

# STANDARD TERMS AND CONDITIONS

## A - GENERAL PROVISIONS

### G.C.1. DEFINITIONS

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Unless the context otherwise requires, the following terms have the meanings given when used in the Contract.

**Malabar Resources Limited (Malabar) Corporate Policies** means the policies, codes and principles published by Malabar Resources Limited and all its subsidiaries, and such other policies, codes and principles notified by the Company to the Contractor but does not include the SHE Requirements.

**Anti-Corruption Laws** means:

- (a) Chapter 4, Division 70 of the *Australian Criminal Code Act 1995* (Cth);
- (b) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 (**OECD Convention**);
- (c) the *United Nations Convention against Corruption 2003*;
- (d) the *Foreign Corrupt Practices Act of 1977* (as amended) of the United States of America (**FCPA**);
- (e) the *Bribery Act 2010* of the United Kingdom (**UK Bribery Act**); and
- (f) any other Relevant Law which:
  - (i) prohibits the offering of any gift, payment or other benefit to any person or any officer, employee, agent or adviser of such person; or
  - (ii) is broadly equivalent to the FCPA or the UK Bribery Act, is intended to enact the provisions of the OECD Convention, or has as its objective the prevention of corruption,

and is applicable in the jurisdiction in which the Company or the Contractor are registered or conduct business or in which activities relevant to the Goods, Services or Equipment hire are to be performed.

**Business Day** means a calendar day ending at 5.00pm, other than a Saturday, Sunday or public holiday in New South Wales, Australia or the location of the Site.

**Claim** means all claims (including at law or in equity), requests, accusations, allegations, assertions, complaints, petitions, demands, suits, actions, proceedings and causes of action of every kind (including by or against any or all of the Company, or its personnel by the Contractor, the Contractor's Personnel or any third party).

**Company** means the party so named in the Contract.

**Constructional Plant** means all plant, tools and equipment to be used by the Contractor in the performance of the Services and includes cranes, tools, machinery and temporary buildings.

**Contract** means the Purchase Order, these Standard Terms and Conditions and any other document stated in the Purchase Order to be part of the Contract.

**Contract IP** means all Intellectual Property (present and future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the Contract.

**Contractor** means the party so named in the Contract.

**Contractor's Personnel** means the Contractor's employees, agents and subcontractors, and employees, agents and contractors of the subcontractors.

**Equipment** means the equipment hired to the Company, as specified in the Purchase Order (if any).

**Goods** means the items specified in the Purchase Order (if any).

**Intellectual Property** means trademarks, service marks, trade names, copyrights, designs, patents, mask works, moral rights, inventions, patent rights, trade secrets, know how, proprietary information, registrations of, and applications (including patent applications) to register copyrights, trademarks and service marks and other intellectual property in any and all countries, unions and jurisdictions and under any and all laws, regulations, treaties, conventions and agreements.

**Losses** means losses, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person.

**Purchase Order** means the order for Goods, Services and/or Equipment hire issued by the Company to the Contractor.

**PPSA** means the *Personal Property Securities Act 2009* (Cth), any regulations made at any time under the PPSA, or any amendment to the PPSA or those regulations, made at any time, as the context requires.

**Related Body Corporate** has the meaning given in section 9 of the *Corporations Act 2001* (Cth).

**Services** means the services specified in the Purchase Order (if any).

**SHE Requirements** means all relevant law and government requirements relating to workplace health and safety and the environment, and the Company's policies with respect to health and safety, the environment and positive stakeholder relationships.

**Site** means the areas specified in the Purchase Order for the delivery of the Goods or the Equipment or the performance of the Services.

## **G.C.2. SUPPLY OF GOODS, SERVICES OR EQUIPMENT**

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- 2.1** The Contractor must supply the Goods, perform the Services and/or hire the Equipment in accordance with the Contract. If any delay in supplying the Goods, performing the Services or delivering or repairing the Equipment, occurs or is foreseen, the Contractor must immediately notify the Company of the cause and anticipated length of the delay.
- 2.2** The Contractor must:
- (a) not interfere with any of the Company's activities, or the activities of any other person on the Site;
  - (b) comply with and ensure that the Contractor's Personnel comply with all directions and orders given by the Company's representatives; and
  - (c) ensure that the Site is left secure, clean, orderly and fit for immediate use.

## **G.C.3. SAFETY, HEALTH AND ENVIRONMENT**

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### **3.1 Contractor's obligations and acknowledgments**

The Contractor:

- (a) acknowledges the extreme importance that the Company places on:
  - (i) establishing and maintaining high standards in relation to workplace health and safety, the protection of the environment and positive stakeholder relationships; and
  - (ii) compliance with Malabar's Corporate Policies;
- (b) acknowledges that the Company is committed to eliminating work related injuries and occupational illnesses with a view to achieving the vision of 'Zero Harm';
- (c) must acquaint itself with Malabar's Corporate Policies and use its reasonable endeavours when performing the Services to:
  - (i) comply with Malabar's Corporate Policies; or
  - (ii) where full compliance is not immediately practicable, take action to continuously improve compliance with Malabar's Corporate Policies; and
- (d) must acquaint itself with the SHE Requirements and when on Site, must comply with all SHE Requirements and any direction given by the Company in respect of the SHE Requirements.

