



# **Vale Exploration Supply of Goods Agreement (with ancillary services)**

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**Vale Exploration Pty Ltd**

ABN 87 127 080 219

## 1 Dictionary

1.1 Words used in these Terms and Conditions have the following meanings:

**Ancillary Services** means the services (if any) specified in the Confirmation Sheet or Purchase Order.

**Applicable Codes and Standards** means the codes, standards, regulations and requirements expressed in any Law, authorisation or specification, and in the event of an inconsistency or conflict, the more rigorous performance standard applies.

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

**Commencement Date** means the date so specified in the Confirmation Sheet, or if no Confirmation Sheet has been executed by the parties, the date of the Purchase Order.

**Confidential Information** means all information (whether of a scientific, engineering, industrial, mining, technical, business or financial nature or otherwise) and records of a party, in whatever form, but does not include information that:

- (a) as at the Commencement Date is publicly available;
- (b) subsequent to this Contract becomes publicly available without breach of this Contract;
- (c) is obtained by a party from a third party without breach by that third party of any obligation of confidence concerning that information;
- (d) was already in a party's possession (as evidenced by written records) when provided by or on behalf of the other party; or
- (e) a party can prove beyond reasonable doubt has been developed independently by an employee or contractor of the party who has not had access to any Confidential Information.

**Confirmation Sheet** means, if required by the Principal, the document of that name executed by You and the Principal in relation to the Supply of the Goods and Ancillary Services.

**Contract** means a contract between the Principal and You consisting of these Terms and Conditions, the Confirmation Sheet (if any) and the Purchase Order.

**Contract Price** means the price payable by the Principal for the Goods including any Ancillary Services provided as specified in the Confirmation Sheet (if any) or Purchase Order.

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

**Defects** means any defect, fault or omission of the Goods which is not in accordance with the requirements of the Contract.

**Delivery Date** means the due date specified in the Confirmation Sheet or Purchase Order for delivery of the Goods.

**Delivery Point** means the place specified in the Confirmation Sheet or Purchase Order for delivery of the Goods.

**Enhanced Project Bylaw Scheme** means the scheme administered by the Australian Taxation Office relating to the importation of goods into Australia free of customs duty.

**Event of Default** means, in respect of a party, any of the following:

- (a) the party becomes Insolvent;
- (b) the party commits a material breach of its obligations under this Contract which is capable of being remedied and does not remedy the breach within 14 days from the party receiving notice in writing from the other party specifying the breach and requiring the breach to be remedied; or
- (c) the party commits a material breach of its obligations under this Contract which is not capable of being remedied.

**Expiry Date** means the date so specified in the Confirmation Sheet or if no Confirmation Sheet has been executed by the parties, the date on which each of the parties has performed all of its obligations under this Contract.

**Goods** means goods to be supplied by You under this Contract as described in the Confirmation Sheet or Purchase Order.

**Government Official** means any appointed, elected or honorary official or any career employee of the federal or any state or local government of Australia or another country, or of a public international organisation, any political party, party official, or candidate of Australia or another country. The government includes any agency, department, embassy, or other governmental entity. It also includes any company or other entity owned or controlled by the government. A person does not cease to be a government official by purporting to act in a private capacity or by the fact that he or she serves without compensation.

**GST** means the same as in the GST Law.

**GST Law** has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insolvent means**, in respect of a party, that it:

- (a) is (or states that it is) insolvent (as defined in the Corporations Act);
- (b) has a Controller (as defined in the Corporations Act) appointed to any part of its property;
- (c) is in receivership, in receivership and management, in liquidation, in provisional liquidation, under administration or wound up or has had a receiver or a receiver and manager appointed to any part of its property;
- (d) is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or, dissolved (other than to carry out

a reconstruction or amalgamation while solvent on terms approved by the other party to this Contract);

- (e) is taken (under section 459(F)(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) is the subject of an event described in section 459(C)(2) or section 585 of the Corporations Act (or it makes a statement from which the other party to this Contract reasonably deduces it is so subject); or
- (g) is otherwise unable to pay its debts when they fall due.

