



SANDVIK MINING AND CONSTRUCTION AUSTRALIA PTY LIMITED  
(MATERIALS HANDLING PROJECTS)

## PART A – CONTRACT DOCUMENT

CONTRACT FOR THE SUPPLY OF EQUIPMENT WITHOUT INSTALLATION

### Amrun Project

Stacker BBST1001, Reclaimer BBBWR1001, Shiploader  
BBSL1001

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### Fabrication, Offsite Assembly and Commissioning of Rail Mounted Machines

Contract No: 726 – 15001 Rev. ~~FG~~

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[RFT 15001 Steel Fabrication and Offsite Erection Rev G 160908](#)~~[RFT 15001 Steel Fabrication and Offsite Erection Rev G 160908](#)~~  
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## 1 FORMAL INSTRUMENT OF AGREEMENT

**THIS AGREEMENT** is made on ("Contract Date")

**BETWEEN** Sandvik Mining and Construction Australia Pty Limited (ABN 62 003 771 382)  
whose address is 285 Collier Road, Bayswater 6053 in the State of Western Australia (hereinafter  
called the "Purchaser")

**AND** , ABN , whose address is in the state of (hereinafter called the  
"Supplier").

### WHEREAS

- A. The Purchaser has entered into a contract for the design, supply, manufacture, construction and commissioning of works for the Principal as set out in the Contract, in connection with the Project.
- B. The Purchaser is desirous that certain Works should be executed and completed, namely the Fabrication, Offsite Assembly and Commissioning of Rail Mounted Machines as detailed in the Part B Contract Scope of Work and Part B0 Technical Contract Specification.
- C. The Supplier has represented to the Purchaser that it has the skill and expertise to perform the Works and has in place safety systems, supervision and procedures, which will ensure that the Works are performed in a safe and professional manner in accordance with the Contract and all applicable Legislative Requirements.
- D. The Supplier warrants that it is able to complete the Works for the consideration and upon the terms and conditions hereinafter appearing.
- E. The parties have now agreed to enter into this Contract so as to evidence their agreement concerning the Works.

### NOW THEREFORE IT IS AGREED AS FOLLOWS:

1. In this Contract words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions of Contract for the Supply of Equipment without Installation (AS/NZS 4911-2003), the Special Conditions of Contract and the Contract Specification hereinafter referred to.
2. The following documents attached hereto shall be deemed to form and be read and construed as part of this Contract, namely:
  - a) Part A- Formal Instrument of Agreement;
  - b) Part A- General Conditions of Contract (AS/NZS 4911-2003);
  - c) Part A- Special Conditions of Contract;
  - d) Part B- Contract Scope of Work
  - e) Part B0 – Contract Technical Specification
  - f) Part A- Schedules:

Schedule A	Contract Sum Breakdown
Schedule A.1	Quantity Measurement
Schedule B	Schedule of Rates

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**SANDVIK MINING AND CONSTRUCTION AUSTRALIA PTY LIMITED  
(MATERIALS HANDLING PROJECTS)**

Schedule C	List of Proposed Subcontractors
Schedule D	Deliverables Schedule
Schedule E	Delivery Time Schedule
Schedule F	Progress Claim Schedule
Schedule G	Dayworks Rates
Schedule H	Organisation Chart and Resumes of Key Personnel
Schedule I	Shop Manpower
Schedule J	QA/QC Questionnaire
Schedule K	Occupational Health and Safety
Schedule L	Quality Documentation Requirements
Schedule M	Vendor Data Sheet
Schedule N	Vendor Recommended Spare Parts Pricing
Schedule O	Environmental, Safety and Health Management Plan
Schedule P	Deed of Novation - Purchaser
Schedule Q	Deed of Novation – Supplier
Schedule R	Statutory Declaration
Schedule S	Program
Schedule T	Site Provisions
Schedule U	Supplier's Workforce and Industrial Relations
("Contract Documents" or "Contract").	

In the event of any inconsistency in the Contract Documents, the listing above represents the order of precedence of the documents.

#### CONTRACT SUM

In consideration of the due and proper performance of the Works by the Supplier, the Purchaser hereby covenants with the Supplier to make payments to the Supplier at the times and in the manner prescribed by the Contract to the total amount of the Contract Sum being:

SEPARABLE PORTION	DESCRIPTION	AMOUNT IN
<u>1</u>	<u>STACKER BBST1001</u>	
	<u>1P Stacker Preliminaries</u>	
<u>1A</u>	<u>1A</u> Stacker Fabrication and Delivery to Assembly Yard	
<u>1B</u>	<u>1B</u> Stacker Assembly and Installation of Purchaser Supplied Components	
<u>2</u>	<u>RECLAIMER BBBWR1001</u>	
	<u>1P Reclaimer Preliminaries</u>	
<u>2A</u>	<u>2A</u> Reclaimer Fabrication and Delivery to Assembly Yard	
<u>2B</u>	<u>2B</u> Reclaimer Assembly and Installation of Purchaser Supplied Components	
<u>3</u>	<u>SHIPLOADER BBSL1001</u>	
	<u>3P Shiploader Preliminaries</u>	



**SANDVIK MINING AND CONSTRUCTION AUSTRALIA PTY LIMITED**  
**(MATERIALS HANDLING PROJECTS)**

<del>3A</del>	<u>3A</u> Shiploader Fabrication and Delivery to Assembly Yard	
<del>3B</del>	<u>3B</u> Shiploader Assembly and Installation of Purchaser Supplied Components	
	Provisional Sums	
TOTAL		

All prices are exclusive of GST or VAT.

**COMMENCEMENT AND COMPLETION**

The Supplier shall commence to perform the Works immediately upon acceptance of the Supplier's tender or as otherwise directed in accordance with the Purchaser's Contract or Notice of Award.

The Supplier shall complete the work under the Contract as soon as due diligence and proper practice permits but, in any event, by the Date for Delivery as outlined in Schedule E (Delivery Time Schedule).

Time is of the essence in the performance of this Contract.



**SANDVIK MINING AND CONSTRUCTION AUSTRALIA PTY LIMITED  
(MATERIALS HANDLING PROJECTS)**

**IN WITNESS WHEREOF**, the parties hereto have executed this Contract the day and year first written above.

**SIGNED AND AUTHORISED FOR AND ON BEHALF**  
SANDVIK MINING AND CONSTRUCTION AUSTRALIA PTY LTD  
by authority of its directors:

\_\_\_\_\_  
Purchaser Representative

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

**SIGNED AND AUTHORISED FOR AND ON BEHALF OF**  
[SUPPLIER COMPANY NAME]

▲ by authority of its directors in accordance with Section 127 of  
the Corporations Act:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Date

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## 2 GENERAL CONDITIONS OF CONTRACT (AS/NZ 4911-2003)

The Australian Standard General Conditions of Contract for the Supply of Equipment without Installation (AS/NZS 4911-2003) including Annexures Parts A, B and C together constitute the "General Conditions of Contract".

A copy of the Annexure Parts A, B and C duly completed follow this page. General Conditions of Contract AS/NZS 4911-2003 are not bound into the Contract Document.

### 2.1 ANNEXURE PART A

**ANNEXURE to the Joint Australian/New Zealand Standard  
General Conditions of Contract for the Supply of Equipment without Installation  
AS/NZ 4911-2003**

Note: This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the Contract, is to be attached to the General Conditions of Contract and shall be read as part of the Contract.

ITEM	TITLE	DESCRIPTION
1	Purchaser (Clause 1)	<b>SANDVIK MINING AND CONSTRUCTION AUSTRALIA PTY LIMITED</b>  ACN: 003 771 382 ABN: 62 003 771 382
1A	Purchaser Representative	Jim Simons
2	Purchaser's Address	285 Collier Road, BAYSWATER Western Australia 6053 Tel: +61 8 6332 6400 Fax: +61 8 6332 6436 e-Mail: jim.simons_c@sandvik.com
3	Supplier (Clause 1)	ACN: ABN:
3A	Supplier Representative	[#insert]
3B	Relevant Party (clause 1 and Schedule K)	[#insert]
4	Supplier's Address	Tel: Fax: e-Mail:
4A	Principal	RTA Weipa Pty Ltd ABN 54 137 266 285
4B	Head Contract	means the contract entered into or to be entered into between the Purchaser and the Principal in respect of the Project as further described in Item 4C.
4C	Project	means the project for the construction and operation of a bauxite mine and associated processing and port facilities known as the Amrun Project and located near Boyd Point on the western side of Cape York Peninsula approximately 40km south-west of Weipa and 40km north of Aurukun, with the closest mining areas being 4km from Napranum, 15km from Aurukun and 50km from the nearest cattle station homesteads.
5	Stated purpose for the Equipment (clause 1-definition of acceptable)	Rail Mounted Machines Stacker BBST1001, Reclaimer BBBWR1001 and Shiploader BBSL1001 shall be utilised as key infrastructure for

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**SANDVIK MINING AND CONSTRUCTION AUSTRALIA PTY LIMITED**  
**(MATERIALS HANDLING PROJECTS)**

