

1. GENERAL

- 1.1 The following documents form the entire agreement between the parties:
- the special conditions (if any are listed on the Purchase Order);
 - these terms and conditions;
 - the Purchase Order (when issued by an authorised person from Us to You); and
 - any other documents referred to in the Purchase Order, ("Contract").
- 1.2 The parties to this Contract are the person or organisation named as the supplier on the Purchase Order ("You", "Your", "Yourself") and the Sojitz Entity named on the Purchase Order to whom You are required to supply the Goods and Services under this Contract ("We", "Us", "Our", "Ours", "Ourselves").
- 1.3 Where a party may exercise any right or discretion or make any decision under this Contract, that party may do so in its absolute discretion, conditionally or unconditionally, and without being required to give reasons or act reasonably. This clause applies unless this Contract expressly requires otherwise.
- 1.4 This Contract applies, and will continue to apply to the Goods and Services, to the exclusion of (and will supersede) any other or subsequent purchase order, terms and conditions on an invoice, or any other terms and conditions, whether express or implied, issued by You to Us regarding the Goods or the Services.
- 1.5 Unless expressly stated otherwise, this Contract does not create a relationship of employment, trust, agency or partnership between the parties.
- 1.6 Any inconsistency, discrepancy or ambiguity between the documents listed in clause 1.1 will be resolved by giving precedence to the document highest in the list.
- 1.7 Our review, comment, approval or non-approval of any document, Services, Goods, sample or other deliverable provided by You does not relieve You of any of Your obligations or liabilities under this Contract.
- 1.8 A right under this Contract may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in the waiver.

2. ACCEPTANCE

- 2.1 You are taken to have accepted the terms and conditions of this Contract by indicating Your acceptance by oral or written communication to Us, or by Your conduct that is consistent with the existence of this Contract. For example, where You start to perform Your obligations under this Contract even though You have not expressly advised Us of Your acceptance.
- 2.2 This Contract is formed on the issue of a Purchase Order by an authorised person of Us to You, and will apply to the whole of the supply of the Goods and Services including to the extent You may have commenced the supply of the Goods and Services prior to Our issuing of the Purchaser Order.
- 2.3 Any statement, representation or promise made in any document, negotiation, discussion regarding the subject of this Contract has no effect except to the extent expressly set out or incorporated by reference in this Contract.

3. AMENDMENTS

- 3.1 These terms and conditions may be amended, supplemented, replaced or novated by Us from time to time, with notice to You. You are taken to have accepted any amended, supplemented, replaced or novated terms and conditions by indicating Your acceptance by oral or written communication to Us, or, following notification of any such

amendment, replacement or novation, You continue to perform Your obligations under this Contract even though You have not expressly advised Us of Your acceptance.

4. SERVICES

- 4.1 You must perform the Services to a high standard in accordance with relevant best practice, safely and by exercising due care and diligence at all times.
- 4.2 You must perform the Services in accordance with the specifications, including any timeframe, set out in the Purchase Order and ensure the Services comply with the Law and applicable Australian Standards and are fit for the purposes for which services of the same kind are commonly supplied and for any other purpose made known to You.
- 4.3 The Services must be free from defects in performance and be complete according to specifications and all requirements of this Contract.
- 4.4 If the Services are not provided according to this Contract, We may:
- by notice, require You to remedy any default in the performance of the Services, redo the Services or complete the Services, and you must comply with any such notice issued by Us at no additional cost to Us; or
 - terminate this Contract pursuant to clause 24.
- 4.5 Where you fail to remedy Your default in performance, complete the Services, or redo the Services within 30 days after notification by Us under subclause 4.4, We may perform the work Ourselves or have it performed by others, the cost of which will be offset against any fees payable to You under this Contract, but where the costs exceed any remaining payments under this Contract, We may recover the cost from You such cost being a debt due and immediately owing to Us.

5. GOODS

- 5.1 The Goods must be free from defects in performance, meet their purpose, be complete and be supplied in accordance with best practice, safely and by exercising due care and diligence at all times.
- 5.2 Unless otherwise instructed by Us, You shall ensure that all Goods specified in the Purchase Order as described in 5.1 shall be entirely complete in regard to quality and quantity. No partial Goods shall be dispatched without the prior written consent from Us. Should You dispatch partial Goods any additional freight charges to complete the outstanding Purchase Order shall be borne by You.
- 5.3 You must deliver the Goods in accordance with any specifications, including any timeframe, set out in the Purchase Order and ensure the Goods comply with the Law and applicable Australian Standards and are fit for the purposes for which goods of the same kind are commonly supplied and for any other purpose made known to You.
- 5.4 We may inspect the Goods at any time. Without additional cost to Us, You must provide reasonable access to Your premises and all other necessary assistance for Our representatives to inspect any manufacture or assembly of Goods.
- 5.5 If We require it, You are to submit samples of Goods, and You must not proceed to bulk manufacture of the Goods until We have approved the samples.

