

**ANGLOGOLD ASHANTI AUSTRALIA LIMITED**

**ABN 42 008 737 424**

**AND**

**[\*\*NAME AND ABN OF SELLER\*\*]**

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**SUPPLY OF GOODS CONTRACT**

**TROPICANA GOLD MINE**

**CONTRACT NO. [xxxx]**

**[\* insert general description of goods\*]**

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## KEY TERMS SCHEDULE FOR CONTRACT [\*insert contract number\*]

### Item 1: Parties and Delivery Point

Company: *AngloGold Ashanti Australia Limited, as agent for the Joint Venturers*  
ABN: *42 008 737 424*  
Company Representative: *[\*insert name, title and contact details, including email address\*]*  
Seller: *[\*Insert Seller's name and address\*]*  
ABN: *[\*Insert Seller's ABN\*]*  
Seller's Representative: *[\* Insert Seller's Representative (Name, title and contact details, including email address)\*]*  
Delivery Point: *Tropicana Gold Mine, or such other Delivery Point as may be specified in the applicable Purchase Order*

### Item 2: Goods Specifications

*[\*Insert general description of Goods to be supplied by the Seller to the Company\*], as described in the Schedule of Goods and elsewhere in the Contract.*

### Item 3: Prices

The prices set out in the Schedule of Goods or the Purchase Order (as applicable) are [*\* firm for the whole term of this agreement \**] / [*\*firm for [ ] and then subject to adjustment to reflect changes in the cost of labour and materials in [ ] intervals until the end of the term\**].

### Item 4: Method of Transport

[\*]

### Item 5: Term of Contract

[\*Insert term during which the Company may issue Purchase Orders.\*]

### Item 6: Incidental Services

Incidental Services means any incidental services to be performed by the Seller pursuant to the supply of Goods as specified in the Schedule of Goods (if any).

### Item 7: Date of Contract

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### Item 8: Amount of Security (Clause 15)

Required Security Amount:

- (a) *two unconditional bank guarantees, each for 5% of the Contract Price in the form of Schedule 2 to this Contract or any other form reasonably required by the Company; or*

(b) 10% of the Contract Price as retention monies, in the form of 10% of each payment made by the Company pursuant to Clause 29, up to a maximum of 10% of the Contract Price.

**Item 9: Liquidated Damages (Clause 17) [Drafting note: Item 9 and Clause 17 are to be deleted if no LDs are being included in the contract]**

**Item 9A: Liquidated damages rate for late delivery of Goods**

[insert]

**Item 9B: Maximum amount of liquidated damages**

[insert]

TABLE OF CONTENTS

1.	INTERPRETATION	1
2.	CONTRACT	6
3.	SUPPLY OF GOODS	6
4.	TERM	7
5.	REPRESENTATIVES	7
6.	PURCHASE ORDERS	7
7.	PRICE AND PAYMENT	8
8.	PACKAGING	8
9.	FREIGHT	9
10.	PASSING OF TITLE IN THE GOODS	9
11.	SELLER'S STOCK AND INSPECTION RIGHTS	10
12.	STATUTORY REQUIREMENTS AND SPECIFICATION	10
13.	DELIVERY DOCUMENTATION	10
14.	WARRANTIES AND MAKING GOOD OF DEFECTS	10
15.	SECURITY FOR PERFORMANCE	11
16.	FAILURE TO SUPPLY	12
17.	LIQUIDATED DAMAGES	12
18.	TERMINATION	13
19.	CANCELLATION OF PURCHASE ORDERS	13
20.	IMPORT AND CUSTOMS DUTIES	14
21.	PERFORMANCE OF INCIDENTAL SERVICES AND STANDARD OF CONDUCT	14
22.	ACCESS TO THE SITE	15
23.	ASSIGNMENT AND SUB-CONTRACT	16
24.	CONFIDENTIALITY AND SECURITY	17
25.	INTELLECTUAL PROPERTY RIGHTS	18
26.	INSURANCE	18
27.	INDEMNITY	20
28.	APPORTIONMENT OF LIABILITY	21
29.	NOTICES	21
30.	GST	22
31.	ADDITIONAL OBLIGATIONS AND INDEMNITY	23
32.	CONFLICT OF INTEREST	23

<b>33. THE COMPANY ACTING AS MANAGER OF TROPICANA JOINT VENTURE; ASSIGNMENT</b>	<b>24</b>
<b>34. PROHIBITION ON MODERN SLAVERY</b>	<b>24</b>
<b>35. PPSA SECURITY INTERESTS</b>	<b>26</b>
<b>36. MISCELLANEOUS</b>	<b>26</b>
<b>ANNEXURE A</b>	<b>29</b>
<b>SCHEDULE OF GOODS</b>	<b>29</b>
<b>ANNEXURE B</b>	<b>30</b>
<b>BANK GUARANTEE</b>	<b>30</b>

## SUPPLY OF GOODS CONTRACT

**THIS CONTRACT** is made on the Date of Contract

**BETWEEN**

**ANGLOGOLD ASHANTI AUSTRALIA LIMITED** ABN 42 008 737 424 of Level 10, 140 St Georges Terrace, Perth, WA, 6000 as agent for the Joint Venturers (the “**Company**”)

**AND**

**THE ENTITY NAMED AS THE SELLER IN ITEM 1 OF THE KEY TERMS SCHEDULE OR WHERE A PURCHASE ORDER IS ISSUED, THE ENTITY NAMED AS VENDOR ON THE PURCHASE ORDER FORM** (the “**Seller**”).

**THE PARTIES AGREE AS FOLLOWS:**

### **1. INTERPRETATION**

#### **1.1 Definitions**

In this Contract, unless the context requires otherwise:

**"Applicable Policies"** means any policies, standards, procedures, industry codes and guidelines adopted by the Company, in relation to the Site, the Company and/or its contractors and suppliers, from time to time;

**"Carbon Scheme"** means any Law or any requirement or condition of a licence, permit, Government Agency consent or approval:

- (a) with respect to the production or emission of, or to reduce, limit, cease, prevent, offset, remove or sequester, greenhouse gases; or
- (b) that imposes a tax, levy, duty, impost or other charge that is calculated by reference to actual, potential or deemed greenhouse gas emissions or that is intended to reflect a carbon price,

including without limitation any statutory emissions trading scheme for the management of greenhouse gas emissions or concentrations;

**"Civil Liability Act"** means the Civil Liability Act 2002 (WA);

**"Claim"** means any action, suit, proceeding or demand of any kind;

**"Company Representative"** means the representative of the Company noted in Item 1 of the Key Terms Schedule and as may be replaced under Clause 5 or if not noted in the Key Terms Schedule, the representative nominated by the Company;

**"Confidential Information"** means all information and materials disclosed, provided or otherwise made accessible to, or developed by, the Seller in the course of supplying the Goods or performing the Incidental Services (if any), whether before or after execution of this Contract including the policies, services, processes, procedures, methods, formulations, facilities, products, plans, affairs, transactions, organisations and business connections of

the Company and its Related Bodies Corporate and all information of the kind mentioned in section 275(1) of the PPSA, but excludes information that the Seller can prove:

- (a) was in the public domain at the Date of Contract;
- (b) subsequent to the Date of Contract, became part of the public domain otherwise than as a result of disclosure by the Seller or its Personnel or other person directly or indirectly in breach of this Contract or other obligation of confidentiality; or
- (c) was in its possession at the time of disclosure by the Company to the Seller and was not otherwise acquired from the Company directly or indirectly;

**"Conflict of Interest"** means a situation where an employee of the Company (whether temporary, part-time or permanent) and /or that employee's related parties (including family or close friends) have an interest, either directly or indirectly, in an entity (such as the Seller) that may do, or does, business with the Company. The conflict may be actual, potential or perceived. Good faith or intention by any party involved will not affect the duty to report the conflict. The conflict may relate to an interest in the Seller itself, or if the Seller is aware of, or suspects an interest that the employee may have with others. The conflict may include hospitality, gifts, or expensive entertaining;

**"Contract"** means this contract, including the Key Terms Schedule, the Schedule of Goods, any applicable Purchase Order, and each other Schedule to this contract (if any);

**"Contract Price"** means the aggregate amount payable by the Company to the Seller for the Goods supplied under this Contract (calculated in accordance with Item 3 of the Key Terms Schedule, the Schedule of Goods and/or the applicable Purchase Order, as relevant;

**"Date of Contract"** means the date specified in Item 7 of the Key Terms Schedule or, if no such date is specified, the date that the last party executed this Contract;

**"Defects Liability Period"** means:

- (a) in respect of Goods, one (1) year from the Company putting the Goods into service or eighteen (18) months from delivery of the Goods to the Delivery Point, whichever is later; or
- (b) in respect of Incidental Services, twelve (12) months from the date of completion of the Incidental Services;

**"Delivery Date"** means the date by which the Goods are to be delivered to the Delivery Point as specified in the Schedule of Goods or, if no such date is specified, the date specified in the applicable Purchase Order or the date otherwise agreed by the Parties.

