

Purchase Order General Conditions for the Supply of Products

1 Evidence of Contract and precedence of documents

1.1 This Contract consists of the following documents:

- (a) Purchase Order;
- (b) Special Conditions (if any);
- (c) these General Terms and Conditions; and
- (d) any other attachments to the Purchase Order.

1.2 If there is any conflict or inconsistency between the documents constituting this Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in Clause 1.1.

1.3 (a) This Contract contains the entire agreement between the Company and the Supplier with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Supplier in this regard, unless those communications expressly form part of this Contract.

(b) If at any time in relation to the Supply, the Supplier provides, refers to, submits or otherwise uses terms and conditions other than those included in this Contract (including as part of the submission of a Tax Invoice) such terms and conditions will not form part of, or be incorporated into, this Contract. Where Products supplied and any Associated Services performed under this Contract are accompanied by the Supplier's documentation, acceptance of the Products or Associated Services or documentation by the Company is limited to an acknowledgement of receipt or delivery of the Products or other items so supplied or Associated Services performed and not of the Supplier's documentation.

1.4 No amendment or variation of this Contract is valid or binding on a Party unless made in writing and signed by the Supplier and the Company.

2 Term

This Contract commences on the earlier of the date of acknowledgment of receipt of the Purchase Order by the Supplier or the date the Supplier commences to perform the Supply, and will remain in force, unless terminated earlier in accordance with this Contract, until the completion by the Supplier of all of its obligations under this Contract (**Term**).

3 Supply arrangements

3.1 The Supplier will supply the Products to and perform any Associated Services for the Company and if relevant, within the Specified Lead Time in accordance with this Contract. Time is of the essence in the performance of the Supplier's obligations under this Contract.

3.2 The Company may order Products and any Associated Services by completing and forwarding a Purchase Order to the Supplier.

3.3 When supplying the Products and performing any Associated Services, the Supplier must at all times comply with and ensure that the Supplier's Personnel comply with all applicable Laws and industrial awards and agreements, including those relating to drugs and alcohol, health, safety and the environment.

3.4 If the Supplier or its Personnel enter the Site, the Supplier must ensure that the Supplier and its Personnel:

(a) cooperate with all Persons at the Site and do not interfere with any of the activities conducted by the Company or any other Person at the Site; and

(b) ensure that any rubbish or refuse brought by the Supplier onto the Site is removed, and any damage to the Site repaired.

3.5 The Supplier agrees that the Company or its designated agent will have the right of inspection, testing and expediting of all work on Products while in any stage of engineering, manufacture, delivery or installation, including attending at the Supplier's premises.

3.6 Any inspection, testing or expediting done by the Company or its designated agent will not relieve the Supplier of any obligations contained in this Contract.

3.7 The Company or its designated agent may at any time reject any work performed or Products supplied that do not conform to this Contract, whereupon the work or Products rejected must be redone or replaced at no additional cost to the Company.

3.8 The Supplier or the Supplier's Personnel must, at the Supplier's or their cost, obtain all Government Authorisations required to perform this Contract.

3.9 The Supplier will be responsible for identifying any Government Authorisations that must be obtained by the Company and will:

(a) prepare and submit to the Company Representative the draft applications for such authorisations (as well as all other relevant material required to be provided in support of the application) for approval and execution by the Company;

(b) after receipt of the signed application from the Company, attend to lodgement of the application with the relevant Government Instrumentality; and

(c) do all other things necessary to obtain such authorisations.

4 Delivery

4.1 Subject to Clause 4.2, the Supplier will deliver the Products to the Company at the Delivery Point.

4.2 If the Company nominates different locations for delivery other than the Delivery Point, then the Company will pay the amount of any additional cost of delivery to such nominated point(s), as agreed in advance with the Supplier.

4.3 The Products delivered to each Delivery Point must be delivered in good condition and without damage caused by delivery. The Supplier will replace any damaged Products at no additional cost to the Company.

4.4 The Supplier will provide detailed delivery dockets with every shipment, in duplicate. One delivery docket is to be packed with the Products, the other is to be enclosed and attached to the outside of the consignment. Each delivery docket must contain as a minimum, the following information – the Company's Purchase Order number; details (including the name and telephone number) of the packer; quantity of Products dispatched; item description and part number (if applicable); details of any items on back order. All Products must be packed, marked and transported as specified in this Contract or the Purchase Order, but if not specified then in a proper and suitable manner and in all cases in accordance with the proper requirements of the carriers.

4.5 The Supplier will be liable for any difference in freight charges arising from a failure to follow any transport

instructions as set out in Clause 4.4 or to properly describe the Products transported.

- 4.6 The Parties will assist each other in obtaining documents and other information desirable for the prosecution of claims against carriers.

5 Provision of information and records

- 5.1 The Supplier will keep the Company fully informed of its progress in relation to the Supply.
- 5.2 The Supplier must respond promptly and accurately to all reasonable requests by the Company for information relating to the Supply and must provide the Company on request with a copy of all correspondence, letters of approval, certificates or other documents in relation to Government Authorisations.

6 Risk, title and personal property registration

- 6.1 The Products remain at the Supplier's risk and (subject to Clause 6.2) title will not pass to the Company until the Products are delivered to, inspected by, and accepted by, the Company at the relevant Delivery Point.
- 6.2 Where it occurs prior to title passing under Clause 6.1, title to the Products will pass to the Company upon the Company making payment in full to the Supplier for the Products.
- 6.3 The Company will cooperate with the Supplier to enable the Supplier to register, under the *Personal Property Securities Act 1999* (NZ), the security interests of the Supplier in the Products under the provisions of this Contract.

7 Health, safety and environment

- 7.1 The Supplier and all Supplier Personnel must attend and complete such induction training programs as the Company reasonably requires, at the Supplier's cost, before entering the Site to deliver the Products or to perform any Associated Services.
- 7.2 The Supplier must comply immediately, and must ensure that all Supplier Personnel comply immediately, with all directions given by the Company in relation to the health or safety of any person at the Site.
- 7.3 The Supplier must ensure that all Supplier Personnel observe safe work practices that comply with:
- (a) generally accepted industry codes relevant to the Supply;
 - (b) all Laws (including the *Resource Management Act 1991* (NZ), the *Health and Safety in Employment Act 1992* (NZ) and the *Hazardous Substances and New Organisms Act 1996* (NZ)), codes of practice, relevant Government Instrumentality guidelines, and industry guidelines or Applicable Codes and Standards relevant to the Supply or to the Company's activities;
 - (c) the conditions of any Government Authorisations held by the Supplier in connection with the Supply; and
 - (d) the Company's reasonable requirements in relation to safe work practices, including the requirements of relevant Company policies, procedures and guidelines, which the Supplier acknowledges that it has received.
- 7.4 The Supplier must comply with all work practices directed by the Company in accordance with Clause 7.3(d) in preference to the work practices ordinarily adopted by the Supplier, if there is any inconsistency between the Company's requirements and the Supplier's ordinary work practices. The Supplier will raise any inconsistencies with the Company Representative.
- 7.5 The Company may instruct the Supplier to remove any person engaged in the Supply who, in the reasonable

opinion of the Company Representative, engages in misconduct or is incompetent or negligent in the performance of their duty or engaged in activities which are contrary or detrimental to the interests of the Company or is not complying with the policies of the Company or persists in any conduct likely to be prejudicial to safety, health or the environment. The Supplier must remove such person immediately from the Site. The Supplier must, at its own cost, provide a suitable replacement for any such person within 24 hours or such longer time as may be agreed by the Company.

