contractor failing to deliver the Goods to the Delivery Address or complete the Services by the Date for Completion (and no other breach or failure) and shall be capped at a maximum of 10% of the Price and once such cap is reached the Company may in its absolute discretion terminate the Purchase Order without liability to the Contractor.
- 3.4 Notwithstanding any other clause of this Agreement, if clause 3.3 is found for any reason to be void, invalid or otherwise inoperative so as to disentitle the Company from claiming delay liquidated damages, the Company is entitled to claim against the Contractor damages at law at the rate specified under clause 3.3 for the Contractor's failure to complete the performance of the Purchase Order by the Date for Completion.
- 4. TITLE AND RISK**
- 4.1 Title in Goods passes to the Company upon the earlier of delivery of the Goods to the Company (or its agent) and payment of the Price by the Company.

- 4.2 Risk in the Goods passes to the Company when the Goods are delivered to the Delivery Address.
- 4.3 Effective upon part payment prior to the delivery of the Goods to the Delivery Address, right title and interest in the Goods passes to the Company pro rata as tenants in common.
- 4.4 Notwithstanding title in the Goods has or has not passed to the Company, the Company and the Contractor agree:
- (a) a part payment of the Goods gives rise to a Security Interest in the Goods; and
- (b) the Company may register a Security Interest under the PPSA in respect of the Goods to be supplied and the Contractor agrees to do all things reasonably required to assist the Company effect such registration.
- 4.5 Effective upon delivery of the Goods to the Delivery Address and notwithstanding title in the Goods has or has not passed to the Company, the Company and the Contractor agree:
- (a) the supply of the Goods may give rise to a Security Interest in the Goods; and
- (b) at the Contractor's cost, the Contractor may register a Security Interest under the PPSA solely in respect of the Goods supplied and the Company agrees to do all things reasonably required by the Contractor to assist the Contractor effect such registration.
- 4.6 Neither party may disclose information of the kind referred to in section 275(1) of the PPSA and this clause constitutes a **confidentiality agreement** within the meaning of s.275(6) of the PPSA. Each party waives any right it may have, or but for this clause may have had, under section 275(7) (c) of the PPSA to authorise the disclosure of information of the kind referred to in section 275(1) of the PPSA.
- 5. PRICE**
- 5.1 The Company must pay the Contractor the Price for the Goods and/or Services.
- 5.2 The Price is inclusive of all costs incurred by the Contractor in the supply of the Goods and/or performance of the Services including all charges for packing, insurance and delivery of the Goods and the cost of any items used or supplied in the performance of the Services.
- 5.3 The Price cannot be varied unless agreed by the parties in writing.
- 5.4 The Price is inclusive of all taxes and duties, except GST.
- 6. GST**
- 6.1 If GST is imposed on any supply made by the Contractor under or in connection with this Purchase Order, the Contractor may recover from the Company, in addition to the Price, an amount equal to the GST payable in respect of that Supply.
- 6.2 The Contractor must first provide the Company with a valid tax invoice before the Company will pay the GST amount to the Contractor.
- 7. INVOICING**
- 7.1 Upon delivery of the Goods and/or completion of the Services, the Contractor must provide to the Company (via the accounts email address as specified on the Purchase Order) a valid tax invoice which must include the information set out in clause 7.2. Any invoices provided by any other means than the email address set out on the Purchase Order will not be deemed received by the Company.
- 7.2 The Contractor's tax invoice must include the following details:
- (a) a reference to this Purchase Order and the relevant contract (if any) including the line item numbers on the Purchase Order and the contract number;
- (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services in respect of which the invoice relates and the relevant quantity;
- (c) an individual reference number for the Company to quote with remittance of payment;
- (d) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order;
- (e) the amount of any applicable GST;
- (f) Company operation and Site; and
- (g) Company contact name.
- 7.3 Where the Price is calculated on a 'cost plus', 'schedule of rates' or 'per day' basis, the Company may audit the Contractor's records to determine if the Price has been correctly calculated. This right of the Company to audit continues for twelve (12) months after the date of the relevant invoice.
- 7.4 The Company will pay all tax invoices that comply with clause 7.2 within forty five (45) days from the end of month in which the Contractor's invoice is received, except where the Company disputes the invoice in which case:
- (a) the Company may withhold payment of the disputed amount pending resolution of the dispute; and
- (b) if the resolution of the dispute determines that the Company must pay an amount to the Contractor, the Company must pay that amount upon resolution of that dispute.
- 7.5 The Company may reduce any payment due to the Contractor under this Agreement by any amount which the Contractor must pay the Company, including costs, charges, damages and expenses and any debts owed by the Contractor to the Company on any account whatsoever. This does not limit the Company's right to recover those amounts in other ways.
- 8. QUALITY**
- 8.1 The Goods and/or Services must match the description referred to in the Purchase Order.
- 8.2 If the Contractor gave the Company a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the sample or demonstration given.
- 8.3 The Goods and/or Services must be fit for the purpose for which goods and/or services of the same kind are commonly supplied or bought and for any other purpose the Company expressly specifies in the Purchase Order.
- 8.4 The Goods must be of acceptable quality, safe and free from defects, acceptable in appearance and finish, do all things that the Goods are ordinarily used for, and unless otherwise specified in the Purchase Order, must be new.



