

# Technology & Innovation Purchase Order General Conditions for the Supply of Goods (and Associated Services) (AU)

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## 1. Definitions and interpretation

### 1.1 Definitions

In these General Conditions and the Contract the following terms have the meanings set out below:

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

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

**Business Day** means a day on which banks are open for business in the place in respect of which an obligation is to be performed or, in respect of Clause 30, the place to which a Notice is sent.

**Cancellation Date** is defined in Clause 25.2(b)(iii).

**Claim** means any action, suit, proceeding or demand of any kind (including by or against any or all of the Company, an End User or their respective Personnel by Personnel of the Supplier or any third party).

**Company** is Technological Resources Pty Limited (ACN 002 183 557) or such other company defined in the Purchase Order.

**Company Competencies** is defined in Clause 17.5(b).

**Company Induction Courses** is defined in Clause 17.5(a).

**Company Representative** is, initially, as defined 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.

**Company's Personal Information** means the Personal Information that the Company transfers to the Supplier from time to time in connection with the Contract.

**Confidential Information** means the Contract, and any information (in whatever form) or Documentation of a confidential nature (or which the receiving Party or its Personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of the disclosing Party (including, in the case of the Company, an End User or members of the Rio Tinto Group).

**Contract** is defined in Clause 2.1.

**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 the 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).

**Contract Price** is defined in Clause 9.1.

**Corporations Act** means the Corporations Act 2001 (Cth).

**Customs Duties** means any tax or tariff imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the import or export of Goods.

**Deducted Amount** is defined in Clause 12.2(a).

**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 the receipt of a particular Good by the Company.

**Delivery Point** means the place identified in the Purchase Order for delivery of the Goods.

**Dispute** is defined in Clause 26.1.

**Dispute Notice** is defined in Clause 26.1.

**Dispute Representative** is defined in Clause 26.2(a).

**Documentation** includes plans, designs, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in the Contract (and whether embodied in tangible or electronic form).

**End User** means an entity identified in the 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.

**EOAP** means the end of the Accumulation Period in which the Tax Invoice is received.

**Excise Duties** means any tax imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the production or manufacture of Goods.

**Facilities** means any accommodation, sustenance, transportation, medical or toilet facilities.

**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; or
- (c) acts of war, acts of public enemies, terrorist acts, riots or civil commotions.

**Goods** mean the goods, materials, supplies, equipment or other items identified in the Purchase Order.

**Government Agency** means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

**HSE Management Plan(s)** is defined in Clause 17.4(a).

**HSE Policies and Standards** is defined in Clause 17.3(a).

**Indemnified Parties** is defined in Clause 23.2(a).

**Indirect Transaction Taxes** means any value added tax, goods and services tax or similar tax including, without limit, sales, use or consumption taxes, imposed, claimed, levied or assessed by, or payable to, any Government Agency, but does not include any related penalty, fine or interest thereon.

**Input Tax Credit** means any entitlement to a credit for, or offset against, reduction in or refund of, Indirect Transaction Taxes, in relation to any acquisition or the receipt of any supply.

**Intellectual Property Rights** means all industrial and intellectual property 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

registerable), rights in relation to registered or unregistered trade marks, 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 the Contract as agent.

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

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

**Materials** is defined in Clause 29.5(a)(i).

**Notice** is defined in Clause 30.1.

**Party** means a party to the Contract.

**Payment Date** means, unless otherwise specified in the Purchase Order, the fifteenth day of the second month following the end of the Accumulation Period in which the Tax Invoice is received by the Company (for the avoidance of doubt, the term '45 days after end of Accumulation Period' when used in the Purchase Order has the same meaning as 'Payment Date').

**Personal Information** has the meaning given in the Privacy Act.

**Personnel** means:

- (a) in relation to the Supplier, any of its employees, Sub-contractors (including Sub-contractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Supply;
- (b) in relation to the Company, an End User or a member of the Rio Tinto Group, any of its past or present officers, employees, agents (including, for the purposes of Clause 23, the entity entering into the Contract for and on behalf of Joint Venturers (if applicable) and that entity's past or present officers, employees, agents or representatives) or representatives; and
- (c) in relation to a Sub-contractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Supply.

**Privacy Act** means the Privacy Act 1988 (Cth) including the Australian Privacy Principles.

**Process of Processing** includes collecting, holding, using, disclosing, transferring, storing, accessing, viewing, destroying and any other dealing.

**Purchase Order** means an individual purchase order issued by the Company to the Supplier in respect of the supply of Goods or the performance of Associated Services which shall be subject to the terms of the Contract.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Rio Tinto Business Practices and Standards** is defined in Clause 31.

**Rio Tinto Group** means the dual listed company structure incorporating Rio Tinto plc and Rio Tinto Limited and including:

- (a) any Related Body Corporate of Rio Tinto plc or Rio Tinto Limited;
- (b) any unincorporated joint venture in which Rio Tinto plc or Rio Tinto Limited or any Related Body

Corporate of Rio Tinto plc or Rio Tinto Limited has a participating interest of not less than 50%;

- (c) any body corporate or unincorporated joint venture managed by Rio Tinto plc or Rio Tinto Limited or any Related Body Corporate of Rio Tinto plc or Rio Tinto Limited; and
- (d) such other entities as the Parties agree in writing.

**Rio Tinto IP** means the Intellectual Property Rights of the Company or any member of the Rio Tinto Group (as the case requires) which:

- (e) (a) are in existence at the date of the Contract; or
- (f) (b) come into existence after the date of the Contract otherwise than in connection with the Contract.

**Rio Tinto Limited** means Rio Tinto Limited (ABN 96 004 458 404) having its registered office at 360 Collins Street, Melbourne, Victoria, 3000.

**Rio Tinto plc** means Rio Tinto plc (Company No. 719885) of 6 St James's Square, London, SW1Y 4AD, United Kingdom.

**Site** means the Company's premises identified in the Purchase Order.

**Specifications** mean the specifications for the Supply and any variation of those specifications made in accordance with the Contract.

**Sub-contractor** means any person engaged by the Supplier in accordance with Clause 34 to perform all or any part of the Supply on behalf of the Supplier.

**Supplier** means the Party (as identified in the Purchase Order) responsible for providing the Supply.

**Supplier Default Notice** is defined in Clause 25.1.

**Supplier Insurances** is defined in Clause 22.1.

**Supplier IP** means the Supplier's Intellectual Property Rights which:

- (g) are in existence at the date of the Contract; or
- (h) come into existence after the date of the Contract otherwise than in connection with the Contract.

**Supplier Representative** is defined in the Purchase Order.

**Supply** means the supply of Goods and the performance of any Associated Services in accordance with the Contract.

**Supply Chain** means all steps and processes involved in the provision of the Supply to the Company, commencing with the sourcing of the Goods and (if applicable) Associated Services and finishing with the use of the Goods and Associated Services by the Company.

**Tax or Taxes** means, unless the contrary intention is expressed, any and all taxes, including, without limitation, Indirect Transaction Taxes, excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Government Agency or otherwise payable.

**Tax Invoice** means an invoice or other document, including without limit a credit note or debit note, in a form that is valid

under the applicable law of the jurisdiction in which a liability to pay Indirect Transaction Taxes is imposed, claimed, levied or assessed, which must be held by a person for that person to be able to claim Input Tax Credits.

**Tender** means the Supplier's offer or counter-offer in writing to perform the Supply whether described as a "tender" or "proposal" or otherwise.

**Term** is defined in Clause 7.

**Termination Notice** is defined in Clause 24.1.

## 1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and conversely.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) The meaning of general words is not limited by specific examples introduced by including or for example.
- (e) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes all of them.
- (f) A reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including persons taking by way of novation), assigns (in the case of a person) and permitted assigns (in the case of a Party).
- (g) A reference to a Clause is a reference to a clause of, these General Conditions.
- (h) A reference to an Act or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (i) A reference to use in the context of dealing with Intellectual Property Rights includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communicating
- (j) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (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 Contract Price.
- (l) If the date for payment of any monies under the Contract falls on a day that is not a Business Day, the payment will be due on the following Business Day.

## 1.3 Joint Venture

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

- (a) The Company is a party to the 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 the Contract to an incoming agent or manager on behalf of the Joint Venturers;
- (iii) the rights and remedies in and under the 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 the 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 the 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 the Contract (including, for the avoidance of doubt, any 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 the Contract.

