



## **STANDARD TERMS & CONDITIONS**

**FOR THE SUPPLY OF  
GOODS AND SERVICES**

**to**

**Norton Gold Fields Pty Ltd**

**ABN 98 008 585 886**

**and**

**Paddington Gold Pty Limited**

**ABN 98 008 585 886**

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# STANDARD TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS AND SERVICES

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## 1. Definitions and Interpretations

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### 1.1 Definitions

Throughout this Agreement, unless the context otherwise requires;

**Affected Party** means any Party which is prevented by an event of Force Majeure in carrying out its obligation under this Agreement.

**Agreement** means this agreement including the Schedules, Purchase Orders and all other documents annexed to this Agreement or specifically incorporated by reference.

**Applicable Anti-Corruption Laws** means any anti-corruption laws that are applicable to this Agreement, including without prejudice to the generality of the *Australian Criminal Code Act 1995 (Cth)*.

**Business Day** means a day on which trading banks are open for business in Perth, Western Australia but excludes weekends and public holidays.

**Claim** means any claim, action, suit, demand, proceeding, notice, litigation, investigation or judgement whether based in contract, tort, under statute or otherwise.

**Commencement Date** is the date the Purchase Order is received by the Supplier.

**Company Representative** means the person appointed by the Company who is authorised to act for and on behalf of the Company, including giving Directions on behalf of the Company.

**Confidential Information** means all information and materials disclosed, provided or otherwise made accessible to, or developed by, the Supplier in the course of performing the Services, whether before or after execution of this Agreement including the policies, services, processes, procedures, methods, formulations, facilities, products, plans, affairs, transactions, organizations and business connections of the Company and its Related Bodies Corporate but excludes information that the Supplier can prove:

- (a) was in the public domain at the Date of Agreement;
- (b) subsequent to the Date of Agreement, became part of the public domain otherwise than as a result of disclosure by the Supplier or its Personnel or other person directly or indirectly in breach of this Agreement or other obligation of confidentiality; or
- (c) was in its possession at the time of disclosure by the Company to the Supplier and was not otherwise acquired from the Company directly or indirectly;

**Consequential Loss** means indirect loss of any kind whatsoever and includes loss of sales, loss of profit, loss of revenue, loss of goodwill or business opportunities and damage to reputation, even if a party knew or should have known of the possibility of such loss or damage.

**Delivery Instruction** means the delivery instruction specified in Item 5 of Schedule 1.

**Delivery Point** means the location or locations at the Site or Sites specified by the Company in the Purchase Order.

**Expert** means an independent expert appointed under clause 6.2.

**Goods** means the goods to be delivered by the Supplier to the Company, as specified by the Company in the Purchase Order.

**Good Operating Practices** means the practices, methods and acts used by a Supplier who is in the performance of service exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced Suppliers engaged in the same type of services in similar conditions as contemplated under this Agreement.

**Government Agency** includes any federal, state, territory or local government, or any ministry, department, court, commission, board, agency, instrumentality, political subdivision or similar entity.

**Government Authorisations** means all approvals, consents, authorisations, permits, clearances, licences or other requirements that are required by or from any Government Agency for the Supplier to perform its obligations under this Agreement or any Purchase Order.

**GST** means the tax payable on Taxable Supplies under the GST Law.

**GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is enacted to validate, recapture or recoup such tax, and includes any subordinated legislation in respect of those Acts and terms used in this Agreement will, where the context requires, have the meaning ascribed to such terms in the GST Law.

**Insolvency Event** means, in relation to any Party, that any of the following events or circumstances have occurred:

- (a) the affected Party becomes insolvent or commits an act of bankruptcy or is declared insolvent; or
- (b) proceedings are commenced to appoint a liquidator or provisional liquidator to the affected Party, or
- (c) Any trustee, receiver or receiver and manager is appointed in respect any material part of the affected Party's assets.

**Liability** means liability, loss, damage (of any nature including aggravated and punitive), cost, Claim, suit, charge, diminution in value action, statutory or equitable compensation, demand, expense or proceeding or loss of any nature and of any kind whatsoever whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising including under any Law or Government Authorisation.

**Material Safety Data Sheet** means a document that includes:

- (a) Details of the identity, chemical and physical properties of the Goods;
- (b) (Information on the health hazards associated with the use and handling of the information Goods; and
- (c) Provides information on precautions for the safe use and handling of the Goods.

**Parties** means the Company and the Supplier.

**Party Representatives** means the representatives nominated by each Party to manage the operation of the Agreement.

**Personnel** means the directors, officers, employees, Suppliers and agents of the Supplier or Company or their respective Related Bodies Corporate as the context requires.

**Price** means the Purchase Price or the Services Price, whichever is applicable.

**Purchase Order** means the purchase order issued to the Supplier by the Company for the supply of Goods and/or Services in accordance with this Agreement.