6. TIME FOR DELIVERY OR COMPLETION

- 6.1 You must supply the Goods and Services in accordance with this Contract and must deliver the Goods and supply the Services by the date required in the Purchase Order (or as otherwise directed by Us). Time is of the essence in respect to the delivery of such Goods and Services.
- 6.2 If the Goods or Services are not delivered or completed (as applicable) by any timeframes set out in the Purchase Order for such delivery or completion, We will be entitled to claim as a debt due and immediately payable to Us all costs, losses, expenses and damages which We suffer or incur for each day that delivery of

- Goods or completion of Services is delayed beyond the relevant timeframes, until the earlier of:
- (a) termination of this Contract by Us; or
 - (b) the date when the Goods are delivered or Services are completed (as applicable).
- 6.3 You are entitled to an extension of time to the relevant timeframes if a Delay Event causes You to incur a delay, provided You notify Us in writing of the cause, expected duration and Your efforts to minimise the effect of the Delay Event, within 3 Business Days of when You become aware or You should have become aware, whichever is earlier, of the Delay Event.
- 6.4 We will reasonably determine what, if any, extension of time will be granted to You and will notify You accordingly.
- 6.5 You are not entitled to claim any costs for delay or disruption (whether the delay or disruption arises out of a Delay Event or otherwise).
- 6.6 Without limiting Your rights in this clause 6, We may at any time and for any reason, extend any timeframes for the delivery of Goods or completion of Services set out in the Purchase Order. This right is solely for Our benefit and may be exercised in Our absolute discretion.
- 6.7 You must and must ensure that Your contractors and carriers (at Your cost):
- (a) properly pack the Goods to avoid damage during loading, transit, delivery, unloading or storage;
 - (b) obtain all authorisations and comply with all Laws and applicable Australian Standards relating to the supply and transport of the Goods; and
 - (c) implement 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.
- 6.8 You must provide all installation instructions, maintenance and operating manuals, engineering data, spare parts lists and other documents and information reasonably required for the installation, operation and maintenance of the Goods at the time of delivery of the Goods.
- 7. PASSING OF PROPERTY**
- 7.1 Property in the Goods passes to Us upon the earlier of when the Goods are delivered to the Site, We pay for the Goods, or the risk of loss or damage to the Goods passes to Us.
- 7.2 Unless otherwise specified in this Contract, risk of loss or damage to the Goods passes to Us only when the Goods have been delivered to the Site, and We have inspected, tested and accepted the Goods in writing, including that we have acknowledged receipt of the Goods and that the Goods appear to meet the requirements of this Contract, including the specifications.
- 7.3 The delivery of the Goods to the Site, any payment for the Goods, or signing of delivery receipts before inspection does not constitute acceptance of the Goods and does not affect any of Our rights under this Contract.
- 7.4 If any inspection, examination or testing of the Goods in accordance with clause 7.2 discloses that all or any part of the Goods contains defects, we may, upon notice to You:
- (a) elect to accept the Goods in their existing state and condition and claim damages; or
 - (b) reject the Goods.
- 7.5 Where payment in respect of the Goods (or any part or component of the Goods) is made to You prior to delivery and Goods Acceptance of the relevant Goods (or part or component of the Goods) by Us ("Pre-Paid Goods"), You:
- (a) acknowledge that You hold the Pre-Paid Goods as bailee for Us;
 - (b) grant a Security Interest over the Pre-Paid Goods in favour of Us to secure the performance by You of each of Your obligations in connection with this Contract (whether past, present or future) and the payment of any liability of You to Us in connection with this Contract; and
 - (c) must, on or before the date for payment, provide Us with details of any applicable serial number (or identification numbers or marks) that relate to the Pre-Paid Goods.
- 7.6 At all times prior to delivery and Goods Acceptance of any Pre-Paid Goods, You:
- (a) must ensure that the Pre-Paid Goods remain clearly identifiable as property of Us, are stored in a designated area that is separate from all other goods, and are kept in a good and merchantable condition;
 - (b) must not part with possession of the Pre-Paid Goods otherwise than in accordance with this Contract (or as otherwise agreed by Us in writing); must comply with all of Our requirements in relation to the storage, maintenance and preservation of the relevant Pre-Paid Goods; and
 - (c) must not grant, create, give or allow to come into existence any encumbrances over the Pre-Paid Goods other than an encumbrance in favour of Us.
- 8. PERSONAL PROPERTY SECURITIES ACT**
- 8.1 If We determine that this Contract (or a transaction in connection with it) provides a Security Interest on the Goods, which includes but is not limited to, the Pre-Paid Goods, You agree to do anything We may reasonably require for the purposes of enabling Us to:
- (a) ensure that the Security Interest is enforceable, perfected and ranks ahead of other Security Interests;
 - (b) apply for, and obtain, any registration or provide any notification in accordance with the PPSA; or
 - (c) exercise any right in connection with the Security Interest or the property the subject of the Security Interest.
- 8.2 Except as expressly agreed in writing, You:
- (a) acknowledge that neither this Contract nor a transaction in connection with it is intended to provide a Security Interest in Your favour;
 - (b) agree that You will not register any Security Interest and will remove any registration in connection with this Contract;
 - (c) must promptly notify Us if You know that a third party has or claims a Security Interest on any Goods or a product of the Services supplied by You, to be supplied by You or owned by Us; and
 - (d) must, on Our request, use best endeavours to ensure that the third party discharges any such Security Interest and removes any registration in respect of any such Security Interest.
- 9. WARRANTY**
- 9.1 The warranty period commences on the date of Goods Acceptance, and shall be valid for 18 months, or the length of Your or the manufacturer's standard warranty period, whichever is longer ("Warranty Period").
- 9.2 You warrant that:
- (a) You are the legal and beneficial owner of the Goods, free from any third-party interests (including any Security Interests);
 - (b) We are free to use the Goods or any product of the Services once delivered to Us;
 - (c) the Goods, when delivered to the Site, will: (i) correspond to their description in this Contract and to any sample; (ii) conform in every way with the specifications requested by Us and all of the requirements of this Contract; (iii) comply with all applicable Australian Standards and all applicable Laws; (iv) be of merchantable quality; (v) be new (unless otherwise agreed in writing); (vi) be free from defects; (vii) not infringe or contribute to the infringement of any intellectual property rights; and (viii) be fit for the purposes as may be specified in this Contract;
 - (d) the Services, when supplied, will (i) be complete according to specifications and all requirements of this