9. WARRANTY PERIOD

9.1 If, during the Warranty Period, any of the Goods or Services are found to be Defective, the Company may:

- (a) require the Contractor to repair or replace the Defective Goods, or reject the Defective Goods and require the Contractor to reimburse the Company the Price paid or payable on account of the Defective Goods in addition to any other loss or damage incurred by the Company in connection with the Defective Goods;
- (b) reject the Defective Services and require the Contractor to re-perform the Defective Services or reimburse the Company the Price paid or payable on account of the Defective Services in addition to any other loss or damage incurred by the Company in connection with the Defective Services;
- (c) repair or make good the Defective Goods itself; and/or
- (d) re-perform or make good the Defective Services itself.

9.2 The Contractor must:

- (a) repair or replace the Defective Goods;
- (b) re-perform or make good the Defective Services,

at the Contractor's cost, if requested to do so by the Company and within the timeframe considered reasonable by the Company, or

- (c) reimburse the Company for any direct expenses incurred in the Company repairing, re-performing or making good (as the case may be) any Defective Goods or Services should:
 - (i) the Company elect to repair, re-perform or make good (as the case may be) the Defective Goods or Services under clause 9.1; or
 - (ii) the Contractor decline or fail in its obligations to do so under clause 9.2(a) or 9.2(b) within a timeframe considered reasonable by the Company as notified to the Contractor by the Company.

9.3 If the Company requests the Contractor to repair or replace any Defective Goods that have been incorporated into larger equipment or facilities, the Contractor must reimburse the Company for any direct expense incurred by the Company in removing the Defective Goods from such larger equipment or facilities, and re-installing any repaired or replacement Goods into the larger equipment or facilities.

9.4 The provisions relating to any warranty or Defective Goods and/or Services specified under this Agreement shall be in addition to and shall not limit any conditions or warranties expressed or implied by statute or common law. The Contractor's liability under this Agreement shall be in addition to any condition or warranty in the Company's favour implied by statute or common law as to the quality or the fitness for any particular purpose of the Goods and / or Services and each part thereof.

10. CONFIDENTIALITY

10.1 The Contractor must not, and must ensure that its subcontractors do not, divulge to third parties any information provided by the Company or otherwise obtained by the Contractor relating to the Goods and/or Services (including any intellectual property), the Company or the

supply to the Company by the Contractor, unless and until such information is within the public domain (other than by a breach of this clause) or express written consent has been given by the Company.

10.2 The Contractor shall indemnify the Company and keep the Company indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs (including legal costs) and expenses arising from any breach of this clause 10 by the Contractor whatsoever.

11. INTELLECTUAL PROPERTY

11.1 The specifications, drawings, technical instructions or any other documentation whatsoever issued to the Contractor by the Company during tendering and at the time of establishing this Agreement will remain the exclusive property of the Company and are to be kept strictly confidential.

11.2 The Contractor warrants that:

- (a) the Goods supplied and/or Services performed by the Contractor and the license granted by it to the Company do not infringe any intellectual property rights of any third party; and
- (b) the Goods supplied and/or Services performed are not subject to any intellectual property rights of any third party that in any way restrict the rights of the Company or its clients to use or sell the same.

11.3 The Contractor agrees that title in all (present and future) intellectual property created, discovered or coming into existence as a result of, for the purposes of or in connection with the supply of the Goods and/or performance of the Services under the Purchase Order shall vest exclusively in the Company upon its creation (**Company IP**).

11.4 The Company acknowledges that the Contractor remains the owner of all intellectual property created, discovered or coming into existence other than as a result of, for the purposes of or in connection with the supply of the Goods and/or performance of the Services under the Purchase Order (**Contractor IP**).

11.5 The Contractor grants the Company a non-exclusive, transferrable, irrevocable, perpetual, royalty free licence to use all Contractor IP to the extent necessary to enable the Company to exercise its rights in the Company IP under the Purchase Order.