**Law** means:

- (a) the Safety Legislation;
- (b) other Commonwealth, State or local legislation including regulations, by-laws and other subordinate legislation and including all environmental laws;
- (c) common law; and
- (d) guidelines of a Commonwealth, State or local government with which You are required to comply.

**Personnel** includes employees, agents and contractors.

**Policies** means each of the Site policies relating to safety, the environment, quality, energy and purchasing and such other policies as notified to You by the Principal, as amended from time to time.

**PPS Act** means the Personal Property Securities Act 2009 (Cth).

**Principal** means Vale Exploration Pty Ltd (ACN 127 080 219) with its registered office at Level 11, 100 Creek Street, Brisbane, Queensland, 4000.

**Purchase Order** means any purchase order issued to You by the Principal in relation to the supply of Goods and any Ancillary Services under this Contract.

**Safety Legislation** means the *Coal Mining Safety and Health Act 1999* (Qld), the *Coal Mining Safety and Health Regulation 2001* (Qld), the *Work Health and Safety Act 2011* (Qld) and the *Work Health and Safety Regulation 2011* (Qld) and the *Coal Mine Health and Safety Act 2002* (NSW), the *Coal Mine Health and Safety Regulation 2006* (NSW), the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW).

**Site** means the site where the Delivery Point is located.

**Site Regulations** means the Principal's site regulations for contractors, as amended from time to time.

**Supply** includes the supply and delivery of Goods and Ancillary Services in accordance with this Contract.

**Taxes** includes any tax, stamp, documentary, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest or similar additions, imposed, levied or assessed by any government, governmental, semi-governmental or other relevant authority or otherwise payable on or in respect of the performance of this Contract but does not include GST payable under clause 8.9.

**Terms and Conditions** means these terms and conditions.

**You, Your or Yourself** means the supplier identified in the Confirmation Sheet or Purchase Order.

1.2 Rules for interpreting this document

- (a) Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.
- (b) A reference to:
  - (1) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (2) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
  - (3) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
  - (4) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
  - (5) anything (including a right, obligation or concept) includes each part of it.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes the other genders.
- (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (g) The words **related body corporate** have the same meanings as in the Corporations Act.