- Contract; (ii) comply with all applicable Australian Standards and all applicable Laws; (iii) be free from defects; (iv) be fit for the purposes as may be specified in this Contract, or otherwise fit for the purposes for which services of the same kind are commonly supplied;
- (e) the manufacture, sale or use of the Goods does not and will not infringe the Intellectual Property Rights of any third party;
- (f) all information provided to Us in relation to the Goods and Services is true and correct and is not misleading or deceptive in any way; and the Goods are and will remain free from defects in design, materials and workmanship and compliant with this Contract.
- 9.3 If during the Warranty Period, there is a defect in the Goods or Services, or the Goods are not delivered in accordance with the specifications and this Contract, We may by notice require You to remedy the defect by repair, replacement or modification at Our discretion, and You must comply with any such notice issued by Us at no additional cost to Us.
- 9.4 If the Goods or Services do not meet their purpose or are not otherwise in accordance with this Contract, We may by notice require You to replace the Goods, or re-perform the Services at no additional cost to Us.
- 9.5 Where You fail to:
- (a) remedy a defect in the Goods or Services;
- (b) complete the Goods or Services; or
- (c) replace the Goods or Services,
- within 30 days after notification issued by Us in accordance with clauses 9.3 and 9.4, We may perform or have performed the necessary work and recover the cost from You such cost being a debt due and immediately owing to Us.
- 9.6 You must meet all costs incidental to the discharge of warranty obligations, including any packing, freight, disassembly and reassembly costs.
- 9.7 Any repair, replacement or modification of the Goods provided by You will be subject to the same warranties as the original Goods, from the date of the completion of the repair, replacement or modification and the Warranty Period will recommence from that date.
- 9.8 You acknowledge and agree that Your guarantees, warranties, obligations and liabilities under this Contract remain unaffected by any testing, investigation or inspection of the Goods conducted by or on behalf of Us.
- 9.9 You must assign to Us any warranties provided by any third party suppliers or manufacturers of any materials or parts or components of the Goods and Services and Your rights under each such warranty. To the extent any such warranty is not capable of assignment to Us, You acknowledge that You hold the benefit of such warranties on trust for Us and you must, in regard to any recovery action regarding a third-party warranty ("Recovery Action"):
- (a) act in good faith with due regard for the interests of Us in connection with any Recovery Action; and
- (b) do all things and take all actions required of You by Us (at Our cost) in connection with any Recovery Action.
- 10. SAFETY AND ENVIRONMENT**
- 10.1 You must perform Your obligations with due regard for the health and safety of all Personnel of Yours and Ours and the protection of the environment and must take all precautions necessary to protect the health and safety of all persons and the environment.
- 10.2 While carrying out Services or delivering Goods at the Site, You must, and must ensure that You, Your employees, agents and suppliers:
- (a) attend any inductions We require before entering the Site or before using any plant or equipment at or in the vicinity of the Site;
- (b) comply with all of Our applicable polices and procedures in relation to health, safety and the environment, as well as any plans We may require
- You to prepare;
- (c) comply with, and do all things necessary to enable Us to comply with, all relevant Laws and government requirements relating to work health and safety (including that specific to the coal mining industry) and the environment;
- (d) comply with all directions issued by Us or any other authorised Site supervisor; prevent damage to property on or near the Site (including existing utility services and supporting infrastructure, Our assets and work previously performed at the Site by another party);
- (e) avoid unnecessary interference with the passage of people and vehicles on or near the Site; and
- (f) cooperate with others carrying out work at the Site and coordinate Your work with the work of others so as to avoid disruption to others.
- 10.3 If any damage, harm, interference, nuisance or disturbance is caused by You, Your employees, agents or suppliers at the Site or Your breach of this clause 10, You must:
- (a) remedy, at Your own cost and risk, the damage, harm, interference, nuisance or disturbance as soon as possible to Our satisfaction; and
- (b) indemnify Us from and against any loss, damage, injury or expense suffered by Us in connection with the damage, harm, interference, nuisance or disturbance or Your breach of this clause 10.
- 10.4 You must immediately advise Us, and provide Us with a written report, if:
- (a) You reasonably believe that any part of the Site or any plant or equipment at the Site is unsafe;
- (b) any person engages in work practices that are likely to put safety, health or the environment at risk; or
- (c) an incident or accident occurs.
- 10.5 Entry to the Site by You and Your employees, agents and suppliers is at your own risk and We are not responsible for any loss or damage suffered by You or Your employees, agents and suppliers while on the Site or any other place provided by Us in connection with the Goods or the Services.
- 10.6 You must, at Your cost, immediately and permanently remove from the Site any person We consider (in Our absolute discretion) is behaving in an unsafe or offensive manner or has caused You to breach this clause 10.
- 11. CONTRACT PRICE**
- 11.1 The contract price for the Goods or Services specified in the Purchase Order includes GST.
- 11.2 You will be liable for all taxes, duties, levies or government charges relating to the delivery of the Goods or performance of the services.
- 11.3 The contract price may not be increased without Our prior consent. We have the right to refuse to give our consent.
- 12. GST**
- 12.1 If a Supply made under or in connection with this Contract is a Taxable Supply, You must give Us a Tax Invoice at or before the time consideration is payable, in a form that complies with the GST Act and enables Us to claim a full input tax credit. :
- 12.2 Words and expression used in this clause 12 that are defined in the GST Act have the same meaning given in that Act, and "GST" includes any related interest fines or penalties.
- 13. CONFIDENTIALITY**
- 13.1 You must keep confidential all Confidential Information and not disclose it to any other person, except:
- (a) with the prior written consent of Us;
- (b) to Your professional advisers; or
- (c) to any of your workers who have a need to know in order to perform obligations under this Contract.
- 13.2 Clause 13.1 does not apply to information that is:
- (a) in the public domain;
- (b) required to be disclosed by Law; or
- (c) the requirements of a stock exchange but only to the extent that the information is required to be disclosed.