**Purchase Order Number** means the number assigned to the Purchase Order by the Company and specified in the Purchase Order.

**Purchase Price** has the meaning ascribed to that term in clause 4.1(a).

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

**Services** means the services to be provided by the Supplier to the Company as specified by the Company in the Purchase Order.

**Services Price** has the meaning ascribed to that term in clause 4.1(b).

**Site** means the mine site or sites specified in the Purchase Order.

**Site Induction** means questionnaires and teachings given by an authorised Company representative at or associated with any Site in order to bring knowledge of Company safety procedures for that Site to a level compliant with legislative and Company requirements

**Site Safety Requirements** means the safety requirements at or associated with any Site as are imposed or required by any person that is related to health and safety.

**Specifications** means details of the design and materials of the Goods and Services as specified by the Company in the Purchase Order.

**Supply** means Taxable Supply as defined in the GST Law.

**Taxes includes** all taxes, fees, levies, duties and charges imposed or assessed in respect of the Services under this Agreement by all local, state or national government authorities including income tax (including withholding for prescribed payments or group tax), payroll tax, statutory superannuation contributions and workers' compensation payments and contributions, sales tax, customs duty, excise tax, and stamp duty but does not include GST.

**Tax Invoice** has the meaning given to that term in the GST Law.

**Term** means the period specified by the Company for the performance of Services in the Purchase Order.

**The Company** is Paddington Gold Pty Ltd, a wholly owned subsidiary of Norton Gold Fields Pty Ltd.

## 1.2 Interpretation

In this Agreement unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words importing a gender include everygender;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning.
- (e) the word person includes a company, an unincorporated association, a Government Agency, or a partnership and vice versa;
- (f) reference to a Party includes its successors and permitted assigns;
- (g) an agreement, representation or warranty by two or more persons binds them jointly and severally;
- (h) a reference to anything (including but not limited to any right) includes a part of that thing;
- (i) a reference to a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law judgement, rule of law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced;
- (j) a reference to a clause, Party, annexure, exhibit, schedule or attachment is a reference to a clause, Party, annexure, exhibit, schedule and attachment to this Agreement and a reference to this Agreement includes any annexure, exhibit, schedule and attachment to it,
- (k) a reference to an obligation includes a liability and a duty and a reference to performance includes observance;
- (l) a reference to a day is reference to a calendar day;
- (m) a reference to an Item is a reference to an Item in the Annexure to this Agreement unless otherwise stated;
- (n) including is to be read as including but not limited to; and
- (o) a reference to \$AUD or dollar is to Australian currency.
- (p) a reference to time is to local time in Kalgoorlie, Western Australia.

## 2. Supply Arrangements

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### 2.1 Supply of Goods

The Company agrees to buy, and the Supplier agrees to sell and deliver, the Goods on the terms and conditions set out in this Agreement.

### 2.2 Provision of Services

The Supplier agrees that it will provide the Services to the Company during the Term in accordance with the terms and conditions set out in this Agreement and any written directions from the Company Representative from time to time during the Term.

### 2.3 Alternate Supply

- (a) Subject to clause 2.3(b), if the Supplier is unable to supply the Goods in accordance with this Agreement, then:
  - i. Supplier must use reasonable endeavours to source goods of the same quality and to the same Specifications as the Goods for the Company from other industry manufacturers or retailers (**Sourced Goods**) and provide the Sourced Goods to the Company on terms no less favourable to the Company than provided for in this Agreement; and
  - ii. the cost to the Company for the Sourced Good must not exceed the Purchase Price of that Good.
- (b) Where a trade name product is nominated as a Good, the Supplier may not supply a substitute or equivalent product in lieu of such Good without the prior written consent of Company.

## 3. Delivery of Goods and performance of Services

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### 3.1 Goods

- (a) The Supplier shall deliver Goods ordered in accordance with clause **Error! Reference source not found.** to the Delivery Point as contemplated by Schedule 1 on the date or within the period stated in the Purchase Order.
- (b) If the Supplier does not comply with clause 3.1(a)) the Company is entitled to immediately terminate the Purchase Order in whole or in part.
- (c) All goods must be packed, marked and transported as specified in the Delivery Instructions and in accordance with industry best practice.

### 3.2 Services

The Supplier must provide the Services at the Site or Sites and on such occasions as may be specified in the Purchase Order or as otherwise directed by the Company Representative in writing from time to time in accordance with this Agreement.



## 4. Pricing and Payment

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### 4.1 Price

#### (a) Goods

Subject to this clause 4, clause 5 and clause 6.2(b), the Company shall pay the Supplier for the supply of the Goods in accordance with the Price agreed and listed on the Purchase Order (**Purchase Price**).

#### (b) Services

Subject to this clause 4, clause 5 and clause 6.2(b), the Company shall pay the Supplier for the supply of the Services in accordance with the price agreed and listed on the Purchase Order (**Services Price**).