## 2. Evidence of Contract and precedence of documents

### 2.1 Contract

The Contract consists of the following documents:

- (a) the Purchase Order;
- (b) these General Conditions; and
- (c) any other document which is attached to, or incorporated by reference in, the Purchase Order or these General Conditions (provided that documents incorporated by reference have been provided or made available to the Supplier).

### 2.2 Precedence of Contract documents

If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in Clause 2.1.

### 2.3 Entire agreement

- (a) The 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 the Contract.

- (b) No terms or conditions submitted by either Party that are in addition to, different from or inconsistent with those contained herein or in the Purchase Order, including, without limitation, the Supplier's printed terms and conditions, and any terms and conditions contained in any Supplier's quotation, invoice, order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon either Party unless specifically and expressly agreed to in a writing signed by duly authorised representatives of both Parties.

#### 2.4 Amendment to be in writing

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

### 3. Accuracy of information

#### 3.1 No representation by Company

The Company has endeavoured and will continue to endeavour (without being obliged to do so) to ensure the accuracy of any information provided to, or obtained by, the Supplier or its Personnel through a conducted Site visit, a pre-bid conference or otherwise obtained by the Supplier or its Personnel from the Company. Other than any information the Company expressly agrees in writing to warrant, the Company does not warrant or guarantee the accuracy, sufficiency or otherwise of such information and disclaims all responsibility for it. The Parties acknowledge that any information so provided is for the convenience of the Supplier only and does not form part of the Contract, and that any Tender submitted by the Supplier and its subsequent execution and performance of the Contract is based on the Supplier's own investigations and determinations.

#### 3.2 No relief

Failure by the Supplier to do all or any of the things it is deemed to have done under this Clause 3 will not relieve the Supplier from any of its obligations under the Contract.

#### 3.3 Company not liable

The Company is not liable for any Liabilities incurred or suffered by the Supplier as a result of its reliance in any way upon any information given to it by the Company.

### 4. Performance by Supplier

The Supplier must perform the Supply in accordance with the terms of the Contract and in consideration of the payment of the Contract Price by the Company.

### 5. Supplier's warranties

#### 5.1 Supplier's warranties

In addition to the warranty contained in Clauses 6.2, 28.4, 29.1 and 35.1, the Supplier warrants that:

- (a) all of the Supply will be provided in an efficient manner in accordance with all applicable legislation and laws or regulations;
- (b) all of the Supply will be of the highest standard and in accordance with the Specifications (where those Specifications are made known to the Supplier) or in the absence of such Specifications,

in accordance with any applicable standards set by the Standards Association of Australia;

- (c) in relation to the performance of the Supply:

- (i) the Supplier and its Personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work; and
- (ii) any equipment used on-Site by the Supplier will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Company; and

- (d) in relation to the provision of Goods as part of the Supply:

- (i) the Goods will be of merchantable quality;
- (ii) the Goods will be free from defects in design, materials and workmanship, and suitable for the relevant purpose of those Goods;
- (iii) it has good and marketable title to the Goods and the Company will receive title to the Goods free of any charge or encumbrance; and
- (iv) it will obtain at its cost all usual trade warranties and any warranties specifically requested by the Company and that on completion of the Supply it will assign the benefit of any such unexpired warranties to the Company including any warranties obtained from the Supplier's Sub-contractors.

- (e) all information and materials forming part of the Tender (if any) are true and correct in every respect and are not misleading or deceptive and the Supplier has not withheld from the Company any information concerning the Supplier, its experience or expertise which might reasonably be supposed to be material to the Company in determining whether or not to engage the Supplier to perform the Supply or the price at which or the terms on which the Company would be prepared to engage the Supplier to perform the Supply.

#### 5.2 Copies of trade warranties

Copies of trade warranties referred to in Clause 5.1(d)(iv) must be supplied to the Company with Tax Invoices.

#### 5.3 Variations to Specifications

- (a) During the Term the Company may by Notice vary the Specifications with effect from a reasonable date specified in that Notice.
- (b) If the Supplier believes that complying with the varied Specifications will result in it incurring additional costs it may submit a Notice to the Company Representative proposing that the Contract Price be increased to enable it to recover those costs.
- (c) If the Supplier and the Company cannot agree on whether there should be an increase in the Contract Price or the amount of any such increase within 30 days of a Notice being served

pursuant to Clause 5.1(b) then the Parties may agree to refer to the matter to an independent expert for determination.

Representative accepts the Goods following an inspection, or is deemed to have accepted the Associated Goods, in accordance with Clause 16).

## 6. Defects liability

### 6.1 Correction of deficient Associated Services

Upon receipt of a Notice from the Company Representative during the Term of any deficiency in the Associated Services (except for a defect in any Good, in respect of which Clauses 6.2, 6.3 and 6.4 apply), the Supplier must correct such deficiency (including by way of providing such additional services necessary to correct such deficiency) at no cost to the Company prior to the time specified in the Notice.

### 6.2 Warranty

The Supplier warrants each Good against any defect which arises during the Defects Liability Period.

### 6.3 Commencement of Defects Liability Period

In respect of each Good, the Defects Liability Period will commence on and from the date that Good is accepted by the Company..

### 6.4 Rectification of defects

Upon receipt of a Notice from the Company Representative of any defect in any Good 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.

### 6.5 Supplier failure to rectify

If the Supplier fails to (as the case requires):

- (a) correct any deficiency in the Associated Services identified by the Company pursuant to Clause 6.1; or
- (b) rectify any defect in any Associated Good identified by the Company pursuant to Clause 6.4.

the Company may correct any deficient Associated Services or rectify any defect in any Good (as the case may be) 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.

## 7. Term

The Contract will commence 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 the Contract, until the completion by the Supplier of all of its obligations under the Contract (**Term**).

## 8. Delivery, title and risk

### 8.1 Delivery

The Supplier must deliver the Goods to the Delivery Point.

### 8.2 Title

Full unencumbered title to each Good will pass to the Company upon the earlier of:

- (a) the Company making payment in full to the Supplier for that Good; or
- (b) the Good being delivered to the Delivery Point, and being accepted by the Company Representative (including where the Company

## 8.3 Risk

Risk in each Good will remain with the Supplier until the Good is delivered to the Delivery Point and accepted by the Company Representative (including where the Company Representative accepts the Goods following an inspection, or is deemed to have accepted the Goods, in accordance with Clause 16).

## 9. Contract Price

### 9.1 Contract Price

The **Contract Price** means the aggregate amount payable (excluding Indirect Transaction Taxes payable in accordance with Clause 10) by the Company to the Supplier in relation to the Supply pursuant to Clause 11.3.

### 9.2 Contract Price to be inclusive

- (a) Unless otherwise agreed, all expenses incurred by the Supplier in relation to the provision of the Supply, including, without limitation, travel expenses and subsistence expenses, will be deemed to be included in the Contract Price and the Contract Price includes any applicable Taxes.
- (b) The Supplier must separately disclose to the Company details of any Customs Duties included in the Contract Price.
- (c) Section 152(1)(a) of the Customs Act 1901 (Cth) does not apply to the Contract.

### 9.3 Greenhouse gas emissions

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 Body Corporate of the Supplier, being required by a law to surrender tradeable permits or to pay a Tax as a consequence of:

- (a) the emission of greenhouse gases in the course of producing or supplying the Goods or performing any Associated Services supplied under the Contract; or
- (b) performing the Supply.

## 10. Taxes

### 10.1 Taxes (including Indirect Transaction Taxes)

- (a) All amounts payable under or in connection with this Contract, (including any amount by way of reimbursement, indemnity, damages or otherwise) are:
  - (i) inclusive of Taxes; and
  - (ii) exclusive of Indirect Transaction Taxes, unless expressed otherwise.
- (b) If Indirect Transaction Taxes are payable on a supply, transfer or sale (**supply**) made under or in connection with this Contract, and if the party making that supply (**supplier**) is liable, under the applicable law, to pay, or collect and remit, the Indirect Transaction Taxes to the appropriate Government Agency, the party receiving that supply (**recipient**) shall pay to the supplier an additional amount equal to the Indirect Transaction Taxes payable by the supplier in respect of the supply. The recipient must pay the additional amount to the supplier on the date



when the Contract Price (or part thereof) is provided to the supplier (subject to a Tax Invoice being received prior to payment date). This 10.1(b) Clause does not apply to the extent that the consideration for the supply is expressed to be inclusive of Indirect Transaction Taxes.