- 7.6 The Supplier must provide any Safety Data Sheets as required by Law.
- 7.7 The Supplier must notify the Company as soon as reasonably practicable, and in any event within 24 hours, of any incident or occurrence involving the Supplier or Supplier Personnel that results in, or has the potential to result in, injury or damage to any person or property or a breach of any Law or licence condition applicable to the Company's operation.
- 7.8 The Supplier will promptly report to the Company the presence, release or discharge of Pollution caused or contributed to by the Supplier or its Personnel in connection with the Supplier's performance or non-performance of this Contract, or the activities conducted by the Supplier or its Personnel at the Site.
- 7.9 The Supplier will, without delay, clean up and remediate, at its own cost and expense, all Pollution referred to in Clause 7.8 to the complete satisfaction of the Company in its sole discretion, whether such Pollution was intentional, accidental or otherwise.

8 Supplier Personnel

The Supplier must ensure that Supplier Personnel:

- (a) are appropriately trained to deliver the Products and perform any Associated Services competently, with due care and skill and in compliance with all relevant Laws;
- (b) are familiar with such of the Company's policies, procedures, guidelines and work instructions as are relevant to the Supply;
- (c) are familiar with the layout, conditions and processes relevant to the Site; and
- (d) comply when on the Site with the *Health and Safety in Employment Act 1992* (NZ) and promptly notify the Company:
 - (i) if any hazard exists at the Site due to the Supplier's activities; and
 - (ii) of any accident or serious harm that occurs to the Supplier's employees or subcontractors, or is caused by the Supplier's employees or subcontractors, at the Site.

9 No exclusivity

The Supplier acknowledges that:

- (a) the Company is not obliged to acquire any minimum quantity of the Products or any Associated Services from the Supplier; and
- (b) nothing in this Contract will be construed as limiting the Company's right to purchase Products or products similar to the Products or any Associated Services from a third party at any time in any circumstances.

10 Existing supply arrangements

The Supplier acknowledges that the Company has no obligation to the Supplier to seek to alter, modify or terminate any supply arrangements between the

Company and third party suppliers of the Products or products similar to the Products.

11 Price

- 11.1 The Products and any Associated Services will be supplied by the Supplier to the Company for the Prices.
- 11.2 The Prices will be fixed for the period of the Supply.
- 11.3 Subject to Clause 12, the Prices are inclusive of all Taxes (excluding GST).
- 11.4 All expenses incurred by the Supplier in relation to the provision of the Products and any Associated Services, including, without limitation, travel expenses and subsistence expenses, will be deemed to be included in the Prices.
- 11.5 The Company is not liable for any cost, liability or expense incurred by the Supplier in performing its obligations under this Contract, except as provided in this Contract.
- 11.6 Unless otherwise provided for in this Contract, the Prices will be the Supplier's sole remuneration for the Supply and the performance of the Supplier's obligations under this Contract.

12 Taxes and GST

- 12.1 Subject to Clauses 12.2 to 12.5 (inclusive), amounts in this Contract are inclusive of all Taxes (excluding GST).
- 12.2 For the purposes of Clauses 12.3 to 12.5 inclusive, capitalised words and expressions that are not otherwise defined have the meaning given in the GST law.
- 12.3 (a) The Parties acknowledge that unless otherwise specified, all Consideration to be provided under this Contract is expressed to be exclusive of GST.
(b) Subject to Clause 12.3(c), If GST is payable on a Taxable Supply, the Consideration to be provided for that Taxable Supply will be the Consideration expressed in this Contract plus GST.
(c) Clause 12.3(b) does not apply to the extent that the Consideration is expressed to be inclusive of GST.
- 12.4 If Consideration to be provided under this Contract is calculated by reference to or relates to a cost, expense, liability or similar amount (**Liability**) incurred by a Party, then the Liability will be reduced by the amount of any Input Tax Credit to which that Party is entitled in respect of that Liability. The Party will be assumed to be entitled to a full Input Tax Credit unless it demonstrates that its entitlement is otherwise prior to the date on which the payment will be made.
- 12.5 (a) If GST is payable on a Taxable Supply made by one Party (**Supplier**) to another (**Recipient**), then the Recipient will not be required to pay any amount to the Supplier in respect of that Taxable Supply unless it has first received a Tax Invoice from the Supplier.
(b) The Supplier will provide the Recipient with an Adjustment Note / Tax Invoice as soon as it becomes aware of an adjustment to the price in relation to this Contract.
(c) If payment is required in any other currency than New Zealand dollars, then the Supplier must state the New Zealand dollar equivalent of the GST amount on the Tax Invoice / Adjustment Note.
- 12.6 Notwithstanding any other provision of this Contract, the Supplier is not entitled to be reimbursed by the Company for any amount that the Supplier pays or is liable to pay as a result of the Supplier, or a Related Company of the Supplier, being required by a Law to surrender tradeable permits or to pay any tax, levy, duty or other impost under the *Climate Change Response Act 2002* (NZ), or related

legislation or other legislation relating to greenhouse gas emission as a consequence of the:

- (a) emission of greenhouse gases in the course of the Supply; or
- (b) Supply.

13 Payment

- 13.1 The Supplier will invoice the Company for payment on the basis and in the form determined by the Company. However, all invoices must be in the form of, or accompanied by, a valid Tax Invoice and must specify the amount due to the Supplier and the basis of its calculation, including the Purchase Order number.
- 13.2 All invoices, Prices and payments must be stated and made in the Currency or as agreed in writing between the Parties.
- 13.3 Unless specified elsewhere in this Contract, the Company must pay, by electronic funds transfer to the Supplier's nominated bank account, the amount shown on the Suppliers Tax Invoice by the Payment Date.
- 13.4 In the event that any invoice or any part of any invoice is disputed, the Company must pay that part of the invoice (if any) that is undisputed, and the Parties must settle the disputed invoice or part in accordance with Clause 28.
- 13.5 Subject to Clause 13.4, the Company may set off against any amount owing to the Supplier any amount owing, or claimed by the Company to be owing, by the Supplier to the Company, whether under this Contract or otherwise.
- 13.6 (a) Notwithstanding any other provision to the contrary contained in this Contract, if the Supplier is in material breach of this Contract then the Company may withhold payment of all or part of any amount due to the Supplier until the failure has been remedied, provided that the:
 - (i) Company has given at least 5 Business Days prior written notice to the Supplier of its intention to withhold payment; and
 - (ii) Supplier has been given a reasonable period (as determined in the Company's sole discretion) in which to remedy the breach before payment is withheld.
- (b) The total amount that may be withheld by the Company under this Clause 13.6. must not exceed the amount that is adequate to compensate the Company for:
 - (i) the Supplier committing the material breach of this Contract; and
 - (ii) costs, damages, losses, charges or expenses incurred by the Company in connection with the breach or the rectification of it.