**"Delivery Point"** means the delivery point nominated in Item 1 of the Key Terms Schedule or if not such item is specified in the Key Terms Schedule, the equivalent item specified in a Purchase Order (if any);

**"Goods"** means any merchandise, chattels, plant, equipment, computer hardware and software and/or machinery described in Item 2 of the Key Terms Schedule and/or specified in a Purchase Order (if any), together with any Incidental Services to be supplied by the Seller to the Company;

**"Government Agency"** means government, government department or court, port, transport or local authority or person (whether autonomous or not) responsible for the administration of an applicable Law;

**"GST"** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (C'th);

**"Incidental Services"** means any incidental services to be performed by the Seller pursuant to the supply of Goods (including the delivery of the Goods) and any services (such as for example, fitting, testing and commissioning) described in Item 6 of the Key Terms Schedule or if no such item is specified in the Key Terms Schedule, the equivalent item in the Purchase Order;

**"Indemnified Parties"** has the meaning given in Clause 27;

**"Input Tax Credit"** has the meaning given in New Tax System (Goods and Services Tax) Act 1999 (C'th);

**"Insolvency Event"**, in relation to the Seller only, means any of the following events:

- (a) becoming subject to bankruptcy, liquidation or winding up procedures or otherwise becoming insolvent (other than for the purpose of a solvent restructuring or amalgamation);
- (b) a receiver, receiver/manager, administrator or voluntary administrator is appointed, or a mortgagee takes possession of all or a substantial part of its assets or it is placed under official management; or
- (c) a judgement is entered against it for a sum in excess of \$20,000 and that sum remains unsatisfied or is not appealed for a period of 21 days;

**"Joint Venturers"** means, in respect of the Tropicana Joint Venture, the participants in the Tropicana Joint Venture from time to time (being, as at the Date of Contract, AngloGold Ashanti Australia Limited and IGO Limited);

**"Key Terms Schedule"** means the schedule at the beginning of this Contract or the equivalent item in the Purchase Order;

**"Law"** means:

- (a) the present or future requirements of any statute, regulation, order, rule, subordinate legislation, common law, equity or other document enforceable under any statute, regulation, rule or subordinate legislation, common law or equity; and
- (b) the lawful requirements, directions or instructions of any Government Agency;

**"Liabilities"** means any damages, Claims, losses, liabilities, costs and expenses of any kind;

**"Modern Slavery"** means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, involuntary servitude, debt bondage, human trafficking, forced or servile marriage, the sale and exploitation of children and other slavery-like exploitation as prohibited or defined as a modern slavery offence under anti-slavery and human trafficking laws, statutes and codes from time to time in force including, but not limited to the *Criminal Code Act 1995* (Cth), sch 1 divisions 270 and 271 and the *Modern Slavery Act 2018* (Cth). For the avoidance of doubt, Modern Slavery includes any conditions or practices similar to those prohibited under those laws, statutes, regulations and codes;

**"NGERS"** means the National Greenhouse and Energy Reporting Act 2007 (C'th) and all regulations, measurement determinations and other instruments made under it;

**"Notice"** means a notice, consent, approval or other communication under this Contract;

**"Personnel"** means:

- (a) in relation to the Seller – any of the Seller's employees, representatives, agents, consultants and invitees, any of its Sub- contractors, and any of its Sub-contractors'



Personnel under paragraph (b), involved either directly or indirectly in performing any part of the Incidental Services;

- (b) in relation to a Sub-contractor – any of its employees, representatives, agents, consultants and invitees involved whether directly or indirectly in the performance of the Incidental Services; and
- (c) in relation to the Company – any of the Company's employees, representatives, agents, consultants and invitees involved either directly or indirectly in connection with this Contract.

**"PPSA"** means the Personal Property Securities Act 2009 (C'th);

**"Practical Completion"** means the occurrence of all of the following (each to the reasonable satisfaction of the Company Representative):

- (a) the delivery of the Goods to the Delivery Point;
- (b) the completion of any testing and commissioning of the Goods required pursuant to this Contract; and
- (c) the supply to the Company of all documents (including Vendor Data Documents) and other information required under this Contract which, in the opinion of the Company Representative, are required for the use, operation and maintenance of the Goods;

**"Purchase Order"** means the formal order document issued by the Company for Goods (and any associated Incidental Services, if any) which the Company requires or, where this Contract provides for sale of Goods on consignment, a consignment request;

**"Related Body Corporate"** has the meaning given in the Corporations Act 2001 (C'th);

**"Schedule of Goods"** means the schedule annexed at Annexure A;

**"Seller's Representative"** means the representative of the Seller noted in Item 1 of the Key Terms Schedule and as may be replaced under Clause 5 or if no such item is specified in the Key Terms Schedule, the representative noted as Site Contact in the Purchase Order (if any);

**"Site"** means the Company's Tropicana Gold Mine;

**"Specifications"** means any relevant specifications for the Goods set out in Item 2 of the Key Terms Schedule or elsewhere in this Contract and/or in an applicable Purchase Order;

**"Sub-contractor"** means any person engaged by the Seller to supply or perform all or any portion of the Goods or Incidental Services under this Contract on behalf of the Seller who is not an employee of the Seller;

**"Taxable Supply"** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (C'th);

**"Tax Invoice"** has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (C'th);

**"Taxes"** means any tax imposed, levied or charged by a Government Agency and includes, without limitation, any excise duties, stamp or similar duties, customs duties, withholding taxes, value added or similar transaction taxes and any penalties or interest relating thereto;

**"Term"** means the term of this Contract as set out in Item 5 of the Key Terms Schedule or, if none is specified, the term expiring when the Company considers the Seller's obligations under this Contract have been completed;

**“Tropicana Joint Venture”** means the Tropicana unincorporated joint venture between the Joint Venturers, on behalf of which the Company is a party to this Contract as agent for the Joint Venturers; and

**“Vendor Data Documents”** means the technical information in respect of the Goods including, but not limited to, drawings, manuals, tables, diagrams, spare parts lists, data and other information, required to be provided by the Seller in accordance with the Specification and the relevant Purchase Order.

## 1.2 Interpretation

In this Contract, unless the context requires otherwise:

- (a) all references to a person for whom the Seller is responsible includes all of its Personnel;
- (b) a reference to any gender includes every gender;
- (c) the absence of a capital letter does not alone indicate that a term that has a defined meaning is to have a meaning other than the defined meaning;
- (d) a reference to a person includes a natural person, corporation, partnership, joint venture, association, authority or state (and vice versa);
- (e) clause headings and indexes are for convenience of reference only and do not affect interpretation;
- (f) the singular includes the plural and vice versa;
- (g) a recital, schedule, annexure, attachment or exhibit or a description of the parties forms part of this Contract;
- (h) the meaning of general words is not limited by specific examples introduced by "includes", "including" or "for example";
- (i) a reference to any agreement, document or legislation is to that agreement, document or legislation (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;
- (j) a reference to any party to this Contract or any other document or arrangement includes that person's executors, administrators, substitutes, successors and permitted assigns;
- (k) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (l) a reference to “dollars” or “\$” is to Australian currency;
- (m) in this Contract, performance of an obligation of any kind by the Seller:
  - (i) includes performance by the Seller and, where this Contract expressly permits, by its Sub-contractors;
  - (ii) must be carried out at the Seller's cost unless this Contract expressly states otherwise;
- (n) where this Contract, expressly or impliedly:
  - (i) allows the Company a discretion as to whether or not to do or not to do any act, matter, or thing of any kind, or as to how it may be done; or
  - (ii) confers a power of determination, or a right or obligation to form an opinion or the like,

that discretion, power, right or obligation may be exercised or performed in the absolute discretion of the Company, unless expressly stated otherwise;

- (o) in the interpretation of a provision of this Contract, a construction that would promote the purpose or object underlying the provision (whether that purpose or object is stated in the provision or not) is to be preferred to a construction that would not promote that purpose or object; and
- (p) in the interpretation of a provision of this Contract, a construction adverse to a party must not be preferred solely on the ground that:
  - (i) that party was responsible for the preparation of this Contract or that provision; or
  - (ii) this Contract or that provision favours the person relying upon that provision.

