



Purchase Order – Terms and Conditions

1 Nature of Agreement

- 1.1 Subject to clause 1.2, the Purchase Order is deemed to be accepted by the Supplier and forms part of this Agreement upon the earlier of:
- (a) the Supplier commencing the supply of the Goods and/or Services stated in the Purchase Order; and
 - (b) an authorised representative of the Supplier confirming the Supplier's acceptance of the Purchase Order in writing (including by email) to the Principal.
- 1.2 If there is a written contract already in place and agreed between the Supplier and the Principal for the supply of the Goods and/or Services set out in the Purchase Order (**Pre-Existing Contract**) then that Pre-Existing Contract will apply to the supply of the Goods and/or Services and this Agreement does not apply. If there is more than one written contract already in place and agreed between the Supplier and the Principal that could be the Pre-Existing Contract, then the contract most relevant to the supply of the Goods and/or Services the subject of the Purchase Order will be deemed to be the Pre-Existing Contract.
- 1.3 Any of the Supplier's terms and conditions supplied to the Principal in respect of the Goods and/or Services, are of no legal effect and do not constitute part of this Agreement.
- 1.4 In consideration for the payment of the Fees, the Supplier agrees to supply the Goods and/or Services:
- (a) by the Delivery Date;
 - (b) in accordance with the Delivery Terms; and
 - (c) in accordance with the terms of this Agreement.
- 1.5 The Agreement does not confer upon the Supplier any exclusivity in respect of any Goods and/or Services and does not oblige the Principal to procure any minimum level of Goods and/or Services from the Supplier.
- 1.6 The Supplier agrees to notify the Principal if it finds any errors, omissions or inconsistencies in information provided by the Principal.

2 Representations and Warranties

- 2.1 The Supplier represents and warrants that:
- (a) all information and communications it provides in connection with the performance of this Agreement will be complete and accurate;
 - (b) the Goods and/or Services will:
 - (i) be supplied in an efficient manner and will match the description and specification in this Agreement;
 - (ii) be supplied in accordance with Good Industry Practice; and
 - (iii) comply with, and be supplied in accordance with, all applicable Laws and the Goods and/or Services;
 - (c) all Goods supplied will be:
 - (i) of merchantable quality, free of defects and fit for the purpose set out in this Agreement;
 - (ii) manufactured strictly in accordance with any manufacturing drawings, Scope of Work or descriptions supplied to the Supplier by the Principal; and
 - (iii) free from any Security Interests or any other third party interest, from the time title in the Goods passes to the Principal; and
 - (d) where Goods are procured from a third party, the Supplier will obtain all manufacturer's warranties that may be applicable to those Goods for the benefit of the Principal.
- 2.2 Except where the Principal has acted fraudulently or negligently, nothing provided by the Principal to the Supplier (including any information, materials or documents) limits or affects the warranties given by the Supplier under this Agreement.

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- 2.3 If the Supplier breaches clause 2.1, then the Principal may, having regard to the nature, cause and consequences of the breach:
- (a) instruct the Supplier to suspend performance of this Agreement immediately;
 - (b) instruct the Supplier to leave the Site immediately;
 - (c) instruct the Supplier to remove any or all of its Equipment from the Site immediately;
 - (d) terminate this Agreement; and/or
 - (e) claim damages from the Supplier.

3 Site Access and Safety

- 3.1 The Principal grants to the Supplier a revocable, non-exclusive and non-assignable licence to access the Site during the Term to perform its obligations under this Agreement.
- 3.2 The Supplier must obtain all applicable permits, licences, exemptions, consents and approvals required for the Supplier to supply the Goods and/or Services.
- 3.3 The Supplier must, and must ensure its Personnel, in supplying the Goods and/or Services:
- (a) act in a safe manner that does not prejudice safe working practices, safety and care of property and continuity of work, and use best endeavours to achieve zero classified injuries and fatalities;
 - (b) not engage in sexual harassment or other inappropriate behaviour on the Site;
 - (c) not interfere with the Principal's activities or the activities of any other person on the Site;
 - (d) not pollute, contaminate or cause other damage to the environment on the Site;
 - (e) provide all information and assistance reasonably required by the Principal in connection with any statutory or internal health and safety, environment or community investigation in connection with this Agreement; and
 - (f) be aware of and comply with, and ensure that its Personnel are aware of and comply with, all:
 - (i) applicable Laws (including WHS Legislation, environmental Laws and Aboriginal Heritage Legislation);
 - (ii) the Principal's Policies and Procedures (to the extent they are applicable to the Goods and/or Services); and
 - (iii) all lawfully given directions from the Principal's Representative and the Site Senior Executive.
- 3.4 From time to time, by notice to the Supplier, the Principal may amend, replace, delete or add a Principal's Policy or Procedure:
- (a) without the Supplier's consent, provided that the change:
 - (i) does not materially reduce the Supplier's rights or materially increase the Supplier's obligations under this Agreement;
 - (ii) is reasonably necessary for the Principal to:
 - (A) protect the Principal's legitimate business interests;
 - (B) protect the health and safety of any person on the Site; or
 - (C) safely operate the Site; or
 - (iii) is required by applicable Law; or
 - (b) otherwise with the Supplier's consent after notice in writing to the Supplier, provided that the Supplier will be deemed to have consented to the change where the Supplier continues to perform this Agreement 30 days after receiving notice of the change unless the Supplier expressly rejects the change. In such circumstances, the Principal may elect to continue with the original Principal's Policy or Procedure or may terminate this Agreement subject to payment of the amounts set out in clause 15.5.

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- 3.5 Without limiting the Supplier's other obligations under this Agreement, the Supplier must notify the Principal's Representative and the Site Senior Executive in writing:
- (a) immediately upon the occurrence of any incident which has a potential to become a Serious Potential Incident;
 - (b) within 12 hours of any incident (not being an incident referred to in clause 3.5(a)); and
 - (c) promptly if the Supplier becomes aware of any inappropriate behaviour or incident involving the Supplier's Personnel who are working on the Site.

In this clause 3.5 **incident** includes accidents, incidents, near miss accidents or incidents, high potential incidents, personal injury (whether serious or not), equipment or property loss or damage, environmental impact or incident, fire, electrical incidents, security incidents and theft.

- 3.6 The Supplier must leave the Site secure, clean and orderly and fit for immediate use having regard to the condition of the Site immediately prior to the supply of the Goods and/or Services.
- 3.7 If the Supplier breaches clause 3.2, 3.3 or 4.2, then the Principal may, having regard to the nature, cause and consequence of the breach:
- (a) instruct the Supplier to suspend the supply of the Goods and/or Services immediately;
 - (b) instruct the Supplier to leave the Site immediately;
 - (c) instruct the Supplier to remove any or all of its Equipment from the Site immediately;
 - (d) terminate this Agreement; and/or
 - (e) claim damages from the Supplier.

4 Supplier's Personnel

- 4.1 The Supplier must engage all personnel necessary for the supply of the Goods and/or Services under this Agreement.
- 4.2 The Supplier must engage only Personnel that are trained, skilled, experienced and with qualifications to the degree ordinarily expected of personnel engaged in the supply of goods and/or services similar to the Goods and/or Services.
- 4.3 No Supplier's Personnel may commence work on the Site unless they have attended the induction courses required by the Principal to be attended by all persons engaged on the Site.
- 4.4 To the extent permitted by Law and except in response to a public advertisement, during the Term and extending for a period of 6 months after the End Date, the Principal's Personnel are not to be engaged or offered employment by the Supplier, without the prior written approval of the Principal, not to be unreasonably withheld.

5 Industrial Relations

- 5.1 The Supplier is responsible for conducting its industrial and employee relations with its Personnel in a manner conducive to preventing any delay or disruption in the supply of the Goods and/or Services, including by taking all prudent steps to maintain harmonious and productive relations with its Personnel.
- 5.2 The Principal may, with due cause, request that the Supplier withdraw any of its Personnel from supplying any part of the Goods and/or Services and the Supplier must promptly do so. If requested by the Principal, the Supplier must replace the person with a person of suitable training, skill, experience and qualifications as soon as reasonably practicable.