14 Representations and Warranties

- 14.1 The Supplier represents and warrants to the Company that each of the following warranties is true and accurate and not misleading as at the date of the Purchase Order and on each day during the Term:
 - (a) it will supply the Products and any Associated Services with the skill, care and diligence reasonably to be expected from a qualified, competent and experienced provider of products and services of a similar type as the Products and Associated Services;
 - (b) the Supplier has good title to, and is the sole beneficial owner of, the Products supplied to the Company under this Contract, and such Products will be sold and delivered to the Company free of any charge or encumbrance;

- (c) the Supplier has taken all reasonable measures to ensure it has not carried on business, entered into any financial arrangements or undertaken any obligation which would in any way interfere or conflict with the performance of its obligations under this Contract.
 - (d) in relation to the Supply:
 - (i) the Supplier and its Personnel will exercise the standards of diligence, skill and care normally exercised by similarly qualified and competent persons in the performance of comparable work; and
 - (ii) any tools and equipment used on Site by the Supplier or its Personnel will be in safe working condition, will be compliance checked (if applicable), will comply with all Laws applicable to such tools and equipment, will be kept secure and fully insured, and will be operated by suitably qualified and competent persons, to the satisfaction of the Company;
 - (e) the Products (whether or not manufactured by the Supplier) and in relation to sub-paragraphs (ii), (iii), and (iv), any Associated Services:
 - (i) will be of merchantable quality;
 - (ii) will be free from defects in design, materials and workmanship;
 - (iii) will be fit-for-purpose;
 - (iv) will meet the relevant Specifications, and all applicable Laws and Government Authorisations;
 - (v) where not manufactured by the Supplier, will meet the current specifications of the manufacturer of the relevant Product;
 - (vi) are new unless otherwise agreed; and
 - (vii) if packaged or labelled, have packaging and labelling which is in compliance with the requirements of this Contract and the Purchase Order, and all applicable Laws;
 - (f) the Relevant Software and Equipment will be free from defects in design, material and workmanship, including, without limitation, any defect in functionality;
 - (g) the Supplier and the Supplier's Personnel are in possession of, or will be able to obtain, all requisite Government Authorisations;
 - (h) the Supplier is not aware of any actual or threatened claim for infringement of Intellectual Property Rights, or for the breach of any obligation of confidence, in respect of the Supply;
 - (i) it has examined and considered all information made available by the Company to the Supplier for the purpose of the Supply;
 - (j) it has represented that it can comply with all of its obligations under this Contract and acknowledges and agrees that the Company has relied upon such representation in entering into this Contract;
 - (k) it has made proper allowance in the Prices for all:
 - (i) matters which might impact upon the Supplier's ability to deliver the Products and perform any Associated Services within the particular time, cost or quality constraints; and
 - (ii) risks associated with the Supply;
 - (l) it is not, or under threat or proposal of, bankruptcy or insolvency, or any form of insolvency, administration (by whatever name it is known and in whatever jurisdiction it occurs, including having a provisional liquidator, liquidator, trustee, receiver or receiver and manager appointed) nor has any step been taken in relation to the Supplier (including the making of a court order, the presentation of a petition or the passing of a resolution) for or with a view to any of the foregoing; and
 - (m) it has full power and authority to execute and deliver this Contract and the execution, the delivery of this Contract and the Supply will not:
 - (i) violate any Law or any existing judgment, injunction, order or decree of any court of law or Government Instrumentality having jurisdiction over it;
 - (ii) result in or constitute a breach or default under any covenant, contract, other commitment or restriction to which it is a party or by which it is bound; or
 - (iii) require any consent, vote or approval which has not been taken, or at the time of the Supply will not have been given or taken; and
 - (n) it has made all efforts to become aware of the subject matter of the representations and warranties set out in this Clause 14.1.
- 14.2 The warranties in Clause 14.1 given by the Supplier in relation to the Supply are in addition to any:
- (a) warranty or service guarantee supplied by the manufacturer of a Product;
 - (b) service guarantee separately provided by the Supplier; and
 - (c) warranty implied by Law.
- 14.3 Without limitation to any other remedy available to the Company under this Contract or otherwise, if the Supplier is in breach of any of the Warranties, then the Supplier must, at the election of the Company, and at the Supplier's cost (including any relevant transportation and labour costs), to the Company's satisfaction, either replace or repair the Products, re-perform the Associated Services and replace or rectify the Relevant Software and Equipment.
- 14.4 Each of the Warranties:
- (a) will not be read down by reason of the existence or absence of any other warranty; and
 - (b) is repeated when each invoice is delivered.
- 15 Defects Liability**
- 15.1 The Supplier warrants each Product against any defect that arises during the Defects Liability Period.
- 15.2 In respect of each Product, the Defects Liability Period will commence on and from the date that Product is accepted by the Company Representative in writing.
- 15.3 Upon receipt of a notice from the Company Representative of any defect in any Product during the Defects Liability Period due to defective design, materials, workmanship, unmerchantable quality or unfitness for intended purpose, the affected items or parts must be redesigned, repaired or replaced as appropriate by the Supplier at no cost to the Company prior to the expiration of the time specified in the notice. If the Supplier fails to make the necessary redesign, repair or replacement within the period specified, the Company may perform or cause to be performed such redesign, repair or replacement at the Supplier's risk and cost and any costs

and expenses incurred by the Company will be recoverable from the Supplier as a debt due and payable.

16 Force Majeure

- 16.1 A Party will not be liable for any delay or failure to perform any of its obligations under this Contract (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 this Contract, it gives a notice to the other Party that complies with Clause 16.2.
- 16.2 A notice given under Clause 16.1 must:
- specify the obligations the Party cannot perform;
 - fully describe the Force Majeure;
 - estimate the time during which the Force Majeure will continue; and
 - specify the measures proposed to be adopted to remedy or abate the Force Majeure.
- 16.3 The Party that is prevented from carrying out its obligations under this Contract as a result of Force Majeure must:
- remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible; and
 - take all action reasonably practicable to mitigate any Liabilities suffered by the other Party as a result of its failure to carry out its obligations under this Contract.
- 16.4 The Company will make an equitable adjustment to the Supplier's program (if any), however this is the Supplier's sole remedy for any delays resulting from Force Majeure where the Supplier is the affected Party.

17 No fault termination

- 17.1 The Company may, at any time and for any reason whatsoever, terminate this Contract or any part of it by giving the Supplier not less than 30 days' notice of its intention to do so (**Termination Notice**).
- 17.2 Upon receipt of a Termination Notice, the Supplier must:
- immediately cease the Supply in accordance with, but only to the extent specified in, the Termination Notice;
 - immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Products;
 - immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
 - take any other action required by the Company in relation to the termination.
- 17.3 On the date of termination specified in the Termination Notice, the Supplier must:
- provide the Company with a detailed report in such form as the Company may require in relation to the obligations performed up to and including the date of receipt of the Termination Notice;
 - return to the Company any items issued to the Supplier by the Company during the Term; and
 - take any other action relating to the termination of this Contract as the Company may reasonably require.
- 17.4 (a) Following termination of this Contract by the Company under Clause 17.1, the Company will pay the Supplier for all Products and any Associated Services properly delivered to the

Company as at the date of termination, less any payments previously made by the Company in respect of those Products and Associated Services.

- (b) The amounts outlined in Clause 17.4 represent the only amounts or Liabilities recoverable from the Company by the Supplier following a termination of this Contract by the Company in accordance with this Clause 17.