ITEM	TITLE	DESCRIPTION
		bulk commodity management at an operating bauxite processing and export facility in far north Queensland
5A	Commencement Date	Supplier shall commence Work under this Contract immediately following execution of this Contract by Supplier and Purchaser
6	Date for Delivery (clause 1 and subclause 19.1)	For details refer to <del>Schedule E – Delivery Time Schedule</del> <del>Schedule E – Delivery Time Schedule</del>
7	Delivery place (clause 1 and subclause 19.1)	Supplier shall deliver Machines <u>in modular form</u> free alongside Heavy Lift Ship (FAS Incoterms 2010)
	Site/Premises	[TBA]
	Place/Section	[TBA]
8	Mode of delivery (subclause 19.1)	[TBA]
9	Governing law (page 4, clause 1(h))	Queensland
10	a) Currency (page 4, clause 1 (g))	[TBA]
	b) Place for payments (page 4 clause 1 (g))	285 Collier Road, BAYSWATER Western Australia 6053
	c) Place of business of bank (page 3, clause 1 (d) – definition of security)	Perth, Western Australia
11	Limits of quantities to be supplied and delivered (clause 2.2)	Supplier to provide all quantities required to complete work in accordance with Contract, excepting for those items identified as Purchaser Supplied Components in Scope of Work subsection 2.5
12	Supplier's Security	
	a) Form (clause 3)	Two Bank Guarantees each for a sum equal to five (5%) of the Contract Sum and a cash retention for a sum equal to five (5%) of the Contract Sum
	b) Amount or maximum percentage of Contract Sum (clause 3)	Fifteen per cent (15%) of the Contract Sum
	c) If retention moneys, percentage to be retained from payment of each invoice (clause 3 and subclause 24.3)	For the cash retention referred to in Item 12 (a), fifteen per cent (15%) will be deducted from each progress claim until the limit in Item 12(a) is reached
	d) Time for provision (except for retention moneys) (clause 3)	Within 28 days after the date of acceptance of tender
	e) Additional security for Equipment not delivered (subclauses 3.4 and 24.4)	N/A
	f) Supplier's security upon acceptance is reduced by (subclause 3.4)	<u>a) One Bank Guarantee shall be returned on Completion</u> <u>b) Cash Retention shall be returned on delivery of all information</u> <u>c) One Bank Guarantee shall be returned on Final Completion</u> <del>One third (33%) of amount held as security on Completion and a further one third (33%) on delivery of all information</del>
13	Purchaser's security	Purchaser shall not provide security
	a) Form (clause 3)	N/a

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**SANDVIK MINING AND CONSTRUCTION AUSTRALIA PTY LIMITED**  
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ITEM	TITLE	DESCRIPTION
	b) Amount or maximum percentage of Contract Sum (clause 3)	N/a
	c) Time for provision (clause 3)	N/a
	d) Purchaser's security upon acceptance is reduce by (subclause 3.4)	N/a
14	Purchaser-supplied documents (subclause 6.2)	
	Document / Number of Copies	1. One electronic copy of the documents listed in the Technical Contract Specification
15	Supplier-supplied documents (subclause 6.3)	Refer Vendor Document Schedule
16	Time for Purchaser's direction about documents (subclause 6.3(c))	21 days
17	Subcontract work requiring approval (subclause 7.2)	All
17A	Selected clauses (subclause 7.2)	2.1 to 2.3, 6.6, 7, 7A, 8 10.1, 11, 12, 13.1, 13.4 to 13.9, 15(e), 15(h) to (s), 15A, 16 to 18, 20, 21.8 – 21.10, 22(b)-(j), 23, 24.2 – 24.3, 25.10, 28 34 Special Conditions 3.6 - 3.12 Schedule K Schedule T - U
18	Legislative requirements, those excepted (subclause 10.1)	No exceptions
19	Reference date (clause 1, subclause 10.2(b))	7 <sup>th</sup> day prior to closing of tenders
20	Time by which insurance cover for the Equipment is to be effected (subclause 13.1)	14 days after award of Contract
21	Public and product liability insurance (subclause 13.2)	
	a) Is public liability insurance required?	Yes
	b) If yes to (a), level of cover required	AU\$10,000,000
	c) Period for which public liability insurance is required	The duration of the Contract
	d) Is product liability insurance required	Yes
	e) If yes to (d), level of cover required	AU\$10,000,000
	f) Period for which product liability insurance cover is required	For the duration of the Contract and thereafter for seven (7) years



**SANDVIK MINING AND CONSTRUCTION AUSTRALIA PTY LIMITED  
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ITEM	TITLE	DESCRIPTION
22	Qualifying cause of delay, causes of delay for which EOT's will not be granted (page 3, subparagraph (b)(iii) of clause 1 and subclause 17.2)	None
23	Liquidated damages, rate (subclause 17.5)	TBA % of the Contract Sum per day to a maximum of TBA % of the Contract Sum
24	Delay costs	
	a) other compensable causes (page 1, paragraph (b) of clause 1 and subclause 17.6)	Nil
	b) rate (subclause 17.6)	Nil
25	Date for completion of acceptance testing (subclauses 18.1 and 21.1)	TBA
26	Party responsible for unloading the Equipment (subclause 19.1)	the Purchaser shall unload machines once Supplier delivers them underhook and free alongside Heavy Lift Ship
27	When risk in the Equipment passes (subclause 20.1)	The risk in the Equipment and any Works supplied by the Purchaser or any other person will remain with the Supplier until the issue of the Certificate of Completion in relation to those Works is issued.
28	Time at which ownership of the Equipment passes to the Purchaser (subclause 20.2)	Ownership of, and unencumbered title in, the Equipment will pass to the Purchaser on the earlier of: a) the date of payment under clause 24 (and, if part payment, only to the extent of the value of the part payment); b) the date of issue of the Certificate of Acceptance by the Purchaser pursuant clause 21; c) at the time the Equipment enters the Site; or d) incorporation of the Equipment with any Equipment or other property already owned by the Purchaser.
29	Period for Purchaser's notice that Equipment is acceptable or rejected (subclause 21.1)	21 days
30	Period for Purchaser's notice accepting or rejecting Supplier's proposal (subclause 21.5)	21 days
31	Defects liability period (clause 22)	The defects liability period shall be the period commencing on the date of Completion at 4.00pm (local time at Supplier's Assembly Yard) and ending upon expiry of the Defects Liability Period of the Head Contract, <u>forecast to be 5 November 2020.</u>
32	Progress Claims (subclause 24.1)	Progress Claims to be submitted in accordance with Schedule F – Progress Claim Schedule
	a) Time for invoices	within 7 days of Purchaser's written approval of progress payment claim proforma. Supplier to submit progress payment proforma for approval on 16 <sup>th</sup> of every month.
33	Period for payment (subclause 24.4)	60 days from month end during which the original invoice was received



**SANDVIK MINING AND CONSTRUCTION AUSTRALIA PTY LIMITED  
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ITEM	TITLE	DESCRIPTION
34	Equipment for which prepayment may be claimed (subclause 24.5)	Nil
35	Interest rate on overdue payments (subclause 24.8)	Nil
36	Arbitration (subclause 28.3)	
	a) Person to nominate an arbitrator	the President of the Institute of Arbitrators & Mediators Australia
	b) Rules for arbitration	Rules 5-18 of the Rules of The Institute of Arbitrators & Mediators Australia for the Conduct of Commercial Arbitrations ;
	c) Appointing Authority under UNCITRAL Arbitration Rules	the President of the Institute of Arbitrators & Mediators Australia
37	The Supplier's liability is limited as follows (clause 29)	the Contract Sum as adjusted pursuant to the Contract
	The respective limits apply to the sum of the respective claims and not to each claim.	the Contract Sum as adjusted pursuant to the Contract
	a) for claims in respect of or arising out of death or personal injury:	Unlimited
	b) for loss of rents, income (other than arising out of death or personal injury) and the opportunity to earn profits and indirect and consequential loss	AU \$1.00
	c) for all other claims whatsoever	If nothing stated, the Contract Sum as adjusted pursuant to the Contract
38	The Purchaser's liability is limited as follows (clause 29)	the Contract Sum as adjusted pursuant to the contract
SC1	Trade Warranties (3.6.1 of the Special Conditions)	To be notified to the Supplier by the Purchaser Representative.



## 2.2 ANNEXURE PART B

**ANNEXURE to the Joint Australian/New Zealand Standard  
General Conditions of Contract for Supply of Equipment without Installation  
AS/NZ 4911-2003**

Note: This Annexure shall be completed and issued as part of the tender documents and, subject to any amendments to be incorporated into the Contract, is to be attached to the General Conditions of Contract and shall be read as part of the Contract.

**Approved Form of Unconditional Undertaking  
(Clause 1 – Security)**

At Request of :

ACN:

ABN:

(the Supplier) and in consideration of:

ACN:

ABN:

(the purchaser) accepting this undertaking in respect of  
the contract for:

(the project):

Contract Number:

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AUSTRALIA PTY LIMITED**

003 771 382

62 003 771 382

Fabrication, Offsite Assembly and  
Commissioning of Rail Mounted  
Machines  
Fabrication, Offsite Assembly  
and Commissioning of Rail Mounted  
Machines

726-15001

('the Financial Institution') unconditionally undertakes to  
pay on demand any sum or sums which may from time to  
time be demanded by the Purchaser to a maximum  
aggregate sum of:

[TBA]

The undertaking is to continue until notification has been received from the Purchaser that the sum  
is no longer required by the Purchaser or until this undertaking is returned to the Financial  
Institution or until payment to the Purchaser by the Financial Institution of the whole of the sum or  
such part as the Purchaser may require.

Should the Financial Institution be notified in writing, purporting to be signed by the nominee of  
SANDVIK MINING AND CONSTRUCTION AUSTRALIA PTY LIMITED for and on behalf of the Purchaser  
that the Purchaser desires payment to be made of the whole or any part or parts of the sum, it is  
unconditionally and irrevocably agreed that the Financial Institution will make the payment or  
payments to the Purchaser forthwith without reference to the Supplier and not withstanding any  
notice given by Supplier not to pay same.

