

## 1 Definitions

In this Agreement, unless the contrary intention appears:

**Agreement** means the agreement constituted by these general terms and conditions and the relevant Purchase Order.

**Authorised Signatories** means the designated representative of each Party duly authorised.

**Business Day** means a day other than a Saturday, Sunday or a gazetted public holiday in Western Australia.

**Consequential Loss** means indirect or consequential loss, but does not include any loss that may fairly and reasonably be considered to arise naturally, that is according to the usual course of things, from the breach or other act or omission giving rise to the relevant loss.

**Data Breach** means any:

- (a) unauthorised access to, or unauthorised disclosure of, any Personal Information; or
- (b) loss of any Personal Information.

**Defective Goods** means goods which are not in conformity with this Agreement.

**Defective Services** mean services or the results of any services which are not in conformity with this Agreement.

**Goods** means the goods, if any, described in the Purchase Order.

**Government Authority** means any national, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body, having jurisdiction over the Goods or Services or the Site.

**GST** has the same meaning as in the GST Act.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Industrial Matter** means industrial action of any sort, whether threatened or actual, involving your employees working at or in connection with the Site.

**Insolvent** means, with respect to a Party, insolvent (as defined in the *Corporations Act 2001* (Cth)), in liquidation or provisional liquidation, receivership,

bankruptcy (protective or otherwise) or under administration, unable to pay its debts as and when they fall due or otherwise insolvent, or that has entered into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or in respect of which any analogous event has occurred.

**Intellectual Property Rights** includes all intellectual property rights including current and future registered and unregistered rights in respect of copyright (including Moral Rights), designs, circuit layouts, trademarks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Laws** means any statutes, ordinances, codes, laws, decrees, circulars, rules or regulations made by any Government Authority, and common law and the principles of equity.

**Licences** means all licences, qualifications, registrations and other statutory requirements necessary for the supply of the Goods and Services under this Agreement.

**Modern Slavery Laws** means:

- (a) Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth);
- (b) sections 80D, 80E, 91G(1)-(3), 91H, 91HAA and 93AA-93AC of the *Crimes Act 1900* (NSW);
- (c) Laws in the other Australian states and territories which are equivalent to any of the Laws referred to in paragraphs (a) and (b); and
- (d) any Laws of the Commonwealth relating to modern slavery.

**Month** means a calendar month.

**Moral Rights** means any of the rights defined as a "moral right" in the *Copyright Act 1968* (Cth).

**Normal Business Hours** means the hours between 8:00am and 4:00pm on a Business Day.

**Our Website** means the relevant page(s) of our website at [www.westgold.com.au/site/about-us/corporate-governance](http://www.westgold.com.au/site/about-us/corporate-governance).

**Parties** means you and us.

**Party** means you or us.

**Personal Information** means personal information, as that term is defined in the *Privacy Act 1988* (Cth), that is provided to, or obtained or accessed by, you in the course of performing your obligations under this Agreement.

**Personnel** means the employees, agents, contractors or subcontractors of a person (but our Personnel do not include your Personnel).

**Policies and Procedures** means:

- (a) our corporate code of conduct and corporate governance policies available on Our Website, regardless of whether those policies are identified as applying specifically to our suppliers, or to our own employees (in which case they will apply as if references to our own employees included references to you);
- (b) our fitness for work, health and safety, environmental, and equal opportunity and harassment policies, and Site Rules and induction requirements, which apply to our operations generally, are relevant to your performance of the Goods or Services, and are provided or notified by us to you; and
- (c) all our other policies, procedures, standards, codes, rules, manuals, protocols, plans or directives (and similar documents) which are relevant to your performance of the Goods or Services and are reasonable and are provided or notified by us to you.

**Price** means the price specified in the Purchase Order.

**Privacy Act** means the *Privacy Act 1988* (Cth).

**Privacy Laws** means:

- (a) the Privacy Act;
- (b) any Laws (to the extent that such Laws apply to you, us or our Related Bodies Corporate, or any other recipient of Personal Information) from time to time in force in any relevant jurisdiction affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of personal data; and
- (c) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made, issued or registered under any of the Laws referred to in paragraphs (a) and (b) above, as amended from time to time.

**Purchase Order** means the purchase order for Goods and/or Services issued by us to you from time to time containing amongst other things, a description of the Goods and/or Services, the Price and the Site.

**Related Body Corporate** has the meaning given to that term in the *Corporations Act 2001* (Cth).

**Sanctioned Country** means any country or territory against which Sanctions are imposed.

**Sanctions** means sanctions imposed by any country in which this Agreement is being performed, the United States, the United Kingdom, the EU, any EU Member States, Switzerland, the United Nations, or any other country with jurisdiction over the activities undertaken in connection with this Agreement.

**Services** means the services, if any, described in the Purchase Order.

**Site** means the site or location for delivering the Goods or providing the Services detailed in the Purchase Order.

**Site Rules** means the site rules (if any) available on Our Website or otherwise provided by us.

**Tax Invoice** has the same meaning as in the GST Act.

**Taxes** means any tax, levy, charge, franchise, impost, duty, fee, rate, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Government Authority and includes, for the avoidance of doubt, capital gains tax, fringe benefits tax, income tax, value added tax, goods and services tax, sales or use tax, training guarantee levy, profits tax, undistributed profits tax, payroll or employment tax, group tax, PAYG or PAYE withholding tax, land tax, import or customs duty, excise, municipal rates, and any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of the above.

**we** and **us** means Westgold Resources Limited (ACN 009 260 306) and any of our Related Bodies Corporate named in the Purchase Order or which elect to take the benefit of this Agreement in accordance with clause 23.1, and **our** has the corresponding meaning.

