

## Glencore Australia Purchase Order Terms and Conditions

### 1 Supply of goods and/or services

- 1.1 You must supply the goods and/or services to us in accordance with the purchase order (which includes these Purchase Order Terms and Conditions).
- 1.2 Subject to clause 1.3, the purchase order, the Purchase Order Terms and Conditions, the Accreditation Agreement (if any) and the documents expressly referred to in any of the above documents (“**agreement**”) comprise the entire terms of our agreement with you.
- 1.3 Where there is an existing and current written contract between you and us in relation to the goods and/or services the subject of the purchase order (“**Contract**”), then:
  - (a) The reference to the Purchase Order Terms and Conditions in the purchase order must be read as a reference to the Contract; and
  - (b) The Purchase Order Terms and Conditions do not apply to the purchase order.

### 2 Conditions as to quality and description of the goods and/or services

- 2.1 The goods and/or services must match the description (including performance criteria) in the purchase order.
- 2.2 If you gave us a sample of the goods before we issued the purchase order, the goods must correspond with the sample in addition to matching the description.
- 2.3 If you provided us with a demonstration of the services before we issued the purchase order, the services must correspond in nature and quality with the services demonstrated.

- 2.4 If you showed us a result achieved by the services before we issued the purchase order, the services must correspond in quality with the services that achieved that result.
- 2.5 The services must be performed by appropriately qualified, competent, skilled, experienced and professional personnel and must be rendered with due care and skill.
- 2.6 The goods and/or services must comply with any applicable legislation and relevant standard of the Standards Association of Australia, and must be supplied with copies of all material safety data sheets for dangerous goods.
- 2.7 The goods and/or services must be fit for the purpose for which goods and/or services of the same kind are commonly supplied or bought and for any other purpose which we make known to you prior to the issue of this purchase order.
- 2.8 The goods must be new and of merchantable quality (unless otherwise specified in the purchase order).
- 2.9 If you supply more goods than specified in the purchase order, then the excess may be returned to you at your cost.

### 3 Delivery

- 3.1 Unless otherwise specified, you are responsible for ensuring that the goods are properly packed and delivered to the place (within the time period) specified in the purchase order.
- 3.2 You must include a packing list in each package of goods delivered.

### 4 Inspection and acceptance

- 4.1 We must have a reasonable time to inspect the goods after delivery. Payment for the goods or the signing of delivery receipts before inspection does not constitute acceptance that the

goods are in conformity with this agreement.

- 4.2 You must provide to us, at our request, progress reports on the performance of the services. A progress report must be detailed enough to allow us to ascertain whether the services are in conformity with this agreement.
- 4.3 At any time during the performance of the services we may inspect or witness tests on the services or their results.
- 4.4 If upon inspection we find any goods to be defective goods and/or any services or their results to be defective services, we may:
  - (a) reject the defective goods by returning them to you;
  - (b) reject the defective services by notifying you that we are rejecting them;
  - (c) repair the defective goods; or
  - (d) make good the defective services.
- 4.5 We may reject and return to you (in the case of goods) any goods and/or services which are not in conformity with this agreement even if we have accepted or paid for those goods and/or services.
- 4.6 You must reimburse us for any reasonable expenses we incur in returning or repairing defective goods and/or in making good defective services.
- 4.7 You must refund to us, when requested, any payments made by us in respect of defective goods and/or defective services which we reject.



### 5 Performance of the services

- 5.1 You must, in performing the services:
  - (a) use your best endeavours not to interfere with any of our activities, or the

- activities of any other person, on our premises;
- (b) comply with, and ensure that your employees, agents, contractors and subcontractors comply with:
  - (i) all applicable laws, regulations and industrial awards and agreements;
  - (ii) all safety, health and environment guidelines, rules and procedures provided to you by us; and
  - (iii) all reasonable directions and orders given by our representatives; and
- (c) ensure that our premises are left secure, clean, orderly and fit for immediate use.

located at your premises, you must make it clear (whether by affixing a notice to the Overhaul Equipment or otherwise) that the Overhaul Equipment is our property; and

- (c) you are responsible for all risks associated with each part of the Overhaul Equipment from the time that the Overhaul Equipment is delivered to your premises (or from the time it is collected by you from our site, if you are responsible for transportation) until it is collected by us from your premises (or until the time that the Overhaul Equipment has been delivered to our site, if you are responsible for transportation).

month (or other period specified in this agreement) for services performed by you in that month or that period (as the case may be).