- (h) A reference to dollars or \$ is to an amount in Australian currency.
- 1.3 If there is any discrepancy, inconsistency or ambiguity within or between the documents (or parts of the documents) comprising this Contract, the Principal must resolve the discrepancy, inconsistency or ambiguity by applying the following order of precedence:
- any Confirmation Sheet;
  - the Purchase Order; and
  - these Terms and Conditions.
- 1.4 This Contract applies to the exclusion of any terms and conditions contained in Your tender response, quotation or in any payment claim or invoice rendered by You.
- 1.5 You acknowledge that You have no authority to bind the Principal and that You must not hold Yourself out as an agent of the Principal in dealings with third parties or purport to incur any obligation, or make any promise, contract or undertaking, warranty or representation for or on behalf of the Principal. You are engaged by the Principal as an independent supplier and nothing in this Contract is to be treated as creating a relationship of employer and employee, agency arrangement, partnership, joint venture or fiduciary relationship between You and the Principal.
- 1.6 This Contract commences on the Commencement Date and expires on the Expiry Date.
- 1.7 If the Confirmation Sheet states that this Contract is a Standing Offer Arrangement, the Principal may purchase Goods and Ancillary Services (if any) from time to time on the terms specified in the Confirmation Sheet by issuing one or more Purchase Orders to You. You acknowledge and agree that if this Contract is a Standing Offer Arrangement, the Principal is not obliged to purchase any minimum quantity of Goods or Ancillary Services..
- 2 Your Fundamental Obligations**
- 2.1 You must deliver the Goods and supply any Ancillary Services at the Delivery Point by the Delivery Date.
- 2.2 The quantity of Goods to be provided and the unit cost payable by the Principal for such Goods are as set out in the Confirmation Sheet or Purchase Order.
- 2.3 If You are delayed in the delivery of the Goods or the supply of any Ancillary Services by an act or omission of the Principal or any of its respective Personnel which is not permitted or contemplated under this Contract, You may request in writing an extension to the Delivery Date and the Principal may, acting reasonably, agree in writing to any extension and if so the period of the extension. However, in determining whether You are delayed in delivering the Goods or providing the Ancillary Services, the Principal will have regard to whether You can perform the obligation without an extension of time and whether You can make up time lost. If You are otherwise delayed by an act or event beyond Your reasonable control the Principal may in its absolute discretion grant You a written extension to the Delivery Date.
- 2.4 You must comply with any specification provided by the Principal in respect of the Goods and Ancillary Services.
- 2.5 You must comply with all directions and instructions given to You by the Principal or the "coal mine operator", "site senior executive" or "supervisor" for the Site (as such terms are defined in the *Coal Mining Safety and Health Act 1999* (Qld) and the "Manager of Mining Engineering", "Manager of Electrical Engineering" and "Manager of Mechanical Engineering" under the *Coal Mine Health and Safety Act 2002* (NSW)).
- 2.6 You must promptly notify the Principal if You become aware of anything which may delay delivery of the Goods and Ancillary Services by the Delivery Date.
- 2.7 You must not subcontract performance of this Contract without the prior written approval of the Principal.
- 3 Ownership and Risk**
- 3.1 The Goods are at Your risk until unloaded at the Delivery Point and You must make good any damage to the Goods which occurs prior to delivery to the Delivery Point and provide the protection necessary to preserve the Goods until delivery.
- 3.2 Property in the Goods passes to the Principal on delivery to the Delivery Point.
- 4 Your Warranties**
- 4.1 You warrant that:
- You are a resident of Australia for Australian tax purposes;
  - at the time of delivery:
    - You will have good title to the Goods;
    - the Goods will be free of encumbrances, liens and reservation of title; and
    - You will have the right to sell the Goods to the Principal;
  - from the time of delivery the Principal will have and enjoy quiet possession of the Goods;
  - the Goods when delivered to the Delivery Point will:
    - correspond to its description in this Contract;
    - conform in every way with the requirements of this Contract (including any specification);
    - be of merchantable quality;
    - be new (unless otherwise specified);
    - be free from Defects; and
    - be fit for the Principal's purpose or purposes as specified in this Contract or made known to You prior to entry into this Contract;
- (e) the manufacture, sale or use of the Goods does not and will not infringe any intellectual property of any third party;
- (f) the Goods when supplied and installed will be complete in all respects and include everything necessary to operate properly in accordance with any applicable specification;
- (g) in performing this Contract You and Your Personnel will comply with:
  - all applicable Laws;
  - the Safety Legislation;
  - the Policies;
  - the Site Regulations; and
  - Applicable Codes and Standards;
- (h) the Goods as designed, manufactured and supplied will meet the requirements of all Laws and Applicable Codes and Standards.
- (i) where You also provide Ancillary Services, You will perform, and ensure that Your Personnel perform the Ancillary Services:
  - in a commercial, prudent and reasonable manner;
  - in accordance with suitable and appropriate methods and practices;
  - in accordance with any applicable industry standards;
  - with the degree of skill, care and diligence that may reasonably be expected of a person, suitably qualified and experienced, in the performance of services similar to the Ancillary Services;
  - in a manner that could reasonably be expected to enable the Principal to discharge its duties under applicable Laws; and
  - in a manner which is consistent with the Principal's best interests and without adversely affecting the Principal's business reputation, interests or goodwill.
- 4.2 You must:
- obtain, for the benefit of the Principal, all manufacturer's and any other applicable third party warranties in respect of the Goods (including in respect of any item forming part of the Goods);
  - if requested by the Principal, assign the benefit of those warranties to the Principal; and
  - during the period of the warranties, take all reasonable action required by the Principal to enforce those warranties or assist the Principal to enforce them.
- 5 Safety, security and care**
- 5.1 You must comply with, and You must ensure that Your Personnel comply with, all Laws (including the Safety Legislation) and all occupational health, safety and environmental and rehabilitation requirements of the Principal.
- 5.2 You must comply with the Site Regulations and Policies at all times when on the Site.
- 5.3 You must obtain a copy of the Site Regulations before entering the Site and You must ensure that Your Personnel have been made aware of their content before entering the Site. The Site Regulations may be replaced or amended from time to time by additional requirements at the discretion of the Principal.
- 5.4 You must provide all safety devices and warnings which may be necessary or desirable for ensuring the protection of persons, or which are required by the Principal.
- 5.5 You must not interfere with or disrupt the work of the Principal's staff or other contractors except to the minimum extent necessary for the performance of this Contract.
- 5.6 You must:
- avoid damage to property on or near the Site and make good loss or damage caused to any of the Principal's or third party property by You;
  - only enter the Site during the working hours nominated by the Principal and only for the purposes of performing this Contract; and
  - keep the Site clean and tidy during the delivery of Goods or the performance of any Ancillary Services and remove any rubbish You are responsible for, from the Site.
- 5.7 You acknowledge and confirm that You have fully inspected the Site and reviewed all information provided by the Principal about its state and condition. You also acknowledge and confirm that You have made adequate provision for all reasonable contingencies that may arise while You are performing this Contract at the Site.
- 5.8 If requested by the Principal, You must undertake, at Your expense, a site induction prior to performing this Contract at the Site to ensure a full understanding of site requirements.
- 5.9 You must immediately remove any Personnel from delivering Goods or performing any Ancillary Services under this Contract if the Principal notifies You that any of Your Personnel are unacceptable for any reason.

