

Goods**1 Definitions**

In this Agreement, unless the contrary intention appears:

Agreement means the agreement constituted by these general terms and conditions and the relevant Purchase Order.

Authorised Signatories means the designated representative of each Party duly authorised.

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

Consequential Loss means indirect or consequential loss, but does not include any loss that may fairly and reasonably be considered to arise naturally, that is according to the usual course of things, from the breach or other act or omission giving rise to the relevant loss.

Data Breach means any:

- (a) unauthorised access to, or unauthorised disclosure of, any Personal Information; or
- (b) loss of any Personal Information.

Defective Goods means goods which are not in conformity with this Agreement.

Goods means the goods, if any, matching the description (including performance criteria, if any) in the Purchase Order.

Government Authority means any national, state, local, regional, territorial or municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, legislative, judicial or administrative body, having jurisdiction over the Goods or the Site.

GST has the same meaning as in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Insolvent means, with respect to a Party, insolvent (as defined in the *Corporations Act 2001* (Cth)), in liquidation or provisional liquidation, receivership, bankruptcy (protective or otherwise) or under administration, unable to pay its debts as and when they fall due or otherwise insolvent, or that has entered into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or in respect of which any analogous event has occurred.

Intellectual Property Rights includes all intellectual property rights including current and future registered and unregistered rights in respect of copyright (including Moral Rights), designs, circuit layouts, trademarks, know-how, confidential information, patents, inventions and discoveries and all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

Laws means any statutes, ordinances, codes, laws, decrees, circulars, rules or regulations made by any Government Authority, and common law and the principles of equity, including in relation to health, safety, the environment, bribery or corruption, or modern slavery.

Modern Slavery Laws means:

- (a) Divisions 270 and 271 of the *Criminal Code Act 1995* (Cth);
- (b) sections 80D, 80E, 91G(1)-(3), 91H, 91HAA and 93AA-93AC of the *Crimes Act 1900* (NSW);
- (c) Laws in the other Australian states and territories which are equivalent to any of the Laws referred to in paragraphs (a) and (b); and
- (d) any Laws of the Commonwealth relating to modern slavery.

Moral Rights means any of the rights defined as a "moral right" in the *Copyright Act 1968* (Cth).

Normal Business Hours means the hours between 8:00am and 4:00pm on a Business Day.

Our Website means the relevant page(s) of our website at www.westgold.com.au/site/about-us/corporate-governance.

Parties means you and us.

Party means you or us.

Personal Information means personal information, as that term is defined in the *Privacy Act 1988* (Cth), that is provided to, or obtained or accessed by, you in the course of performing your obligations under this Agreement.

Personnel means the employees, agents, contractors or subcontractors of a person (but our Personnel do not include your Personnel).

Policies and Procedures means:

- (a) our corporate code of conduct and corporate governance policies available on Our Website, regardless of whether those policies are identified as applying specifically to our suppliers, or to our own employees (in which case they will apply as if references to our own employees included references to you);
- (b) our fitness for work, health and safety, environmental, and equal opportunity and harassment policies, and Site Rules and induction requirements, which apply to our operations generally, are relevant to your provision of the Goods, and are provided or notified by us to you; and
- (c) all our other policies, procedures, standards, codes, rules, manuals, protocols, plans or directives (and similar documents) which are relevant to your performance of the Goods or Services and are reasonable and are provided or notified by us to you.

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Price means the price specified in the Purchase Order.

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cth);
- (b) any Laws (to the extent that Laws apply to you, us or our Related Bodies Corporate, or any other recipient of Personal Information) from time to time in force in any relevant jurisdiction affecting privacy, Personal Information or the collection, handling, storage, processing, use or disclosure of personal data; and
- (c) any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made, issued or registered under any of the Laws referred to in paragraphs (a) and (b) above, as amended from time to time.

Purchase Order means the purchase order for Goods issued by us to you from time to time containing amongst other things, a description of the Goods, the Price and the Site.

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

Sanctioned Country means any country or territory against which Sanctions are imposed.