Provided always that the Financial Institution may at any  
time without being required so to do pay to the  
Purchaser the sum of:

[TBA]

Less any amount or amounts it may previously have paid under this undertaking or such lesser sum  
as may be required and specified by the Purchaser and there upon the liability of the Financial  
Institution here under shall immediately cease.

Dated at: this \_\_\_\_ day of \_\_\_\_ 20xx



## 2.3 ANNEXURE PART C

### ANNEXURE to the Joint Australian/New Zealand Standard General Conditions of Contract for Supply of Equipment without Installation AS/NZ 4911-2003

Note: This Annexure shall be issued as part of the tender documents and is to be attached to the General Conditions of Contract and shall be read as part of the Contract.

#### Deletions, amendments and additions to AS/NZ 4911-2003

1. Clause 1 is amended to add the following definitions:

"Advice of Non-Acceptance" has the meaning given to it in clause 21.3.

"Affected Party" means the Party which is prevented from performing its obligations by a Force Majeure Event.

"Anti-Corruption Laws" means:

- (a) Chapter 4, Division 70 of the *Australian Criminal Code Act 1995* (Cth) or any equivalent state law;
- (b) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 (OECD Convention);
- (c) the United Nations Convention against Corruption 2003;
- (d) the Foreign Corrupt Practices Act of 1977 of the United States of America (FCPA);
- (e) the Bribery Act 2010 of the United Kingdom (UK Bribery Act); and
- (f) any other Law which:
  - (i) prohibits the offering of any gift, payment or other benefit to any person or any officer, employee, agent or adviser of such person; or
  - (ii) is broadly equivalent to the FCPA or the UK Bribery Act, is intended to enact the provisions of the OECD Convention, or has as its objective the prevention of corruption,

and is applicable in the jurisdiction in which the Purchaser or the Supplier are registered or conduct business or in which activities relevant to the Works are to be performed.

"Associated Person" means a person or entity that performs services for another, including as an employee, agent, contractor, representative or subsidiary of that other person or entity.

"Best Industry Practice" means the practices, policies, methods, standards and acts that would reasonably be expected from an efficient, qualified, competent and skilled Supplier experienced in performing services and/or works of a similar nature to the Works, for a project of a similar size, scope, complexity and nature to the Project.

"Certificate of Acceptance" means the written notice issued by the Purchaser to the Supplier that the Equipment is Acceptable, pursuant to clause 21.1.

"Certificate of Completion" means a certificate issued pursuant to clause 21.8.

"Certificate of Final Completion" means a certificate issued pursuant to clause 21.9.



"Commencement Date" has the meaning given in Item 5A of Annexure Part A.

"Compensable Cause" means:

- (a) a breach of the Contract by the Purchaser or any other act or omission of its Personnel or the Purchaser Representative, other than an act or omission permitted or contemplated by Law or by this Contract; or
- (b) a Variation directed by the Purchaser Representative, to the extent that the event is not caused or contributed to by the Supplier or its Personnel.

"Completion" in respect of a Separable Portion of the Works or the whole of the Works (as applicable), the stage when:

- (a) a Certificate of Acceptance has been previously issued; and
- (b) in the reasonable opinion of the Purchaser's Representative:
  - (i) to the extent not already provided:
    - (A) the Supplier has delivered all:
      - (I) operation and maintenance manuals, instructions and other engineering data;
      - (II) spare parts lists;
      - (III) verifying documentation,
    - (B) all requisite tests have been passed and test results submitted pursuant to clause 18;
    - (C) suitable closeout documentation in respect of any non-conformances
  - (ii) all matters, omissions and Defects specified in any Advice of Non-Acceptance are completed or made good pursuant to clause 21; and
  - (iii) all Trade Warranties, if any, have been provided pursuant to Special Condition 3.6.1 and accompanied by a list of the same.

"Confidential Information" means:

- (a) any Information, data, specifications, drawings, reports or other documents and things relating to the Contract or the Project;
- (b) any Information, data, specifications, drawings, reports or other documents and things relating to the operations of the Company or its Personnel;
- (c) any matters relating to the affairs of the Company or its Personnel;
- (d) the Company's Personal Information; or
- (e) the Company's rates of wages and conditions for workmen, contractors and employees.

"Contract Date" means the date specified in clause 1 of the Formal Instrument of Agreement.

"Contract IP" means all Intellectual Property Rights (present or future) created, discovered or coming into existence in connection with the performance of the Contract, including all Intellectual Property Rights in anything developed (including any Information) by the Supplier in performance of the Contract.

"Direct Costs" means all amounts reasonably and actually incurred by the Supplier or paid by the Supplier to a Subcontractor, for Personnel, Equipment required for the execution of the Works but must not include:

- (a) amounts in respect of On-Site Overheads, Off-Site Overheads and profit;





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- (b) liquidated damages payable under this Contract or under any Subcontract;
- (c) amounts which are reimbursed under insurance policies;
- (d) amounts which are in respect of remedial work or repairing damage or defects to the Works; and
- (e) amounts which are, pursuant to an express provision of the Contract, to be borne by the Supplier.

"Drawings" means the drawings referred to in the Contract and any modification of such drawings notified to the Supplier by the Purchaser Representative and includes such other drawings as may from time to time be supplied to the Supplier by the Purchaser Representative or the use of which is permitted by the Purchaser Representative for the purposes of the Contract.

"Environment" means components of the earth including:

- (a) land, air and water
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter and any living organism;
- (d) any human-made or modified structures and areas;
- (e) the aesthetic or amenity values of an area; and
- (f) humans.

"Environmental Event" means any event or series of events arising out of the performance of the Contract which has resulted, or results, in any actual or potential harm to the Environment including any event or series of events not authorised by or in breach of any Law or approval or other Government Agency requirement.

"Final Completion" means the stage when, in the opinion of the Purchaser Representative, the whole of the Works have been performed in accordance with the Contract and the last of the Defects Liability Periods has expired, as specified in a Certificate of Final Completion issued under 21.9.

"EPCM Supplier" means Bechtel Australia Pty Ltd (ABN 42 006 334 505) of Level 3, 540 Wickham Street, Fortitude Valley, QLD 4006 or such other Person as notified or substituted from time to time in writing by the Purchaser to the Supplier as being the EPCM Supplier.

"Fit for the Intended Purposes" means suitable, fit and appropriate for their respective functions and purposes as stated or reasonably to be inferred from the Contract having regard to the nature and scope of the Works and the purpose of the Project, including the stated purpose in Item 5 of Annexure Part A or Schedule D (Deliverables Schedule).

"Force Majeure Event" means the occurrence after the Contract Date of:

- (a) war, civil war, armed conflict or terrorism;
- (b) nuclear, chemical or biological contamination unless the source or the cause of the contamination is the result of the conduct of the Affected Party or its Personnel;
- (c) riot, commotion, disorder, strike, lockout or other industrial action which is industry, state or nation-wide by persons other than the Affected Party or its Personnel;
- (d) natural catastrophes such as earthquake, tornado or volcanic activity but excluding hurricane, typhoon or cyclone affecting the Site; or
- (e) hurricane, typhoon or cyclone which affects a location other than the Site,



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that is unavoidable, insurmountable and not within the reasonable control (whether directly or indirectly) of the Affected Party and that directly causes the Affected Party to be unable to comply with all or a material part of its obligations under the Contract.

"Government Agency" means any government (including any national, state, provincial, district, territorial, regional or local government) or governmental, semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, board, agency or entity.

"Government Official" means any appointed, elected or honorary official or any employee of:

- (a) any Government Agency;
  - (b) any Purchaser or other entity owned or controlled by any Government Agency; or
  - (c) any embassy, public international organisation, or political party (including any party official or political candidate),
- whether or not such person purports to act in a private capacity or serves with or without compensation.

"Head Contract" means the contract entered into or to be entered into between the Purchaser and the Principal in respect of the Project.

"HSEC" means health, safety, environment and community.

"HSEC Requirements" means the HSEC related requirements, systems, standards, policies, management plans, programs, licences and procedures, including those set out in Schedules O and P, as may be varied and updated from time to time.

"Information" means documentation, plans, designs, Drawings, data sheets, calculations, information, data, Specifications, sketches, notes, samples, reports, maps, accounts, operating manuals, training materials and any other material specified in the Contract (including in [Schedule D – Deliverables Schedule](#) ~~Schedule D – Deliverables Schedule~~) and the like required by the Contract and created (including, where the context so requires those to be created by the Supplier) for the delivery of the Equipment.

"Law" means any law, binding case law, legislation, statute, regulation, order, rule, subordinate legislation, decree, decree-law, treaty, notice or resolution of any Government Agency or any other document enforceable thereunder, in each case which affects or is applicable to the Contract, its performance or its subject matter and/or relates to a Party's rights and obligations under the Contract.

"Liabilities" means damages, claims, demands, losses, liabilities, liquidated sums, charges, costs and expenses of any kind whatsoever or howsoever arising.

"Machine" means a stacker, reclaimers or shiploader as is relevant in the context.

"MQSH Act" means the *Mining Quarry Safety and Health Act 1999* (Qld).

"Moral Rights" means each right defined as a 'moral right' in Part IX of the *Copyright Act 1968* (Cth), and if work or any document relating to the Works is used in any



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jurisdiction other than Australia, any similar right capable of protection under the laws of that jurisdiction.