### 4.2 Invoice and Payment

#### (a) Goods

Upon delivery of the Goods, Supplier must submit an invoice to Company at the address specified on the Purchase Order to support the claim for payment of the Purchase Price under the Purchase Order. The Invoice must be in a form acceptable to Company and must contain the following information:

- i. The Purchase Order Number;
- ii. A brief description of the Goods supplied, including where appropriate a part number and the Company's stock item number;
- iii. The quantity of the Goods supplied;
- iv. The period in which the Goods were supplied;
- v. Any further information stipulated in any applicable GST legislation, or by the Company, so that the Company will receive the benefit of any input tax credits in relation to the supply of the Goods; and
- vi. Such other accurate verification documentation as may be required by Company.

#### (b) Services

The Supplier must, within 10 days from the end of each month during which Services are provided to the Company, provide the Company with an invoice to support the payment of the Services Price in a form acceptable to Company and must contain the following information:

- (1) A brief description of the Services supplied, including the location of the Site on which services were provided;
- (2) The quantity of the Services supplied (including days and times that Services were provided);

- (3) Any further information stipulated in any applicable GST legislation, or by the Company, so that the Company will receive the benefit of any input tax credits in relation to the supply of the Services; and
- (4) Such other accurate verification documentation as may be required by Company.
- (c) For the avoidance of doubt, the Supplier may combine an invoice required to be provided under clause 4.2 **Error! Reference source not found.** with the invoice to be provided under clause 4.2(b), provided that by doing so the Supplier is complying with the applicable time and content requirements contained within the respective clauses.
- (d) Subject to clause 4.2(e) payment will be made by Company 30 days from the month end after an invoice has been validly issued under this clause 4.2.
- (e) If Company disputes in good faith any amount claimed by Supplier to be due and payable, Company will notify Supplier specifying the reason for the dispute. Payment for the disputed portion will be withheld until settlement of the dispute. Company will pay the undisputed portion of the invoice.
- (f) Any amounts due by the Company to the Supplier under this Agreement may be set off against any amounts due to the Company from the Supplier.
- (g) Unless otherwise agreed, all payments to be made pursuant to this Agreement shall be made by deposit to a bank account in Australia nominated in writing by the intended recipient of the payment.

## 5. Goods and Services Tax

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- 5.1 Unless otherwise specified in the Purchase Order, the Purchase Price or the Service Fee is exclusive of GST.
- 5.2 If GST is imposed in relation to any Supply under this Agreement by one Party to another, the Party receiving the Supply (**Recipient**) must pay the amount imposed to the Party providing the Supply (**the Provider**) at the same time as the Party is required to pay the Provider for the Supply in question, provided that the Provider issues a valid tax invoice to the Recipient:
  - i. within 7 days after the occurrence of the event that causes the GST liability of the Provider on any taxable supply to the Recipient to be attributed to a particular tax period (and the Recipient is not required to make any payment for GST until the Recipient has received a valid tax invoice from the Supplier); or
  - ii. in the case of the provision of Goods or Services by the Supplier, in accordance with the invoice requirements in clause 4.2.

## 6. Quality

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- 6.1 The quality of the Goods and Services supplied by Supplier must be in accordance with the Specifications.
- 6.2 Dispute

- (a) If any dispute or difference arises between the Parties in respect of the Specifications of the Goods or Services, Company shall give notice of the dispute to the Supplier (**Specification Dispute**).
- (b) Payment for the portion of Goods the subject of a Specification Dispute will be withheld by the Company until after settlement of the Specification Dispute.
- (c) The Specification Dispute must be referred to the Party Representatives for resolution pursuant to clause 19.
- (d) If the Party Representatives or their senior management are unable to resolve the dispute, the matter shall be referred to a mutually acceptable Expert who shall act as an expert and whose decision will be final and binding on both Parties.
- (e) The Expert shall be appointed by mutual agreement between the Parties or, failing agreement within 14 days of notice by Company under clause 6.2(a), by the Company. The Company's appointment of an Expert shall be made in good faith on the basis of the nature of the Goods or Services the subject of the Specification Dispute.
- (f) If the Expert determination establishes that the Goods or Services supplied did not conform to the Specifications (or otherwise resolves the dispute in favour of the Company), the Supplier will bear the Expert's costs and the Company will not be liable to pay the Supplier for the portion of the Goods or Services the subject of the Specification Dispute.
- (g) If the Expert determination establishes that the Goods or Services supplied conform to the Specifications (or otherwise resolves the dispute in favour of the Supplier), the Company will pay the Expert's costs and will make payment for the portion of the Goods or Services the subject of the Specification Dispute within 30 days from the month end after the expert has determined the Specification Dispute.
- (h) The Expert shall act as expert and not arbitrator in resolving a Specification Dispute.