12. INDEMNITY

12.1 The Contractor will indemnify the Company and the Company's Personnel and will keep the Company and the Company's Personnel indemnified from and against all Claims, including without limitation injury to (including illness or disability), or death of, any person and loss of, damage to or destruction of or loss of use of any property (including property of the Company or the Company's Personnel) caused or contributed to by an act or omission of the Contractor or the Contractor's Personnel or by any breach of this Agreement by the Contractor (including any breach of a warranty), except to the extent and the proportion that such Claim has been caused or contributed to by the wilful default or unlawful or negligent act or omission of the Company.

12.2 Without prejudice to the obligation on the Contractor to maintain the insurance set out in clause 15, the Contractor shall be solely liable for and indemnify and keep indemnified the Company and the Company's Personnel against any Claims which may be brought against the Company or the Company's Personnel by any:

- (a) employee of the Contractor;

- (b) subcontractor engaged by the Contractor; or
- (c) employee of a subcontractor engaged by the Contractor

in relation to their employment with or engagement by the Contractor, or incurred by the Company in connection with the Services, except to the extent and the proportion that such Claim has been caused or contributed to by the wilful default or unlawful or negligent act or omission of the Company.

13. FORCE MAJEURE

13.1 The parties agree that:

- (a) a party will not be liable for any delay or failure to perform any of its obligations under the Purchase Order (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the party to perform any of its obligations under the Purchase Order, it gives a notice to the other party that complies with Clause 13.2.; and
- (b) the Purchase Order will suspend in the event and for the period of the Force Majeure, provided that each parties' respective obligations contained in this clause 13 are complied with.

13.2 A notice given under Clause 13.1 must:

- (a) specify the obligations the party cannot perform;
- (b) fully describe the Force Majeure;
- (c) estimate the time during which the Force Majeure will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

13.3 Any amendment to the Date for Completion is the Contractor's sole remedy for any delays resulting from Force Majeure where the Contractor is the affected party and the Contractor is not entitled to any increase in the Price or any damages, costs or expenses in connection with the Force Majeure.

14. BREACH AND TERMINATION

14.1 The Company may terminate the Purchase Order:

- (a) in its absolute discretion by giving the Contractor fourteen (14) days written notice; or
- (b) in the event the Contractor defaults on any of the terms of the Purchase Order for any reason (including insolvency) by written notice:
 - (i) where the default is not capable of remedy, with immediate effect; or
 - (ii) where the default is capable of remedy but the Contractor fails to remedy such default within fourteen (14) days of the date of a written notice from the Company.

14.2 In the event that the Company terminates the Purchase Order then subject to any other rights of the Company under this Agreement the Company must:

- (a) pay for the Goods delivered or Services provided by the Contractor in accordance with the Purchase Order prior to the date of termination;
- (b) reimburse the Contractor for the direct costs of materials the Contractor reasonably ordered prior

to the date of receipt of the notice of termination for the purpose of providing the Goods and or performing the Services and which the Contractor is legally liable to accept and cannot otherwise utilise, but only if the materials are delivered to the Delivery Address and become the Company's property upon payment; and

- (c) reimburse the Contractor for any other direct costs that the Contractor actually and reasonably incurred prior to the date of receipt of the notice of termination in the expectation of providing the Goods and or performing the Services, and which costs were not included in any previous payment by the Company,

and the Contractor shall not otherwise be entitled to any compensation whether by way of damages, profit, loss or expense, including without limitation anticipated profits, incurred as a result of a termination of the Purchase Order under this clause.

14.3 Notwithstanding any other clause of this Agreement, if the Company terminates the Purchase Order pursuant to clause 14.1(b) the provisions of clause 14.2(b) and (c) shall not apply.

14.4 Clauses 10, 15.1(b) and 17 shall survive termination or determination of a Purchase Order or this Agreement.

15. INSURANCES

15.1 The Contractor must at all times during the performance of the Purchase Order effect and maintain the following insurances:

- (a) Public liability insurance for at least \$20 million for any one event and unlimited in the aggregate and products liability insurance for at least \$20 million for any one event and in the aggregate, which shall contain a principal's indemnity extension in favour of the Company for liability to any third party arising out of the performance of this Purchase Order by the Contractor;
- (b) where the Purchase Order provides for the provision of professional services, professional indemnity insurance for not less than \$10 million limit of indemnity for any one claim with one reinstatement of the limit during any 12 month period of insurance. This policy is to be maintained for a period of 7 years following completion of the supply of the Goods and/or provision of the Services (as applicable); and
- (c) workers' compensation insurance as required by law which shall contain (except where precluded by law) a principal's indemnity extension for both statutory liability and common law liability in favour of the Company and its respective officers and employees, and shall further contain a waiver of subrogation in favour of the Company and its respective officers and employees.

15.2 Upon receipt of a Purchase Order and otherwise when directed to do so by the Company, the Contractor shall provide copies of certificates of currency of the above insurances.