## 6 Confidential Information and intellectual property

- 6.1 If You have access to any of the Principal's Confidential Information You must:
- (a) keep the Confidential Information confidential;
  - (b) only disclose the Confidential Information to Your Personnel who genuinely need to know the Confidential Information in order for You to perform Your obligations under this Contract and only if such persons are required to keep the Confidential Information confidential; and
  - (c) only use the Confidential Information for the purpose for which it was provided.
- 6.2 You warrant You will not infringe any third party intellectual property rights in performing this Contract. You indemnify the Principal against any Claims brought against the Principal for an infringement of intellectual property rights by You or Your Personnel.

## 7 Indemnities and insurance

- 7.1 Subject to clause 7.2, You must indemnify the Principal (and its related bodies corporate) against, and must pay the Principal on demand, the amount of any claims (including claims made by third parties), damages, expenses (including legal costs on a full indemnity basis), costs (including costs payable to third parties) losses or liabilities which the Principal suffers or incurs, in respect of:
- (a) loss of, or damage to, or loss of use of, any real or personal property, or the personal injury, disease or illness (including mental illness) to, or death of, any person, arising out of Your or Your Personnel's performance of a Contract or the state and condition of the Goods or the provision of the Ancillary Services;
  - (b) interruption to mining operations at the Site arising out of Your performance of a Contract or the state and condition of the Goods or the provision of the Ancillary Services; and
  - (c) any breach by You of this Contract, an unlawful or negligent act or omission by You or by any of Your Personnel or Your wilful misconduct or the wilful misconduct of any of Your Personnel.
- 7.2 The indemnity in clause 7.1 does not apply to the extent that any claims, damages, expenses, losses or liabilities are caused by:
- (a) any negligent act or omission of the Principal or the Principal's Personnel, as the case may be; or
  - (b) a breach by the Principal of this Contract.
- 7.3 The indemnity contained in clause 7.1 does not in any way limit or affect any other rights that the Principal may have arising out of any default by You in the performance of Your obligations under this Contract.
- 7.4 You must maintain public and products liability insurance in the amount of ten million dollars, motor vehicle insurance covering both personal injury and property damage arising from the use of registered motor vehicles associated with performing this Contract in the amount of ten million dollars and workers compensation insurance as required by applicable Laws together with any additional insurance specified in the Confirmation Sheet or Purchase Order. If requested by the Principal at any time, You must provide such evidence as the Principal reasonably requires that You and Your Personnel are insured in accordance with this Contract. All insurance must be with an insurer which has a credit rating of A – or better with Standard and Poor's (or an equivalent rating with another reputable ratings agency).