## **7. Risk and Title**

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- 7.1 Title in the Goods shall pass upon delivery to the Company at the Delivery Point or upon payment for the Goods, whichever occurs first.
- 7.2 All Goods shall be at the Supplier's risk until such Goods are delivered to, and accepted by, the Company at the Delivery Point. Risk and title will not pass if the Company rejects the Goods.
- 7.3 Passing of title and acceptance of the Goods by the Company does not constitute any acknowledgement by the Company as to the condition of the Goods or that the Goods are compliant with the terms of this Agreement

## **8. Force Majeure**

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- 8.1 No liability for inability to perform resulting from Force Majeure
  - (a) During the period when a party is affected by Force Majeure (**Affected Party**), either party shall be excused from performance and shall not be in default in

respect of any obligation under the Purchase Order or this Agreement to the extent that the failure to perform such obligation relates to a Force Majeure.

- (b) For the avoidance of doubt, the Company shall be excused from its payment obligations if the Force Majeure prohibits or materially inhibits its ability to conduct its usual mining or milling operations.

## 8.2 Meaning of Force Majeure

- (a) In this Agreement, **Force Majeure** means any event not within the control of the Affected Party and which by the exercise of due diligence, the Affected Party is not reasonably able to prevent or overcome, and which prevents the Affected Party from complying with its obligations under this Agreement, or which prohibits or materially inhibits the Company conducting its usual mining or milling operations.
- (b) Force Majeure includes but is not limited to:
  - i. acts of God, including epidemics, landslides, earthquakes, cyclones, floods and washouts;
  - ii. strikes, labour disputes or other industrial disturbances;
  - iii. acts of the enemy including wars, blockades or insurrections;
  - iv. acts of terrorism;
  - v. riots and civil disturbance;
  - vi. laws, rules, regulations, orders or decrees of the Federal or State Government or of any local government or of any statutory authority, not resulting from any wrongful act or omission of the affected party; and
  - vii. refusal or delay in obtaining any necessary consents or approvals from any Government authority, provided that the affected party has acted in a competent and timely manner in endeavouring to secure same.

## 8.3 Notification of Force Majeure

- (a) An Affected Party must as soon as reasonably practicable notify the other party of:
  - i. the occurrence and details of any Force Majeure;
  - ii. the estimated delay in performance resulting from the Force Majeure; and
  - iii. where possible, the proposed method of remedying or abating the Force Majeure.
- (b) An Affected Party must promptly notify the other party of any changes in or cessation of the occurrence or effects of Force Majeure.

## 8.4 Reasonable diligence to overcome

An Affected Party must use all reasonable diligence to overcome the effect of Force Majeure as quickly as possible.

#### 8.5 Termination due to an event of Force Majeure

- (a) If an event of Force Majeure is operative for a period of 60 days, the Company may give to the Supplier a notice of termination, which shall take effect 30 days after the giving of the notice. If, at the end of the 30 day period, the effect of the Force Majeure continues, the Agreement shall terminate.
- (b) After termination under clause 8.5(a) the Company will pay to the Supplier all amounts due and payable by the Company to the Supplier for the Goods and Services provided to the date of termination.

### **9. Indemnity and Insurance**

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- 9.1 The Supplier indemnifies and will hold the Company indemnified from and against all Claims however arising that the Company or its servants, agents or contractors suffer, sustain or incur as a result of or in connection with any breach of the Supplier of this Agreement or arising from any act, default or negligence of the Supplier.
- 9.2 Prior to commencing performance of the Services the Supplier shall provide to the Company certificates of currency for:
  - (a) public liability insurance for an amount not less than \$20,000,000;
  - (b) compulsory motor vehicle third Party liability insurance for all Supplier's vehicles;
  - (c) insurance for third Party property damage by Supplier's vehicles for an amount of not less than \$20,000,000; and
  - (d) workers compensation insurance.
  - (e) If the Services are for professional services then professional indemnity insurance in the sum of \$5,000,000 will be applicable.
- 9.3 The insurances referred to in this clause 9 must be endorsed to note the Company and its officers and employees as joint insured with the Supplier and must be maintained by the Supplier for the Term.

### **10. Warranty and Obligations**

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- 10.1 Without limiting any other warranty or obligation under this Agreement, the Supplier in delivering the Goods to the Company pursuant to the Purchase Order represents and warrants to the Company as at the date of delivery of the Goods ) that:
  - (a) Is the legal and beneficial owner of the Goods and no other person other than Company holds or is entitled to hold any interest in the Goods ;
  - (b) There are no encumbrances, liens, charges and adverse claims over any of the Goods
  - (c) The Goods are manufactured, to the standard of care, skill and diligence that would normally be expected of a reputable and competent organisation providing goods similar to the Goods;

- (d) The Goods are fit for their intended purpose;
- (e) The Goods are free of defect in materials, workmanship and design;
- (f) The Goods are in good working order and condition in the manner for which they were intended;
- (g) The Goods comply with:
  - i. the Specifications; and
  - ii. guidelines, standards or codes or practice or other legal requirement concerning safety, quality, manufacture, labelling including ingredient, packing and delivery;
- (h) The Goods have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable supplier or contractor;
- (i) The Goods will be free of defect or failure or malfunction (except to the extent attributed to wrongful use or failure to maintain) during a period of 12 months from the date of delivery of the Goods;
- (j) The Goods are new unless specified otherwise; and

10.2 Without limiting any other warranty or obligation under this Agreement, the Supplier in performing the Services pursuant to the Purchase Order represents and warrants to the Company as at the date of commencement of the Term it has the requisite skill and knowledge to perform the Services and that all Services will be performed in an efficient manner to standards of skill and care normally exercised by qualified and experienced professional or trade persons in the performance of similar work.