18 Supplier default and insolvency

- 18.1 If the Supplier breaches any term or condition of this Contract, the Company may serve a notice of default (**Supplier Default Notice**) on the Supplier.
- 18.2 (a) If a Supplier Default Notice is given in accordance with this Clause 18 the Supplier must remedy the breach (or, in the case of a breach which is incapable of remedy, make alternate arrangements acceptable to the Company) within seven days of receipt of the Supplier Default Notice.
- (b) If the Supplier does not remedy the breach (or make alternate arrangements acceptable to the Company, as applicable) within seven days of receipt of the Supplier Default Notice, the Company may terminate this Contract by notice to the Supplier setting out the date upon which this Contract will terminate (**Cancellation Date**).
- 18.3 If the Supplier:
- becomes bankrupt or insolvent or is placed under any form of insolvency or administration (by whatever name it is known and in whatever jurisdiction it occurs, including having a provisional liquidator, liquidator, trustee, receiver or receiver and manager appointed) or any step is taken in relation to the Supplier (including the making of a court order, the presentation of a petition or the passing of a resolution) for or with a view to any of the foregoing;
 - stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
 - takes any analogous step or action to those listed in paragraphs (a) and (b) above,
- the Company may immediately terminate this Contract by written notice to the Supplier setting out the date upon which this Contract will terminate (**Cancellation Date**).
- 18.4 If there is a change in the control of the Supplier's issued voting capital (or the Supplier's holding company (if any)) resulting in an existing shareholder increasing its holding to 50% or more, or a new shareholder obtaining a holding of 50% or more, of the Supplier's issued voting capital or that of the Supplier's holding company (as the case may be), other than for the purpose of internal reconstruction, the Company may immediately terminate this Contract by written notice to the Supplier setting out the date upon which this Contract will terminate (**Cancellation Date**).
- 18.5 If the Company gives notice under Clause 18.1, 18.3 or 18.4 (**Notice**), this Contract is terminated from the Cancellation Date specified in the Notice and Clauses 17.2, 17.3 and 17.4 apply as if a reference to a 'Termination Notice' was a reference to the Notice.

19 Insurance

- 19.1 The Supplier is required, at its cost, to effect and maintain throughout the Term each of the insurances described in this Clause 19 (**Supplier Insurances**).
- 19.2 Insurance covering all Liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property however caused. Such insurance must provide cover to an amount of not less

than \$20,000,000 in respect of each and every claim and be unlimited as to the number of claims that can be made under the policy and extend to cover liability to any injured worker other than liability for the Supplier's own employees (**Extension**). Insurance in relation to the Extension must also provide cover to an amount of not less than \$20,000,000 in respect of each and every claim and be unlimited as to the number of claims that can be made under the policy).

19.3 Goods in transit insurance

The Supplier will maintain insurance covering loss of or damage to the Products during transit, regardless of whether the Company has paid for those Products.

19.4 (a) Employers' liability insurance covering all Liabilities, whether arising under statute or common law, in relation to the death of, or injury to, any employee of the Supplier.

(b) The insurance required by Clause 19.4(a) must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its Personnel.

19.5 (a) Comprehensive motor vehicle insurance covering all mechanically propelled vehicles used at any time in connection with delivery of the Products or performance of any Associated Services, which insurance must (unless prohibited by law) provide cover for market value and in respect of third party property damage of not less than \$20,000,000 in respect of any one accident or series of accidents arising out of one event.

(b) Any insurance that is compulsory under relevant laws for the time being in force governing the use of motor vehicles used at any time in connection with delivery of the Products or performance of any Associated Services.

19.6 If the performance of this Contract requires or involves the use of aircraft (including helicopters), the Supplier must maintain, or require the owners of aircraft (including helicopters) used in the Supply, to maintain:

(a) aircraft hull insurance, on all aircraft so used, with a limit of cover not less than the market value of the aircraft; and

(b) liability insurance including coverage for injuries or death of crew, passengers and any other person, and in respect of loss of or damage to cargo. Such insurance must provide cover to an amount of not less than \$10,000,000 for each and every claim.

19.7 If the performance of this Contract requires or involves the use of watercraft, the Supplier must maintain, or require the owners of watercraft used in the Supply, to maintain:

(a) marine hull & machinery insurance, including collision liability, on all watercraft so used, with a limit of cover not less than the market value of the watercraft; and

(b) protection and indemnity insurance including coverage for injuries or death of masters, mates and crews. Such insurance must provide cover to an amount of not less than \$10,000,000 for each and every claim.

19.8 (a) If the Supplier Insurances are subject to the application of any self-insured retention, excess or deductible, the amount of the excess or deductible must be declared to the Company. The Company reserves the right to require the Supplier to reduce the amount of any self-insured retention, excess or deductible where such amount is considered unreasonable in the circumstances of this Contract.

(b) The Supplier Insurances must be underwritten by a reputable insurer with a security rating from Standard & Poor's of not less than "A".

(c) No provision contained in this Clause 18 will limit the Supplier's liability in relation to the indemnities in this Contract.

(d) Before commencing to perform its obligations under this Contract, and each time the policies are renewed or varied during the Term, the Supplier must provide the Company with such evidence as the Company may reasonably require that the Supplier and its Subcontractors are insured in accordance with this Contract.

(e) In the event that the Supplier fails to effect or maintain any of the Supplier Insurances required under this Contract the Company may do one or more of the following:

(i) effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Supplier;

(ii) refuse the Supplier and its Personnel access to all or any part of the Site; and

(iii) treat the failure to insure as a default under this Contract.

(f) All Supplier Insurances must not be varied to the detriment of the Company or its Personnel, cancelled or allowed to lapse unless the Supplier has received a written consent from the Company Representative.

19.9 If the Company consents to the Supplier subcontracting any of its duties and/or obligations under this Contract, the Supplier must ensure that its Subcontractors have the benefit of or effect and maintain insurances similar to the Supplier Insurances required to be effected by the Supplier.

20 Indemnities

20.1 Subject to Clause 20.2, the Supplier will indemnify (and will keep indemnified) the Company, End Users and their Personnel (**Indemnified Parties**) from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any one or more of the following:

(a) the breach by the Supplier or its Personnel of any of the Supplier's obligations (including any Warranty) under this Contract;

(b) any negligent act or omission or wilful misconduct by the Supplier or its Personnel arising out of the performance of this Contract; or

(c) any Claim made against the Company by any of the Supplier's Personnel in respect of relevant legislation concerning income tax, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal.

20.2 The Supplier will not be liable under Clause 20.1 to the extent that the Liability was directly caused by the Company's negligence or wilful default.

21 Compliance with Company policies

The Supplier must, and must ensure that its Personnel, comply with each of the rules and policies of the Company and the Group, as notified by the Company from time to time by notice to the Supplier in writing.

22 Business Practices Standard

The Group has developed a policy entitled '*The Way We Work*'. The Supplier acknowledges that it has received a copy of that policy which can also be found at: http://procurement.riotinto.com/documents/The_way_we_work_-_English_-_Final.pdf or www.riotinto.com

The Supplier is required to read, understand and adhere to the 'The Way We Work policy', and the Company reserves the right to monitor and/or audit the Supplier's adherence to such policy.

23 Illegal Information Brokering

23.1 Prohibition

The Supplier recognises that the practice of Illegal Information Brokering or any other corruption of the award process for this Contract is not permitted by the Company and the Supplier represents and warrants that it has not and will not utilise Illegal Information Brokering in connection with this Contract.

23.2 Notification

- (a) The Supplier must immediately notify the Company Representative if any person approaches the Supplier for the purpose of Illegal Information Brokering concerning this Contract or any other related business interest of the Group or the Company.
- (b) After receiving a notice under Clause 23.2(a):
 - (i) such notice and any related information provided by the Supplier will be treated by the Group and the Company with the utmost discretion; and
 - (ii) the Group and the Company will handle this Contract with extra security measures, as appropriate, in order to prevent any contractor, subcontractor or other supplier from gaining any unfair advantage subsequent to such notice.

24 Personal Data protection

24.1 Personal Data

Each Party agrees to comply with its obligations under all Laws relating to privacy and protection of Personal Data in respect of Personal Data obtained by or disclosed to them under this Contract.