"Nominated Subcontract" means the agreement between the Nominated Subcontractor and the Supplier.

"Nominated Subcontractor" means any person nominated by the Purchaser Representative for a Subcontract in accordance with clause 7.2 and Schedule C.

"Off-Site Overheads" means a provision or allowance for costs and expenses in respect of providing and operating the corporate and branch offices of each of the Supplier, its parent company and its Related Bodies Corporate and their associated functions incurred, or normally incurred, at a state-wide, national, Purchaser or group level, but must not include amounts for On-Site Overheads or profit.

"On-Site Overheads" means amounts properly and actually incurred by the Supplier for management, supervision and contract administration of the Works and may include the cost of craneage, scaffolding, hoists and other materials for handling equipment, hoardings, gantries, site offices, ablution blocks, storage sheds, initial survey and set out, permits, insurances, temporary services, security, signage, progressive and final cleaning, small tools, safety equipment and barricades, but must not include amounts for Direct Costs, Off-Site Overheads or profit.

"Party" or "Parties" means a party or the parties to the Contract as the context requires.

"Personal Information" means information relating to an individual, as more specifically defined in the *Privacy Act 1988* (Cth).

"Personnel" means:

- (a) in relation to the Supplier, any of its Workers (including Subcontractors and Subcontractors' Personnel, agents and representatives (including the Supplier Representative) involved either directly or indirectly in the performance of the Contract);
- (b) in relation to the Purchaser, any of its past or present suppliers (other than the Supplier), officers, Workers, agents or representatives (including the Purchaser Representative, any delegate and the EPCM Supplier) (including the Personnel of each of the foregoing);
- (c) in relation to the Principal, any of its past or present suppliers (other than the Purchaser), officers, Workers, agents or representatives (including the Principal's Representative, any delegate and the EPCM Supplier), members of the Rio Tinto Group and any member of the Rio Tinto Group having an interest in the subject matter of the Contract including the use and enjoyment of such subject matter or the Project (including the Personnel of each of the foregoing); and
- (d) in relation to a Subcontractor, any of its Workers (including Subcontractors and Subcontractor's Personnel, agents or representatives involved either directly or indirectly in the performance of the Subcontract).

"Plant and Machinery" means all machinery, plant, equipment, tools, consumables, temporary buildings, appliances, scaffolding, formwork and other items of a similar



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nature used for or in relation to the performance or maintenance of the Works or the Temporary Works but does not include the Equipment.

"Process" or "Processing" means collecting, holding, using, transferring, destroying and any other dealing.

"Project" means the project described in Item 4C of Annexure Part A.

"Purchaser IP" means the Intellectual Property Rights of the Purchaser or its Related Bodies Corporate (as the case requires) which:

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

"Purchaser Representative" means the person described as the Purchaser Representative in Item 1A of Annexure Part A or such other person from time to time substituted by the Purchaser.

"Purchaser's Insurance Policies" means insurance against loss, damage or destruction of the Works on Site, and, whilst on or adjacent to the Site, materials and Equipment to be incorporated into the Works. Such insurance will name the Purchaser, the Supplier and the Subcontractors as insured persons for their respective rights and interests in relation to the Works on Site.

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

"Relative" means, in relation to a person, that person's husband or wife and any other member of that person's immediate family, including (without limitation) his or her mother, father, child, brother, sister, grandparent or grandchild and the husband or wife of any such immediate family member.

"Relevant Party" means the person specified in Item 3B of Annexure Part A as the principal contractor under section 293 of the WHS Regulation.

"Rio Tinto Group" means the dual listed Principal structure incorporating Rio Tinto plc and Rio Tinto Limited and:

- (a) any Related Body Corporate of Rio Tinto plc or Rio Tinto Limited;
- (b) any unincorporated joint venture in which Rio Tinto plc or Rio Tinto Limited or any Related Body Corporate of Rio Tinto plc or Rio Tinto Limited has a participating interest of not less than 50%;
- (c) any body corporate or unincorporated joint venture managed by Rio Tinto plc or Rio Tinto Limited or any Related Body Corporate of Rio Tinto plc or Rio Tinto Limited; and
- (d) such other entities as the Parties agree in writing.

"Rio Tinto IP" means the Intellectual Property Rights of the Purchaser or any member of the Rio Tinto Group (as the case requires) which:

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



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"Rio Tinto Limited" means Rio Tinto Limited (ACN 004 458 404) having its registered office at 33rd Floor, 120 Collins Street, Melbourne, Victoria 3000, Australia.

"Rio Tinto plc" means Rio Tinto plc (Company No. 719885) of 2 Eastbourne Terrace, London W2 6LG, United Kingdom.

"Rules" means (as the case may be):

- (a) the Purchaser's rules, requirements, policies, standards and procedures referred to in the Contract as amended from time to time; and
- (b) the Principal's rules, requirements, policies, standards and procedures referred to in the Contract or currently listed at [www.riotinto.com/library/3608\\_policies.asp](http://www.riotinto.com/library/3608_policies.asp) or otherwise obtainable from the Purchaser, including, "The Way We Work", the "Business integrity (anti-corruption) standard" and the "Anti-bribery due diligence standard".

"Security of Payment Act" means the *Building and Construction Industry Payments Act 2004* (Qld).

"Selected Clauses" means the selected clauses in Item 17A of Annexure Part A. Purchaser is obligated to include Selected Clauses in Contract with Supplier.

"Specification" means any specification for the Works as existing at the Contract Date and forming part of the Contract (including the Technical Specification) and any modification of such specification thereafter directed by the Purchaser Representative or otherwise varied in accordance with the Contract.

"Standards" means any Australian Standards and codes of practice applicable to the Works or, subject to the Purchaser's written approval, any other applicable international standards and codes of practice of an equivalent or higher standard.

"Subcontract" means any agreement, arrangement or understanding between the Supplier and any person, as well as any lower tier subcontract whether or not in writing, to perform all or any part of the Supplier's obligations under the Contract on behalf of the Supplier including any supplier and persons engaged by the Supplier to perform consultancy services in connection with the Works.

"Subcontractor" means any person engaged under a Subcontract, and includes a Nominated Subcontractor, and, where the context requires, also includes the Subcontractor's Personnel.

"Supplier IP" means the Supplier's Intellectual Property Rights incorporated in anything supplied under the Contract (including any Information) and that:

- (a) is in existence at the Contract Date; or
- (b) comes into existence after the Contract Date otherwise than in connection with the Contract.

"Supplier's Insurance Policies" means the Supplier's insurance policies specified in Item 21 of Annexure Part A.

"Tax Invoice" has the meaning given in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).



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"Technical Specification" means the Technical Specification for Rail Mounted Machines document no. 25977-000-3PS-MH00-00001.

"Temporary Works" means the work of a nature which is required to be performed on the Site in order to enable the Works to be undertaken, but does not include Plant and Machinery or Equipment.

"Term" means the period commencing on the Commencement Date and ending on the earlier of:

- (a) the date that all obligations under the Contract have been performed, including with respect to any defects; or
- (b) the date the Contract is terminated in accordance with the Contract.

"Transfer Depot" means the location (if any) specified in Item 7A of Annexure Part A or any substitute or other location specified or substituted from time to time by the Purchaser Representative by notice in writing.

"WHS Legislation" means the laws regulating work health and safety applicable to the Works including where applicable:

- (a) the *Electrical Safety Act 2002* (Qld);
- (b) the *Electrical Safety Regulation 2013* (Qld);
- (c) the *Heavy Vehicle National Law Act 2012* (Qld);
- (d) the *Marine Safety (Domestic Commercial Vessel) National Law Act 2012* (Cth);
- (e) the *Marine Safety (Domestic Commercial Vessel) National Law Commencement Proclamation 2013* (Cth);
- (f) the *Maritime Safety Queensland Act 2002* (Qld);
- (g) the *Maritime Safety Queensland Regulation 2002* (Qld);
- (h) the MQSH Act;
- (i) the *Mining and Quarrying Safety and Health Regulation 2001* (Qld);
- (j) the *Transport Operations (Marine Safety) Act 1994* (Qld);
- (k) the *Transport Operations (Marine Safety) Regulation 2004* (Qld);
- (l) the *Transport Operations (Marine Pollution) Act 1995* (Qld);
- (m) the *Transport Operations (Marine Pollution) Regulation 2008* (Qld);
- (n) the *Transport Infrastructure (Waterways Management) Regulation 2012* (Qld);
- (o) the *Work Health and Safety Act 2011* (Qld) (**WHS Act**); and
- (p) the *Work Health and Safety Regulation 2011* (Qld) (**WHS Regulation**).

"Variation Notice" means a formal document of Variation to be signed by the Purchaser and the Supplier stating the Variation directed by the Purchaser Representative and the adjustments (if any) to the Contract Sum.

"Workers" has the meaning under the WHS Act (irrespective of whether the WHS Act applies to the individual) and includes suppliers, Subcontractors, employees of Suppliers and Subcontractors, volunteers and apprentices.

"Working Days" means any day which is not:

- (a) a Saturday or a Sunday; except for Supplier's fabrication locations and assembly yards, where Saturdays and Sundays shall be Working Days; or
- (b) a public holiday, special holiday or bank holiday in the place in which any relevant act is to be or may be done; or
- (c) for the purposes of clause 24 only, any day occurring within any of the following periods:



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- (i) 22 to 24 December;
- (ii) 27 to 31 December; and
- (iii) 2 to 10 January.

