



**Purchase Order/Service Order
Terms and Conditions
Mali - Syama**

TABLE OF CONTENTS

1.	INTERPRETATION.....	2
2.	CONTRACT AND PRECEDENCE.....	6
3.	TERM.....	6
4.	NO MINIMUM PURCHASE OR EXCLUSIVITY.....	6
5.	STATUS OF CONTRACTOR.....	6
6.	CONTRACTOR'S REPRESENTATIONS.....	7
7.	CONTRACTOR'S INVESTIGATIONS.....	7
8.	REPRESENTATIVES.....	7
9.	PROVISION OF SUPPLY BY CONTRACTOR.....	8
10.	CONTRACTOR'S WARRANTIES.....	8
11.	DEFECTS LIABILITY.....	9
12.	ADHERENCE TO SUPPLY DATE.....	10
13.	DELIVERY, TITLE AND RISK.....	10
14.	CONTRACT PRICE.....	10
15.	PAYMENTS TO CONTRACTOR.....	11
16.	DEDUCTION FROM PAYMENTS.....	11
17.	CONTRACTOR REGISTRATION REQUIREMENTS AND GST.....	12
18.	RIGHT TO AUDIT BY COMPANY.....	13
19.	PERSONNEL AND EQUIPMENT.....	13
20.	PACKING, DESPATCH AND TRANSPORT.....	14
21.	INSPECTION.....	15
22.	ACCESS TO SITE.....	15
23.	COMPLIANCE WITH COMPANY POLICIES.....	16
24.	HEALTH, SAFETY, ENVIRONMENT AND COMMUNITY.....	16
25.	LAWS.....	16
26.	FORCE MAJEURE.....	17
27.	INSURANCES.....	17
28.	INDEMNITIES.....	18
29.	COMPANY'S TERMINATION FOR CONVENIENCE.....	19
30.	CONTRACTOR DEFAULT AND INSOLVENCY.....	20
31.	DISPUTE RESOLUTION.....	20
32.	CONFIDENTIALITY.....	21
33.	INTELLECTUAL PROPERTY RIGHTS IN SUPPLY.....	22
34.	THIRD PARTY INTELLECTUAL PROPERTY RIGHTS.....	23
35.	BUSINESS ETHICS.....	24
36.	CONFLICT OF INTEREST.....	24
37.	ASSIGNMENT AND SUB-CONTRACTING.....	25
38.	NOTICES.....	25
39.	GENERAL.....	26
40.	GOVERNING LAW.....	27

1. INTERPRETATION

1.1 Definitions

In these Terms and Conditions and the Contract the following terms have the meanings set out below:

ABN has the meaning given by section 41 of the *A New Tax System (Australian Business Number) Act 1999* (Cth).

Affected Party is defined in clause 26.1.

Anti Bribery and Corruption Law includes:

- (a) any anti bribery or corruption Law of the Commonwealth of Australia or a State of Australia, including Division 70 of the *Criminal Code Act 1995* (Cth);
- (b) the United States *Foreign Corrupt Practices Act 1977*;
- (c) the United Kingdom *Bribery Act 2010*; and
- (d) any anti-corruption Law of a country which applies to the Company from time to time in relation to the Contract including any anti-corruption Laws of Mali.

Anti Bribery and Corruption Law Violation means a situation where the Contractor or a Sub-contractor has:

- (a) directly or indirectly offered, paid, solicited or accepted bribes in any form, including facilitation payments; or
- (b) otherwise breached an Anti Bribery and Corruption Law,

in connection with the subject matter of the Contract or sub-contract, as the case may be.

Award means any legally binding instruments made by industrial tribunals established under Law that operate with the force of legislation and which regulate the terms and conditions on which specified types of employees may be employed.

Business Day means a day, other than a Saturday or Sunday, on which banks are open for general banking business in Bamako, Mali and the location in respect of which an obligation is to be performed or, in respect of clause 38, the place to which a Notice is sent.

Cancellation Date is defined in clause 30.2(b).

Claim means any action, suit, proceeding or demand of any kind, whether actual or threatened and includes any claim for payment of money (including damages) or for an increase in the Contract Price (including by or against the Company or its Personnel by Personnel of the Contractor or any third party):

- (a) under, arising out of, or in connection with, the Contract;
- (b) arising out of, or in connection with the Supply under the Contract; or
- (c) arising otherwise under Law or in equity including by statute, in tort for negligence or otherwise, including negligent misrepresentations or for restitution.

Company is defined in the Purchase Order.

Company Associates is defined in clause 39.8(b).

Company Representative is defined in the Purchase Order and includes any person expressly authorised by the Company Representative to perform any of that representative's powers, duties, discretions or authorities, or to receive Goods or Services on the Company's behalf.

Confidential Information means the Contract, and any information (in whatever form) or Documentation of a confidential nature (or which the Contractor or its Personnel ought reasonably to know to be confidential) which relates to the business, affairs or activities of the Company or members of the Resolute Group (including in relation to the Supply) and which:

- (a) is disclosed to the Contractor or its Personnel by or on behalf of the Company;
- (b) is generated by the Contractor or its Personnel in providing the Supply; or
- (c) otherwise comes to the knowledge of the Contractor or its Personnel.

Contract is defined in clause 2.1.

Contractor means the Party (as identified in the Purchase Order) responsible for providing the Supply.

Contractor Default Notice is defined in clause 30.1.

Contractor Insurances is defined in clause 27.1.

Contractor IP means the Contractor's Intellectual Property Rights which:

- (a) are in existence at the date of the Contract; or
- (b) come into existence after the date of the Contract otherwise than in connection with the Contract.

Contractor Representative means the representative of the Contractor identified in the Purchase Order.

Contract Price is defined in clause 14.1.

Defects Liability Period means (as applicable) the period identified as such in the Purchase Order or, where such period is not identified in the Purchase Order, is the period of 12 Months following the date of acceptance of a particular Good by the Company.

Delivery Point means the place identified in the Purchase Order for delivery of any Goods.

Design means any designs required by the Contract and created (or, where the context requires, to be created) by the Contractor for the performance of the Contractor's obligations and contained in drawings, specifications and any other design related Documentation.

Dispute is defined in clause 31.1(a).

Dispute Notice is defined in clause 31.1(a).

Dispute Representative is defined in clause 31.2.

Documentation includes plans, Designs, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in the Contract (and whether embodied in tangible or electronic form).

Force Majeure means an event or cause which is beyond the control of the Affected Party, which causes or results in default or delay in the performance by the Affected Party of any of its obligations under the Contract and which the Affected Party could not reasonably have been expected to have prevented, avoided or overcome by exercising a standard of care and diligence consistent with that of a prudent, competent and experienced person in the circumstances, provided that the event or circumstance is limited to:

- (a) an act of God, earthquake, lightning, cyclone, tsunami, fire emanating from outside the Site, explosion, flood, landslide, drought or meteor, but excluding weather conditions regardless of severity;
- (b) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
- (c) expropriation or compulsory acquisition of any part of the Site;
- (d) an act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
- (e) embargo; and
- (f) Industrial Action by labour not employed or otherwise engaged by the Affected Party or its Personnel and which is specific to the provision of the Supply or the Contract.

Goods means the goods, materials, supplies, equipment or other items (if any) identified in the Purchase Order and which are to be provided by the Contractor.

Government Agency means any government or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency or entity.

Government Approvals means any approval, consent, exemption, filing, licence, authority, permit, registration or waiver required from a Government Agency.

GST is defined in clause 17.

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

Indemnified Parties is defined in clause 28.2.

Industrial Action means any action involving (as applicable) the Contractor's or the Company's Personnel in connection with the Supply including any:

- (a) strike;
- (b) imposition of any ban or limitation of the performance of work; or
- (c) refusal by an employee to work in accordance with that employee's contract of employment or the provisions of any Award, agreement, order or determination of an industrial tribunal, whether actual, threatened, impending or probable.

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

Invoice means an invoice referred to in clause 15.2(a) and in the form referred to in clause 15.2(c).

Laws means present and future obligations arising under:

- (a) applicable laws, statutes, regulations, by-laws, orders, ordinances, proclamations and decrees;
- (b) the terms and conditions of any applicable Government Approvals; and
- (c) any binding requirement, instruction, direction or order of a Government Agency.

Liabilities means damages, Claims, losses, liabilities, costs and expenses of any kind.

Month means a calendar month.

Notices is defined in clause 38.1.

Official includes:

- (a) any officer or employee of any Government Agency, or any person acting in an official capacity on behalf of any such Government Agency;
- (b) any officer, employee or official of a political party;
- (c) any candidate for political office; or
- (d) any officer or employee of a public international organisation (for example, the United Nations or World Bank).

Parties means the parties to the Contract, being the Company and the Contractor, and **Party** means any one of them.

Personnel means:

- (a) in relation to the Contractor, any of its employees, Sub-contractors (including Sub-contractors' Personnel), agents and representatives involved either directly or indirectly in the provision of the Supply;
- (b) in relation to the Company, all employees, representatives, directors, officers, agents, labour hire workers and sub-contractors of the Company or the Resolute Group, any of their respective past or present officers, employees, agents or representatives; and
- (c) in relation to a Sub-contractor, any of its employees, agents or representatives involved either directly or indirectly in the provision of the Supply.