## 8 Payment

- 8.1 The Principal is only required to pay You the Contract Price to the extent that the Goods and Ancillary Services have been delivered in compliance with this Contract. The Principal's payment obligations are subject to this clause 8, and clauses 17, 18 and 19.
- 8.2 You acknowledge and confirm that the Contract Price includes:
- (a) the cost of all labour, plant, equipment, tools, appliances or other property and items used by You in performing Your obligations under this Contract including performing the Ancillary Services;
  - (b) any other costs incurred by You in performing Your obligations under this Contract; and
  - (c) all applicable Taxes.
- 8.3 Your payment claim must be emailed to the email address shown on the Confirmation Sheet or Purchase Order, include the Confirmation Sheet or Purchase Order Number and contain sufficient information for the Principal to review the amounts claimed by You.
- 8.4 The Principal will pay your claim within 30 days of the end of the month in which the claim is received by the Principal. The amount which will be paid by the Principal is the amount that the Principal considers to be payable under the Contract. This may not necessarily be the same as the amount claimed by You. Payment by the Principal of any payment claim does not constitute an acknowledgment by the Principal that the Goods (and any Ancillary Services provided) are in conformity with the requirements of this Contract.
- 8.5 The Principal may reduce any payment due to You by any amount for which You are liable to the Principal, including costs, charges, damages and expenses or which the Principal disputes in good faith. This provision does not limit the Principal's right to recover those amounts in other ways. If the resolution of a dispute determines that the Principal owes an amount to You, You may submit a payment claim for that amount.

- 8.6 You must deliver a valid tax invoice to the Principal before the due date for payment of any invoice. The Principal may withhold payment until it receives a tax invoice for any supply. Each invoice must unless otherwise notified by the Principal:
- (a) be billed and sent to the address specified in the Confirmation Sheet or Purchase Order (or, if an email address is provided for invoices in the Confirmation Sheet or Purchase Order, may be emailed to that address);
  - (b) contain the Confirmation Sheet or Purchase Order Number; and
  - (c) be in the form of a tax invoice for GST purposes.
- 8.7 Any non-conforming invoices will be returned unpaid. Claim form and invoice queries should be directed to the Contract Administrator appointed to this Contract.
- 8.8 You must provide the Principal with written details of a bank account to enable the Principal to make payments under this Contract to that account by electronic funds transfer. Payment will be deemed to have been made when received into that account. All banking fees and charges in connection with the payment will be to Your account.
- 8.9 Unless otherwise specified, amounts otherwise payable under this Contract do not include GST. The Principal will pay to You the amount of GST for which You become liable for any supply You make to the Principal under this Contract, provided that payment claims rendered by You comply with all relevant GST Laws and are sufficient to allow the Principal to claim any input tax credits which may be available to it.

## 9 Delivery of Goods

- 9.1 Upon delivery of the Goods or on earlier termination of this Contract, You must promptly:
- (a) deliver to the Principal all documentation and other items that are required to be supplied by You under this Contract; and
  - (b) return to the Principal all materials, documentation and other things provided to You by the Principal for the purposes of this Contract.
- 9.2 If any testing of the Goods after delivery discloses that the Goods do not, in the reasonable opinion of the Principal, substantially comply with the requirements of this Contract, the Principal may within 7 days after delivery notify You:
- (a) that the Principal elects to accept the Goods in their existing state and condition and recover damages; or
  - (b) reject the Goods, recover the Contract Price to the extent already paid and recover damages.
- 9.3 Nothing in clause 9.2 affects the Principal's rights under clauses 10, 17 and 18 of this Contract.
- 9.4 This Contract is not an exclusive arrangement. Notwithstanding any other provision of this Contract, the Principal may at any time engage another contractor to supply and deliver the Goods or any part of the Goods (including following termination of this Contract in accordance with clause 18.1 or otherwise).