**WHS Act** means the *Work Health and Safety Act 2020* (WA).

**WHS Regulations** means the *Work Health and Safety (Mines) Regulations 2022* (WA).

**you** means the person named in the Purchase Order as the supplier of the Goods and Services and **your** has the corresponding meaning.

## **2 Supply of Goods and Services**

- 2.1 This Agreement applies to the supply of Goods and Services as specified in the Purchase Order. The Purchase Order issued by us will reflect the matters we have agreed between us before its issue. You must review each Purchase Order promptly upon receipt, and if you believe that it does not reflect the matters we have agreed between us (including if you are unable to provide the Goods or Services in accordance with the Purchase Order), or you believe there is any ambiguity or uncertainty in respect of the Purchase Order, you must notify us without delay. We will seek to resolve such matter with you, but until such time as the matter is resolved either Party may terminate this Agreement with immediate effect.
- 2.2 In consideration of payment of the Price by us, you must supply the Goods and Services to us in accordance with this Agreement.
- 2.3 We intend to contract for the Goods and Services only on the terms of the Agreement, and not on any other terms. Accordingly, the provision of other terms by either Party will not bind the Parties, will be of no legal effect, and will not constitute a contract or part of this Agreement irrespective of any act by either Party or by any of its Personnel, including execution of any document incorporating (including by reference) any other terms.
- 2.4 Before you supply the Goods or Services, you acknowledge that you have read and understood these general terms and conditions before making a supply under this Agreement. If you make a supply under a Purchase Order or any other form of order or request by us to supply goods or services, whether or not in writing, these general terms and conditions will apply to that supply.
- 2.5 You must supply the Goods and Services to us in accordance with this Agreement.
- 2.6 We will provide you with access to our Site to the extent necessary for you to provide the Goods and Services.

- 2.7 In providing the Goods and Services you must, and you must ensure that your Personnel:
- (a) use best endeavours not to interfere with any of our activities or the activities of any other person on our Site, and not adversely affect the security, cleanliness, order or fitness for use of our Site;
  - (b) supply the Goods and perform the Services in a safe manner and by appropriately qualified, skilled and experienced Personnel undertaking all activities, functions and tasks safely, with all due skill and care, and avoiding all undue risk to the environment;
  - (c) comply with all applicable Laws and the applicable requirements of any Government Authority and ensure that you possess all relevant authorisations, permits and Licences to provide the Goods and Services;
  - (d) without limiting paragraph (c) above, comply with:
    - (i) all applicable occupational health, safety and environmental Laws, including the WHS Act and the WHS Regulations, and any related guidelines and codes of practice published by any Government Authority having regulatory responsibility for such matters;
    - (ii) our Policies and Procedures; and
    - (iii) all reasonable directions and orders given by our representatives when you are on our Site;
  - (e) provide us with regular reports, or more frequently where reasonably required by us, in a form reasonably approved by us, in relation to any occupational health and safety issues in relation to the Goods or Services and on request by us prepare and provide to us any information and documents you are required to prepare or maintain under any Laws including Laws concerning occupational health, safety and the environment; and

- (f) provide us all such information and assistance as we reasonably require in connection with any investigation arising from or in connection with the supply of the Goods or Services.
- 2.8 We may, at any time, require you to provide evidence of compliance with your obligations under paragraphs 2.7 (b), (c) and (d).
- 2.9 The Agreement does not affect in any way:
- (a) us procuring the same, or similar, goods or services from other suppliers; or
- (b) you providing the same, or similar, goods or services to other customers.
- 2.10 If the conditions of the Site may affect your provision of the Goods or Services, you must notify us before commencing provision of the Goods or Services and we will permit you to undertake your own assessment of the Site or otherwise seek to resolve such matter with you. You are responsible for taking into account all local and other conditions affecting the performance of the Goods or Services and all information available to you which is relevant to the risks, contingencies and other circumstances which could affect provision of the Goods or Services.

### **3 Conditions as to quality and description of the Goods and Services**

- 3.1 The Goods and Services must match the description (including performance criteria, if any) in the Purchase Order.
- 3.2 If you gave us a sample of the Goods or a demonstration of the Services, the Goods and Services must be of the same nature and quality as the sample or demonstration given.
- 3.3 The Goods and Services must comply with any applicable Laws and relevant standards of the Standards Association of Australia, and must be supplied with copies of all material safety data sheets for dangerous Goods.
- 3.4 The Goods and Services must be fit for the purpose for which Goods and Services of the same kind are commonly supplied or bought and for any other purpose which we make known to you in the Purchase Order.

- 3.5 The Goods must be of merchantable quality, and must be new (unless otherwise stated on the Purchase Order).
- 3.6 If you supply more Goods than stated on the Purchase Order, the excess Goods may be returned to you at your cost.

### **4 Delivery**

- 4.1 Unless otherwise specified, you are responsible for ensuring that the Goods are properly and safely packed and delivered (including off-loading) during Normal Business Hours to the place and within the time period specified in the Purchase Order. If no time period is specified in the Purchase Order, the order is for delivery within 72 (seventy two) hours of receipt of the Purchase Order. The Goods delivered must be free of any right or interest of any person (including any encumbrance), other than the right and interest of you to be paid the Price.
- 4.2 Without limiting clause 4.1, if you are unable to deliver the Goods during the agreed delivery time, you must promptly notify us, and we will endeavour to accommodate an alternative delivery time where it would be reasonable in the circumstances to do so. In no event will you have any claim in respect of damages or losses arising directly or indirectly from rejection by us of a delivery outside the agreed delivery time where it is reasonable for us to do so (**loss**), except to the extent that we have caused or contributed to such loss.
- 4.3 You must include a packing list in each package of Goods delivered and the packaging must be marked with the Purchase Order number and accompanied by a delivery docket describing the Goods.