Plant and Equipment means the plant, equipment, tools, appliances, items or other property the Contractor requires in order to perform its obligations under the Contract.

Project IP means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the provision of the Supply or the Contract (including all Intellectual Property Rights in anything developed by the Contractor in providing the Supply and any Intellectual Property Rights in any documentation provided by the Company to the Contractor).

Purchase Order means an individual purchase order or service order issued by the Company to the Contractor in respect of the provision of the Supply.

RCCM means Registre du Commerce et du Credit Mobilier.

RCCM extract means a company registration document evidencing that the company is duly registered at the companies registry or RCCM.

Related Body Corporate means:

- (a) in relation to the Company, a body corporate that is:
 - (i) a holding company of the Company;
 - (ii) a subsidiary of the Company; or
 - (iii) controlled by an entity that also controls the Company; and
- (b) in relation to the Contractor, a body corporate that is:

- (i) a holding company of the Contractor;
- (ii) a subsidiary of the Contractor;
- (iii) controlled by an entity that also controls the Contractor; or
- (iv) any of the Contractor's Personnel.

Resolute means Resolute Mining Limited (ACN 097 088 689).

Resolute Group means the company structure incorporating Resolute and including:

- (a) any Related Body Corporate of Resolute;
- (b) any unincorporated joint venture in which Resolute or any Related Body Corporate of Resolute has a participating interest of not less than 50%;
- (c) any body corporate or unincorporated joint venture managed by Resolute or any Related Body Corporate of Resolute; and
- (d) such other entities as the Parties agree in writing will be a member of the Resolute Group for the purposes of the Contract.

Resolute IP means the Intellectual Property Rights of the Company or any member of the Resolute Group (as the case requires) which:

- (a) are in existence at the date of the Contract; or
- (b) come into existence after the date of the Contract otherwise than in connection with the Contract.

Services means the services (if any) identified in the Purchase Order and which are to be performed by the Contractor.

Site means the Company's premises identified in the Purchase Order.

Sub-contractor means any person engaged by the Contractor in accordance with clause 36 to provide all or any part of the Supply on behalf of the Contractor.

Supply means the supply of any Goods or the performance of any Services (as the case requires) requested by the Company pursuant to the Purchase Order.

Supply Date means the date identified in the Purchase Order as the date for completion of the provision of the Supply (including any amendments to the date for completion in accordance with clause 26.4).

Taxes means all taxes including income taxes, excise duties, stamp duties, customs duties, payroll taxes, withholding taxes, import taxes, government duties, charges and fees.

Tender means the Contractor's offer or counter-offer in writing to provide the Supply whether described as a "tender" or "proposal" or otherwise.

Term is defined in clause 3.

Termination Notice is defined in clause 29.1.

Terms and Conditions means these Purchase Order and Service Order Terms and Conditions.

VAT means any value added tax or goods and services tax applicable to the provision of the Supply.

1.2 Interpretation

In these Terms and Conditions, and in the Contract, the following rules apply unless the context requires otherwise:

- (a) a document (including these Terms and Conditions and the Contract) includes any variation or replacement of it;
- (b) a reference to a clause is a reference to a clause of these Terms and Conditions;
- (c) a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) the singular includes the plural and vice versa;
- (f) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association, or any Government Agency;
- (g) a word or expression defined in the *Corporations Act 2001* (Cth) has the meaning given to it in that Act;

- (h) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (j) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (k) a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (l) a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day; and
- (m) the words "including" or "for example" when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

1.3 Next Day

If an act under the Contract to be done by a Party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day.

1.4 Next Business Day

If an event must occur under the Contract on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day.

1.5 Headings

Headings are for convenience only and do not affect the interpretation of the Contract.

2. CONTRACT AND PRECEDENCE

2.1 Contract

The **Contract** consists of the following documents:

- (a) the Purchase Order;
- (b) these Terms and Conditions; and
- (c) any other document which is attached to, or incorporated by reference in, the Purchase Order or these Terms and Conditions.

2.2 Precedence of Contract documents

If there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause 2.1.

3. TERM

The Contract will commence on the date of acknowledgement or confirmation of receipt of the Purchase Order by the Contractor and, unless terminated earlier in accordance with the Contract, will remain in force until the completion by the Contractor of all its obligations under the Contract (**Term**).

4. NO MINIMUM PURCHASE OR EXCLUSIVITY

4.1 No minimum purchase

Nothing in the Contract obliges the Company to request or acquire any minimum level of Supply from the Contractor.

4.2 No exclusivity

The Contract is not evidence of, nor does it create, an exclusive relationship between the Company and the Contractor in respect of the Supply (or any aspect of it).

5. STATUS OF CONTRACTOR

5.1 Independent contractor

The Contractor is an independent contractor and will not act as, or be regarded as, an agent or employee of the Company, and the Contractor and its Personnel will not be entitled to any benefits which would ordinarily accrue to any employee of the Company by virtue of their status as an employee.

5.2 Partnership and joint venture Contractors

Where the Contractor comprises more than one person they will be bound jointly and severally and by executing the Contract accept joint and several liability for any loss or damage that may be suffered or occasioned and any sum that may be or may become payable to the Company under the Contract.

6. CONTRACTOR'S REPRESENTATIONS

The Contractor represents to the Company that, as at the date of the Contract:

- (a) it has the corporate power to enter into, and to perform all of its obligations under, the Contract;
- (b) it is qualified and has the necessary experience, skill and resources to provide the Supply;
- (c) it is properly licensed, equipped, organised and financed to perform all of its obligations under the Contract;
- (d) there are no contracts in existence that would affect the Contractor's ability to perform its obligations under the Contract in a timely and satisfactory manner;
- (e) the Contract has been validly executed by the Contractor and constitutes valid and binding obligations of the Contractor enforceable according to its terms; and
- (f) the execution of the Contract and the provision of the Supply do not and will not result in the breach of:
 - (i) the terms of, or constitute a default under, any agreement or undertaking (whether verbal or written) or any instrument to which the Contractor may be affected or bound; or
 - (ii) any order, writ, rule, regulation, injunction or decree of any court or Government Agency or any legislation applicable to the Contractor by which the Contractor may be bound.

7. CONTRACTOR'S INVESTIGATIONS

7.1 Investigations regarding Contract

- (a) The Contractor is deemed to have made due allowance for, and has inspected, examined, familiarised itself and otherwise satisfied itself as to the accuracy of any information given to it and accepts full responsibility for any use by it of such information including, without limitation, responsibility for any conclusions drawn by it from such information.
- (b) Failure by the Contractor to do all or any of the things it is deemed to have done under clause 7.1(a) shall not relieve the Contractor from its warranties or its liability to perform its obligations under the Contract.

7.2 No representation by Company

- (a) The Company has endeavoured to ensure the accuracy of any information provided to, or obtained by, the Contractor or its Personnel from the Company.
- (b) The Company does not warrant or guarantee the accuracy, sufficiency or otherwise of the information referred to in clause 7.2(a).
- (c) The Parties acknowledge that any information referred to in clause 7.2(a) is for the convenience of the Contractor only and does not form part of the Contract unless otherwise expressly agreed by the Parties in writing, and that any Tender submitted by the Contractor and its subsequent execution and performance of the Contract is deemed to have been based on the Contractor's own investigations and determinations.
- (d) The Company is not liable for any Liabilities incurred or suffered by the Contractor as a result of its reliance in any way upon any information given to it by the Company.

8. REPRESENTATIVES

8.1 Company Representative

- (a) The Company Representative is responsible for giving directions for and on behalf of the Company as provided in the Contract.
- (b) The Contractor must provide the Supply in accordance with the Contract and in accordance with any written directions of the Company Representative pursuant to the provisions of the Contract. Any approval, comment or review by the Company Representative in relation to any part of the Supply is for contract management purposes only and does not relieve or reduce the Contractor's obligations or liability under the Contract in any way.
- (c) Directions given to the Contractor by any person other than the Company Representative will not bind the Company unless ratified by the Company Representative.

8.2 Contractor Representative

- (a) The Contractor Representative is responsible for liaising with the Company Representative in relation to any of the matters referred to in clause 8.1. The Contractor Representative will have full power to legally bind the Contractor in respect of all matters arising out of the Contract.
- (b) Any direction which the Company Representative gives to a Contractor Representative is deemed to have been given to the Contractor for and on behalf of the Company and the Contractor must comply with that direction.
- (c) Any communication given, or document signed, by a Contractor Representative is deemed to have been given or signed by the Contractor and will bind the Contractor.
- (d) Matters within the knowledge of a Contractor Representative are deemed to be within the knowledge of the Contractor.
- (e) The Contractor Representative and Company Representative will hold regular meetings to discuss the provision of the Supply at such times and places as the Company Representative directs (unless otherwise agreed between the Representatives).
- (f) If the Company, acting reasonably, considers that the performance of the Contractor Representative is deficient in any respect or the Contractor Representative is not co-operating with the Company in a manner which results in an efficient working relationship under the Contract, the Company may direct the Contractor to replace the Contractor Representative with a person reasonably acceptable to the Company. The Contractor must use its best endeavours to ensure such replacement is made within 5 Business Days of any such request by the Company.