- (c) The supplier shall ensure that each invoice it presents to the recipient in respect of any Indirect Transaction Taxes is a Tax Invoice. If the supplier fails to provide the recipient with a Tax Invoice within the time period required by applicable law of that jurisdiction, the recipient may withhold payment of the amount payable on account of Indirect Transaction Taxes, either pursuant to Clause 10.1(b) or as part of the consideration where that consideration is expressed to be inclusive of Indirect Transaction Taxes, until such time as a Tax Invoice is received.
- (d) Any reference in:
  - (i) this Contract to a cost, expense or other liability (**Cost**) incurred by a party; or
  - (ii) the calculation of consideration or of any indemnity, reimbursement or similar amount to a Cost,
 must exclude the amount of any Input Tax Credit entitlement of that party in relation to that Cost.
- (e) Each Party will take all reasonable steps to cooperate with and provide all necessary assistance to the other Party to ensure so far as possible that the Taxes treatment is accepted by the relevant Government Agency, including the provision of invoices, proof of payment, proof of source and/or origination and other documentation for this purpose.

## 10.2 Withholding Taxes

- (a) If a party (**payer**) is required by any applicable law to make a deduction or withholding from a payment to the other party (**payee**) for or on account of any Taxes, the payer is entitled to make that deduction or withholding unless the payee provides the payer with valid documentation (received prior to the date when the payment is to be made) showing to the satisfaction of the payer that an exemption applies. If the payer is required by law to deduct or withhold, then the payer shall use its best endeavours to furnish the payee with all receipts, proof of payment and other relevant documentation for all deductions and withholding Taxes so paid to the relevant Government Authority. For the avoidance of doubt, the payer will not be liable to pay any amount to the payee on account of an amount deducted or withheld in accordance with this Clause 10.2.
- (b) Where a payment is made without a deduction or withholding for or on account of Taxes and such a deduction or withholding was required by any applicable law, the payee shall reimburse the payer for, or otherwise pay to the payer, the amount that should have been withheld or deducted within 14 days of receiving an official receipt (or certified copy) or other documentation evidencing the amount that was required to have been withheld or deducted.

## 10.3 Customs and Excise Duties

- (a) Where the recipient elects to acquire Goods and the supplier is the importer of record, the supplier will:
  - (i) be responsible for, and remit payment of all Customs Duties assessed by or payable to any Government Agency as well as any other foreign shipping charges; and
  - (ii) use its best endeavours to ensure that any Goods are imported free of Customs Duties including, without limit, through the use of applicable bilateral free trade agreements (or the equivalent).
- (b) The supplier will, at the recipient's request, provide the recipient with all information and documentation necessary for the recipient to make or assess the supplier's entitlement to make, in accordance with any applicable laws, applications or certifications for:
  - (i) a drawback, refund, rebate, remission or other reduction of Customs Duties or Excise Duties; and
  - (ii) Customs Duties or Excise Duties concessions, including, without limit, exemptions, reductions, duty-free access and preferential rates of duty available under bilateral free trade agreements (or the equivalent).
- (c) The supplier must make any application or certification requested by the recipient in a form that is satisfactory to the recipient. Where any such application or certification is successful, the supplier will pass on to the recipient the full economic benefit of the exemption, reduction, concession, drawback, refund, rebate or remission of Customs Duty or Excise Duty, as appropriate, by way of a reduction in the Contract Price. This Clause 10.3 applies regardless of the shipping, insurance or freight terms used.

## 10.4 Survival

This Clause 10 will continue to apply after expiration or termination of this Contract.

## 10.5 International contracts only

- (a) If, in respect of a Tax audit or a levied Tax assessment, the appropriate Government Agency seeks payment of Indirect Transaction Taxes from the supplier for which the supplier seeks reimbursement from the recipient, then, unless the supplier notifies the recipient in writing of the Indirect Transaction Taxes payable at least 30 days prior to the expiration date of the right to appeal the imposition thereof, any reimbursement by the recipient will be at its sole discretion.
- (b) If the recipient deems that any Indirect Transaction Taxes paid to the supplier under Clause 10.1(b) have been inappropriately levied or that an exemption applies, the recipient may, by written Notice to the supplier, require the supplier to contest such Indirect Transaction Taxes at the recipient's sole expense and subject to its direction and control.
- (c) The supplier shall do all things reasonably necessary to ensure that the recipient remains eligible for any exemption, credit, set-off,

deduction or similar amount to which the recipient is entitled as a purchaser or recipient of any supply under any applicable laws, whether the Indirect Transaction Taxes are paid by the supplier or directly by the recipient. If an exemption to payment of Indirect Transaction Taxes applies, the recipient shall provide the supplier with a valid tax exemption certificate or equivalent documentation required by any applicable laws in the jurisdiction where the supply takes place.

## **11. Payments to Supplier**

### **11.1 Method of payment**

- (a) Unless otherwise provided in the Contract, all payments required to be made to the Supplier by the Company pursuant to the Contract in relation to the performance of the Supply must be made in the currency specified in the Purchase Order by electronic funds transfer into the Supplier's nominated bank account.
- (b) If the Contract provides that any of the amounts referred to in Clause 11.1(a) are to be paid to the Supplier:
  - (i) outside Australia;
  - (ii) other than in Australian currency; or
  - (iii) in a manner subject to control by any Government Agency,

payment is conditional upon the Company obtaining the necessary authorities and consents to the making of that payment.

### **11.2 Tax Invoices**

- (a) The Supplier must, unless otherwise agreed with the Company, render a Tax Invoice to the Company in relation to the provision of the Supply at the end of each month during the period in which Supply is provided and calculated by reference to the prices, fees or other amounts specified in the Purchase Order.
- (b) Tax Invoices must be in a form acceptable to the Company and must contain the following information:
  - (i) the number of the Purchase Order to which the Tax Invoice relates;
  - (ii) a brief description of the Supply provided in the period covered by the Tax Invoice; and
  - (iii) any further verification or documentation in relation to the Tax Invoice as is reasonably required by the Company.

### **11.3 Payment of Tax Invoices**

Subject to Clauses 11.4, 12, 22.10(e) and 25.2(b), the Company must pay to the Supplier the amount shown on the Tax Invoice on the Payment Date.

### **11.4 Disputed Tax Invoices**

The Company will notify the Supplier if it disputes any amount shown on an invoice and will pay any amounts not in dispute in accordance with Clause 11.3, provided that the payment by the Company of any amount the subject of a disputed Tax Invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment. Upon receipt of the Company's notice of dispute, the Supplier and the

Company will jointly review the nature of the disputed amount, and the Supplier must, if appropriate, provide adequate substantiation for the amount shown on the invoice and/or take prompt corrective action and promptly adjust the relevant invoice or refund overpayments.

## **12. Deduction from payments**

### **12.1 Deductions**

The Company may:

- (a) deduct from any moneys due or becoming due to the Supplier pursuant to Clause 11.3 the following amounts (plus any Indirect Transaction Taxes in respect of such deductions payable in accordance with Clause 10):
  - (i) all debts and moneys due from the Supplier or its Personnel to the Company;
  - (ii) all Liabilities which the Company may have paid, suffered or incurred and which or for which the Supplier or its Personnel is or are liable to bear, pay or reimburse to the Company (including pursuant to any indemnity contained in the Contract); and
  - (iii) the cost of remedying any defective or damaged Goods or performance of the Associated Services below a standard acceptable to the Company; or
- (b) without prejudice to the Company's rights pursuant to any other provision of the Contract, if the Supplier fails to perform any of its material obligations under the Contract, without notice withhold payment of all or part of any amount payable to the Supplier under the Contract, until the matter has been remedied.
- (c) Any Dispute about the amount deducted pursuant to Clause 12.1 must be resolved in accordance with Clause 26.