### **3.2 Reporting of incidents**

The Contractor must:

- (a) report any incident relating to workplace health and safety or the environment or which impacts on stakeholder relationships (which is reportable under the SHE Requirements) to the Company as soon as reasonably possible, and in any event, within a time period that ensures the Company can comply with all relevant laws; and
- (b) provide the Company with reasonable assistance (including access to relevant documents and Contractor's Personnel employees) in investigating any such incident.

## **G.C.4. ASSIGNMENT AND SUBCONTRACTING**

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The Contractor must not subcontract, assign, novate, transfer, delegate or otherwise deal with the Contract or any right, obligation, duty or responsibility under it except with the prior written consent of the Company.

## **G.C.5. LAWS AND REGULATIONS**

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### **5.1 General**

The Contractor must comply with all laws and government requirements affecting or applicable to the Goods or their supply, the performance of the Services, or the hire of the Equipment, and subject to **G.C.5.2** must pay any fees, charges, levies and taxes imposed by a government entity in relation to the Goods, Services or hire of the Equipment.

## **5.2 Long service leave and safety fees**

Any portable long service leave levy or workplace health and safety fee imposed in connection with the supply of the Goods, performance of the Services or hire of the Equipment must, unless otherwise specified in the Purchase Order or agreed in writing by the parties, be paid by the Contractor and is deemed to be included in the price payable for the Goods, Services or Equipment hire (subject to **G.C.11**).

## **G.C.6. PRECEDENCE OF DOCUMENTS**

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If there is any discrepancy, inconsistency or ambiguity between a Purchase Order and these Standard Terms and Conditions, the Purchase Order shall prevail. The Purchase Order and these Standard Terms and Conditions shall have precedence over any other documents forming part of the Contract.

## **G.C.7. INTELLECTUAL PROPERTY RIGHTS**

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- 7.2** The Contractor warrants that the Intellectual Property rights of third parties will not be infringed by the supply of the Goods or Equipment under the Contract, the use of those Goods or Equipment by the Company or the performance of the Services by the Contractor.
- 7.3** Each party remains the owner of all of its Intellectual Property, and nothing in the Contract prevents or limits either party's use of its own Intellectual Property.
- 7.4** Except to the extent permitted under the Contract, neither party will reproduce, communicate, use, register or attempt to register any interest in, or otherwise deal with, the Intellectual Property of the other.
- 7.5** Any and all Contract IP will be vested in the Company and be the Company's property as and when created. The Contractor must assign and ensure that all of the Contractor's Personnel assign all right, title and interest in and to the Contract IP to the Company free and clear of all liens, charges, security interests, claims, third party rights to use or acquire such Contract IP or other encumbrances whatsoever.

## **G.C.8. INDEMNITY**

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### **8.1 Indemnity by the Contractor**

The Contractor must indemnify the Company against all Losses the Company incurs due to, or as a result of:

- (a) any damage to the Site, the Goods or any property whether located on the Site or otherwise;
- (b) death or injury to any person whether located on the Site or otherwise;
- (c) a breach by the Contractor or Contractor's Personnel of any law in the course of, or caused by, the performance of its obligations under the Contract; and
- (d) the breach by the Contractor of an obligation under the Contract or a warranty contained in **G.C.7.1**, **G.C.9.2**, **G.C.10.9**, **G.C.17**, **G.C.23**, **G.C.27** or **G.C.35**,

if and to the extent that the Losses are caused or contributed to by any default, error or omission of the Contractor or Contractor's Personnel.

### **8.2 Extent and duration of indemnity**

The indemnity given by the Contractor under **G.C.8.1** is a continuing obligation, separate and independent from the other obligations of the Contractor and survives the expiry or earlier termination of the Contract.

## **G.C.9. PAYMENT**

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### **9.1 Payment by the Company**

Subject to the Goods delivered, Services performed or Equipment hired complying with the Contract, the Company must pay the Contractor's invoice by the last business day of the month following the month in which the relevant invoice is received by the Company. The time for payment is calculated from the date that an acceptable invoice is received by the Company.

### **9.2 Warranty**

When submitting an invoice, the Contractor warrants to the Company that it is a resident of Australia for Australian

tax purposes.

## **G.C.10. WITHHOLDING TAX**

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### **10.1 Company's right to withhold**

Notwithstanding any other provision to the contrary, if the Company considers it necessary to satisfy its obligations under the *Taxation Administration Act 1953* (Cth) (**Act**) or the *Taxation Administration Regulations 1976* (Cth) (**Regulations**), the Company may:

- (a) withhold an amount from a payment made to the Contractor; and
- (b) pay the withheld amount directly to the Commissioner of Taxation (**Commissioner**).

### **10.2 Types of withholding payments**

Without limitation, the withholding taxes that the Company may have an obligation to withhold from a payment made to the Contractor include:

- (a) 49% of any payment for a supply by the Contractor made in the course or furtherance of an enterprise carried on in Australia by the Contractor, where the Contractor does not quote its ABN on the invoice for the supply or on other documentation relating to the supply;
- (b) 5% of any payment to a foreign entity if the Services fall within the description of certain activities specified in the Regulations; or
- (c) from any other payments to the Contractor or received for the Contractor of a kind set out in the Act or the Regulations from time to time, the rate set out in the Act or the Regulations from time to time.

The Company and the Contractor acknowledge that these rates are subject to change and are subject to any relevant Tax Treaty.

### **10.3 Deemed payment to Contractor**

If the amount withheld in accordance with this **G.C.10** is paid by the Company to the Commissioner, it is deemed to have been paid to the Contractor on the date on which the remainder of the payment to which it relates was paid to the Contractor.