13.3 The obligations under this clause 13 survive termination of this Contract.

14. INTELLECTUAL PROPERTY

14.1 Unless otherwise agreed or notified between the parties all Intellectual Property Rights created under this Contract and relating to the Goods or Services is, from the time of creation of the right, owned by Us.

14.2 For any Intellectual Property Rights created under this Contract and relating to the Goods and Services which do not vest in Us, You give Us a non-exclusive, transferable, perpetual, royalty free licence (including the right to sublicense) to use, modify, maintain, repair, upgrade or destroy such Intellectual Property Rights, including any information, materials or documents provided as part of, or comprised in, the related Goods or the Services.

15. INDEMNITY, LIABILITY AND INSURANCE

15.1 You indemnify Us, Our officers, employees and agents from and against all loss, damage, injury or expense which We may sustain or incur arising out of or in connection with:

- (a) any negligent or unlawful act or omission by You or Your employees, agents or suppliers;
- (b) loss of or damage to any property of Ours or a third party caused or contributed to by any act or omission of You, Your employees, agents or suppliers;
- (c) personal injury or death of any person caused or contributed to by any act or omission of You, Your employees, agents or suppliers;
- (d) any breach of this Contract or any warranty, representation or guarantee given by You under or in connection with this Contract (whether express or implied);
- (e) any defect in the Goods or Services;
- (f) the occurrence of an event giving rise to a right of termination under clause 24.1; and
- (g) any action or claim for alleged infringement of any Intellectual Property Rights by reason of Our receipt or use of the Goods or Services,

except to the extent that the loss, damage, injury or expense is caused or contributed to by Our negligent act or omission.