### **5 Inspection and acceptance**

- 5.1 We will have a reasonable time to inspect the Goods after delivery.
- 5.2 You must provide to us, at our request, detailed progress reports on the performance of the Services. A progress report must be detailed enough to allow us to ascertain whether the Services meet the requirements specified in the Purchase Order.

- 5.3 At any time during the performance of the Services we may inspect or witness tests on the Services or their results by providing you with reasonable prior notice and to the extent that such inspection does not unreasonably interfere with your business activities.
- 5.4 Any payment or the signing of delivery receipts before inspection does not constitute acceptance of the Goods or Services.
- 5.5 If upon inspection we find any Goods to be Defective Goods or any Services or their results to be Defective Services, we may exercise our rights under clause 12.
- 5.6 We may reject and return to you (in the case of Goods) any Goods or Services which are not in conformity with this Agreement even if we have paid for those Goods or Services.
- 5.7 You must refund to us, when requested, any payments made by us in respect of Goods or Services which we reject, and which are not replaced or re-performed free of charge under clause 12.2.

## **6 Title and risk**

- 6.1 Title to and risk in the Goods does not pass to us until we take delivery of, inspect and accept the Goods.
- 6.2 You warrant that, at the point at time at which title passes to us, you have complete ownership of the Goods free of any liens, charges and encumbrances and will provide the Goods to us on that basis and at all times thereafter we will be entitled to clear, complete and quiet possession of the Goods.

## **7 Price**

- 7.1 We agree to pay you the Price in accordance with this Agreement for the Goods and Services.
- 7.2 The Price is inclusive of all costs incurred by you in supply of the Goods and performance of the Services including all charges for packaging, packing, insurance and delivery of the Goods in accordance with this Agreement and the cost of any items used or supplied in conjunction with the Services. The Price is also inclusive of all duties and Taxes except GST.

- 7.3 The Price may not be increased without our prior consent. We have the right to refuse to give our consent.

## **8 Invoicing and payment**

- 8.1 You must submit Tax Invoices to us (by providing them to our representative referred to in the Purchase Order or as advised by us in writing if there is no representative referred to), no earlier than (as applicable):
- (a) upon delivery and acceptance of the Goods as set out in clause 6.1, unless we specifically agreed to make a partial or full upfront down payment in which case the invoice should reflect the amount we agreed to pay upfront;
  - (b) at the completion of the Services, unless the Purchase Order states that progress payments are to be made; and
  - (c) where progress payments are to be made for the provision of Services, at the end of each Month (or other period specified in this Agreement) for Services performed by you in that Month or that period (as the case may be).
- 8.2 When submitting your Tax Invoice under clause 8.1, it must include the following details:
- (a) a reference to the Purchase Order;
  - (b) a detailed description of the Goods and Services supplied;
  - (c) an individual reference number for us to quote with remittance payment;
  - (d) the Price relating to Goods and Services, broken down to reflect any Price components on the Purchase Order;
  - (e) the amount of any GST; and
  - (f) our representative name and Site (if applicable).
- 8.3 Subject to you complying with this clause 8, we will pay all invoices rendered to us by you under this clause 8 within 20 Business Days of our receipt of the invoice, except where we dispute the invoice, in which case:

- (a) we will provide you with a payment schedule within 15 Business Days of our receipt of the invoice setting out the payment we propose to make and the amount we propose to withhold and dispute which includes the reasons we are not paying the disputed amount;
  - (b) we will pay the undisputed part of the relevant invoice (if any) and withhold the balance pending resolution of the dispute; and
  - (c) if the resolution of the dispute determines that we are to pay an amount to you, we will pay that amount within 20 Business Days of the resolution of that dispute.
- 8.4 If any supply made under this Agreement is or becomes subject to GST, the Party to whom the supply is made must pay to the Party making the supply in addition to any consideration payable an additional amount on account of GST. If any Party is required to reimburse or indemnify another person for a cost, expense or liability (**Cost**) incurred by the other Party, the amount of that Cost for the purpose of this Agreement is the amount of the Cost incurred less the amount of any credit or refund of GST which the Party incurring the Cost is entitled to claim.
- 8.5 If we are entitled to an exemption or concession concerning any Tax with respect to the Goods or Services, you must use all reasonable endeavours to apply for that concession or exemption and as far as possible promptly pass on to us the benefit of that concession or exemption.
- 8.6 Unless otherwise agreed, any money payable is to be paid in Australian currency.
- 8.7 If the Purchase Order involves the supply of Services on a cost plus or per hour basis we have the right to conduct an audit of the basis of your charges using your records. This right continues for twelve Months after we pay the relevant invoice.

## **9 Suspension and termination**

- 9.1 To the extent permitted by Law, we may at any time suspend performance of your obligations under this Agreement for any reason, by giving

you notice. When you receive a notice of suspension from us you must suspend performance of the relevant obligations for a period of 180 days or earlier if we direct you to resume performance of those obligations by notice in writing (**Suspension Period**). Where the suspension of your obligations by us under this clause is not as a result of:

- (a) any default or action by you; or
- (b) an event or circumstance which is beyond the control and without the fault or negligence of us and which by the exercise of reasonable diligence we are unable to prevent (excluding any shortage of labour or materials),

we will reimburse you within a reasonable time of receipt by us of a detailed breakdown of your claim for the direct, verifiable and reasonable costs incurred by you as a consequence of the suspension. Where the suspension in clause 9.1 is a result of any action by you in breach of this Agreement, you must take all reasonable steps during the Suspension Period to remediate such action.