### **10.4 No claim against Company**

Unless the Company wrongfully withholds amounts under this GC10, the Contractor agrees and acknowledges that it has no claim against the Company for any amounts withheld and paid to the Commissioner in accordance with this **G.C.10**.

### **10.5 Amounts not withheld**

If the Company does not withhold an amount under this **G.C.10** which it is required to withhold pursuant to the Act and the Regulations, the Contractor agrees to pay that amount to the Company, upon request by the Company.

### **10.6 No increase for the amount withheld**

The Contractor agrees that the Company will not be required to increase the payment to the Contractor by the amount withheld by the Company under this **G.C.10**.

### **10.7 Withholding tax exemptions and variations**

The Company agrees to provide all reasonable assistance to the Contractor to establish its entitlement to any exemption available from a withholding tax or any variation of the amount of a withholding tax.

### **10.8 Failure to withhold**

If the Company fails to withhold an amount as required by the Act or the Regulations any penalty or interest paid by the Company for failing to withhold may be recovered from the Contractor, but only if the failure to withhold arose as a consequence of a breach of a warranty or because the Contractor did not provide information or assistance requested by the Company, or provided incorrect information, with respect to a withholding tax matter.

### **10.9 Agency warranty**

The Contractor warrants to the Company that it has entered the Contract on its own behalf and not as agent for any other person, unless otherwise specified in the Contract.

### **10.10 Definitions**

For the purposes of this **G.C.10**:

- (a) **ABN** means Australian Business Number, and has the same meaning as in section 41 of *A New Tax*

*System (Australian Business Number) Act 1999* (Cth);

- (b) **foreign entity** means an entity covered by subsection 12-315(2) of Schedule 1 to the *Taxation Administration Act 1953* (Cth);
- (c) **in the course or furtherance of an enterprise carried on in Australia** has the same meaning as in section 12-190 of Schedule 1 to the *Taxation Administration Act 1953* (Cth); and
- (d) **Tax Treaty** means an agreement within the meaning of the *International Tax Agreements Act 1953* (Cth), or an international tax agreement within the meaning of section 995-1 of the *Income Tax Assessment Act 1997* (Cth).

In determining whether the Contractor is a foreign entity, or carries on an enterprise in Australia, the Company may have regard to the Contractor's warranty in **G.C.9.2**. The Contractor must supply such evidence as the Company reasonably requires to support that warranty.

## **G.C.11. GST**

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### **11.1 Interpretation**

In this **G.C.11**, words or expressions have the same meaning as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) unless the context makes it clear that a different meaning is intended.

### **11.2 GST exclusive amounts**

All amounts used in this Contract, including amounts and variables in formulas, are exclusive of GST, unless it is clearly stated that they are intended to be GST inclusive.

### **11.3 GST gross up**

If a party makes a supply under or in connection with the Contract in respect of which GST is payable, the consideration for the supply but for the application of this **G.C.11 (GST exclusive consideration)** is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

### **11.4 Reimbursements**

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit to which the other party is entitled for the loss, cost or expense and then increased in accordance with **G.C.11.3**. That party is assumed to be entitled to a full input tax credit unless it proves, before the date on which the payment must be paid, that its entitlement is otherwise.

### **11.5 Tax invoices**

Notwithstanding any other provision of the Contract, the recipient of a taxable supply made under or in connection with the Contract need not make a payment until the supplier has given the recipient a tax invoice for the supply to which the payment relates. The supplier must give the recipient an adjustment note for an adjustment arising from an adjustment event relating to a taxable supply made under or in connection with the Contract within seven days after the date the supplier becomes aware of the adjustment event.

### **11.6 GST group**

If a party is a member of a GST group, references to GST which the party must pay, and to input tax credits to which the party is entitled, include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.

### **11.7 Indemnities**

- (a) If a payment under an indemnity gives rise to a liability to pay GST, the payer must pay and indemnify the payee against the amount of that GST.
- (b) Without limiting **G.C.11.7(a)**, the Contractor bears the risk of and indemnifies the Company and must keep the Company indemnified in respect of any liabilities incurred or sustained by the Company resulting from any actual infringement of any Intellectual Property rights of any third party to the extent caused or contributed to by:
  - (i) the performance of the Services by the Contractor or the Contractor's Personnel, including the creation of any Goods or Equipment; or
  - (ii) receipt of the Services (or any Goods or Equipment) by the Company,

which will be reduced proportionally to the extent that a negligent act or omission of the Company or a breach of their obligations under the Contract caused or contributed to the infringement.

- (c) The Contractor must immediately notify the Company in writing if the Contractor becomes aware of a Claim being threatened or made against the Company in relation to any of the matters covered by the

indemnity in this **G.C.11.7**.

- (d) The Company may require the Contractor to conduct any litigation that may arise from a Claim referred to in paragraph (c) and all negotiations for settlement of that Claim. However, the Contractor must not make any settlement or consent to any judgment, order or verdict against the Company without the Company's prior written consent.

## **G.C.12. RIGHT OF SET OFF**

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### **12.1 Company's rights**

The Company may at any time, deduct from any amount due to the Contractor under the Contract to meet:

- (a) all debts and amounts due from the Contractor to the Company under the Contract; and
- (b) the amount of any bona fide claims or liens that the Company can reasonably substantiate against the Contractor under the Contract, provided that the Company must return the money deducted from the Contractor's payments within 30 Business Days, if such claims or liens are not substantiated.