Sanctions means sanctions imposed by any country in which this Agreement is being performed, the United States, the United Kingdom, the EU, any EU Member States, Switzerland, the United Nations, or any other country with jurisdiction over the activities undertaken in connection with this Agreement.

Site means the site or location for delivering the Goods detailed in the Purchase Order.

Site Rules means the site rules (if any) available on Our Website or otherwise provided by us.

Tax Invoice has the same meaning as in the GST Act.

Warranty Period means the period of 24 months commencing on the date of supply of the Goods.

we and us means Westgold Resources Limited (ACN 009 260 306) and any of our Related Bodies Corporate named in the Purchase Order or which elect to take the benefit of this Agreement in accordance with clause 15.2 and “**our**” has the corresponding meaning.

you means the person named in the Purchase Order as the supplier of the Goods and **your** has the corresponding meaning.

2 Supply of Goods

2.1 This Agreement applies to the supply of Goods as specified in the Purchase Order. The Purchase Order issued by us will reflect the matters we have agreed between us before its issue. You must review each Purchase Order promptly upon receipt, and if you believe that it does not reflect the matters we have

agreed between us (including if you are unable to provide the Goods in accordance with the Purchase Order), or you believe there is any ambiguity or uncertainty in respect of the Purchase Order, you must notify us without delay. We will seek to resolve such matter with you, but until such time as the matter is resolved either Party may terminate this Agreement with immediate effect.

2.2 In consideration of payment of the Price by us, you must supply the Goods to us in accordance with this Agreement.

2.3 We intend to contract for the Goods only on the terms of the Agreement, and not on any other terms. Accordingly, the provision of other terms by either Party will not bind the Parties, will be of no legal effect, and will not constitute a contract or part of this Agreement irrespective of any act by either Party or by any of its Personnel, including execution of any document incorporating (including by reference) any other terms. If you supply Goods under a Purchase Order or any other form of order or request by us to supply Goods, whether or not in writing, these general terms and conditions will apply to that supply.

2.4 In providing the Goods you must, and you must ensure that your Personnel:

- (a) use best endeavours not to interfere with any of our activities or the activities of any other person on our Site, and not adversely affect the security, cleanliness, order or fitness for use of our Site;
- (b) supply the Goods in a safe manner and by appropriately qualified, skilled and experienced Personnel undertaking all activities, functions and tasks safely, with all due skill and care, and avoiding all undue risk to the environment;
- (c) comply with all applicable Laws and the applicable requirements of any Government Authority and ensure that you possess all relevant authorisations, permits and licences to provide the Goods;
- (d) comply with our Policies and Procedures and Site Rules;
- (e) comply with all reasonable directions and orders given by our representatives when you are on our Site; and
- (f) provide us all such information and assistance as we reasonably require in connection with any investigation arising from or in connection with the supply of the Goods.

2.5 The Agreement does not affect in any way:

- (a) us providing or procuring the same, or similar, goods ourselves or from other providers; or
- (b) you providing or procuring the same, or similar, goods yourselves or from other providers.

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2.6 Both Parties acknowledge that you are supplying Goods as our contractor and not our agent or employee.

3 Conditions as to Quality and Description of the Goods

- 3.1 If you gave us a sample of the Goods, the Goods must be of the same nature and quality as the sample given.
- 3.2 The Goods must comply with any applicable Laws and relevant standards of the Standards Association of Australia, and must be supplied with copies of all material safety data sheets for dangerous Goods.
- 3.3 The Goods must be fit for the purpose for which Goods of the same kind are commonly supplied or bought and for any other purpose which we make known to you in the Purchase Order.
- 3.4 The Goods must be of merchantable quality, and must be new (unless otherwise stated on the Purchase Order).
- 3.5 If you supply more Goods than stated on the Purchase Order, the excess Goods may be returned to you at your cost.

4 Delivery

Any Goods must be properly and safely packed and delivered during Normal Business Hours to the place and within the time period specified in the Purchase Order. If no time period is specified in the Purchase Order, the order is for delivery within 72 (seventy two) hours of receipt of the Purchase Order.