### **1.3 Time of essence**

Time is of the essence in all respects in relation to the obligations of the Seller under this Contract. The Seller must advise the Company in writing immediately if the Seller foresees any delay in its ability to provide the Goods or Incidental Services.

### **1.4 Obligations**

No obligation on the part of the Seller under this Contract (including under any Clause of this Contract or further to an Applicable Policy) limits any other obligation on the part of the Seller under this Contract, and each obligation is to be construed separately and independently, except to the extent this Contract expressly provides otherwise.

## **2. CONTRACT**

### **2.1 Entire agreement**

This Contract contains the entire agreement between the Company and the Seller with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Seller in this regard, unless those communications expressly form part of this Contract.

### **2.2 Other documentation excluded**

Without limiting Clause 2.1:

- (a) tender documentation (if any) does not, except to the extent that it is reproduced in this Contract itself, form part of this Contract; and
- (b) if the Seller's terms and conditions are supplied in connection with the delivery of the Goods or the performance of any Incidental Services (including when accepting or acknowledging a Purchase Order), such terms and conditions will be of no legal effect and will not form part of this Contract (notwithstanding the endorsement, acceptance or signing of any such document by a representative of the Company).

## **3. SUPPLY OF GOODS**

### **3.1 Supply of Goods**

The Seller agrees to provide the Goods to the Company in accordance with:

- (a) the terms and conditions set out in this Contract including the Specifications;

- (b) all applicable Laws and all Applicable Policies;
- (c) any relevant Specification and the terms of any relevant Purchase Order;
- (d) the quantities set out in Purchase Orders issued by the Company from time to time in accordance with this Contract; and
- (e) the prices set out in the Schedule of Goods or the Purchase Order (as applicable).

### **3.2 Inconsistency**

If there is any conflict or inconsistency between the various components of this Contract, unless otherwise provided, those components will rank in the order of precedence in which they are listed below:

- (a) the Key Terms Schedule;
- (b) the Clauses of this Contract;
- (c) the Specifications;
- (d) each other Schedule to this Contract; and
- (e) the applicable Purchase Order (if any).

### **3.3 No minimum commitment**

The Seller acknowledges and agrees that the Company is not obliged under this Contract to issue any, or a minimum number of, Purchase Orders, notwithstanding any estimate of requirements set out in this Contract or otherwise provided to the Seller.

## **4. TERM**

This Contract continues for the Term as set out in Item 5 of the Key Terms Schedule unless terminated earlier in accordance with the terms of this Contract.

## **5. REPRESENTATIVES**

- (a) The Company's Representative is specified in Item 1 of the Key Terms Schedule or any alternate notified by the Company to the Seller in writing.
- (b) The Seller's Representative is specified in Item 1 of the Key Terms Schedule or any alternate notified by the Seller to the Company in writing.
- (c) The Seller and the Company acknowledge and agree that each party's representative is authorised to act on behalf of that party in relation to this Contract.

## **6. PURCHASE ORDERS**

- (a) The Company may order Goods by issuing a Purchase Order to the Seller at any time during the Term, and the Seller must supply the Goods and comply with the Purchase Order.
- (b) The Company must specify the required date for delivery of the Goods in the relevant Purchase Order and, subject to paragraph (c), the Seller must deliver the Goods to the Delivery Point by that required date for delivery.
- (c) The Company may vary a Purchase Order at any time, by Notice in writing to the Seller.

- (d) The Seller must make any Claim for additional costs or an alteration in the required date for delivery specified in the applicable Purchase Order, which it asserts arises as a result of the variation in writing to the Company within seven days from the date on which the variation was advised.

## 7. PRICE AND PAYMENT

- (a) The prices set out in the Schedule of Goods or the Purchase Order (as applicable) are either firm or subject to adjustment as set out in Item 3 of the Key Terms Schedule. This price payable by the Company to the Seller is exclusive of GST.
- (b) The Seller must deliver an invoice to the Company with every delivery or consignment of Goods.
- (c) Each invoice rendered by the Seller must:
  - (i) identify the number of this Contract and the number of the relevant Purchase Order;
  - (ii) contain details of the delivered quantity of Goods and any Incidental Services provided; and
  - (iii) contain an itemisation of any applicable sale or other taxes.
- (d) The Company may reject any delivery or consignment not accompanied by an invoice setting out the details required by paragraph (c).
- (e) Subject to paragraph (f), provided the Goods and Incidental Services and the invoices submitted by the Seller comply with this Contract, the Company must pay each invoice within 30 days of the date of receipt of such invoice by the Company.
- (f) The Company may deduct from any money due or becoming due to the Seller all debts and moneys in any way owing to the Company by the Seller.
- (g) If the Company is required by Law to withhold or deduct an amount from any amount payable to the Seller under or in relation to this Contract ("**Withheld Amount**"), the Company shall be entitled to do so, and if the Company is required to remit the Withheld Amount to a Government Agency, it shall be entitled to do so. The Withheld Amount, whether remitted to a Government Agency or otherwise, will be treated as having been paid to the Seller when it is withheld, deducted or remitted (as the case may be). The Company will not be in any way liable to pay the Seller any amount on account of the Withheld Amount whether such amount is remitted to a Government Agency or otherwise.
- (h) Without limiting clause 20, unless otherwise expressly stated in this Contract, the Seller must pay all Taxes, charges, fees and other amounts due in respect of this Contract or any payment made by the Company to the Seller under this Contract, and the Company shall not in any way be liable for such amounts.
- (i) Each amount invoiced in accordance with paragraph (b) is deemed to include all expenses incurred by the Seller in relation to the supply of Goods and any Incidental Services covered by the invoice, including costs associated with NGERS reporting and costs incurred by the Seller under any Carbon Scheme.

## 8. PACKAGING

- (a) The Seller must ensure that:

- (i) the Goods are packed in accordance with the Specification (if any) and otherwise in a manner suitable for road transport to, and storage at the Delivery Point;
  - (ii) the Goods are suitably packed so that Goods are not damaged in transit or in storage prior to being put to use; and
  - (iii) the Goods are packed and transported in accordance with all applicable Laws, and relevant Applicable Policies and any applicable regulations or industry codes and any safety or environmental requirements including as may be notified to it by the Company.
- (b) The Seller must clearly mark all packages with the name of the Company, the address for delivery, the Purchase Order number and to the attention of the 'Supply Officer' at the Site.
  - (c) The Seller is liable for loss or damage due to unsuitably packed Goods and for any difference in freight charges that arises from its failure to follow any transport instruction in the Contract or to properly describe the Goods being transported. The Seller must assist the Company in obtaining documents and other information required for the resolution of any transport dispute.
  - (d) The Company may reject any delivery or consignment that is not adequately packed in accordance with this Clause 8.
  - (e) For the avoidance of doubt, acceptance of the Goods at the Delivery Point by any third party on behalf of the Company, such as a transport provider, shall not affect or limit:
    - (i) any right the Company may have to reject the Goods upon the Company inspecting the Goods when they are delivered to the Site (if the Delivery Point is not at the Site); or
    - (ii) the Seller's warranties or other obligations under this Contract.

## **9. FREIGHT**

The Seller must arrange for and pay for the transport of the Goods, by the method of transport specified in Item 4 of the Key Terms Schedule, to the Delivery Point.

## **10. PASSING OF TITLE IN THE GOODS**

- (a) Subject to sub-clause (c) and (e) below, title in the Goods passes to the Company on the earlier of payment for those Goods or delivery of those Goods to the Delivery Point.
- (b) Subject to sub-clause (c) below, the Goods remain at the Seller's risk until they are delivered to the Delivery Point.
- (c) If the Goods are sold to the Company by the Seller on a consignment basis, title to, and risk in, the Goods shall pass to the Company when the Goods are put into use by the Company.
- (d) The Seller must insure the Goods for full replacement value up until delivery to the Delivery Point.
- (e) If the Company makes part payment for the Goods prior to their delivery, title in the partly completed Goods and any materials and parts to be used in their manufacture or assembly, and then on hand, passes to the Company and the Seller must clearly mark them with the Company's name and Purchase Order number(s). If the Company terminates this Contract or cancels the applicable Purchase Order or considers that the Seller has failed, or indicated that it may be unable, to fulfill any obligation under the Contract, the Company or its agent(s)

may at any time enter the Seller's land or premises and remove the Goods and any materials or parts to which it has title.

