

Terms of Order - Services

1 Performance

- 1.1 The Contractor must perform the Services for the Client to and/or at the Site in accordance with this Order, the Policies and the directions of the Client's Authorised Representative, for the Fee.
- 1.2 The Contractor is taken to have carefully examined all documents and other information furnished by the Client relating to the performance of the Services and to have fully satisfied itself of all conditions, risks, contingencies and other circumstances which might affect the performance of the Services, including conditions at the Site, and to have made due allowance for these in the Fee.
- 1.3 The Contractor must not subcontract any part of the Services without the prior written approval of the Client, which may be given or withheld in the Client's absolute discretion.
- 1.4 If the Client or any of its representatives signs a docket or other document required by the Contractor to acknowledge performance of the Services, the Client will not be taken to have accepted the Services as being in accordance with this Order (whether as to quality or quantity). This applies notwithstanding any terms and conditions appearing on any such acknowledgment of performance.

2 Inspection

- 2.1 The Client may at any time enter the premises where any part of equipment to be incorporated in the Services is being manufactured or stored, to inspect, examine or test the Services. The Contractor must at its cost procure access for the Client. The Client may also inspect, examine or test any part of the Services being performed or which have been completed, on Site. No inspection, examination or testing by the Client relieves the Contractor of its obligations under this Order.
- 2.2 If following any inspection, examination or testing by or on behalf of the Client pursuant to **clause 2.1**, the Client anticipates or suspects that the Services may be defective or otherwise in breach of this Order, the Client may give the Contractor a notice requiring the defect or breach to be remedied within the reasonable time identified in the notice and the Contractor must comply with that notice.
- 2.3 If the Contractor does not remedy a defect in the Services or other breach of this Order within the time identified in a notice under **clause 2.2**, the Client may immediately terminate this Order by giving notice to the Contractor.
- 2.4 The Contractor must ensure that the Services are performed in accordance with this Order, all laws and any quality assurance requirements prescribed in this Order. Where no quality assurance requirements are specified, the Services must comply with the best standards applicable to Services of that type.

3 Goods and Services Tax

- 3.1 Unless expressly stated otherwise in this Order, the Fee does not include GST. The Client is not required to pay the GST component of the Fee until the Client receives a *tax invoice* from the Contractor in respect of the *taxable supply*.
- 3.2 If an *adjustment event* occurs, the Contractor must issue an *adjustment note* and a payment must be made as between the parties to reflect the adjusted amount of the GST on the *taxable supply*.
- 3.3 The GST payable on a *taxable supply* must be paid in Australian dollars regardless of whether the Fee is paid in Australian dollars or any other currency. If the Fee is payable in a currency other than Australian dollars:
 - (a) for the purposes of calculating the GST payable, the Fee will be converted into Australian dollars, using the daily exchange rate as published on the Reserve Bank of Australia's website on the date prior to or the date that a *tax invoice* for the *taxable supply* is issued, in accordance with the Australian Taxation Office Guidelines; and
 - (b) the relevant *tax invoice* must specify the exchange rate used and the date of conversion, the GST payable in Australian dollars and the account details into which the GST payable must be paid.

- 3.4 Italicised expressions used in this **clause 3** have the meaning given to them in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

4 Fee

- 4.1 The Fee is fixed and will not be subject to adjustment for rise and fall, exchange rate variations or any other reason, except as provided in this Order.
- 4.2 The Contractor may give the Client a valid tax invoice at the times stated in Schedule 1 (**Invoice**). An Invoice must include:
 - (a) a reference to this Order, including the line item numbers on the order and the Order number;
 - (b) a detailed description of the Services performed, and the period for which the Invoice relates;
 - (c) an individual reference number for the Client to quote with remittance of payment; and
 - (d) the Fee relating to the Services, broken down to reflect the Fee components on the Order.

- 4.3 If the Client requests, the Contractor must provide the Client with all relevant records to calculate and verify the amount set out in any Invoice.
- 4.3 The Client must pay the Contractor the amount determined by the Client as the appropriate proportion of the Fee for the Services performed (having regard to the provisions of this Order and the proportion of the total Services performed) within 30 days of the end of the month in which the

Invoice was received by the Client. If the Client proposes to pay an amount less than that claimed in the Invoice, on or before the due date for payment the Client will issue to the Contractor a payment schedule identifying the amount (if any) which the Client believes to be then payable, and which the Client proposes to pay, to the Contractor and the reasons why it is less than the amount claimed. The Contractor must then provide an adjustment notice or revised valid tax invoice.

- 4.4 All Invoices must be itemised and be in a form which clearly indicates any GST component already paid by the Contractor for which the Client may claim an input credit.
- 4.5 The Fee includes all taxes, levies and fees (excluding GST) which are payable in relation to the performance of the Services. For the avoidance of doubt, the Contractor must pay all such taxes, levies and fees.
- 4.6 The Fee includes all costs associated with the transport, loading and unloading of equipment, plant and materials. For the avoidance of doubt, the Contractor must pay all such costs.
- 4.7 The Fee cannot be varied for any reason except where expressly agreed in writing, signed by an Authorised Representative of the Client.
- 4.8 The Client may, by notice to the Contractor and signed by an Authorised Representative of the Client, vary the quantity, quality or description of the Services, the Delivery Date, the Term or any other aspect of the performance of the Services. The Fee will be altered by a reasonable amount determined by the Client for that variation.
- 4.9 The Client may deduct from any amount owing to the Contractor, including any part payment of the Fee, any amount which the Client determines is or may become payable by the Contractor to the Client including amounts by way of damages.
- 4.10 The Client may pay the Fee by cheque, bank cheque, electronic funds transfer, or cash payment or in any other manner agreed in writing by the parties.
- 4.11 All payments by the Client will be on account only and will not be an admission that the Services comply with this Order.
- 4.12 The provisions of this Order do not prevent a party from seeking adjudication under the *Construction Contracts Act 2004* (WA) in respect of a payment dispute, or prevent a party from contending that this Order does not constitute a construction contract, as those terms are defined in the *Construction Contracts Act 2004* (WA).
- 4.13 The adjudicator for any payment dispute under the *Construction Contracts Act 2004* (WA) shall be appointed by the Resolution Institute, WA Chapter (or any successor body).