- 9.2 If we have not given written directions to you to recommence performance of your obligations under this Agreement by the end of the Suspension Period, either Party may immediately terminate this Agreement by giving notice of such termination to the other.
- 9.3 A Party may immediately terminate this Agreement by notice in writing to the other Party if the other Party:
- (a) breaches any term under this Agreement and such breach is not able to be remedied;
  - (b) breaches any term under this Agreement and such breach is not remedied within 14 days of notice being given to the Party to remedy the breach;
  - (c) breaches any Law relating to its obligations under this Agreement;
  - (d) becomes Insolvent; or
  - (e) is convicted of a criminal offence.

9.4 We may terminate this Agreement for convenience at any time by giving 14 days' notice to you, in which case (subject to our other rights under this Agreement) we must reimburse you for all verifiable:

- (a) work in progress;
- (b) Goods and Services supplied or completed; and
- (c) expenses incurred up to the date of the notice of termination,

which are incurred in compliance with this Agreement, and which cannot be reversed or mitigated by you applying best efforts.

9.5 We may terminate this Agreement with immediate effect by notice in writing to you if any information supplied by you relating to the Purchase Order, your details, or any other material fact, is materially incorrect, and we reasonably believe we would not have entered into this Agreement with you on the same basis had we known the correct information.

9.6 If this Agreement is terminated pursuant to clauses 9.4, 9.5 or 9.6, you must cease the supply of the Goods and Services the subject of the Purchase Order and if the Agreement is terminated pursuant to clause 9.5, you must deliver all Goods and Services in progress or completed as we may request.

9.7 Unless expressly stated otherwise, termination of this Agreement for any reason does not affect the rights or obligations of a Party which have accrued prior to termination.

## **10 Independent contractor**

Both Parties acknowledge that you are our contractor and not our agent or employee.

## **11 Warranties**

11.1 You warrant that the Goods and Services will:

- (a) be provided in a timely and professional manner in accordance with this Agreement;
- (b) be free from any defect in design, performance, workmanship and makeup;
- (c) be of high quality and workmanship;

(d) be free from any claim of any nature by any third party; and

(e) not infringe or contribute to the infringement of any Intellectual Property Rights.

11.2 Each Party warrants to the other that any information supplied by it relating to this Agreement (including, in your case, the Goods and Services) is true and correct.

## **12 Defects**

12.1 If we find any of the Goods to be Defective Goods, or any of the Services or their results to be Defective Services, we may, at our option:

- (a) return the Defective Goods to you; or
- (b) reject the Defective Services by notifying you that we are rejecting them.

12.2 At our option and request, you must promptly:

- (a) repair free of charge or, at our option, replace free of charge any Defective Goods that we return to you; or
- (b) re-perform free of charge or make good free of charge any Defective Services that we reject.

12.3 If you fail to comply with clause 12.2, we may, at our option, make good or replace the Defective Goods or re-perform or make good the Defective Services, in which case you must reimburse us for any reasonable expenses we incur in doing so.

12.4 You are not liable for any defect or fault in the Goods or Services to the extent that it is caused by our negligence or the negligence of our Personnel.

## **13 Insurance**

13.1 You at your own expense must procure and maintain all insurances required by Law and the following insurance policies (except where the Purchase Order indicates they are not applicable, and subject to any amendment to the amount of cover in the Purchase Order):

- (a) workers' compensation & employers' liability insurance covering statutory liability under the *Workers' Compensation and Injury Management Act 1981 (WA)* (as amended) or any equivalent legislation,

and liability at common law with a minimum limit of not less than fifty million dollars (\$50,000,000);

- (b) public liability, products liability and pollution liability (sudden and accidental) insurance for an amount of twenty million dollars (\$20,000,000) for any one occurrence (but limited to twenty million dollars (\$20,000,000) in the aggregate in relation to products liability insurance and pollution liability insurance) to cover your legal liability in respect of occurrences resulting in:

- (i) death of or bodily injury (including illness) to any third party; and
- (ii) damage to property not belonging to nor held in trust by nor in the care, custody or control of you,

arising out of or in the course of or caused by the execution, provision or purported provision of Goods and Services under this Agreement; and

- (c) if provision of the Goods or Services requires you to:

- (i) provide or use plant and equipment – plant and equipment insurance covering loss or damage to any plant or equipment (whether owned, hired or leased by you) for replacement value;
- (ii) transport Goods to or from Site – goods in transit insurance, and if the transport involves shipping then marine transit insurance, covering material loss or damage to property (at full replacement value including provision for the costs of freight, insurances, Taxes and duties) from the time of leaving the premises of the relevant manufacturer, supplier or other place of origin;
- (iii) use motor vehicles – compulsory motor vehicle third party insurance and comprehensive motor vehicle third party liability insurance with a minimum limit of liability of thirty million dollars (\$30,000,000); or

- (iv) provide directly or indirectly professional services - professional indemnity insurance covering civil liability arising from an actual or alleged breach of professional duty in the performance of services under this Agreement which must provide a minimum limit of indemnity of not less than five million dollars (\$5,000,000) each and every claim, with one automatic reinstatement of the limit of indemnity and be maintained for the period of this Agreement and thereafter for a period of not less than seven years or seven years from the date on which the professional services are completed.

13.2 Where permitted by Law, the workers' compensation & employers' liability policy referred to in clause 13.1(a) must be:

- (a) extended to indemnify us for statutory liability under the Workers' Compensation and Injury Management Act 1981 (WA) (as amended) or any equivalent legislation, and liability at common law; and
- (b) further extended to include a waiver of subrogation favouring us for statutory liability under the *Workers' Compensation and Injury Management Act 1981 (WA)* (as amended) or equivalent legislation, and liability at common law.