### **12.2 Deductions and withholdings required by law**

- (a) If the Company is required by law to withhold or deduct any amount (**Deducted Amount**) from an amount payable under the Contract, the Deducted Amount will be treated as having been paid to the Supplier when it is withheld or deducted and the Company will not be liable to pay any amount on account of the Deducted Amount to the Supplier.
- (b) If the Company fails to withhold or deduct a Deducted Amount, the Company may:
  - (i) give Notice to the Supplier demanding payment of an amount equal to the Deducted Amount and the Supplier will pay that amount to the Company within 30 days of receiving the Notice;
  - (ii) deduct an amount equal to the Deducted Amount from any amounts payable by the Company to the Supplier and the amount so deducted will be treated as having been paid to the Supplier when it is deducted and the Company will not be liable to pay any amount on account of the Deducted Amount to the Supplier; or
  - (iii) recover an amount equal to the Deducted Amount by a combination of a demand under Clause 12.2(b)(i) and

deducting an amount under Clause 12.2(b)(ii),

and in each case where the failure to withhold or deduct the Deducted Amount arises as a result of any act, omission or oversight of the Supplier, the Deducted Amount will include any fines, penalties or interest payable by the Company in respect of the Deducted Amount.

#### **12.3 Notification of withholding or deductions**

The Company must notify the Supplier of the details of any amounts withheld or deducted pursuant to Clauses 12.1 or 12.2.

#### **12.4 Survival of Clause**

This Clause 12 will survive the termination of the Contract.

### **13. No minimum purchase or exclusivity**

#### **13.1 No minimum purchase**

Nothing in the Contract obliges the Company to request or acquire any minimum level of Supply from the Supplier.

#### **13.2 No exclusivity**

The Contract is not evidence of, nor does it create, an exclusive relationship between the Company and the Supplier in respect of the Supply (or any aspect of it).

### **14. Supplier Personnel**

#### **14.1 Supplier Personnel**

The Supplier is required to supply all Personnel necessary for the proper performance of the Supply. Such Personnel must be appropriately qualified, competent and skilled to perform the relevant part of the Supply in respect of which they are engaged.

#### **14.2 Engagement of Personnel**

The Supplier must ensure that all Personnel of the Supplier engaged to provide any part of the Supply comply with Clauses 27 28 and 29 with respect to Confidential Information and Intellectual Property Rights.

#### **14.3 Company may object to Personnel**

The Company Representative may object to any of the Supplier's Personnel who, in the opinion of the Company Representative, is lacking in appropriate skills or qualifications, engages in misconduct or is incompetent or negligent. The Supplier must remove such Personnel upon receipt from the Company Representative of Notice requiring it to do so and must not re-employ that person in connection with the Supply without the prior written consent of the Company Representative. In addition, the Supplier must at its cost replace such removed Personnel with suitably qualified, competent, skilled and approved Personnel.

### **15. Packing, despatch and transport**

#### **15.1 Supplier responsible**

The Supplier is responsible, at its cost, for packing and transporting the Goods to the Delivery Point.

#### **15.2 Where Company to arrange transport**

If, pursuant to the terms of the Contract, the Company is obliged to arrange transport of all or some of the Goods, then the Supplier must notify the Company Representative of the details of those Goods ready for despatch in sufficient time to enable transport to be arranged.

### **15.3 Preparation for transport**

The Supplier must pack and protect all Goods ready for despatch so that they are in accordance with all applicable laws, comply with the Company's policies provided in writing to the Supplier, and comply with first class international standards having regard to methods of transport to the Delivery Point and handling and to the weather conditions whilst in transit to the Delivery Point. The Supplier must provide and fit all lifting and handling devices required for lifting and handling the Goods in transit.

### **15.4 Notification of despatch dates**

The Supplier must notify the Company Representative promptly of the date of despatch of each item and the estimated date of arrival at the Delivery Point.

### **16. Inspection**

#### **16.1 Inspection**

The Company Representative has the right to inspect any of the Goods at any time to determine whether the Goods are in accordance with the Contract and are to the standard provided for in the Contract.

#### **16.2 Pre-acceptance inspection**

Without limiting Clause 16.1, the Company Representative may inspect any Goods after they have been delivered and before accepting them. If the Company Representative does not inspect any Goods within a reasonable time after delivery, the Goods are deemed to have been accepted by the Company Representative following a reasonable time after delivery. Any Dispute about acceptance of Goods may be resolved in accordance with Clause 26.

#### **16.3 Access**

The Supplier must ensure that the Company has access to the Goods at all times and the Supplier must provide all facilities necessary for the supervision, inspection and testing of all Goods at the Site or wherever the Goods are stored or in the course of manufacture.

#### **16.4 Cost of inspections**

- (a) Subject to Clause 16.4(b), if upon inspection after a direction by the Company Representative to dismantle or open up any part of a Good, the Good so inspected is in accordance with the Contract, the whole of the expense incurred as a result of the dismantling or opening up and reassembly will be borne by the Company. If the Good is found not to be in accordance with the Contract the whole of the expense so incurred, including without limitation, any costs associated with putting that Good into a condition which is in accordance with the Contract, will be borne by the Supplier.
- (b) If the Company Representative gives the Supplier reasonable Notice that the Company Representative wants to inspect any portion of a Good before it is assembled, and the Supplier assembles that Good without first giving the Company Representative a reasonable opportunity to inspect, any expense incurred as a result of dismantling or opening up and reassembling that Good will be borne by the Supplier.

#### **16.5 Testing**

The Supplier must conduct tests of the Goods or parts of the Goods in accordance with the Contract and otherwise as required in accordance with the relevant standards set by the Australian Standards Association and any applicable

industry codes or, where there are no such standards or codes, in accordance with generally accepted practices.

## 17. Health, safety and environment

### 17.1 Application of Clause

This Clause 17 applies to the extent the Supplier or any of its Personnel are required to be on, or near the vicinity of, the Site for the purposes of the Supply.

### 17.2 Supplier acknowledgement

The Supplier acknowledges that there is a direct relationship between the Supplier's health, safety and environmental performance and the success of the Company's business.

### 17.3 Compliance with health, safety and environmental laws, policies and standards

The Supplier agrees to comply, and to ensure that its Personnel comply, with:

- (a) without limiting Clause 19, the Company's health, safety and environmental policies and associated standards applicable from time to time (copies of which have been provided or made available to the Supplier) (**HSE Policies and Standards**);
- (b) without limiting Clause 20, all relevant health, safety and environmental legislation and laws in force from time to time; and
- (c) the health, safety and environmental conditions contained in this Clause 17.

### 17.4 Health, Safety and Environmental Management Plan

- (a) If it has not already been finalised as part of the submission of the Supplier's Tender (if any), the Supplier must, within 30 days after the date of the Contract, submit proposed health, safety and environmental management plan(s) (**HSE Management Plan(s)**) in accordance with the HSE Policies and Standards, for review by the Company Representative.
- (b) The Company Representative will review the proposed HSE Management Plan(s) and provide the Supplier with any request for amendments.
- (c) The Supplier and its Personnel may not commence work on-Site unless and until the HSE Management Plan(s) and any requested amendments to it have been approved by the Company Representative.
- (d) The Company Representative may at any time direct the Supplier to amend the approved HSE Management Plan(s) to adequately reflect any amendments to the HSE Policies and Standards.
- (e) The Supplier must keep a copy of the approved HSE Management Plan(s) at its on-Site office or work area at all times during the Term.

### 17.5 Induction courses

- (a) Each of the Supplier's Personnel must attend all appropriate and relevant induction courses required by the Company (**Company Induction Courses**).
- (b) Where, pursuant to the operating rules for specific areas of the Company, any of the Supplier's Personnel are required to have specific skills for the performance of the Supply (**Company Competencies**), the induction and training requirements in relation to those Company Competencies must:

- (i) be included in the HSE Management Plan(s);
- (ii) to the extent they are not set out in the Specifications, be confirmed with the Company Representative; and

- (iii) be undertaken by the relevant Personnel prior to the commencement of any work on, or near the vicinity of, the Site.

(c) Unless otherwise agreed:

- (i) the Company will arrange and pay for the Company Induction Courses and will be responsible for the costs of Supplier Personnel attending the Company Induction Courses; and
- (ii) the Supplier will arrange and pay for all training courses in respect of Company Competencies and will be responsible for the costs of Supplier Personnel attending such training courses.