## 10 Defects Liability Period

- 10.1 You warrant that the Goods will be free from Defects in workmanship and materials for the longer of:
- (a) 12 months;
  - (b) the extended warranty period set out in the Confirmation Sheet or Purchase Order (if any); and
  - (c) such other period as agreed in writing between us, from the date of delivery of the Goods to the Delivery Point.
- 10.2 During the Warranty Period, the Principal may direct You to correct any Defect to the Goods for which You are responsible under this Contract. You must carry out any remediation of Defects in accordance with the terms of such direction.
- 10.3 If You do not comply with any direction given under clause 10.3, the Principal may reject the Goods and recover the Contract Price to the extent already paid and recover damages; or make good any Defect at Your cost.

## 11 Dispute resolution

- 11.1 All disputes between the parties in connection with this Contract must be resolved in accordance with the provisions of this clause 11.
- 11.2 If a party considers that a dispute exists in connection with this Contract, that party may give the other party a notice detailing the nature of the dispute (**Notice of Dispute**). Upon receipt of a Notice of Dispute, each party must use its best efforts to resolve the dispute.
- 11.3 If the parties have not resolved the dispute or agreed an alternative means of resolving the dispute, within 14 days after a Notice of Dispute is served, then either party may commence mediation:
- (a) by giving notice to the other party; and
  - (b) referring the matter to the Institute of Arbitrators and Mediators Australia.
- 11.4 The Mediation Rules of the Institute of Arbitrators and Mediators Australia apply to any mediation under this Contract and the parties must comply with those rules.

- 11.5 If the parties have not resolved the dispute within 30 days after referral of the dispute to mediation in accordance with clause 11.3, then either party may refer to the dispute for litigation.
- 11.6 Notwithstanding the existence of a dispute, the parties must continue to perform this Contract.
- 11.7 Nothing in this clause 11 shall prejudice the right of a party to institute proceedings to enforce payment due under clause 7 or to seek urgent injunctive or declaratory relief in respect of a dispute under this clause 11 or any matter arising under this Contract.

## 12 Joint and several liability

- 12.1 If You comprise 2 or more persons, each is jointly and severally liable for Your obligations and liabilities under this Contract.

## 13 Taxes

- 13.1 Unless otherwise expressly provided in this Contract, You must pay all Taxes arising out of or relating to this Contract or the performance of Your obligations under this Contract.

## 14 Notices

- 14.1 A notice given to You under this Contract must be addressed to the address set out in the Confirmation Sheet or Purchase Order or to the address last notified by You to the Principal.
- 14.2 A notice to the Principal given under this Contract must be addressed to the address shown in the Confirmation Sheet or Purchase Order, or the address last notified by the Principal to You as the Principal's address for the purposes of this Contract;
- 14.3 Notices must be in writing signed by an authorised representative of the sender.
- 14.4 Notices are taken to have been given or made (in the case of delivery in person or by fax or post) when delivered, received or left at the specified address.

## 15 No assignment

- 15.1 You may not assign, declare a trust over or encumber a right or interest under this Contract without the prior written consent of the Principal. You must not undergo a change in control without the prior written consent of the Principal. For the purposes of this clause, control has the meaning given to that term in the Corporations Act.
- 15.2 The Principal may assign, encumber, declare a trust over or otherwise deal with its rights under this document without Your consent and You must do, and must ensure that Your Personnel do anything (including execute any document), that the Principal may reasonably require to give full effect to this clause.

## 16 Governing law

- 16.1 This Contract is governed by Queensland law.

## 17 Termination for Event of Default

- 17.1 Either party may terminate this Contract by 14 days notice in writing to the other party given at any time if an Event of Default in respect of the other party has occurred.