6 Equipment

- 6.1 The Supplier supplies the Equipment at its own risk and expense, however the Principal is liable to the Supplier for any loss or damage to the Equipment caused by the Principal's Personnel.
- 6.2 All Equipment must be maintained in safe, operable and good working condition, be maintained and operated by suitably qualified and competent Personnel and comply with all Laws applicable to the Equipment.

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- 6.3 The Principal may reject any item of Equipment which is in breach of clause 6.2 by notifying the Supplier and including details of the reason for the rejection. If any Equipment is so rejected then it must be either repaired, removed or replaced to the reasonable satisfaction of the Principal promptly after notification by the Principal. If the Supplier does not remove the Equipment by the date required by the Principal, the Principal may remove the Equipment at the Supplier's cost and risk.
- 6.4 Unless otherwise directed by the Principal, the Supplier must supply all spare parts (where required) and consumable items for the Equipment.

7 Principal's Property

- 7.1 The Principal may provide Principal's Property to the Supplier for the purposes of the Supplier fulfilling its obligations under this Agreement and the Supplier must not use Principal's Property for any other purpose.
- 7.2 Where the Principal provides Principal's Property to the Supplier under clause 7.1:
- (a) the Supplier is liable to the Principal for any loss or damage to the Principal's Property caused by the Supplier's Personnel; and
 - (b) title in the Principal's Property remains with the Principal but the Supplier must be responsible for its risk, and have the care, custody and control of the Principal's Property from the time of receipt, until its return to the Principal.

8 Hired Equipment

- 8.1 This clause 8 applies if the Principal has engaged the Supplier to lease equipment to the Principal on the Site.
- 8.2 The Supplier agrees to lease to the Principal the Hired Equipment for the duration set out in the Purchase Order. Unless otherwise agreed by the Principal in writing, the Supplier must:
- (a) perform all maintenance on the Hired Equipment at the Supplier's own cost and risk to ensure it is in safe, operable and good working condition throughout the Term; and
 - (b) conduct or supervise any commissioning of the Hired Equipment to the Principal's satisfaction.
- 8.3 The Supplier warrants that:
- (a) it has the necessary rights, title and interest in the Hired Equipment to lease it to the Principal;
 - (b) it has adequate insurance cover for the Hired Equipment pursuant to clause 18;
 - (c) the Hired Equipment is in safe, operable and good working condition throughout the Term, complies with all Laws applicable to the Hired Equipment; and
 - (d) where the Supplier's Personnel operate the Hired Equipment, those Personnel are suitably qualified and competent to operate the Hired Equipment, and formally inducted to work on the Site in accordance with clause 4.3.
- 8.4 Subject to clause 8.5, the Supplier is responsible for the Hired Equipment regardless of where the Hired Equipment is located.
- 8.5 The Principal is responsible to pay the relevant deductible for the insurance policy under clause 18 for loss or damage to the Hired Equipment solely caused by the Principal or the Principal's Personnel, from the time the Hired Equipment is under the control of the Principal, until the Hired Equipment is returned to the Supplier at its relevant return point nominated in the relevant Purchase Order, subject to fair, wear and tear.

9 Records and Audits

- 9.1 The Supplier must keep and maintain an accurate and reasonably detailed record of all documents relating to the supply of Goods and/or Services and retain copies of them for a period of 6 years, or any longer period required by any applicable Law, following the End Date.
- 9.2 Subject only to the Principal providing reasonable notice, during the Term and for 12 months after the End Date, the Supplier must permit the Principal's Personnel or its nominated representative/s to undertake reasonable audit activities to confirm the Supplier's compliance with this Agreement, and to facilitate this,

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must provide access to the Supplier's Personnel and premises and any information reasonably requested by the Principal.

10 Defective Goods and/or Services

- 10.1 Subject only to the Principal providing reasonable notice, at any time during the Term or during the Warranty Period, the Principal may review, undertake and/or witness tests on, and inspect and examine, the Goods and/or Services and the Supplier must take all reasonable steps to facilitate this.
- 10.2 If upon inspection or testing in accordance with clause 10.1 the Principal identifies Defective Goods and/or Services, it may give the Supplier a notice requiring the Supplier to rectify any defects identified (**Defect Notice**).
- 10.3 The Supplier must, at its own cost and risk, rectify the defect to the Principal's satisfaction (acting reasonably) by the date reasonably specified in the Defect Notice.
- 10.4 If the Supplier fails to comply with clause 10.3, the Principal may:
- (a) reject the Defective Goods and/or Services by notifying the Supplier that it is rejecting them; or
 - (b) make good the Defective Goods and/or Services itself,
- and the Supplier must:
- (c) refund to the Principal any payments made by the Principal in respect of any Defective Goods and/or Services that the Principal rejects; or
 - (d) reimburse the Principal for any expenses the Principal incurs in making good any Defective Goods and/or Services itself.
- 10.5 The remedies provided in this clause 10 do not exclude any other remedies provided by Law.

11 Fees

- 11.1 In consideration for the supply of the Goods and/or Services, the Principal must pay the Supplier the Fees.
- 11.2 Subject to clauses 14.4, 15.5, 17.2 and 25, the rates set out in this Agreement are the sole consideration payable to the Supplier under this Agreement, and are deemed to include all of the Supplier's, and its third party suppliers', costs and obligations expressed or implied in this Agreement or incurred in the course of the supply of the Goods and/or Services.
- 11.3 The Supplier must pay all costs and expenses incurred by the Supplier in the course of the supply of Goods and/or Services under this Agreement.

12 Invoicing and Payment

- 12.1 The Supplier must submit a Tax Invoice to the Principal following the end of each calendar month for the Goods and/or Services supplied in that month. Invoices must be submitted by the Supplier to the Principal by email at APInvoice@bellevuegold.com.au (or such other address as notified by the Principal's Representative to the Supplier's Representative from time to time).
- 12.2 The Tax Invoice must set out:
- (a) the Supplier's entity name and Australian Business Number (ABN);
 - (b) particulars of all Goods and/or Services supplied by the Supplier;
 - (c) the amount payable by the Principal under this Agreement in respect of those Goods and/or Services, and how the amount of the Tax Invoice was calculated;
 - (d) the Purchase Order Number and any line item numbers on the Purchase Order;
 - (e) the date of issue of the Tax Invoice and the period it covers;
 - (f) the Site and Delivery Date;
 - (g) if Services are charged by time, the time spent by the Supplier's Personnel; and
 - (h) any other information required by any applicable Law or as the Principal reasonably requires.

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- 12.3 Subject to clauses 12.4, 12.5 and 12.7, the Principal must pay all Tax Invoices submitted by the Supplier by the end of the month following the month in which the Tax Invoice was received (or such other period required by Law).
- 12.4 If a Tax Invoice rendered under clause 12.1:
- (a) does not comply in full with clause 12.2; or
 - (b) where the amount stated on the Tax Invoice, when aggregated with all prior Tax Invoices, exceeds the amount stated on the Purchase Order,
- then the Principal is not required to pay the amount stated on that Tax Invoice and the Supplier must resubmit a Tax Invoice which (as applicable):
- (c) complies in full with clause 12.2; and
 - (d) states an amount on the Tax Invoice for payment that, when aggregated with all prior Tax Invoices, does not exceed the amount stated on the Purchase Order.
- 12.5 The Principal must pay the amount of a Tax Invoice resubmitted in compliance with clause 12.4 by the end of the month following the month in which the Principal receives the resubmitted invoice (or such other period required by Law).
- 12.6 If a positive adjustment to the Fee is required as a consequence of a Variation in accordance with clause 16, then the Principal must ensure that the Purchase Order is amended to reflect any such adjustment.
- 12.7 If the Principal disputes any part of the amount set out in an invoice as being payable:
- (a) the Principal must pay the undisputed portion in accordance with clause 12.3 and notify the Supplier within 20 Business Days after the date of receipt of the invoice of the amount disputed and the reasons why the Principal disputes that portion of the invoice; and
 - (b) the Parties must meet as soon as practicable after a notice is given by the Principal under clause 12.7(a), with a view to settling the dispute. If the Parties have not resolved the dispute within 10 Business Days of the date of the notice, the matter may be referred for dispute resolution in accordance with clause 33.
- 12.8 The making of any payment by the Principal to the Supplier under this Agreement may not be taken or construed as proof or admission of the supply of the Goods and/or Services or any part thereof having been supplied to the satisfaction of the Principal but is only taken as a payment on account.
- 12.9 Any amounts due by the Principal to the Supplier under this Agreement may be set off by the Principal against any amounts due to the Principal from the Supplier.