8.3 Replacement of Representative

Either Party may, from time to time, revoke the appointment of its Representative and appoint another person as its Representative provided that Party gives 7 days' notice of such revocation and appointment to the other Party.

9. PROVISION OF SUPPLY BY CONTRACTOR

The Contractor must provide the Supply in accordance with the terms of the Contract and in consideration for the payment of the Contract Price by the Company.

10. CONTRACTOR'S WARRANTIES

10.1 Contractor's warranties

In addition to the warranties contained in clauses 11.2, 34.1 and 35.2 the Contractor warrants that:

- (a) all of the Supply will be provided in an efficient manner using suitably qualified and experienced Personnel and in accordance with all applicable Laws;
- (b) all of the Supply will be of the highest standard and in accordance with the Company's specifications (where those specifications are made known to the Contractor) or, in the absence of such specifications, in accordance with any applicable industry standards or codes, or, where there are no such standards or codes, in accordance with generally accepted best practices;
- (c) if Design is required as part of the Supply, it will develop and complete any Design so that the Design complies with the requirements of the Contract and is accurate, suitable, appropriate and adequate to achieve the relevant purpose for which the Company has procured the Supply or as could be reasonably inferred by a reputable contractor from what is stated in the Contract taking into account the environment, the Site and expected design life;
- (d) in relation to the performance of Services as part of the Supply:
 - (i) the Contractor and its Personnel will exercise the standards of diligence, skill, foresight and care normally exercised by a similarly qualified, reputable and competent person or supplier in the performance of comparable work; and
 - (ii) any equipment used on-Site by the Contractor will be in safe working condition and fit for purpose, will comply with all Laws applicable to such equipment and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Company;
- (e) if the Contractor gave the Company any demonstrations of the Services or any samples of the Goods (as the case requires) before the Company entered into the Contract, the Supply corresponds in nature and quality with the samples and/or demonstrations (as the case requires);
- (f) in relation to the provision of Goods as part of the Supply:
 - (i) the Goods will be of merchantable quality;

- (ii) the Goods will be free from defects including defects, deficiencies and faults in Design, performance, materials, workmanship, quality or makeup, and suitable for the intended purpose of those Goods;
 - (iii) it has good and marketable title to the Goods and the Company will receive title to the Goods free of any charge or encumbrance; and
 - (iv) it will obtain at its cost all usual trade warranties and any warranties specifically requested by the Company and that on completion of the Supply it will assign the benefit of any such unexpired warranties to the Company including any warranties obtained from the Contractor's Sub-contractors; and
- (g) all information and materials forming part of the Tender (if any) or any related presentation by the Contractor are true and correct in every respect and are not misleading or deceptive and the Contractor has not withheld from the Company any information concerning the Contractor, its experience or expertise which might reasonably be material to the Company in determining whether or not to engage the Contractor to provide the Supply or the price at which or the terms on which the Company would be prepared to engage the Contractor to provide the Supply.

10.2 Copies of trade warranties

Copies of trade warranties referred to in clause 10.1(f)(iv) must be supplied to the Company with Invoices.

10.3 Warranties separate and additional

- (a) The express warranties set out in the Contract are additional to any warranties implied by Law, custom or usage.
- (b) Each of the warranties is a separate warranty. No warranty is to be read down by reference to any other warranty. No obligation of the Contractor under the Contract will be read down by reference to a warranty.

11. DEFECTS LIABILITY

11.1 Correction of deficient Services

Upon receipt of a notice from the Company Representative during the Term of any deficiency in the Services (except for a defect in any associated Goods, in respect of which clauses 11.2, 11.3, 11.4 and 11.5 apply), the Contractor must correct such deficiency (including by way of providing such additional services necessary to correct such deficiency) at no cost to the Company prior to the time specified in the notice.

11.2 Warranty

The Contractor warrants each Good against any defect including defects, deficiencies and faults in Design, performance, materials, workmanship, quality, makeup, or suitability for intended purpose, which arises during the Defects Liability Period.

11.3 Commencement of Defects Liability Period

In respect of each Good, the Defects Liability Period will commence on and from the date that Good is accepted by the Company Representative in writing.

11.4 Rectification of Defects

- (a) Upon receipt of a notice from the Company Representative of any defect in any Good during the Defects Liability Period including due to:
 - (i) defective, deficient or faulty Design, performance, materials, workmanship, un-merchantable quality or makeup, or unfitness for intended purpose; or
 - (ii) not being in accordance with the standard provided for in the Contract,
 the affected items or parts must be redesigned, repaired or replaced as appropriate by the Contractor at no cost to the Company prior to the expiration of the time specified in the notice.
- (b) On completion of any redesign, repair or replacement in accordance with this clause 11.4, the relevant Good must be re-tested at the cost of the Contractor.

11.5 Redesigned, repaired or replaced Goods

Any part of a Good that is redesigned, repaired or replaced pursuant to clause 11.4 will be subject to a separate and additional Defects Liability Period commencing from the Company's acceptance of the redesigned, repaired or replaced Good and expiring:

- (a) on the last day of the additional Defects Liability Period; or
- (b) on the day that is 12 Months after the date of the Company's acceptance,

whichever is later.

11.6 Contractor failure to rectify

Without prejudice to any other remedies available to the Company, if the Contractor fails to (as the case requires):

- (a) correct any deficiency in the Services identified by the Company pursuant to clause 11.1; or
- (b) rectify any defect in any Good identified by the Company pursuant to clause 11.4,

the Company may correct any deficient Services or rectify any defect in any Good (as the case may be). Any costs and expenses incurred by the Company will be recoverable from the Contractor as a debt due and payable.

12. ADHERENCE TO SUPPLY DATE

12.1 Adherence to Supply Date

- (a) Time is of the essence in the performance of the Contractor's obligations under the Contract.
- (b) The Contractor must:
 - (i) deliver any Good to the Company at the Delivery Point by the Supply Date for that Good; and
 - (ii) complete the provision of any Services by the Supply Date for that Service.

13. DELIVERY, TITLE AND RISK

13.1 Delivery

The Contractor must deliver the Goods to the Delivery Point on the Supply Date.

13.2 Title

Full unencumbered title to each Good will pass to the Company upon the Company making payment in full to the Contractor for that Good.

13.3 Risk

Risk in each Good will remain with the Contractor until its delivery to, and acceptance by, the Company Representative at the Delivery Point.

14. CONTRACT PRICE

14.1 Contract Price

The **Contract Price** means the aggregate amount payable by the Company to the Contractor in relation to the Supply pursuant to clause 15.3.

14.2 Contract Price to be inclusive

- (a) Unless specifically agreed by the Parties as a reimbursable expense payable by the Company to the Contractor in accordance with clause 14.3, all costs and expenses incurred by the Contractor in relation to provision of the Supply will be deemed to be included in the Contract Price. This includes all incidental and related work which may arise from matters referred to, identified in, or to be reasonably inferred from or contemplated by the description of the Supply.
- (b) The Contract Price includes any applicable Taxes other than VAT.
- (c) The Contractor must separately disclose to the Company details of any customs duties included in the Contract Price.
- (d) To the extent applicable, Section 152(1)(a) of the *Customs Act 1901* (Cth) does not apply to the Contract.

14.3 Reimbursable expenses

- (a) The Contractor must obtain the Company's prior written approval before:
 - (i) incurring any reimbursable expense; or
 - (ii) undertaking any activity that would result in the Contractor incurring any reimbursable expense where the amount of the reimbursable expense cannot reasonably be ascertained.
- (b) The Company has no obligation to reimburse the Contractor for reimbursable expenses incurred without the Company's prior written approval.

15. PAYMENTS TO CONTRACTOR

15.1 Method of payment

Unless otherwise provided in the Contract, all payments required to be made to the Contractor by the Company pursuant to the Contract in relation to the provision of the Supply must be made in the currency specified in the Purchase Order by electronic funds transfer into the Contractor's nominated bank account.

15.2 Invoices

- (a) The Contractor must, unless otherwise agreed with the Company, render an Invoice to the Company in relation to the provision of the Supply in accordance with the agreed payment procedure identified in the Purchase Order and calculated by reference to the prices, fees or other amounts specified in the Purchase Order.
- (b) Invoices must be submitted by the Contractor to the Company by email at accounts@somisy.com (or such other address as notified by the Company Representative to the Contractor Representative from time to time).
- (c) Invoices must be in a form acceptable to the Company and must contain the following information:
 - (i) the number of the Purchase Order to which the Invoice relates;
 - (ii) a brief description of the Supply provided in the period covered by the Invoice;
 - (iii) evidence of payment or timing of payment of any Sub-contractor;
 - (iv) any further verification or documentation in relation to the Invoice as is reasonably required by the Company; and
 - (v) (if applicable) the VAT amount.

15.3 Payment of Invoices

Subject to clauses 15.4, 16, 27.3(f), 30.2(b) and 45.5, the Company must pay to the Contractor the amount shown on an Invoice (including (if applicable) the VAT amount in accordance with the applicable Law) issued in accordance with clause 15.2 sixty days after which the Invoice is received by the Company.