5 Title and risk

Title to and risk in the Goods does not pass to us until we take delivery of, inspect and accept the Goods. You warrant that, at the point at time at which title passes to us, you have, and will transfer to us, complete ownership of the Goods, free of any lien, charge or encumbrance.

6 Price

- 6.1 We agree to pay you the Price in accordance with this Agreement for the Goods.
- 6.2 The Price is inclusive of all costs incurred by you in supply of the Goods including all charges for packaging, packing, insurance and delivery of the Goods in accordance with this Agreement. The Price is also inclusive of all duties and taxes except GST.

7 Invoicing and Payment

- 7.1 You must submit Tax Invoices to us as soon as practicable upon delivery and acceptance of the Goods as set out in clause 5, [unless we specifically agreed to make a partial or full upfront down payment in which case the invoice should reflect the amount we agreed to pay upfront].

- 7.2 When submitting your Tax Invoice under clause 7.1 it must include the following details:

- (a) a reference to a valid Purchase Order;
- (b) a detailed description of the Goods supplied;
- (c) an individual reference number for us to quote with remittance payment;
- (d) the Price relating to Goods, broken down to reflect any Price components on the Purchase Order;
- (e) the amount of any GST; and
- (f) our representative name and Site (if applicable).

- 7.3 Subject to you complying with this clause 7, we will pay all invoices rendered to us by you under this clause 7 within 20 Business Days of our receipt of the invoice, except where we dispute the invoice, in which case:

- (a) we will provide you with a payment schedule within 15 Business Days of our receipt of the invoice setting out the payment we propose to make and the amount we propose to withhold and dispute which includes the reasons we are not paying the disputed amount;
- (b) we will pay the undisputed part of the relevant invoice (if any) and withhold the balance pending resolution of the dispute; and
- (c) if the resolution of the dispute determines that we are to pay an amount to you, we will pay that amount within 20 Business Days of the resolution of that dispute.

8 Suspension and Termination

- 8.1 To the extent permitted by Law, we may at any time suspend performance of your obligations under this Agreement for any reason by giving you notice. When you receive a notice of suspension from us you must suspend performance of the relevant obligations for a period of 180 days or earlier if we direct you to resume performance of those obligations by notice in writing (**Suspension Period**). Where the suspension of your obligations by us under this clause is neither due to your default nor to circumstances beyond our reasonable control, we will reimburse you within a reasonable time of receipt by us of a detailed breakdown of your claim for the direct, verifiable and reasonable costs incurred by you as a consequence of the suspension. Where the suspension in clause 8.1 is a result of any action by you in breach of this Agreement, you must take all reasonable steps to remediate such action.
- 8.2 If we have not given written directions to you to recommence performance of your obligations under this Agreement by the end of the Suspension Period, either Party may immediately terminate this Agreement by giving notice of such termination to the other.

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8.3 A Party may immediately terminate this Agreement by notice in writing to the other Party if the other Party:

- (a) breaches any term under this Agreement and such breach is not able to be remedied;
- (b) breaches any term under this Agreement and such breach is not remedied within 14 days of notice being given to the Party to remedy the breach;
- (c) breaches any Law relating to its obligations under this Agreement;
- (d) becomes Insolvent; or
- (e) is convicted of a criminal offence.

8.4 We may terminate this Agreement for convenience at any time by giving 14 days' notice to you, in which case (subject to our other rights under this Agreement) we must reimburse you for all verifiable:

- (a) Goods supplied; and
- (b) expenses incurred up to the date of the notice of termination,

which are incurred in compliance with this Agreement, and which cannot be reversed or mitigated by you applying best efforts.

8.5 We may terminate this Agreement with immediate effect by notice in writing to you if any information supplied by you relating to the Purchase Order, your details or any other material fact, is materially incorrect, and we reasonably believe we would not have entered into this Agreement with you on the same basis had we known the correct information.

8.6 If this Agreement is terminated pursuant to clauses 8.3, 8.4, or 8.5, you must cease the supply of the Goods the subject of the Purchase Order and if the Agreement is terminated pursuant to clause 8.4 you must deliver all Goods in progress or completed as we may request.