## **11. SELLER'S STOCK AND INSPECTION RIGHTS**

- (a) The Seller must maintain stocks of the Goods equal to at least 25% of the estimated annual usage listed in the Schedule of Goods (or any lesser amount agreed by the Company from time to time in writing).
- (b) The Company may inspect the Seller's stock at any time between 9:00am and 5:00pm on days other than Saturdays, Sundays and public holidays.
- (c) The Seller must supply manufacturing schedules and progress reports to the Company as reasonably requested by the Company from time to time.
- (d) The Company or the Company Representative may:
  - (i) inspect all or part of the work relating to the Goods specified in a Purchase Order (including any work sub contracted by the Seller) prior to and during the manufacture of those Goods until final acceptance of Goods by the Company; and
  - (ii) reject any work which does not comply with the requirements of this Contract.
- (e) The Company is not obliged to take or pay for any Goods otherwise than in accordance with Purchase Orders placed by it. The Company may return any excess Goods delivered at the Seller's cost.

## **12. STATUTORY REQUIREMENTS AND SPECIFICATION**

The Seller must ensure that the design, fabrication, testing, packaging, loading on transport, delivery (and installation and commissioning where specified) of Goods is in accordance with the relevant Specification (if any) and all relevant Laws.

## **13. DELIVERY DOCUMENTATION**

The Seller must clearly mark all delivery documentation with the Purchase Order number(s) and ensure those documents accompany the Goods to the Delivery Point.

## **14. WARRANTIES AND MAKING GOOD OF DEFECTS**

### **14.1 Warranties**

The Seller warrants that:

- (a) the Goods are free of encumbrances and that the Seller has good title to them; and
- (b) the Goods will conform to all applicable Laws, their description (or representative sample if applicable), any Specification and all other requirements of this Contract; and
- (c) the Goods shall be new and of good and merchantable quality.

### **14.2 Making good defects**

- (a) No inspection conducted by the Company prior to despatch affects the Seller's warranties or other obligations under this Contract and, upon receipt of a Notice from the Company the Seller must, at no cost to the Company and by the date specified in the Notice, make good

any defects which appear in the Goods under proper use during the Defects Liability Period as a result of:

- (i) the Seller not complying with the requirements of this Contract;
  - (ii) defective design, material or workmanship; or
  - (iii) any act or omission of the Seller.
- (b) Upon receipt of a Notice from the Company of any deficiency in the Incidental Services that arose within the Defects Liability Period, the Seller must correct such deficiency by the date specified in the Notice at no cost to the Company.
- (c) If:
- (i) the Seller fails to correct any defects in the Goods identified by the Company pursuant to Clause 14.2(a); or
  - (ii) the Seller fails to correct any deficiencies in the Incidental Services identified by the Company pursuant to Clause 14.2(b); or
  - (iii) the Company elects to undertake urgent remedial works to correct any defects in the Goods or deficiencies in the Incidental Services,

the Company may correct any defects in the Goods or deficiencies in the Incidental Services at the Seller's cost and the Seller must indemnify the Company against any Liabilities incurred by the Company in doing so.

## **15. SECURITY FOR PERFORMANCE**

- (a) The Seller must provide security as provided for in Item 8 of the Key Terms Schedule as security to the Company for the performance of the obligations of the Seller under this Contract. If security is to be provided by way of bank guarantees, the bank guarantees must be issued to the Company within 5 days of the Date of Contract.
- (b) The Company must release and return to the Seller within 14 days of Practical Completion:
  - (i) if security is provided by way of unconditional bank guarantee, one of the bank guarantees; or
  - (ii) if security is provided by way retention moneys, an amount equal to 50% of the security held.
- (c) The Company must release and return to the Seller within 14 days of the expiration of the Defects Liability Period:
  - (i) if security is provided by way of unconditional bank guarantee, the remaining bank guarantee; or
  - (ii) if security is provided by way retention moneys, any remaining security held.
- (d) If the Contract Price increases as a result of variations pursuant to Clause 6, the Company may notify the Seller that it requires the amount of the security to be increased.
- (e) If the Company gives the Seller Notice in accordance with Clause 15(d), the Seller must immediately provide the Company with an amended or supplemental bank guarantee in such amount as will ensure compliance with Clause 15(d).
- (f) The Company may draw on the security if:
  - (i) the Seller has breached this Contract; or



- (ii) there is a defect in the Goods that the Seller has failed to rectify in accordance with Clause 14.2(a); or
  - (iii) there is a deficiency in the Incidental Services that the Seller has failed to rectify in accordance with Clause 14.2(b); or
  - (iv) there is a defect in the Goods or deficiency in the Incidental Services that the Company has urgently rectified in accordance with Clause 14.2(c)(iii).
- (g) A bank guarantee provided under this Clause must not be subject to any expiry date.
- (h) If the Seller is a subsidiary of another corporation, or where the Company otherwise requires, the Seller must, if notified in writing by the Company, arrange for the ultimate parent company of the Seller (or such other Related Body Corporate of the Seller as the Company may in its discretion approve) to provide a guarantee and indemnity which guarantees all of the Seller's obligations and Liabilities under this Contract, indemnifies the Company from any Liabilities caused by breach of Contract, and which is in a form that is approved by the Company. The Seller must provide the Company with the guarantee on the date indicated in the Notice. If the Seller is comprised of more than one entity, each such entity must comply with this Clause 15(h).

## **16. FAILURE TO SUPPLY**

If the Seller does not deliver any Goods to the Delivery Point by the required date for delivery specified in the relevant Purchase Order, the Company may, in addition to any other remedy or right, at the risk and expense of the Seller:

- (a) obtain those goods from another source; and
- (b) refuse to accept the late delivery or consignment when eventually delivered.

## **17. LIQUIDATED DAMAGES**

- (a) If the Seller does not deliver any Goods (or specified part thereof) to the Delivery Point by the Delivery Date or complete the Incidental Services by the specified date for completion, the Company may require that the Seller pay, as pre-estimated and liquidated damages, a sum calculated at the appropriate rate specified in Item 9A of the Key Terms Schedule for every calendar day after the Delivery Date or the date for completion of the Incidental Services to and including:
- (i) the date the Goods reach the Delivery Point or the date the Incidental Services are completed; or
  - (ii) the date that this Contract is terminated,
- whichever occurs first.
- (b) The Company and the Seller agree that the total cumulative amount which may become payable under Clause 17(a) is limited to the percentage of the Contract Price specified in Item 9B of the Key Terms Schedule.
- (c) The Seller acknowledges that sums payable to the Company under Clause 17(a) represents the Company's genuine pre-estimate of the damages likely to be suffered by the Company if the Goods (or parts thereof) are not delivered by the Delivery Date or the Incidental Services are not completed by the specified date for completion and that sum ought not to be construed as nor are they intended to be a penalty.

## **18. TERMINATION**

- (a) The Company may terminate this Contract, including any Purchase Order, in its absolute discretion by 30 days' Notice to the Seller.
- (b) The Company may terminate this Contract including any Purchase Order, immediately, by Notice, if there is an Insolvency Event in respect of the Seller.
- (c) In addition to, and without limiting the rights of the Company in paragraph (d) below, the Company may terminate this Contract immediately, by Notice, if there is, in the reasonable opinion of the Company, a repeated and persistent failure of the Seller to Deliver the Goods to the Delivery Point by the required Delivery Date.
- (d) If the Seller commits a breach of any of its obligations under this Contract including any Purchase Order, then the Company may immediately terminate this Contract including any Purchase Order by Notice to the Seller.
- (e) Notwithstanding any other provision of this Contract, where the Company has a right to terminate this Contract, it may do so without terminating any one or more outstanding Purchase Orders (in its absolute discretion) and, to avoid doubt, the Seller must still comply with such Purchase Orders that are not terminated even though the Contract and other Purchase Orders are terminated.
- (f) Nothing in this Clause limits or affects the Company's rights under Clause 19 or any other provision of this Contract, and Clause 19 does not limit or affect the Company's rights under this Clause.
- (g) Termination or expiry of this Contract or any Purchase Order does not prejudice:
  - (i) any right, action or remedy accrued in favour of the Company prior to such termination or expiry; or
  - (ii) any rights, action or remedy of the Company which expressly or impliedly survive the termination or expiry of this Contract including under Clauses 14 (warranties and making good defects), 23 (Sub-contractors), 24 (confidentiality), 26 (insurance) and 27 (indemnities).

## **19. CANCELLATION OF PURCHASE ORDERS**

### **19.1 Cancellation of Purchase Orders**

If the Seller breaches any of the terms of the Contract, or an Insolvency Event occurs in relation to the Seller, the Company may at its option and without prejudice to any of its other rights or remedies, cancel any undelivered Goods or unprovided Incidental Services which are the subject of a Purchase Order and the Seller is not entitled to any compensation in respect of that cancellation.