- (d) Any person visiting the Supplier on Site to meet Personnel working on the Site, and who is not performing any type of manual work, will also be required to attend the relevant Company Induction Courses. However, this requirement will not apply if the visitor is accompanied at all times whilst on Site by a person who has attended all relevant Company Induction Courses, and has Company Competencies in relation to access to the Site.

### 17.6 Supplier to remain liable

Nothing in this Clause 17 (including the approval of the HSE Management Plan(s)) limits or removes any obligation or duty imposed on the Supplier or any of its Personnel (whether under the Contract or otherwise) to secure or have regard to the health and safety of any of its Personnel.

### 17.7 Removal from Site

Notwithstanding any other term of the Contract, in the event of any breach of this Clause 17, the Company may:

- (a) require the Supplier, Supplier's Personnel and/or any other person to leave the Site immediately; and
- (b) require the Supplier and/or any of its Personnel to remove any material or substance from the Site at the Supplier's cost,

and the Supplier must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, personnel and the environment.

### 17.8 Right of audit of Supplier performance

The Supplier and its Personnel must permit the Company to have access to the Supplier's premises, any of their documentation and data (including documents stored in electronic form) and to interview the Supplier's Personnel in connection with the Supply, as necessary for Company Personnel to verify, monitor and audit the Supplier's compliance with:

- (a) the HSE Management Plan(s) and the health, safety and environmental conditions set out in this Clause 17; and
- (b) the Company policies identified in Clause 19.

## 17.9 Action by Supplier

Without limiting any other rights or remedies available to the Company as a result of the Supplier's non-compliance with any of the conditions, policies and standards referred to in Clause 17.8 if deficiencies are identified by an audit undertaken under Clause 17.8 the Supplier must take prompt corrective action and notify the Company of such action.

## 18. Access to Site

### 18.1 Access

Without limiting Clause 22.10(e) or this Clause 18, the Company will grant to the Supplier access to the Site on and from the date of the Contract and the Supplier must give the Company Representative at least 7 days' Notice before commencing the Supply on the Site.

### 18.2 Supplier obligations

- (a) Prior to commencement of the Supply on the Site, the Supplier must notify the Company Representative of its normal times and periods of work and must give the Company Representative at least 24 hours' Notice of any alteration in its working hours or periods of work.
- (b) The Supplier must at all times consult with the Company Representative and obtain 14 days' prior written approval for any action likely to interfere with the Company's operations. The Company Representative must reply to any such request within 7 days of receipt of such request.

### 18.3 Right to deny access

If the Supplier or its Personnel fail to comply with any of the requirements of Clause 17 or this Clause 18, then the Company Representative may in its discretion deny that person or those persons access to the Site or permit such access subject to terms and conditions the Company Representative thinks appropriate.

### 18.4 No exclusive possession

The Supplier acknowledges that nothing in the Contract confers on it exclusive possession of the Site and that it will only be granted access to the Site to the extent deemed necessary by the Company Representative for the performance of the Supply.

## 19. Compliance with Company policies

During the Term, the Supplier must, and must ensure that its Personnel, comply with each of the rules and policies of the Company or the Rio Tinto Group, as provided or made available by the Company from time to time to the Supplier.

## 20. Laws

### 20.1 Compliance with laws

During the Term, the Supplier must:

- (a) comply with all applicable legislation, laws and Government Agency requirements relating to its obligations under the Contract and ensure that each of its Personnel does the same; and
- (b) in relation to the provision of the Supply, at its cost:
  - (i) obtain all necessary notices;
  - (ii) give all necessary notices;
  - (iii) pay all necessary fees, deposits and Taxes,

and, if requested by the Company, must provide evidence of the matters referred to in this Clause 20.1(b).

## 20.2 Consequences of breach

Notwithstanding any other Clause of these General Conditions or term of the Contract, in the event of any breach of Clause 19 or this Clause 20, the Company may:

- (a) require the Supplier, the Supplier's Personnel, and/or any other person to leave the Site immediately; and
- (b) require the Supplier and/or any of its Personnel to remove any material or substance from the Site at the Supplier's cost,

and the Supplier must, at its cost, ensure such request is immediately complied with and take all possible action to ensure the safety of all Personnel.

## 21. Force Majeure

### 21.1 Notice of Force Majeure

A Party will not be liable for any delay or failure to perform any of its obligations under the 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 the Contract, it gives a Notice to the other Party that complies with Clause 21.2.

### 21.2 Force Majeure Notice

A Notice given under Clause 21.1 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.

### 21.3 Obligation to remedy and mitigate

The Party that is prevented from carrying out its obligations under the Contract as a result of Force Majeure must:

- (a) remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible; and
- (b) 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 the Contract.

## 22. Insurances

### 22.1 Supplier Insurances

The Supplier is required, at its cost, to effect and maintain throughout the Term and any additional period specified in the Contract or otherwise agreed with the Company, each of the insurances described in Clauses 22.2, 22.3, 22.4, 22.5, 22.6, 22.7, 22.8 and 22.9 (**Supplier Insurances**) in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.

### 22.2 General and Product Liability Insurance

- (a) Insurance covering all Liabilities in respect of any injury to, or death of, any person not being a person who at the time of the occurrence is engaged in or upon the service of the insured under a contract of service or apprenticeship, or any loss, damage or destruction to any property not belonging to nor in the care, custody or

control of the insured, however caused. Such insurance must provide cover to an amount of not less than A\$10,000,000 for each and every claim.

- (b) The insurance outlined in Clause 22.2(a) must, unless prohibited by law, be endorsed to:
- (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
  - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
  - (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract;
  - (iv) cover "goods in the physical and legal control of the Supplier" for an amount not less than the value of the "goods" held off the Site; and
  - (v) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

## **22.3 Workers' Compensation and Employer's Liability Insurances**

- (a) Workers' compensation and employers' liability insurances covering all Liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee of the Supplier or any person deemed to be an employee of the Supplier.
- (b) The insurance outlined in Clause 22.3(a) must, unless prohibited by law, be endorsed to:
- (i) indemnify the Company against any liability which it may incur to the Supplier's employees, arising by virtue of the applicable workers' compensation statute or regulations or at common law;
  - (ii) extend to include employees underground if any of the work under the Contract is to be performed underground; and
  - (iii) provide cover in respect of each and every claim for an amount not less than the minimum statutory requirements.
- (c) The insurance outlined in Clause 22.3(a) must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its Personnel.

## **22.4 Supplier's Plant and Equipment**

If the performance of the Contract requires the Supplier to use or provide for use plant and equipment that will be used at the Site in connection with the Contract, the Supplier must maintain or require the owner of such plant and equipment (except where the owner of such plant or equipment is the Company or a member of the Rio Tinto Group) to maintain insurance covering all loss and damage to the supplier's plant and equipment, for its replacement value. The insurance must, unless prohibited by law, waive

all express or implied rights of subrogation against the Company and its directors, officers and employees.

## **22.5 Goods in Transit**

If the performance of the Contract requires the Supplier to transport Goods to or from the Site, unless otherwise advised by the Company in writing, the Supplier will maintain insurance covering loss of or damage to the Goods during transit, regardless of whether the Company has paid for those Goods. Such insurance must note the Company as a party insured under the policy.

## **22.6 Motor Vehicle/Automobile Third Party Liability Insurance**

- (a) If the performance of the Contract requires the Supplier or its Personnel to use or provide for use motor vehicles, the Supplier must maintain or require the owners of such motor vehicles to maintain third party liability insurance covering all Liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of such motor vehicles.
- (b) The insurance outlined in Clause 22.6(a) must, unless prohibited by law, be endorsed to:
- (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
  - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
  - (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract; and
  - (iv) include a clause that provides a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

## **22.7 Professional Indemnity Insurance**

If the performance of the Contract includes or is related to the provision of professional advice or services, the Supplier must effect and maintain throughout the Term and for a period of not less than 3 years after termination of the Contract or completion of the Supplier's obligations under the Contract, professional indemnity insurance in respect of any negligent acts, errors or omissions in the advice or services provided by the Supplier under the Contract. Such insurance must provide cover to an amount of not less than A\$5,000,000 for each and every claim.

## **22.8 Marine Insurance**

- (a) If the performance of the Contract requires or involves the use of watercraft, the Supplier must maintain or require the owners of such watercraft to maintain:
- (i) 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
  - (ii) 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 A\$10,000,000 for each and every claim.