10.3 The Supplier also warrants:

- (a) as the date of entering into this Agreement:
  - (i) the Supplier employs 100 persons or more; and
  - (ii) the Supplier's turnover is \$10,000,000 or more.
- (b) For the purposes of calculating:
  - (i) the number of persons the Supplier employs for clause 10.3(a) above:
    - a. a casual employee is not to be counted unless employed on a regular and systematic basis; and
    - b. a part time employee (including a part time casual employee counted under subparagraph (a) above) is to be counted as an appropriate fraction of a fulltime equivalent;
- (c) The Supplier's turnover is the sum of the values of all supplies the Supplier made during the Supplier's last income year, other than the following:

- (i) supplies that are input taxed;
- (ii) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the A New Tax System (Goods and Services Tax) Act 1999);
- (iii) supplies that are not made in connection with an enterprise that the Supplier carry on; or
- (iv) supplies that are not connected with Australia (excluding external territories and offshore areas).

10.4 By warranting clause 10.3, the Supplier warrants that it is not a small business within the meaning of section 23(4) of Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

## **11. Performance of Services – Compliance with Licences, Approvals and Policies**

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- 11.1 The Company will provide the Supplier with a copy of all applicable policies, procedures and environmental approvals and safety plans for the Sites (**Policies**) within seven (7) days of the commencement of the Term.
- 11.2 The Supplier must at all times comply with all laws relating to:
  - (a) the safe conduct of the Services;
  - (b) the performance of the Services within an operating mine site; and
  - (c) the environment and the prevention of pollution.
- 11.3 Without limiting clause 11.2, the Supplier must at all times comply with:
  - (a) the terms and conditions of the tenements (granted in accordance with the Mining Act 1978) applicable to the Site where the Services will be performed;
  - (b) all applicable Company policies and procedures provided to the Supplier by the Company pursuant to clause 11.1;
  - (c) the Company's safety management plan;
  - (d) the Company's environmental management plan; and
  - (e) all lawful directions of the Company and the Company's Representative in relation to safety and workplace practices and procedures.
- 11.4 The Supplier shall not, without the prior approval of the Company:
  - (a) start fires on or in the vicinity or any work area or Site;
  - (b) drive vehicles off roads or designated access routes;
  - (c) dispose of solid or liquid waste other than in areas prescribed for that purpose by the Company;
  - (d) bring firearms onto the Site; or

- (e) bring dogs, cats or other domestic pets onto the Site.
- 11.5 The Supplier shall, where practicable, immediately report to the Company any incident or accident which causes or has the potential to cause:
  - (a) damage to the environment or pollution; and
  - (b) injury to persons, plant or equipment at the Site.
- 11.6 The Supplier must to the satisfaction of the Company clean up any damage to the Site or pollution caused by or emitted from any facilities or equipment used by the Supplier in the performance of the Services.
- 11.7 A reference in this clause 11 to an obligation on the Supplier includes an obligation on the Supplier to ensure compliance with those obligations by any employee, agent or contractor of the Supplier that enters or is at the Site.
- 11.8 The Supplier will provide any and all permits, licenses and approvals required to sell the Goods and provide the Services as requested by the Company.
- 11.9 The Supplier will:
  - (a) be responsible for any breach or non-observance of any permits, licences or approvals;
  - (b) observe and ensure compliance with the provisions of all applicable laws relating to this Agreement or to the performance of the Services; and
  - (c) exercise due skill, care and diligence in the performance of the Services.

## **12. Performance of Services - Supplier's Personnel**

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- 12.1 The Supplier will employ or otherwise engage Personnel as are necessary for the proper performance of the Services and who are skilled, experienced and competent in their respective trades.
- 12.2 For the Term the Supplier shall:
  - (a) Ensure that its Personnel:
    - i. regularly consult or liaise with and report (either orally or in writing) to the Company Representative with respect to the scope and nature of the Services; and
    - ii. adhere as a minimum to all health and safety requirements as set out in this Agreement including any policies provided to the Supplier pursuant to clause 11.1;
  - (b) adhere as a minimum to all environmental requirements as set out in this Agreement.
- 12.3 The Supplier shall submit to the Company the names and qualifications of the Supplier's employees who will be engaged in performing the Services, in each case not less than 96 hours before the commencement of engagement of an employee in performing the Services. The Company shall have the right to:



- (a) interview and evaluate the qualifications of any person proposed to be engaged by the Supplier in performing the Services; and
  - (b) require the replacement or removal of any person who, in the Company's opinion, is unsuitable to be engaged in the performance of the Services.
- 12.4 It is a condition of entry to the Site that all Personnel complete the Company's Site Induction and any other reasonable training as the Company may require from time to time. The Company may deny access to the Site to any person who fails to complete the Site Induction to the satisfaction of the Company in its sole discretion. In addition, the Supplier's personnel and subcontractors are required to provide a National Police Clearance less than 12 months old, a clear drug and alcohol screening no more than one month old and a front and back copy of their drivers licence
- 12.5 The Supplier shall be responsible for and must from time to time as required by law pay all compulsory superannuation, payroll tax, income tax and any other government levies and charges incurred in connection with providing the Services, and indemnifies and will keep indemnified the Company from and against all losses, liabilities, damages, claims, proceedings, demands, costs and expenses however arising that the Company or its servants, agents or Suppliers suffer, sustain or incur by reason of the Supplier's breach of any part of this clause 12.
- 12.6 The Company may from time to time impose restrictions on access to any Site and limitations on possession of parts of the Site in its sole discretion.

### **13. Performance of Services - Consent to Alcohol and other Drug Testing**

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- 13.1 With respect to Personnel employed or otherwise engaged by the Supplier to perform the Services, the Supplier must:
  - (a) obtain the prior consent of its Personnel to alcohol and drug testing in such form as the Company reasonably requires;
  - (b) ensure that alcohol and drug testing is carried out in respect of its Personnel during the Term as the Company requires from time to time requires.
  - (c) ensure that any Personnel that fails to participate in alcohol and drug testing as required by the Company, or that fails a relevant test to a standard determined by the Company, is immediately removed from the Site and is not permitted to re-enter the Site.

### **14. Performance of Services - Supplier's Plant and Equipment**

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- 14.1 Unless otherwise agreed by the Company, the Supplier shall supply all plant and equipment necessary for performance of the Services.
- 14.2 The cost of maintaining and repairing any Supplier's plant and equipment shall be paid by the Supplier.
- 14.3 The Supplier shall keep all plant and equipment provided by it in good, proper and serviceable repair, order and condition during the Term.

### **15. Gold Stealing Detection Unit**

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- 15.1 It is a condition of entry to the Site that all Personnel of the Supplier agree to comply

with the Company Gold Stealing Detection Unit Clearance protocol;

- 15.2 The Supplier must ensure that all of its Personnel sign all of the Purchaser's documentation in relation to the Company's Gold Stealing Detection Unit Clearance protocol prior to entering the Site.
- 15.3 The Supplier must ensure that Personnel that refuse to comply with the Gold Detection Unit Clearance protocol, or that fail the Gold Detection Unit Clearance as determined by the Company, are immediately removed from the Site and are not permitted to re-enter the Site.

## **16. Assumed risks by the Supplier**

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16.1 Notwithstanding:

- (a) any information provided to the Supplier by or obtained by the Supplier from the Company or others or which is withheld (except where information is unreasonably withheld by the Company);
- (b) any difficulties the Company might have in satisfying the requirements of this Agreement;
- (c) any changes in law whether or not foreseeable at the date of execution of this Agreement;
- (d) compliance with the Company's directions and any consequences in connection with such compliance;
- (e) any increases in cost; or
- (f) any other difficulties the Supplier might have in providing the Goods or Services in accordance with the Purchase Order or this Agreement,

the Supplier acknowledges that these matters are regarded as within the Supplier's liability and risk and the Supplier remains fully responsible for providing the Goods or Services in accordance with the Purchase Order and this Agreement at its own expense and the receipt of the Purchase Price and/or the Service Fee will be regarded as providing adequate allowance for these matters.

## **17. Plant Security**

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The Company shall have the right in the interests of ensuring the security of the property and Personnel of the Supplier and the Company to examine and inspect any package, container or vehicle carried or driven by any Personnel upon entering or exiting the Site.

## **18. Liability**

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With the exception of the following, the liability of each party is limited to 100% of the Price. Liability excludes Consequential Loss;

- i. Any fraud, fraudulent concealment or dishonesty;
- ii. Any illegal, malicious, or reckless act or omission of its personnel;
- iii. Any claim which is recoverable under a policy of insurance maintained pursuant to clause 9; or
- iv. Death, personal injury or third party claim.

## **19. Assignment**

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Neither Party shall, without the prior written consent of the other Party, assign, mortgage or charge any or all of its rights or obligations under or pursuant to this Agreement.

## **20. Dispute**

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In the event of any dispute between the Parties other than a Specification Dispute:

- (a) Either Party may refer the matter in dispute to the Party Representatives for determination;
- (b) Subject to clause 5.2, if the Party Representatives or their senior management are unable to resolve the matter within 30 Days, either Party may commence legal proceedings to resolve the dispute.