16. LIMITATION OF LIABILITY

16.1 Despite any other provision of these Standard Terms and Conditions of Purchase but subject to clauses 16.2 and 16.3, and to the maximum extent permitted by Law, a party's overall liability to the other party in respect of a particular Purchase Order for liability:

- (a) under, or arising out of, or in connection with this Agreement (in respect of that Purchase Order); or
- (b) otherwise at law or in equity including:
 - (i) by statute to the extent permitted by Law;
 - (ii) in tort for negligence or otherwise;
 - (iii) on any other basis whatsoever,

shall not exceed 100% of the Price specified in that Purchase Order.

16.2 Notwithstanding any other clause of this Agreement but subject always to clause 16.3 neither party shall be in any way liable to the other party, including by way of indemnity, for Consequential Loss.

16.3 The limitation of liability referred to in clause 16.1 and 16.2 does not apply to the Contractor's liability for:

- (a) loss caused or contributed to by the Contractor or the Contractor's Personnel that is:
 - (i) covered by a policy of insurance under which the Contractor is an insured and which it is required to effect under this Agreement; or
 - (ii) which, but for an act or omission of the Contractor (including in respect of its disclosure obligations to any insurer), would have been covered by a policy of insurance which the Contractor is required to effect under this Agreement.
- (b) loss arising from or in connection with the death of or personal injury to any person, or loss or damage to any property, caused or contributed to by the Contractor or the Contractor's Personnel;
- (c) loss arising from or in connection with the breach of any applicable Law, the deliberate default, the reckless or the wilful misconduct by the Contractor or the Contractor's Personnel or by any person for whose acts or omissions the Contractor is vicariously liable;
- (d) loss arising from or in connection with conduct of the Contractor which is repudiatory of the Agreement as a whole;
- (e) all costs associated with the Contractor repairing or replacing Defective Goods or re-performing Defective Services and costs incurred by the Company or the Contractor in connection with removing Defective Goods from larger equipment or facilities, re-installing any repaired or replacement Goods into the larger equipment or facilities pursuant to clause 9.3 and transport of such goods;
- (f) loss arising from or in connection with liability which, by Law, the Contractor cannot contract out of; or
- (g) loss arising from or in connection with a breach of confidentiality or infringement of any intellectual property rights,

or in relation to the indemnities in clause 12.2.

16.4 To avoid circularity, a reference in clause 16.3(a) to an amount covered or an amount that would have been covered under an insurance policy is a reference to the amount which would be recovered or recoverable or would have been recovered by the Contractor under the insurance policy (up to the sum insured as required by this Agreement), if:

- (a) the Contractor's liability was not limited by clause 16.1 or 16.2;
- (b) the insurance policy was interpreted disregarding clause 16.1 and 16.2;
- (c) the Contractor had paid in full the amount of its liability (being its liability unlimited by clause 16.1 and 16.2) in a manner which entitled the Contractor to claim under the policy; and
- (d) the Contractor had taken any legal action reasonably available to it to recover an amount under the policy and had not settled or compromised any such action without the consent of the Company (which consent will not be unreasonably withheld).

17. DISPUTE RESOLUTION AND GOVERNING LAW

17.1 The parties agree that all disputes relating to or arising out of this Agreement must be resolved in accordance with the following:

- (a) if a dispute arises then either party may give notice to the other party of the dispute that must:
 - (i) be in writing;
 - (ii) state that it is a notice under this subclause 17.1; and
 - (iii) include or be accompanied by reasonable particulars of the dispute;
- (b) if a notice is given under subclause 17.1(a), then a senior management representative or equivalent of each of the parties (who must be capable of binding each party) must meet at least once within five (5) Business Days of receipt of the notice under subclause 17.1(a) (or such other time as the parties may agree) and use reasonable endeavours acting in good faith to resolve the dispute; and
- (c) if the dispute is not resolved by the senior management representatives within the period referred to in subclause 17.1(b), either party may commence proceedings for the resolution of the dispute.

17.2 Notwithstanding the existence of a dispute, each party must continue to perform its obligations under this Agreement.

17.3 Notwithstanding any other provision of this Agreement, the Company may commence proceedings in relation to any dispute at any time where it seeks urgent interlocutory relief.

17.4 This Agreement is governed by the law in force in the State of Western Australia.

18. DEFINITIONS

Agreement means this agreement, comprising:

- (a) the Purchase Order;
- (b) these Standard Terms and Conditions of Purchase;
- (c) the Annexure to these Standard Terms and

Conditions of Purchase (if any); and

- (d) any attachments or annexure specifically referred to in the Purchase Order (if any).