5 Time

- 5.1 The Contractor must perform the Services from the Commencement Date:
 - (a) if there is a Term stated in Schedule 1, for the Term during the Service Hours stated in Schedule 1; or
 - (b) if there is no Term:
 - (i) until completion of the Services; and
 - (ii) complete the Services by the Delivery Date.The Contractor must notify the Client immediately upon the Contractor becoming aware or having reasonable grounds to believe that it will not be able to complete the Services by the Delivery Date or in the time otherwise required by this Order.
- 5.2 The Delivery Date and/or Term may be extended where the Contractor is delayed in the performance of the Services by an act, omission or default of the Client (or its agents or employees), or for the Client's sole convenience. The period of an extension to the Delivery Date and/or Term will be determined by the Client in its sole discretion.

6 Risk title and Indemnity

- 6.1 Title in any materials, equipment and other things to be incorporated into any physical Services which is to be handed over to the Client, will pass to the Client on the earlier to occur of:
 - (a) delivery of those materials, equipment or things to Site; and
 - (b) when payment is made in respect of part or all of those materials, equipment or things.
- 6.2 Notwithstanding clause 6.1, if the Services involves any work or service of a construction, civil, mechanical, electrical or any physical nature, the Contractor will be responsible for the care of the work or services performed (including all materials, equipment and things whether or not incorporated into any physical building, structure or plant) and any of the Client's plant and equipment that is accesses from the date of commencement of the Services to 4:00pm on the date that the Contractor completes performance of the Services.
- 6.3 The Contractor indemnifies the Client and its officers, employees, agents and contractors against any action, claim or proceeding brought or threatened to be brought against the Client (including all costs and expenses which the Client may suffer or incur in disputing any such action, claim or proceeding) and any liability, cost, damage, liability or expense, whatsoever and howsoever, whether directly or indirectly, and whether or not foreseeable, suffered or incurred by the Client, including any injury to any person or damage to any property, in respect of, in relation to or in connection with a breach of this Order by the Contractor, the performance of the Services and any activity