24.2 Warranty

Each Party warrants to the other Party that it has complied with, and will continue to comply with, all Laws in its processing of Personal Data (including its collection, use, disclosure, storage and handling) under this Contract.

24.3 Data protection

In addition to its obligations under Clauses 24.1 and 24.2, the Supplier agrees to:

- (a) only collect, use, disclose or process Company Personal Data for the performance of its obligations under this Contract, and as directed by the Company;
- (b) not disclose Company Personal Data to any other person (including the data subject) without the Company's prior written request or consent, unless the disclosure is required by Law;
- (c) immediately notify the Company that the disclosure of Company Personal Data is or may be required by Law;
- (d) put into place and maintain appropriate technical, physical and organisational measures to protect against unauthorised access, loss, destruction, misuse modification, disclosure or damage to Company Personal Data;
- (e) take all necessary steps to ensure that its collection, use, disclosure and handling of Company Personal Data will be fair and lawful and, for this purpose, the Supplier may

reasonably enquire of the Company as to the manner in which the Company collected Company Personal Data; and

- (f) if requested by the Company to do so, execute EU model contracts for the transfer of Personal Data with:

- (i) the Company or any other member of the Group; or
- (ii) any or all of the Supplier's related companies or subcontractors.

For clarification, such a request may be made if the Company considers it necessary or appropriate for the purposes of the Company's compliance with its global data privacy obligations. This Clause operates in addition to Clause 24.2.

24.4 Individual complaints

- (a) If an individual complains to the Company that the Supplier (or any of its Personnel) has, in the performance of this Contract, handled his or her Company Personal Data inappropriately, or the Company must promptly give the Supplier sufficient details about the complaint to enable the Supplier to take steps to address the subject of the complaint promptly. The Supplier must provide a written response to the Company about how it has addressed the complaint as soon as possible, and in any event, no later than seven days after the complaint is notified to the Supplier. The response must identify the steps that the Supplier has taken to address the complaint and if relevant, to minimise any further misuse.
- (b) If an individual complains to the Supplier that the Supplier (or any of its Personnel) has, in the performance of this Contract, handled his or her Company Personal Data inappropriately, the Supplier must:
 - (i) promptly inform the Company of the complaint;
 - (ii) provide the Company with the Company Personal Data that is the subject of the complaint; and
 - (iii) provide a written notice to the Company about how the Supplier has addressed the complaint, and what steps the Supplier has taken to minimise further complaints.

24.5 Supplier Indemnity

Without limiting Clause 20, the Supplier must indemnify the Company and each End User from and against any and all Liabilities arising from the Supplier's actual or alleged breach of this Clause 24.

24.6 Return of Company Personal Data

The Supplier must, on termination of this Contract, return, destroy, store or dispose of the Company Personal Data as directed by the Company.

25 Intellectual Property Rights in Supply

- 25.1 (a) The Parties acknowledge that each Party remains the owner of its Background IP and that nothing in this Contract prevents, limits or restricts a Party's subsequent use or exploitation of its Background IP.
- (b) The Supplier grants to the Company a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use its Background IP for the purposes of or in connection with the business of the Group to the extent such use is necessary to use the Products

- or enjoy the benefit of the Associated Services. The Company may sub-licence the Company's rights to use the Supplier's Background IP to any member of the Group provided such use is in connection with the business of the Group.
- (c) The Company grants to the Supplier, or where the Company's Background IP is owned by a member of the Group other than the Company, the Company will procure the grant to the Supplier of, a non-exclusive, non-transferable, revocable licence to use the Company's Background IP and the Contract IP for the sole purpose of providing the Supply.
- (d) The Supplier must not use, register or attempt to register any interest in or otherwise deal with the Company's Background IP and the Contract IP, or allow any other person to do the same, for any purpose other than to provide the Supply.
- 25.2 (a) The Supplier agrees that all Contract IP will be vested in the Company and will be the Company's property as and when created and the Supplier assigns and must ensure that all of its Personnel assign all of their respective rights, title and interest in and to the Contract IP (whether created before, on or after the commencement of the Term) to the Company.
- (b) On the Company's request, the Supplier must execute any formal assignment or other document required to give effect to this Clause 25.2.
- 25.3 The Supplier warrants that it has the right to:
- (a) grant to the Company the licence under Clause 25.1(b);
- (b) assign all Contract IP to the Company in accordance with Clause 25.2.
- 25.4 The Supplier agrees to:
- (a) disclose to the Company all Contract IP as and when it is created;
- (b) ensure that any sub-contract the Supplier enters into in relation to this Contract contains an assignment by the Sub-contractor to the Company of all Intellectual Property Rights in any Contract IP created by the Sub-contractor for the purposes of this Contract;
- (c) notify the Company as soon as the Supplier becomes aware of any suspected, threatened or actual infringement or unauthorised use of any Intellectual Property Rights in the Contract IP and to provide all reasonable assistance in relation to that infringement; and
- (d) provide all reasonable assistance the Company may request to protect, perfect enforce, defend or assert its interests in and right to use and exploit the Contract IP (including assisting the Company to take action against persons infringing the Contract IP). The Supplier must also ensure that its Personnel provide all reasonable assistance to the Company as set out in Clause 25.2.
- 26 **Third party Intellectual Property Rights**
- 26.1 The Supplier warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party in the provision of the Supply, or to the extent the Company will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of the Supply:
- (a) it has obtained, or will obtain at no further cost to the Company, from the relevant third party all necessary licences and consents to use, or assignments of, such Intellectual Property Rights; and
- (b) that it will not breach any of the licences or assignments referred to in Clause 26.1(a).
- 26.2 (a) The Supplier indemnifies the Company and must keep the Company indemnified in respect of any Liabilities incurred or sustained by the Company resulting from any actual or alleged infringement of any Intellectual Property Rights of any third party arising out of or caused by:
- (i) the performance of the Supply by the Supplier;
- (ii) the performance or operations of any other plant, machinery, tools, equipment, process, work, material, matter, thing or method used or supplied by the Supplier; or
- (iii) the use and enjoyment of the Products by the Company.
- (b) The Supplier must notify the Company immediately the Supplier becomes aware of a Claim being threatened or made against the Company in relation to any of the matters covered by the indemnity in Clause 26.2.
- (c) The Company may require the Supplier to conduct any litigation that may arise from a Claim referred to in Clause 26.2(b) and all negotiations for settlement of that Claim. However, the Supplier must not make any settlement or consent to any judgment, order or verdict against the Company without the Company's prior written consent.
- 26.3 If the Company is prevented from (as the case requires) operating or using the Products or Supply or any part of the Products or Supply as a result of any Claim in relation to an infringement of Intellectual Property Rights, the Supplier must (at its cost) take all reasonable steps to procure for the Company the right to (as the case requires) operate or use the Products or Supply or the relevant part of the Products or Supply for the purpose for which it was intended.
- 26.4 If the Supplier cannot procure the rights referred to in Clause 26.3 within a reasonable time (but not exceeding 60 days unless the Company Representative otherwise agrees), it must notify the Company Representative accordingly and the Company Representative may direct the Supplier to immediately (at the Supplier's cost):
- (a) alter the Products or Supply or the relevant part of the Products or Supply to avoid infringement or violation of the Intellectual Property Rights or any of them;
- (b) replace the Products or re-perform any Associated Services affected or the relevant part of the Products or re-perform any Associated Services with work or Products which do not infringe or violate the Intellectual Property Rights; or
- (c) remove the Products and discontinue the Associated Services and reimburse the Company any compensation and other moneys already paid to the Supplier and pay to the Company any costs or other expenses that may have been paid or incurred by the Company in connection with the removed Products or discontinued Associated Services.
- 26.5 (a) The Supplier must, at its cost, procure from each of its Personnel and any other relevant third party author or originator, an irrevocable and unconditional consent, in favour of the Company, which is legally enforceable by the Company, for

the Company and if requested, a member of the Group or the Supplier's Personnel, to:

- (i) reproduce, adapt or publish any materials in relation to the Products or Supply, anywhere in the world, in whatever form the Company thinks fit, without making any identification of the author or originator of the materials; and;
 - (ii) do anything in relation to the materials that, except for these consents, would infringe any moral rights or similar rights (being non-assignable rights which are otherwise excluded from Intellectual Property Rights) of the author or originator of the materials in relation to the Products or Supply, anywhere in the world.
- (b) Where the Company reasonably believes that the Supplier has not complied with its obligations under this Clause 26.5, the Supplier must procure that each of its Personnel and any other relevant third party author or originator do all such other things and execute all such documents as reasonably requested by the Company in order to confirm or give effect to the provisions of this Clause 26.5.

27 Assignment and delegation

- 27.1 The Supplier may not assign or transfer its rights under this Contract without the prior written consent of the Company.
- 27.2 The Supplier may not delegate, subcontract or outsource any of the Supplier's duties and/or obligations under this Contract without the prior written consent of the Company.
- 27.3 If the Supplier delegates, subcontracts or outsources any of the Supplier's duties and/or obligations under this Contract at any time, the Supplier will remain liable to the Company for the performance and discharge of the delegated and/or subcontracted and/or outsourced duties and/or obligations under this Contract.
- 27.4 The Company may delegate, subcontract or outsource any of its duties and/or obligations under this Contract to any Group member without the Supplier's consent, but will inform the Supplier following any such delegation, subcontracting or outsourcing.
- 27.5 The Company may assign, charge, encumber, novate or otherwise deal with any of its rights or obligations under this Contract at any time. At the request of the Company, the Supplier must execute all documents necessary to give effect to such assignment, charge, encumbrance or novation, including executing a novation deed.

28 Dispute resolution

- 28.1 The Parties acknowledge that while disputes may arise from time to time, their common intent is to ensure that any dispute is resolved in a timely and cost effective manner.
- 28.2 Subject to Clause 28.12, a Party must not start court proceedings unless it has complied with this Clause 28.
- 28.3 A Party claiming that a dispute, difference or question arising out of this Contract has arisen (**Dispute**) must give the other Party notice of the details of the Dispute (**Dispute Notice**).
- 28.4 The Parties must attempt to resolve any Dispute by negotiations using the following escalation procedure:
- (a) When a Dispute Notice is given, refer any Dispute initially to a representative nominated by the Company, and a representative nominated by the Supplier, who will in good faith endeavour to

resolve the Dispute within 10 Business Days after the Dispute Notice is given by a Party.

- (b) If they cannot resolve the Dispute within 10 Business Days after the Dispute Notice is given, each Party must refer the Dispute to representatives of senior management who must then attempt to resolve it.
- 28.5 If the senior management cannot resolve the Dispute within 10 Business Days after the Dispute Notice is given, the Parties must refer the Dispute to:
- (a) binding expert determination, if the Parties agree to resolve the Dispute by expert determination; or
 - (b) mediation, if the Parties:
 - (i) are unable to agree on submitting the Dispute to expert determination in accordance with Clause 28.5(a); or
 - (ii) agree to resolve the Dispute by mediation.
- 28.6 The Parties will attempt to agree upon an appropriate expert or mediator within 15 days after the Dispute Notice is given. If the Parties are unable to agree the expert or mediator will be a person nominated, at the request of either Party, by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc or his or her nominee.
- 28.7 The Parties must promptly supply the expert or mediator with any information, assistance and cooperation requested in writing by the expert or mediator in connection with the Dispute. All correspondence between the expert or mediator and a party must be copied to the other parties.
- 28.8 If an expert is appointed:
- (a) the expert must be instructed to finish its determination no later than 20 Business Days after the expert's appointment (or another period agreed by the Parties); and
 - (b) the expert must act as an expert and not as an arbitrator and its written determination will be final and binding on the parties in the absence of manifest error.
- 28.9 Each expert determination and mediation conducted in accordance with this Clause 28 will be conducted in accordance with the Mediation Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc or such other rules and procedures agreed between the Parties.
- 28.10 Each Party must bear its own costs of complying with this Clause 28.
- 28.11 Notwithstanding the existence of a Dispute, each Party must continue to perform its obligations under this Contract, subject always to its rights of termination under this Contract.
- 28.12 A Party may commence court proceedings relating to any Dispute at any time where that Party seeks urgent or interim declaratory or injunctive relief.

29 Confidentiality

- 29.1 The Supplier must not disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of providing the Products or performing any Associated Services (and the Supplier must ensure those Personnel do not disclose or permit or cause the Confidential Information to be disclosed) unless it has obtained the prior written consent of the Company to do so.
- 29.2 Clause 29.1 does not apply to:

- (a) information after it becomes generally available to the public (other than as a result of the breach of this Clause 29.29 or any other obligations of confidence imposed on the Supplier);
- (b) disclosure to professional advisors who are under a duty of confidentiality; or
- (c) the disclosure of information in order to comply with any applicable Law or legally binding order of any court, Government Instrumentality or recognised stock exchange, provided that prior to such disclosure the Supplier gives notice to the Company with full particulars of the proposed disclosure.

29.3 The obligations in this Clause 29 are in addition to and do not diminish the obligations of the Supplier in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.

30 Delay and disruption

- 30.1 The Supplier must not delay or disrupt the work or activities of the Company or any other suppliers or contractors or their Personnel (whether employed or engaged by the Company or not) on the Site during the Term.
- 30.2 The Supplier is not entitled to any increase in the Prices or damages or any other financial compensation in respect of any delay or disruption suffered by the Supplier that was caused by the Company or any other suppliers or contractors or their Personnel.
- 30.3 If, through no fault of its own, the Supplier is delayed or disrupted by the Company or any other suppliers or contractors or their Personnel, the Company may (in its discretion) make an equitable adjustment to the Supplier's program (if any).

31 Notices

- 31.1 A notice, approval, consent or other communication in connection with this Contract must be:
 - (a) in writing;
 - (b) marked to the attention of the Company Representative or Supplier Representative (as the case may be);
 - (c) signed by:
 - (i) a director, company secretary, or duly authorised representative of the Party giving the notice, approval, consent or other communication;
 - (ii) the Company Representative in the case of the Company; or
 - (iii) the Supplier Representative in the case of the Supplier; and
 - (d) delivered personally or sent by facsimile, post or email to the address specified in this Contract or to the last advised address of the addressee.
- 31.2 A letter, email or facsimile is deemed to be received:
 - (a) in the case of a posted letter, on the fifth day (seventh if posted to or from a country other than the country from which it was sent);
 - (b) in the case of an e-mail, on receipt of a successful delivery report by the system from which the e-mail was sent; and
 - (c) in the case of a facsimile, on production of a successful transmission report.

32 Governing law and jurisdiction

- 32.1 This Contract and the transactions contemplated by this Contract are governed by the Laws of the Relevant Jurisdiction.
- 32.2 The *United Nations Convention on Contracts for the International Sale of Goods (1980)* does not apply to this Contract.
- 32.3 Each Party submits to the non-exclusive jurisdiction of the courts of the Relevant Jurisdiction and the courts of appeal from them.