- 8.2 When submitting your invoice under clause 8.1 you must provide us with all relevant records to enable us to calculate and/or verify the amount of the invoice.
- 8.3 Subject to clause 18.3, we will pay any invoice rendered to us by you under clause 8.1 by the last business day of the month following the month in which you submit such invoice, except where we dispute the invoice, in which case:
  - (a) you will, as soon as reasonably possible, issue a credit note for the full amount of the disputed invoice and issue a new invoice for the undisputed amount, if any (“undisputed invoice”);
  - (b) we will pay the undisputed invoice or, if no such undisputed invoice is issued by you in accordance with clause 8.3(a), the undisputed part of the relevant invoice (if any) and dispute the balance; and
  - (c) if the resolution of the dispute determines that we are to pay an amount to you, we will pay that amount upon resolution of that dispute.
- 8.4 Notwithstanding anything in this agreement, we may (acting reasonably) reduce any payment due to you under these terms by any liability you have to us in relation to this agreement, provided we have issued documentation to you evidencing the incurring of that liability.
- 8.5 Unless otherwise agreed, any money payable to you is to be paid in Australian currency.
- 8.6 If the purchase order involves the supply of services on a cost plus or per hour basis we have

## 6 Title and risk

- 6.1 Title to and risk in the goods does not pass to us until:
  - (a) we take delivery of the goods; and
  - (b) we inspect and accept the goods.
- 6.2 You warrant that:
  - (a) you have complete ownership of the goods free of any liens, charges and encumbrances and will provide the goods to us on that basis; and
  - (b) the goods will be free of any lien, mortgage, encumbrance or any other third-party interest.
- 6.3 Despite any other provision of this agreement, if the services comprise an overhaul of equipment owned by us prior to the commencement of the overhaul (the “Overhaul Equipment”):
  - (a) title to the Overhaul Equipment remains with us at all times, regardless of its location;
  - (b) at all times that the Overhaul Equipment is

## 7 Price

- 7.1 We agree to pay you the price in accordance with this agreement for the goods and/or services.
- 7.2 The price is inclusive of all costs incurred by you in supply of the goods and/or performance of the services including all charges for packaging, packing, insurance and delivery of the goods in accordance with this agreement and the cost of any items used or supplied in conjunction with the services. The price is also inclusive of all taxes except GST.
- 7.3 The price may not be increased without our prior consent and we have the right to refuse to give our consent.

## 8 Invoicing and payment

- 8.1 You must submit invoices to us:
  - (a) upon delivery of the goods; and/or
  - (b) at the completion of the services, unless the purchase order states that progress payments are to be made; or
  - (c) where progress payments are to be made for the provision of services, at the end of each calendar

the right to conduct an audit of the basis of your charges using your records. This right continues for 12 months after we pay the relevant invoice.

## 9 Termination

- 9.1 Either party may terminate the purchase order by notice in writing to the other party if the other party:
- (a) does not carry out its obligations under the purchase order and such breach is not remedied within 30 days of notice being given to the party to remedy the breach; or
  - (b) breaches any law relating to the supply of the goods or services under this agreement and such breach is not remedied within a cure period determined by the non-defaulting party (such cure period being reasonable in the circumstances).
- 9.2 In addition to any other rights that we may have under this agreement, we may at any time, in our absolute discretion and without cause, terminate this agreement in whole or in part by written notice to you.
- 9.3 If we terminate this agreement under clause 9.2 then, subject to clause 8.4, we must pay to you all amounts due and unpaid for the portion of the goods and/or services that were provided or performed prior to the date of termination.

## 10 Independent contractor

Both parties acknowledge that you are our contractor and not our agent or employee.