### **19.2 Consequences of cancellation where Seller not in breach**

Notwithstanding that the Seller is not in breach, the Company may, at its option, cancel any unshipped Goods or unprovided Incidental Services but:

- (a) if the Goods are any of the Seller's standard stock, the Company must pay for Goods shipped prior to the cancellation and accepted by the Company (unless such Goods are sold to the Company by the Seller on a consignment basis, in which case the Company must pay for any Goods put into use by the Company prior to cancellation); and
- (b) if Goods are manufactured or fabricated in accordance with a Specification:

- (i) upon receipt of notice of cancellation the Seller must cease manufacture in accordance with and to the extent specified in the notice and immediately do all things possible to mitigate any costs incurred; and
- (ii) the Company must pay to the Seller any expenditure reasonably incurred by the Seller prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and which has not been otherwise recouped by the Seller.

### **19.3 Title to material; incomplete Goods**

Title to material or incomplete Goods passes to the Company upon the earlier of delivery or payment (including payment of an amount by the Company under Clause 19.2(b)(ii) above) in accordance with Clause 10.

## **20. IMPORT AND CUSTOMS DUTIES**

The Seller must pay all Australian import duties, charges and GST payable on, or in respect of the importation of, the Goods or components and materials imported by it into Australia for use in manufacturing the Goods or providing the Incidental Services and all anti dumping, countervailing and other special duties and all Taxes associated with the Goods and the Incidental Services.

## **21. PERFORMANCE OF INCIDENTAL SERVICES AND STANDARD OF CONDUCT**

### **21.1 Qualifications**

The Seller represents and warrants that it, and each of its Personnel, are qualified and have the capacity, experience, resources, skill and expertise to perform the Incidental Services (if any) in accordance with the requirements of this Contract.

### **21.2 Standards of conduct**

- (a) The Seller represents and warrants that, in performing the Incidental Services (if any), the Seller and its Personnel shall:
  - (i) exercise the standards of diligence, skill and care normally exercised by similarly qualified and competent persons in the performance of work comparable to the Incidental Services; and
  - (ii) ensure the Incidental Services are fit for any purpose notified by the Company and in the absence of notification, for the purpose for which works of that or a similar type are commonly acquired.
- (b) In performing the Incidental Services, the Seller and its Personnel shall:
  - (i) act in accordance with all reasonable directions of the Company (including in relation to health and safety, industrial relations (whilst on the Site) and Environmental matters;
  - (ii) act in a workmanlike, careful, safe and proper manner;
  - (iii) perform the Incidental Services in a timely manner;
  - (iv) comply with all the requirements of this Contract; and
  - (v) ensure that the Incidental Services (including their delivery) comply with all Laws and Applicable Policies.

### **21.3 Protection from Incidental Services**

Where Incidental Services are to be performed, the Seller must take all reasonable precautions to protect persons, property or work in progress by the Company or others at or in the vicinity of the place where Incidental Services are being performed including the erection of any necessary temporary guards and fences and warning signs. Any damage must be reported to the Company immediately.

## **22. ACCESS TO THE SITE**

### **22.1 Conditions of access**

- (a) The provisions of this Clause apply if and to the extent only that the Seller or its Personnel are on the Site including for the purposes of delivering the Goods or in connection with the Incidental Services.
- (b) The Seller:
  - (i) enters the Site at its own risk (and must ensure its Personnel know they enter the Site at their own risk);
  - (ii) is not entitled to exclusive possession of the Site;
  - (iii) may only access the areas allocated by the Company Representative as necessary, in the opinion of the Company Representative, for performance of the Incidental Services or the delivery of Goods;
  - (iv) must ensure that it and its Personnel comply with all applicable Site rules and procedures including any relating to induction;
  - (v) must co operate with the Company's Personnel and the Company's other contractors and workmen and give them any information or data reasonably necessary or expedient to ensure proper performance of their respective work;
  - (vi) must obtain 14 days prior approval from the Company Representative for any action likely to interfere with the Company's operations or the work of any other contractor; and
  - (vii) if required by the Company Representative to do so, must and persons for whom it is responsible must, wear or carry badges or passes issued by the Company Representative for the purpose of identification at all times whilst on or entering the Site or the Company's mining or exploration tenements.

### **22.2 Removal from Site**

The Company may, in its absolute discretion and without the need to provide any explanation to the Seller, require the removal from the Site of any person for whom the Seller is responsible (including all Personnel) who, in the opinion of the Company, is incompetent or conducts themselves in a reprehensible or irresponsible fashion or is otherwise unsuitable to continue to be employed on the Incidental Services or in connection with this Contract and the Seller must immediately comply with such requirement. The Company may require the replacement, within such time as the Company directs, of any such person removed from Site.

## **23. ASSIGNMENT AND SUB-CONTRACT**

### **23.1 Sub-contractor generally**

- (a) This Contract is personal to the Seller and the Seller must not assign all or any part of its rights or obligations under it, without the prior written consent of the Company.
- (b) The Seller must not engage a Sub-contractor to supply the Goods or perform all or any part of the Incidental Services without the prior written approval of the Company.

### **23.2 Terms of engagement of Sub-contractor**

- (a) If the Seller engages a Sub-contractor, with prior written approval as contemplated under Clause 23.1, the Seller:
  - (i) must ensure that the Goods supplied and/or the Incidental Services performed by the Sub contractor meets the requirements of this Contract;
  - (ii) is liable to the Company for the acts and omissions of that Sub-contractor and that Sub-contractor's Personnel as if they were the acts and omissions of the Seller;
  - (iii) must ensure that the sub-contract is immediately terminable and that the Sub-contractor vacates the Site immediately, if this Contract is terminated;
  - (iv) must ensure that the benefit of the sub-contract is freely assignable to the Company;
  - (v) without limiting paragraph (b), must ensure that the sub-contract contains the terms contemplated by Clause 25 (Intellectual Property Rights) and other terms required to be incorporated pursuant to other provisions of this Contract; and
  - (vi) must ensure that each Sub-contractor covenants separately with the Seller:
    - (A) to permit the Company's Representative to have access at all times to the Incidental Services being performed by that Sub-contractor; and
    - (B) otherwise to observe this Contract as if that Sub-contractor were a party to it.
- (b) The terms of every sub-contract must be no less stringent than the terms of this Contract, provided that the Seller may include in any sub contract all terms that the Seller considers necessary to maintain control over the work to be performed by the Sub-contractor and to allow it to comply with all obligations under this Contract.

### **23.3 Seller obligations survive**

- (a) No permitted assignment or sub-contract will in any way relieve the Seller from the performance of any of its obligations under this Contract.
- (b) Each Sub-contractor will be considered as the agent and representative of the Seller, as between the Seller and the Company. The acts and omissions of each Sub-contractor and the Sub-contractor's Personnel will be deemed to be the acts and omissions of the Seller, for which the Seller is responsible under this Contract.
- (c) No Sub-contractor will have any rights under this Contract against the Company or be entitled to receive any payment from the Company under this Contract. If requested by the Company, the Seller must procure that each Sub-contractor unconditionally acknowledges the terms of this paragraph (c) by written notice to the Company.

#### **23.4 Replacement of Sub-contractor**

The Company may, by providing the Seller with reasonable notice, require the Seller to replace a Sub-contractor or cease using a Sub-contractor. The Company must have reasonable grounds for the requirement under this Clause, including that it considers that the Sub-contractor is failing to perform its obligations.

### **24. CONFIDENTIALITY AND SECURITY**

#### **24.1 General**

The Seller must maintain, and must ensure, the confidentiality of all enquiries, quotations and tenders relevant to the supply of Goods and Incidental Services by the Seller to the Company and must ensure that the persons for whom it is responsible do not, unless the Company has first agreed in writing:

- (a) disclose to anyone else; or
  - (b) use for a purpose other than the performance of this Contract,
- any of the Confidential Information.

#### **24.2 Permitted Copies**

The Seller must not make copies of written or computer stored materials incorporating Confidential Information unless those copies are necessary for the purpose of performing its obligations under this Contract. The Seller must:

- (a) return to the Company all Confidential Information (including any copies made by it); and
- (b) permanently delete any Confidential Information stored in a computer or electronic retrieval system so that it is incapable of retrieval,

within 7 days of:

- (c) receipt of a request from the Company to do so; or
- (d) termination or expiry of this Contract,

and must provide a certificate to the Company, if requested, confirming that these obligations have been complied with.