15.4 Disputed Invoices

If the Company disputes any amount shown on an Invoice, it must notify the Contractor within 21 days of receipt of the Invoice and must pay any amounts not in dispute in accordance with clause 15.3, provided that the payment by the Company of any amount the subject of a disputed Invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment.

15.5 Errors or exceptions in invoicing

Without limiting clause 15.3, if the Contractor discovers or is advised of any errors or exceptions relating to its invoicing for the Supply, the Contractor and the Company will jointly review the nature of the errors or exceptions, and the Contractor must, if appropriate, take prompt corrective action and adjust the relevant Invoice or refund overpayments.

16. DEDUCTION FROM PAYMENTS

16.1 Deductions

The Company may:

- (a) deduct from any moneys due or becoming due to the Contractor pursuant to clause 15.3 the following amounts (plus any VAT in respect of such deductions payable in accordance with the applicable Law):
 - (i) all debts and moneys due from the Contractor or its Personnel to the Company under the Contract and any other agreement between the Company and the Contractor (including liquidated damages);
 - (ii) all Liabilities which the Company may have paid, suffered or incurred and which or for which the Contractor or its Personnel is or are liable to bear, pay or reimburse to the Company (including pursuant to any indemnity contained in the Contract); and
 - (iii) the cost of remedying any defective or damaged Goods or of re-performing Services performed below a standard acceptable to the Company; or
- (b) without prejudice to the Company's rights pursuant to any other clause of the Contract, if the Contractor fails to perform any of its obligations under the Contract, without notice withhold payment of all or part of any amount payable to the Contractor under the Contract, until the matter has been remedied.

16.2 Deductions and withholdings required by Law

The Company is not liable to the Contractor and the Contractor has no Claim against the Company in respect of any sum which would otherwise be payable to the Contractor under the Contract which:

- (a) the Company has withheld from payment in accordance with any Tax or other Law, until it is released or relieved from all liability pursuant to the relevant Law in respect of the amount so withheld and is lawfully entitled to pay the sum to the Contractor; or
- (b) which it has paid in accordance with the provisions of any Tax or other Law to the entity legally entitled to accept payment.

16.3 Notification of withholding or deductions

The Company must notify the Contractor of the details of any amounts withheld or deducted pursuant to clauses 16.1 or 16.2.

17. CONTRACTOR REGISTRATION REQUIREMENTS AND GST

17.1 Requirement for ABN

If the Contractor is required to be registered for an ABN under the *A New Tax System (Pay as You Go) Act 1999* (Cth):

- (a) the Contractor must notify the Company of its ABN within 5 Business Days of the date of the Contract; and
- (b) if for any reason the Contractor ceases to be ABN registered, the Contractor must notify the Company within 5 Business Days.

17.2 Requirement for registration at the RCCM

If, in accordance with the applicable Laws, the Contractor is required to be registered at the RCCM, the Contractor must:

- (a) give the Company a copy of its RCCM extract; and
- (b) if for any reason the Contractor ceases to be RCCM registered, the Contractor must notify the Company within 5 Business Days.

17.3 Application and definitions

Clauses 17.4 to 17.10 (inclusive) apply if Resolute Corporate Services Pty Ltd (as agent for Société des Mines de Syama S.A) is a Party. Terms used in this clause 17 have the meanings used in the GST Act. The following terms have the meanings set out below:

GST Contractor means, in respect of a particular GST Supply made under the Contract, the Party entitled to payment for that GST Supply.

GST Supply has the meaning given to the term "Supply" in section 195-1 of the GST Act.

Recipient means, in respect of a particular GST Supply made under the Contract, the Party providing consideration for that GST Supply.

17.4 Registration for GST

Without limiting clause 17.1, the Contractor must do all things necessary to ensure that it is registered for GST purposes and is required to notify the Company immediately if it is not GST registered or for any reason, ceases to be GST registered.

17.5 Amounts payable exclusive of GST

Subject to clause 17.8(a), if GST becomes payable by a GST Contractor on any GST Supply it makes under the Contract:

- (a) any amount payable or consideration to be provided under the Contract for that GST Supply (as reduced in accordance with clause 17.6) (**Agreed Amount**) is exclusive of GST;
- (b) an additional amount will be payable by the Recipient, equal to the amount of GST payable on that GST Supply as calculated by the GST Contractor in accordance with the GST Law and payable at the same time and in the same manner as for the Agreed Amount; and
- (c) the GST Contractor will provide a Tax Invoice to the Recipient in respect of that GST Supply, no later than the time at which the Agreed Amount for that GST Supply is to be provided under the Contract.

17.6 Refunds and credits

- (a) If, for any reason, the GST payable by the GST Contractor in respect of a GST Supply it makes under the Contract (incorporating any increasing adjustments or decreasing adjustments relating to that GST

Supply) varies from the additional amount it receives from the Recipient under clause 17.5 in respect of that GST Supply, the GST Contractor will provide a refund or credit to or will be entitled to receive the amount of this variation from the Recipient (as appropriate).

- (b) Where an adjustment occurs in relation to a GST Supply, the GST Contractor will issue an adjustment note to the Recipient in respect of that GST Supply within 14 days after becoming aware of that adjustment occurring.

17.7 Input Tax Credit

Subject to clause 17.8(b), notwithstanding any other provision of the Contract, any amount payable for a GST Supply made under the Contract which is calculated by reference to a cost, expense or other amount paid or incurred by a Party will be reduced by an amount equal to any Input Tax Credits to which that Party is entitled to in respect of that cost, expense or other amount.

17.8 GST group

- (a) Any reference to GST payable by the GST Contractor includes any GST payable by the representative member of any GST group of which the GST Contractor is a member.
- (b) Any reference to Input Tax Credit entitlements of the GST Contractor includes any Input Tax Credit entitlements of the representative member of any GST group of which the GST Contractor is a member.

17.9 Recipient Created Tax Invoice

The Contractor acknowledges that if GST Supplies are to be made under a Recipient Created Tax Invoice then a Recipient Created Tax Invoice agreement between the Company and the Contractor is required.

17.10 Requirement for Tax Invoice/adjustment note

Notwithstanding any other provision of the Contract, the Company is not obliged to pay any amount to the Contractor unless and until the Contractor issues a Tax Invoice and (if required) an adjustment note in respect of that amount.

18. RIGHT TO AUDIT BY COMPANY

18.1 Right of audit of Contractor performance

The Contractor and its Personnel must permit the Company to have access to the Contractor's premises, any of their documentation and data (including documents stored in electronic form) and to interview the Contractor's Personnel in connection with the Supply, as necessary for Company Personnel to verify, monitor and audit the Contractor's compliance with:

- (a) the procedures, rules, regulations and policies of the Company and (if applicable) the Site (as notified by the Company from time to time by notice to the Contractor in writing); and
- (b) the health, safety, environmental and community conditions set out in clause 24.

18.2 Action by Contractor

Without limiting any other rights or remedies available to the Company as a result of the Contractor's non-compliance with any of the conditions, policies and standards referred to in clause 18.1, if deficiencies are identified by an audit undertaken under clause 18.1, the Contractor must take corrective action as soon as possible and notify the Company of such action.

19. PERSONNEL AND EQUIPMENT

19.1 Contractor Personnel

The Contractor is required to supply all Personnel necessary for the proper provision of the Supply. Such Personnel must be appropriately qualified, competent and skilled to provide the relevant part of the Supply in respect of which they are engaged.

19.2 Engagement of Personnel

The Contractor must ensure that all Personnel of the Contractor engaged to provide any part of the Supply comply with clauses 32, 33, 34 and 35 with respect to Confidential Information, Intellectual Property Rights and business ethics.

19.3 Company may object to Personnel

- (a) The Company Representative may object to any of the Contractor's Personnel who, in the opinion of the Company Representative, is lacking in appropriate skills or qualifications, engages in misconduct, is incompetent or negligent or has failed to comply with the procedures, rules, regulations and policies of the Company and (if applicable) the Site (as notified by the Company from time to time by notice to the Contractor in writing).

- (b) The Contractor must:
 - (i) remove any Personnel that the Company Representative objects to under clause 19.3(a);
 - (ii) not re-employ that person in connection with the Supply without the prior written consent of the Company Representative; and
 - (iii) at its cost replace any Personnel removed pursuant to this clause 19.3(b) with suitably qualified, competent, skilled and approved Personnel.

19.4 Contractor responsibilities

The Contractor is responsible for:

- (a) the transportation of its Personnel to and from the Site and will provide for the movement of its Personnel on the Site at all times;
- (b) unless otherwise agreed between the Parties, and subject to clause 19.5, at the Contractor's expense, the supply of all labour, supervision, Plant and Equipment, materials, power, water, safety equipment and other requirements necessary for the Contractor to provide the Supply in accordance with the Contract; and
- (c) the health and safety of its Personnel.

19.5 Company Plant and Equipment

- (a) Where the Company has agreed to provide certain Plant and Equipment to the Contractor for the performance of the Contractor's obligations under the Contract (if any), the Contractor is responsible for that Plant and Equipment including the physical security of that Plant and Equipment.
- (b) All Plant and Equipment provided by the Company to the Contractor remains the Company's property and the Contractor may only use that Plant and Equipment for performing the Contractor's obligations under the Contract.
- (c) The Contractor must keep the Company's Plant and Equipment in good working order and condition, except for fair wear and tear.
- (d) The Contractor must compensate the Company for any loss or damage to the Site, Company property (including Plant and Equipment) or property in the Company's possession or control caused by the Contractor or the Contractor's Personnel.