15.2 You must take out and keep current all necessary insurance policies reasonably expected of a supplier of the Goods or the Services including (without limitation):

- (a) public liability insurance for an amount no less than \$20 million for each and every occurrence, from the date of this Contract until the expiry of the last Warranty Period, and You must name the relevant Sojitz Entity/s as a principal;
- (b) workers' compensation insurance as required by Law;
- (c) third party comprehensive motor vehicle insurance from the date of this Contract until expiry of the Warranty Period;
- (d) if You are supplying Goods, insurance for the full replacement value of the Goods (including transportation insurance or coverage); and
- (e) if specified in the Purchase Order any other insurance required and if professional indemnity insurance is so nominated, it must be for not less than \$5 million from the date of this Contract until seven years after the expiry of the Warranty Period.

15.3 We are not liable to You in any circumstances for any indirect, economic, special or consequential loss or damage, including but not limited to loss of revenue, loss of production or profit.

15.4 Nothing in this Contract is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of You in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of Goods or Services.

16. WARRANTIES

16.1 Each party represents and warrants that:

- (a) it is validly existing under the laws of its place of incorporation or registration;
- (b) it has the power to enter into and perform its obligations under this Contract;
- (c) it has taken all corporate action and holds all Authorisations necessary or desirable to enable its entry into and performance of this Contract, and it is complying with any conditions attached to the Authorisations;
- (d) its obligations under this Contract are enforceable against it under the terms of this Contract; and
- (e) the execution, delivery and performance by it of this Contract (and any other document required to be entered into by it relating to this Contract) does not and will not:
 - (i) result in a breach of, or constitute a default under, any agreement or arrangement to which it is party or by which it is bound; or
 - (ii) result in a breach of any law or order, judgment or decree of any court or Government Agency or regulatory body by which it is bound.

17. DISCLOSURE OF INFORMATION

17.1 You, Your employees or agents, must not disclose or make public any information or material acquired or produced in connection with this Contract without Our prior written approval.

18. CONFLICT OF INTEREST

18.1 You warrant that, at the date of entering into this Contract, no conflict of interest exists or is likely to arise in the performance of obligations under this Contract. If, during the term of this Contract, a conflict or risk of conflict of interest arises, You undertake to notify Us immediately in writing of that conflict or risk

19. SECURITY

19.1 You must, when using Our premises or facilities, comply with all security and office regulations in effect at those premises or in regard to those facilities, as notified by Us.

20. PAYMENT

We will pay for the Goods or Services properly supplied in accordance with this Contract and no later than 30 days from end of month in which we receive the relevant invoices, subject to Our Goods Acceptance or the satisfactory provision of the Services. If this period ends on a day that is not a Business Day, payment is due on the next Business Day.

20.1 Any payment We make to You is on 'account only' of the proper performance of Your obligations and does not connote any acceptance of the Goods or Services.

20.2 An invoice is correctly rendered if it is sent electronically to a dedicated Sojitz exchange accounts mail box or a hard copy to either GPO Box 126 BRISBANE, QLD 4001, or a dedicated mine site PO Box. It is complete if it contains Your bank account details, the amount has been calculated in accordance with prices set out in the Purchase Order and, where explanation is necessary, accompanied by documentation substantiating the amount claimed.

20.3 We may set off against any payment due to You any amount which We determine You are liable to Us, whether for expenses or damages, howsoever that liability may have arisen. If the amount payable by Us is insufficient to discharge Your liability, we may recover the outstanding amount from You.

20.4 The payment of any amount by Us will not be evidence that this Contract has been performed to Our satisfaction and such payment will be made on account only.

21. SUBCONTRACTING

21.1 You must not, without Our prior consent in writing, subcontract the whole or any part of the work under this Contract. Despite any approval to subcontract, You remain fully responsible for the performance of Your obligations under this Contract and will be vicariously liable for the acts or omissions of any approved subcontractors.