## **G.C.13. TERMINATION**

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### **13.2 Insolvency**

- (a) If a party becomes insolvent or bankrupt (**Insolvent Party**), the other party may terminate the Contract immediately by written notice to the Insolvent Party or the person in whom the Contract is vested.
- (b) The terminating party's right under this **G.C.13.1** to terminate for the Insolvent Party's insolvency is subject however to sections 415D, 434J and 451E of the *Corporations Act 2001* (Cth).

### **13.3 Contractor's Event of default**

If the Contractor fails to perform or comply with any of its obligations under the Contract (a **Contractor Default**) then the Company may serve a notice on the Contractor specifying the Contractor Default, the time within which the Company requires the Contractor Default is to be remedied (which time must be reasonable in the circumstances and in any event, at least 10 Business Days from the date the Contractor receives notice under this clause) and requiring the Contractor to remedy it.

### **13.4 Failure to remedy**

If, within the time specified in a notice served under **G.C.13.2**, the Contractor fails to remedy the Contractor Default to the reasonable satisfaction of the Company, then the Company may terminate the Contract by written notice, without prejudice to its other rights.

### **13.5 Contractor's obligations on termination**

On receiving a notice under **G.C.13.1** or **G.C.13.2**, the Contractor must take any action relating to the termination of the Contract reasonably required by the Company.

### **13.6 Company's Event of default**

- (a) Subject to clause G.C. 13.5(c), if the Company fails to perform or comply with any of its obligations under the Contract (a **Company Default**) then the Contractor may serve a notice on the Company specifying the Company Default and requiring the Contractor to remedy it.
- (b) If, within 20 Business Days of the date of the notice is issued under G.C.13.5(a), the Company fails to remedy the Company Default, then the Contractor may terminate the Contract by written notice, without prejudice to its other rights.
- (c) Despite any other provision of this Contract, where the breach under G.C. 13.5(a) is in relation to the Company's failure to pay (actual or alleged, and for any reason) a correctly rendered invoice issued by Contractor under G.C.9, the Contractor acknowledges and accepts that its right to terminate under G.C. 13.5(b) is subject to:
  - (i) the parties strictly complying with their obligations under the G.C.9;
  - (ii) the relevant Dispute is not resolved within 60 Business Days from the date the Contractor issued a notice under G.C. 13.5(a); and
  - (iii) the Company paying the undisputed amount in accordance with G.C.9.

## **G.C.14. ANTI-CORRUPTION**

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#### **14.1 Receipt of benefits**

A director, employee or agent of the Contractor must not:

- (a) give or receive any commission, fee, rebate, gift or entertainment of significant value from; or
- (b) enter into any business agreement with,

any director, employee or agent of the Company other than as a representative of the Company or in the ordinary and proper course of business between any of those parties.

#### **14.2 Compliance with Anti-Corruption requirements**

The Contractor must not undertake any activity that may constitute a breach of any provision of the Anti-Corruption Laws.

#### **14.3 Conflict of interest**

- (a) The Contractor warrants that at the date of this Contract:
  - (i) there is no relationship between it and the Company, between any of the Contractor's directors or employees and the Company or between the Contractor and a director or employee of the Company that gives rise to an actual or potential conflict of interest; and
  - (ii) that it has not carried on business, entered into any financial arrangements or undertaken any obligation which would in any way interfere or conflict with the performance of the Services by the Contractor and the Contractor's Personnel under the Contract.
- (b) The Contractor must ensure that neither it, or the Contractor's Personnel, carries on business, enters into any financial arrangements or undertakes any obligation which would in any way interfere or conflict with the performance by the Contractor or the Contractor's Personnel of the obligations under the Contract, without first obtaining the written consent of the Company.
- (c) If the Contractor becomes aware of the existence of a relationship or circumstance referred to in paragraph (a), the Contractor must:
  - (i) immediately notify the Company; and
  - (ii) take reasonable steps to eliminate or overcome any actual or potential conflict of interest without in any way adversely affecting its continued performance of its obligations under the Contract.

### **G.C.15. CONFIDENTIALITY**

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- 15.1** A party must not, without the prior written consent of the other party disclose confidential information:
  - (a) relating to the Goods, Services or hire of Equipment or a party's business or operations; or
  - (b) provided by one party to the other; or
  - (c) use such information for purposes unrelated to this Contract, unless disclosure is required by an applicable law, stock exchange listing rule or taxation authority.
- 15.2** Nothing in the Contract prohibits disclosure of confidential information:
  - (a) which is in the public domain; or
  - (b) to a party's professional advisors.
- 15.3** The obligations under this **G.C.15** survive the expiry or earlier termination of the Contract.

### **G.C.16. NOTICES**

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A notice under the Contract must be in writing, in English and addressed to the receiving party, and will be deemed to have been received:

- (a) if posted, on the 5<sup>th</sup> Business Day after posting;
  - (b) if delivered personally, upon delivery; or
  - (c) if sent by email:
    - (i) on a Business Day, on dispatch of the transmission; or
    - (ii) on a day other than a Business Day, on the next Business Day,
- unless the sender's server indicates a malfunction or error in transmission, or the recipient immediately notifies the sender of an incomplete transmission.