## **21. Governing Law**

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This Agreement shall be governed by the laws of Western Australia. Each Party submits to the non-exclusive jurisdiction of courts of Western Australia.

## **22. Confidentiality and Confidential Information**

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Subject to any requirement at law, the details of this Agreement are confidential and shall not be disclosed without the written consent of the other Party.

The Supplier must not, and must ensure that its Personnel do not, unless the Company has first agreed in writing:

- (a) disclose to anyone else, or
  - (b) use for a purpose other than the provision of Services,
- any of the Confidential Information

## **23. Entire Agreement**

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The Purchase Order and this Agreement constitutes the entire agreement between the two Parties in relation to the subject matter thereto and supersedes all prior negotiations, conditions, representations, proposals, understandings and agreements whether written or oral which are hereby excluded and negated save and except for such conditions or representations that cannot be excluded by virtue of the *Competition and Consumer Act 2010* (Cth) or any other legislation applicable hereto.

## **24. Variation and Waiver**

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- 24.1 No failure, delay, relaxation or indulgence on the part of either Party in exercising any power or right conferred upon such Party under this Agreement shall operate as waiver of any such power or right, nor shall any single or partial exercise of any such power or right preclude any other future exercise of such power or right or the exercise of any other owner or right under this Agreement. No variation, modification or waiver of any provision of this Agreement shall have any effect unless expressly agreed in writing by the Parties, and then only in specific instances, and for the purpose for which, and to the extent to which it is made or given.
- 24.2 If any provision of this Agreement is held by any competent authority to be invalid or unenforceable in whole or in part or validity of the other provisions of this Agreement and the remainder of the provision in question will not be affected.

## **25. Relationship of the Parties**

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- (a) The Parties acknowledge and agree that the relationship between Company and Supplier is that of company and independent supplier.
- (b) Nothing in this Agreement will be deemed to constitute the Supplier nor any of its Personnel as an employee, partner, agent or representative of Company. Neither the Supplier nor any of its Personnel will have any authority to incur and will not incur any obligation on the part of Company, except with, and to the extent of, the prior written authority of Company.

## **26. Notices**

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- (a) Any notice or other communication to or by any Party shall be in writing, in English, signed and addressed to the agreed representative of each Party.
- (b) Any communication shall be deemed duly given or made in the case of:
- i. being personally served on a Party, when delivered;
  - ii. being left at the Party's current address for service, when delivered;
  - iii. being sent to the Party's current address for services by pre-paid ordinary mail, on the second Business Day after posting;
  - iv. if the address is outside Australia, by being sent to the Party's current address by pre-paid airmail on the tenth Business Day after posting;
  - v. if delivered by email, the day that the sender's computer reports that the message has been delivered to the email address of the addressee **and** receipt is confirmed by the sender. For the avoidance of doubt replying to the email or acting on information contained in the email would serve as confirmation of receipt. It is incumbent on the sender of any electronic communication to confirm it has been received by the intended recipient.
- (c) If delivery is not made before 4.00pm on a Business Day, it shall be deemed to be received on the next Business Day in that place.
- (d) A Party may from time to time change its address or numbers for service by written notice to the other Party.

## **27. Time of the Essence**

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Time is of the essence with respect to the performance of the Supplier's obligations under this Agreement.

## **28. Modern Slavery**

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- 28.1 For the purposes of this clause 'Modern Slavery' has the meaning given to it under the *Modern Slavery Act 2018* (Cth) (as amended).
- 28.2 The Supplier represents and warrants to the Company that, at the date of entering into this Agreement, the Supplier:
- (a) has not been convicted of any offence involving Modern Slavery and, to the best of the Supplier's knowledge having made reasonable enquiries, neither its Related Bodies Corporate nor Personnel have been convicted of any offence involving Modern Slavery;
  - (b) does not engage in any conduct or omission which would amount to an offence involving Modern Slavery and, to the best of the Supplier's knowledge having made reasonable enquiries, neither its Related Bodies Corporate nor Personnel engage in any conduct or omission which would amount to any offence involving Modern Slavery;
  - (c) to the best of the Supplier's knowledge, having made reasonable enquiries, it is not and has not been and its Related Bodies Corporate and Personnel are not or have not been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence involving Modern Slavery;
  - (d) has no knowledge of any Modern Slavery currently occurring within its operations and supply chain or, if it is so aware, it has disclosed this information to the Company and has taken and will continue to take appropriate action to mitigate, remediate and reduce those risks; and
  - (e) takes and will continue to take reasonable steps to identify the risk of, and reduce or prevent the occurrence of, Modern Slavery within its operations or supply chains.
- 28.3 The Supplier must, in connection with performing its obligations under the Agreement:
- (a) comply, and ensure that its Personnel comply with the Company's corporate policies relating to Modern Slavery; and
  - (b) not, and ensure that its Personnel do not engage in any conduct or omission which would amount to an offence involving Modern Slavery.
- 28.4 The Supplier must promptly notify the Company upon becoming aware of any potential, suspected or actual Modern Slavery within its operations or supply chain and of any other information that would make the representations and warranties given under clause 28.2 if repeated, false.
- 28.5 If requested by the Company, the Supplier must, subject to any existing confidentiality requirements and any relevant law, provide the Company with any information, reports or documents in relation to any Modern Slavery or any risk of Modern Slavery within the Supplier's operations or supply chain.