19.6 Improper or defective items

- (a) The Company Representative may at any time:
 - (i) inspect any materials, Plant and Equipment, machinery or other implements used by the Contractor in the provision of the Supply to ensure all are in safe working condition and fit for purpose;
 - (ii) object to any unsafe, unsuitable, improper or defective materials, Plant and Equipment, machinery or other implements and have the relevant items removed from the Site or direct the Contractor to rectify any defects so that all items are in safe working condition and fit for purpose;
 - (iii) request the addition of such items as in the opinion of the Company Representative are necessary for the due completion and fulfilment of the Contract.
- (b) If the Contractor fails to comply with any such objection or request made by the Company Representative within 7 days of receiving notice of that objection or request, then the Company may add to or remove such materials, Plant and Equipment, machinery or implements as it sees fit at the cost of the Contractor.

20. PACKING, DESPATCH AND TRANSPORT

20.1 Contractor responsible

- (a) The Contractor is responsible, at its cost, for packing and transporting the Goods to the Delivery Point.
- (b) The Contractor must notify the Company Representative promptly of the date of despatch of each item and the estimated date of arrival at the Delivery Point.

20.2 Where Company to arrange transport

If, pursuant to the terms of the Contract, the Company is obliged to arrange transport of all or some of the Goods, then the Contractor must notify the Company Representative of the details of those Goods ready for despatch in sufficient time to enable transport to be arranged.

21. INSPECTION

21.1 Inspection

The Company Representative has the right to inspect any of the Goods the subject of the Supply at any time to determine whether the Goods are in accordance with the Contract, the Company's specifications (where those specifications are made known to the Contractor), any applicable industry codes, or, where there are no such codes, in accordance with generally accepted best practices.

21.2 Access

The Contractor must ensure that the Company has access to the Goods at all times and the Contractor must provide all facilities necessary for the supervision, inspection and testing of all Goods at the Site or wherever the Goods are stored or in the course of manufacture.

21.3 Cost of inspections

If upon inspection after a direction by the Company Representative to dismantle or open up any part of a Good, the Good so inspected is in accordance with the Contract, the whole of the expense incurred as a result of the dismantling or opening up and reassembly will be borne by the Company. If the Good is found not to be in accordance with the Contract the whole of the expense so incurred, including without limitation, any costs associated with putting that Good into a condition which is in accordance with the Contract, will be borne by the Contractor.

22. ACCESS TO SITE

22.1 Application of clause

This clause 22 applies if any part of the Supply is to be provided by the Contractor or its Personnel on the Site.

22.2 Access

- (a) Without limiting clause 27.3(f) or this clause 22, the Company will grant to the Contractor access to the Site on and from the date of the Contract and the Contractor must give the Company Representative at least 7 days' notice before commencing the Supply on the Site.
- (b) The Contractor acknowledges that other contractors may be present at the Delivery Point or on the Site during the performance of the Contractor's obligations.
- (c) The Company will give the Contractor sufficient access to the Site to enable the Contractor to provide the Supply and whilst on the Site, the Contractor agrees to:
 - (i) co-operate with all other contractors;
 - (ii) co-ordinate its work with the other contractors' work to minimise any delays; and
 - (iii) not obstruct, delay or interfere with or damage other contractors' work.

22.3 Contractor obligations

- (a) Prior to commencement of provision of the Supply on the Site, the Contractor must notify the Company Representative of its normal times and periods of work and must give the Company Representative at least 24 hours' notice of any alteration in its working hours or periods of work. Such working hours and periods of work must be in accordance with all relevant Laws and Site Rules and Regulations.
- (b) The Contractor must at all times consult with the Company Representative and obtain 14 days' prior written approval for any action likely to interfere with the Company's operations. The Company Representative must reply to any such request within 7 days of receipt of such request.
- (c) The Contractor must keep the Site in a clean and tidy condition while performing the Contractor's obligations on the Site and, on completion of the Contractor's obligations on the Site, remove all structures, buildings, Plant and Equipment, unused materials, rubbish and other material from the Site.
- (d) The Contractor must provide the Supply in a manner that does not cause or threaten to cause pollution, contamination or environmental harm of, on, under or outside the Delivery Point or the Site in breach of the Contract, any relevant environmental Laws or approvals from Government Agencies relating to the environment.

22.4 Right to deny access

- (a) The Contractor must ensure that no person is permitted access to the Site until that person has been approved by the Company and has undertaken appropriate inductions and training.
- (b) If the Contractor or its Personnel fail to comply with any of the requirements of clause 24 or this clause 22, then the Company Representative may in its discretion deny access to the Site or permit such access subject to terms and conditions the Company Representative thinks appropriate.

22.5 No exclusive possession

The Contractor acknowledges that nothing in the Contract confers on it exclusive possession of the Site and that it will only be granted access to the Site to the extent deemed necessary by the Company Representative for the provision of the Supply.

23. COMPLIANCE WITH COMPANY POLICIES

During the Term, the Contractor must, and must ensure that its Personnel, comply with each of the procedures, rules, regulations and policies of the Company and (if applicable) the Site, as notified by the Company from time to time by notice to the Contractor in writing.

24. HEALTH, SAFETY, ENVIRONMENT AND COMMUNITY

24.1 Application of clause

This clause 24 applies to the extent the Contractor or any of its Personnel are required to be on, or near the vicinity of, the Site (including any Site accommodation and nearby towns or communities associated with the Site) for the purposes of the Supply.

24.2 Compliance with health, safety, environmental and community Laws, policies and standards

The Contractor agrees to comply, and to ensure that its Personnel comply, with:

- (a) without limiting clause 23, the Company's health, safety, environmental and community policies and associated standards applicable from time to time (a copy of which has been provided to the Contractor);
- (b) without limiting clause 25, all relevant health, safety and environmental Laws in force from time to time, including but not limited to, Laws relating to the packaging and transport of dangerous, hazardous or toxic goods; and
- (c) the health, safety and environmental conditions contained in this clause 24.

24.3 Induction courses

Each of the Contractor's Personnel must attend all appropriate and relevant induction courses required by the Company.

24.4 Contractor to remain liable

- (a) Nothing in this clause 24 limits or removes any obligation or duty imposed on the Contractor or any of its Personnel (whether under the Contract or otherwise) to secure or have regard to the health and safety of any of its Personnel.
- (b) The Contractor is responsible for, and must make good, any damage to the environment caused by the provision of the Supply (including any unlawful pollution of the Site or its surroundings).
- (c) If the Contractor fails to comply with this clause 24.4, the Company may perform or have the obligation performed on the Contractor's behalf and the costs and expenses incurred by the Company are recoverable from the Contractor as a debt due and payable to the Company.

25. LAWS

25.1 Compliance with Laws

During the Term, the Contractor must comply with all applicable Laws relating to its obligations under the Contract and ensure that each of its Personnel does the same.

25.2 Consequences of breach

Notwithstanding any other clause of these Terms and Conditions or term of the Contract, in the event of any breach of clause 23, clause 24 or this clause 25, the Company may:

- (a) require the Contractor, the Contractor's Personnel, and/or any other person to leave the Site immediately; and
- (b) require the Contractor and/or any of its Personnel to remove any material or substance from the Site at the Contractor's cost,

and the Contractor must, at its cost, ensure such request is immediately complied with and take all possible action to ensure the safety of all Personnel.

26. FORCE MAJEURE

26.1 Notice of Force Majeure

A Party will not be liable for any delay or failure to perform any of its obligations under the Contract (other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the Contract (**Affected Party**), the Affected Party gives a notice to the other Party that complies with clause 26.2.

26.2 Force Majeure notice

A notice given under clause 26.1 must:

- (a) specify the obligations the Affected Party cannot perform;
- (b) fully describe the Force Majeure;
- (c) estimate the time during which the Force Majeure will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

26.3 Obligation to remedy and mitigate

The Affected Party must:

- (a) remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible; and
- (b) take all action reasonably practicable to mitigate any Liabilities suffered by the other Party as a result of its failure to carry out its obligations under the Contract.

26.4 Amendment to Supply Date

If the Affected Party is the Contractor, the Company Representative will make an amendment to the Supply Date to reflect such relief.