## G.C.17. TRADE AND ECONOMIC SANCTIONS

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### 17.2 Definitions

For the purposes of this **G.C.17**:

**Sanction** means:

- (a) the 'Specially Designated Nationals and Blocked Persons' list maintained by the United States Department of the Treasury or any similar or equivalent list maintained, amended and imposed by any Sanction Authority;
- (b) any program that prohibits or restricts:
  - (i) trade with or investment in, or the transfer of property or assets to or from, a specified country, including its government, government subdivisions, agencies and other entities under the control or acting on behalf of government; or
  - (ii) engaging in transactions that relate to investing in or the provision of advice or assistance in relation to, a specified country, maintained, amended and imposed by any Sanction Authority; and
- (c) any other similar sanctions, regulations, statutes, prohibitions and official embargo measures that relate to the enforcement of economic and trade sanctions which are maintained, amended and imposed by any Sanction Authority.

**Sanction Authority** means the United Nations, the European Union, Her Majesty's Treasury in the United Kingdom, the United States Department of Treasury's Office of Foreign Assets Control, the Commonwealth of Australia, Switzerland, South Africa, Canada or any replacement or other regulatory body enforcing economic and trade sanctions legislation in such countries or by any state, supranational or international government organisation.

**Sanctioned Person** means any person, being an individual, corporation, company, association, government or other entity who:

- (a) is the subject or target of a Sanction or in respect of which a Sanction has been imposed or targeted; or
- (b) is owned, operated or controlled by any person who is the subject or target of a Sanction or in respect of which a Sanction has been imposed or is targeted.

### 17.3 Warranty

As at the date of the Contract, the Contractor warrants that:

- (a) to the best of its knowledge, information and belief neither it, nor any of its employees, agents, contractors or Related Bodies Corporate (including the employees, agents and contractors of such Related Bodies Corporate) (together the **Contractor's Group**) is a Sanctioned Person; and
- (b) it has provided all information of which it is aware, that the Company reasonably requires in order for the Company to:
  - (i) manage the risk of Sanctions being imposed on the Company; and
  - (ii) comply with laws or regulations applying in the jurisdictions in which the Goods or Services are supplied or the Equipment hired, the parties are located or in any other country.

### 17.4 Provision of information regarding status

From the date of the Contract, the Contractor must:

- (a) immediately notify the Company upon becoming aware that any member of the Contractor's Group, has:
  - (i) become or is reasonably likely to become a Sanctioned Person; or
  - (ii) violated any Sanction; and
- (b) provide all information that the Company reasonably requires from time to time in order for the Company to:
  - (i) determine whether any member of the Contractor's Group has become or is reasonably likely to become a Sanctioned Person;
  - (ii) comply with any request by a regulatory authority that oversees Sanctions;
  - (iii) manage the risk of Sanctions being imposed on the Company; and
  - (iv) comply with laws or regulations applying in the jurisdictions in which the Goods or Services are



supplied, or the Equipment hired, the parties are located or in any other country.

#### **17.5 Suspension by Company**

If the Company suspects that any member of the Contractor's Group, has become or is reasonably likely to become a Sanctioned Person then (without limitation to any other right or remedy available to the Company), the Company may:

- (a) suspend performance of; or
- (b) withhold any payment due and owing under,  
the Contract.

#### **17.6 Termination by Company**

- (a) If, during the term of the Contract, the Company:
  - (i) is notified by any Sanction Authority or the Contractor that any member of the Contractor's Group has or is reasonably likely to become a Sanctioned Person; or
  - (ii) has reasonable cause to believe that any member of the Contractor's Group is a Sanctioned Person, then (without limitation to any other right or remedy available to the Company) the Company may terminate the Contract.
- (b) The Company may terminate the Contract or any part of it by giving not less than 30 days' written notice of its intention to do so (**Termination Notice**).
- (c) The termination rights of the Company in this **G.C.17** are in addition to, and do not in any way limit, the termination rights of the Company set out in the Contract.
- (d) Upon receipt of a Termination Notice, the Contractor must:
  - (i) immediately take all reasonable action at its own cost to ensure the safety of the Contractor's Personnel and the protection of any Goods or Equipment to be provided under the Contract;
  - (ii) immediately take all reasonable action to mitigate any liabilities incurred as a result of such termination; and
  - (iii) take any other action reasonably required by the Company in relation to the termination.
- (e) On the date of termination specified in the Termination Notice, the Contractor must:
  - (i) immediately cease performance of the Services in accordance with, but only to the extent specified in, the Termination Notice;
  - (ii) provide the Company with a detailed report in such form as the Company may require in relation to the Services performed up to and including the date of receipt of the Termination Notice;
  - (iii) return to the Company any items, materials or other information issued to the Contractor by the Company during the term of the Services; and
  - (iv) take any other action relation to the termination of the Contract as the Company may reasonably require.

#### **17.7 Consequences of termination or suspension**

Where the Company exercises its rights under **G.C.17.4(b)(iv)** or **G.C.17.5**

- (a) it will not be liable for any loss suffered by any member of the Contractor's Group; and
- (b) the Contractor hereby provides a release and indemnity to the Company in respect of any loss incurred by the Company,

as a result of or in connection with the exercise of the rights by the Company.

#### **17.8 Contract Continuing supply obligations**

The parties acknowledge and agree that where:

- (a) the Company has made payment for all or any part of the Goods, Services or Equipment hired under the Contract; and
- (b) the Contractor is prevented from receiving or accessing (or is otherwise not permitted to receive or access) that payment due to or as a result of any member of the Contractor's Group being or becoming a Sanctioned Person,

that payment is taken to have been validly made by the Company and received by the Contractor for the purposes of the Contract, and the Contractor:

- (c) is not relieved of its obligation to supply the Goods or Services or hire the Equipment (or any part of them);
- (d) must continue to supply the Goods or Services or hire the Equipment (or any part of them) in accordance with the Contract; and
- (e) will not be entitled to recover from the Company any loss or expense incurred by any member of the Contractor's Group in complying with its obligations under this **G.C.17**.