8.7 Unless expressly stated otherwise, termination of this Agreement for any reason does not affect the rights or obligations of a Party which have accrued prior to termination.

9 Warranty Period

9.1 If we find any of the Goods to be Defective Goods during the Warranty Period, we may, at our option:

- (a) return the Defective Goods to you; or
- (b) make good or replace the Defective Goods.

9.2 At our option and request, you must promptly:

- (a) repair free of charge or, at our option, replace free of charge any Defective Goods that we return to you; and

- (b) if you fail to comply with clause 9.2, we may, at our option, request you to reimburse us for any reasonable expenses we incur in making good any Defective Goods.

9.3 You are not liable for any defect or fault in the Goods to the extent that it is caused by our negligence or the negligence of our Personnel.

10 Insurance

10.1 You must at your own expense procure and maintain all insurances:

- (a) which are required by Law;
- (b) specified by us in the Purchase Order; and
- (c) which a reasonable and prudent provider of similar Goods would ordinarily procure and maintain, including in relation to public liability, workers compensation, motor vehicles and plant and equipment.

10.2 The insurance policies referred to in clause 10.1 must be endorsed (except where precluded by Law) to include:

- (a) a principal's indemnity extension, indemnifying us against any liability which we or our Personnel may incur to you, your Personnel or any other person, with such endorsement to contain a waiver of subrogation of rights by the insurer in favour of us; and
- (b) a cross-liability extension stating that the policy must operate as if there was a separate policy covering each insured and further include a provision stating that a failure by any insured to comply with the policy terms and conditions will not prejudice the rights and entitlements of any other insured under the policy.

10.3 Not less than 5 Business Days before commencing the provision of Goods you must provide us certificates of currency for any insurances required to be held by you and your Personnel under this Agreement. All costs incurred by us as a consequence of you not maintaining such insurances will be a debt due from you to us.

10.4 Without limiting any other rights under this Agreement, if you fail to comply with clause 10.3 and you do not correct such failure within 7 days of us notifying you, we may effect the required insurances and then seek reimbursement of the premium costs from you.

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10.5 The effecting of insurance as required under clause 10.1 will not in any way limit your obligations or responsibilities under this Agreement.

11 Liability and Indemnities

11.1 You are liable for and must indemnify us, our Related Bodies Corporate and our Personnel from and against any liability, loss or damage arising out of or in connection with:

- (a) personal injury or death, or damage to tangible property, caused by your act or omission or the acts or omissions of your Personnel; and
- (b) any claim by a third party that the Goods infringe or contribute to the infringement of any Intellectual Property Rights,

except to the extent that such loss arises from our own act or omission.

11.2 Neither Party is liable to the other Party for Consequential Loss.

11.3 Part 1F of the *Civil Liability Act 2002 (WA)* is excluded from operation with respect to any dispute, claim, action or matter under or in connection with this Agreement.

12 Confidentiality

12.1 Subject to clauses 12.2 and 12.3, each Party (the **Receiving Party**) must keep confidential and not disclose to any third party any information (including the terms of this Agreement) disclosed or revealed by the other Party (the **Disclosing Party**) under or in relation to this Agreement that:

- (a) is by its nature confidential;
- (b) is designated by the Disclosing Party as confidential; or
- (c) the Receiving Party knows or reasonably ought to know is confidential,

but excluding:

- (d) information which is in the public domain otherwise than as a result of a breach of this clause;
- (e) is received from a third party rightfully free of any obligation of confidence; or
- (f) is independently developed without breach of this Agreement,

(Confidential Information).

12.2 The Receiving Party may only use the Confidential Information of the Disclosing Party for the purposes of exercising its rights or performing its obligations under this Agreement.

12.3 The Receiving Party may disclose the Confidential Information of the Disclosing Party:

- (a) to those of its Related Bodies Corporate and its and their Personnel who need to know such Confidential Information, provided that the Receiving Party ensures that those recipients keep such Confidential Information confidential on the same basis as the Receiving Party is required to do so under this clause 12; or
- (b) that is required to be disclosed by Law, or the rules of any relevant stock exchange.