13 Representatives

- 13.1 Unless expressly provided otherwise, all directions or any permission given on behalf of the Principal to the Supplier must be given by the Principal's Representative (or the Principal's Representative's delegate notified to the Supplier).
- 13.2 The Supplier must comply, and ensure that its Personnel comply, with the lawful directions of the Principal's Representative and Site Senior Executive in relation to the Supplier supplying the Goods and/or Services on the Site. In any matter pertaining to the safety of persons or property or proper compliance with any Laws which it is the Site Senior Executive's duty to enforce, the Site Senior Executive's decision will be final and any directions given must be obeyed in the manner directed.
- 13.3 The Supplier is bound by the actions of the Supplier's Representative. Matters within the knowledge of the Supplier's Representative are deemed to be within the knowledge of the Supplier.

14 Extension of Time

- 14.1 The Supplier must immediately give the Principal written notice of all incidents, circumstances or events of any nature affecting or likely to affect the Supplier's ability to supply the Goods and/or Services by the Delivery Date.
- 14.2 Within 10 days after the date of the notice issued under clause 14.1, the Supplier must give a further notice to the Principal which must include all material details of the event and mitigating actions taken by the Supplier.

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- 14.3 The Principal must grant an extension of time to the Delivery Date if the supply of the Goods and/or Services has been delayed by:
- (a) a Force Majeure Event;
 - (b) any act or omission of the Principal or its Personnel or any breach of this Agreement by the Principal;
 - (c) any Variation Proposal approved by the Principal;
 - (d) a delay in the Principal providing access to the Site; or
 - (e) a suspension by the Principal under clause 17.1 other than where the need for the suspension is due to a breach of this Agreement by, or an act or omission of, the Supplier.
- 14.4 If the Principal grants the Supplier an extension of time to the Delivery Date under either of clauses 14.3(b), 14.3(d) or 14.3(e), the Principal must reimburse the Supplier for its direct costs actually, reasonably and properly incurred as a direct consequence of the delay (evidenced on an open book basis and by the provision of documentation).
- 14.5 The Principal may, in its absolute discretion at any time by written notice to the Supplier, unilaterally extend the Delivery Date. The Principal is not required to exercise its discretion under this clause 14.5 for the benefit of the Supplier.

15 Default and Termination

- 15.1 The Supplier may terminate this Agreement by notice in writing to the Principal if the Principal fails to make a payment due to the Supplier under this Agreement, in respect of which there is no bona fide dispute as to the Principal's liability to make the payment, and provided the Supplier has delivered a notice of default to the Principal that states that the Supplier intends to terminate this Agreement if the breach is not remedied and the Principal fails to remedy the non-payment within the time specified in the notice of default (which must be no less than 10 Business Days).
- 15.2 The Principal may terminate this Agreement in whole or in part and with immediate effect, by notice to the Supplier, if:
- (a) the Supplier or any of its Personnel commits an act of gross negligence, wilful misconduct, fraud or dishonesty in respect of any matter in connection with this Agreement;
 - (b) the Supplier is in breach of any provision of this Agreement and the Principal reasonably determines that the breach is not capable of remedy;
 - (c) the Supplier is in breach of any provision of this Agreement which is capable of remedy and fails to remedy that breach at its own expense and to the reasonable satisfaction of the Principal within 14 days after receipt of a notice from the Principal specifying the breach; or
 - (d) the Principal is expressly entitled to exercise a right of termination under any other provision of this Agreement.
- 15.3 Either Party may terminate this Agreement by notice in writing to the other Party if the other Party:
- (a) ceases or threatens to cease to conduct its business or a substantial part of its business;
 - (b) being a natural person, commits an act of bankruptcy;
 - (c) being a corporation, is subject to any of the following events:
 - (i) a petition being presented, an order being made or a meeting being called to consider a resolution for that Party to be wound up, Deregistered or dissolved;
 - (ii) the appointment of a liquidator;
 - (iii) a receiver, receiver and manager, or an administrator under part 5.3A of the Corporations Act, or other similar officer, being appointed to all or any part of that Party's property;
 - (iv) a scheme of arrangement, or any steps are taken to plan or promote a scheme of arrangement;
 - (v) any assignment for the benefit of creditors;
 - (vi) any Security Interest is enforced against any of its assets;

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- (vii) any execution is levied, or judgment debt obtained, and is not paid or satisfied;
 - (viii) the planning or pursuit of a restructuring plan pursuant to section 588GA of the Corporations Act;
 - (ix) is subject to any corporate action, legal proceedings or other procedure or step is taken in relation to:
 - (A) the suspension of payments, a moratorium of any indebtedness, winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise); or
 - (B) a composition, compromise, assignment or arrangement with any of its creditors; or
 - (x) anything that is analogous or having a substantially similar effect to any of the events described above happens in connection with that corporation under the laws of any applicable jurisdiction;
 - (d) is or is presumed or deemed to be unable or admits inability to pay its debts as they fall due;
 - (e) suspends making payments on any of its debts; or
 - (f) by reason of actual or anticipated financial difficulties, commences negotiations with one or more of its creditors with a view to rescheduling any of its indebtedness.
- 15.4 No action taken by a Party under clauses 15.1 to 15.3 prejudices the existence of any of its rights and remedies under this Agreement or otherwise at Law which have accrued to that Party as at the date of action (and/or as at the date of any subsequent termination).
- 15.5 Without prejudice to any other rights of the Principal under this Agreement, if this Agreement is terminated by the Supplier under clause 15.1 or 15.3 or by the Principal under clause 15.3 or 24.2(b), the Principal must pay to the Supplier:
- (a) the Fees for Goods and/or Services supplied to the Principal prior to the date of termination and not included in any previous payment by the Principal;
 - (b) subject to the Supplier providing evidence, on an open book basis and by the provision of documentation (to the reasonable satisfaction of the Principal) of costs actually, reasonably and properly incurred, all irrevocable costs incurred or agreed to by the Supplier prior to the date of termination for the purpose of supplying the Goods and/or Services, which the Supplier is legally liable to accept and cannot otherwise utilise, but, where those costs relate to materials, only if the materials become the property of the Principal upon payment;
 - (c) reasonable and substantiated costs of demobilisation from the Site; and
 - (d) reasonable costs of complying with any directions given by the Principal upon, or subsequent to, termination.
- 15.6 On and from the End Date the Supplier must:
- (a) cease supply of the Goods and/or Services;
 - (b) take such action as necessary or as the Principal directs, for the transfer, protection and preservation of Principal's Property in the course of the Supplier demobilising from the Site;
 - (c) use its reasonable commercial endeavours to minimise the cost of termination to the Principal; and
 - (d) immediately cease using all Principal's Property, Principal's Background IP and Supply IP.
- 15.7 Within 14 days after the End Date, the Supplier must return to the Principal (or if requested, erase and/or destroy) all copies in any form of the applicable Principal's Background IP, Supply IP and Confidential Information in the possession or control of the Supplier and/or its Personnel.

16 Variation to the Scope of Work

- 16.1 The Principal may by written notice request a Variation.
- 16.2 The Supplier must as soon as practical (but no later than 7 days) after receiving a notice under clause 16.1, submit a Variation Proposal to the Principal addressing the effect of the requested Variation on the Scope of Work, including any change to the Fees and Delivery Date.