## **G.C.18. MISCELLANEOUS PROVISIONS**

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### **18.1 Status of provisions**

If Goods have been specified in the Purchase Order, **Part B** applies to this Contract. If Services have been specified in the Purchase Order, **Part C** applies to this Contract. If Equipment hire has been specified in the Purchase Order, **Part D** applies to this Contract.

### **18.2 Interpretation**

In the Contract unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of the Contract;
- (b) the singular includes the plural and vice versa;
- (c) words importing a gender include other genders;
- (d) the words '*include*' and '*including*' are to be construed without limitation;
- (e) other grammatical forms of defined words or expressions have corresponding meanings;
- (f) a reference to:
  - (i) a clause, schedule or appendix is a reference to a clause, schedule or appendix to the Contract and a reference to the Contract includes any schedules and appendices;
  - (ii) any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable;
  - (iii) a document or agreement includes a reference to that document or agreement as novated, altered or replaced from time to time;
  - (iv) 'A\$', '\$A', 'AUD', 'dollar' or '\$' is a reference to Australian currency;
  - (v) a person includes any individual, firm, body corporate, partnership, unincorporated association, government, state or agency of a state, joint venture or authority;
  - (vi) a party includes its executors, administrators, successors and permitted assigns;
  - (vii) a day means a period of 24 consecutive hours from midnight;
  - (viii) a week means 7 consecutive days commencing and ending at midnight on Sunday; and
  - (ix) a month means a calendar month;
- (g) where a party is more than one person the Contract binds all of them separately and each of them together;
- (h) if the due date for anything to be done under the Contract falls on a day that is not a Business Day, then it must be done on the next Business Day; and
- (i) any reference in the Contract to a number preceded by the words '*Sourcing No.*', is included only to identify the Contractor within the Company's supplier management systems and does not comprise part of the Contractor's name or other formal identifiers (such as a registration or company number).

### **18.3 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.

### **18.4 Governing law**

The Contract is governed by and must be construed and enforced in accordance with the laws of New South Wales, Australia and the parties unconditionally submit to the exclusive jurisdiction of the courts of New South Wales,

Australia (and courts of appeal from them).

#### **18.5 Entire agreement**

The Contract contains the entire agreement between the parties and supersedes all prior written arrangements, letters of intent, memorandums of understanding, purchase orders (other than the Purchase Order and any other document stated in the Purchase Order), representations and documents (if any) relating to the Goods, Services, or Equipment (including any terms and conditions proposed or delivered to the Company by the Contractor) or the Contract.

#### **18.6 Non-waiver**

- (a) A waiver of any provision of or right under the Contract shall not constitute a waiver of any other provision or right.
- (b) A failure to exercise, or any delay in exercising any right, power or remedy by a party does not operate as a waiver. An 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.

#### **18.7 Severability**

Any provision of the Contract which is prohibited or unenforceable in a 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.

#### **18.8 Negotiation in good faith**

Where a provision is prohibited or unenforceable in a jurisdiction, the parties must negotiate in good faith to replace the invalid provision with 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.

### **G.C.19. DISPUTE RESOLUTION**

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#### **19.1 Dispute**

In the event of any dispute, question or difference of opinion between the Company and the Contractor arising out of or in connection with the Contract (**Dispute**), a party may give the other party written notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this **G.C.19**.

#### **19.2 Dispute Representative to seek resolution**

- (a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other party, a senior representative of the Company and a senior representative of the Contractor (each being a **Dispute Representative**) must meet to resolve, or to attempt to agree on a method for resolving, the Dispute. All aspects of the meeting except the fact of occurrence shall be confidential and without prejudice to the parties' rights.
- (b) If the Dispute is not resolved, or a method for resolving the dispute is not agreed by the Dispute Representatives, within 30 days of the Dispute being referred to the Dispute Representatives, then either party may commence court proceedings in respect of the Dispute.

#### **19.3 Performance of Contract obligations during Dispute**

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

#### **19.4 Urgent interlocutory relief**

Nothing in this **G.C.19** prevents a party from seeking any urgent interlocutory relief which may be required in relation to the Contract.

#### **19.5 Survival of clause**

This **G.C.19** survives the expiry or earlier termination of the Contract.

### **PART B - PROVISIONS APPLYING TO GOODS**

#### **G.C.20. INSURANCE FOR THE GOODS**

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The Contractor must insure the Goods for the period when they are in transit to the Site against all loss or damage arising from any insurable cause, for a limit of not less than the full replacement cost of those Goods.

#### **G.C.21. PROTECTION**

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The Contractor must protect the Goods from loss or damage arising from any cause, and ensure that the Goods are

appropriately packed, handled and transported to the Site to prevent damage or shrinkage while in transit or storage. The Contractor must ensure that delivery documents accompany the Goods to the Site and bear the Purchase Order number.

## **G.C.22. PASSING OF TITLE AND RISK**

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### **22.1 Clear title**

The Contractor warrants that title in the Goods, when it passes to the Company under **G.C.22.2** will be free and clear of any and all liens, restrictions, reservations, security interests and encumbrances.

### **22.2 Passing of title and risk**

Title to the Goods passes to the Company upon payment for the Goods . The Contractor bears the risk of loss or damage to the Goods until they are delivered to the Site.