- (b) The insurance outlined in Clause 22.8(a) must, unless prohibited by law, be endorsed to:
  - (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
  - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
  - (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract; and
  - (iv) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

## 22.9 Aviation Insurance

- (a) If the performance of the Contract requires or involves the use of aircraft (including helicopters), the Supplier must maintain or require owners of such aircraft to maintain:
  - (i) aircraft hull insurance, on all aircraft so used, with a limit of cover not less than the market value of the aircraft; and
  - (ii) 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 A\$10,000,000 for each and every claim.
- (b) The insurance outlined in Clause 22.9(a) must, unless prohibited by law, be endorsed to:
  - (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;
  - (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
  - (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract; and
  - (iv) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

## 22.10 Insurance Terms

- (a) If the Supplier Insurances are subject to the application of any self-insured retention, excess

or deductible, the amount of the self-insured retention, 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 by the Company as being unreasonable in the circumstances of the Contract.

- (b) The Supplier Insurances must be underwritten by a reputable insurer with a security rating from A.M. Best of not less than "A" and on terms and conditions consistent with prudent risk management practice.
- (c) No provision contained in this Clause 22 will limit the Supplier's liability in relation to the indemnities in the Contract.
- (d) Before performing any of the Supply, and each time the policies are renewed or varied, the Supplier must provide the Company with an insurance certificate of currency or such other evidence as the Company may reasonably require that the Supplier and its Sub-contractors are insured in accordance with the Contract.
- (e) In the event that the Supplier fails to, or fails to ensure that its Sub-contractors, effect or keep in force any of the insurances required pursuant to the 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/or
  - (iii) treat the failure to insure as a default under the 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.

## 22.11 Notification under Supplier's policy

If the Supplier becomes aware of an event which may give rise to a claim involving the Company under any policy of insurance effected by the Supplier as required by this Clause 22, the Supplier must notify the Company and must ensure that the Company is kept fully informed of subsequent action or developments concerning the claim.

## 22.12 Sub-contractors' insurance

The Supplier must ensure that its Sub-contractors have the benefit of or effect and maintain insurances similar to the Supplier Insurances required to be effected by the Supplier.

## 22.13 Insurance claims and payments of insurance excess

- (a) The Supplier will be responsible for the payment of any excess or deductible relating to the insurances effected by the Supplier and the Supplier will not be entitled to recover from the Company any excess or deductible so paid by the Supplier.
- (b) The Supplier will be responsible for the payment of any excess or deductible relating to the insurances effected by the Supplier where the Company makes a claim under such policy, to the extent that the Company determines that the

Supplier or any of its Personnel were responsible for the loss or damage.

#### 22.14 Survival of Clause

This Clause 22 will survive the expiry or earlier termination of the Contract.

### 23. Indemnities

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#### 23.1 Acknowledgement

The Supplier acknowledges that if it enters on to the Site, it does so at the Supplier's own risk. The Supplier must ensure that its Personnel are also aware that they enter onto the Site at their own risk.

#### 23.2 Indemnity

(a) Subject to Clause 23.3, the Supplier will indemnify (and will keep indemnified) the Company, each End User and their respective 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:

(i) the breach by the Supplier or its Personnel of any of the Supplier's obligations (including any warranty) under the Contract and/or any Purchase Order;

(ii) any negligent act or omission or wilful misconduct by the Supplier or its Personnel arising out of the performance of the Contract and/or any Purchase Order; or

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

(b) The Company is entitled to recover from the Supplier an amount due to an End User and/or its Personnel under the indemnity in Clause 23.2(a) on behalf of that End User and/or its Personnel and will hold any amount recovered, and the benefit of the indemnity in Clause 23.2(a) to which an End User and/or its Personnel is entitled, as trustee for and on behalf of that End User and/or its Personnel.

#### 23.3 Exclusions

The Supplier will not be liable under Clause 23.2 to the extent that the Liability was caused, or contributed to, by (as the case requires) the Company's or an End User's negligent acts or omissions or wilful misconduct.

#### 23.4 Indemnity held for benefit of Company, End User and Rio Tinto Personnel

Every exemption, limitation, defence, immunity, indemnity or other benefit contained in the Contract or otherwise to which the Company, an End User or a member of the Rio Tinto Group is entitled will be held by the Company as trustee for the benefit of, and will extend to protect, each of the Company's, each End User's and each Rio Tinto Group member's Personnel.

#### 23.5 Indemnity continuing

Each indemnity in the Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Contract.

#### 23.6 No requirement for expense before enforcing indemnity right

It is not necessary for the Company, a member of the Rio Tinto Group or their respective Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

### 24. No fault termination

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#### 24.1 Termination Notice

The Company may terminate the Contract or any part of it by giving the Supplier not less than 30 days' Notice of its intention to do so (**Termination Notice**).

#### 24.2 Obligations upon receipt of Termination Notice

Upon receipt of a Termination Notice, the Supplier must:

(a) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Goods;

(b) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and

(c) take any other action reasonably required by the Company in relation to the termination.

#### 24.3 Obligations upon termination

On the date of termination specified in the Termination Notice, the Supplier must:

(a) immediately cease performance of the Supply in accordance with, but only to the extent specified in, the Termination Notice;

(b) provide the Company with a detailed report in such form as the Company may require in relation to the Supply performed up to and including the date of receipt of the Termination Notice;

(c) return to the Company any items issued to the Supplier by the Company during the Term;

(d) offer the Company first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Contract to be purchased by the Company at its depreciated value or such other value as agreed by the Parties; and

(e) take any other action relating to the termination of the Contract as the Company may reasonably require.

#### 24.4 Supplier compensation

(a) Following termination of the Contract by the Company pursuant to this Clause 24, the Supplier is entitled to be paid by the Company for any part of the Goods already delivered and any part of the Associated Services already performed, out-of-pocket expenses which it has incurred or will incur solely as a result of the Contract and which it is unable to otherwise recover or mitigate, including as a result of (if applicable):

(i) removing the Supplier's plant and equipment from the Site; and

(ii) transporting Supplier Personnel back to their place of engagement.



- (b) The amounts outlined in Clause 24.4(a) represent the only amounts or Liabilities recoverable from the Company by the Supplier following a termination of the Contract by the Company in accordance with this Clause 24.

## **25. Supplier Default**

### **25.1 Supplier Default Notice**

If the Supplier breaches any term of the Contract, the Company may serve a Notice of default (**Supplier Default Notice**) on the Supplier containing the information specified in Clause 25.2.

### **25.2 Supplier Default Notice requirements**

A Supplier Default Notice must:

- (a) either require that the breach be remedied within a specified period of not less than 30 days after service of the Supplier Default Notice on the Supplier or state that the breach is incapable of remedy; and
- (b) state that if the breach is not remedied within the period specified in the Supplier Default Notice or is incapable of remedy, then the Company may by further Notice to the Supplier do one or more of the following:
  - (i) elect wholly or partly to suspend payment under the Contract until the breach has been remedied by the Supplier;
  - (ii) take such action as the Company deems necessary to cure the breach (the cost of such action so taken by the Company being recoverable from the Supplier as a debt due to the Company by the Supplier); or
  - (iii) in relation to any material breach, terminate the Contract or any part of it with effect from a specified date (**Cancellation Date**).

### **25.3 Obligations upon termination**

If the Company gives Notice pursuant to Clause 25.2(b)(iii), the Contract is terminated from the Cancellation Date and the Supplier must:

- (a) cease performance of the Supply in accordance with, but only to the extent specified in, the Supplier Default Notice;
- (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Goods;
- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination;
- (d) offer the Company first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Contract to be purchased by the Company at its depreciated value or such other value as agreed by the Parties; and
- (e) take any other action reasonably required by the Company in relation to the termination.

### **25.4 No prejudice**

Notwithstanding the terms of any Supplier Default Notice, no action taken by the Company under this Clause 25 will prejudice the existence of any of its rights and remedies

under the Contract which the Company may have as a result of the relevant breach.

## **26. Dispute Resolution**

### **26.1 Dispute**

In the event of any dispute, question or difference of opinion between the Company and the Supplier arising out of or under the Contract (**Dispute**), a Party may give to the other Party a notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this Clause 26.