27. INSURANCES

27.1 Contractor Insurances

The Contractor is required, at its cost, to procure and maintain appropriate insurance policies throughout the Term and any additional period specified in the Contract, including:

- (a) workers' compensation insurance or social security cover in accordance with the statutory requirements and other Laws applicable to each employee of the Contractor that will work in providing the Supply or any part thereof;
- (b) for any Contractor employees not domiciled in Mali, Personal Accident insurance for the employees of the Contractor with limits of at least USD\$375,000 per person for death benefit and permanent invalidity benefit and USD\$750,000 for medical fees, medicines and hospitalisation;
- (c) public and products liability insurance written on an occurrence basis with a limit of indemnity of at least USD\$7,500,000 for each and every occurrence and, in the case of product liability, no less than USD\$7,500,000 in the aggregate during any one 12 Month period of insurance which covers the liability of the Contractor and any of the Contractor's Personnel in respect of:
 - (i) loss of, damage to, or loss of use of, any real or personal property; and
 - (ii) the bodily injury of, disease or illness (including mental illness) to, or death of, any person, arising out of the performance of or in connection with the Contract;
- (d) if required by the Company, motor vehicle insurance for the market value of all motor vehicles which are used by the Contractor in connection with the Contract;
- (e) if required by the Company, Automobile Liability insurance or Third Party Liability for vehicles and/or mobile plant used by the Contractor for the Contract for the amount required in accordance with statutory requirements and other Laws for registration and at least USD\$1,000,000 for any one occurrence in respect of third party property damage or third party personal injury;
- (f) if required by the Company, professional indemnity insurance with a sum insured of not less than USD\$7,500,000 for any one occurrence and in the annual aggregate. Limit to be specific to the Contract and policy to be in force from Commencement Date and is maintained for at least 7 years after the end of the Contract;
- (g) transit insurance covering the Goods with a sum insured of not less than the replacement value of the Goods, with the insurance being maintained up until the Goods are accepted by the Company at the Delivery Point; and

- (h) the Contractor shall effect any other insurance which is required by Law for the time being in force in the country where the Supply has been undertaken,

in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract (together, the **Contractor Insurances**).

27.2 Sub-contractors' insurance

The Contractor must ensure that its Sub-contractors have the benefit of or effect and maintain insurances similar to the Contractor Insurances required to be effected by the Contractor.

27.3 Insurance terms

- (a) If the Contractor Insurances are subject to the application of any self-insured retention, excess or deductible, the amount of the self-insured retention, excess or deductible must be declared to the Company.
- (b) The Company reserves the right to require the Contractor to reduce the amount of any self-insured retention, excess or deductible where such amount is considered by the Company as being unreasonable in the circumstances of the Contract.
- (c) The Contractor Insurances are the minimum requirement and the Contractor is expected to have comparable insurance that a similar organisation would be expected to procure and maintain, with reputable insurers (S&P rating or equivalent of "A-" or better) and on policy forms reasonably acceptable to the Company.
- (d) No provision contained in this clause 27 will limit the Contractor's liability in relation to the indemnities in the Contract.
- (e) Before commencing provision of the Supply, the Contractor must provide the Company with an insurance certificate of currency or such evidence as the Company may reasonably require that the Contractor and its Sub-contractors are insured in accordance with the Contract. The same certificate or evidence must be provided within 5 Business Days of the renewal date of each policy of insurance required under the Contract.
- (f) In the event that the Contractor fails to, or fails to ensure that its Sub-contractors, effect or keep in force any of the insurances required pursuant to the Contract, the Company may do one or more of the following:
- (i) effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Contractor;
 - (ii) refuse the Contractor and its Personnel access to all or any part of the Site; and/or
 - (iii) treat the failure to insure as a default under the Contract.
- (g) All Contractor Insurances must not be varied to the detriment of the Company or its Personnel, cancelled or allowed to lapse unless the Contractor has received a written consent from the Company.

27.4 Notification under Contractor's policy

If the Contractor becomes aware of an event which may give rise to a Claim involving the Company under any policy of insurance effected by the Contractor as required by this clause 27, the Contractor must notify the Company and must ensure that the Company is kept fully informed of subsequent action or developments concerning the Claim.

27.5 Insurance claims and payment of insurance excess

- (a) The Contractor will be responsible for the payment of any excess or deductible relating to the insurances effected by the Contractor and the Contractor will not be entitled to recover from the Company any excess or deductible so paid by the Contractor.
- (b) The Contractor will be responsible for the payment of any excess or deductible relating to the insurances effected by the Contractor where the Company makes a Claim under such policy, to the extent that the Company determines that the Contractor or any of its Personnel were responsible for the loss or damage.

27.6 Survival of clause

This clause 27 will survive the expiry or earlier termination of the Contract.

28. INDEMNITIES

28.1 Acknowledgement

The Contractor acknowledges that if it enters on to the Site, it does so at the Contractor's own risk. The Contractor must ensure that its Personnel are also aware that they enter onto the Site at their own risk.

28.2 Indemnity

Subject to clause 28.3, the Contractor will indemnify (and will keep indemnified) the Company, and its Personnel (**Indemnified Parties**) from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any one or more of the following:

- (a) the breach by the Contractor or its Personnel of any of the Contractor's obligations (including any warranty) under the Contract and/or any Purchase Order;
- (b) any negligent act or omission or wilful misconduct by the Contractor or its Personnel arising out of the performance of the Contract and/or any Purchase Order;
- (c) any Claim made against the Company or any member of the Resolute Group by any of the Contractor's Personnel in respect of relevant Laws concerning income Tax, workers' compensation, annual leave, long service leave, superannuation or any applicable Award, determination or agreement of a competent industrial tribunal; and
- (d) any Claim made against the Company or any member of the Resolute Group arising out of third party property damage or third party personal injury arising in connection with the activities of the Contractor or its Personnel when performing obligations under the Contract.

28.3 Exclusions

The Contractor's liability to indemnify the Indemnified Parties under clause 28.2 will be reduced proportionately to the extent that a negligent act or omission or wilful misconduct of the Indemnified Parties contributed to the Liability.

28.4 Indemnity held for benefit of the Company's and Resolute Group's Personnel

Every exemption, limitation, defence, immunity, indemnity or other benefit contained in the Contract or otherwise to which the Company or a member of the Resolute Group is entitled will be held by the Company as trustee for the benefit of, and will extend to protect, each of the Company's, and each Resolute Group member's Personnel.

28.5 Indemnity continuing

Each indemnity in the Contract is a continuing obligation separate and independent from the Contractor's other obligations and survives termination of the Contract.

28.6 No requirement for expense before enforcing indemnity right

It is not necessary for the Company, a member of the Resolute Group or their respective Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

29. COMPANY'S TERMINATION FOR CONVENIENCE

29.1 Termination notice

The Company may terminate the Contract or any part of it by giving the Contractor not less than 30 days' notice (**Termination Notice**).

29.2 Obligations upon receipt of Termination Notice

Upon receipt of a Termination Notice, the Contractor must:

- (a) immediately cease provision of the Supply in accordance with, and to the extent specified in, the Termination Notice;
- (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Goods and Services forming part of the Supply;
- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- (d) take any other action reasonably required by the Company in relation to the termination.

29.3 Obligations upon termination

On the date of termination specified in the Termination Notice, the Contractor must:

- (a) provide the Company with a detailed report in such form as the Company may require in relation to the Supply provided up to and including the date of receipt of the Termination Notice;
- (b) issue an Invoice to the Company in accordance with clause 15.2 in relation to the provision of the Supply up to and including the date of termination;
- (c) return to the Company any items issued to the Contractor by the Company during the Term; and
- (d) take any other action relating to the termination of the Contract as the Company may reasonably require.

29.4 Contractor payment and compensation

- (a) Following termination of the Contract by the Company pursuant to this clause 29, the Contractor is entitled to recover from the Company out-of-pocket expenses which it has incurred or will incur solely as a result of termination of the Contract and which it is unable to otherwise recover or mitigate, including as a result of (if applicable):
- (i) removing the Contractor's Plant and Equipment from the Site; and
 - (ii) transporting Contractor Personnel back to their place of engagement,
- but not including any expenses which have been or are reimbursed as reimbursable expenses in accordance with clause 14.3.
- (b) The amounts outlined in clause 29.4(a) represent the only amounts or Liabilities recoverable from the Company by the Contractor following a termination of the Contract by the Company in accordance with this clause 29.

30. CONTRACTOR DEFAULT AND INSOLVENCY

30.1 Contractor default notice

If the Contractor breaches any term of the Contract, the Company may serve a notice of default (**Contractor Default Notice**) on the Contractor.

30.2 Contractor Default Notice requirements

A Contractor Default Notice must:

- (a) either require that the breach be remedied within a specified period of not less than 14 days after service of the Contractor Default Notice on the Contractor or state that the breach is incapable of remedy; and
- (b) state that if the breach is not remedied within the period specified in the Contractor Default Notice or is incapable of remedy, then the Company may by further notice to the Contractor do one or more of the following:
 - (i) (if the breach is capable of being remedied) elect wholly or partly to suspend payment under the Contract until the breach has been remedied by the Contractor;
 - (ii) take such action as the Company deems necessary to cure the breach (the cost of such action so taken by the Company being recoverable from the Contractor as a debt due and payable to the Company by the Contractor); or
 - (iii) terminate the Contract or any part of it with effect from a specified date (**Cancellation Date**).

30.3 Obligations upon termination

If the Company gives notice pursuant to clause 30.2(b)(iii), the Contract is terminated from the Cancellation Date and the Contractor must:

- (a) cease provision of the Supply in accordance with, and to the extent specified in, the Contractor Default Notice;
- (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Goods and Services forming part of the Supply;
- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- (d) take any other action reasonably required by the Company in relation to the termination.

30.4 No prejudice

Notwithstanding the terms of any Contractor Default Notice, no action taken by the Company under this clause 30 will prejudice the existence of any of its rights and remedies under the Contract which the Company may have as a result of the relevant breach.