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16.3 Following receipt of a Variation Proposal under clause 16.2, the Principal may either:

- (a) direct the Supplier to perform the Variation in accordance with the Variation Proposal, in which case the relevant Purchase Order and Scope of Work (including any Fee) will be deemed to have been adjusted in accordance with the Variation Proposal; or
- (b) advise that it does not wish to proceed with the Variation, in which case the Parties must continue to perform the relevant Purchase Order and Scope of Work in its original form.

17 Suspension

17.1 The Principal has the right, at any time and for any reason, to suspend this Agreement or any part of this Agreement immediately by notice to the Supplier.

17.2 Subject to the Supplier providing the Principal with evidence, on an open book basis and by the provision of documentation (to the reasonable satisfaction of the Principal) of the costs actually, reasonably and properly incurred by the Supplier as a direct consequence of a suspension, the Principal must pay the Supplier such costs, except that the Supplier is not be entitled to any relief or remedy (including payment of any amount or any extension of time) in connection with the suspension to the extent that:

- (a) the reason for the suspension was caused, or contributed to, by an act, default or omission of the Supplier or its Personnel; or
- (b) the suspension is required by Law.

17.3 If the Supplier receives a notice of suspension from the Principal under clause 17.1, it must suspend the performance of its obligations until such time as the Principal directs that this Agreement is no longer suspended.

18 Insurance

18.1 The Supplier must, before commencing the supply of Goods and/or Services, effect and maintain at its expense, the following insurances:

- (a) (where the Supplier is required to enter the Site):
 - (i) workers' compensation insurance for an amount of not less than \$50,000,000 that must:
 - (A) comply with all statutory requirements, including providing any compulsory statutory workers' compensation benefits;
 - (B) provide common law liability as required by Law in Western Australia;
 - (C) provide a principal's indemnity extension indemnifying the Principal and a waiver of subrogation in favour of the Principal and its Related Bodies Corporate; and
 - (D) extend to include employees underground, if the Supplier's Personnel are required to carry out any work underground;
 - (ii) an industrial disease workers compensation policy in accordance with the applicable legislation;
 - (iii) public liability insurance for general public and products liability to a limit not less than \$20,000,000 in respect of any one occurrence arising out of the same or original cause and unlimited in the aggregate as to the number of claims, and be endorsed to include:
 - (A) a principal's indemnity extension indemnifying the Principal and a waiver of subrogation in favour of the Principal and its Related Bodies Corporate;
 - (B) cover for worker-to-worker injury liability risks;
 - (C) cover for goods in the care, custody and control of the Supplier for amount of not less than the market value of any plant and equipment supplied by the Principal;
 - (D) liability arising out of the use of unregistered motor vehicles; and
 - (E) a cross liability clause.

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- (b) (where the Principal purchases or any Goods or hires any Hired Equipment from the Supplier) product liability insurance that must provide cover for general products liability to a limit not less than \$20,000,000 in respect to any one occurrence arising out of the same or original cause and limited in the aggregate to \$20,000,000, and be endorsed to include:
 - (i) a principal's indemnity extension indemnifying the Principal and a waiver of subrogation in favour of the Principal and its Related Bodies Corporate;
 - (ii) cover for worker-to-worker injury liability risks;
 - (iii) cover for goods in the care, custody and control of the Supplier for amount of not less than the market value of any plant and equipment supplied by the Principal;
 - (iv) liability arising out of the use of unregistered motor vehicles; and
 - (v) a cross liability clause.
 - (c) (where the Supplier is required to use or provide for use of motor vehicles on the Site):
 - (i) motor vehicle insurance for all motor vehicles used or brought onto the Site for an amount not less than \$20,000,000 for any one occurrence and unlimited as to the number of occurrences and be endorsed to include:
 - (A) a principal's indemnity extension indemnifying the Principal and a waiver of subrogation in favour of the Principal and its Related Bodies Corporate; and
 - (B) a cross liability clause; and
 - (ii) comprehensive motor vehicle third party liability insurance insuring against third party claims, and the Supplier must ensure that all motor vehicles used or brought onto the Site are kept licensed in accordance with any Laws.
 - (d) (where the Services include professional services), professional indemnity insurance in respect of the supply of the Services to cover for liability to a limit of not less than \$5,000,000 (with a maximum excess of \$100,000) in relation to any one claim;
 - (e) (where the Supplier is bringing the Supplier's Equipment (including any Hired Equipment or Equipment for which the Supplier has a responsibility to insure)) all risks property insurance for an amount of not less than the full replacement value of the Supplier's Equipment (unless otherwise insured) to the satisfaction of the Principal, and be endorsed to include:
 - (i) a principal's indemnity extension indemnifying the Principal and a waiver of subrogation in favour of the Principal and its Related Bodies Corporate; and
 - (ii) a cross liability clause;
 - (f) (where the Supplier is responsible for transport of property owned by the Principal), marine transit and property damage insurance for loss or damage to such property in transit or loading/unloading for the full the replacement value; and
 - (g) any other insurances required by Law or regarded as Good Industry Practice.
- 18.2 The Supplier must provide evidence of the currency of insurance to the Principal at any time upon request.
- 18.3 The Supplier must ensure any Subcontractor engaged by the Supplier in relation to the Goods and/or Services effects and maintains the equivalent insurances nominated in this clause 18.
- 18.4 The Supplier shall at all times be responsible for complying with and abiding by the terms and conditions of the insurances arranged by it, including the giving of prompt notice of any loss or claim to the Supplier's insurers and the payment of any premium under the terms of the insurances. The Supplier is responsible for the payment of any excess or deductible relating to the insurances effected by the Supplier under this Agreement.
- 18.5 If the Supplier or its Subcontractors fail to maintain any required insurance, then the Principal may, at the Supplier's cost, effect and maintain that insurance, pay the necessary premiums and recover from the Supplier the amount paid by the Principal under this clause 18.5.

19 Title and Risk

- 19.1 Title in any Goods (except for any Hired Equipment) passes to the Principal when the Principal pays for the relevant Goods or when such Goods are applied in the course of supplying the Services, whichever is the first to occur. The Supplier must ensure that the title in the Goods passes to the Principal free of all Security Interests.
- 19.2 To the extent permitted by Law, and subject to any breach by the Principal of its obligations under work, health and safety legislation, its duty of care and this Agreement, the Supplier enters onto the Site and supplies the Goods and/or Services under this Agreement at its own risk. Risk in any Goods (except for any Hired Equipment) remains with the Supplier until delivery to the Principal.

20 Liability and Indemnities

- 20.1 To the maximum extent permitted by Law, the Supplier is liable for and must indemnify and hold harmless the Principal, the Principal's Personnel, each Group Member and each of their Personnel (**Indemnified Parties**) from and against any and all Liabilities:
- (a) relating to any loss of use of, destruction or damage to any property of any kind whatsoever, including that of any third party;
 - (b) arising out of any Claims by any person against any of the Indemnified Parties relating to any:
 - (i) illness, injury, occupational disease or death of any person;
 - (ii) infringement or alleged infringement of the Intellectual Property Rights of any person; or
 - (iii) unauthorised disclosure of Confidential Information;
 - (c) relating to any Claims brought against the Indemnified Parties by any third party; and
 - (d) relating to any non-compliance by the Supplier or the Supplier's Personnel with, or infringement of, any Laws applicable to the Goods and/or Services,
- that arise out of or in connection with any negligent or unlawful act or omission of the Supplier under this Agreement or the Supplier's Personnel or breach of this Agreement by the Supplier or the Supplier's Personnel, except that the Supplier's liability to the Indemnified Parties shall be reduced proportionately to the extent that any act or omission of an Indemnified Party or breach of this Agreement by the Principal or the Principal's Personnel caused or contributed to the liability.
- 20.2 Notwithstanding anything in this Agreement to the contrary but subject to clause 20.3 and to the extent permitted by Law, neither Party will be liable to the other for any Excluded Loss.
- 20.3 The limitation set out in clause 20.2 does not apply to limit, or in any way restrict the liability of either Party:
- (a) for any liability relating to any illness, injury, occupational disease or death of any person;
 - (b) if the Liability arises from the infringement of the Intellectual Property Rights of a third party;
 - (c) in respect of a breach of a Party's obligations under this Agreement relating to Intellectual Property Rights or confidentiality;
 - (d) in respect of any statutory fine payable by a Party as a result of a breach of applicable work health and safety requirements or environmental requirements under Law by the other Party or any of the other Party's Personnel; or
 - (e) to the extent that the loss or liability is recoverable under a policy of insurance required to be effected or maintained pursuant to this Agreement or would have been recoverable but for that Party's failure to comply with its insurance obligations or the terms of the policy of insurance or if it fails to diligently pursue a claim under a policy of insurance.
- 20.4 The indemnities in clause 20.1 are a continuing obligation, separate and independent from the other obligations of the Parties and survive termination of this Agreement. It is not necessary for any of the Indemnified Parties to incur expense or make payment before enforcing a right of indemnity conferred by this clause 20.