Authority means any government or local authority, any department, minister or agency of government, or any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised securities exchange.

Business Day means any day which is not a Saturday, Sunday or public holiday in Perth, Western Australia.

Claim means any claim, notice, demand, suit, account, action, proceeding, arbitration, litigation (including reasonable legal costs), investigation or judgment of any nature, absolute or contingent, liquidated or unliquidated, whether known or unknown, whether directly or indirectly, or whether in Law, contract, tort, negligence, statute (including strict liability) or any claim for any liability, damages, losses, costs, expenses, expenditure, charge, compensation, payment, remedy, debt, lien, relief or payment, or relief from any obligation under the Agreement.

Company means the Mineral Resources Limited entity named in the Purchase Order being Mineral Resources Limited, Mineral Resources (Equipment) Pty Ltd, Mineral Services Pty Ltd, Crushing Services International Pty Ltd, Process Minerals International Pty Ltd, PIHA Pty Ltd, Polaris Metals Pty Ltd, Mesa Minerals Limited, MIS Carbonart Pty Ltd, Mineral Resources Transport Pty Ltd or any other related body corporate (as defined in the *Corporations Act 2001* (Cth)) of Mineral Resources Limited.

Company's Personnel means the Company's officers, employees, agents and contractors (other than the Contractor).

Consequential Loss means:

- (a) loss of profits and revenue; and
(b) loss of production.

Contractor means the party identified as such in the Purchase Order.

Contractor's Personnel means the Contractor's directors, officers, employees, agents and contractors.

Defective means Goods and/or Services (or any aspect of them) which are not in accordance with this Agreement and the Purchase Order, or which are damaged, deficient, faulty, inadequate or incomplete.

Deliverables means those documents, information stored electronically or by other means and materials created under this Agreement and to be handed over to the Company.

Delivery Address means the place for delivery specified on the Purchase Order.

Date for Completion means the date specified on the Purchase Order by which the Goods are to be delivered to the Delivery Address or the Services are to be completed.

Force Majeure means any event or circumstance (or combination of events and circumstances) which:

- (a) is beyond the control of the party affected by that event or circumstance or both which could not reasonably have been foreseen at the time of entering into this Agreement and which could not reasonably have been provided against or prevented by the party affected including but not limited to an act of God, war declared or undeclared, blockage, revolution, riot, insurrection, civil commotion, sabotage, lightning, fire, earthquake, storm or flood on the Site, plague and

explosion, governmental or governmental agency restraint, expropriation, prohibition, intervention or embargo;

- (b) causes delay in, or prevention of, the performance by the affected party of any of its obligations under the Agreement; and
(c) cannot be prevented, overcome or remedied by the exercise by the affected party of a standard of care and diligence consistent with that of a prudent and competent company,

including a strike or industrial dispute which:

- (d) has national or state-wide application and is not confined to the Contractor's workforce;
(e) affects the execution of the Services at the Site or the supply of the Goods; and
(f) lasts for more than seven (7) consecutive days,

but does not include:

- (g) other industrial-related disputes including strikes, lockouts, industrial difficulties, labour difficulties, work bans, blockades or picketing;
(h) wet or otherwise inclement weather not connected to a named cyclone;
(i) lack of or inability to use funds for any reason;
(j) any occurrence which results from the wrongful act or wrongful omission of the affected party or the failure by the affected party to act in a prudent and proper manner and in accordance with good and accepted industry practices;
(k) any failure by the affected party to reach agreement with any third party necessary to enable the affected party to perform its obligations under this Agreement;
(l) an event or circumstance, where the event or circumstance or its effects on the affected party or the resulting inability of the affected party to perform its obligations could have been prevented, overcome or remedied by the exercise by the affected party of the standard of care and diligence consistent with that of a reasonable and prudent operator; or
(m) breakdown of any plant or equipment.

Goods means the goods, if any, described on the Purchase Order.

GST has the meaning given to that term under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

HSEC means health, safety, environment and community.

Law means:

- (a) Commonwealth, State and local government legislation including regulations, by-laws, orders, awards and proclamations;
(b) common law and equity;
(c) Authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
(d) guidelines of Authorities with which the Contractor is legally required to comply.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Purchase Order means the purchase order for Goods and/or Services issued by the Company to the Contractor from time to time containing, amongst other things, a description of the Goods and/or Services.

Price means the price set out in the Purchase Order which is exclusive of GST, but is inclusive of all other costs and charges.

Security Interest has the meaning given to it in the PPSA.

Services means the services, if any, described on the Purchase Order.

Site means the site set out in the Purchase Order.

Site Standards and Procedures means all guidelines, rules, requirements or Site specific conditions which the Company makes available to the Contractor from time to time.