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- directly or indirectly associated with the performance of the Services, and any negligent act or omission by the Contractor or its officers, employees, agents and contractors.
- 6.4 The benefit of any indemnity or waiver of recourse given by the Contractor under this Order extends to the Related Entities (and in the case of an indemnity, also extends to Roy Hill Operations Pty Ltd (ACN 168 771 355)).
- 7 **Insurance**
- 7.1 Prior to the Contractor performing any work pursuant to this agreement, the Contractor must effect (or cause to be effected) and thereafter maintain (or cause to be maintained) the following insurances for amounts not less than and deductibles not more than those specified:
- (a) Motor Vehicle insurance:
- (i) in respect of third party property damage and death or injury to persons for all plant, equipment and motor vehicles to be used in connection with the Services;
 - (ii) with a limit of indemnity in respect of third party property damage of \$20,000,000 any one claim and unlimited in the aggregate;
 - (iii) for compulsory third party insurance covering death or injury to persons, as required by applicable law; and
 - (iv) with a maximum deductible of \$50,000 in respect of third party property damage cover.
- (b) Public and product liability insurance of \$20,000,000;
- (c) Plant and Equipment insurance:
- (i) in respect of all plant, equipment and supplies, including any temporary work and materials not for incorporation into any work to be handed over to the Client by the Contractor, used or to be used by the Contractor in connection with the Services;
 - (ii) for a sum equivalent to the full replacement value of all such plant, equipment and supplies; and
 - (iii) with a maximum deductible of \$100,000.
- (d) Employers liability and workers compensation insurance against any liability for death of, or injury to persons employed (or deemed to be employed) by the Contractor in the performance of Services whether under statute or common law. Where permitted by law, the Contractor must procure an extension to this policy to indemnify the Client as principal for the Client's liability under statute and at common law to person's engaged by the Contractor. The policy must contain a waiver of subrogation in favour of the Client.
- (e) Where required by this Order, professional Indemnity insurance, with a level of cover not less than \$5,000,000.
- 7.2 The Contractor must maintain, or cause to be maintained, the insurances referred to in **clause 7.1** until the date of completion of the Services, except in respect of professional indemnity insurance which must be maintained for 7 years after completion of the Services.
- 7.3 The Contractor must furnish to the Client certificates of currency evidencing the effecting and maintaining of the insurances required by **clause 7.1**;
- 7.4 If the Contractor fails to provide to the Client certificates of currency as required by **clause 7.3**, the Client may effect and maintain the relevant insurances and pay the premium. The costs incurred by the Client in connection with taking such action will be recoverable from the Contractor as a debt due and payable from the Contractor to the Client.
- 7.5 Contractor's general insurance requirements and obligations:
- (a) The Contractor's insurances must be effected and maintained with Reputable Insurers or insurers otherwise agreed between the Client and the Contractor.
- (b) The Contractor must:
- (i) not do or permit, or omit to do, anything which prejudices any insurance; and
 - (ii) rectify anything which might, if not rectified, prejudice any insurance; and
 - (iii) fully and promptly disclose all material information to insurers relating to the insurances where failure to do so may prejudice or invalidate an insurance; and
 - (iv) comply at all times with the terms of each insurance.
- 8 **Warranties and intellectual property**
- 8.1 The Contractor warrants, at the time it accepts this Order and at the time the Services are performed, that:
- (a) the Services will be performed precisely in accordance with:
- (i) the requirements of this Order (as varied under **clause 4.8**);
 - (ii) any relevant patterns or specifications;
 - (iii) any other warranties or guarantees contained in this Order;
 - (iv) all applicable Australian standards; and
 - (v) all laws, including the provisions of any legislation applicable to the Services;
- (b) it has the necessary skills, resources and experience to successfully, effectively and efficiently perform the Services in accordance with this Order; and
- (c) it has all intellectual property rights (including any patents, trademarks and copyright) necessary to perform the Services in accordance with this Order, and that the performance of the Services will not infringe any intellectual property rights.
- 8.2 The warranties in **clause 8.1** are in addition to any warranties which are or may be implied under any legislation applicable to the Services.
- 8.3 The Contractor indemnifies the Client against any loss, cost, damage or expense incurred by the Client as a consequence of or in connection with any claim by a third party that it has a right to any intellectual property right in relation to any part of the Services provided or performed by or on behalf of the Contractor.
- 8.4 The Contractor grants to the Client a royalty free, perpetual and irrevocable licence to use all intellectual property in the Services and any component incorporated into the Services and any other works which the Client may perform in relation to the Services in the future. The licence will remain vested in the Client despite the termination of this Order and the Client may assign or sublicense the rights granted by the licence without the consent of the Contractor.
- 9 **Defective Services**
- 9.1 If at any time during the period of 12 months from the completion of the Services the Client discovers that the Services do not comply with this Order (including any warranty given under **clause 8.1**), the Client may (without limiting any other right available to it):
- (a) rectify or re-perform the Services or have the Services rectified or re-performed and the cost, loss, damage and expense suffered or incurred by the Client will be a debt due and payable from the Contractor to the Client; or
 - (b) give the Contractor a notice requiring it to, at its cost and within the reasonable time prescribed in the notice, re-perform the Services.
- 9.2 The Contractor must comply with any notice under **clause 9.1(b)**.
- 10 **Confidentiality**
- The Contractor must treat this Order and any information provided by the Client or on its behalf, as confidential and must not disclose the Order or such information, the existence of the Order, the information contained in it or its subject matter to any third party (except as may be required to perform its obligations under this Order, by law, a Court order or the rules of any securities exchange) or use it for advertisement, display or publication without the prior written consent of the Client.
- 11 **Drawings and tools**
- All tools, patterns, materials, drawings, specifications and other data provided by the Client to the Contractor in connection with this Order:
- (a) remain the property of the Client (except that the Contractor is responsible for making good any damage done to them while they are in the possession of the Contractor);
 - (b) must be used only for the purpose of this Order;
 - (c) must not be passed to or divulged to any third party except with the express written consent of the Client;
 - (d) must not be reproduced except to the extent necessary and incidental to complete this Order; and
 - (e) must be returned, together with any reproductions, to the Client on completion of this Order.
- 12 **Contractor to provide equipment and facilities**
- 12.1 The Contractor will be responsible at its own expense for providing and maintaining in a lawful manner all equipment and facilities used or necessary for providing the Services to the Client.
- 12.2 Without limiting the Contractor's obligation in **clause 12.1**, the Contractor must ensure that all equipment and facilities used by the Contractor or any person engaged or employed or acting for the Contractor are used and maintained in compliance with all applicable laws, including, but not limited to, the Health and Safety Legislation.
- 13 **Client may make equipment and facilities available**
- 13.1 The Client will not be obliged to supply the Contractor or any of its Personnel with any equipment (including any motor vehicles or communications equipment), but at the discretion of the Client the Contractor or its Personnel may be provided with use of office equipment and facilities by the Client from time to time at the premises occupied by the Client, but only for the purpose of providing the Services to the Client.
- 13.2 The Contractor must keep the Client's equipment in good order and condition, except for fair wear and tear.
- 13.3 The Contractor must compensate the Client for any loss or damage to or waste of the Client's equipment caused or contributed to by the Contractor or the Contractor's Personnel.
- 13.4 The Contractor must not remove the Client's equipment from Site without the Client's prior written approval.
- 14 **Client supplied accommodation**
- 14.1 For the purposes of this **clause 14**:
- Camp Accommodation** means:
- (a) a reasonable standard of accommodation, breakfast, crib lunch and evening meal and all reasonable ancillary or related services including messing, servicing of the rooms and a laundry service, either in the construction accommodation on the Client's Roy Hill mine site (if applicable) or such other reasonable location determined by the Client; and
 - (b) return flights between Perth and the Client's Roy Hill mine site in accordance with the Client's charter services for flights to that site

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which the Client organises and notifies to the Contractor from time to time or return flights between Perth and such other place in Western Australia as required in order to perform the Services as specified by the Client,

but excludes all transport other than return flights between Perth and the destination specified above (including, interstate and overseas flights) (**Other Transport**).

Man-Power Histogram means the Contractor's accommodation requirements for its Personnel necessary for performing the Services at the Client's Roy Hill mine site or such other Site as specified in Schedule 1.

14.2 Subject to **clause 14.5**, the Client agrees to provide the Camp Accommodation free of charge to the Contractor for the Contractor's Personnel who are necessarily involved in performing the Services, provided that:

- (a) the Contractor's Personnel comply with any rules and policies and terms and conditions as the Client may from time to time decide in relation to the Camp Accommodation, including the Client's accommodation rules;
- (b) all occupants of the Client's accommodation or provided accommodation that are Contractor's Personnel comply with the Client's relevant lease or occupancy documents;
- (c) the Client may, at the Contractor's cost, evict or refuse to accommodate any person whose conduct is, in the sole discretion of the Client, inappropriate, or whose behaviour is such as to make their continued presence undesirable; and
- (d) the Contractor will make good any damage to the Client supplied accommodation beyond normal wear and tear, or pay the Client for the damage caused, and the Client may claim the cost as a debt due from the Contractor to the Client.

14.3 If the Contractor requires Camp Accommodation above that set out in the Man-Power Histogram the Contractor must make a request to the Client in writing for the extra Camp Accommodation immediately (**Extra Room Request**).

14.4 The Client may, at its absolute discretion, agree to provide all or any such Camp Accommodation in an Extra Room Request. If the Client rejects all or any part of an Extra Room Request, the Contractor will be liable for all costs, delays and other risks arising from or in connection with the rejection and cannot make any claims against the Client in connection with such rejection.

14.5 The Client may charge the Contractor under **clause 14.6**:

- (a) for any Camp Accommodation provided as a result of an Extra Room Request;
- (b) if the Contractor or its Personnel book(s) any Camp Accommodation with the Client under this **clause 14**, but does not utilise the relevant service, unless the reason for the failure to utilise the service is approved in writing by the Client; and
- (c) for any Other Transport costs which in some way accrue to the Client.