## 11 Warranties

- 11.1 You warrant that the goods and/or services will:
- (a) be free from any defect in design, performance, workmanship and makeup;
  - (b) be rendered with due care and skill and be of high quality and workmanship;

- (c) not infringe or contribute to the infringement of any intellectual property rights; and
- (d) conform with these terms and conditions for the warranty period.

11.2 If, during the warranty period, we find any of the goods to be defective goods and/or any of the services or their results to be defective services, we may, at our option (acting reasonably):

- (a) direct you (at your cost) either to make good or replace the defective goods;
- (b) reject the defective services by notifying you that we are rejecting them, and in doing so, direct you (at your cost) either to re-perform or make good those services;
- (c) make good the defective goods ourselves, in which case, you will reimburse us for any reasonable expenses we incur in making good any defective goods;
- (d) make good the defective services ourselves, in which case, you will reimburse us for any reasonable expenses we incur in making good any defective services; or
- (e) reject the defective goods, in which case, you must refund us any costs we have paid to you for the defective goods as well as any costs we incur in returning the defective goods to you.

11.3 Any:

- (a) repairs or replacement goods provided by you under this clause are subject to the same warranty as the original goods, as from the date of repair or replacement; and/or
- (b) defective services that are re-performed or made good by you under this

clause are subject to the same warranty as the original services, as from the date of re-performance or the date on which the defective services were made good.

11.4 The remedies provided in this clause do not exclude any other remedies provided by law.

## 12 Trustee Warranties

12.1 If you have entered into the agreement as trustee of a trust ("Trust"), you:

- (a) enter into the agreement personally and in your capacity as trustee; and
- (b) warrant that:
  - (i) the Trust is validly constituted, and no steps have been taken to terminate the Trust;
  - (ii) you were properly appointed as trustee of the Trust and that you are the sole trustee of the Trust;
  - (iii) you have the power (and have obtained all authorisations necessary) to enter into the agreement, comply with your obligations under the agreement and allow the agreement to be enforced;
  - (iv) you and your directors and other officers have complied with your obligations in connection with the Trust;
  - (v) you have a right to be fully indemnified out of the Trust property in respect of your obligations and liabilities incurred under the agreement; and
  - (vi) the Trust property is sufficient to satisfy your right of indemnity in relation

to your obligations under the agreement in full, and all other obligations in respect of which you have a right to be indemnified out of Trust property, and you have not released or disposed of your equitable lien over the assets of the Trust.

### 13 Insurance

13.1 This clause 13 does not operate in conjunction with, and is not limited by, any other clause in the agreement.

13.2 You must take out and maintain:

- (a) insurance for the goods up to the time they are delivered or, if you are responsible for installation as part of the services under the agreement, up to the time of installation, for an amount not less than their replacement value;
- (b) a comprehensive public and products liability policy on an occurrence basis, to cover all sums which you may become legally liable to pay as compensation consequent upon:
  - (i) death of, or bodily injury (including disease or illness) to, any person; and
  - (ii) loss of, or damage to, property,

happening anywhere in Australia arising out of or in connection with this agreement or performance of your obligations under this agreement. The limit of liability provided by this policy must be not less than \$20 million for any one occurrence, and such policy must include a principal's indemnity clause and a cross liability clause;

- (c) insurance in respect of all claims and liabilities arising, whether at common law or under

statute relating to workers compensation or employer's liability, from any accident or injury to any person employed by you in connection with this agreement, and you must ensure that all subcontractors are similarly insured in respect of their employees. This insurance must be in compliance with the laws of the relevant jurisdiction in which the services are to be carried out;

- (d) a policy of insurance against any and all liability, loss and damage of any kind whatsoever (including consequential loss) arising directly or indirectly from the use, non-use, failure, breakage or any other act, omission or matter arising in respect of any plant, equipment, tools, appliances or other property owned, rented or hired by you to give effect to the supply of goods and/or services;
- (e) if your performance of the services involves the provision of professional services, professional indemnity insurance for an amount not less than \$5 million per claim, for a period of six years from the date of the Purchase Order; and
- (f) other insurances required by law.

13.3 You must notify us as soon as reasonably possible of any cancellation of a relevant insurance policy and of any change to the policy which materially affects our interests.