13.3 The public liability policy referred to in clause 13.1(b) must be endorsed to:

- (a) contain a principal's indemnity extension;
- (b) include a waiver of subrogation in favour of us;
- (c) include a cross-liability extension stating that the policy must operate as if there was a separate policy covering each insured and further include a provision that a failure by any insured to comply with the policy terms and conditions will not prejudice the rights and entitlements of any other insured under the policy;



- (d) cover the legal liability of any of your employees, sub-consultants and/or agents;
  - (e) cover legal liability arising from the use and/or operation of unregistered motor vehicles; and
  - (f) cover pollution events of a sudden, accidental and identifiable nature up to the limit of liability stated in clause 13.1(b).
- 13.4 The insurance policies referred to in clause 13.1(c)(i) and 13.1(c)(iii) must be endorsed to:
- (a) contain a principal's indemnity extension;
  - (b) include a waiver of subrogation in favour of us; and
  - (c) include a cross liability extension stating that the policy must operate as if there was a separate policy covering each insured and further include a provision stating that a failure by any insured to comply with the policy terms and conditions will not prejudice the rights and entitlements of any other insured under the policy.
- 13.5 The marine transit insurance policy referred to in clause 13.1(c) must be extended to cover us as an insured to the extent that we have any insurable interest in the property being transported.
- 13.6 Not less than 5 Business Days before commencing the provision of Goods or Services and thereafter not less than five Business Days prior to the date set for the annual renewal of each required insurance, you must provide us certificates of currency for any insurances required to be held by you and your sub-contractors under this Agreement. All costs incurred by us as a consequence of you not maintaining such insurances will be a debt due from you to us.
- 13.7 Without limiting any other rights under this Agreement, if you fail to comply with clause 13.6 and you do not correct such failure within 7 days of us notifying you, we may effect the required insurances and then seek reimbursement of the premium costs from you.
- 13.8 General provisions as to insurance to be effected by you:
- (a) you must ensure that every subcontractor engaged by you maintains the same insurances you are required to maintain under this Agreement;
  - (b) the sole responsibility for ensuring that insurance to be arranged by you and any sub-contractor hereunder is actually effected and at all times remains current, will at all times remain with you. No approval by us as to the adequacy in terms of insurance protection nor sighting by us of certificates of currency or copies of policies will be taken as a representation by us that such insurance is adequate or be raised or pleaded in bar to any action against you for default in performing in any of the requirements under this clause;
  - (c) you must at all times be responsible for complying with and abiding by the terms and conditions of the insurances arranged by you and for the payment of all excesses or deductibles under the terms of such insurances;
  - (d) you must as soon as reasonably practicable, inform the relevant insurer of any occurrence which may give rise to a claim under any insurance required by this Agreement, and must also keep us reasonably informed of subsequent developments concerning the claim. You must also ensure that your sub-contractors, sub-consultants and/or agents similarly inform the relevant insurer and/or us; and
  - (e) you must immediately advise us of any change or cancellation of the insurances referred to in clause 13.1.
- 13.9 The effecting of insurance as required under clause 13.1 will not in any way limit your obligations or responsibilities under this Agreement.

## **14 Liability and indemnities**

- 14.1 You are liable for and must indemnify us, our Related Bodies Corporate and our Personnel from and against any liability, loss or damage arising out of or in connection with:

- (a) personal injury or death, or damage to tangible property, caused by your act or omission or the acts or omissions of your Personnel; and
- (b) any claim by a third party that the Goods or Services infringe or contribute to the infringement of any Intellectual Property Rights,

except to the extent that such loss arises from our own act or omission.

- 14.2 Each indemnity in this Agreement is a continuing obligation separate and independent from other obligations under this Agreement.
- 14.3 Neither Party is liable to the other Party for any Consequential Loss.
- 14.4 Part 1F of the *Civil Liability Act 2002* (WA) is excluded from operation with respect to any dispute, claim, action or matter under or in connection with this Agreement.

## 15 Confidentiality

15.1 Subject to clauses 15.2 and 15.3, each Party (the **Receiving Party**) must keep confidential and not disclose to any third party any information (including the terms of this Agreement) disclosed or revealed by the other Party (the **Disclosing Party**) under or in relation to this Agreement that:

- (a) is by its nature confidential;
- (b) is designated by the Disclosing Party as confidential; or
- (c) the Receiving Party knows or reasonably ought to know is confidential,

but excluding:

- (d) information which is in the public domain otherwise than as a result of a breach of this clause;
- (e) is received from a third party rightfully free of any obligation of confidence; or
- (f) is independently developed without breach of this Agreement,

**(Confidential Information).**

15.2 The Receiving Party may only use the Confidential Information of the Disclosing Party for the purposes of exercising its rights or performing its obligations under this Agreement.

15.3 The Receiving Party may disclose the Confidential Information of the Disclosing Party:

- (a) to those of its Related Bodies Corporate and its and their Personnel who need to know such Confidential Information, provided that the Receiving Party ensures that those recipients keep such Confidential Information confidential on the same basis as the Receiving Party is required to do so under this clause 15; or
- (b) that is required to be disclosed by Law, or the rules of any relevant stock exchange.

15.4 If requested by the Disclosing Party at any time, the Receiving Party must immediately return to the Disclosing Party, or destroy or delete, as the Disclosing Party directs, all originals and copies of the Disclosing Party's Confidential Information in the Receiving Party's custody, power or control, including by deleting all Confidential Information from any computer or other storage device into which it was programmed, recorded or stored by or on the Receiving Party's behalf.

15.5 Nothing in clause 15.4 requires the Receiving Party to return, destroy or delete any Confidential Information of the Disclosing Party to the extent that such Confidential Information:

- (a) needs to be retained for the purpose of actual or potential litigation or other record-keeping purposes; or
- (b) is on back-up or archival storage media, or shared storage systems such as email, and it is not practical to do so.

## 16 Privacy

16.1 If either Party collects, uses, discloses, transfers or otherwise handles any Personal Information under this Agreement, it must comply with all Privacy Laws as if it were an 'organisation' for the purposes of the Privacy Act.