- 21.2 You agree to make available to Us, if We request, details of all subcontractors engaged by You in the performance of this Contract, and You acknowledge (and agree to inform subcontractors) that we may publicly disclose the names of all subcontractors engaged.
- 22. ASSIGNMENT**
- 22.1 You must not, without Our consent in writing, assign this Contract, Your rights or Your obligations under this Contract.
- 23. VARIATION**
- 23.1 We may direct You at any time to vary, amend, increase, decrease, omit or change the quality, character, extent or amount of the Goods or Services ("Variation").
- 23.2 If We decrease or omit any Goods and Services, We may provide those Goods and Services Ourselves, or procure them from others. If the parties cannot agree upon the adjustment to this contract price for the varied Goods and Services, We will price the Variation using reasonable rates and prices.
- 23.3 No Variation or other direction given by Us will invalidate this Contract.
- 24. TERMINATION**
- 24.1 We may immediately terminate this Contract entirely or partially:
- at any time and for any reason, at our absolute discretion and without cause by giving written notice to You;
 - by giving written notice to You if we believe You are or may become insolvent, commit an act of bankruptcy, enter into administration, have a liquidator, receiver, manager or controller appointed or an event analogous to any of those things has or may occur to You;
 - if, in the absolute opinion of Us, You fail to remedy a breach of this Contract within 7 days (or such other period which We may specify) after receiving written notice from Us requiring You to remedy a breach.
- 24.2 If We reasonably determines, at any time, that there is credible evidence that You or any of Your Personnel has violated any provisions of clauses 30 or 31, We may suspend all payments due under this Contract while it investigates the credible evidence. Upon a good faith request by Us, You agree to cooperate with Our investigation to determine if a violation of clauses 30 or 31 has occurred. If We determine reasonably and in good faith that there has been such a violation, We may terminate this Contract with immediate effect and without payment due of any kind except for Services lawfully rendered. It is expressly understood and agreed that if this Contract or payments to be paid hereunder are found by a court of competent jurisdiction having final decision in the matter to violate applicable Laws, including anti-corruption laws and sanction regulations, then this Contract shall be deemed null and void, and any compensation or other payments made to You must be immediately refunded to Us by You upon demand by Us to You.
- 24.3 Except as expressly set out in clauses 24.5 and 24.7, if We terminate this Contract, You will not be entitled to any further payment for the terminated portion of this Contract and will have no claim, demand, suit, liability or action against Us and You are not entitled to any costs, losses, expenses, damages or penalties arising out of or in connection with this Contract or its termination or the supply of the Goods or the Services.
- 24.4 On termination under clauses 24.1(b) or 24.1(c), without limitation, We can:
- cease all payments under this Contract (subject only the application of clause 24.5);
 - recover from You all amounts paid for Goods or Services not provided; and
 - purchase similar goods and services to the Goods and Services from alternative suppliers and claim by way of indemnity from You any loss We may incur in doing so.
- 24.5 If We terminate this Contract partially, the contract price is adjusted on pro-rata basis in accordance with Our calculation, and You must pay Us or we must pay You (as the case may be) the amount We ascertain as owing between us on account of the performance of this Contract. Any amount owing by You to Us is a debt due and immediately payable.
- 24.6 Upon termination of this Contract in all circumstances, You must immediately, or on such later date as specified in the notice of termination:
- cease carrying out Services and procuring or manufacturing Goods;
 - terminate any outstanding subcontracts and recover from the subcontractor any property, documentation, material or information of Ours;
 - where applicable, remove any rubbish or debris from the Site and leave the Site in a clean and safe condition; and
 - deliver to Us the parts of the Services performed or Goods supplied by You up to the date of termination (and ensure we receive title to all such Goods).
- 24.7 Subject to your compliance with clause 24.6 and our other rights under this Contract, if we have terminated this Contract under 24.1(a), then You will be entitled to the reasonable costs incurred by You in supplying the Goods or the Services up to the date of termination.
- 25. DISPUTE RESOLUTION BY MEDIATION**
- 25.1 The parties must endeavour to settle any dispute in connection with this Contract by mediation. Such mediation is to be conducted by a mediator who is independent of the parties and appointed by agreement of the parties, or failing agreement within seven days of receiving any party's notice of dispute, by a person appointed by the Chair of Resolution Institute or the Chair's designated representative. The Mediation Rules apply to the mediation. It is a condition precedent to the right of either party to commence arbitration or litigation other than for interlocutory relief that it has first offered to submit the dispute to mediation.
- 26. NEGATION OF EMPLOYMENT, PARTNERSHIP AND AGENCY**
- 26.1 You are not by virtue of this Contract, and must not represent Yourself to be, and must ensure that none of Your employees or agents represent himself or herself to be, Our employee, partner or agent or otherwise able to bind or represent Us in performing Your obligations under this Contract.
- 27. COMPLIANCE WITH LEGISLATION**
- 27.1 You must comply with all applicable Laws of the Commonwealth, of any State, Territory or local authority, including obtaining all requisite permits, approvals and licences.
- 27.2 You agree to comply with the Information Privacy Principles contained in the *Privacy Act 1988* (Cth) to the extent that the content of those principles apply as if You were an agency as defined in that Act and You agree to comply with any reasonable demand or inquires of Ours on the basis of the exercise of the functions of the Privacy Commissioner under that Act.
- 28. SUSPENSION**
- 28.1 We may suspend the receipt of the Services or the Goods at any time and for any reason, at our absolute discretion by giving written notice to You and You must comply with such notice.
- 28.2 We shall not be obliged to make any payment to You during the period of the suspension. We may lift the suspension at any time by notice to You and You must recommence the performance of the supply of the Services or the Goods.
- 28.3 We shall not be liable for any additional costs or expenses in connection with a suspension of the Services or the Goods under this clause 28.
- 29. MODERN SLAVERY**
- 29.1 Without limiting the operation of any other clause in this