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20.5 Every exemption, limitation, defence, immunity, indemnity or other benefit contained in this Agreement or otherwise to which the Principal or a Group Member is entitled is held by the Principal as trustee for the benefit of, and extends to protect, each of the Principal's, and each Group Member's, Personnel.

21 Privacy

- 21.1 Each Party must, and must procure that its Personnel, in relation to all Other Party Personal Information:
- (a) take such steps (with reasonable costs to be paid by the other Party) as the other Party reasonably requests to facilitate the other Party's compliance with the Privacy Law;
 - (b) not do or omit to do any act that puts the other Party in breach of the Privacy Law;
 - (c) except with the other Party's written consent, not disclose any of the Other Party Personal Information to any other person, including not subcontracting the collection, use or storage of the Other Party Personal Information; and
 - (d) not store any Other Party Personal Information outside Australia.
- 21.2 Notwithstanding clause 21.1, the Principal may disclose Other Party Personal Information to the extent required when it is reasonably necessary for the Principal to:
- (a) operate its business and protect its legitimate business interests;
 - (b) protect the health and safety of any person on the Site; or
 - (c) safely operate the Site.

22 Intellectual Property

- 22.1 Each Party grants the other Party a non-exclusive, royalty free licence to use its Background IP to the extent necessary to enable the other Party to perform its obligations under this Agreement.
- 22.2 The Supplier acknowledges and agrees that all Supply IP vests in the Principal, and the Supplier hereby assigns all rights, title and interest in and to the Supply IP to the Principal.
- 22.3 The Supplier must not disclose, reproduce or otherwise deal with the Principal's Background IP or the Supply IP, or allow any other person to do the same, for any purpose other than to supply the Goods and/or Services under this Agreement.
- 22.4 The Supplier warrants that:
- (a) it owns the Supplier's Background IP and the use of the Supplier's Background IP does not and will not infringe any Intellectual Property Rights of any third party;
 - (b) the supply of the Goods and/or Services does not and will not infringe the Intellectual Property Rights of any third party;
 - (c) it will, at no further cost to the Principal, procure all licences and consents to use any Intellectual Property Rights of a third party which are necessary to supply the Goods and/or Services;
 - (d) the Supply IP does not and will not infringe any Intellectual Property Rights of any Third Party; and
 - (e) the Supplier has the right to assign all Supply IP in accordance with clause 22.2.

23 Confidential Information

- 23.1 Notwithstanding clause 35.6, any Confidentiality Agreement remains in effect and is not displaced by, and prevails to the extent of any inconsistency with, this Agreement.
- 23.2 The Supplier must not, and must ensure that its Personnel do not, advertise or issue any information, publication, document or article (including photograph or film) for publication or media releases or other publicity relating to this Agreement or the Principal's Confidential Information without the prior written consent of the Principal.
- 23.3 Each Party must ensure that all Confidential Information is kept:
- (a) confidential and is not disclosed directly or indirectly to a third party without the prior written consent of the other Party; and

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- (b) secure and protected from unauthorised access, use, disclosure, reproduction, modification, corruption, loss, damage and destruction,

except that nothing in this Agreement prevents:

- (c) a Party from disclosing Confidential Information if disclosure is required to be made by Law or the rules of any recognised securities exchange applicable to that Party;
- (d) a Party from disclosing Confidential Information to its Related Bodies Corporate, its professional advisers, any current or prospective banker or debt or equity financier (or security trustee or agent on behalf of one or more financiers) of the Party or its Related Bodies Corporate (and their professional advisers) or to any potential direct or indirect investors in the Party or its Related Bodies Corporate (and their professional advisers), provided in each case they are bound by an obligation of confidentiality;
- (e) disclosure that is reasonably required to enable a Party to perform its obligations under this Agreement or to enforce the terms of this Agreement;
- (f) a Party from disclosing information that has come into the public domain otherwise than as a result of a breach by any Party of this Agreement; or
- (g) a Party from disclosing information which is lawfully known to that Party before the Effective Date or which is or becomes available to that Party from a third party who is in possession of it lawfully and can disclose it to the Party on a non-confidential basis.

23.4 Each Party must ensure that its Personnel and any third party who receives the other Party's Confidential Information do not disclose that information and secure and protect the Confidential Information from unauthorised access, use, disclosure, reproduction, modification, corruption, loss, damage and destruction.

23.5 This clause 23 survives termination of this Agreement for a period of 2 years.

24 Conflict of Interest

24.1 The Supplier:

- (a) warrants on the Effective Date that it has disclosed to the Principal any Conflict of Interest at that time; and
- (b) must disclose to the Principal any Conflict of Interest that arises after the Effective Date as soon as it comes to the attention of the Supplier.

24.2 Where a Conflict of Interest arises after the Effective Date:

- (a) the Parties agree to work together to address the effect of the Conflict of Interest; and
- (b) where the Conflict of Interest cannot be addressed to the reasonable satisfaction of the Principal, the Principal may terminate this Agreement subject to clause 15.5.

25 Taxes

25.1 If GST has application to any supply made by the Supplier under or in connection with this Agreement, the Supplier may, in addition to the consideration payable or to be provided for the supply, subject to issuing a Tax Invoice, recover from the Principal an additional amount on account of GST, such amount to be calculated by multiplying the amount or consideration payable or to be provided by the Principal for the supply by the prevailing GST rate.

25.2 Should any taxes (other than GST) be levied on, in respect of, or in relation to, the Goods and/or Services, the Supplier is responsible for the payment of those taxes.

25.3 The Supplier must do everything necessary to ensure that both the Supplier and Principal are eligible for any exemptions, credits, set-offs or deductions in respect of any applicable taxes.

25.4 If either Party is required by applicable Law to make a deduction or withholding from a payment to the other Party for or on account of any taxes, the paying Party may make that deduction or withholding.

25.5 If a payment is made without a deduction or withholding for or on account of taxes and such a deduction or withholding was required by any applicable Law then:

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- (a) the payee must reimburse the paying Party for the amount that should have been withheld or deducted; and
- (b) reimbursement must be made within 14 days of receiving a copy of a receipt evidencing the amount that was required to have been withheld or deducted.

26 Assignment, Change of Control and Subcontracting

- 26.1 A Party must not assign, transfer, novate, charge or otherwise dispose of any part or the whole of its rights or obligations under this Agreement, including by way of Change of Control, to a third party (other than a Related Body Corporate) without the prior written consent of the other Party (which must not be unreasonably withheld) and, if required by the other Party, must enter into any document reasonably required to effect the assignment, transfer, novation, charge or disposal.
- 26.2 The Supplier must not subcontract any part or the whole of its obligations under this Agreement except with the prior written consent of the Principal, and must enter into a subcontract that contains terms that oblige the Subcontractor to perform its obligations under the subcontract in a way that ensures that the Supplier complies with its obligations under this Agreement.
- 26.3 The Supplier is liable to the Principal for the acts and omissions of any subcontractor as if they were acts and omissions of the Supplier.