## **G.C.23. QUALITY OF WORKMANSHIP**

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### **23.1 Contractor's warranty**

(a) The Contractor warrants that the Goods will:

- (i) comply with all the requirements of the Contract, relevant laws, government requirements and any applicable codes or standards;
- (ii) be of merchantable quality and fit for their intended purpose; and
- (iii) be free from all defects and imperfections affecting performance.

(b) The Contractor further warrants that:

- (i) the Goods will match the description (including performance criteria) contained in the Purchase Order; and
- (ii) where the Contractor has provided the Company with any sample of the Goods, the Goods will correspond with the sample in addition to matching the description.

(c) If the Contractor supplies the Company with more Goods than specified in the Purchase Order, then any excess will be returned at the Contractor's cost.

### **23.2 Defects liability period**

The Contractor must, at its expense, rectify any defect discovered within 12 months of the Goods being used by the Company or 18 months from the date of delivery of the Goods, whichever is earlier.

### **23.3 Failure to rectify**

If the Contractor fails to rectify a defect within a reasonable time after receiving notice of the defect, the Company may, without prejudice to its other rights, rectify the defect and the costs incurred in doing so will be a debt due from the Contractor to the Company.

## **G.C.24. INSPECTION**

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The Company must at all times, on giving reasonable notice, have access to the Contractor's premises and those of its subcontractors for the purpose of inspecting work in progress on the Goods.

## **G.C.25. ACCEPTANCE**

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### **25.1 Notification of acceptance**

At any time after delivery of the Goods to the Site, the Company may notify the Contractor whether the Goods are accepted or rejected.

### **25.2 Notice of rejection**

If the Goods are rejected, the Company's notice of rejection must state the reasons for the rejection and may either:

- (a) require the Contractor to remove the Goods and refund to the Company any amount paid in relation to the

Goods;

- (b) direct the Contractor to replace or rectify the Goods; or
- (c) notify the Contractor that the Company elects to accept the Goods and claim damages for the Contractor's failure to comply with the Contract.

If the Contractor is directed to replace or rectify the Goods, the Contractor must do so within a reasonable time after receiving such a direction and must notify the Company when the replacement or rectification is completed and **G.C.25.1** will apply.

### **25.3 No acceptance**

Neither payment for Goods nor inspection of Goods under **G.C.24** constitutes acceptance of Goods that do not comply with the Contract or affects the ability of the Company to subsequently reject the Goods under this **G.C.25**.

## **PART C - PROVISIONS APPLYING TO SERVICES**

### **G.C.26. INSURANCE**

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The Contractor must maintain:

- (a) workers' compensation insurance in relation to its employees in accordance with the requirements of the *Workers Compensation Act 1987* (NSW) or section 31 of the *Coal Industry Act 2001* (NSW) (as the case may be);
- (b) public liability insurance for a limit of not less than \$20 million from an independent reputable insurer in respect of loss or damage that may occur to any physical property, or death or bodily injury to any person that arises out of or in connection with the performance of the Services;
- (c) if providing professional services, professional indemnity insurance for a limit of not less than \$5 million and commitment to maintain for a period of 6 years from completion of the Services.
- (d) third party motor vehicle liability insurance against liability for death or bodily injury to any person or damage to the Site or property located on the Site, for each of its vehicles that enter the Site during the performance of the Services; and
- (e) insurance for its Constructional Plant during its transit to the Site and throughout the period that the Constructional Plant is on or near the Site against all loss or damage arising from any insurable cause and for a limit of not less than the market value (including delivery to Site) of the Constructional Plant.

### **G.C.27. QUALITY OF WORKMANSHIP**

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The Contractor warrants that:

- (a) it will at all times be suitably qualified and experienced to perform the Services; and
- (b) the Services will be performed in accordance with:
  - (i) best practice standards of diligence, skill, care and efficiency to be expected of a competent contractor performing services of a similar nature to the Services; and
  - (i) all the requirements of the Contract, relevant laws, government requirements and any applicable codes or standards.

### **G.C.28. INSPECTION**

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The Company must at all times, on giving reasonable notice, have access to the places where the Services are being performed for the purpose of inspecting Constructional Plant and work in progress.

### **G.C.29. NO ACCEPTANCE**

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Neither payment for Services nor an inspection under **G.C.28** constitutes acceptance of Services that do not comply with the Contract.

### **G.C.30. CONSUMABLES**

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If the Company provides consumables for use by the Contractor in the performance of the Services, including electricity, gas or water, then:

- (a) the consumables must only be used by the Contractor for the Services and must not be on-sold or wasted;

- (b) the Company does not make any representations about the quality or fitness for purpose of the consumables;
- (c) risk in the consumables passes from the Company at the time that they are delivered to the Contractor;
- (d) all conditions and warranties implied by legislation are excluded to the extent permitted; and
- (e) the Company must use its best endeavours to supply consumables in a timely manner provided that the Company is not liable for any failure to ensure continuity of supply of those consumables.

### **G.C.31. CONSTRUCTIONAL PLANT**

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#### **31.1 Contractor's obligations**

Except as otherwise provided, the Contractor must:

- (a) supply all Constructional Plant necessary for the performance of the Services in accordance with the Contract;
- (b) notify the Company at least 24 hours before any fixed or mobile plant or equipment is used on-Site;
- (c) if requested to do so by the Company, certify that all Constructional Plant to be used on-Site complies with all laws and government requirements;
- (d) ensure that each item of Constructional Plant is fitted with an inspector's tag or uniquely identified by a stamp or an engine, chassis or serial number;
- (e) not remove any Constructional Plant from the Site without the prior written consent of the Company; and
- (f) on completion of the Services, remove the Constructional Plant from the Site.