31. DISPUTE RESOLUTION

31.1 Dispute

- (a) In the event of any dispute between the Company and the Contractor arising out of or under the Contract (**Dispute**), a Party may give to the other Party a notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this clause 31.
- (b) A Dispute Notice must:
 - (i) set out the facts on which the Claim is based;

- (ii) annex copies of correspondence and any relevant background material; and
- (iii) contain detailed particulars of the quantification of the Claim.

31.2 Dispute Representatives to seek resolution

- (a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management with authority to resolve the Dispute (each, a **Dispute Representative**).
- (b) If the Dispute is not resolved within 30 days of the Dispute being referred to the respective Dispute Representatives, then either Party may, after giving written notice to the other Party, commence legal proceedings in an appropriate court within Western Australia to resolve the matter.

31.3 Performance of obligations during Dispute

- (a) During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.
- (b) Service of the notices under, and compliance with the process outlined in this clause 31 are conditions precedent to the commencement of any litigation in respect of a Dispute.

31.4 Urgent interlocutory relief

Nothing in this clause 31 prevents a Party from seeking any urgent interim or interlocutory relief which may be required in relation to the Contract.

31.5 Information to be used for no other purposes

The Parties agree that:

- (a) the reason for a Party providing any information, including the making of any offer of settlement (on a without prejudice basis or otherwise) under this clause 31 is to attempt to resolve the Dispute;
- (b) information provided under this clause is Confidential Information for the purposes of clause 32; and
- (c) no Party may use such information for any purpose other than to seek to resolve the Dispute.

32. CONFIDENTIALITY

32.1 Obligation of confidentiality

The Contractor undertakes and agrees:

- (a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of providing the Supply; and
- (b) not to make use of the Confidential Information, except and solely to the extent necessary for the provision of the Supply,

unless the Contractor has obtained the prior written consent of the Company to do so. Such consent may be withheld by the Company in its absolute discretion or given on such terms as it sees fit.

32.2 Exceptions

Clause 32.1 does not apply to:

- (a) information after it becomes generally available to the public other than as a result of a breach of confidence;
- (b) the disclosure of information in connection with legal proceedings relating to the Contract to the extent the Contractor is required to make such disclosure; or
- (c) the disclosure of information in order to comply with any applicable Law or rule of a recognised securities exchange, provided that prior to such disclosure the Contractor gives notice to the Company with full particulars of the proposed disclosure.

32.3 Public announcements

- (a) Except as required by any applicable Law or as otherwise permitted by the Contract, the Contractor may not make any public announcements or disclosures as to the Contract, or otherwise in relation to the subject matter of the Contract, without the prior written consent of the Company.
- (b) No media release or public announcement will be made in relation to the existence of the Contract without the Company's prior written approval and should such approval be given, then the wording of such release and the manner of publication must first be approved in writing by the Company.

32.4 Contractor acknowledgment

The Contractor acknowledges that this clause 32 is for the benefit of not only the Company but also any member of the Resolute Group that has any interest in any Confidential Information.

32.5 Indemnity

- (a) Without limiting clause 28, the Contractor indemnifies the Company and each member of the Resolute Group, and must keep them indemnified, in respect of any Liabilities incurred or sustained by them resulting from a breach of this clause 32 by the Contractor or its Personnel.
- (b) The Company is entitled to recover from the Contractor an amount due to a Resolute Group member under the indemnity in clause 32.5(a) on behalf of that entity and will hold any amount recovered, and the benefit of the indemnity in clause 32.5(a) to which that entity is entitled, as trustee for and on behalf of that entity.

32.6 Additional obligations

- (a) The obligations in this clause 32 are in addition to and do not diminish the obligations of the Contractor in respect of secret and confidential information at Law or under any trade or professional custom or use.
- (b) When disclosing Confidential Information under and in accordance with clause 32.1, the Contractor must use all reasonable endeavours so that persons receiving Confidential Information from it do not disclose the information except in the circumstances permitted under this clause 32.

32.7 Return or destruction of Confidential Information

If requested by the Company, whether prior to or after the expiry or earlier termination of the Contract, the Contractor must promptly deliver to the Company or destroy all Confidential Information in the custody, possession or control of the Contractor or any of its Personnel.

32.8 Survival of clause

This clause 32 will survive the termination of the Contract.

33. INTELLECTUAL PROPERTY RIGHTS IN SUPPLY

33.1 Contractor IP

- (a) The Company acknowledges that the Contractor remains the owner of all Contractor IP and that nothing in the Contract prevents, limits or restricts the Contractor's subsequent use or exploitation of Contractor IP.
- (b) The Contractor grants to the Company a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use all Contractor IP for the purposes of or in connection with the Contract.
- (c) The Company may sub-licence the Company's rights to the Contractor IP to any person where that person has been granted use of the Project IP by the Company.

33.2 Project IP

- (a) The Contractor agrees that all Project IP will be vested in the Company and will be the Company's property as and when created.
- (b) The Contractor assigns all rights, title and interest in and to the Project IP (whether created before, on or after the commencement of this Contract) to the Company. On the Company's request, the Contractor must execute any formal assignment or other document required to give effect to such assignment.
- (c) The Company grants to the Contractor a non-exclusive, non-transferable, revocable licence to use the Project IP for the sole purpose of providing the Supply.
- (d) The Contractor must not reproduce, communicate, use, register or attempt to register any interest in or otherwise deal with the Project IP, or allow any other person to do the same, for any purpose other than to provide the Supply.

33.3 Resolute IP

- (a) The Contractor acknowledges and agrees that the Company or any member of the Resolute Group (as the case requires) remain the owner of all Resolute IP and that nothing in the Contract prevents, limits or restricts their subsequent use or exploitation of Resolute IP.
- (b) The Company grants to the Contractor, or where the relevant Resolute IP is owned by a member of the Resolute Group other than the Company, the Company will procure the grant to the Contractor of, a non-exclusive, non-transferable, revocable licence to use the Resolute IP for the sole purpose of providing the Supply.

- (c) The Contractor must not reproduce, communicate, use, register or attempt to register any interest in or otherwise deal with the Resolute IP, or allow any other person to do the same, for any purpose other than to provide the Supply.

33.4 General Contractor obligations

The Contractor agrees to:

- (a) disclose to the Company all Project IP as and when it is created;
- (b) ensure that any sub-contract the Contractor enters into in relation to the Contract contains an assignment by the Sub-contractor to the Company of all Intellectual Property Rights in any Project IP created by the Sub-contractor for the purposes of the Contract;
- (c) notify the Company as soon as the Contractor becomes aware of any suspected, threatened or actual infringement of any Intellectual Property Rights in the Project IP and to provide all reasonable assistance in relation to that infringement; and
- (d) provide all reasonable assistance the Company may request to protect, perfect, enforce, defend or assert its interests in and right to use and exploit the Project IP (including assisting the Company to take action against persons infringing the Project IP). The Contractor must also ensure that its employees provide all reasonable assistance to the Company as set out in clause 33.2(b).

33.5 Survival of clause

This clause 33 will survive the termination of the Contract.

34. THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

34.1 Third party Intellectual Property Rights

The Contractor warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party in the provision of the Supply, or to the extent the Company will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of the Supply:

- (a) it has obtained, or will obtain at its cost, from the relevant third party all necessary licences and consents to use, or assignments of, such Intellectual Property Rights; and
- (b) that it will not breach any of the licences or assignments referred to in clause 34.1(a).

34.2 Indemnity

- (a) Without limiting clause 28, the Contractor indemnifies the Company and must keep the Company indemnified in respect of any Liabilities incurred or sustained by the Company resulting from any actual or alleged infringement of any Intellectual Property Rights of any third party arising out of or caused by:
 - (i) the provision of the Supply by the Contractor;
 - (ii) the performance or operations of any other Plant and Equipment, machinery, process, work, material, matter, thing or method used or supplied by the Contractor; or
 - (iii) the use and enjoyment of the Supply by the Company.
- (b) The Contractor must notify the Company immediately if the Contractor becomes aware of a Claim being threatened or made against the Company in relation to any of the matters covered by the indemnity in clause 34.2(a).
- (c) The Company may require the Contractor to conduct any litigation that may arise from a Claim referred to in clause 34.2(b) and all negotiations for settlement of that Claim. However, the Contractor must not make any settlement or consent to any judgment, order or verdict against the Company without the Company's prior written consent.

34.3 Procurement of Intellectual Property Rights

If the Company is prevented from (as the case requires) operating or using the whole, or any part of, the Goods and/or Services as a result of any Claim in relation to an infringement of Intellectual Property Rights, the Contractor must (at its cost) take all reasonable steps to procure for the Company the right to (as the case requires) operate or use the Goods and/or Services or the relevant part of the Goods and/or Services for the purpose for which it was intended.

34.4 Procedure where Intellectual Property Rights cannot be procured

If the Contractor cannot procure the rights referred to in clause 34.3 within a reasonable time (but not exceeding 60 days unless the Company Representative otherwise agrees), it must notify the Company Representative accordingly and the Company Representative may direct the Contractor to immediately (at the Contractor's cost):

- (a) alter the affected Supply to avoid infringement or violation of the Intellectual Property Rights or any of them;

- (b) replace the affected Supply or the relevant part of the affected Supply with work or Supply that does not infringe or violate the Intellectual Property Rights; or
- (c) remove the affected Supply and reimburse the Company any compensation and other moneys already paid to the Contractor and pay to the Company any costs or other expenses that may have been paid or incurred by the Company in connection with the removed Supply.