12.4 If requested by the Disclosing Party at any time, the Receiving Party must immediately return to the Disclosing Party, or destroy or delete, as the Disclosing Party directs, all originals and copies of the Disclosing Party's Confidential Information in the Receiving Party's custody, power or control, including by deleting all Confidential Information from any computer or other storage device into which it was programmed, recorded or stored by or on the Receiving Party's behalf.

12.5 Nothing in clause 12.4 requires the Receiving Party to return, destroy or delete any Confidential Information of the Disclosing Party to the extent that such Confidential Information:

- (a) needs to be retained for the purpose of actual or potential litigation or other record-keeping purposes; or
- (b) is on back-up or archival storage media, or shared storage systems such as email, and it is not practical to do so.

13 Privacy

13.1 If either Party collects, uses, discloses, transfers or otherwise handles any Personal Information under this Agreement, it must comply with all Privacy Laws as if it were an 'organisation' for the purposes of the Privacy Act.

13.2 In addition to your obligations under clause 13.1, if you collect, use, disclose, transfer or otherwise handle any Personal Information, you must:

- (a) only use any Personal Information to the extent necessary to perform your obligations in accordance with this Agreement;
- (b) not disclose any Personal Information to any other person (including to a subcontractor) without our prior written consent or, subject to paragraph (e), as required by applicable Law;
- (c) establish and maintain safety and security procedures and safeguards (including anti-virus and intrusion detection and monitoring measures), and take such other steps as are reasonable in the circumstances, to:
 - (i) protect the Personal Information from misuse, interference and loss, and

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- unauthorised access, modification or disclosure;
- (ii) guard against the destruction, loss or alteration of the Personal Information; and
 - (iii) prevent any person who does not have the appropriate level of security clearance from gaining access to the Personal Information, and comply with, and ensure that your Personnel comply with, all such procedures, safeguards and steps;
- (d) notify us as soon as reasonably practicable after you receive any request concerning access to or correction of any Personal Information, or complaint about the handling of any Personal Information, and comply with any of our reasonable requests or directions concerning remedying or otherwise dealing with any such request or complaint;
- (e) notify us as soon as reasonably practicable after you become aware that a disclosure of any Personal Information may be required by applicable Law;
- (f) upon request, notify and keep us notified at all times of:
- (i) your current safety and security procedures and safeguards that apply to the Personal Information; and
 - (ii) your privacy and Data Breach protocols and response plans, including by providing us with a copy of such protocols and plans,
- and any amendments to such materials that are made from time to time. Such materials will, for the avoidance of doubt, form part of your Confidential Information. If we consider, acting reasonably, that such materials indicate that you are failing to comply with your obligations under this Agreement, you must promptly (and at your own cost) update your practices and materials to ensure you are compliant with such obligations;
- (g) notify us immediately if you become aware of any breach of this clause 13, or of any Data Breach which has occurred or which you have reasonable grounds to suspect may have occurred;
- (h) promptly provide us with any information, assistance and co-operation requested by us to allow us to investigate any such breach or Data Breach and to comply with our obligations under the Privacy Laws;
- (i) if you form the view that you are or may be required to notify affected individuals of a Data Breach under the Privacy Laws, ensure that

before making any such notification you promptly discuss such matter with us in good faith and comply with any reasonable directions issued by us in relation to such notification, including as to whether we or you will be the person responsible for fulfilling the relevant notification requirements; and

- (j) at any time upon our request, or on the termination or expiry of this Agreement for any reason, ensure that any Personal Information is destroyed or returned to us except as otherwise required by applicable Law.