2. Clause 1 is amended by replacing the following existing definitions with:

"Contract" has the meaning given in the Formal Instrument of Agreement.

"Defect" means any defect, deficiency, error, omission or any other failure to comply with the Contract (other than fair wear and tear).

"Intellectual Property Right" means 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 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 trademarks, circuit layout designs and rights in relation to circuit layouts.

"Legislative Requirement" includes:

- (a) any Law, binding case law, legislation, statute, regulation, order, rule, subordinate legislation, decree, decree-law, treaty, notice or resolution of any Government Agency or any other document enforceable thereunder, in each case which affects or is applicable to the Contract, its performance or its subject matter and/or relates to a Party's rights and obligations under the Contract.
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction where the supply or Delivery of the Equipment or the particular part thereof is being carried out;
- (c) all applicable Standards; and
- (d) fees and charges payable in connection with the foregoing.

"Qualifying Cause of Delay" means:

- (a) a breach of the Contract by the Purchaser or any other act or omission of its Personnel or the Purchaser Representative, other than an act or omission permitted or contemplated by Law or by this Contract;
- (b) a Variation directed by the Purchaser Representative;
- (c) a suspension to the performance of the Works (in whole or in part) by the Purchaser Representative, except if due, directly or indirectly, to an act or omission of the Supplier or any of its Personnel or a Force Majeure Event;
- (d) a suspension by the Supplier under clause 25.7;
- (e) a Force Majeure Event if the Supplier has complied with clause 17.6; or
- (f) an event described in clause 18.4(c);
- (g) other than:
  - (i) a breach or omission by the Supplier;
  - (ii) stated in Item 22; and
  - (iii) industrial disputes which are not particular to the Supplier and which are not limited to the Site or the Supplier's place of work.

3. Clause 2.1 is deleted and replaced with:

2.1 The Supplier must supply the Equipment in accordance with requirements of the Contract and comply with all of its obligations under the Contract including any requirements set out in the Annexures and Schedules and all other Contract Documents.



2.2 Except where it is expressly stated in the Contract that something will be provided by the Purchaser, the Supplier must provide everything necessary for and necessarily incidental to the proper performance of the Contract.

2.3 The Supplier:

- a) must comply with any reasonable Direction, instruction, brief, program, schedule or budget provided by the Purchaser (including to enable the Purchaser to comply with the Head Contract), but will warn the Purchaser of any potential detriment to the Purchaser (including increased, time, scope and cost) in doing so;
- b) must not knowingly, or with reckless indifference, do or fail to do anything that would put the Purchaser in breach of the Head Contract; and
- c) agrees that the Purchaser will need to, or is required to, obtain Directions, instructions, comments, approvals, review or opinion from the Principal or its Associated Persons pursuant to the Head Contract for corresponding matters and, in undertaking any of those functions, it is reasonable for the Purchaser to reflect, or otherwise take account of Directions, instructions, comments, approvals, review or opinion from the Principal or its Associated Persons.

2.4 The Purchaser shall pay the Supplier the Contract Sum.

2.5 All materials supplied by the Supplier must not be likely to be discontinued or become obsolete and must comply with the Contract Documents.

The Supplier warrants that the Equipment shall have no Defect arising from materials or workmanship.

Subclause 2.2 is renumbered as 2.6.

4. Clause 3.4 is amended to adding as the second paragraph:

Upon the Supplier delivering all the Information to the Purchaser, the Purchaser's entitlement to security shall be reduced by the percentage or amount in Item 12 (f) and the reduction shall be released and returned within 14 days after the Supplier provides the last of the Information to the Purchaser.

5. Clause 4 is amended by adding:

a. As the second paragraph:

For the avoidance of doubt, notwithstanding any term of the Contract to the contrary, the parties acknowledge and agree that any terms and conditions of contract attached to or forming part of any purchase order issued by the Purchaser in respect to the Work or any quotation or other offer made by the Supplier to perform the Work shall not form part of the Contract or any agreement that binds the parties prior to the execution of the formal instrument of agreement.

b. As the last paragraph:





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The Supplier acknowledges and agrees that it will not deliver any claim for payment pursuant to subclause 24.1 and the Purchaser has no obligation to pay any part of the Contract Sum to the Supplier until the Purchaser is provided with one copy of the formal instrument of agreement executed by the Supplier.

5. Clause 6 is amended by deleting subclause 6.5 and clause 6.6 is renumbered as 6.5.

6. Clause 6 is amended by adding subclause 6.6 as follows:

**6.6          Publicity**

Except as required by any Legislative Requirement or as otherwise permitted by the Contract, the Supplier may not make any public announcements or disclosures or place any advertisements in relation to the Contract or the Project without the prior written consent of the Purchaser.

7. Clauses 7.1 and 7.2 are deleted and the following subclauses added:

**7.1          Assignment**

- a) The Purchaser may assign or novate its rights or obligations under the Contract (in whole or in part) on giving prior written notice to the Supplier.
- b) The Supplier must, within 7 Working Days of a request from the Purchaser to do so, enter into a deed of novation in the form set out in Schedule P and deliver the same to the Purchaser duly executed. The Parties acknowledge that damages will not be an adequate remedy for breach of this clause 7.1(b).
- c) The Supplier shall not be entitled to assign or novate its rights or obligations under the Contract without the prior written consent of the Purchaser, which consent shall not be unreasonably withheld by the Purchaser.
- d) Without limitation, it will be reasonable for the Purchaser to withhold its consent to any proposed novation if:
  - (i) the Purchaser has genuine concerns regarding the financial capacity of the proposed transferee or its ability to perform the obligations it would assume under the Contract;
  - (ii) the proposed transferee is not willing to or the Purchaser has genuine concerns about the proposed transferee's ability to comply with all Rules or the Purchaser's requirements in relation to anti-bribery, anti-corruption and acceptable business practices; or
  - (iii) the proposed transferee does not first provide equivalent replacement Security to that which the Supplier has provided under the Contract;
- e) in the event consent to the novation of this Contract is granted to the Supplier by the Purchaser in accordance with clause 7.1(c) above, the Parties will execute a deed of novation in the form set out in Schedule Q.



## 7.2 Subcontracting

- a) The Supplier must not without the prior written consent of the Purchaser or the Purchaser Representative which may be given on whatever terms and conditions the Purchaser or Purchaser Representative may think appropriate or withheld in the Purchaser or Purchaser Representative's absolute discretion:
  - (i) subcontract or allow a subcontractor to subcontract any work described in Item 17; or
  - (ii) allow a subcontractor to assign a subcontract or any payment or any other right, benefit or interest thereunder.
- b) As at the Contract Date the Supplier has proposed:
  - (i) that the Subcontractors specified in Table 1 of Schedule C perform the Works specified in that Schedule, and the Purchaser has consented to the use of those Subcontractors to perform those Works; and
  - (ii) a list of Subcontractors as set out in Table 2 of Schedule C and the Supplier agrees and acknowledges that:
    - a. as at the Contract Date the Purchaser has not approved the use of those Subcontractors in accordance with this clause 7.2; and
    - b. it will have no claim against the Purchaser should the Purchaser not approve the use of those Subcontractors to perform Works under the Contract.
- c) If the Supplier has not paid amounts claimed by any of its Subcontractors and the Purchaser Representative reasonably considers that there is a risk that the Subcontractor may suspend performance of its Subcontract for non-payment, the Purchaser may pay the Subcontractor's claim on behalf of the Supplier and in respect of such payment the Purchaser may exercise its rights pursuant to clause 24.7 as to set-off against the Supplier. The Supplier must include in all Subcontracts an obligation on the Subcontractor to give notice to the Purchaser Representative before suspending or terminating the Subcontract for non-payment.
- d) As at the Contract Date:
  - (i) subject to clause 7.2(d)(ii), the Supplier has proposed to use the Subcontractors specified in Table 3 of Schedule C to perform the Works specified in that table; and
  - (ii) the Supplier acknowledges that the Purchaser has not conducted a financial assessment of those Subcontractors and subject to the outcomes of that financial assessment, the Purchaser may at any time in its absolute discretion inform the Supplier in writing that it no longer agrees to the Supplier using those Subcontractors.
- e) The Purchaser Representative may nominate persons as Nominated Subcontractors after the Contract Date, in which case the Supplier is



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entitled to claim a Variation under clause 23 and an extension of time to the Date for Delivery.

- f) The Supplier may make objections in writing against acceptance of a Nominated Subcontractor. Such objections must be made within 10 Working Days or within such further time as is approved by the Purchaser Representative after the giving of the nomination in writing to the Supplier, failing which the right to object will be deemed to have been waived by the Supplier.
- g) If the Supplier objects to a nomination, the Purchaser Representative may make a further nomination.
- h) The Supplier is required to Subcontract in accordance with the Purchaser Representative's nominations unless the Purchaser Representative:
  - (i) considers that the Supplier's objections made under clause 7.2(f) are reasonable; or
  - (ii) determines that a Nominated Subcontractor has refused to enter into a Subcontract on terms acceptable to the Purchaser Representative.
- i) The Supplier is not entitled to be paid for any Works performed by a Subcontractor that has not been approved by the Purchaser under this clause 7.2.