35. BUSINESS ETHICS

35.1 Establishment of procedures

- (a) The Contractor must establish and maintain procedures and policies to prevent its Personnel from making, receiving, providing or offering substantial gifts, entertainment, payments, loans or other consideration to Personnel of the Company or the Resolute Group for the purpose of influencing such Personnel to act contrary to the best interests of the Company.
- (b) The obligation in clause 35.1(a) applies to the activities of Contractor Personnel in their relations with Company Personnel arising from the Contract.

35.2 Contractor warranties

The Contractor represents and warrants that, with respect to or in connection with the subject matter of the Contract:

- (a) neither it nor its Personnel have offered, authorised, promised or given, and neither it nor its Personnel will offer, authorise, promise or give, to an Official or any other person, directly or indirectly, any payment, gift, service, thing of value or other advantage where such payment, gift, service, thing of value or other advantage would be an Anti Bribery and Corruption Law Violation;
- (b) it will otherwise comply with the Anti Bribery and Corruption Laws; and
- (c) it has not and will not utilise or participate in any practice whereby suppliers, sub-contractors, vendors and other contractors, are approached and offered confidential information or influence in order to obtain business through corruption of competitive bidding processes.

35.3 Books and records

The Contractor must:

- (a) maintain adequate internal controls over all transactions in relation to the Contract;
- (b) properly record all transactions in relation to the Contract; and
- (c) maintain accurate books and records in relation to each transaction for a period of no less than 5 years from the date of such transaction.

35.4 Audit rights

The Company may, on reasonable notice and at its sole expense, conduct an audit of the books and records referred to in clause 35.3 for the purpose of verifying the Contractor's compliance with the terms of the Contract or to determine whether an Anti Bribery and Corruption Law Violation has occurred.

35.5 Company's right of termination

If the Company determines in its sole discretion that the Contractor has committed a breach of this clause 35 it may treat the breach as an event of default and may exercise any rights it may have under the Contract upon the occurrence of an event of default, but without regard to any waiting periods or cure periods specified in the Contract.

35.6 Clause to apply to Sub-contractors

The Contractor must require its Sub-contractors to agree to and comply with contractual provisions substantially identical to those contained in clauses 35.2, 35.3(c), 35.4 and 35.5.

36. CONFLICT OF INTEREST

36.1 Warranty

The Contractor warrants that as at the date of the Contract it has not carried on business, entered into any financial arrangements or undertaken any obligation which would in any way interfere or conflict with the provision of the Supply by the Contractor and its Personnel under the Contract.

36.2 Conflicts of interest

The Contractor must ensure that neither it nor any of its Personnel carry on business, enter into any financial arrangements or undertake any obligation which would in any way interfere or conflict with the provision of the Supply by the Contractor and its Personnel under the Contract, without the prior written consent of the Company.

36.3 Indemnity

Without limiting clause 28, the Contractor indemnifies the Company and must keep the Company indemnified in respect of any Liabilities incurred or sustained by the Company as a result of any breach by the Contractor of the warranties contained in clause 36.1 or the undertakings contained in clause 36.2.

37. ASSIGNMENT AND SUB-CONTRACTING

37.1 Consent required

- (a) The Contractor is not permitted to assign or sub-contract all or any part of the Contract without the prior written consent of the Company.
- (b) Any consent to an assignment or sub-contract by the Contractor may be withheld or given at the Company's sole discretion and on whatever terms and conditions the Company may think appropriate.

37.2 Obligations survive assignment or sub-contract

The Contractor acknowledges that no permitted assignment or sub-contract in any way relieves the Contractor from the performance of any of its obligations under the Contract.

37.3 Status of Sub-contractor

As between the Contractor and the Company, the Sub-contractor will be considered the agent and employee of the Contractor. For the purposes of the Contract, the acts and omissions of each Sub-contractor and its Personnel will be deemed to be the acts and omissions of the Contractor.

37.4 Payment of subcontractors

- (a) The Contractor must pay all Sub-contractors when they fall due.
- (b) The Company may withhold payment (not exceeding the Sub-contractors' payment) of an Invoice until the Contractor complies with clause 37.4(a).
- (c) If the Contractor fails to comply with its obligations under clause 37.4(a), in addition to its other rights under the Contract, the Company may pay the Sub-contractors' payment directly to the Sub-contractors and that payment will be taken to be part payment of the relevant Invoice.

38. NOTICES

38.1 Form - all communications

Unless expressly stated otherwise in the Contract, all notices, certificates, directions, consents, approvals, waivers and other communications (**Notices**) under the Contract must be:

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;
- (c) signed or authorised by either the Company Representative or Contractor Representative or a director, company secretary or a duly authorised representative of the Company or the Contractor (as appropriate); and
- (d) marked for the attention of the Company Representative or the Contractor Representative, as the case may be.

38.2 Form - communications sent by email

- (a) Notices sent by email need not be marked for attention in the way stated in clause 38.1(d). However, the email must state the first and last name of the sender.
- (b) Notices sent by email are taken to be signed by the named sender.

38.3 Delivery

Notices must be:

- (a) left at the address set out or referred to in the Purchase Order; or
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address set out or referred to in the Purchase Order; or
- (c) sent by email to the address set out or referred to in the Purchase Order.

However, if the intended recipient has notified a changed address or email address, then Notices must be to that address or email address.

38.4 When effective

Any Notice takes effect from the time they are received or taken to be received under clause 38.5 (whichever happens first) unless a later time is specified.

38.5 When taken to be received

Notices are taken to be received:

- (a) if sent by post, 2 Business days after posting (or 5 Business Days after posting if sent from one country to another); or
- (b) if sent by email;
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first.

38.6 Receipt outside business hours

Despite clause 38.5, if a Notice is received or taken to be received under clause 38.5 after 5.00pm in the place of receipt or on a non-Business Day, it will be taken to be received at 9.00am on the next Business Day.

39. GENERAL

39.1 Approvals and consents

By giving its approval or consent a Party does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

39.2 Costs and Duty

- (a) Each Party must bear its own costs arising out of the negotiation, preparation and execution of the Contract, and except as expressly provided otherwise in the Contract, any transaction contemplated by the Contract.
- (b) All duty (including fines and penalties) which may be payable in any relevant jurisdiction on or in connection with the Contract, any Purchase Order or other document related to the Contract will be borne by the Contractor.

39.3 Waiver

- (a) A failure to exercise, or any delay in exercising any right, power or remedy by a Party does not operate as a waiver.
- (b) A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A waiver is not valid or binding on the Party granting that waiver unless made in writing.

39.4 Language of Contract

- (a) The language of the Contract will be English.
- (b) If the parties agree in writing, the Contract will be translated into French. If there is any inconsistency between the English and French versions of the Contract, the English version of the Contract will prevail to the extent of any inconsistency.

39.5 Entire agreement

- (a) The Contract constitutes the entire agreement between the Company and the Contractor about its subject matter and supersedes all previous agreements, understandings and negotiations between the Company and the Contractor on that subject matter (including any offer or counter-offer in writing to provide the Supply, whether a Tender, quote, proposal or otherwise).
- (b) For the avoidance of doubt, if during the Term:
 - (i) the Contractor provides, refers to, submits or otherwise uses terms and conditions other than those included in the Contract (including as part of the submission of an Invoice); or
 - (ii) the Supply under the Contract is accompanied by the Contractor's documentation,then any such terms and conditions and documentation will not form part of, or be incorporated into, the Contract.

39.6 Amendment to be in writing

No amendment or variation of the Contract is valid or binding on a Party unless made in writing and signed by the Contractor and the Company.

39.7 Remedies cumulative

The rights and remedies provided in the Contract are in addition to other rights and remedies given by Law independently of the Contract.

39.8 Time for Claims

- (a) If the Contractor considers itself entitled to any Claim under or in connection with the Contract, it must notify the Company Representative of the facts, matters, events or circumstances relating to the Claim in reasonable detail so that it may be assessed. This notice must be delivered no later than 30 days after the Contractor became or should have become aware of the relevant facts, matters, events or circumstances.
- (b) If the Contractor fails to give notice of a Claim within this period, the Contractor fully releases and discharges the Company, the Resolute Group and their Personnel (**Company Associates**) from and against the Claim arising out of or in connection with relevant facts, matters, events or circumstances.

39.9 Further assurances

Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of the Contract and the transactions contemplated by it.

39.10 Severability

- (a) Any provision of the Contract which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.
- (b) Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable Law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

39.11 Counterparts

The Contract may be executed in any number of counterparts (including counterparts by electronic transmission) and all counterparts together constitute one and the same instrument.

39.12 Construction

No rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of, or seeks to rely on, the Contract or any part of it.

40. GOVERNING LAW

- (a) The Contract is governed by the laws of Western Australia (excluding Part 1F of the *Civil Liability Act 2002 (WA)*).
- (b) Each Party submits to the non-exclusive jurisdiction of the courts of Western Australia and appropriate courts of appeal. Each Party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.