13.4 If any event occurs which may give rise to a claim involving us under any policy of insurance to be taken out by you under this clause, then you must:

- (a) notify us within 14 days of that event; and
- (b) ensure that we are kept fully informed of any

subsequent actions and developments concerning the relevant claim.

13.5 At our request, you must produce evidence that you are maintaining the insurances required by this clause.

13.6 We have the right to take out and maintain any policy of insurance required by this clause if you fail to do so. In such circumstances, you agree to reimburse us for any expenses we incur in taking out and maintaining any such policy of insurance.

13.7 You must notify the insurer at or before the commencement of any insurance policy which you effect under this agreement of your entitlement to an input tax credit for any premium paid for that policy and provide to us (on request) written proof that you have informed the insurer of your entitlement to an input tax credit for any premium paid for that policy.

13.8 You warrant that you have informed the insurer of the extent, or change in the extent, of your entitlement to an input tax credit for the last premium you paid at or before the time of first making any subsequent claim under the insurance policy.

13.9 With respect to every insurance policy referred to in this clause 13, whether effected before or after the date of this agreement, you must keep under review the extent of your entitlement to an input tax credit for the last premium paid.

### 14 Liability and indemnities

14.1 You are liable for and must indemnify us and keep us indemnified from and against any liability and/or any loss (including financial loss) or damage, arising out of the performance of the services by you under the agreement and the performance of your other obligations under the agreement, including:

- (a) any claim that any intellectual property you supply to us in connection

with this agreement infringes the intellectual property rights of a third party;

- (b) physical loss or damage to property; and
- (c) personal injury or death to any persons.

14.2 Your liability to us under clause 14.1 will be reduced proportionally to the extent that a negligent act or omission by us or a breach of our obligations under this agreement has caused the loss, damage, expense, injury, disease, illness, death or other liability.

14.3 Each indemnity in this agreement is a continuing obligation separate and independent from your other obligations and survives termination of this agreement.

#### 15 Records and right to audit

15.1 At all times during the term of this agreement, you must maintain complete and accurate records, together with all supporting or underlying documents and materials, relating to or in connection with the goods and/or services and your obligations under this agreement (and you must ensure that your employees, agents, contractors and subcontractors maintain the same).

15.2 We may at any time by reasonable notice in writing to you request that you make available the records required to be maintained under this clause. Upon such request, you must make such records available for inspection and audit (including copies and extracts of records if required) to us.

#### 16 Confidentiality

16.1 Each party undertakes that it will not, either during the term of this agreement or at any time thereafter (except in the proper course of its duties under this agreement or as required by law or by the other party) disclose to any person any confidential information of or relating to the other party of which it has

become possessed as a result of this agreement or the negotiations preceding this agreement including, but not limited to, the terms of this agreement.

16.2 Nothing in this agreement prohibits disclosure of information which:

- (a) is in the public domain;
- (b) after disclosure to a party becomes part of the public domain otherwise than as a result of the wrongful act of that party;
- (c) is received from a third party provided that it was not acquired directly or indirectly by that third party from a party to this agreement;
- (d) is to either party's related bodies corporate;
- (e) is to a party's professional advisers, provided that they are obliged to keep the information confidential; or
- (f) is required to be disclosed by law or any government or government body, authority or agency having authority over a party.

16.3 The obligations under this clause 16 survive termination of this agreement.

#### 17 Intellectual Property

17.1 Each party retains title to its respective Existing IP.

17.2 Subject to clause 17.3, all Project IP created as part of this agreement will remain vested in you at all times.

17.3 You grant to us, or must procure the granting to us of, a perpetual, transferrable, royalty-free and irrevocable licence to use your Existing IP and the Project IP in connection with the goods and/or services (including without limitation the use, maintenance, repair and upgrade of the goods and/or services).

#### 18 Taxes

18.1 Unless otherwise expressly provided in this agreement, you

must pay all taxes including sales tax, payroll tax, levies, duties and assessments due in connection with the goods and/or services.