27 PPSA

- 27.1 Unless otherwise defined in this Agreement, capitalised terms and expressions used in this clause 27 have the same meaning as they have in the PPSA.
- 27.2 The Supplier may register and maintain a Financing Statement on the Register to perfect any Security Interest which is created by or arises out of this Agreement in the Hired Equipment and the proceeds arising from dealing in the Hired Equipment (**Collateral**) provided that any Financing Statement specifically describes the Collateral. The Supplier must not register any Financing Statement in respect of assets of the Supplier which are not Collateral and must not register a Financing Statement with the collateral class of "AIIPAAP" (with or without exceptions).
- 27.3 If requested by the Supplier, the Principal agrees to promptly do such acts and provide such information as may be necessary to enable the Supplier to perfect any Security Interest created or provided for by this Agreement in the Collateral.
- 27.4 The Supplier waives any right which it may have at any time (including under s157 of the PPSA) to receive a copy of a Verification Statement.
- 27.5 The Supplier and the Principal agree that neither Party will disclose any information of the kind mentioned in s275(1) of the PPSA (except as provided for in s275(7)).

28 Force Majeure

- 28.1 If a Party is prevented from performing any of its obligations under this Agreement by reason of a Force Majeure Event, that Party must immediately give written notice to the other Party setting out:
- (a) the circumstances constituting the Force Majeure Event;
 - (b) the date of commencement of the Force Majeure Event and the expected duration of the impact of the Force Majeure Event; and
 - (c) the measures proposed to be adopted to remedy or abate the Force Majeure Event (to the extent known at the time the notice is issued).
- 28.2 The affected Party must promptly keep the other Party informed of any changes in the circumstances of the Force Majeure Event or the effects of the Force Majeure Event.
- 28.3 Non-performance or delay in performance (wholly or in part) of any obligation of an affected Party under this Agreement as a result of a Force Majeure Event:
- (a) will be excused during the time and to the extent that Force Majeure Event prevents such performance, wholly or in part; and
 - (b) will not give rise to any liability to the other Party for any liability directly arising out of that non-performance or delay.

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- 28.4 The affected Party must use its best endeavours to remedy or mitigate the effect of any Force Majeure and comply with its obligations under this Agreement.
- 28.5 Notwithstanding any provision of this Agreement, if the Force Majeure causes the suspension of the Supplier's obligations for a continuous period of 60 days or a cumulative period of 60 days in any 180-day period, either Party may terminate this Agreement by written notice to the other Party.

29 Human Rights and Modern Slavery

- 29.1 The Supplier represents and warrants that:
- (a) it does not engage in conduct that is inconsistent with Human Rights;
 - (b) it does not engage in Modern Slavery;
 - (c) it investigates Human Rights and Modern Slavery risks within its operations, and those of its supply chain;
 - (d) it assesses and addresses Human Rights and Modern Slavery risks, including implementing appropriate due diligence and remediation programs;
 - (e) it will notify the Principal as soon as possible of any confirmed instances of Modern Slavery or conduct inconsistent with Human Rights within its operations and supply chain and the actions undertaken by the Supplier to remedy the issue;
 - (f) it has all the necessary processes, procedures, investigations and compliance systems in place to undertake the actions in this clause 29.1;
 - (g) upon request, and within a reasonable time specified by the Principal, the Supplier will provide evidence (on an open book basis and by the provision of documentation) to the satisfaction of the Principal which validates the Supplier's compliance with this clause 29.1;
 - (h) upon request, and within a reasonable time specified by the Principal, the Supplier will permit the Principal's Personnel or its nominated representative/s to undertake verification activities to validate the Supplier's compliance with this clause 29.1, including access to the Supplier's premises and records as reasonably required; and
 - (i) it will include a clause similar to this clause 29.1 in all contracts it enters into with its suppliers.
- 29.2 If the Supplier does not appropriately remedy, or provide the Principal with an acceptable plan to remedy, any identified instances of Modern Slavery within a reasonable time frame specified by the Principal, the Principal may terminate this Agreement in accordance with clause 15.2.

30 Greenhouse Gas Emissions

If the Principal requests, or if applicable pursuant to the Scope of Work, the Supplier agrees to use its reasonable endeavours to carry out emission management actions and measure or provide the Principal with Scope 1 Emissions, Scope 2 Emissions and Scope 3 Emissions related information in connection with the Goods and/or Services under this Agreement in a transparent and independently verifiable manner.

31 Anti-Bribery and Corruption

Each Party must:

- (a) at all times comply with all applicable Laws, statutes, regulations and codes relating to anti-bribery and improper payments including the *Criminal Code Act 1995* (Cth) (Australia), the *Foreign Corrupt Practices Act 1977* (United States), and the *Bribery Act 2010* (United Kingdom) (**Relevant Requirements**); and
- (b) have and maintain in place throughout the term of this Agreement its own policies and procedures, including adequate procedures under the Relevant Requirements, to ensure compliance with the Relevant Requirements, and enforce them where appropriate.

32 Trade Controls

- 32.1 The Supplier and the Supplier's Personnel must not be a Sanctioned Party during the Term.

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- 32.2 The Supplier must not, without the prior written consent of the Principal, supply to the Principal any:
- (a) Goods that have been imported by a Sanctioned Party or sourced (including any Goods that have been grown, produced, manufactured extracted or processed) in whole or part from a Sanctioned Country or Territory, or Sanctioned Party and any Goods that have entered into commerce in a Sanctioned Country or Territory; or
 - (b) Services from a Sanctioned Country or Territory origin, including any services performed in a Sanctioned Country or Territory or outside of a Sanctioned Country or Territory by an entity organised under the Laws of a Sanctioned Country or Territory or a person ordinarily a resident of a Sanctioned Country or Territory, or Services that involve a Sanctioned Party in any respect.
- 32.3 The Principal may terminate this Agreement by written notice to the Supplier if the Supplier breaches clause 32.1. If the Principal terminates this Agreement pursuant to this clause 32.3, the Principal is no obligation to return any Goods, make any payments or pay any compensation to the Supplier unless the Principal has received all government authorisations required to do so.

33 Dispute Resolution

- 33.1 If a dispute arises between the Parties, either Party may give to the other Party a dispute notice specifying the nature of the dispute and requiring its resolution under this clause 33.
- 33.2 If a notice is given under clause 34.1, the Parties must promptly meet and negotiate in good faith with a view to resolving the dispute. If the dispute has not been resolved within 14 days after the notice of the dispute is given to the other Party, each Party must nominate one representative from its senior management to negotiate and try and settle the dispute, who must negotiate in good faith with a view to resolving the dispute.
- 33.3 If the dispute has not been resolved within 30 days after the date of receipt of the dispute notice, either Party may commence legal proceedings in connection with that dispute in any Western Australian court of competent jurisdiction.
- 33.4 Despite the existence of a dispute, the Supplier must continue without delay to perform its obligations under this Agreement.
- 33.5 Nothing in this clause 33 prevents either Party from applying to a court for urgent interlocutory, injunctive or declaratory relief.

34 Notices

- 34.1 Any notice, approval, consent or other communication in relation to this Agreement must:
- (a) be in writing and signed by the Party sending it (or on that Party's behalf);
 - (b) be marked for the attention of:
 - (i) in the case of a notice to the Principal, the Principal's Representative;
 - (ii) in the case of a notice to the Supplier, the Supplier's Representative; and
 - (iii) be left at or sent by prepaid ordinary post to the last notified address of the receiving Party or sent by email to the last notified email address of the receiving Party.
- 34.2 A notice, approval, consent or other communication is taken to be received by the addressee:
- (a) in the case of delivery by hand, when delivered;
 - (b) in the case of delivery by post, five Business Days after the date of posting (if posted to an address in the same country) or 10 Business Days after the date of posting (if posted to an address in another country); or
 - (c) in the case of email, when the email (including any attachment) is sent to the receiving Party, unless the sending Party receives a notification of delivery failure within 24 hours of the email being sent,

but if the result is that a notice would be taken to be given or made on a day that is not a Business Day in the place to which the notice is sent or is later than 5.00pm (local time) it will be taken to have been duly given or made at the commencement of the next Business Day in that place.