#### **24.3 Seller Obligations**

- (a) The Seller must notify the Company immediately if it becomes aware of, or suspects, any disclosure, use or copying of Confidential Information that is not authorised by this Contract and must take all steps reasonably required by the Company to stop that unauthorised disclosure, use or copying.
- (b) The Seller must restrict disclosure of the Confidential Information to Personnel who need to know it in order to perform the Seller's obligations under this Contract and will, on reasonable request by the Company, ensure those Personnel execute confidentiality agreements similar in effect to this Clause.
- (c) The Seller must not take or permit any person for whom it is responsible to take photographs or sketches of any part of the Company's premises or operations except with the consent of the Company.

#### **24.4 Permitted Disclosure**

Clause 24.1 does not affect disclosures required by Law, other than section 275 of the PPSA (except when required by section 275(7)).

#### **24.5 Public Announcements**

Except as required by Law, no media release or public announcement may be made by the Seller in relation to the existence or subject matter of this Contract unless:

- (a) the Seller first receives the express prior written consent of the Company; and
- (b) the Company approves, in writing, the wording of such media release or public announcement and the manner of publication.

### **25. INTELLECTUAL PROPERTY RIGHTS**

The Seller warrants that the sale or use of any Goods by the Company, or the provision of the Incidental Services, will not infringe or contribute to the infringement of any intellectual property rights (including rights to patents, designs, copyright, trade marks, trade names and circuit layouts) conferred under statute, common law or equity in any country. The Seller must indemnify the Company against any Liabilities arising out of or in connection with any claim by a third party that its intellectual property rights have been, or will be, infringed by the Company's use of the Goods or the provision of the Incidental Services.

### **26. INSURANCE**

#### **26.1 Insurance required**

The Seller must take out and maintain:

- (a) insurance to cover:
  - (i) all loss or destruction of, or damage to, all registered motor vehicles, mobile plant and other mechanically propelled vehicles that are operated by the Seller in connection with this Contract, for their market value;
  - (ii) liability for loss and destruction of, or damage to, any third party property that results from the operation by the Seller of the motor vehicles, mobile plant and mechanically propelled vehicles referred to in Clause 26.1(a)(i), for an indemnity of no less than \$10,000,000;
- (b) insurance to cover liability for death, or bodily injury of any third party and loss and destruction of, and damage to, any third party property in connection with this Contract (including liability arising from goods sold or supplied, property, unregistered vehicles and registered vehicles whilst being used as a tool of trade), for an indemnity of no less than \$15,000,000 for any one occurrence or, for products liability insurance, in the aggregate for any one 12 month period of insurance; and
- (c) any other insurance which is required by Law (including automobile compulsory third party insurance) and such other insurances as the Company may reasonably require,

and where Incidental Services are provided the Seller must also take out and ensure that its permitted Sub-contractors take out:

- (d) insurance to cover liability arising, whether at common law or under any statute relating to workers' compensation or employers' liability and occupational / industrial disease, to

Personnel (including any person deemed by statute to be an employee of the Seller) engaged to do anything in connection with this Contract, for not less than the amount/s required by the Law of the relevant State or Territory and, to the extent permitted by Law, endorsed to provide a principal's indemnity extension and a waiver of subrogation in favour of the Company; and

- (e) insurance to cover all loss or destruction of, or damage to, the Seller's tools, plant and equipment used in connection with this Contract, for their market value,
- (f) and keep those policies current during the Term and any period for the making good of defects referred to in Clause 14.2.

## **26.2 Insurance policy requirements**

- (a) Each policy of insurance required under Clause 26.1 must (except for statutory insurances) be with an insurer and on terms approved by the Company.
- (b) The insurance policies required by Clause 26.1 must, where permitted by law:
  - (i) insure the Seller and the Company (as an additional insured) for their respective rights and interests in connection with this Contract;
  - (ii) be primary with respect to all insureds, including additional insureds, to the extent of liabilities for personal injury and property damaged assumed under this Contract; and
  - (iii) include:
    - (A) a clause by which the insurer agrees to waive all rights of subrogation or action against the Company; and
    - (B) a cross liability/severability of interest clause.
- (c) The Seller must produce to the Company a certificate of currency and policy wording in relation to each policy of insurance required by Clause 26.1 signed by either the Seller's insurer or insurance broker:
  - (i) within 7 days of the Date of Contract; and
  - (ii) within 14 days of any request by the Company.
- (d) The Seller must:
  - (i) not materially alter the terms of any insurance policy required by Clause 26.1 unless the Seller has first given the Company 30 days written notice before any such alteration is made and obtained the Company's agreement to that alteration (such agreement must not be unreasonably withheld); and
  - (ii) immediately notify the Company of the cancellation or expiry of any insurance policy required by Clause 26.1.
- (e) If the Seller fails to comply with Clauses 26.2(c) or 26.2(d), and otherwise fails to effect or maintain the insurance policies required by Clause 26.1, the Company may either:
  - (i) itself arrange that insurance and deduct the premiums and any GST relating to the premiums from any amount due to the Seller; or
  - (ii) refuse to make any payment otherwise due to the Seller until that document is produced.



- (f) Notwithstanding that the Company may effect such insurance if the Seller fails to do so, the Seller will be deemed to have indemnified the Company for all Liabilities which may arise from the Seller's failure to do so.
- (g) For the avoidance of doubt, the presence of this Clause and the obligations in this Clause, and whether or not the Clause is complied with, in no way limits or affects the operation of the other provisions of this Contract including Clause 27.

### **26.3 Sub-contractor insurances**

- (a) The Seller must ensure that any Sub-contractors effect and maintain similar insurance (to the extent applicable) to that required by Clause 26.1 and must provide proof of that insurance in accordance with Clause 26.2.

## **27. INDEMNITY**

### **27.1 General**

Notwithstanding any other provision of this Contract, the Seller must indemnify the Company, each of its Related Bodies Corporate and each of their officers, agents and employees, and the Joint Venturers (in this Clause, the "**Indemnified Parties**") and keep them indemnified against any Liabilities (including Liabilities of any of them to third parties) arising out of:

- (a) the performance, non-performance or breach by the Seller or its Personnel of any of the Seller's obligations (including any warranty) under this Contract;
- (b) any act or omission by the Seller or of its Personnel arising out of the performance or non-performance of this Contract;
- (c) any fraudulent, reckless or negligent act or omission by the Seller or any of its Personnel;
- (d) any Claim or lien over the Goods, Incidental Services, labour, or services provided in connection with the performance of this Contract;
- (e) any misuse or disclosure of Confidential Information by the Seller, a Sub-contractor or any of its Personnel or any person for whom it is responsible;
- (f) any claim by any third party that it has intellectual property rights which have been infringed as a result of the supply of the Goods or the performance of the Incidental Services; or
- (g) any claims made against an Indemnified Party by any of the Seller's Personnel in respect of legislation concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal or authority.

### **27.2 Costs include legal costs**

In this Clause, Liabilities includes all reasonable legal costs and expenses on a solicitor and own client basis.

### **27.3 No requirement for expenses**

It is not necessary for an Indemnified Party to incur an expense or make a payment before enforcing a right of indemnity conferred by this Contract.

#### **27.4 Exclusions**

The Seller will not be liable under Clause 27.1 to the extent that the Liability was solely caused by (as the case requires) the Company's or an Indemnified Party's negligence or wilful default.

#### **27.5 Company as trustee**

Every exemption, limitation, defence, immunity, indemnity or other benefit contained in this Contract or otherwise to which the Company or an Indemnified Party is entitled will be held by the Company as trustee for the benefit of, and will extend to protect, each of the Indemnified Parties.

### **28. APPORTIONMENT OF LIABILITY**

- (a) To the extent permitted by Law, the operation of Part 1F of the Civil Liability Act is excluded in relation to all and any rights, obligations and Liabilities under this Contract whether such rights, obligations or Liabilities are sought to be enforced as a Claim in contract, tort (including negligence), equity, under statute or otherwise at Law.
- (b) Without limiting the generality of paragraph (a), it is further agreed that the rights, obligations and Liabilities of the parties (including those relating to proportionate liability) are as specified in this Contract and not otherwise whether such rights, obligations and Liabilities are sought to be enforced by a Claim in contract, tort (including negligence), in equity, under statute or otherwise at Law.
- (c) The Seller further agrees that:
  - (i) in each sub-contract into which it enters for the supply of Goods under this Contract, it will include provisions that, to the extent permitted by Law, effectively exclude the operation of Part 1F of the Civil Liability Act in relation to all rights, obligations or Liabilities under each sub-contract whether such rights, obligations or Liabilities are sought to be enforced as a breach of contract or in tort or otherwise; and
  - (ii) it will require and ensure that each Sub-contractor will include in any further agreement that it enters into with others for the supply of Goods, provisions that, to the extent permitted by Law, each such further contract will include provisions that effectively exclude the operation of Part 1F of the Civil Liability Act in relation to all rights, obligations or Liabilities under such further contract whether such rights, obligations or Liabilities are sought to be enforced as a breach of contract, in tort or otherwise.
- (d) If any provision of this Contract is illegal, void, invalid, unenforceable for any reason, all other provisions which are self sustaining and capable of separate enforcement must, to the maximum extent permitted by Law, be and continue to be valid and enforceable.