Contract, You must, from the commencement of the supply of Goods or Services under this Contract:

- (a) comply with Modern Slavery Law:
 - (i) by which You are bound; and
 - (ii) by which We are bound;
- (b) not do anything, or fail to do anything, that will cause You, or Us, to breach ant Modern Slavery Law;
- (c) provide information as requested by Us from time to time which is reasonably required by You to comply with Your obligations under Modern Slavery Law, including information relating to:
 - (i) the business structure, operations and supply chain of You and Your Personnel;
 - (ii) the risks of Modern Slavery practices in the operations and supply chain of You and Your Personnel;
 - (iii) actions taken by You and Your Personnel to asses and address those risks, including due diligence, training, consultation and remediation processes, and
 - (iv) any other information that You consider relevant;
- (d) inform Us as soon as is reasonably practicable of any risks or issues that You become aware of within Your Personnel's operations and/or supply chain involving or in connection with Modern Slavery; and
- (e) comply with any directions, guidelines, or codes of practice (or similar) issued by Us or a relevant Government Agency in connection with Modern Slavery (and irrespective of whether or not it is expressed to be mandatory or voluntary) from time to time, including with respect to identifying, remediating and/or monitoring risks of Modern Slavery in Your, or Your Personnel's, operations and/or supply chain.

30. ANTI-CORRUPTION

- 30.1 You must not, and must procure that Your Personnel must not, directly or indirectly through a third-party intermediary, in connection with this Contract, offer, pay, promise, or authorize the giving of money or anything of value to any person for the purpose of inducing such person to act improperly or otherwise to use his or her influence or position with any entity to affect or influence any act or decision of that entity, in order to obtain or retain business for, direct business to, or secure an improper advantage for Us.
- 30.2 You must not provide gifts, entertainment, meals, travel or anything of value to any third parties without the prior written consent of Us in connection with the performance of the Services.
- 30.3 You must maintain books and records that describe in accurate and reasonable detail all expenditures incurred by You in connection with this Contract. You must maintain such books and records for the duration of this Contract. If We, based on credible information, reasonably consider it necessary to verify Your compliance with applicable anti-corruption laws, rules and regulations, You must make available for audit by Us or a third party retained by Us, Your books, records and other documentation, if any, relevant to its activities conducted pursuant to this Contract.
- 30.4 Upon Our reasonable request from time to time thereafter, You must participate in training associated with the requirements of this clause 30 and provide a written certificate in form and substance satisfactory to Us indicating that You are, and to Your knowledge all of Your Personnel are, in compliance with this clause 30. Upon Our reasonable request, You must also make its representatives and sub-contractors, if any, participate in such training, and obtain such certificates from them and provide a copy of such certificate(s) to Us.
- 30.5 You represent and warrant that neither You nor any of Your Personnel:
 - (a) is a Government Official; or
 - (b) has a Close Family Member, personal, business or other relationship or association with a Government Official who may have responsibility for or oversight

of any business activities of You or Us, other than any relationships or associations that have been disclosed to Us.

31. SANCTION

- 31.1 You represent and warrant that:
 - (a) You and any of Your Personnel is not a Sanctioned Person, is not in violation of any applicable Laws, and has not entered into in any contract, transaction, agreement or otherwise engaged in any commercial activity that would violate any applicable Laws or reasonably be expected to result in it being designated as a Sanctioned Person;
 - (b) You maintain effective internal controls that are sufficient to provide reasonable assurance that violations of any applicable Laws will be prevented, detected, and deterred; and
 - (c) You and all of Your personnel are now, and have been in the five years before the date of this Contract, in compliance with all applicable Laws.

32. GOVERNING LAW

- 32.1 Queensland law governs this Contract.
- 32.2 Each party irrevocably submits to the non-exclusive jurisdiction of the Queensland courts and courts competent to hear appeals or those courts.

33. SEVERABILITY

- 33.1 A clause or part of a clause of this Contract that is illegal or unenforceable may be severed from this Contract and the remaining clauses or parts of the clause of this Contract continue in force.