## **29. Anti-Corruption**

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The Supplier must comply, and must procure that its Personnel comply, with all Applicable Anti-corruption Laws and must not give or offer to give, receive, or agree to accept any payment, gift or other advantage or thing of value (including a facilitation payment) which violates an Applicable Anti-corruption Law.

## **30. Data Protection and Privacy**

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- 30.1 The Supplier must not do anything which has or could reasonably be expected to compromise the Company's information security.
- 30.2 The Supplier must, and must ensure its Personnel:
- (a) only use Personal Information held or controlled by the Supplier or the Personnel in connection with the Purchase Order solely for the purposes of fulfilling the obligations in the Purchase Order;
  - (b) take all reasonable measures to ensure that Personal Information in connection with the Purchase Order in the Supplier's or the Supplier's Personnel's possession or control, is protected against loss and unauthorised access, use, modification or disclosure;
  - (c) comply with the *Privacy Act 1988* (Cth) and any reasonable request of the Company relating to Personal Information; and
  - (d) ensure that any Personnel who accesses or may access any Personal Information in connection with the Purchase Order are made aware of and comply with this clause 30.2.
- 30.3 The Supplier must immediately notify the Company upon becoming aware of a breach or potential breach of clause 30.1.

## **Schedule 1 – Delivery and Access Details**

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### **Item 1. Transportation**

The Supplier will be responsible (at its cost) for transporting or arranging the transportation and discharging of all Goods for delivery to the Delivery Point.

### **Item 2. Weighing**

Weighbridge

If applicable each delivery of Goods will, when being loaded with the Suppliers' transport agent, be weighed using the Supplier's weighometer in accordance with the Supplier's weighing procedures.

### **Item 3. Weights**

If applicable the weight of each delivery of Goods will be set out in the delivery docket.

Except in the case of manifest error, the weight of a delivery set out in the delivery docket (rounded to the nearest 10 kilograms) will be final for calculation and settlement purposes under this Agreement.

### **Item 4. Delivery Point**

The Delivery Point will be to the Site specified in the Purchase Order or as subsequently notified to the Supplier by the Company Representative.

### **Item 5. Delivery Instructions**

#### **(a) Preferred Delivery Times**

Delivery times are to be as per the delivery instructions specified in the Purchase Order.

#### **(b) Loading /Unloading**

Loading/Unloading shall be in accordance with driver's handbook and the guidelines provided by the Company in relation to the Site. Delivery drivers must ensure that paperwork is completed and correct prior to leaving the Site. Delivery drivers are required to complete a Site Induction prior to entering any of the Company's Sites.

#### **(c) Access to Site**

- i. Switch on amber flashing light on vehicle before entering Site.
- ii. All drivers must have long sleeve shirts and trousers with suitable high visibility safety designs, Australian standard safety boots and if required, helmet, gloves and safety glasses.
- iii. Proceed to reception at the Site and sign in.

- iv. A Site Induction is required for drivers who have **not** previously been inducted at the relevant Site. Drivers must notify reception whether they have previously been inducted.
- v. If required by a Company's representative, at their sole discretion,, an escort will be arranged by a Company's representative for all transiting between reception and Site delivery points.
- vi. Proceed to delivery point and complete unloading. Time and date of delivery shall be recorded, obtain a name and signature from a Company representative on delivery docket as confirmation of quantity or volume and time and date of delivery, leave customer copy with the Company representative.

(d) Carrier's Consignment Notes

A carrier's consignment notes must be correctly completed, and show the following:

- i. the relevant Purchase Order Number;
- ii. the description and quantity of Goods delivered.
- iii. a copy of the weighbridge docket

(e) Hazardous Goods

- i. All markings on the outside of containers and packaging containing Goods which are dangerous goods (as determined under the "Australian Dangerous Goods Code") shall be in accordance with the "Australian Dangerous Goods Code" and without limitation, by attaching or affixing a Material Safety Data Sheet in compliance with that Code.
- ii. All vessels / containers for the transport of Goods which are dangerous goods are to be in satisfactory condition for transport via road, rail, sea or air.

**Item 6. Site Contact**

All contact for Goods to be delivered to the Site or Services to be performed at the Site must immediately prior to delivery or performance be confirmed with the warehouse purchasing officer/the Site superintendent or in the case of Services the Company representative that has requested those Services.