14.6 The fees which the Client may charge under **clause 14.5**, and which are recoverable from the Contractor as a debt due from the Contractor to the Client, are as follows:

- (a) accommodation = daily rate for accommodation+ messing+ transport via bus to the Client's Roy Hill mine site at direct cost + 20%;
- (b) flights = cost per round trip flight from Perth to Client's Roy Hill mine site or such other site or vice versa at direct cost + 20%; and
- (c) Other Transport = direct cost + 20%.

15 Occupational Health and Safety

15.1 The Contractor is responsible for the occupational health and safety at all times of all Personnel engaged by it and Personnel working or attending at any working environment under the Contractor's control.

15.2 The Contractor shall ensure that in carrying out the Services it complies with the Health and Safety Legislation and the Policies and shall ensure that all its Personnel comply with the Health and Safety Legislation and the Policies.

15.3 The Contractor shall keep the Client fully and regularly informed of all safety matters arising out of, or in any way in connection with, the Services.

15.4 The Contractor shall comply with any safety management plan provided by the Client to the Contractor.

15.5 The Client retains a power to audit the Contractor and its Personnel's compliance with any safety management plan, Policies and/or Health and Safety Legislation at its discretion. Any such audit by the Client will not relieve the Contractor from any of its obligations or liabilities in respect of occupational health and safety, including under the Health and Safety Legislation or this **clause 15**.

15.6 The Contractor, at no additional cost to the Client, shall, and shall ensure that all of the Contractor's Personnel promptly obey all directions and instructions given by the Statutory Manager relating to the safety of persons or property, or to the proper compliance with the Health and Safety Legislation which it is the duty of the Statutory Manager to enforce. The decision of the Statutory Manager is final and any such directions or instructions he or she may give shall be obeyed in the manner he or she directs. To the extent of any inconsistency, this **clause 15** prevails over all other provisions of this agreement.

15.7 Without limiting any other clause of this agreement, the Contractor must:

- (a) in the event that there has been a potential breach of the Health and Safety Legislation or the safety management plan the Contractor must notify the Client, consult with the Client and agree on any remedial actions which should be taken or failing agreement, comply with the remedial action directed by the Client, and the Client may recover from the Contractor any resulting costs and expenses incurred by the Client;
- (b) maintain appropriate safety precautions and programs so as to prevent injury to persons or damage to property on, about or adjacent to the Site and the Services;
- (c) ensure that all Contractor Personnel performing the Services on the Site (including all persons employed or engaged by its subcontractors) undertake an agreed safety and site induction course;
- (d) ensure that all the Services are executed in a safe manner including notifying the Client and any other users of any dangerous or hazardous conditions arising out of the carrying out of the Services;
- (e) have on the Site at all times that the Services are being carried out, appropriate first aid facilities and a member of its staff fully qualified and experienced in occupational health and safety and familiar with occupational health and safety law including the Health and Safety Legislation;
- (f) if the Contractor or any Contractor Personnel, damages any property, promptly make good the damage and pay any damages which the Contractor is liable at law to pay; and
- (g) ensure that all work, plant, equipment and other items used in the carrying out of the Services is maintained in a safe and working order and complies with the Health and Safety Legislation.

15.8 If the Client considers that the Contractor has failed or is failing to comply with an obligation under the Health and Safety Legislation or this **clause 15** and the Client notifies the Contractor of this the Contractor will consult and agree with the Client the necessary remedial action or failing agreement comply with the remedial action directed by the Client, and the Client may recover from the Contractor any resulting costs and expenses incurred by the Client.

15.9 To the maximum extent permitted by law, and without limiting any other indemnity by the Contractor, the Contractor indemnifies the Client against any and all suits, actions, proceedings, claims, demands, losses, damages, liabilities, costs and expenses of whatsoever nature (including legal costs on a full indemnity basis) which the Client may suffer or incur or have brought against it, or which may be imposed under or may arise out of enforcement of any section of the Health and Safety Legislation, arising out of or in any way in connection with any failure by the Contractor to comply with the Health and Safety Legislation or any breach by the Contractor of its obligations under this **clause 15**.

15.10 In the event of any safety incident occurring which concerns any aspect of the Services, the Contractor must, when requested to do so by the Client, give all documents relevant to the incident to the Client, and also authorise the Client and its representatives or agents to conduct interviews with the Contractor's Personnel regarding all matters relevant to the incident.

15.11 The Contractor must notify the Client's Authorised Representative as soon as practicable, but in any event within 24 hours, of any accident, injury, loss or damage of any kind which occurs in connection with the Services.

16 Industrial relations

16.1 The Contractor must, and must ensure that its subcontractors, comply with all applicable Industrial Legislation.

16.2 The Contractor:

- (a) must subject to **clause 16.3** assume sole responsibility for, and manage, all Industrial Action and Industrial Relations Issues in relation to the Contractor's obligations under this Order;
- (b) must keep the Client regularly informed of any Industrial Relations Issues or Industrial Action which will, or is likely to, affect the performance of the Contractor's obligations under this Order;
- (c) must immediately notify the Client of:
 - (i) any Industrial Relations Issues or Industrial Action which causes the Contractor or a subcontractor engaged by the Contractor to suspend or cease carrying out all or any part of the Contractor's obligations under this Order;
 - (ii) what action or measures (including settlement) the Contractor has taken or proposes to take to overcome, or minimise the effects of, such Industrial Relations Issues or Industrial Action; and
 - (iii) any request by a trade union to access the Site.
- (d) where the Contractor is required to mobilise more than 5 Personnel to Site, either as its own Personnel or subcontractor Personnel, for a period exceeding 8 consecutive days, or for multiple days exceeding 8 in aggregate:

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- (i) must, not less than 14 days before mobilising to Site, submit an employee relations management plan in terms which comply with the Client's Employee Relations Management Plan and which is acceptable to the Client. As a minimum the Contractor's employee relations management plan shall set applicable remuneration including wage rates and allowances, site working hours and roster arrangements. The Contractor's employee relations management plan shall also make reference to a registered industrial relations agreement where applicable. In the event that the Contractor has subcontracted any part of the Services, such subcontractors must comply with the requirements of this clause. The Contractor must implement and comply with and ensure all its subcontractors implement and comply with the Contractor's employee relations management plan;
- (ii) must not carry out any of the Services under this Order on or about the Site until:
- A. it has enterprise agreements that apply (as that term is defined in section 12 of the *Fair Work Act*) to the work under the Order with all Contractor employees, including those who will be working on the Site, all on terms acceptable to the Client; and
 - B. it has ensured that its subcontractors have enterprise agreements that apply (as that term is defined in section 12 of the *Fair Work Act*) with all of the subcontractors employees, including those who will be working on Site, all on terms acceptable to the Client.
- 16.3 The Client has a right to direct the Contractor in relation to the management of all Industrial Action and Industrial Relations Issues in relation to the Contractor's obligations under this Order, including but not limited to with respect to the commencement and conduct of proceedings in any court or tribunal, and any negotiations and dealings with an industrial association (as that term is defined in section 12 of the *Fair Work Act*).
- 17 **Suspension and termination**
- 17.1 Any parties' rights to terminate this Order under the terms of this Order are in addition to their rights of termination under statute or at common law.
- 17.2 The Client may suspend all or part of the performance of the Services at any time for any period by notice to the Contractor. The Contractor must comply with such a notice and must recommence performance of the Services when required by notice from the Client. The Contractor will not be entitled to any additional payment arising as a result of any such suspension.
- 17.3 The Client may immediately terminate this Order at any time by giving the Contractor notice. Subject to any rights of set off or deduction which the Client may have, on termination of this Order the Client's only obligation will be to pay the Contractor for Services which have been performed in accordance with this Order prior to the date of termination.
- 18 **Dispute resolution**
- 18.1 Subject to **clause 18.2**, any dispute arising in relation to this Order (**Dispute**) must be determined in accordance with this **clause 18**.
- 18.2 **Clause 18.1** does not prevent either party from applying to the Supreme Court of Western Australia for urgent injunctive relief in relation to this Order.
- 18.3 If a party alleges a Dispute has arisen it must give notice of that fact to the other party (**Dispute Notice**).
- 18.4 Within ten Business Days of service of a Dispute Notice, the Client's representative and a senior representative of the Contractor must meet and, confidentially and in good faith, attempt to resolve the Dispute. If the Dispute is not resolved within ten Business Days of the last date for the meeting of delegates under this clause, the matter will be and is hereby referred to arbitration.
- 18.5 The seat of the arbitration will be Perth, Western Australia and the arbitration is to take place in Perth before 1 arbitrator. The arbitrator will be nominated by the Chair of Resolution Institute (ACN 008 651 232) or any successor body upon the application of either party. The arbitration will be conducted in accordance with:
- (a) the Resolution Institute Arbitration Rules as amended by the Resolution Institute from time to time which are applicable at the date of referral of the dispute to arbitration (or any replacement Rules issued in the future by the Resolution Institute or any successor body); or
 - (b) if one or more parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules (i.e. the version applicable at the date of referral of the dispute to arbitration) will apply and the appointing authority will be the Chair of the Resolution Institute or any successor body.
- 18.6 To the extent permitted by law, the parties agree that:
- (a) the powers conferred and restrictions imposed on a court by Part 1F of the *Civil Liability Act 2002* (WA) are not conferred or imposed on the arbitrators appointed under this **clause 18**; and
 - (b) any such arbitrators will have no power to make an order or award in respect of a Dispute by applying or considering the provisions of Part 1F of the *Civil Liability Act 2002* (WA) (or any equivalent statutory provisions in any other state or territory) which might, in the absence of this **clause 18.6**, have applied to any Dispute referred to arbitration.
- 19 **Assignment**
- 19.1 The Contractor must not assign or deal with the Contractor's interest under this Order without the prior written consent of the Client. Any purported dealing by the Contractor in breach of this **clause 19.1** is of no effect. The Client may assign or deal with its interest under this Order at any time by notice in writing to the Contractor.
- 19.2 The Client may grant or create any mortgage, pledge, lien, charge, assignment, hypothecation, security interest, title retention, preferential right or trust arrangement or any other security agreement or arrangement (**Security**) over this Order and any rights under this Order.
- 19.3 Without limiting **clauses 19.1 or 19.2**, when directed by the Client, the Contractor, without being entitled to compensation, must promptly execute a deed of novation in the form reasonably required by the Client, such deed being between the Client, the Contractor and a suitable substitute for the Client. For the purpose of effecting such novation only, the Contractor hereby irrevocably appoints the Client to be the Contractor's attorney with authority to execute such documents as are necessary to give effect to the novation and to bind the Contractor accordingly.
- 19.4 If requested by the Client, the Contractor must enter into a deed (**Side Deed**) with any person in whose favour Security is granted or created (**Financier**) and the Client, imposing conditions which are reasonable and mutually agreeable to all parties to the Side Deed, acting reasonably, to protect the interests of the Contractor and the Financier. The Side Deed must incorporate such provisions as are commercial and appropriate and the Contractor and the Client must each act reasonably in respect of the negotiation and finalisation of the Side Deed having regard to the matters specified in this **clause 19**.
- 20 **Liability**
- 20.1 Subject to **clause 20.2**, a party will not be liable to the other party in respect of any Consequential Loss which may be suffered or incurred by the other party in connection with this Order whether arising by way of indemnity, for breach of contract, in tort (including negligence), under statute, in equity or otherwise.
- 20.2 The exclusion of liability described in **clause 20.1** does not extend to liability for Consequential Loss in respect of:
- (a) death or injury to persons or damage to real or personal property;
 - (b) conduct which is so grossly careless that it amounts to a reckless disregard for the harmful, foreseeable and avoidable consequences which may result from it;
 - (c) breach of any law by the Contractor, or the completed Services not complying with any applicable law;
 - (d) breach of **clause 10** by the Contractor;
 - (e) any liability of the Contractor to the extent that the Contractor is indemnified for the liability under any policy of insurance required to be maintained, or effected and maintained by the Contractor under this Order, or would have been indemnified but for the inclusion of clause 20.1 or the failure by the Contractor to comply with its insurance obligations under this Order or the terms of any such policy of insurance or to diligently pursue a claim;
 - (f) liability arising from fraudulent or criminal acts or omissions of the liable party or any of its employees, agents or subcontractors;
 - (g) liability for wilful misconduct in breach of contract which has substantial harmful consequences for the other party (including an intentional unlawful abandonment of this Order);
 - (h) liability for insurance deductibles borne by the Contractor;
 - (i) liability for any fine, penalty, sanction or compensation imposed by any law; or
 - (j) liability which, by law, a party cannot contract out of or limit.
- 20.3 Subject to **clause 20.4** each party's maximum aggregate liability to the other party under or in any way connected to this Order, whether arising by way of an indemnity, for breach of contract, in tort (including negligence) under statute, in equity or otherwise, is limited to the amount stated in schedule 1.
- 20.4 The limitation of liability set out in **clause 20.3** does not apply to or limit any liability in respect of:
- (a) death or injury to persons or damage to real or personal property;
 - (b) conduct which is so grossly careless that it amounts to a reckless disregard for the harmful, foreseeable and avoidable consequences which may result from it;
 - (c) a breach of any law by the Contractor, or the completed Services not complying with any applicable law;
 - (d) breach of **clause 10** by the Contractor;
 - (e) liability of the Contractor to the extent the Contractor is indemnified for the liability under any policy of insurance required to be maintained, or effected and maintained by the Contractor under this Order, or would have been indemnified but for the inclusion of **clause 20.3** or the failure by the Contractor to comply with its