### **29. NOTICES**

- (a) Any notice under this Contract may be given by personal delivery, prepaid mail, facsimile or email addressed to the address set out in Item 1 of the Key Terms Schedule and to the Company Representative or the Seller's Representative (as the case may be) or another address in Australia notified in writing to the other party.

- (b) A Notice must be either typed or legibly written in English, signed by or on behalf of the person giving it, addressed to the person to whom it is to be given.
- (c) A Notice may be given by personal delivery, pre paid mail, facsimile or email and is treated as having been given and received:
  - (i) if delivered personally to a person's representative upon delivery;
  - (ii) if delivered to a person's address, on the day of delivery if a business day, otherwise on the next business day;
  - (iii) if sent by pre paid mail:
    - (A) to an address in the city of dispatch, on the third business day after posting;
    - (B) from elsewhere within Australia, on the fifth business day after posting; or
    - (C) if mailed from overseas, on the tenth business day after posting.
  - (iv) if transmitted by facsimile to a person's address and a correct and complete transmission report is received, on the day of transmission if a business day, otherwise on the next business day; or
  - (v) if sent by email to a person's address, on the first to occur of:
    - (A) receipt by the sender of an email acknowledgement from the recipient's information system showing that the Notice has been delivered to the email address of the recipient set out in Item 1 of the Key Terms Schedule;
    - (B) the time that the Notice enters an information system which is under the control of the recipient; and
    - (C) the time that the Notice is first opened or read by an employee of the recipient,

but if the result is that a Notice would be taken to be given or made on a day that is not a business day, it will be taken to have been duly given or made on the next business day.

## 30. GST

### 30.1 Input Tax Credit

If an amount payable under this Contract by the Company is calculated by reference to or otherwise relates to a cost, expense or other liability (in this Clause, a "**Liability**") incurred by the Seller, then the Liability will be reduced by the amount of any Input Tax Credit in respect of that Liability. The Seller will be assumed to be entitled to claim a full Input Tax Credit unless it demonstrates that its entitlement is otherwise prior to the date on which the payment must be made.

### 30.2 Taxable Supply

If an amount to be paid by either party under this Contract constitutes a payment for a Taxable Supply, then the party making that payment must, upon receipt of a Tax Invoice, pay that amount plus the GST payable on that Taxable Supply.

### 30.3 Registration for GST

The Seller must do all things necessary to ensure that it is registered for GST purposes. The Seller is required to give Notice to the Company if it is not GST registered. If for any reason the Seller ceases to be GST registered, the Seller must give the Company Notice within seven days of it ceasing to be registered.

### 30.4 Requirement for ABN

Unless the Company is absolutely satisfied that an exemption in Section 12-190 of Schedule 1 to the Taxation Administration Act 1953 (Cth) applies, the Company is not required to make any payment to the Seller unless the Seller has given Notice to the Company of its ABN. If, for any reason, the Seller ceases to be ABN registered, the Seller must give Notice to the Company within seven days.

## 31. ADDITIONAL OBLIGATIONS AND INDEMNITY

- (a) The Seller must:
- (i) not pay bribes or breach any Laws with respect to foreign corrupt practices or undertake any act that could potentially damage the reputation of the Company;
  - (ii) at all times comply with the United States Foreign Corrupt Practices Act of 1977, and any other similar Laws with respect to corruption in other applicable jurisdictions;
  - (iii) at all times comply with the Voluntary Principles on Security and Human Rights and other similar Laws, codes or principles in other applicable jurisdictions;
  - (iv) not act in any manner that would create, or is likely to create, any risk for the Company with respect to a breach of the United States Foreign Corrupt Practices Act of 1977 or the Voluntary Principles on Security and Human Rights and other similar Laws in other applicable jurisdictions;
  - (v) notify the Company immediately if it becomes aware of any facts or circumstances that might lead to a breach of this Clause (the "**Event**"); and
  - (vi) immediately furnish to the Company a detailed report of the Event and an estimate of likely resultant costs or penalties.
- (b) The Seller indemnifies the Company against any Liabilities that may be incurred or sustained by the Company arising out of any breach of the warranties or covenants given by it under this Clause 31.
- (c) The Seller acknowledges that it has received the Company's Code of Business Principles and Ethics.

## 32. CONFLICT OF INTEREST

The Seller shall not cause, or in any way contribute to a Conflict of Interest. If the Seller is aware of, or suspects, a Conflict of Interest, the Seller must immediately report such Conflict of Interest to an appropriate senior manager of the Company, or must use the confidential reporting mechanism, details of which can be obtained from the Company's website ([www.anglogoldashanti.com](http://www.anglogoldashanti.com)). The obligation on the Seller is continuous and a Conflict of Interest must be reported when it arises, not merely at the inception of this Contract.

### **33. THE COMPANY ACTING AS MANAGER OF TROPICANA JOINT VENTURE; ASSIGNMENT**

- (a) The Company is a party to this Contract as agent severally for each of the Joint Venturers in their respective percentage interests in the Joint Venture from time to time. As at the Date of Contract, the Joint Venturers respective percentage interests in the Joint Venture are as follows:
  - (i) AngloGold Ashanti Australia Limited – 70%; and
  - (ii) IGO Limited – 30%.
- (b) The obligations and Liabilities of the Joint Venturers to the Seller under or in connection with this Contract are several only (and will not be, nor be construed to be, either joint or joint and several), in accordance with the Joint Venturer's respective percentage interest from time to time in the Joint Venture.
- (c) The percentage interests of the Joint Venturers, and the identity and number of Joint Venturers (and therefore their respective interests in and under this Contract), may change from time to time without the consent of the Seller and for this purpose the rights and obligations of the relevant Joint Venturers under this Contract may be freely assignable without the consent of the Seller (provided that the Company provides written Notice to the Seller of any change in the percentage interests or the identity of the Joint Venturers) and the Company may at any time without the consent of the Seller assign its rights and obligations under this Contract to an incoming agent or manager on behalf of the Joint Venturers.
- (d) The rights and remedies in and under this Contract may be exercised by the Company for and on behalf of the Joint Venturers.
- (e) The benefit of the respective duties and obligations of the Seller under this Contract are deemed to enure to each of the Joint Venturers, and the Company is severally authorised to enforce those duties and obligations on the Joint Venturers' behalf.
- (f) All Notices may be given or made (as the case requires) by the Company on behalf of the Joint Venturers or any one or more of them and, in dealing with the Joint Venturers, for all purposes under or in connection with this Contract, the Seller must deal only with the Company.
- (g) The Company will not be liable for the failure of the Joint Venturers (or any one or more of them) to perform its or their obligations under this Contract.

### **34. PROHIBITION ON MODERN SLAVERY**

#### **34.1 Representations, warranties and undertakings**

- (a) The Seller represents, warrants and undertakes, throughout the term of this Contract:
  - (i) that neither the Seller nor any of its Personnel, contractors or subcontractors will engage in Modern Slavery;
  - (ii) to comply with all Modern Slavery reporting requirements applicable to it;
  - (iii) to have and maintain its own policies and procedures that are intended to ensure compliance with this clause;
  - (iv) to take reasonable steps to require each of its contractors and/or suppliers directly involved in the provision of goods or services to the Company have, and maintain

throughout the term of the Seller's contract with the relevant contractor and/or supplier, policies and procedures that are designed to ensure that no form of Modern Slavery is used in the relevant contractor's and/or supplier's business, or by its Personnel, contractors or subcontractors; and

- (v) to notify the Company promptly in writing upon becoming aware of:
  - (A) any incident, complaint or allegation that the Seller, or any entity in its supply chain, has engaged, directly or indirectly, in Modern Slavery; or
  - (B) any actual, reasonably suspected or anticipated Modern Slavery in the operations of the Seller or engaged in by any entity in its supply chain in connection with this Contract,

and such notice will include reasonable details of the steps it is taking or proposes to take to investigate the matter.