Warranty Period means the period of eighteen (18) months commencing on the date of delivery of the Goods and/or twelve (12) months from the date on which the Service is performed.

becomes aware of any circumstances or event beyond its control that may delay the Commencement Date or the availability of the Equipment at the Collection Location on the Commencement Date.

The Contractor warrants that it has the right to Hire the Equipment to the Company in accordance with this Agreement.

21. RISK

Risk in the Equipment passes to the Company:

- (a) if the Purchase Order provides that Company shall collect the Equipment, at the time the Company removes the Equipment from the Collection Location; or
- (b) if the Purchase Order provides that the Contractor shall deliver the Equipment to the Site, at the time the Equipment is delivered and accepted by the Company on the Site,

21.2 Risk in the Equipment shall revert to the Contractor:

- (a) if the Purchase Order provides that Company shall return the Equipment, at the time the Equipment is returned to the Collection Location by the Company; or
- (b) if the Purchase Order provides that the Contractor shall collect the Equipment from the Site, the time the Contractor arrives on Site to collect the Equipment.

22. TITLE AND OWNERSHIP

Notwithstanding the possession and use of the Equipment by the Company, the Equipment shall at all times remain the property of Contractor, and nothing contained in this Agreement will confer on the Company any right or property or security interest in the Equipment other than the rights specified in this Agreement or by law as hirer of the Equipment.

23. RATES AND CHARGES

23.1 The Company must pay the Contractor the Hire Rates in accordance with this clause 23.

23.2 The Contractor acknowledges and agrees that the Hire Rate:

- (a) includes the cost of all labour, plant, equipment, tools, appliances or other property and items used by the Contractor in the provision of the Hire and in the performance of this Agreement;
- (b) includes all costs, expenses, fees and charges incurred by the Contractor in providing the Hire and performing all of the Contractor's obligations under this Agreement;
- (c) includes the Contractor's profits, overheads and supervision relating to the provision of the Hire and performance of the Contractor's obligations under this Agreement;
- (d) will not be subject to any rise and fall or any adjustment for any reason; and
- (e) includes any other costs incurred by the Contractor in providing the Equipment for Hire and the performance of this Agreement.

24. EQUIPMENT CONDITION

24.1 Equipment Manuals

- (a) The Contractor must provide the Company with all relevant information and records to enable the safe and proper use of the Equipment by the Company including without limitation all operating

The following additional clauses apply to the Hire of Equipment

To the extent of any inconsistency between the previous clauses of these Standard Terms and Conditions of Purchase and these additional clauses for the Hire of Equipment, these additional clauses shall prevail.

19. ADDITIONAL DEFINITIONS

Collection Location means that location nominated by the Contractor as that where the Equipment is located prior to the Commencement Date.

Commencement Date means the date specified by the Company as the date from which the Hire shall commence.

End Date means the date specified on the Purchase Order by the Company as the date on which the Hire shall terminate.

Equipment means Goods provided to the Company for Hire in accordance with these terms and conditions and which shall be used or operated exclusively by the Company.

Hire means the hire of any Equipment on the terms of this Agreement and includes any variations to such hire as well as all services, responsibilities and functions not specifically described in this Agreement but which are incidental to or otherwise necessary for the Contractor to provide the hire under this Agreement.

Hire Rates means the rates payable by the Company during the Term for the Hire of the Equipment as specified in the Purchase Order.

Major Servicing has the meaning given to it in clause 25.2.

Minor Servicing means any daily servicing, scheduled maintenance and (at the Company's sole discretion) minor running repairs required to ensure the Equipment remains in good repair and condition during the Term between any Major Servicing.

Term means the period of Hire that commences on the Commencement Date and terminates on the End Date unless extended in writing by the Company at its absolute discretion.

20. HIRE AND ACCESS

20.1 The Company upon reasonable notice must grant the Contractor access (or procure that the Contractor is granted access) for the purpose of inspection, servicing or, following termination or expiry of the Agreement, repossessing the Contractor's Equipment.

20.2 The Contractor must promptly notify the Company if it

procedures, manuals, risk assessments and manufacturer's instructions required for the safe operation and maintenance of the Equipment (**Safety Information**).

- (b) If any Safety Information has not been provided by the Contractor to the Company because such information is not in the possession of, or available to, the Contractor, then the Company may elect (at its absolute discretion) to take delivery of the Equipment without the Safety Information or terminate the Purchase Order with immediate effect.