16.2 In addition to your obligations under clause 16.1, if you collect, use, disclose, transfer or otherwise handle any Personal Information, you must:

- (a) only use any Personal Information to the extent necessary to perform your obligations in accordance with this Agreement;

- (b) not disclose any Personal Information to any other person (including to a subcontractor) without our prior written consent or, subject to paragraph (e), as required by applicable Law;
- (c) establish and maintain safety and security procedures and safeguards (including anti-virus and intrusion detection and monitoring measures), and take such other steps as are reasonable in the circumstances, to:
  - (i) protect the Personal Information from misuse, interference and loss, and unauthorised access, modification or disclosure;
  - (ii) guard against the destruction, loss or alteration of the Personal Information; and
  - (iii) prevent any person who does not have the appropriate level of security clearance from gaining access to the Personal Information, and comply with, and ensure that your Personnel comply with, all such procedures, safeguards and steps;
- (d) notify us as soon as reasonably practicable after you receive any request concerning access to or correction of any Personal Information, or complaint about the handling of any Personal Information, and comply with any of our reasonable requests or directions concerning remedying or otherwise dealing with any such request or complaint;
- (e) notify us as soon as reasonably practicable after you become aware that a disclosure of any Personal Information may be required by applicable Law;
- (f) upon request, notify and keep us notified at all times of:
  - (i) your current safety and security procedures and safeguards that apply to the Personal Information; and
  - (ii) your privacy and Data Breach protocols and response plans, including by providing us with a copy of such protocols and plans, and any amendments to such materials that are made from time to time. Such materials will, for the avoidance of doubt, form part of your Confidential Information. If we consider, acting reasonably, that such materials indicate that you are failing to comply with your obligations under this Agreement, you must promptly (and at your own cost) update your practices and materials to ensure you are compliant with such obligations;
- (g) notify us immediately if you become aware of any breach of this clause 16, or of any Data Breach which has occurred or which you have reasonable grounds to suspect may have occurred;
- (h) promptly provide us with any information, assistance and co-operation requested by us to allow us to investigate any such breach or Data Breach and to comply with our obligations under the Privacy Laws;
- (i) if you form the view that you are or may be required to notify affected individuals of a Data Breach under the Privacy Laws, ensure that before making any such notification you promptly discuss such matter with us in good faith and comply with any reasonable directions issued by us in relation to such notification, including as to whether we or you will be the person responsible for fulfilling the relevant notification requirements; and
- (j) at any time upon our request, or on the termination or expiry of this Agreement for any reason, ensure that any Personal Information is destroyed or returned to us except as otherwise required by applicable Law.

**17 Intellectual property**

- 17.1 The Parties will each retain their Intellectual Property Rights existing prior to the date of this Agreement. The Intellectual Property Rights resulting from the provision of Services under this Agreement will vest in us upon creation, and you hereby assign all such Intellectual Property Rights to us including as a present assignment of future copyright.
- 17.2 We have a non-exclusive, royalty free licence to use, modify, adapt or sublicense any Intellectual Property Rights owned by you or your Personnel to the limited extent necessary for us to exercise our rights or perform our obligations under this Agreement or to enjoy the benefit of the Goods and Services provided to us under this Agreement.
- 17.3 You must do all things reasonably necessary to give full effect to the rights and obligations contained in this clause 17.
- 17.4 You must obtain the irrevocable consent of each author of the Intellectual Property Rights referred to in this clause 17 to any act or omission by us which infringes, or may infringe, any Moral Rights, including:
- (a) using any of the Goods or the deliverables from the Services without identifying the author of them; or
  - (b) altering, amending or deleting the content of the Goods or the deliverables from the Services.

**18 Assignment and subcontracting**

- 18.1 Neither Party may assign, novate or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld or delayed.
- 18.2 We have the right to assign any or all of our obligations or rights under this Agreement at any time to any of our Related Bodies Corporate.
- 18.3 You may not subcontract your obligations under this Agreement without our prior written consent. We will not unreasonably withhold our consent. Any such subcontract must include provisions that the subcontractor must:

- (a) comply with all relevant terms of this Agreement including the confidentiality obligations in clause 15;
- (b) not assign or subcontract without our written consent; and
- (c) effect and maintain insurance on the same terms as you are required to in this Agreement.

**19 Business ethics**

- 19.1 You must exercise reasonable care and diligence to prevent any actions or conditions which could result in a conflict with our interests.
- 19.2 You represent and warrant to us that you have complied and shall comply with all applicable Laws governing, relating to or dealing with illegal payments, gifts, undue hospitality or gratuities or other corrupt business practices. You acknowledge that we and our Related Bodies Corporate desire, and are obliged, to comply with all provisions of any applicable anti-corruption Laws. You agree to reasonably cooperate with and assist us and our Related Bodies Corporate with respect to such compliance.
- 19.3 You will not, in providing any Goods or performing any Services, take action of any nature which would contravene any provision of any applicable anti-corruption Laws. You represent and warrant to us that in the performance of your obligations under this Agreement, you and your Personnel have not made and will not make, whether on your own behalf, on behalf of us or our Related Bodies Corporate or any of their Personnel or on behalf of any other person, any offer of payment of or promise to pay, or gift of or promise to give, any money or anything of value, directly or indirectly, to:
- (a) any officer, official, employee or representative of any Government Authority or of any department, agency, subdivision or instrumentality thereof; or
  - (b) any political party, party official or candidate for political office; or