34. INTERPRETATION

- 34.1 In this Contract:
 - (a) "ACL" means the Australian Consumer Law (as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth)).
 - (b) "Australian Standards" means standards published by Standards Australia from time to time.
 - (c) "Authorisation" means a consent, authorisation, approval, licence, permit, franchise, permission, filing, registration, resolution, direction, declaration or exemption required by a Government Agency or by law.
 - (d) "Business Day" has means a day that is not a Saturday, Sunday or public holiday at the Site.
 - (e) "Close Family Member" means an individual's spouse, the individual's and the spouse's grandparents, parents, siblings, children, grandchildren, or the spouse of any of the above persons.
 - (f) "Confidential Information" means all information provided by a party that is not already in the public domain, legally in the possession of the receiving party prior to the Purchase Order, required to be disclosed by Law, acquired from a third party who is entitled to disclose it or otherwise agreed by the parties in writing, not to be confidential.
 - (g) "Delay Events" means delays caused by any act, default or omission by Us or other contractors engaged by Us on Site (who are not otherwise employed by You).
 - (h) "Goods" means the goods You are selling to Us and We are buying from You in accordance with this Contract.
 - (i) "Goods Acceptance" is Our acceptance of the Goods in writing after the delivery in accordance with clause 7.2.
 - (j) "'Government Agency" means:
 - (i) a government, government department or other body, or political party;
 - (ii) a government, semi-governmental or judicial person;
 - (iii) any entity or business that is owned or controlled by any of those bodies listed in (i) or (ii);
 - (iv) any international organization such as the United Nations or the World Bank; or
 - (v) a person (whether autonomous or not) who is charged with the administration of a law.
 - (k) "Government Official" means:
 - (i) any officer, employee or representative

- (including anyone elected, nominated or appointed to be an officer, employee or representative) of any Government Agency, or anyone otherwise acting in an official capacity on behalf of a Government Agency;
- (ii) any political party, political party official or political party employee;
- (iii) any candidate for public office;
- (iv) any royal or ruling family member;
- (v) any agent or representative of any of those persons listed in (i) through (v).
- (l) "GST Act" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (m) "Intellectual Property Rights" includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trademarks (including service marks), designs, and circuit layouts, and all other rights resulting from intellectual activity in industrial, scientific, literary or artistic fields but does not include moral rights (being the rights of attributions and integrity of authorship and the right not to have authorship falsely attributed) or the rights of performers.
- (n) "Law" includes legislation, regulations, by-laws, orders, permits, approvals, licences, common law, equity and other requirements imposed by any relevant body, agency, regulatory authority or equivalent organization.
- (o) "Mediation rules" means the Resolution Institute Mediation Rules.
- (p) "Modern Slavery" means any of the following:
- (i) any conduct involving the use of any form of slavery, human trafficking, exploitation, forced labour practices or servitude to exploit children or other persons taking place in a supply chain;
- (ii) any other slavery-like practices; and
- (iii) any conduct defined as Modern Slavery, or constituting an offence, under Modern Slavery Law.
- (q) "Modern Slavery Law" means any primary, delegated or subordinate legislation including the *Modern Slavery Act 2018* (Cth) (and any binding or non-binding guidelines issued by any entity or person so authorised under Modern Slavery Law), applicable in Australia or otherwise applicable to You from time to time with respect to reporting on or addressing the risks of Modern Slavery, including in business operations and supply chains and with respect to related purposes.
- (r) "Personnel" means any officer, employee, agent or subcontractor of a party.
- (s) "Purchase Order" means the purchase order for the Goods and/or Services issued by Us to You.
- (t) "PPSA" means the *Personal Property Securities Act 2009* (Cth).
- (u) "PPS Law" means: (i) the PPSA; (ii) any regulations made at any time under the PPSA; (iii) any provision of the PPSA or regulations referred to in paragraph (ii); (iv) any amendment to any of the above, made at any time; and (v) any amendment made at any time to the Corporations Act 2001 (Cth) or any other legislation in connection with the implementation or as a consequence of the PPSA.
- (v) "Resolution Institute" means the Resolution Institute ACN 008 651 232, a company limited by guarantee, and any successor organisation.
- (w) "Sanctioned Person" means any person, organization, or entity (including aircraft and ocean vessels) that is:
- (i) designated on any list of targeted persons issued under the Laws;
- (ii) located within, operated from, or part of the government of a country that is subject to sanctions under the Laws;
- (iii) owned 50% or more in the aggregate or individually by, or acting on behalf of, any of the foregoing; or
- (iv) otherwise targeted by applicable sanctions under the Laws.
- (x) "Security Interest" means a security interest that is subject to the PPS Law.
- (y) "Services" means the services You are providing with Us and We are receiving from You in accordance with this Contract.
- (z) "Site" means:
- (i) for Goods, the location for delivery of the Goods as specified in the Purchase Order; and
- (ii) for Services, the location where the Services are to be performed.
- (aa) "Sojitz Entity" means any of the following:
- (i) Sojitz Blue Pty Ltd;
- (ii) Sojitz Plus Pty Ltd;
- (iii) Sojitz MDS Mining Pty Ltd;
- (iv) Sojitz Gregory Mining Pty Ltd;
- (v) Sojitz Green Pty Ltd;
- (bb) "Supplier" means the entity making the supply.
- 34.2 If more than one Sojitz Entity is a party to this Contract then the liability of each Sojitz Entity is several.
- 34.3 In this Contract the words 'includes' and 'including' are to be read as if followed by the words 'without limitation'.
- 34.4 No provision of this Contract is to be construed against Our interests because We prepared or rely on this Contract.