18.2 If any supply made under this agreement is or becomes subject to GST, the party to whom the supply is made ("the **Recipient**") must pay to the party making the supply ("the **Supplier**"), as consideration in addition to any consideration payable or to be provided elsewhere in this agreement, subject to issuing a Valid Tax Invoice, an additional amount on account of GST, such amount to be calculated by multiplying the consideration by the applicable rate of GST.

18.3 Any amount in respect of GST payable under clause 18.2 must be paid to the Supplier on or before the last Business Day of the month following the month in which the Recipient receives the Valid Tax Invoice.

18.4 If any party is required to reimburse or indemnify the other party for a cost, expense or liability ("**Cost**") incurred by the other party, the amount of that Cost for the purpose of this agreement is the amount of the Cost incurred less the amount of any credit or refund of GST to which the party incurring the Cost is entitled to claim in respect of the Cost.

#### 19 Privacy

19.1 Each party agrees to comply with their obligations under the *Privacy Act 1988* (Cth) in respect of personal information obtained by or disclosed to them pursuant to this agreement.

19.2 Each party warrants to the other that it has complied with the *Privacy Act 1988* (Cth) in obtaining any personal information disclosed by it pursuant to the agreement.

#### 20 Assignment and sub-contracting

20.1 Subject to clause 20.2, neither party may assign its obligations under this agreement without the prior written consent of the other party (which may not be unreasonably withheld).

20.2 We have the right to assign any or all of our obligations or rights under this agreement at any time to any related body corporate.

20.3 You are responsible for the performance of any obligations under this agreement you elect to delegate to subcontractors, and further, you are liable for the acts, omissions and defaults of any subcontractors as if they were the act, omissions or defaults of yourself.

## 21 Force Majeure

21.1 If the occurrence of a Force Majeure Event prevents or is likely to prevent the supply of goods or services by the agreed delivery date, the party impacted by the Force Majeure Event must as soon as reasonably possible, give the other party (**Other Party**) written notice of the Force Majeure Event, including full particulars of the nature of the Force Majeure Event, its likely duration and your obligations which are prevented or delayed (**Affected Obligations**). Upon receipt of such notice,:

- (a) the Affected Obligations are suspended;
- (b) we have no obligation to pay any amounts in respect of the Affected Obligations; and
- (c) the Other Party may cancel the purchase order (but only if the Force Majeure Event will prevent or is likely to prevent the supply of goods or services by a period of more than one month).

21.2 On the cessation of a Force Majeure Event the subject of a written notice under clause 21.1, you must, as soon as reasonably practicable, resume performance of the Affected Obligations.

21.3 Each party must bear their own costs arising from a Force Majeure Event and no party will have any claim for compensation against the other arising from any valid cancellation of the agreement under clause 21.1.

## 22 Labour hire licensing

22.1 Without limiting anything in this agreement, where the services performed require that you must hold a Labour Hire Licence in order to lawfully perform the services, you:

- (a) warrant that you currently hold the required Labour Hire Licence and that you are on the Register of Licences as holding a Labour Hire Licence;
- (b) at your expense, must maintain a Labour Hire Licence that allows you to lawfully perform the services;
- (c) must ensure the services comply with any conditions imposed on your Labour Hire Licence;
- (d) must as soon as reasonably possible inform us if you are subject to any disciplinary action, including a show cause process, regarding your Labour Hire Licence; and
- (e) must as soon as reasonably possible inform us if your Labour Hire Licence is cancelled, suspended or has any conditions imposed on it.

## 23 Heavy Vehicle National Law

23.1 Without limiting anything in this agreement, you must, whilst on our site or in transit to or from our Sites and at all other relevant times, comply with any law that applies to transport-related activities that are undertaken in connection with this agreement (including the Heavy Vehicle National Law) and must ensure that your employees, agents, contractors and subcontractors also comply with those laws.

23.2 For the purpose of this clause, “transport-related activities” has the meaning given to “transport activities” in the Heavy Vehicle National Law.

## 24 These terms are exclusive

24.1 By supplying the goods and services referred to in the

purchase order, you agree to be bound by the terms in this agreement.

24.2 Except as may be specifically provided in this agreement, any terms and conditions contained in, or relating to any other documents, including any of your documents, in respect of the goods and/or services are excluded.