## 18 Termination by the Principal

- 18.1 The Principal may terminate this Contract for its convenience by giving You 14 days written notice of termination.

## 19 Effect of Termination

- 19.1 If this Contract is terminated by the Principal under clause 18 or by You under clause 17, then subject to the Principal's rights to withhold amounts owing to You, the Principal shall pay You as Your sole remedy in relation to the termination:
- (a) the amount due to You in relation to the Goods and any Ancillary Services supplied or delivered prior to the date of termination; and
- (b) the cost of Goods reasonably ordered by You for the supply and delivery of Goods and any Ancillary Services which You must accept, but only if they will become the Principal's property upon payment, plus any other costs reasonably and necessarily incurred by You as a direct and immediate consequence of the termination which could not reasonably be mitigated by You.
- 19.2 If this Contract is terminated by the Principal under clause 17, the parties' remedies, rights and liabilities will be the same as they would have been under the law governing this Contract had You repudiated this Contract and the Principal elected to treat this Contract as at an end and recover damages.
- 19.3 On receiving a notice under clause 17 or 18, You must immediately cease performance of Your obligations under this Contract to the extent specified in the notice and take any other action reasonably directed by the Principal.

## 20 Preservation of rights and obligations on termination or expiry

- 20.1 The provisions relating to Confidential Information, Defects Liability Period, indemnity, governing law and jurisdiction survive termination or expiry of this Contract until each of those obligations have been completely discharged.

## 21 Packaging, Marking and Shipment

### 21.1 Packaging

You must:

- (a) properly pack the Goods to avoid damage during loading, transit, delivery, unloading or storage;
- (b) ensure and ensure that Your Personnel pack and transport the Goods in accordance with any applicable Law or specification, including implementing appropriate policies and systems to ensure compliance with requirements regarding vehicle mass, vehicle dimension, load restraint, speed limits, driver fatigue, driving hours and rest periods;
- (c) clearly mark all packages of the Goods for delivery and ensure that the delivery documents accompany the Goods to the Delivery Point;
- (d) ensure that the relevant Confirmation Sheet or Purchase Order number is included in the delivery documents relating to the Goods;
- (e) ensure that the size and weight of the packaged Goods is clearly marked on the outside of the packaging; and
- (f) ensure that where the Goods are shipped by sea they are suitably and adequately protected and packed against possible damage resulting from the ingress of salt water and any likely damage including condensation and corrosion.

### 21.2 Inadequate packaging or shipping

- (a) The Principal may reject the Goods if they are inadequately packed.
- (b) You must pay any increase in freight charges arising from Your failure to properly describe the Goods.

## 22 Variation

### 22.1 Variation

- (a) The Principal reserves the right at any time to vary this Contract.
- (b) You and the Principal must negotiate in good faith any adjustment to the price of the Goods (and any Ancillary Services) or an alteration to the Delivery Date arising in connection with a variation.

## 23 Enhanced Project Bylaw Scheme

### 23.1 Application

This clause 23 applies where the Goods or any component of the Goods is to be imported into Australia.

### 23.2 Mining Industry Bylaw

- (a) The Principal may instruct a party (**Applying Party**) to apply to the Australian Government for a mining industry bylaw to permit the entry free of customs duty of any goods which are to be imported for the purposes of this Contract. The bylaw is to apply both to goods which are to be supplied to the Principal in the condition in which they are imported, and to goods (being parts or components) which are to be incorporated in other goods prior to supply to the Principal.
- (b) If required by the Principal, You must provide to the Applying Party, within 21 days of such request, such information regarding the Goods as the Applying Party may require. You must procure any subcontractor for the supply of imported components to provide the same information to the Applying Party within the same period.
- (c) You must ensure that the Applying Party enters into an agreement with the Principal that it will not disclose any confidential or commercially sensitive information to any person other than the relevant Government authorities, such disclosure being limited for the purposes of the application for the mining industry bylaw.
- (d) Any customs duty paid by You in respect of the Goods or any component of the Goods supplied directly or indirectly to the Principal by You or a subcontractor, being customs duty that is subsequently refunded to You pursuant to the mining industry bylaw or other duty concession, must be paid to the Principal.
- (e) Any reasonable costs incurred by You in securing a refund of customs duty may be deducted from the amount of that refund before payment to the Principal. Where the Principal and You are unable to agree whether such costs are reasonable, You may refer such disagreement to dispute resolution under clause 11.
- (f) Where You or Your subcontractor fail to provide the information required by paragraph (b) following a request by the Principal to do so, then where the Principal believes on reasonable grounds that the Goods or any component of the Goods has been imported the Principal may at its sole discretion deduct from the Contract Price an amount equal to 5% of the estimated free on board (FOB) value of the Goods or the components of the Goods.