#### **31.2 Inspections of Constructional Plant**

Immediately prior to bringing any Constructional Plant on Site, the Contractor must have the Constructional Plant inspected and certified as complying with all laws and government requirements by an inspector nominated by the Company.

Notwithstanding the above, the Company may:

- (a) inspect any Constructional Plant located on-Site from time to time during the performance of the Services; and
- (b) prohibit the use of any Constructional Plant that does not meet relevant laws and government requirements, and the Contractor:
  - (i) must bear the costs associated with the removal and replacement of that Constructional Plant; and
  - (ii) is not entitled to compensation as a result of that prohibition, removal or replacement.

## **PART D - PROVISIONS APPLYING TO EQUIPMENT HIRE**

### **G.C.32. INSURANCE**

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The Contractor must maintain:

- (a) insurance for the Equipment for the period when it is in transit to the Site against all loss or damage arising from any insurable cause, for a limit of not less than the full replacement cost of that Equipment;
- (b) workers' compensation insurance in relation to its employees; and
- (c) third party motor vehicle liability insurance against liability for death or bodily injury to any person or damage to the Site or property located on the Site, for each of its vehicles that enter the Site during the performance of the Contractor's obligations under the Contract.

### **G.C.33. PROTECTION**

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The Company must protect the Equipment from loss or damage arising from any cause, other than a breakdown, defect or malfunction of the Equipment or an act or omission of the Contractor or Contractor's Personnel.

The Contractor must ensure that the Equipment is appropriately packed, handled and transported to the Site to prevent damage while in transit and must provide all handling devices required for handling the Equipment when in transit.

### **G.C.34. PASSING OF TITLE AND RISK**

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The parties acknowledge and agree that:

- (a) the Contractor retains full title to the Equipment notwithstanding the delivery of the Equipment to, and the possession and use of the Equipment by, the Company; and
- (b) the Company will be a bailee of the Equipment only, subject to the terms and conditions of the Contract.

### **G.C.35. QUALITY OF EQUIPMENT**

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The Contractor warrants that on delivery, the Equipment will:

- (a) comply with all the requirements of the Contract, relevant laws, government requirements and any applicable codes or standards;
- (b) be fit for its intended purpose; and
- (c) be free from all defects and imperfections affecting the performance of the Equipment.

### **G.C.36. INSPECTION**

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#### **36.1 Equipment condition inspection**

On delivery of the Equipment to the Site, a representative of each of the Company and the Contractor must jointly inspect and, if necessary, test the Equipment.

#### **36.2 Notice of rejection**

The Company may reject Equipment on the basis that it does not comply with this Contract, any relevant laws or approvals, or if in the Company's reasonable opinion, the Equipment could not be safely used on Site. If the Equipment is not accepted by the Company after the joint inspection, the Company may either require the Contractor to replace the rejected Equipment or direct the Contractor to repair the Equipment.

#### **36.3 Equipment Condition Report**

Within 5 Business Days of the Company's acceptance of the Equipment, the Contractor must provide to the Company a report reflecting the agreed condition of the Equipment including a genuine indication of the state of the Equipment (including existing defects) and details of all servicing requirements, attachments, accessories, tools and supporting manuals and documentation for the Equipment.

### **G.C.37. MAINTENANCE AND REPAIR**

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#### **37.1 Contractor's Maintenance Obligations**

The Company must advise the Contractor of any defect in or damage to the Equipment and the Contractor must:

- (a) repair the defective or damaged Equipment;
- (b) supply to the Company an appropriate replacement for the Equipment while it is being repaired, if requested to do so; and
- (c) if necessary, transport the Equipment from the Site to the Contractor's premises for repairs and re-deliver the repaired or replacement Equipment.

#### **37.2 Emergency Repairs**

If emergency repairs to the Equipment are required and the Contractor fails to commence the required repairs within a reasonable time of being requested to do so by the Company, the Company may carry out the emergency repairs to the Equipment without invalidating any warranty given by the Contractor.

#### **37.3 Cost of repair**

The Contractor is liable for all costs associated with repair of defective or damaged Equipment (including costs incurred by the Company under **G.C.37.2**) unless the defect or damage is the direct result of the negligent or deliberate misuse or care of the Equipment by the Company, its employees, agents or contractors.

### **G.C.38. PERSONAL PROPERTY SECURITIES**

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- (a) If a term used in this **G.C.38** has a particular meaning in the PPSA, it has the same meaning in this clause.
- (b) The Contractor consents to the Company registering any security interest which arises under this Contract and shall ensure (where relevant) each of the Contractor's Personnel consents to the Company registering any such interest.
- (c) The Contractor will promptly do anything the Company reasonably requires (including to sign any further documents and provide any further information, such information to be complete, accurate and up-to-date in all respects) to ensure that the Company's security interest is a perfected security interest.
- (d) The Company and Contractor agree that, subject to the terms of this Contract and to the extent permitted by law, sections 95, 121(4), 125, 129, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply to this Contract.
- (e) Unless otherwise agreed to by the Company, the Contractor waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- (f) Without limiting **G.C.15**, the Company and the Contractor agree not to disclose information of the kind described in section 275(1) of the PPSA, except in where non-disclosure would contravene section 275 of the PPSA.