- (c) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any official, to any political party or official thereof, or to any candidate for political office.
- 19.4 You will not pay any commission or fee or grant any rebate or other remuneration, gratuity or undue hospitality to any of our Personnel or the Personnel of our Related Bodies Corporate.
- 19.5 If you at any time receive any request relating to us or any of our Related Bodies Corporate that you reasonably believe may constitute a violation of any applicable Law (including anti-corruption Laws), you will promptly notify us and provide us with all relevant particulars respecting such a request.
- 19.6 All payments to you under this Agreement will be solely by cheque or bank transfer made directly to you or your account and no payment will be in cash, by bearer instrument or made to any person other than you.
- 19.7 You acknowledge for the purposes of this clause 19 that none of our Personnel or the Personnel of our Related Bodies Corporate does or will have authority to give any express or implied direction, whether written or oral, authorising you to make any commitment to any third person on our behalf in violation of any Law (including anti-corruption Laws).
- 19.8 Without limiting any other provision of this Agreement, you must not engage in (and must take reasonable steps to ensure that in your operations and supply chains there are not) any activities, practices or conduct that would constitute an offence under anti-slavery and human trafficking Laws, including Modern Slavery Laws, and must maintain, keep up to date and enforce your own policies and procedures to ensure your compliance with all Modern Slavery Laws and, if requested by us, provide us with copies of such policies and procedures.
- 19.9 You represent, warrant, and undertake that:
- (a) neither you nor any of your Related Bodies Corporate (collectively, the **Organisation**) or directors, senior executives or officers or, to the knowledge of the Organisation, any person on whose behalf the Organisation is acting in connection with the subject matter of this Agreement, is an individual or entity (**Person**) that is, or is 50% or more owned or controlled by, a Person (or Persons) that is the subject of any sanctions or based, organised or resident in a Sanctioned Country (collectively, a **Sanctioned Person**);
- (b) no Sanctioned Person has any beneficial or other property interest in your interest in this Agreement nor will have any participation in or derive any other financial or economic benefit from this Agreement through you; and
- (c) you will not use, or make available, funds provided under this Agreement to fund or facilitate any activities or business of, with or related to any Sanctioned Country or Sanctioned Person, or in any manner that would result in a violation of Sanctions.
- 19.10 You must immediately notify us in writing of any and all violations of this clause 19 upon becoming aware of those violations.
- 19.11 Should you or your Personnel breach this clause 19 we may, in addition to taking all remedies at our disposal in such circumstances, terminate this Agreement with immediate effect.
- 20 Health, Safety and Environment**
- 20.1 You must ensure that each of your Personnel accessing the Site takes all reasonable measures to protect persons and property, avoids unnecessary disturbance and interference with the passage of people and vehicles, prevents nuisance and unnecessary noise, complies with any health and safety requirements applicable to the Site as notified by us to you and acts in a safe and lawful manner while at the Site.
- 20.2 You must also ensure that, in relation to the provision of Goods, Services or Personnel to the Site:
- (a) none of your Personnel does any act or omission that exposes, or has the potential

- to expose any person to any risk to health or safety or hazards arising from any such act or omission;
- (b) any appliance, component, equipment, facility, goods, material, machinery, plant or tool used in the provision of the Services is safe and without risk to health, safety and welfare;
  - (c) appropriate safety equipment is provided to and used by your Personnel;
  - (d) you implement and maintain appropriate systems of work and that the working environment is safe and without risks to health, safety and welfare; and
  - (e) you provide all information, instruction, training and supervision as may be necessary to ensure that the Services are provided without any hazard or risk to health, safety and welfare.
- 20.3 You acknowledge and agree that the following matters are prohibited and are "safety principles" that apply to all Services:
- (a) not using any form of load restraint, if applicable;
  - (b) not adhering to exclusion zones during unloading or loading, if applicable;
  - (c) supply, possession or consumption of alcohol or illegal drugs on the Site;
  - (d) allowing anyone to work in an environment that is a risk to their safety; and
  - (e) not following any danger tag or isolation procedures or interfering with any safety devices.
- 20.4 You acknowledge that we have entered, or may enter, into agreements with various third parties (including local Aboriginal communities) in respect of archaeological, heritage and native title issues applicable to the Site and its surrounds, including as required by archaeological, heritage and native title Laws.
- 20.5 You must not liaise (including any form of communication) with any of those parties in relation to such matters without our prior written approval.
- 20.6 You must ensure your Personnel do not damage or destroy an item on the Site or its surrounds which we have identified to you is, or is otherwise reasonably identifiable to be, of an archaeological, heritage or native title nature or disturb any designated area identified in Site drawings or otherwise notified to you, without our prior written approval.
- 20.7 If your Personnel discover any item on the Site or its surrounds which is of an archaeological, heritage or native title nature, you must promptly inform us in writing and seek instructions from us in dealing with such an item.
- ## 21 Your Personnel
- 21.1 You must immediately notify us on becoming aware of any Industrial Matter that may affect supply of the Goods or Services, and must meet with us, as soon as practicable after that notification, for the purpose of discussing and agreeing on any necessary or appropriate action to be taken to resolve the Industrial Matter.
- 21.2 You must at all times during the provision of the Goods or Services use your best endeavours to prevent any unlawful, riotous or disorderly conduct or behaviour by or amongst your Personnel at our Site.
- 21.3 You shall pay your employees involved in supply of the Goods or Services such wage rates and allowances and observe and meet such terms and conditions of employment as are prescribed in your agreements with your employees or by applicable Laws.
- 21.4 You shall not allow any of your Personnel on Site without having first received our approval. To enable such approval to be considered and given, you shall not later than 72 hours prior to the desired time of access to the Site, submit to us such completed and signed forms and certificates as reasonably requested by us. We will, as soon as possible after receipt of the said forms and certificates, notify you whether or not approval is given for that person to work on Site. We will act reasonably in giving any such approval.
- 21.5 Random alcohol and drug testing may be carried out on Site. You will procure that all of your Personnel comply with, at a minimum, all our

Policies and Procedures relating to that testing. The time required to participate in any such testing regime is not separately recoverable from us and should be factored into your Price.