## 25 Other matters

25.1 In the interpretation of this agreement, 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.

25.2 Either party may only waive its rights under these terms if it does so in writing.

25.3 These terms may not be varied except in writing signed by both parties.

25.4 If a party does not exercise a right, remedy or power at any time, this does not mean that it cannot exercise it later.

25.5 A reference to an attachment, annexure or schedule is a reference to an attachment, annexure or schedule to this agreement and a reference to this agreement includes an attachment, annexure or schedule.

25.6 To the extent that any inconsistency exists between any of the documents comprised in the agreement, they take precedence over each other in the following descending order:

- (a) the purchase order;
- (b) the Purchase Order Terms and Conditions or Contract (as applicable);
- (c) the Accreditation Agreement (if any).

25.7 You must obtain at your own expense any necessary licences or permits and comply with applicable laws in supplying the goods and/or services to us.

25.8 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.

25.9 All rights, obligations and liabilities under or in connection with this agreement are to apply, even where the relevant circumstances involve a failure to take reasonable care and the existence of concurrent wrongdoers (as that term is defined in section 34(2) of the *Civil Liability Act 2002 (NSW)*), unlimited and otherwise unaffected by anything that, but for this clause, may by virtue of the provisions of the *Civil Liability Act 2002 (NSW)* have limited or otherwise affected those rights, obligations and liabilities.

## 26 Conflicts of interest

26.1 You must advise us of any director, owner or employee of, or any person otherwise engaged by you who:

- (a) is involved, planned to be involved or who becomes involved in performing any services, or supplying any goods under this agreement; or
- (b) who was involved in the preparation, review, negotiation, approval, or execution of this agreement,

that has a Conflict of Interest.

26.2 You warrant to us that you have systems in place to identify Conflicts of Interest.

26.3 You warrant that at the time of entering into this agreement there is no Conflict of Interest that you have not previously declared to us in writing, and you undertake to advise us as soon as reasonably possible if a Conflict of Interest arises.

## 27 Supplier Code of Conduct

27.1 You shall comply with the Glencore Supplier Code of Conduct available at <https://www.glencore.com/suppliers>, (the "**Glencore Supplier Code**"), the terms of which are incorporated into this agreement.

27.2 Your obligations under clause 27.1 of this agreement include but are not limited to:

- (a) instituting and maintaining processes and controls designed to ensure that you, and that each of your affiliates and any third party supplying goods or services to you that are related to the performance of this agreement (in each case a "**Relevant Third Party**") complies, with the Glencore Supplier Code; and
- (b) carrying out your business in accordance with the Glencore Supplier Code.

27.3 You shall notify us as soon as you become aware that there is any actual or suspected breach by you of clause 27.1 or 27.2 of this agreement.

27.4 We reserve the right at reasonable times and upon reasonable notice to monitor, review and/or audit your compliance with clauses 27.1, 27.2, 27.3, 27.7, 27.8 and 27.9, of this agreement.

27.5 You shall and shall procure that your affiliates and Relevant Third Parties (including any refinery or smelter that has processed or will process any material delivered or to be delivered under this agreement) shall, co-operate with, and provide any information and assistance reasonably requested by, us in connection with any monitoring, review and/or audit that we may at our discretion undertake to verify your compliance with clause 27 of this agreement.

27.6 Without limiting the generality of clauses 27.4 and 27.5, we shall be entitled, as part of any monitoring, review and/or audit conducted under this clause 27 to:

- (a) inspect relevant books, records and other documents in your possession or control; and
- (b) speak to or otherwise communicate with your directors, officers,

employees, agents and/or representatives.

27.7 If we become aware of facts or circumstances that, in our reasonable determination:

- (a) indicate or could lead to a breach by you of clause 27.1 or clause 27.2 ("**Non-Compliance**"); or
- (b) indicate a material adverse change in the responsible sourcing risk associated with you ("**Additional Risk**"),

then without prejudice to any other rights available to us, we will notify you of the relevant facts and circumstances and you shall: (A) co-operate with, and provide any information and assistance reasonably requested by us in connection with the Non-Compliance and/or the Additional Risk; and (B) shall, if requested by us and following engagement with us, propose a Corrective Action Plan ("**Corrective Action Plan**") which, if agreeable to us in content and timing, shall be undertaken by you to address the Non-Compliance and/or the Additional Risk to our satisfaction.