14 Intellectual Property

- 14.1 The Parties will each retain their Intellectual Property Rights existing prior to the date of this Agreement. The Intellectual Property Rights resulting from the delivery of Goods under this Agreement (if any) will vest in us upon creation, and you hereby assign all such Intellectual Property Rights to us including as a present assignment of future copyright.
- 14.2 We have a non-exclusive, royalty free licence to use, modify, adapt or sublicense any Intellectual Property Rights owned by you or your Personnel to the limited extent necessary for us to exercise our rights or perform our obligations under this Agreement or to enjoy the benefit of the Goods provided to us under this Agreement.
- 14.3 You must do all things reasonably necessary to give full effect to the rights and obligations contained in this clause 14.
- 14.4 You must obtain the irrevocable consent of each author of the Intellectual Property Rights referred to in this clause 14 to any act or omission by us which infringes, or may infringe, any Moral Rights, including:
- (a) using any of the Goods without identifying the author of them; or
 - (b) altering, amending or deleting the content of the Goods.

15 Assignment and Subcontracting

- 15.1 Neither Party may assign, novate or otherwise transfer its rights or obligations under this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld or delayed.
- 15.2 You agree that our Related Bodies Corporate may, by written notice to you, elect to take the benefit of this Agreement as if they were named as parties to it. Regardless of whether a Related Body Corporate has made such an election, any of the Goods may be provided to, or used for the benefit of, our Related Bodies Corporate. Where any of our Related Bodies

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Corporate suffer any loss in connection with any Goods provided to them or used for their benefit, we may recover that loss from you to the same extent we would be entitled to recover that loss if we had suffered it ourselves.

- 15.3 We have the right to assign any or all of our obligations or rights under this Agreement at any time to any of our Related Bodies Corporate.
- 15.4 You may not subcontract your obligations under this Agreement without our prior written consent. We will not unreasonably withhold our consent.

16 NGER Legislation

Upon our request, you must promptly provide us with any information we reasonably require in connection with this Agreement to enable us to comply with our obligations under the *National Greenhouse and Energy Reporting Act 2007* (Cth) and any subordinate legislation made under that Act. We will only use that information for the purposes of complying with our obligations under the *National Greenhouse and Energy Reporting Act 2007* (Cth) and any subordinate legislation made under that Act.

17 Business Ethics

- 17.1 You represent and warrant to us that you have complied and shall comply with all applicable Laws governing, relating to or dealing with illegal payments, gifts, undue hospitality or gratuities or other corrupt business practices. You acknowledge that we and our Related Bodies Corporate desire, and are obliged, to comply with all provisions of any applicable anti-corruption Laws. You agree to reasonably cooperate with and assist us and our Related Bodies Corporate with respect to such compliance.
- 17.2 You will not, in providing any Goods, take action of any nature which would contravene any provision of any applicable anti-corruption Laws. You represent and warrant to us that in the performance of your obligations under this Agreement, you and your Personnel have not made and will not make, whether on your own behalf, on behalf of us or our Related Bodies Corporate or any of their Personnel or on behalf of any other person, any offer of payment of or promise to pay, or gift of or promise to give, any money or anything of value, directly or indirectly, to:
- (a) any officer, official, employee or representative of any Government Authority or of any department, agency, subdivision or instrumentality thereof; or
 - (b) any political party, party official or candidate for political office; or

- (c) any person, while knowing or having reason to know that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any official, to any political party or official thereof, or to any candidate for political office.

- 17.3 Without limiting any other provision of this Agreement, you must not engage in (and must take reasonable steps to ensure that in your operations and supply chains there are not) any activities, practices or conduct that would constitute an offence under anti-slavery and human trafficking Laws, including Modern Slavery Laws, and must maintain, keep up to date and enforce your own policies and procedures to ensure your compliance with all Modern Slavery Laws and, if requested us, provide us with copies of such policies and procedures.