- 21.6 We reserve the right to direct you to remove from Site and/or replace any of your Personnel working on Site and upon receipt of such request you shall immediately comply therewith. We may exercise this right where we believe that such Personnel do not comply with the requirements under this Agreement, or we otherwise have reasonable grounds to require their removal. If we require, you shall without undue delay, replace the person concerned with another person with appropriate skill and experience.
- 21.7 You shall require all Personnel entering the Site to be identified in an approved manner and shall not cause unauthorised persons to enter the Site. We may at any time refuse to admit any person to the Site to the extent that they have not been approved by us in accordance with clause 21.4 or where we have requested their removal or replacement under clause 21.6.
- 21.8 You shall ensure that your Personnel have the required Licences and certification for the equipment each individual operates from time to time. Evidence thereof shall be produced to us upon request.
- 21.9 You shall ensure that all of your Personnel have health assessments in accordance with all applicable Laws.
- 21.10 On arrival at Site, your Personnel must successfully undergo any approved Site induction and pass any induction assessment conducted by us before commencing work. Such inductions are held on days and at times nominated by us, details of which are available upon request. The time required to participate in such inductions is not separately recoverable from us and should be factored into the Price.

## **22 NGER Legislation**

Upon our request, you must promptly provide us with any information we reasonably require in connection with this Agreement to enable us to comply with our obligations under the National Greenhouse and Energy Reporting Act 2007 (Cth) and any subordinate legislation made under that

Act. We will only use that information for the purposes of complying with our obligations under the *National Greenhouse and Energy Reporting Act 2007 (Cth)* and any subordinate legislation made under that Act.

## **23 Other matters**

- 23.1 You agree that our Related Bodies Corporate may, by written notice to you, elect to take the benefit of this Agreement as if they were named as parties to it. Regardless of whether a Related Body Corporate has made such an election, any of the Goods or Services may be provided to, or used for the benefit of, our Related Bodies Corporate. Where any of our Related Bodies Corporate suffer any loss in connection with any Goods or Services provided to them or used for their benefit, we may recover that loss from you to the same extent we would be entitled to recover that loss if we had suffered it ourselves.
- 23.2 In this Agreement unless the contrary appears:
- (a) no rule of contract interpretation applies to the disadvantage of one Party on the basis that it put forward this Agreement or any part of it;
  - (b) if a period of time is specified and dates from a given day or a day of an act or event, it is to be calculated exclusive of that day;
  - (c) the singular includes the plural and vice versa; and
  - (d) the words “including” and “include” are a reference to “including, but not limited to”.
- 23.3 This Agreement is the entire Agreement between the Parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter. However, nothing in this clause limits any liability you or we may have in connection with any representations or other communications (either oral or written) made prior to or during the term of this Agreement, where such liability cannot be lawfully excluded.
- 23.4 Each Party must ensure that its Personnel comply with its and their obligations under this Agreement as if they were Parties to it, and each Party is liable for any acts, omissions and breaches of this Agreement by their Personnel.

- 23.5 A Party's rights under this Agreement can only be waived by that Party in writing.
- 23.6 This Agreement may not be varied except in writing signed by the Authorised Signatories of both Parties. Any variation will only be applicable to the specific Purchase Order for which the terms and conditions are varied and will not apply to past or future Purchase Orders nor oblige us to agree to such a variation for any other Purchase Orders.
- 23.7 If either Party does not exercise a right, remedy or power at any time, this does not mean that it cannot be exercised later.
- 23.8 The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Agreement.
- 23.9 Any provision of this Agreement which is void or unenforceable is to be read down or severed to the extent it is possible to do so without affecting the validity or enforceability of this Agreement.
- 23.10 In the event of any conflict between the Purchase Order, these general terms and conditions and any special terms and conditions, these general terms and conditions will take precedence.
- 23.11 If any dispute arises with regard to any matter in connection with this Agreement, the Parties must meet to review such dispute and to arrive at an amicable and negotiated solution with regard to it. If the Parties are unable to negotiate and agree on an amicable settlement of the dispute, within seven days after such meeting, either Party may refer the dispute to arbitration in accordance with and subject to, the Resolution Institute's Arbitration Rules. Unless the Parties agree upon an arbitrator, either Party may request a nomination from the Chair of the Resolution Institute. Notwithstanding the existence of a dispute, each Party must continue to perform this Agreement. For disputes in which the quantum is less than \$50,000, arbitration must take place using the submission of documents alone unless both Parties agree otherwise.
- 23.12 Nothing in clause 23.11 will prevent a Party from seeking urgent injunctive relief or similar interim relief from a court.
- 23.13 All notices under the Agreement must be sent to the named Party representatives at the respective addresses in the Purchase Order, or as amended by each Party in writing. All such notices so addressed will be deemed duly given:
- (a) upon delivery, if delivered by courier or by hand (against receipt);
  - (b) three days after posting, if sent by certified or registered mail, return receipt requested; or
  - (c) in the case of an email, on the date of its dispatch, unless it is sent after 5pm (WST) in which case it is deemed to have been received at 9am on the next Business Day, or unless the sender receives an automated message that the email has not been delivered.
- 23.14 Clauses 1, 2.8, 6.2, 9.8, 11, 13 to 19, 20.5, 21.8 and 22 to 24, and any other provision intended by its nature to survive termination or expiry of this Agreement, or required to give effect to termination, will survive termination or expiry of this Agreement.
- 24 Governing law and jurisdiction**
- 24.1 This Agreement is governed by the Laws of Western Australia, Australia.
- 24.2 Each Party submits to the non-exclusive jurisdiction of the courts of Western Australia.