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insurance obligations under this Order or the terms of any such policy of insurance or to diligently pursue a claim;

- (f) liability arising from fraudulent or criminal acts or omissions of the liable party or any of its employees, agents or subcontractors;
- (g) liability for wilful misconduct in breach of contract which has substantial harmful consequences for the other party (including an intentional unlawful abandonment of this Order);
- (h) liability for insurance deductibles borne by the Contractor;
- (i) liability for any fine, penalty, sanction or compensation imposed by any law; or
- (j) liability which, by law, a party cannot contract out of or limit.

21 Agency

21.1 If the client is Roy Hill Holdings Pty Ltd (ACN 123 721 077), the Client enters into this Contract on its own behalf and as agent for and on behalf of:

- (a) Roy Hill Iron Ore Pty Ltd (ACN 123 722 038); and
- (b) Roy Hill Infrastructure Pty Ltd (ACN 130 249 633),
(collectively the "Related Entities").

21.2 The Related Entities shall be entitled to the rights and subject to the obligations and liabilities created by this Order.

21.3 The Client may enforce this Order for and on behalf of the Related Entities as well as for itself.

21.4 Loss of the Related Entities may be recovered as part of the loss recoverable by the Client pursuant to this Order or otherwise, but the Client and each of the Related Entities may not recover separately for the same loss. Any such loss will be subject to the same limitations or exclusions of liability that apply under this Order.

22 General

22.1 Where this Order allows the Client a discretion as to whether to do or not to do any act, matter or thing of any kind, or confers on the Client a power of determination or right of opinion, approval or the like, that discretion, power or right is absolute, unless this Order states otherwise, and the Client is not obliged to give its reasons.

22.2 No waiver by the Client of a breach of this Order by the Contractor constitutes a waiver for any subsequent or continuing breach by the Contractor.

22.3 If any of the provisions of this Order are held by a court of competent jurisdiction to be invalid or otherwise unenforceable that provision may be severed from this Order and the remainder of this Order will continue to be effective and valid notwithstanding such severance.

22.4 Except as expressly stated otherwise in this Order, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Order.

22.5 This Order may only be varied or replaced by a document duly executed by the parties.

22.6 A single or partial exercise or waiver by a party of a right relating to this Order does not prevent any other exercise of that right or the exercise of any other right. A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

22.7 Except as expressly stated otherwise in this Order, the rights of a party under this Order are cumulative and are in addition to any other rights of that party.

22.8 Each party must promptly do whatever the other party reasonably requires of it to give effect to this Order and to perform its obligations under it.

22.9 This Order is governed by and is to be construed in accordance with the laws applicable in Western Australia. Subject to **clauses 14.1 to 14.5**, each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

22.10 This Order may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

22.11 This Order is not intended to create a partnership, joint venture or agency relationship between the parties.

22.12 This Order:

- (a) subject to paragraphs (b) and (c), supersedes all other communications and negotiations (whether oral or written) between the Contractor and the Client in relation to the Services and constitutes the entire agreement between the Contractor and the Client in respect of the Services;
- (b) is to be read subject to any written and signed notice of award or contract between the parties and the terms of any such written and signed notice of award or contract will prevail over the terms of this Order to the extent of any inconsistency; and
- (c) will be superseded by any subsequent written and signed notice of award or contract between the parties that relates to the Services, which notice of award or contract will apply retrospectively to any such Services.

23 Interpretation

23.1 In this Order:

Authorised Representative means the authorised representative as described in Schedule 1.

Business Days means a day other than a Saturday, Sunday or public holiday in Perth, Western Australia.

Client means the party whose logo appears on the purchase order.

Consequential Loss means any:

- (a) loss of profit;
- (b) loss of revenue;
- (c) loss of use;
- (d) loss of production; or
- (e) loss of opportunity.

Contractor means the vendor as described in this Order.

Delivery Date means the date identified in this Order.

Employee Relations Management Plan means the Client's document entitled "Roy Hill – Operations: Short Form Employee Relations Management Plan".

Fee is:

- (a) where Schedule 1 states that the Fee is based on a lump sum or lump sums, that lump sum or the aggregate of the lump sums;
- (b) where Schedule 1 states that the Fee is based on rates, the sum ascertained by multiplying those rates by the quantities properly supplied in accordance with this Order;
- (c) where Schedule 1 states that the Fee is based on a lump sum or lump sums and rates, the aggregate of the lump sum or lump sums and the sum ascertained by multiplying the rates by the quantities properly supplied in accordance with this Order; or
- (d) where neither (a), (b) nor (c) applies, the net amount stated in the purchase order.