27.8 You shall, at your own cost, take all steps that are necessary and appropriate to remedy any Non-Compliance and to implement any Corrective Action Plan agreed in accordance with clause 27.7.

27.9 In your contractual arrangements with any Relevant Third Party, you shall use your best endeavours to procure the inclusion of terms imposing similar obligations on such third party as are set out in clauses 27.1 to 27.8 and 27.10 of this agreement.

27.10 We may, in addition to any other remedies we may have under this agreement or at law, terminate or suspend this agreement in whole or in part immediately by giving written notice to you if:

- (a) you breach clauses 27.7 or 27.8 of this agreement;

- (b) there is any Non-Compliance that we, in our reasonable discretion, conclude to be serious and unlikely to be capable of remediation or effective mitigation pursuant to clause 27.9 of this agreement;
- (c) there is repeated Non-Compliance; or
- (d) there is any intentional Non-Compliance.

## 28 Compliance requirements

28.1 You warrant, represent and undertake to us that, in connection with the subject matter of this agreement, you, your affiliates and yours and their directors, officers, employees, agents, representatives and any other person acting on your or their behalf:

- (a) have complied with, and will comply with, all applicable laws, rules and regulations including, without limitation, sanctions, anti-bribery and corruption, anti-money laundering and tax laws; and
- (b) have not authorized, offered, promised, paid or otherwise given, and will not authorize, offer, promise, pay or otherwise give, whether directly or indirectly, any financial or other advantage to or for the use or benefit of any public official or any private individual (A) for the purpose of inducing or rewarding that person's improper performance of their relevant function, or (B) that would be a breach of any applicable law.

28.2 You shall at all times maintain accurate and complete books, records and accounts of all transactions connected with the subject matter of this agreement in accordance with the requirements of applicable laws (including, without limitation, data retention laws).

28.3 You shall notify us in writing as soon as you become aware that:

- (a) there is any actual or suspected breach by you of clause 28.1 or 28.2 of this agreement;
- (b) any of the warranties and representations given in clause 28.1 of this agreement are not true and accurate in all respects; or
- (c) you, or any of your affiliates, becomes the subject of any investigation in connection with this agreement by any law enforcement, regulatory or other governmental agency in relation to any sanctions, anti-bribery and corruption, anti-money laundering and/or tax-evasion.

28.4 We may, in addition to any other remedies that we may have under this agreement or at law, terminate or suspend the agreement in whole or in part (including, without limitation, any obligation to make payment to you in connection with this agreement) immediately by giving written notice to you if:

- (a) you have breached clause 28.1 in connection with any applicable anti-bribery and corruption law, applicable sanctions, or any anti-money laundering law, or you have breached clause 28.3, and in either case, you have not remedied the relevant breach within 14 days of being requested to do so in writing by us; or
- (b) you have materially breached clause 28.1 in connection with any applicable law other than any applicable anti-bribery or corruption law, applicable sanctions, or anti-money laundering law and you have not remedied the breach within 14 days of being requested to do so in writing by us.

28.5 You may report any concerns relating to the conduct of us in connection with the subject matter of this agreement that breaches Glencore's Code of Conduct or underlying policies to its contact at Glencore or through the Glencore corporate Raising Concerns Programme, details of which are available at <https://glencore.raisingconcerns.org/>.

28.6 Without limiting any of our other rights or remedies, in the event that:

- (a) you, or any party that directly or indirectly owns or controls you, is sanctioned by any Applicable Sanctions Authority;
- (b) we are of the reasonable opinion that you have breached or will breach any Sanctions; or
- (c) performance by us of any obligation required by this agreement would or could result in violation of, or be inconsistent with, any Sanctions, or expose us to other Sanctions risks, including, without limitation, the risk of being designated as a sanctioned person by any Applicable Sanctions Authority,

we may (without incurring any liability of any nature and regardless of any subsequent ownership change of you) terminate or suspend all or any part of the agreement with immediate effect by written notice to you or take any other action we deem necessary in order for us to comply with Sanctions or avoid the risk of designation as a sanctioned person by any Applicable Sanctions Authority.