### **26.2 Dispute Representatives to seek resolution**

- (a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute (each, a **Dispute Representative**).
- (b) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either Party may commence legal proceedings in an appropriate court to resolve the matter.

### **26.3 Performance of obligations during Dispute**

During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.

### **26.4 Urgent interlocutory relief**

Nothing in this Clause 26 prevents a Party from seeking any urgent interlocutory relief which may be required in relation to the Contract.

## **27. Confidentiality**

### **27.1 Obligation of confidentiality**

Each Party undertakes and agrees:

- (a) to hold in strict confidence all Confidential Information and not to 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 performing obligations or exercising rights under the Contract; and
- (b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for performing obligations or exercising rights under the Contract,

unless the receiving Party has obtained the prior written consent of the disclosing Party to do so (which consent may be withheld by the disclosing Party in its discretion or given on such terms as it sees fit).

### **27.2 Exceptions**

Clause 27.1 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 27 or any other obligations of confidence imposed on the receiving Party; or
- (b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange, provided that prior to such disclosure the receiving Party gives Notice to the

disclosing Party with full particulars of the proposed disclosure;

- (c) the disclosure of information in connection with any potential sale of shares or a business to a third party, either prior to or at the time of that sale providing the third party has agreed to maintain the confidentiality of the information on terms no less onerous than those set out in this Clause 27.

#### **27.3 Disclosure**

Notwithstanding anything to the contrary in this Clause 27 or elsewhere in the Contract, a Rio Tinto Group member may use the Supplier's Confidential Information and disclose such Confidential Information to other members of the Rio Tinto Group for the internal business purposes of the Rio Tinto Group (or any member of it) provided that any member of the Rio Tinto Group who receives such Confidential Information is made aware of the confidentiality obligations contained in this Clause 27.

#### **27.4 Breach of consent**

The breach of any of the conditions contained in a consent granted pursuant to Clause 27.1 will be deemed to be a breach of the Contract.

#### **27.5 Supplier acknowledgment**

The Supplier acknowledges that this Clause 27 is for the benefit of not only the Company but also any End User and any member of the Rio Tinto Group that has any interest in any Confidential Information.

#### **27.6 Indemnity**

- (a) Without limiting Clause 23, the Supplier indemnifies the Company, each End User and each member of the Rio Tinto Group, and must keep them indemnified, in respect of any Liabilities incurred or sustained by them resulting from a breach of this Clause 27 by the Supplier or its Personnel.
- (b) The Company is entitled to recover from the Supplier an amount due to an End User and/or a Rio Tinto Group member under the indemnity in Clause 27.6(a) on behalf of that entity and will hold any amount recovered, and the benefit of the indemnity in Clause 27.6(a) to which that entity is entitled, as trustee for and on behalf of that entity.
- (c) The Company indemnifies the Supplier, and must keep the Supplier indemnified, in respect of any Liabilities incurred or sustained by it resulting from a breach of this Clause 27 by the Company or its Personnel.

#### **27.7 Additional obligations**

The obligations in this Clause 27 are in addition to and do not diminish the obligations of each Party in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.

#### **27.8 Return of Confidential Information**

If requested by the disclosing Party, whether prior to or after the expiry or earlier termination of the Contract, the receiving Party must promptly deliver to the disclosing Party all Confidential Information in the custody, possession or control of the receiving Party or any of its Personnel. This Clause 27.8 does not apply to the extent the Confidential Information is in, or is incorporated into, board or senior management records, corporate documents or reports of the receiving Party or a member of the Rio Tinto Group and which is required to be retained by applicable law or its internal procedures provided always that the obligations of

confidence set out in this Clause 28 continue to apply to such Confidential Information.

#### **27.9 Survival of Clause**

This Clause 27 will survive the termination of the Contract.

### **28. Intellectual Property Rights in Supply**

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#### **28.1 Contract IP**

- (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 right, title and interest in and to the Contract IP (whether created before, on or after the Commencement Date) 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 28.1.

#### **28.2 Rio Tinto IP**

- (a) The Supplier acknowledges and agrees that the Company or any member of the Rio Tinto Group (as the case requires) remain the owner of all Rio Tinto IP and that nothing in the Contract prevents, limits or restricts their subsequent use or exploitation of Rio Tinto IP.
- (b) The Company grants to the Supplier, or where the relevant Rio Tinto IP is owned by a member of the Rio Tinto 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 Rio Tinto IP and the Contract IP for the sole purpose of providing the Supply.
- (c) The Supplier must not use, register or attempt to register any interest in or otherwise deal with the Rio Tinto IP and the Contract IP, or allow any other person to do the same, for any purpose other than to provide the Supply.

#### **28.3 Supplier IP**

- (a) The Company acknowledges that the Supplier remains the owner of all Supplier IP and that nothing in the Contract prevents, limits or restricts the Supplier's subsequent use or exploitation of Supplier IP.
- (b) The Supplier grants to the Company a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use all Supplier IP for the purposes of or in connection with the Company's business.
- (c) The Company may sub-licence the Company's rights to the Supplier IP to any person where that person has been granted use of the Contract IP by the Company.

#### **28.4 Supplier warranty**

The Supplier warrants that:

- (a) the Supplier has the right to grant to the Company the licence under Clause 28.3(b); and
- (b) the Supplier has the right to assign all Contract IP to the Company in accordance with Clause 28.1.

#### **28.5 General Supplier obligations**

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 the 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 the 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 28.1(b).

## 28.6 Survival of Clause

This Clause 28 will survive the termination of the Contract.

## 29. Third party Intellectual Property Rights

### 29.1 Third party Intellectual Property Rights

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 29.1(a).

### 29.2 Indemnity

- (a) Without limiting Clause 23, 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 Supply 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 29.2(a).

- (c) The Company may require the Supplier to conduct any litigation that may arise from a Claim referred to in Clause 29.2(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.

- (d) The Supplier will not be liable under this Clause 29.2 to the extent the Liabilities were caused, or contributed to, by the Company's or an End User's negligent acts or omissions or wilful misconduct.

## 29.3 Procurement of Intellectual Property Rights

If the Company is prevented from (as the case requires) operating or using the Goods and/or any Associated Services or any part of the Goods and/or any Associated Services 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) utilise the Goods and/or any Associated Services or the relevant part of the Goods and/or any Associated Services for the purpose for which it was intended.

## 29.4 Procedure where Intellectual Property Rights cannot be procured

If the Supplier cannot procure the rights referred to in Clause 29.3 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 Goods or the relevant part of the Goods to avoid infringement or violation of the Intellectual Property Rights or any of them;
- (b) replace the Goods affected or the relevant part of the Goods with work or Goods which do not infringe or violate the Intellectual Property Rights; or
- (c) remove the Goods 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 Goods.

## 29.5 Moral rights

- (a) The Supplier must (at its cost) procure from its Personnel and any third parties engaged in the provision of the Supply an irrevocable and unconditional consent, in favour of the Supplier (for the benefit of the Supplier and its customers, including the Company), which is legally enforceable by the Company, for the Company to:
  - (i) reproduce, transmit, communicate, adapt or publish any materials in relation to the Supply to the Company (together the **Materials**) or any adaptation of them (or any part of the Materials or any such adaptation) anywhere in the world, in whatever form the Company thinks fit (including the making of any distortions, additions or alterations to the Materials or any adaptation thereof or any part of the Materials or any such adaptation) as so

- reproduced, transmitted, communicated, adapted or published;
  - (ii) reproduce, transmit, communicate, adapt or publish the Materials or any adaptation of them (or any part of the Materials or any such adaptation) anywhere in the world without making any identification of the employee/contractor/third party in relation to such reproduction, transmission, communication, adaptation or publication; and
  - (iii) do anything in relation to the Materials that (but for these consents) would otherwise infringe any moral rights or similar rights of the employee/contractor/third party anywhere in the world.
- (b) Where the Company reasonably believes that the Supplier has not complied with its obligations set out in this Clause 29.5, the Supplier must procure that each of the Personnel of the Supplier or any third parties engaged in the provision of the Supply do all such other things and execute all such documents as reasonably requested by the Company in order to confirm or give effect to any of the matters stated in this Clause 29.5.