## 24 No Improper payments

- 24.1 You represent and warrant that You have not and will not make any improper payments of money or improperly transfer anything of benefit or value to a Government Official in connection with this Contract. You must not make or permit any payments or transfer of anything of benefit or value to a third party knowing, or suspecting, that the third party will make any improper payment or improperly transfer anything of benefit or value to a Government Official.

## 25 PPSA

- 25.1 Where You are entitled to payment of any part of the Contract Price prior to delivery of the Goods, You:
- (a) must before that payment is made, provide to the Principal security for such payment in the form of an unconditional financial undertaking from a financial institution approved by the Principal for the amount of such payment; and
  - (b) on submission of a tax invoice to the Principal, grant a security interest over the Goods in favour of the Principal to secure the performance by You of Your obligations under this Contract (whether past, present or future) and the payment of any Claim by the Principal against You in connection with this Contract.
- 25.2 You must not take any steps to injunct or otherwise prevent the issuer of any financial undertaking issued in accordance with this clause from paying the Principal pursuant to the undertaking or the Principal in taking any steps to obtain or receive payment under the undertaking. A financial undertaking issued in accordance with this clause must be released within 5 Business Days after delivery of the relevant Goods to the Delivery Point, provided that You agree that, where there exists any dispute in relation to an underlying Claim providing the Principal with a right to receive payment under the financial undertaking, the Principal will receive and keep for its own purposes the proceeds received under the financial undertaking pending the determination of the dispute.
- 25.3 You acknowledge that the Principal may register a financing statement in relation to the Principal's security interest and You must do anything (including producing any document, supplying information and executing any document) which the Principal requests for the purposes of ensuring that the Principal's security interest is enforceable, perfected and otherwise effective, enabling the

Principal to apply for any registration or to give any notification, and enabling the Principal to exercise any rights in connection with the Principal's security interest. You waive Your rights to receive any notice under section 157 of the PPS Act. You and the Principal agree not to disclose information of the kind mentioned in section 275(1) of the PPS Act (unless required by sections 275(7)(b) to (e)) and You agree not to authorise the disclosure under section 275(7)(c) or to request information under section 275(7)(d) without the Principal's approval. To the extent that it is not inconsistent with this clause constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPS Act, the Principal agrees that You may disclose information of the kind mentioned in section 275(1) of the PPS Act to the extent that You are not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPS Act) pursuant to section 275(1) of the PPS Act.

- 25.4 If You default in the timely performance of Your obligations, the Principal may, without prejudice to any other enforcement right, enter immediately onto Your premises and take possession of any Goods. The Principal may, in its absolute discretion, retain, use or sell any Goods it repossesses. The Principal and You agree that sections 125, 129(2), 129(3), 134(2) and 137 of the PPS Act does not apply. This clause does not limit the Principal's rights or Your obligations under other provisions of this Contract. Terms used in this clause 25 which are defined in the PPS Act have the meaning given in that Act.
- 25.5 The Principal and You acknowledge and agree that it is not intended that the Principal grant a security interest to You in connection with the Goods or otherwise in connection with this Contract. In the event a security interest in Your favour arises, or is alleged to arise, You agree that You must not register a financing statement in connection with such security interest.