- 17.4 You represent, warrant, and undertake that:

- (a) neither you nor any of your Related Bodies Corporate (collectively, the **Organisation**) or directors, senior executives or officers or, to the knowledge of the Organisation, any person on whose behalf the Organisation is acting in connection with the subject matter of this Agreement, is an individual or entity (**Person**) that is, or is 50% or more owned or controlled by, a Person (or Persons) that is the subject of any sanctions or based, organised or resident in a Sanctioned Country (collectively, a **Sanctioned Person**);
- (b) no Sanctioned Person has any beneficial or other property interest in your interest in this Agreement nor will have any participation in or derive any other financial or economic benefit from this Agreement through you; and
- (c) you will not use, or make available, funds provided under this Agreement to fund or facilitate any activities or business of, with or related to any Sanctioned Country or Sanctioned Person, or in any manner that would result in a violation of Sanctions.

- 17.5 You must immediately notify us in writing of any and all violations of this clause 17 upon becoming aware of those violations.

- 17.6 Should you or your Personnel breach this clause 17 we may, in addition to taking all remedies at our disposal in such circumstances, terminate this Agreement with immediate effect.

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18.1 In this Agreement unless the contrary appears:

- (a) no rule of contract interpretation applies to the disadvantage of one Party on the basis that it put forward this Agreement or any part of it;
- (b) if a period of time is specified and dates from a given day or a day of an act or event, it is to be calculated exclusive of that day;
- (c) the singular includes the plural and vice versa; and
- (d) the words “including” and “include” are a reference to “including, but not limited to”.

18.2 This Agreement is the entire Agreement between the Parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter. However, nothing in this clause limits any liability you or we may have in connection with any representations or other communications (either oral or written) made prior to or during the term of this Agreement, where such liability cannot be lawfully excluded.

18.3 Each Party must ensure that its Personnel comply with its and their obligations under this Agreement as if they were Parties to it, and each Party is liable for any acts, omissions and breaches of this Agreement by their Personnel.

18.4 A Party’s rights under this Agreement can only be waived by that Party in writing.

18.5 This Agreement may not be varied except in writing signed by the Authorised Signatories of both Parties.

18.6 If either Party does not exercise a right, remedy or power at any time, this does not mean that it cannot be exercised later.

18.7 The rights, powers and remedies provided in this Agreement are cumulative with and not exclusive of the rights, powers or remedies provided by Law independently of this Agreement.

18.8 Any provision of this Agreement which is void or unenforceable is to be read down or severed to the extent it is possible to do so without affecting the validity or enforceability of this Agreement.

18.9 In the event of any conflict between the Purchase Order, these general terms and conditions and any special terms and conditions, these general terms and conditions will take precedence.

18.10 If any dispute arises with regard to any matter in connection with this Agreement, the Parties must meet to review such dispute and to arrive at an amicable and negotiated solution with regard to it. If the Parties are unable to negotiate and agree on an amicable settlement of the dispute, within seven days after such meeting, either Party may refer the dispute to arbitration in accordance with and subject to, the Resolution Institute’s Arbitration Rules. Unless the Parties agree upon an arbitrator, either Party may request a nomination from the Chair of the Resolution Institute. Notwithstanding the existence of a dispute, each Party must continue to perform this Agreement. For disputes in which the quantum is less than \$50,000, arbitration must take place using the submission of documents alone unless both Parties agree otherwise.

18.11 Nothing in clause 18.10 will prevent a Party from seeking urgent injunctive relief or similar interim relief from a court.

18.12 All notices under the Agreement must be sent to the named Party representatives at the respective addresses in the Purchase Order, or as amended by each Party in writing. All such notices so addressed will be deemed duly given:

- (a) upon delivery, if delivered by courier or by hand (against receipt);
- (b) three days after posting, if sent by certified or registered mail, return receipt requested; or
- (c) in the case of an email, on the date of its dispatch, unless it is sent after 5pm (WST) in which case it is deemed to have been received at 9am on the
- (d) next Business Day, or unless the sender receives an automated message that the email has not been delivered.

18.13 Clauses 1, 5, 8.7 and 10 to 19, and any other provision intended by its nature to survive termination or expiry of this Agreement, or required to give effect to termination, will survive termination or expiry of this Agreement.

19 Governing Law and Jurisdiction

19.1 This Agreement is governed by the Laws of Western Australia, Australia.

19.2 Each Party submits to the non-exclusive jurisdiction of the courts of Western Australia.