**7.3 Terms and conditions of Subcontract to be the same as Contract**

- a) The Supplier shall ensure that the Selected Clauses and any other terms and conditions of the Contract that are reasonably necessary to ensure the Supplier fulfils its obligations to the Purchaser are included in any Subcontract and shall enter into a subcontract with the Subcontractor accordingly, and shall not permit any variation to those terms and conditions without the prior written consent of the Purchaser.
- b) Nothing in this clause 7.3 shall prevent the Supplier from including in any Subcontract such further terms and conditions as it may deem necessary or desirable to maintain control over the work to be performed by the Subcontractor and to allow it to comply with all of its obligations under this Contract.

**7.4 Responsibility**

- a) No Subcontract (including Nominated Subcontracts) or assignment (whether with or without the consent of the Purchaser Representative or the Purchaser) will in any way relieve the Supplier from full responsibility for the performance of the Contract.
- b) To the extent permitted by Law, acts or omissions of the Supplier shall be deemed to include acts or omissions of the Supplier's Personnel and the Supplier's obligations shall include the obligation to procure compliance by the Supplier's Personnel with the Supplier's obligations.

**8. Clause 7A added as follows:**

**7A Contractor's Personnel**

- a) The Supplier must supply all Personnel necessary for the proper performance of the Contract. Such Personnel must be appropriately



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qualified, competent, experienced and skilled to perform the relevant part of the Works in respect of which they are engaged.

- b) As soon as reasonably practicable after the Contract Date, at reasonable intervals thereafter and whenever requested by the Purchaser or the Purchaser Representative, the Supplier must provide the Purchaser Representative with a detailed organisation chart set out in Schedule H which must show positions and reporting relationships within the Supplier's organisation for supervisory and management personnel associated with the performance of the Contract.
- c) The Purchaser Representative may Direct the Supplier to remove a member of Supplier's Personnel from the performance of the Contract at any time, and to replace such Personnel promptly at no extra cost to the Purchaser, and the Supplier must comply with such a Direction and not re-employ that person for the performance of the Contract without first obtaining the Purchaser's written consent to do so.

9. Clause 8.1(b) is amended by deleting the words “, material, documents” and replacing with “and Information”.

10. Clause 8.1 is amended by adding new paragraphs (c) and (d) as follows:

- c) The Supplier warrants that it has the right to grant to the Purchaser the licence under clauses 8.2(a) and 8.2(c).
- d) The Supplier warrants that to the extent that it uses or proposes to use the Intellectual Property Rights of any third party in the performance of the Contract, or to the extent the Purchaser or its Personnel will use or might propose to use the Intellectual Property Rights of any third party in the use and enjoyment of anything supplied under the Contract it has obtained, or will obtain at no further cost to the Purchaser, from the relevant third party all necessary licences and consents to use such Intellectual Property Rights and will licence or procure the licence of the same to the Purchaser.

Renumber existing paragraph (c) as paragraph (e).

11. Clause 8.2 is deleted and replaced with:

**8.2 Ownership and licence**

- a) The Supplier grants to the Purchaser a perpetual, irrevocable, non-exclusive, non-transferable royalty free licence to use the Supplier IP for the purposes of installing, commissioning, operating, altering, upgrading, augmenting, maintaining and/or repairing the Equipment and such other purposes as may be approved by the Supplier from time to time (such approval must not be unreasonably withheld). This licence includes the right to sub-licence the Supplier IP to the Principal or any Rio Tinto Group member or third party contractor for the purposes described above.
- b) The Purchaser agrees that all Contract IP is vested in the Supplier and is the Supplier's property as and when created.
- c) The Supplier grants to the Purchaser a perpetual, irrevocable, non-exclusive, non-transferable royalty free licence to use the Contract IP



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for the purposes of installing, commissioning, operating, altering, upgrading, augmenting, maintaining and/or repairing the Equipment and such other purposes as may be approved by the Supplier from time to time (such approval must not be unreasonably withheld). This licence includes the right to sub-licence the Contract IP to the Principal or any Rio Tinto Group member or third party contractor for the purposes described above.

- d) The Supplier acknowledges and agrees that the Purchaser or its Related Bodies Corporate (as the case may be) remains the owner of all Purchaser IP.
- e) The Purchaser will procure the grant to the Supplier of a non-exclusive, non-transferable, revocable licence to use, for the sole purpose of performing the Contract:
  - (i) the Purchaser IP in the Contract and the Drawings; and
  - (ii) such Purchaser IP as the Purchaser Representative considers appropriate.
- f) The Supplier acknowledges and agrees that the Principal or any member of the Rio Tinto Group (as the case may be) remains the owner of all Rio Tinto IP.
- g) The Purchaser will procure the grant to the Supplier of a non-exclusive, non-transferable, revocable licence to use, for the sole purpose of performing the Contract:
  - (i) the Rio Tinto IP in the Contract and the Drawings; and
  - (ii) such Rio Tinto IP as the Purchaser Representative considers appropriate.
- h) The Supplier must not challenge the validity of, register or attempt to register any interest in or otherwise deal with the Purchaser IP or Rio Tinto IP, or allow any other person to do the same.

12. Clause 8.3 is added as follows:

**8.3 Indemnity**

- a) Without limiting clause 12, the Supplier indemnifies the Purchaser and its Personnel and must keep them indemnified in respect of any Liabilities incurred or sustained by the Purchaser or its Personnel resulting from any actual or alleged infringement of any Intellectual Property Rights of any third party arising out of or caused by:
  - (i) the performance of the Contract by the Supplier; or
  - (ii) the performance, operations, use or enjoyment of anything supplied by the Supplier under the Contract,

provided that this indemnity will not extend to any actual or alleged infringement or violation resulting from the use of the Supplier IP in breach of the licence granted under clause 8.2(a).

- b) Subject to clause 8.3(c), in the event of any claim or demand being made, or action, suit or proceeding being brought against the Purchaser or its Personnel in respect of the matters covered by the indemnity referred to in clause 8.3(a):

- (i) the Purchaser shall notify the Supplier in writing;



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- (ii) the Supplier will, at the Supplier's cost, conduct any litigation in the Purchaser's or its Personnel's name that may arise from a claim referred to in clause 8.3(a) and all negotiations for settlement of that claim, provided that the Supplier must not make any settlement or consent to any judgment, order or verdict against the Purchaser or any of its Personnel without the Purchaser's prior written consent; and
  - (iii) the Purchaser shall, at the Supplier's cost, provide the Supplier with such assistance and cooperation as the Supplier may reasonably request from time to time in connection with any litigation.
- c) Notwithstanding the above, the Purchaser may in its absolute discretion:
- (i) assume from the Supplier the conduct of any litigation and all negotiations for settlement of that claim if the Purchaser forms the view that the Supplier is either:
    - a. failing to properly and diligently defend the claim, demand, action, suit or proceeding; or
    - b. not acting in the best interests of the Purchaser or is acting in a manner which may adversely impact the Purchaser's reputation or cause the Purchaser to fall into disrepute, and the Supplier agrees to take all steps that the Purchaser reasonably requires to allow the Purchaser to assume the conduct of any such litigation or negotiations; and
  - (ii) refuse to consent to any settlement, judgment, order or verdict unless and until the Supplier provides the Purchaser with funds or other form of security (to the satisfaction of the Purchaser) sufficient to cover the Supplier's liability to the Purchaser that will arise under clause 8.3(a) from the settlement, judgement, order or verdict being consented to.

13. Clause 8.4 is added as follows:

**8.4 Procurement of Intellectual Property Rights**

- a) If the Purchaser or its Personnel are prevented from using anything supplied under the Contract as a result of any claim in relation to an infringement of Intellectual Property Rights, the Supplier must, at the Supplier's cost, take all reasonable steps to procure for the Purchaser and its Personnel the right to (as the case requires) operate or use the supplied Equipment, Information or the relevant part of those items for the purpose for which it was intended.
- b) If the Supplier cannot procure the rights referred to in clause 8.4(a) within a reasonable time (but not exceeding 10 Working Days unless the Purchaser Representative otherwise agrees), it must notify the Purchaser Representative accordingly and the Purchaser Representative may direct the Supplier to immediately (at the Supplier's cost):



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- (i) alter the Works or the relevant part of the Works to avoid infringement or violation of the Intellectual Property Rights or any of them;
  - (ii) re-perform or replace the Works affected or the relevant part of the Works with work which does not infringe or violate the Intellectual Property Rights; or
  - (iii) discontinue carrying out the Works and reimburse to the Purchaser any compensation and other moneys already paid to the Supplier and pay to the Purchaser any Liabilities that may have been paid or incurred by the Purchaser or its Personnel in connection with the discontinued Works.
- c) Any Direction made in accordance with 8.4(b) shall not entitle the Supplier to any additional payment or any extension to the Date for Delivery.

14. Clause 8.5 is added as follows:

**8.5 Moral Rights**

- a) The Supplier must:
- (i) ensure that it does not, and its Subcontractors do not, infringe any Moral Rights; and
  - (ii) procure from each of the Supplier's Personnel an irrevocable, transferrable and unconditional consent, in favour of the Supplier (for the benefit of the Supplier and its customers, including the Purchaser), which is legally enforceable by the Purchaser, for the Purchaser or any of its nominees to do anything in relation to any Information that (but for these consents) would otherwise infringe any Moral Rights or similar rights of the relevant Person anywhere in the world.
- b) Where the Purchaser reasonably considers that the Supplier has not complied with clause 8.5(a), the Supplier must procure that each of the Personnel of the Supplier engaged in the performance of the Contract obligations do all such other things and execute all such documents as reasonably requested by the Purchaser in order to confirm or give effect to clause 8.5(a).