## 29 Governing law

29.1 This agreement is governed by the laws of New South Wales, Australia.

29.2 Each party submits to the non-exclusive jurisdiction of the courts of New South Wales.

**Accreditation Agreement** means an accreditation agreement (if any) between, or which covers, you and us.

**agreement** has the meaning given in clause 1.2.

**Applicable Sanctions Authority** means the U.S. Department of Treasury's Office of Foreign Assets Contract (OFAC), the U.S. Departments of State or Commerce, the United Nations Security Council (UNSC), the European Union (EU), Switzerland, the Australian Department of Foreign Affairs and Trade (DFAT) or any other applicable sanctions authority.

**Conflict of Interest** means a personal or business relationship with anyone at any of our operations.

**defective goods** means goods which are not in conformity with this agreement or are defective in design, performance, workmanship or makeup.

**defective services** means services or the results of any services which are not in conformity with this agreement, are of inferior quality or workmanship or are otherwise unsatisfactory.

**Existing IP** means any intellectual property rights or industry rights (whether legal or equitable) in a party's procedures, processes, systems, know-how and methodologies which are pre-existing immediately prior to a purchase order or developed other than in the supply by you to us of any goods and/or services and which are made available to the other party for the purposes of this agreement.

**Force Majeure Event** means an act of government, war, riot, civil disturbance, embargo, storm, tempest, fire, flood, earthquake, natural calamity or other event beyond your or our reasonable control excluding events caused directly or indirectly by you or your subcontractors or suppliers.

**GST** means the goods and services tax imposed by the *New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth.

**goods** means the goods specified in this agreement (including any part of the goods specified).

**Heavy Vehicle National Law** means the Heavy Vehicle National Law and its associated regulations, being the Heavy Vehicle (Fatigue Management) National Regulation, the Heavy Vehicle (General) National Regulation, the Heavy Vehicle (Mass, Dimension and Loading) National Regulation, the Heavy Vehicle (Registration) National Regulation and the Heavy Vehicle (Vehicle Standards) National Regulation).

**insolvent** means, with respect to a party, that it is 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 it has entered into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors or that any analogous event has occurred.

**intellectual property rights** includes without limitation the protected rights attaching to inventions, patents, registered designs, trade marks, copyright, circuit layouts and confidential information.

**licences** means all licences, qualifications, registrations and other statutory requirements necessary for the supply of goods and/or services under this agreement.

**Labour Hire Licence** means the licence required by the *Labour Hire Licensing Act 2017* (Qld).

**party** means you or us.

**parties** means you and us.

**price** means the price specified in the purchase order, or as otherwise agreed with us.

**Project IP** means any new intellectual property rights created or generated in connection with the supply of goods and/or services under this agreement.

**purchase order** means the purchase order for goods and/or services issued by us to you from time to time containing, amongst other things, a description of the goods and/or services.

**Register of Licences** means the register of licences created under the *Labour Hire Licensing Act 2017* (Qld).

**related body corporate** has the meaning given in the *Corporations Act 2001* (Cth).

**Sanctions** means any economic or financial sanctions, trade embargoes or restrictive measures administered or enforced by any Applicable Sanctions Authority.

**services** means the services specified in this agreement (including any part of the specified services and the results of the specified services).

**taxes** means any and all present and future sales, use, personal, property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on our net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.

**Valid Tax Invoice** is an invoice which complies with GST law relating to the production and form of tax invoices for GST purposes.

**you** means the person named in this agreement as the supplier of the goods or services and **your** has the corresponding meaning.

**warranty period** means, unless otherwise agreed between you and us, the period of 24 months from the date of delivery or 12 months from the date of installation or initial use of the goods, whichever is the sooner and/or 12 months from the date on which the service is performed.

**we** and **us** means the entity set out in the purchase order, the operator of the mine set out in the purchase order, and the related bodies corporate of the entity set out in the purchase order and of the operator of the mine set out in the purchase order and their employees, contractors and agents.. **Our** has the corresponding meaning.