33 Miscellaneous

- 33.1 A Party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a Party does not prevent a further exercise of that or any other right, power or remedy. Failure by a Party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.
- 33.2 Except where this Contract expressly states otherwise, a Party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this Contract.
- 33.3 Any indemnity or any obligation of confidence under this Contract is independent and survives termination of this Contract. Any other term by its nature intended to survive termination of this Contract survives termination of this Contract, including Clauses 12, 14, 15, 16, 19, 20, 24, 25, 26, 28, 29, 31, 32, 33, 34 and 35.
- 33.4 A Party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy created under this Contract must be in writing and signed by the Party giving the waiver.
- 33.5 (a) Any provision of this Contract which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of this Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.
- (b) Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable Law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to this Contract.
- 33.6 None of the terms of this Contract, or anything done under or by virtue of this Contract or any other agreement, instrument or document, or judgment or order of any court or judicial proceeding will operate as a merger of any of the rights and remedies of the Parties under this Contract and those rights and remedies will at all times continue in force.
- 33.7 Each Party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Contract and any transaction contemplated by it.
- 33.8 The Supplier acknowledges and agrees that:
 - (a) in entering into this Contract, the Supplier does not, except to the extent expressly stated in this Contract, rely on any representation, warranty, condition or other conduct which may have been made by the Company, any member of the

Group, or any person purporting to act on behalf of the Company or any other member of the Group;

- (b) the Supplier has had the opportunity to make, and has made, all necessary and independent inquiries in relation to all matters relevant to the entry into this Contract; and
- (c) subject to any Law to the contrary, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, are excluded and the Company disclaims all liability in relation to these to the maximum extent permitted by Law.

33.9 The Supplier supplies the Products to and performs any Associated Services for the Company as an independent contractor. Nothing in this Contract is or will be taken as constituting the relationship of employment, trust, agency, partnership or joint venturers between the Parties or otherwise sharing risks or rewards or constituting any Party the agent, servant, employee or representative of another Party.

33.10 Except as required by any applicable Law or as otherwise permitted by this Contract, no Party may make any public announcements or disclosures as to this Contract, or otherwise in relation to the existence or subject matter of this Contract, without the prior written consent of the other Party. Should such approval be given then the wording of such release and the manner or publication of such release must first be approved in writing by both Parties.

34 Interpretation

34.1 In this Contract unless the contrary intention appears:

- (a) a reference to this Contract or another instrument includes any variation or replacement of either of them;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a Person or a Party includes a reference to the Person's or Party's executors, administrators, successors, substitutes (including but not limited to, persons taking by a novation) and assigns;
- (d) a reference to time is a reference to the time where the Site is located;
- (e) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (f) a reference to a recital, annexure, appendix, attachment or schedule is a reference to a recital, annexure, appendix, attachment or schedule to this Contract, and a reference to this Contract includes a recital, annexure, appendix, attachment or schedule;
- (g) a gender includes all genders;
- (h) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (i) the meaning of general words is not limited by specific examples introduced by "including" or "for example";
- (j) a reference to an Act or legislation, or to a provision of an Act or legislation, includes a modification, consolidation, replacement or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (k) where it is provided that the Supplier will perform any act or provide any thing at its cost, this means the Supplier will not be entitled to any

additional compensation for such act or thing and the cost will be deemed to be included in the Price;

- (l) a reference to a clause is a reference to a clause in this Contract;
- (m) a rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Contract or any part of it;
- (n) a reference to a third person or a third party is a reference to a person who is not a party to this Contract;
- (o) a reference to "dollar", "\$" or a currency is a reference to the Currency, unless expressly stated to be otherwise in this Contract;
- (p) any agreement, representation, warranty or indemnity by two or more parties (including where two or more Persons are included in the same defined term) binds them jointly and severally;
- (q) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more Persons are included in the same defined term) is for the benefit of them jointly and severally; and
- (r) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

34.2 Headings are inserted for convenience and do not affect interpretation of this Contract.

34.3 If this Contract specifies that the Company enters into, and is a party to, this Contract for and on behalf of Joint Venturers under a Joint Venture, then the following paragraphs apply:

- (a) The Company is a party to this Contract as agent severally for each of the Joint Venturers in their respective percentage interests in the Joint Venture.
- (b) The Parties acknowledge and agree that:
 - (i) the obligations and liabilities of the Joint Venturers to the Supplier are several only (and will not be, nor be construed to be, either joint or joint and several), in accordance with the Joint Venturer's respective percentage interest from time to time in the Joint Venture;
 - (ii) the percentage interests of the Joint Venturers, and the identity and number of Joint Venturers, may change from time to time and the Company may at any time without the consent of the Supplier assign its rights and obligations under this Contract to an incoming agent or manager on behalf of the Joint Venturers;
 - (iii) the rights and remedies in and under this Contract may be exercised by the Company for and on behalf of the Joint Venturers;
 - (iv) the benefit of the respective duties and obligations of the Supplier under this Contract are deemed to enure to each of the Joint Venturers, and the Company is severally authorised to enforce those duties and obligations on the Joint Venturers' behalf;
 - (v) all notices to be given or made pursuant to this Contract relating to the Joint

- Venture may be given or made (as the case requires) by the Company on behalf of the Joint Venturers or any one or more of them;
- (vi) in dealing with the Joint Venturers, for all purposes under or in connection with this Contract (including, for the avoidance of doubt, the Purchase Order), the Supplier must deal only with the Company; and
 - (vii) the Company will not be liable for the failure of the Joint Venturers (or any one or more of them) to perform its or their obligations under this Contract.

35 Definitions

35.1 The following words have these meanings in this Contract unless the contrary intention appears:

Accumulation Period means the period commencing on the first day of a calendar month ending on the last day of the calendar month.

Applicable Codes and Standards means the current editions of all codes, standards, regulations and requirements set forth or implied in any Law and applicable Government Authorisations which are relevant to the Products and any Associated Services and in the event of an inconsistency or conflict between any of those codes or standards, the more rigorous performance standard will apply.

Associated Services means the services (if any) identified in the Purchase Order that are to be performed by the Supplier.

Background IP means the Intellectual Property Rights of a Party which:

- (a) are in existence at the commencement of the Term; or
- (b) come into existence after the commencement of the Term otherwise than in connection with this Contract.

Business Day means every day, ending at 5.00pm other than a Saturday, a Sunday or a statutory public holiday at the Site.

Claim means any claim, demand, action, suit, proceeding or demand of any kind arising out of any cause of action of a Party or an End User including for breach of this Contract or under any indemnity, in tort (including negligence) and any other common law, equitable or statutory cause of action in connection with the operation of this Contract.

Company is defined in the Purchase Order.

Company Personal Data means the Personal Data that the Company transfers to the Supplier from time to time in connection with this Contract.

Company Representative is, initially, as stated in the Purchase Order, and includes:

- (a) such other person as the Company may, in writing, substitute for that representative; or
- (b) any person authorised by that representative to perform any of that representative's powers, duties, discretions or authorities.

Confidential Information means any information (in whatever form) or Documentation of a confidential nature (or which the Supplier or its Personnel ought reasonably to know to be confidential) that relates to the business, affairs or activities of the Company, an End User or members of the Group (including in relation to the Supply) and which:

- (a) is disclosed to the Supplier or its Personnel by or on behalf of the Company;
- (b) is generated by the Supplier or its Personnel in performing this Contract; or
- (c) otherwise comes to the knowledge of the Supplier or its Personnel.