Health and Safety Legislation means:

- (a) the Mining Act 1978 (WA) and the Mines Safety and Inspection Act 1994 (WA) and regulations made thereunder (collectively "mine safety legislation"), to the extent the mine safety legislation applies to the Site or the Services; and
- (b) to the extent the mine safety legislation does not apply to the Site or the Services, the Occupational Safety and Health Act 1984 (WA) and any regulations made thereunder.

Industrial Action means industrial action of any description including any action of the following kinds:

- (a) the performance of work by any person employed or engaged by the Contractor or the Contractor's agents or subcontractors in a manner different from that in which it is customarily performed, or the adoption of a practice in relation to work, the result of which is a restriction or limitation on, or a delay in, the performance of work;
- (b) a ban, limitation or restriction on the performance of work by any person employed or engaged by the Contractor or the Contractor's agents or subcontractors, or on the acceptance of or offering for work by such a person;
- (c) a failure or refusal by any person employed or engaged by the Contractor or the Contractor's agents or subcontractors to attend for work or to perform any work; or
- (d) picketing or protest which interferes with the performance of the Contractor's obligations under this Order, or hinders the mobilisation of personnel, equipment or supplies required for the Contractor's obligations under this Order.

Industrial Legislation means industrial legislation of the Commonwealth or State of Western Australia, including, but not limited to, the *Fair Work Act*, the *Industrial Relations Act 1979* (WA), the *Long Service Leave Act 1958* (WA), the *Minimum Conditions of Employment Act 1993* (WA), and any regulations made thereunder, or any legislation passed in replacement or substitution.

Industrial Relations Issues means any issues arising out of or pertaining to the relationship between:

- (a) the Contractor, and the Contractor's or the Client's employees, agents or subcontractors;
- (b) any persons employed or engaged by the Contractor or the Contractor's agents or subcontractors;
- (c) an industrial association (as that term is defined in section 12 of the *Fair Work Act*) and the persons referred to in paragraph (a) or (b);
- (c) an officer, employee or agent of an industrial association and the persons referred to in paragraph (a) or (b); or
- (d) any representatives of the persons in paragraph (b).

Invoice has the meaning in **clause 4.2**.

Order means the purchase order, this document and any Schedules to this document together with any other documents prescribed in this Order as forming part of this Order, which, in the event of any inconsistencies, must be construed in that order of priority.

Personnel means in respect of a person, the person's officers, employees, secondees, agents and contractors (including, in the case of the Contractor, its subcontractors and its subcontractors' Personnel).

Policies means all policies and procedures of the Client identified in Schedule 1 or notified by the Client to the Contractor from time to time, as updated by the Client from time to time.

Related Entities has the meaning set out in **clause 21.1**.

Terms of Order - Services

Reputable Insurer means an insurance company having a financial performance rating of at least A- by A M Best or a financial strength rating of at least A by Standard and Poors.

Schedule means a schedule to this document.

Services includes all work, supply services and other things described or referred to in this Order, if any, and all other things which can reasonably be inferred from the description of the services in this Order.

Site means the site identified in Schedule 1 or any work place or site made available to the Contractor by the Client for the purposes of this agreement.

Statutory Manager means, when the mine safety legislation applies to the Site, the person appointed by the Client under mine safety legislation as the registered manager responsible for occupational health and safety, at the Site and any other workplace as required by mine safety legislation.

23.2 In this Order, unless the context requires otherwise:

- (a) a word in this Order that has a capitalised first letter has the meaning given to it by this Order;
- (b) the singular includes the plural and vice versa;
- (c) headings are for reference only and do not affect the interpretation of this Order;
- (d) a reference to any legislation includes a reference to any proclamation, order, amendments or modification made under that legislation;
- (e) where two or more persons are named as the Contractor, then the obligations on their part will bind and be observed and performed by them jointly and severally;
- (f) "include", "includes" and "including" means "includes without limitation";
- (g) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or benefits from it;
- (h) a reference to:
 - (i) a person includes that person's legal personal representatives, successors, assigns;
 - (ii) time is to local time in Perth, Western Australia;
 - (iii) "\$" or "dollars" is a reference to Australian currency unless otherwise agreed; and
 - (iv) a clause is a reference to a clause of this Order;
- (i) if the date on or by which any act must be done under this Order is not a Business Day, the act must be done on or by the next Business Day;
- (j) where time is calculated by reference to a day or event, that day or the day of that event is excluded; and
- (k) a notice or other communication means a notice or communication in writing in the English language, addressed to the postal addresses of the recipient party.

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Schedule 1 to Terms of Order

Note to Contractors: All items highlighted in yellow are to be agreed with the Client on a scope by scope basis. The Client may require an alternate form of agreement at its discretion.

Client	Roy Hill Holdings Pty Ltd ABN 71 123 721 077 Roy Hill Iron Ore Pty Ltd ABN 18 123 722 038 Roy Hill Infrastructure Pty Ltd ABN 60 130 249 633
Contractor	<i>To be confirmed</i>
Commencement Date:	<i>To be confirmed</i>
Invoices: [clause 4.1]:	On the last business day of the month wherein the Services have been completed
Term [clause 5.1(a)]:	<i>To be confirmed</i>
Service Hours [clause 5.1(a)]:	In accordance with the Client's Service Hours
Professional indemnity insurance (clause 7.1(e)):	applicable
Man Power Histogram [clause 14.1(b)]:	<i>To be confirmed</i>
Aggregate Liability (clause 20.3)	300% of the Fees
Authorised Representative (clause 23):	<i>To be confirmed</i>
Fee (clause 23):	<i>To be confirmed</i>
Policies (clause 23):	In accordance to the Policies set out in Schedule 4
Services (clause 23):	<i>To be confirmed</i>
Site (clause 23):	<i>To be confirmed</i>