24.2 Condition of the Equipment

- (a) The Contractor must ensure that at the time of collection of the Equipment by the Company from the Collection Location or the time of delivery of the Equipment by the Contractor to the Site (as applicable), the Equipment:

- (i) is as described in the Purchase Order;
- (ii) is fit for the purpose for which such Equipment is ordinarily used, safe to use (including without limitation mechanically, electrically, hydraulically and structurally safe), in good repair and operating condition;
- (iii) is clean and undamaged;
- (iv) has been properly serviced and maintained in accordance with good industry practice and manufacturer's recommendations;
- (v) as designed, manufactured and supplied complies with all laws and applicable codes and standards; and
- (vi) is complete in all respects and includes everything necessary to operate properly in accordance with any relevant manufacturer's specifications or other applicable standards; and
- (vii) is free from any charges or encumbrances which could prevent or affect its use by the Company in accordance with the terms of this Agreement.

- (b) Without limiting the Contractor's obligations in clause 24.2(a), the Company acknowledges that the Contractor gives no warranty that the Equipment is fit for the specific use intended by the Company.

24.3 Pre-Delivery / Return Inspection

- (a) Prior to the Company collecting the Equipment from the Collection Location or the Contractor delivering of the Equipment to the Site, the parties must undertake a joint inspection of the Equipment (**Pre-delivery Inspection**) at a time agreed by the parties (acting reasonably) and a written report that records the condition of the Equipment shall be created and signed by each party (**Pre-delivery Inspection Report**).
- (b) If the Pre-delivery Inspection discloses that the condition of the Equipment does not, in the reasonable opinion of the Company, comply with the requirements of this Agreement, the Company may elect not to take delivery of the Equipment and no charges (by way of Hire Rates or otherwise) shall be payable by the Company and the Purchase Order will automatically terminate.

- (c) At the time the Company returns the Equipment to the Collection Location or the Contractor collects the Equipment from the Site, the parties must undertake a joint inspection of the Equipment (**Return Inspection**).

- (d) If the Return Inspection discloses that the Equipment is not in the same condition as that evidenced in the Pre-delivery Inspection Report (fair wear and tear and any other exceptions noted in the Purchase Order excepted), then the Contractor may invoice the Company for the reasonable direct costs actually incurred by the Contractor in effecting repairs to the Equipment solely to the extent necessary of returning it to that evidenced in the Pre-delivery Inspection Report (fair wear and tear and any other exceptions noted in the Purchase Order excepted) and the Company shall not be liable for any other costs whatsoever and howsoever arising .

25. REPAIR, MAINTENANCE & SERVICING

- 25.1 If the Company is responsible for the Minor Servicing of the Equipment, the Company will during the Term and at its own cost and expense carry out the Minor Servicing of the Equipment in accordance with the any agreed maintenance program, and in the absence of an agreed program, in accordance with good industry practice.

If the Contractor is responsible for the Minor Servicing of the Equipment, the Contractor will at all times and at its own cost and expense carry out the Minor Servicing of the Equipment so as to keep the Equipment in good condition and working order as evidenced by the Pre-delivery Inspection Report (fair wear and tear and any other exceptions in the Purchase Order excepted).

- 25.2 The Contractor must promptly carry out the following (**Major Servicing**):

- (a) all maintenance and servicing that is not Minor Servicing; and
- (b) replacement of major components,

required to keep the Equipment in good condition and working order for the duration of the Term.

- 25.3 The Contractor must allow the Company to inspect any maintenance and servicing records, logbooks or other documents evidencing the condition and servicing of the Equipment.

- 25.4 Breakdown of Equipment

- (a) Unless caused by any wrongful act or omission of the Company, if the Equipment is damaged or rendered non-operational or cannot be used or operated for its intended purpose, the Company may elect to give a written notice to the Contractor:

- (i) requiring the Contractor to repair the Equipment in which case the Contractor must immediately and at its own cost repair the Equipment and provide the Company with temporary replacement equipment which complies with the requirements of this Agreement until such time that the Equipment is repaired and fully complies with the requirements of this Agreement;
- (ii) requiring the Contractor to supply replacement equipment (provided the Contractor is capable of supplying such replacement equipment) that is at least capable of satisfying the requirements of this Agreement in which case the

Contractor must supply the replacement equipment at its cost as soon as practicable and the Company shall continue to pay to the Contractor the Hire Rate; or

- (iii) terminating the Purchase Order with immediate effect in which case the Contractor must arrange for the prompt collection of the Equipment from the Site at its cost.

- (b) Notwithstanding any other provision of this Agreement, the Company is not obliged to pay any Hire Rates for the period from the time the Equipment is damaged or becomes non-operational (unless caused by any wrongful act or omission of the Company) until the Equipment has been repaired or replaced and is operational and available on the Site already for use by the Company.