Contract is defined in Clause 1.1.

Contract 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 the Supply or this Contract (including all Intellectual Property Rights in anything developed by the Supplier in providing the Supply and any Intellectual Property Rights in the Documentation provided by the Company to the Supplier).

Companies Act means the *Companies Act 1993* (NZ).

Currency is defined in the Purchase Order.

Day or day means a calendar day of 24 hours from 12.00am and includes Saturdays, Sundays and holidays.

Defects Liability Period means (as applicable) the period identified as such in the Purchase Order or, where such period is not identified in the Purchase Order, the period of 1 year following receipt of a particular Product by the Company.

Delivery Point means the delivery point stated in the Purchase Order.

Documentation includes contracts, plans, designs, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, invoices and any other material specified in this Contract (and whether embodied in tangible or electronic form).

End User means an entity identified in this Contract (or notified to the Supplier by the Company) to whom the Company provides goods and/or services comprising, or derived from, in whole or in part, the Supply.

Force Majeure means an event or cause which is beyond the control of the Party claiming force majeure, not able to be overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the force majeure by that Party, and which could not have been reasonably foreseen, and includes (subject to satisfying the requirements of the foregoing):

- (a) an act of God (other than adverse weather);
- (b) cyclones, fire, flood, earthquake; or
- (c) acts of war, acts of public enemies, terrorist acts, riots or civil commotions.

Government Authorisations means all approvals, consents, accreditations, authorisations, permits, clearances, licences or other requirements that are required from any Government Instrumentality for the Supplier to perform its obligations under this Contract.

Government Instrumentality means any governmental, semi-governmental, administrative, municipal, fiscal or judicial body, ministry, department, court, commission, board, authority, tribunal, commission, agency, institution or similar entity of any such government.

Group means:

- (a) the dual listed company structure incorporating Rio Tinto plc (**RT**) and Rio Tinto Limited (**RTL**) (**Rio Group**), for so long as the Company is part of the Rio Group including:
 - (i) any Related Company of RT or RTL;

- (ii) any unincorporated joint venture in which RT or RTL or any Related Company of RT or RTL has a participating interest of not less than 50%;
 - (iii) any body corporate or unincorporated joint venture managed by RT or RTL or any Related Company of RT or RTL; and
 - (iv) such other entities as the Parties agree in writing;
- (b) if the Company ceases to be part of the Rio Group:
- (i) any Related Company of the Company;
 - (ii) any unincorporated joint venture in which the Company or any Related Company of the Company has a participating interest of not less than 50%;
 - (iii) any body corporate or unincorporated joint venture managed by the Company or any Related Company of the Company; and
 - (iv) such other entities as the Parties agree in writing.

GST means 'tax' as defined in the GST Act.

GST Act means the *Goods and Services Tax Act 1985* (NZ).

Illegal Information Brokering means the practice by which certain parties approach contractors, subcontractors, vendors and other suppliers, and offer confidential information or illicit influence in order to obtain business through corruption of competitive bidding processes.

Intellectual Property Rights means all industrial and intellectual property rights (including moral rights) whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

Joint Venture means an unincorporated joint venture, if any, on behalf of which the Company is a Party to this Contract as agent.

Joint Venturers means, in respect of a Joint Venture, the participants in that Joint Venture.

Law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them).

Liabilities means damages, Claims, losses, liabilities, costs and expenses of any kind.

Official includes:

- (a) any officer or employee of any Government Instrumentality, or any person acting in an official capacity on behalf of any such Government Instrumentality;
- (b) any officer, employee or official of a political party;
- (c) any candidate for political office; or

- (d) any officer or employee of a public international organisation (for example, the United Nations, IMF or World Bank).

Party or Parties means either the Company, the Supplier or both of them as the context may require.

Payment Date means, unless otherwise specified in the Purchase Order, the fifteenth day (or next Business Day) of the second month following the end of the Accumulation Period in which the Supplier's Tax Invoice is received by the Company, or where applicable, the end of the Accumulation period in which the bill of lading from the Supplier is dated (for the avoidance of doubt, the term '15th day of 2nd month following EOAP' when used in the Purchase Order has the same meaning as 'Payment Date').

Person includes an individual, corporation, partnership, joint venture, trust, unincorporated organisation, association, or Government Instrumentality.

Personal Data means information relating to identifiable individuals and includes (but is not limited to) all information relating to individuals that is protected by privacy laws or data protection laws in the country where the:

- (a) individuals are located; or
- (b) data relating to those individuals is processed.

Personnel means:

- (a) in relation to the Supplier, any of its employees, Subcontractors, agents and representatives involved either directly or indirectly in the Supply;
- (b) in relation to the Company, an End User or a member of the Group, any of its past or present officers, employees, agents or representatives;
- (c) in relation to a Subcontractor, any of its employees, agents or representatives involved either directly or indirectly in the Supply; and
- (d) in relation to any other party, any of its employees, agents or representatives.

Pollution means any hazardous substance, pollutant or contaminant regulated by any applicable Government Instrumentality and also any other contamination or pollution.

Prices means the prices for the Products and any Associated Services specified in the Purchase Order.

Products means the products specified in the Purchase Order.

Purchase Order means the individual purchase orders as may be issued by the Company to the Supplier for the supply by the Supplier to the Company of the Products and the performance of any Associated Services.

Related Company has the meaning given to it in the *Companies Act 1993* (NZ).

Relevant Jurisdiction means New Zealand.

Relevant Software and Equipment means Software and Equipment which:

- (a) is used in, or attached to, the Products supplied by the Supplier, so far as they relate to the use and/or operation of the Products or the Supply;
- (b) affects the supply and/or the delivery by the Supplier (including the Supplier's Personnel) of the Products; and/or
- (c) constitutes the Products.

Rio Tinto Limited means Rio Tinto Limited (ABN 96 004 458 404) having its registered office at 33rd Floor, 55 Collins Street, Melbourne, Victoria, 3000 Australia.

Rio Tinto plc (ARBN 007 488 486) means Rio Tinto plc (Company No. 719885) of 6 St James's Square, London SW1Y 4LD, United Kingdom.

Site means the site stated in the Purchase Order.

Software and Equipment means software, licensed software, developed software, supported software, package software, system, hardware, supported hardware, supplied hardware, firmware, micro code and associated parts and equipment.

Special Conditions means the special conditions (if any) as specified in or attached to the Purchase Order.

Specifications means the specifications (if any) specified in the Purchase Order.

Specified Lead Time means the period (if any) stated in the Purchase Order.

Subcontractor means any Person engaged or employed by the Supplier to perform any of its obligations.

Supplier is defined in the Purchase Order.

Supplier Representative is, initially, as stated in the Purchase Order, and includes:

- (a) such other person as the Supplier may, in writing, substitute for that representative; or
- (b) any person authorised by that representative to perform any of that representative's powers, duties, discretions or authorities.

Supply means the supply of Products and the performance of any Associated Services in accordance with this Contract.

Taxes or Tax means any and all sales, use, personal, property, real property, value added, goods and services, consumption, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever (other than taxes on the Company's net income), together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any government, governmental, semi-governmental or other relevant authority or otherwise payable on or in respect of the Products and any Associated Services.

Tax Invoice has the meaning given in sections 24 and 24BD of the GST Act.

Term means the term of the Agreement as contemplated by Clause 2.

Warranties means the warranties set out in Clause 14.