15. Clause 10.1 is amended by deleting paragraph (a) and replacing with:

- (a) The Supplier must comply and ensure that each of its Personnel comply with the following:
- (i) all Legislative Requirements except those in Item 18 or directed by the Purchaser to be satisfied by or on behalf of the Purchaser;
  - (ii) the Rules;
  - (iii) all customs and practices of any countries to be visited in connection with the performance of the Contract;
  - (iv) the HSEC Requirements; and
  - (v) the Directions of the Purchaser Representative or its Associated Persons."



16. Clause 10.1 is amended by inserting new paragraph (b) as follows:

- b) The Supplier must obtain and maintain all permits, licences, registrations and approvals and give all notices required to be obtained or given by any Legislative Requirements for the performance of the Contract save for any permits, licences, registrations, approvals or notices that are expressly designated as the responsibility of the Purchaser in the Contract.

Existing clause 10.1(b) is renumbered as 10.1(c).

17. Clause 10.2 is deleted.

18. Clause 11 is amended by deleting paragraph (b) and replacing with the following subclauses:

- b) Without limiting clause 3.6.5 of the Special Conditions or any other provision of the Contract, all Plant and Machinery and Equipment supplied and/or used in the Works must be capable of safe, efficient and reliable operation, of current manufacture and of the highest grade, in all respects of suitable capacity and in accordance with the Contract, and such Equipment must be new unless otherwise specified.
- c) Any warranty implied by Law will apply to the Equipment and the Works in addition to any warranty in the Contract or any manufacturer's warranty.
- d) The Supplier must implement and maintain a quality system:
  - (i) to ensure Equipment comply with all Legislative Requirements and requirements of the Contract, including Schedule L;
  - (ii) which satisfies the requirements of AS/NZS ISO 9001, however, systems already in operation and based on other recognised quality standards may be accepted at the Purchaser Representative's absolute discretion; and
  - (iii) which the Purchaser has reasonable access to so as to enable monitoring and quality auditing.
- e) Following proof that a quality system is operating effectively, the Purchaser Representative may limit or vary the number and frequency of visits to where the Works are being performed in its absolute discretion for the purpose of performing surveillance of the Works, to witness major testing, and a final inspection prior to packing.
- f) Prior to commencement of the Works, the Supplier must submit a project quality plan which documents the procedures to satisfy the quality management system and requirements of the Contract, including Schedule L. The content of this project quality plan shall affect the scope of the required work and include at least the following:
  - (i) proposed organisation identifying responsibility for the quality management system; and
  - (ii) procedures or description for planning and control of all of the clauses of quality management system specified in AS/NZS ISO 9001.
- g) The Supplier must maintain an Inspection and Test Plan Schedule (**ITP Schedule**) identifying all Inspection and Test Plans (ITPs) required for





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the Works. The ITP Schedule shall be an integral portion of the project quality plan and shall ensure that the required quality standards are achieved by specification at suitable stages during the Works.

- h) The Supplier must provide each ITP to the Purchaser Representative as each ITP is produced. The Purchaser Representative shall review each ITP and indicate on each ITP those activities to be witnessed by the Purchaser Representative (which shall be indicated as either "hold" or "witness" points). The Supplier shall provide reasonable notice to enable sufficient time for the Purchaser Representative to arrange attendance and in any event not less than 20 days.
- i) Any existing work disturbed or otherwise affected by the performance of the Works shall be made good by the Supplier in every trade to match the adjacent work or as may be directed by the Purchaser Representative. The Supplier shall, at no additional cost or extension to the Date for Delivery, do all work necessary in all trades to suit altered conditions and make proper connections between old and new work.
- j) The Supplier warrants that it has good, legal and marketable title to any Equipment developed, produced or supplied in connection with the Works.

Existing clause 11(c) is renumbered as clause 11(k) and the words "or plan" is inserted after the words "system".

19. Clause 12 is deleted and replaced with:

- a) To the extent allowable by Law, and subject to clause 12(b), the Supplier indemnifies the Purchaser and its Personnel against all Liabilities to the extent caused by:
  - (i) any breach by the Supplier or its Personnel of any of the Supplier's obligations (including any warranty) under the Contract;
  - (ii) any negligent, wilful or unlawful act or omission by the Supplier or its Personnel;
  - (iii) any illness, injury or death of any person including either Parties' Personnel, or any loss or destruction of or damage to any property which is caused or contributed to by the Supplier or its Personnel, in connection with the Supplier's performance or non-performance or breach of the Contract, or any other act or omission of the Supplier or its Personnel;
  - (iv) any Environmental Event which is caused or contributed to by the Supplier or its Personnel, in connection with the Supplier's performance or non-performance or breach of the Contract, or any other act or omission of the Supplier or its Personnel;
  - (v) any claim made against the Purchaser, the Principal or any member of the Rio Tinto Group by any of the Supplier's Personnel in respect of relevant Law concerning income tax, payroll tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal; and
  - (vi) any penalty imposed arising from or due to any breach by the Supplier or its Personnel of any applicable Legislative Requirements.



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- b) The Supplier will not be liable under clause 12(a) to the extent that the Liability was caused by the Purchaser's or its Personnel's negligence or wilful default.
- c) Subject to clause 12(d), every exemption, limitation, defence, immunity, indemnity or other benefit contained in the Contract or otherwise to which the Purchaser, the Purchaser's Personnel, the Principal or a member of the Rio Tinto Group ("**Indemnified Parties**"), is entitled will be held by the Purchaser for the benefit of, and will extend to protect, the Principal and each member of the Rio Tinto Group and each of the Purchaser, the Principal's and each Rio Tinto Group member's Personnel.
- d) Notwithstanding clause 12(c) above, any indemnity given by the Supplier to any of the Indemnified Parties, or held by the Purchaser for the benefit of any of the Indemnified Parties will be subject to the limitation of liability under clause 29.1. The limitation of liability in clause 29.1 limits the total cumulative liability to the Indemnified Parties for any breach of this Contract and any indemnity contained herein.
- e) For the avoidance of doubt, where an act or omission of the Supplier results in a breach of contract, and that act or omission also gives rise to a claim in tort or equity against the Supplier by the Purchaser's Personnel, the limitation of liability under clause 29.1 will not apply to that claim.
- f) The Supplier must not bring any claim arising out of or connected with the Contract or its subject matter against any of the Purchaser's Personnel apart from the Purchaser.

20. Clause 13.1 is amended by inserting new paragraph (a) as follows:

- (a) The Supplier must effect and maintain the Supplier's Insurance Policies throughout the Term, and any additional period as the Purchaser deems necessary in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract and if required by the Purchaser, in the joint names of the Parties.

Renumber existing clause 13.1(a) and 13.1(b) to 13.1(b) and 13.1(c).

21. Clause 13.1(c) is amended by deleting the second sentence.

22. Clause 13.4(a) is deleted and replaced with:

- (a) Before the Commencement Date and each time the policies are renewed or varied, or whenever requested in writing by the Purchaser, the Supplier must provide the Purchaser with an insurance certificate of currency or such other evidence as the Purchaser may require that the Supplier and its Subcontractors are insured in accordance with the Contract.

23. Clause 13.4(c) is amended by inserting at the end:

Alternatively the Purchaser may, in its sole discretion:

- (i) refuse the Supplier and its Personnel access to all or any part of the Site; and/or
- (ii) treat the failure to insure as a default under the Contract.



24. Clause 13.6 is amended by replacing "subclause 13.1 or 13.2" with "this clause 13" and inserting the words "must provide all assistance and cooperation" after the words "concerning the claim".

25. Clause 13.7 is deleted and replaced with:

The Supplier's Insurance Policies must, unless prohibited by Law, be endorsed to:

- a) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each party;
- b) waive all express or implied rights of subrogation against the Purchaser and its Personnel; and
- c) include a clause that provides that a breach of condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy,

save that paragraphs (a) to (b) will not apply in respect of any policy for professional indemnity insurance, compulsory third party insurance in respect of injury from use of motor vehicles or workers' compensation/employer's liability.

26. Clauses 13.8 and 13.9 are added as follows:

13.8 Purchaser's insurances

- a) The Purchaser must effect and maintain during the Term the Purchaser's Insurance Policies.
- b) The Purchaser's Insurance Policies will be subject to such terms, conditions, exclusions, deductibles and sub-limits as are agreed by the Purchaser (or its agents) with the insurer(s).
- c) If any of the Purchaser's Insurance Policies are subject to the application of any deductible or excess, where the Supplier is responsible for the loss, the Supplier will pay the deductible or excess up to \$250,000.

13.9 Further Requirements

- a) The Supplier's Insurance Policies must, unless prohibited by law, be endorsed to insure the Purchaser and its Personnel for their respective rights and interests in relation to the Works.
- b) If the Supplier's Insurance Policies 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 Purchaser and, in the event of a loss, is payable by the Supplier. The Purchaser reserves the right to require the Supplier to reduce the amount of any self-insured retention, excess or deductible where such amount is considered by the Purchaser to be unreasonable in the circumstances of the Contract.
- c) The Supplier's Insurance Policies must be taken out with a reputable insurer with a security rating from A.M. Best of not less than "A" and on terms and conditions consistent with prudent risk management practice.
- d) No provision contained in clause 13 will limit the Supplier's liability including its liability to indemnify the Purchaser or any other person in accordance with the Contract.



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- e) The Supplier must ensure that the Supplier's Insurance Policies are not varied to the detriment of the Purchaser, cancelled or allowed to lapse.
- f) The Supplier will ensure that its Subcontractors have the benefit of or effect and maintain insurances equivalent to the insurances required to be effected by the Supplier under the Contract in respect of the scope of the Subcontract including where applicable that such insurances insure the Purchaser and its Personnel for their respective rights and interests.