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35 Other Matters

- 35.1 This Agreement may only be varied by a document signed by or on behalf of each Party.
- 35.2 If any provision or part of a provision of this Agreement is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular Party or generally), it will be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.
- 35.3 Waiver of any right arising from a breach of this Agreement must be in writing and executed by the Party granting the waiver. Failure by the Principal to exercise a right, remedy or power at any time will not be construed in any way to affect the enforceability of that right, remedy or power in any other instance, or the enforceability of this Agreement as a whole.
- 35.4 The Parties accept the Laws of the State of Western Australia as the governing Law of this Agreement submit to the exclusive jurisdiction of the Courts of the State of Western Australia any courts.
- 35.5 To the maximum extent permitted by Law, the Parties agree that the operation of the Part 1F of the *Civil Liability Act 2002 (WA)* is excluded in relation to all and any rights, obligations and liabilities under this Agreement, whether such rights obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at Law.
- 35.6 Subject to clause 23.1, this Agreement as amended or varied from time to time represents the entire agreement between the Parties and supersedes all prior arrangements whether written or oral in relation to the Services. Any terms that may have been attached or embodied in the Supplier's quotation or other correspondence are deemed to have been withdrawn in favour of the terms stated in the Purchase Order (including this Agreement).
- 35.7 The Principal and the Supplier are independent contracting parties and nothing in this Agreement makes either Party an agent or legal representative of the other for any purpose whatsoever. Nor does this Agreement grant either Party any authority to assume or to create an obligation on behalf or in the name of the other Party.
- 35.8 The Principal is not responsible to the Supplier or any of its Personnel for any payments in respect of any employment related expenses including wages, annual leave, sick leave, long service leave, superannuation, workers' compensation, accidents, sickness, or lift insurance.
- 35.9 Clauses 1, 2, 3.6, 4.4, 7.2, 9, 10, 11.3, 15, 18, 19, 20, 21, 22, 23, 25, 27, 33, 34, 36 and this clause 35 survive the expiry or earlier termination of this Agreement.
- 35.10 This Agreement may be executed in counterparts. All counterparts of this Agreement, taken together, constitute one instrument.

36 Definitions

- 36.1 In this Agreement unless the contrary intention appears:

Aboriginal Heritage Legislation means Western Australian and Commonwealth legislation relating to the protection of Aboriginal heritage, including the:

- (a) *Aboriginal Heritage Act 1972 (WA)*; and
- (b) *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*,

and any other applicable legislation relating to the protection of Aboriginal heritage that may apply from time to time.

Agreement means the agreement between the Principal and the Supplier comprised of the Purchase Order, these Purchase Order – Terms and Conditions and all other documents annexed to this document or specifically incorporated by reference (which, to the extent of any inconsistency, are to be construed in this order).

Background IP means, in relation to a Party, the Intellectual Property Rights of that Party which:

- (a) are in existence prior to or at the Effective Date; or
- (b) come into existence after the Effective Date otherwise than in connection with this Agreement.

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

Change of Control means in relation to an entity:

- (a) an entity that Controls the entity ceases to Control the entity; or
- (b) an entity that does not Control the entity comes to Control the entity.

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

Confidential Information means the terms of this Agreement and all commercial, technical and other information in any form whatsoever in the possession or knowledge of a Party which is disclosed to the other Party at any time in connection with this Agreement, or any other information that is confidential in nature, including any information of that sort which is provided verbally to a Party by any Personnel of the other Party and includes any information in relation to the Bellevue Gold Project, the Group or the Principal received or obtained by the Supplier in the course of supplying the Goods and/or Services.

Confidentiality Agreement means any non-disclosure or confidentiality agreement or deed between the Parties in effect on the Effective Date.

Conflict of Interest means a conflict of interest between the Principal or its Personnel, and the Supplier or its Personnel, whether that conflict of interest is perceived or actual.

Control has the meaning given in the Corporations Act.

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

Defective Goods and/or Services means Goods and/or Services which are in breach of this Agreement.

Delivery Date means (where relevant) the date the Goods and/or Services must be supplied by the Supplier as specified in the Scope of Work.

Delivery Terms means the terms of delivery (where relevant) as set out in the Scope of Work.

Deregistered has the meaning given in the Corporations Act.

Effective Date means the date the Purchase Order is deemed to be accepted in accordance with clause 1.1.

End Date means the earlier of the date:

- (a) on which the Goods have been delivered and commissioned and/or the Services have been provided and the Supplier has demobilised all of its Personnel and Equipment from the Site as required under this Agreement (as applicable); or
- (b) of termination or expiry of this Agreement.

Equipment means the plant, equipment, tools, machinery, vehicles, appliances, items, consumables and other property required by the Supplier for the purpose of supplying the Goods and/or Services and includes any Hired Equipment.

Excluded Loss means:

- (a) loss of income, loss of revenue, profit or anticipated profit, loss of production, loss or denial of business opportunity, loss of access to markets, loss of goodwill, loss of business reputation, future reputation or publicity, damage to credit rating, cost of capital, loss of use and loss of interest; or
- (b) indirect, consequential or special damages or losses,

suffered by the other Party, however arising due to any causes including to the default or negligence of a Party or its representatives and whether or not foreseeable at the Effective Date.

Fees means the fees payable for the Goods and/or Services as set out in the Purchase Order.

Force Majeure Event means:

- (a) fire, lightning strike, explosion, flood, earthquake, landslide or other natural disaster;
- (b) riot, civil commotion, sabotage, war (declared or not), invasion, acts of terrorism or revolution;

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- (c) any epidemic or pandemic arising after the Effective Date (which does not include the COVID-19 pandemic);
- (d) any unlawful act against public order or authority; or
- (e) a government restraint,

that:

- (f) causes or results in the prevention or delay of a Party from performing any of its obligations under this Agreement; and
- (g) is beyond the reasonable control of that Party and could not, or the effects of that event or circumstance, or that combination of events and/or circumstances, could not, have been prevented, delayed, overcome or remedied by that Party acting reasonably,

and for the avoidance of doubt, the occurrence of the following acts, events or circumstances do not constitute a Force Majeure Event:

- (h) the failure or inability of the affected Party to pay any sum due and payable under this Agreement;
- (i) financial hardship or the inability of a Party (or its Related Bodies Corporate) to make a profit or achieve a satisfactory rate of return resulting from performance or failure to perform its obligations under this Agreement;
- (j) any occurrence which results from the wrongful act or omission of the affected Party or the failure by the affected Party to act in a prudent and proper manner and in accordance with Good Industry Practice;
- (k) any failure by the affected Party to reach agreement with any third party necessary to enable the affected Party to perform its obligations under this Agreement; or
- (l) industrial action of the Supplier's Personnel, except industrial action of an industry wide nature.

GHG means all greenhouse gases for which their emissions are reported under the Australian Government's *National Greenhouse and Energy Reporting Scheme*, including carbon dioxide, methane, nitrous oxide, sulphur hexafluoride and hydro fluorocarbons and perfluorocarbons.

Good Industry Practice means the practices, methods and acts engaged in or approved by an organisation who, in the conduct of its undertaking, exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced professional contractors engaged in the same type of undertaking under the same or similar circumstances and conditions and in accordance with generally accepted industry and professional standards and practices.

Goods and/or Services means all goods and/or services to be supplied by the Supplier in accordance with this Agreement including:

- (a) all goods and/or services set out in any applicable Purchase Order including any items to be supplied by the Supplier in the supply of the Services (including any Hired Equipment);
- (b) other services, functions, responsibilities and obligations that this Agreement provides that the Supplier has or will supply; and
- (c) all responsibilities and functions not specifically described in this Agreement but which are incidental to, or otherwise necessary for, the Supplier to supply the goods and/or services under this Agreement.

Group means Bellevue Gold Limited (ACN 110 439 686) and its Related Bodies Corporate.

Group Member means a member of the Group.

GST has the meaning given in the GST Law.

GST Law has the meaning given in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hired Equipment means Equipment to be hired or leased by the Supplier to the Principal on the Site in accordance with this Agreement and as set out in any applicable Purchase Order.