### 30. Notices

#### 30.1 Form of Notices

Any notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract must:

- (a) be in writing;
- (b) be marked to the attention of "the Company Secretary" for the Party to whom the Notice is addressed;
- (c) where given by the Company, be signed or authorised by either the Company Representative, a director or company secretary of the Company, or a duly authorised representative of the Company;
- (d) where given by the Supplier, be signed or authorised by either the Supplier Representative, a director or company secretary of the Supplier, or a duly authorised representative of the Supplier; and
- (e) be delivered by prepaid post, by hand or by email to the Party to whom the Notice is addressed at its address shown in the Contract or such other address as that Party may have notified to the other Party.

#### 30.2 Notices deemed given

A Notice will be taken to be duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); or
- (c) in the case of email upon receipt of a delivery-receipt or other reliable electronic means to verify receipt provided that the Notice must be included as an attachment to the e-mail (not simply contained in the e-mail text),

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

### 31. Rio Tinto Business Practices and Standards and Business Integrity

#### 31.1 Rio Tinto Business Practices and Standards

In performing the Supply, the Supplier must, and must ensure that its Personnel:

- (a) comply or otherwise act in a manner consistent with the Rio Tinto Group's policies entitled "*The way we work*", "*The Supplier Code of Conduct*" and the "*Business Integrity Standard*" (together the **Rio Tinto Business Practices and Standards**) which are available at: <http://www.riotinto.com/aboutus/policies-standards-and-guidance-5243.aspx>;
- (b) permit the Company to have access to the Supplier's premises, any of their documentation and data (including documents stored in electronic form) and to interview the Supplier's in connection with the Supply, as necessary for Company Personnel to verify, monitor and audit the Supplier's compliance with the Rio Tinto Business Practices and Standards;
- (c) report all actual, alleged or suspected non-compliance with the Rio Tinto Business Practices and Standards to the Company or through the Rio Tinto Group's Speak-OUT program; and
- (d) cooperate promptly and fully with the Company in any investigation of an alleged or suspected breach of the Rio Tinto Business Practices and Standards.

#### 31.2 Business Integrity

- (a) The Supplier represents and warrants that it has not violated and will not violate, in connection with the Contract, the Australian Criminal Code Act 1995, the US Foreign Corrupt Practices Act 1977, the UK Bribery Act 2010 or any other similar applicable law (including any applicable Australian State or Territory laws), or engaged in any conduct that would have violated the same had such conduct occurred in the jurisdiction in which such laws apply.
- (b) The Supplier represents and warrants that it will comply with all applicable laws concerning the import, export or re-export of goods, services or technology and economic or trade sanctions or restrictive measures, including such laws or measures enacted, administered, imposed or enforced by Australia, the European Union, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), the U.S. Department of State or the United Nations Security Council.

### 32. Costs

#### 32.1 Each Party to bear its own costs

Each Party must bear its own costs arising out of:

- (a) the negotiation, preparation and execution of the Contract; and
- (b) except as expressly provided otherwise in the Contract, any transaction contemplated by the Contract.

## 32.2 Stamp duty

All stamp duty which may be payable in any relevant jurisdiction on or in connection with the Contract, any Purchase Order or other document related to the Contract will be borne by the Supplier.

## 33. Status of Supplier

### 33.1 Independent contractor

At all times during the Term, and in the provision of the Supply, the Supplier is an independent contractor and will not act as, or be or be regarded as, an agent or employee of the Company, and the Supplier and its Personnel will not be entitled to any benefits which would ordinarily accrue to any employee of the Company by virtue of their status as an employee.

### 33.2 Partnership and joint venture suppliers

Where the Supplier comprises more than one person they will be bound jointly and severally and by executing the Contract accept joint and several liability for any loss or damage that may be suffered or occasioned and any sum that may be or may become payable to the Company under the Contract.

## 34. Assignment and sub-contracting

### 34.1 Consent required

The Supplier is not permitted to assign or sub-contract all or any part of the Contract without the prior written consent of the Company, such permission not to be unreasonably withheld or delayed and subject to any terms and conditions the Company may reasonably think appropriate, including requiring the proposed assignee or Sub-contractor to be bound by any or all of the provisions of the Contract.

### 34.2 Obligations survive assignment or sub-contract

The Supplier acknowledges that no permitted assignment or sub-contract in any way relieves the Supplier from the performance of any of its obligations under the Contract.

### 34.3 Status of Sub-contractor

As between the Supplier and the Company, the Sub-contractor will be considered the agent and employee of the Supplier. For the purposes of the Contract, the acts and omissions of each Sub-contractor and its Personnel will be deemed to be the acts and omissions of the Supplier.

## 35. Privacy and data protection

### 35.1 Privacy Act - Warranty

Each Party agrees and warrants to the other Party that it will comply with the Privacy Act in respect of any Personal Information it collects, uses, discloses or otherwise Processes pursuant to the Contract.

### 35.2 Data protection

In addition to its obligations under the Privacy Act, the Supplier agrees to:

- (a) only Process the Company's Personal Information for the purposes of supplying the Goods or Associated Services under the Contract, and as directed by the Company;
- (b) not disclose the Company's Personal Information to any other person without the Company's prior written consent, unless the disclosure is required by law (and the Supplier complies with Clause 35.2(c) or is in accordance with Clause 34);

(c) immediately notify the Company that the disclosure of the Company's Personal Information may be required by law;

(d) promptly notify Company as soon as it receives an individual's complaint regarding the processing of their Company Personal Data and cooperate fully when Company is investigating any claim relating to such complaint; and

(e) provide information required by Company to demonstrate compliance with the obligations in this Clause 35.

## 35.3 Personal Data Security and Personal Data Breach Notification

(a) The Supplier must put into place and maintain appropriate technical and organisational measures to secure Company's Personal Information, having regard to the risk of accidental or unauthorised access, loss, destruction, misuse, modification, disclosure or damage to Company's Personal Information.

(b) If the Supplier has knowledge of any:

(i) accidental loss or destruction of, or unauthorised disclosure of or access to Company's Personal Information; or

(ii) data security breach of its or its approved Sub-contractors' systems that are used in the provision of the Goods or Associated Services which may have impact upon the security of Company's Personal Information,

the Supplier must:

(iii) expeditiously report such unauthorised disclosure or access to Company;

(iv) mitigate, to the extent practicable, any harmful effect of such disclosure or access that is known to Supplier or its approved Sub-contractors;

(v) cooperate with Company in providing any notices to individuals regarding accidental or unauthorised disclosures, as directed by Company; and

(vi) co-operate with any investigation into the incident that is subsequently undertaken by any data privacy authority, in consultation with Company.

## 35.4 Service Provider indemnity

(a) In addition to and without limiting Clause 23, the Supplier indemnifies the Company and must keep the Company indemnified in respect of all Liabilities incurred by or awarded against the Company relating to any breach by the Supplier of its obligations under the Privacy Act or this Clause 35.

(b) The Supplier will not be liable under Clause 35.4(a) to the extent that the Liability was caused, or contributed to, by the Company's or an End User's negligent acts or omissions or wilful misconduct.

## 35.5 Survival of Clause

This Clause 35 will survive the termination of the Contract.

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**36. Waiver**

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A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

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**37. Further assurances**

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Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Contract and the transactions contemplated by it.

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**38. Severability**

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**38.1 Severability**

Any provision of the 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 the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.

**38.2 Negotiation in good faith**

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 the Contract.

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**39. Public announcements and Promotion**

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**39.1 Public announcements**

Except as required by any applicable law or regulatory requirement or as otherwise permitted by the Contract, the Supplier may not make any public announcements or disclosures as to the Contract, or otherwise in relation to the subject matter of the Contract, without the prior written consent of the Company. In this regard, no media release or public announcement will be made in relation to the existence of the Contract without the Company's written approval and should such approval be given, then the wording of such release and the manner of publication must first be approved in writing by the Company.

**39.2 Promotion**

The Parties agree that they will not use each others' name, logo, trade mark, or other identifier for any advertising, promotion or any other purpose except with prior written consent of the other Party.

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**40. Governing law**

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The Contract is governed by the laws of the Australian State or Territory identified in the address for the Company shown in the Purchase Order or if no address is shown, the laws of Victoria. Each Party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction there in connection with matters concerning the Contract.