26. OTHER OBLIGATIONS OF THE COMPANY

26.1 The Company must:

- (a) unless the Purchase Order provides that the Contractor must arrange for the delivery or return (as the case may be) of the Equipment to or from the Site, arrange for collection or delivery of the Equipment from or to the Collection Location at the Company's expense; and
- (b) notify the Contractor immediately of the full circumstances of any mechanical breakdown or accident involving the Equipment (including an accident resulting in injury to any person or damage to property or environment).

26.2 The Company must not, without the prior written consent of the Contractor:

- (a) alter or dismantle or make any additions to the Equipment including defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment;
- (b) permit any person other than the Company's Personnel to use or otherwise possess the Equipment;
- (c) fix any of the Equipment in such a manner as to make it legally a fixture forming part of any freehold property;
- (d) use the Equipment other than in the ordinary course of its business;
- (e) assign, dispose of, or permit any person to acquire, any of the Contractor's rights or interest under this Agreement or in respect of the Equipment; or
- (f) sell, transfer, assign, sub-lease or otherwise dispose of the Equipment or permit the Equipment to be temporarily or permanently removed from the Site other than for the purposes of repair or servicing in accordance with this Agreement.

27. INSURANCE & DAMAGE WAIVER

27.1 Without affecting the Contractor's obligation to obtain the insurances specified in clause 15, the Company must maintain with a reputable insurer:

- (a) an insurance policy covering the full replacement value of the Equipment in the event of total or partial loss or theft; and
- (b) public liability insurance in the amount of not less

than \$20 million for each occurrence and unlimited in the aggregate arising out of the use of the Equipment.

- 27.2 The Company shall not be liable for any insurance excess payments or damage waiver fees (or similar) unless such has been agreed to in writing by an authorised representative of the Company and is listed on the Purchase Order.

28. LOST OR DAMAGED EQUIPMENT

If any items of the Equipment are lost, damaged beyond reasonable repair or destroyed for any reason including as a result of any negligent or otherwise wrongful act or omission of the Company during the Term, the Company's liability to the Contractor is limited in all circumstances to a maximum of:

- (a) the reasonable direct costs actually incurred by the Contractor replacing the relevant item of Equipment with equipment of the same or similar nature, age and condition; or
- (b) at the Company's sole discretion, the Company's replacement of the relevant item of Equipment with equipment of the same or similar nature, age and condition,

and the Contractor hereby releases and holds harmless the Company from all other loss howsoever arising. For the sake of clarity, the Company shall not be liable to the Contractor for any loss or damage to the Equipment to the extent and the proportion such loss or damage is caused or contributed to by an act or omission of the Contractor.

29. INDEMNITY

The Company will indemnify the Contractor and keep the Contractor indemnified from and against all liabilities, losses, damages, actions, suits, proceedings, claims, costs and expenses (**Contractor Claims**) arising from or in connection with:

- (a) injury to (including illness or disability), or death, of any persons; and
- (b) loss or destruction of or damage to or loss of use of any property,

to the extent and proportion such Contractor Claims are caused by the Company's negligent or otherwise wrongful use of the Equipment. This indemnity will be reduced to the extent and the proportion that such Contractor Claims are caused or contributed to by the negligent or otherwise wrongful act or omission of the Contractor or any other third party.

30. PERMITS AND LICENCES

30.1 The costs of any Equipment licencing such as road registration or similar which is required shall be the responsibility of the Contractor. Should any inspections be required pursuant to any licencing requirements as defined under this clause, the Company shall upon reasonable notice make the Equipment available for such inspections.

30.2 Subject to clause 30.1 the Company shall obtain and bear the costs of any permits and/or licences required by law or any Authority in connection with the use and operation of the Equipment at the Site.

31. TERMINATION

31.1 The Company may for any reason and at any time in its absolute discretion, terminate this Agreement upon written notice to the Contractor of not less than 48 hours.

31.2 If prior to the Commencement Date the Company agreed in writing to an increase in the Hire Rates in the event that the Company elects to terminate the Agreement prior to the expiry of the Term, the Contractor shall be entitled to claim a

pro-rata increase of the Hire Rates until the date of Termination.

31.3 Clause 31.2 shall not apply in the event this Agreement is terminated by the Company in response to a breach of this Agreement by or the insolvency of the Contractor.

31.4 The Contractor may by written notice of not less than seven (7) days elect to terminate this Agreement in response to a breach (which breach is not remedied within a reasonable period of time specified in the written notice from the Contractor) of this Agreement by or the insolvency of the Company.

Acknowledgement and Acceptance

By signing below I hereby certify that I have read and understood the above Standard Terms and Conditions of Purchase and furthermore I am duly authorised to accept the same.

Company: _____

ACN: _____

Name of Authorised Representative: _____

Signature: _____

Position: _____

Witness Name: _____

Witness Signature: _____

Date: ____/____/____