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Human Rights means all internationally recognised human rights Laws and standards, including, those rights and standards expressed in the:

- (a) United Nation's *International Bill of Human Rights*;
- (b) principles concerning the rights set out in the International Labour Organisation's *Declaration on Fundamental Principles and Rights at Work*;
- (c) United Nations' *Guiding Principles on Business and Human Rights*; and
- (d) the Association of the Voluntary Principles on Security and Human Rights' *Voluntary Principles for Security and Human Rights*,

and to the extent of any inconsistency between the above documents, the highest standard applies.

Intellectual Property Rights and **Intellectual Property** means (in the context of a Party or third party) all industrial and intellectual property rights whether protectable by statute, at common law or in equity, including all copyright and similar rights which may subsist now or in the future in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registrable), rights in relation to registered or unregistered trademarks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

Law means any act, statute, legislation, law, proclamation, ordinance, regulation, by-law, order, notice, rule, scheme, requirement, or rule or principle of common law or equity, in any jurisdiction to the extent applicable to a given Party, and includes:

- (a) any Act of Parliament in any Australian jurisdiction (including the Commonwealth) for the time being in force and all proclamations, regulations, by-laws, orders, notices, rules of court, town planning schemes, resolutions or other instruments made under any or by the authority of any such Act of Parliament or written law and having legislative effect;
- (b) legally binding requirements of any government agency;
- (c) any judgement by a competent court; and
- (d) all licences, qualifications, registrations and other statutory requirements necessary for the supply of the Goods and/or Services under this Agreement.

Modern Slavery means any activity, practice or conduct that would constitute an offence or is otherwise as defined as modern slavery in any applicable anti-slavery and human trafficking Laws (including in the *Modern Slavery Act 2018* (Cth) and divisions 270 and 271 of the *Criminal Code 1995* (Cth)).

Other Party Personal Information means, in relation to a Party, all Personal Information received by that Party from the other Party in relation to this Agreement.

Party means the Supplier or the Principal and **Parties** means both of them.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

Personnel means:

- (a) in relation to the Principal, any past or present directors, officers, employees, labour hire workers, suppliers, subcontractors, agents, advisers and representatives of the Principal or any Related Body Corporate of the Principal (excluding the Supplier and any of the Supplier's Personnel); and
- (b) in relation to the Supplier, any of its directors, officers, employees, labour hire workers, suppliers, Subcontractors, agents, advisers and representatives involved either directly or indirectly in the supply of the Goods and/or Services.

PPSA means the *Personal Properties Securities Act 2009* (Cth).

Principal means Bellevue Gold Limited (ACN 110 439 686) or its Related Body Corporate specified on the Purchase Order.

Principal's Policies and Procedures means the Principal's policies, standards and rules of conduct and operation:

- (a) published on the Principal's website on the Effective Date; or

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- (b) applicable to safety and the safe operation of the Site (including the Site Safety Rules) made available to the Supplier prior to the Supplier accessing the Site,

as updated from time to time in accordance with clause 3.4.

Principal's Property means the Principal's plant, equipment, tools, appliances or other property and items on the Site.

Principal's Representative means the person appointed by the Principal to act on its behalf in relation to this Agreement as notified to the Supplier.

Privacy Law means the *Privacy Act 1988* (Cth) and any other applicable Laws or regulations pertaining to the collection, handling and/or disclosure of Personal Information.

Purchase Order means the document entitled 'Purchase Order' issued by the Principal to the Supplier for the supply of Goods and/or Services in accordance with this Agreement (including any schedules attached) and accepted by the Parties in accordance with this Agreement.

Related Body Corporate has the meaning given in the Corporations Act.

Sanctioned Country or Territory means any country or territory against which comprehensive sanctions are imposed by the United States, the United Kingdom, the United Nations, the European Union, any European Union member states, Australia, Switzerland or any other country with jurisdiction over the activities in connection with this Agreement, and currently includes Cuba, Iran, North Korea, South Sudan, Syria and the Crimea.

Sanctioned Party means any person or entity or vessel that is listed on, or owned, or controlled by a person listed on the Specially Designated Nationals and Blocked Persons List maintained by the U.S. Treasury Department's Office of Foreign Assets Control (**Restricted Party**), an entity that is 50% or more controlled or owned, directly or indirectly by a Restricted Party or any similar restricted party or sanctions list maintained by the United States, the United Kingdom, the United Nations and the European Union, Australia, Canada or any other relevant government.

Scope 1 Emissions means direct GHG emissions that occurred directly from sources that are owned or controlled by a relevant Party, for example, emissions from combustion in owned or controlled boilers, furnaces, vehicles, or emissions from chemical production in that Party's own (or controlled) process equipment.

Scope 2 Emissions means any GHG emissions from the generation of purchased electricity, steam and heating/cooling consumed by a relevant Party, being any electricity, steam, and heating/cooling that is purchased or otherwise brought into a relevant Party's organisational boundary and is measured by the relevant GHG emissions levels emitted at the facility where electricity is generated.

Scope 3 Emissions means all other indirect GHG emissions which are a consequence of the activities of a relevant Party, but occurred from sources not owned or controlled by that Party, for example, extraction and production of purchased materials, transportation or purchased fuel and used of products or services procured by the relevant Party.

Scope of Work means the scope of the Goods and/or Services to be supplied as specified in the Purchase Order.

Security Interests has the meaning given in the PPSA.

Serious Potential Incident means any workplace related incident that has the potential to result in a:

- (a) notifiable incident; or
(b) serious injury or illness,

as those terms are defined in sections 35 and 36 of the *Work Health and Safety Act 2020* (WA).

Site means the Principal's Bellevue Gold Project site or other location specified in the Purchase Order or the location under the control of the Principal where the Goods and/or Services are supplied.

Site Safety Rules means the Principal's rules in respect of health and safety, accommodation, drug and alcohol use, fire prevention, security, emergencies on the Site and other similar or related matters, as updated from time to time in accordance with clause 3.4.

Site Senior Executive means the person appointed to be the site senior executive of the mine under regulation 675ZI of the *Work Health and Safety (Mines) Regulations 2022* (WA).

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Subcontractor means any person engaged by the Supplier to supply all or any portion of the Goods and/or Services under this Agreement on behalf of the Supplier, and includes their directors, officers, employees, labour hire workers, suppliers, subcontractors, agents, advisers and representatives.

Supplier means the person, firm or company named in the Purchase Order as the supplier of Goods and/or Services.

Supplier's Representative means the person appointed by the Supplier to act on its behalf in relation to this Agreement as notified to the Principal.

Supply IP means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of or in connection with the supply of any Goods and/or Services or this Agreement (including all Intellectual Property Rights developed by the Supplier in supplying the Goods and/or Services) but excluding any Background IP of either Party.

Tax Invoice has the meaning given in the GST Law.

Term means the period from the Effective Date until the End Date (unless extended by the agreement of the Parties).

Variation means any addition, reduction or change to the Scope of Work.

Variation Proposal means a written proposal provided by the Supplier addressing the particulars of any Variation.

Warranty Period means the 12-month period after the End Date, unless stated otherwise in the Purchase Order.

WHS Legislation means all relevant Laws relating to health and safety, including the *Work Health and Safety Act 2020 (WA)*, *Work Health and Safety (General) Regulations 2022 (WA)* and the *Work Health and Safety (Mines) Regulations 2022 (WA)* and any other applicable legislation relating to health and safety on the Site, and all relevant health and safety regulations, codes of practice of safety standards made pursuant to those Acts or any other legislation dealing with workplace health and safety that may apply from time to time.

37 Interpretation

37.1 In this Agreement, headings and boldings are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

- (a) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (b) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (c) person includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee;
- (e) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (f) a reference to a document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (g) the words 'including', 'includes' and 'include' must be read as if each of them is followed by the words 'without limitation';
- (h) no provision of this Agreement will be construed adversely to a Party solely on the ground that the Party was responsible for the preparation of this Agreement or that provision; and
- (i) references to \$ and dollars are to the lawful currency of the Commonwealth of Australia.