- (b) At the reasonable request of Company, within a reasonable period of time, and at its own expense, the Seller must confirm in writing that it has complied with its undertakings in Clause 34.1(a) and provide any information reasonably requested by the Company in support of such compliance.
- (c) The Seller acknowledges that the Company has corporate reporting obligations with respect to Modern Slavery and must comply, within a reasonable time and at its own expense, with any reasonable requests made by the Company to provide any information that is required to enable the Company to comply with those reporting obligations.

## **34.2 Appointment of Auditor**

If the Company has reasonable grounds to suspect a breach of Clause 34.1(a), the Company may audit the Seller's compliance with that clause. The Seller must promptly comply with the requests of the Company or any auditor appointed by the Company in relation to an audit pursuant to this clause.

## **34.3 Notification**

- (a) The Seller must:
  - (i) immediately notify the Company in writing if:
    - (A) it becomes aware or suspects that any of the representations, warranties and undertakings in Clause 34.1(a) are false; and/or
    - (B) it or any of its Personnel breaches or may have breached any of the representations, warranties and undertakings in Clause 34.1(a); and
  - (ii) at the Company's request, provide details of the steps it is taking to investigate any breach or potential breach notified under Clause 34.3(a)(i).
- (b) Notification under Clause 34.3(a)(i) will be sufficient if and only if the notification sets out adequate particulars of the breach or suspected breach.

## **34.4 Termination**

If the Seller is in breach of any part of Clause 34.1(a) or the Company has reasonable grounds to suspect such a breach, without prejudice to any other remedy which the Company may have, the Company may immediately terminate the Contract for breach by providing written notice of termination to the Seller. Any right of termination under this clause is in addition to any other right of termination the Company may have under the Contract or at Law.

## **35. PPSA SECURITY INTERESTS**

- (a) If the Company determines that this Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPSA, the Seller agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Company reasonably requests and considers necessary for the purposes of:
  - (i) ensuring that the security interest is enforceable, perfected and otherwise effective; and/or
  - (ii) enabling the Company to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
  - (iii) enabling the Company to exercise rights in connection with the security interest.
- (b) To the extent permitted by Law, the Seller waives its right to receive any notice under the PPSA (including notice of a verification statement pursuant to section 157 of the PPSA).
- (c) Everything the Seller is required to do under this Clause 35 is at the Seller's expense.

## **36. MISCELLANEOUS**

### **36.1 Assignment by Company**

In addition to the rights under Clause 33(c), the Company may, without the consent of the Seller, assign the whole or part of its rights and obligations under this Contract to any person (including any Related Body Corporate of it).

### **36.2 Joint and several Liability**

If the Seller comprises two or more parties:

- (a) a Liability of those parties under this Contract is a joint Liability of all of them and a several Liability of each of them;
- (b) a right given to those parties under this Contract is a right given severally to each of them; and
- (c) a representation, warranty or undertaking made by those parties is made by each of them.

### **36.3 Rights cumulative**

Except to the extent the contrary intention expressly appears, the rights, obligations and Liabilities of the Company provided in this Contract are cumulative and do not exclude any rights or remedies provided under Law.

### **36.4 No waiver**

The non-exercise of, or delay in exercising, any power or right of a party does not operate as a waiver of that power or right. Any single exercise of a power or right does not preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

### **36.5 Severability**

The invalidity or unenforceability of any part or provision of this Contract does not affect the enforceability of any other part or provision of this Contract and the invalid or unenforceable part is severable.

**36.6 Amendments in writing**

Modifications and amendments to this Contract must be in writing signed by each of the parties.

**36.7 Costs**

Except where expressly otherwise provided, each party bears its own costs in relation to the negotiation and performance of this Contract. The Seller bears any duties in relation to this Contract, including stamp duties or similar duties and must pay all Taxes on this Contract.

**36.8 Warranty**

The Seller represents and warrants to the Company that at the time of entering into this Contract the Seller employs greater than 20 persons.

**36.9 Governing Law and jurisdiction**

This Contract is governed by the Law in force in Western Australia. The parties submit to the exclusive jurisdiction of the courts of Western Australia and any courts which may hear appeals from those courts in respect of any proceedings in connection with this Contract.



**EXECUTED** as an agreement.

**SIGNED** on behalf of **ANGLOGOLD** )  
**ASHANTI AUSTRALIA LIMITED**, as agent )  
for and on behalf of the Joint Venturers, by: )

.....

Name:

Position:

**SIGNED** on behalf of [**\*SELLER'S NAME\***] )  
by: )  
)

.....

Name:

Position:

## ANNEXURE A

### SCHEDULE OF GOODS

<b>Item</b>	<b>Unit price</b>	<b>Company's estimated [annual] requirements (subject to Clause 3.3)</b>
[* insert item *]	[* insert unit price *]	[* insert quantity *]
[* insert item *]	[* insert unit price *]	[* insert quantity *]
[* insert item *]	[* insert unit price *]	[* insert quantity *]
[* insert item *]	[* insert unit price *]	[* insert quantity *]
[* insert item *]	[* insert unit price *]	[* insert quantity *]
[* insert item *]	[* insert unit price *]	[* insert quantity *]
[* insert item *]	[* insert unit price *]	[* insert quantity *]
[* insert item *]	[* insert unit price *]	[* insert quantity *]
[* insert item *]	[* insert unit price *]	[* insert quantity *]
[* insert item *]	[* insert unit price *]	[* insert quantity *]

## **ANNEXURE B**

### **BANK GUARANTEE**

**THIS DEED** is made [\*Insert Date\*]

**BY:** [\*Insert Name and ACN of Bank\*] of [\*Insert Address of Bank\*] (the “**Guarantor**”)

**IN FAVOUR OF:** ANGLOGOLD ASHANTI AUSTRALIA LIMITED ACN 008 737 424 (the “**Company**”)

#### **RECITALS:**

- A. The Company has contracted or is about to contract with [\*Insert Seller's Name\*] of [\*Insert Seller's Address\*] (the “Seller”) for the supply of Goods referred to in this Contract no [\*Insert Contract Number\*].
- B. The Guarantor agreed to provide this guarantee.

#### **THIS DEED WITNESSES:**

- 1. The Guarantor must immediately upon receipt of notice from the Company requiring it to do so, unconditionally pay to the Company a sum which, when aggregated with all other payments demanded by the Company and made by the Guarantor under this deed, does not exceed [\*Insert \$ amount\*], notwithstanding any communication to the Guarantor from the Seller.
- 2. The liability of the Guarantor under this deed will not be released or discharged (in whole or in part) by:
  - (a) any time, concession, waiver or other indulgence being given by the Company to the Seller (or any surety) for or in relation to the observance of performance of the Seller’s obligations under this Contract;
  - (b) any arrangement made between the Company and the Seller with or without the knowledge or consent of the Guarantor;
  - (c) any variation being made to the terms of this Contract of or its subsequent termination;
  - (d) any other security or contractual obligations to secure the performance of the Seller’s obligations under this Contract being or not being taken, held, renewed, varied or enforced by the Company or that security being void, defective, informal or unenforceable;
  - (e) any of the Seller’s obligations under this Contract being discharged;
  - (f) the liquidation, bankruptcy or insolvency of the Seller or Guarantor; or
  - (g) anything done or omitted to be done by the Company or anything else which, under the law relating to sureties might, but for this deed, operate to wholly or partially release or discharge the Guarantor from that liability.
- 3. The guarantee and indemnity given under this deed is a continuing guarantee and indemnity and remains in force until:

- (h) the obligations of the Seller under this Contract have been duly performed and satisfied in full; or
  - (i) the Company releases the Guarantor by an express release in writing; or
  - (j) the Guarantor has paid the Company in aggregate [\*Insert \$ amount\*] plus GST if any.
4. The Company may enforce this deed without first making any demand or taking any action or proceedings to enforce its rights or remedies against the Seller.
  5. This Deed is governed by the laws in force in the State or Territory of Australia where this Contract is to be performed. The Guarantor submits to the non-exclusive jurisdiction of the courts of the State or Territory and any courts which may hear appeals from those courts in respect of any proceedings in connection with this guarantee.
  6. The Guarantor must pay any stamp duty on this deed.

EXECUTED as a deed.

**THE COMMON SEAL** of [\*Insert Name and ACN of )  
 Bank\*] the affixing of which is witnessed by: )  
 )

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Secretary  
 Name (printed):

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Director  
 Name (printed):