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Schedule 2 – Rates

To be confirmed

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Schedule 3 – Services

To be confirmed

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Schedule 4 – Policies

Document Title	Document Number
HR-IR Assessment Form	CO-FRM-00043
Aboriginal Heritage Incident Procedure	EA-PRO-00004
Drill and Blast near Aboriginal Heritage Sites Procedure	EA-PRO-00005
Aboriginal Heritage Management Specification	EA-SPC-00001
Aboriginal Relations Standard	EA-STD-00001
Risk and Insurance Management Specification for Contractors	FI-SPC-00052
Workforce Mobilisation Procedure	HR-PRO-00045
Supplier_Contractor - Mobilisation to Site Procedure	HR-PRO-00048
Employee Relations Specification for Contractors	HR-SPC-00023
General Area Environmental Inspection Checklist	OP-CHK-00172
Groundwater & Storage Facility Environmental Inspection Checklist	OP-CHK-00173
Power Station Environmental Inspection Checklist	OP-CHK-00174
Imported Materials Weed Hygiene Inspection Form	OP-FRM-00005
Vehicle and Mobile Equipment Weed Hygiene Inspection Form	OP-FRM-00006
Immediate Incident or Event Notification Form	OP-FRM-00011
Journey Management Plan Form	OP-FRM-00015
Ground Disturbance Permit Release Form	OP-FRM-00035
Bioremediation Facility Logsheet Form	OP-FRM-00043
Topsoil and Subsoil Tracking Form	OP-FRM-00044
Topsoil Inspection Form	OP-FRM-00119
Rehabilitation Permit Closeout Inspection Form	OP-FRM-00137
Clearing and Soil Management Environmental Inspection Form	OP-FRM-00138
Ground Disturbance Permit Closeout Form	OP-FRM-00226
Rehabilitation Permit Application Form	OP-FRM-00228
Ground Disturbance Site Inspection Form	OP-FRM-00233
Fauna Sightings Form	OP-FRM-00257
Contractor Environmental Report Template 2015-2016	OP-FRM-00305
Contractor Demobilisation Environmental Inspection Form	OP-FRM-00308
Confined Space Entry Permit Form	OP-FRM-00571
Hot Work Permit Form	OP-FRM-00572
Working at Height Permit Form	OP-FRM-00573
Excavation and Penetration Permit Form	OP-FRM-01259
Site Landfill Conditions of Use Agreement Form	OP-FRM-01517
Fatigue Management Guideline	OP-GUI-00017
Health and Safety Guidance for Contractors Manual	OP-MAN-00016
Isolation and Tagging Manual	OP-MAN-00018
Significant Fauna, Flora, Weed Species Manual	OP-MAN-00089
Fauna Management Plan	OP-PLN-00036
Operational Environmental Management Plan (OEMP)	OP-PLN-00043
Clearing and Soil Management Plan	OP-PLN-00051
Emergency Management Plan	OP-PLN-00086
Lightning Management Plan	OP-PLN-00132

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Document Title	Document Number
Cyclone Management Plan	OP-PLN-00202
Explosive Management Plan	OP-PLN-00261
Authority to Work Procedure	OP-PRO-00001
Groundwater and Storage Facility Management Procedure	OP-PRO-00002
Concrete Batching Management Procedure	OP-PRO-00004
Weed Management Procedure	OP-PRO-00010
Journey Management Procedure	OP-PRO-00012
Abrasive Blasting Management Procedure	OP-PRO-00017
Environmental Audit Procedure	OP-PRO-00018
Principal Hazard Management Procedure	OP-PRO-00021
Contractor Environmental Demobilisation Management Procedure	OP-PRO-00032
Surface Water Management Procedure	OP-PRO-00034
Cranes and Lifting Procedure	OP-PRO-00035
Drilling Management Procedure	OP-PRO-00036
Electrical Safety Management Procedure	OP-PRO-00040
Drug and Alcohol Procedure	OP-PRO-00044
Tyre Storage and Disposal Management Procedure	OP-PRO-00060
Waste Management Procedure	OP-PRO-00063
PAF & AMD Management Procedure	OP-PRO-00066
Use of Electronic Devices Procedure	OP-PRO-00078
Tooling Procedure	OP-PRO-00079
Working Remotely Procedure	OP-PRO-00095
Rehabilitation Management Procedure	OP-PRO-00101
Induction Procedure	OP-PRO-00119
High Voltage Procedure	OP-PRO-00129
Fauna Management Procedure	OP-PRO-00134
Borrow Pit and Quarry Management Procedure	OP-PRO-00150
Crushing and Screening Management Procedure	OP-PRO-00152
Inspection Procedure	OP-PRO-00164
Bunds, Sumps, Washdowns and Oily Water Separators Management Procedure	OP-PRO-00178
Dust Management Procedure	OP-PRO-00180
Flora Management Procedure	OP-PRO-00182
Clearing and Soil Management Procedure	OP-PRO-00187
Ground Disturbance Permit Procedure	OP-PRO-00193
Wastewater Management Procedure	OP-PRO-00208
Working At Height Procedure	OP-PRO-00225
Spill Response Procedure	OP-PRO-00275
Rehabilitation Permit Procedure	OP-PRO-00287
Hazardous Materials Management Procedure	OP-PRO-00289
Change Management Procedure	OP-PRO-00291
Excavation and Penetration Procedure	OP-PRO-00355
Classified Plant Procedure	OP-PRO-00411
Confined Space Entry Procedure	OP-PRO-00457

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Document Title	Document Number
Hot Work Procedure	OP-PRO-00556
Incident Non-Conformance and Action Management Procedure	OP-PRO-00702
Vehicle Operation Procedure	OP-PRO-00764
Personal Protective Equipment and Adornment Procedure	OP-PRO-00828
Job Hazard Analysis Procedure	OP-PRO-00967
Take 5 Procedure	OP-PRO-00968
Worker Health Assessment and Management Procedure	OP-PRO-00974
Traffic Management Specification	OP-SPC-00152
Incident Investigation Specification	OP-SPC-00156
Environmental Basis of Design	OP-SPC-00506
Environmental Performance Standards	OP-STD-00001
Health, Safety, Emergency & Security Management Performance Standard	OP-STD-00195