27. Clause 15 is amended by deleting the paragraph (e) and replacing with:

(e) The Supplier shall, within 20 Working Days of the Contract Date submit to the Purchaser Representative for approval a detailed Delivery Program which must conform with Schedule S (to the extent applicable) and must include:

- (i) the form of a bar chart featuring all activities as specified in Appendix 3 to the Technical Contract Specification and delivery dates thereof in order to achieve Date for Delivery;
- (ii) an estimate of the percentage of the Works which will be completed at the end of each week during the Contract, showing separately work to be performed at the Supplier's premises, Subcontractor's premises, and any other geographical location where the Works shall be performed, and the interrelationship between locations;
- (iii) estimated monthly payments;
- (iv) estimated weekly manpower that will be engaged;
- (v) full details of the Supplier's engineering and drawing program (taking into account the requirements of the Contract);
- (vi) full details of the Supplier's procurement program;
- (vii) for all Works, weekly man hours scheduled to be worked for each activity and weekly total labour scheduled for each trade or labour category;
- (viii) periods of use of items of major Plant and Machinery; and
- (ix) any other details reasonably required by the Purchaser Representative.

Without limiting clause 15(h), if the Supplier fails to meet any Program date or fails to achieve the rate of progress required to achieve the Date for Delivery, the Purchaser may direct the Supplier to give the Purchaser a revised Delivery Program within the time and in the form directed demonstrating how the Supplier will achieve the Date for Delivery. The Supplier shall submit progress reports on the last day of each month incorporating any revised Approved Delivery Program and shall attend progress meetings if and when required by the Purchaser.

28. Clause 15 is amended by deleting paragraph (g) and replacing with:

The Supplier is not entitled to claim or recover any additional cost, loss or expense incurred by reason of compliance with any such Directions under this clause 15.

29. Clause 15 is amended by inserting new paragraphs (h) to (t) as follows:



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- h) The Purchaser Representative may, from time to time, direct the Supplier to supply to the Purchaser Representative a revised Delivery Program and the Supplier must do so within 10 Working Days.
- i) The Supplier may from time to time submit revised Delivery Programs for approval by the Purchaser Representative with the purpose of reorganisation of the performance of the Works so as to enable the Supplier to achieve the Delivery by the Date for Delivery in the shortest practicable time.
- j) The Supplier must, upon being notified by the Purchaser Representative to do so, continue to submit amendments to a Delivery Program or revised Delivery Program until it is approved by the Purchaser Representative. The Supplier must in any event ensure that such Delivery Program is in a form acceptable to the Purchaser Representative by not later than 20 Working Days after the Contract Date or the date the Purchaser Representative first directs the Supplier to supply the revised Delivery Program, as the case may be.
- k) Once the Delivery Program or any revision of the Delivery Program is approved by the Purchaser Representative it will become and thereafter be referred to as the approved Delivery Program ("**Approved Delivery Program**") and will supersede all Delivery Programs which were submitted previously. The Delivery Program in Schedule S (to the extent applicable) will be the Approved Delivery Program until another version is approved under this clause 15.
- l) The Supplier must perform the Works in accordance with the Approved Delivery Program and the Supplier's presentation of progress and performance measurement will be based on the Approved Delivery Program. The Supplier acknowledges that the Purchaser Representative and the Purchaser will rely upon the Approved Delivery Program in coordinating work at the Site to be performed by third parties.
- m) The Purchaser Representative may, from time to time, direct a deviation from an Approved Delivery Program. Any such deviation will not give rise to a Variation pursuant to clause 23.
- n) The acceptance or approval by the Purchaser Representative of a Delivery Program will not relieve the Supplier of its obligation to achieve Delivery of each Separable Portion of the Works and the whole of the Works on or prior to the relevant Date for Delivery and will not give rise to a Variation pursuant to clause 23.
- o) Notwithstanding any other provision of the Contract, the Purchaser is not obliged to pay any amount to the Supplier unless the Supplier has complied with this clause 15.
- p) Without limiting the Supplier's obligations within Schedule S (to the extent applicable) or elsewhere within the Contract, the Supplier must update the Approved Delivery Program at least:
  - (i) weekly once the Works commence.At its absolute discretion, the Purchaser Representative may request additional complete or partial updates to the Approved Delivery Program at no increase to the Contract Sum.
- q) The updates shall include, but not necessarily be limited to, the following information:
  - (i) the actual start and finish dates of activities;
  - (ii) remaining duration to complete activities in progress;



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- (iii) physical progress of each activity and the Works, expressed as a percentage complete;
  - (iv) a narrative report explaining any deviations from the Approved Delivery Program and highlighting any anticipated problems;
  - (v) number of people for each craft and weekly number of hours worked on each contract item; and
  - (vi) Plant and Machinery work hours.
- r) If the breakdown of the Delivery Program and the updates to the Approved Delivery Program are not submitted as required by this clause 15, the Purchaser may in its absolute discretion itself perform the necessary work to prepare an Approved Delivery Program (in a form acceptable to the Purchaser) or engage others to do so, in all cases at the Supplier's expense, which expense will be a debt due to the Purchaser.
- s) If requested by the Purchaser Representative, on the Completion of the Works (or at such times as may be specified by the Purchaser Representative) the Supplier must provide the Purchaser Representative with a statement certified by it showing the breakup of the cost of the Works (in a form as specified by the Purchaser Representative).
- t) The Supplier must provide the Delivery Program and the Approved Delivery Program, including any updated versions, in pdf, native electronic file format and any other format required by the Purchaser Representative.

30. Clause 15A is added as follows:

**15A Acceleration**

- a) No Direction by the Purchaser Representative shall constitute or be regarded as a Direction to accelerate the performance of the Works unless it is in writing and expressly states that it is a Direction under this clause 15A.
- b) The Purchaser Representative may direct the Supplier to accelerate the performance of the Works which may require the Supplier to:
- (i) work overtime including night shifts, Saturdays, Sundays and holidays;
  - (ii) furnish additional labour, supervision and Plant and Machinery; and/or
  - (iii) expedite the procurement or the manufacture of the Equipment and any materials, supplies, spare parts and other things intended to form or forming part of the Works.
- c) If a Direction to accelerate under this clause 15A is considered necessary by the Purchaser Representative:
- (i) to overcome delay by the Supplier; or
  - (ii) to bring the timing for the performance of the Works back to the Approved Program following delay for which the Supplier or its Personnel is responsible,
- the Direction will be deemed not to be a Variation and the Supplier will be responsible for the costs of undertaking the Direction, unless an act or omission of the Purchaser has caused the performance of the Works to not meet the Approved Delivery Program.



31. Clauses 16.1 to 16.4 are deleted and replaced with:

16.1 Purchaser's suspension

- a) The Supplier must suspend the Delivery of the Equipment (in whole or in part) or the performance of the Works (in whole or in part) on receipt of written notice from the Purchaser Representative to do so. The Supplier must do all things possible to reduce any expense or cost consequent upon the suspension. The suspension will not vitiate the Contract.

16.2 Recommencement

- a) The Supplier must promptly recommence Delivery of the Equipment or performance of the relevant part of the Works on receiving notice from the Purchaser Representative to do so.
- b) During a suspension for any reason the Purchaser may direct the Supplier to remain wholly or partially on standby and the Supplier must comply.

16.3 Cost

If the Supplier suspends the Delivery of the Equipment (in whole or in part):

- a) in accordance with clause 16.1(a) and the Direction was not directly or indirectly a result of an act or omission of the Supplier or any of its Personnel or a Force Majeure Event; or
- b) in accordance with clause 25.7(a),

the Supplier shall be entitled to be paid any additional Direct Costs (assessed using stand-by rates included in the Contract for Personnel and Plant and Machinery, where applicable) caused by the suspension, to be assessed by the Purchaser Representative and added to the Contract Sum.

Clauses 17.1 to 17.4 (inclusive) are deleted and replaced with:

17.1 Avoid Delay

- a) The Supplier shall at all times take all reasonable steps to ensure that the achievement of Completion of the Works is not delayed. In particular, without prejudice to the preceding sentence, the Supplier shall, in the event that any delay to supply or Delivery occurs or is foreseen:
  - (i) promptly notify the Purchaser Representative of the fact;
  - (ii) make such arrangements to the Delivery Time Schedule as approved by the Purchaser and will minimise the delay to the maximum practicable extent;
  - (iii) take all such other steps as are reasonably practicable to minimise the delay to the maximum practicable extent; and
  - (iv) take all such action as is reasonably practicable to minimise the expenses incurred as a result of the delay, including making available any labour and equipment to the Purchaser Representative on hourly rates if such labour and equipment would otherwise be idle and can be utilised by the Purchaser.

17.2 Notice of Delay

- a) Where the Supplier is or is likely to be delayed in achieving Delivery by the Date for Delivery by any cause whatsoever, it must give the Purchaser Representative written notice within 3 Working Days of



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when the cause of the delay or potential delay commenced, noting that it is a notice under this clause 17.2 and setting out:

- (i) details of the delay or potential delay including its cause;
  - (ii) how the delay or potential delay will affect the progress of, or Completion of, the Works;
  - (iii) the measures which are available to overcome the delay or potential delay; and
  - (iv) the measures which are in fact being taken to overcome the delay or potential delay.
- b) Where the cause of the delay is continuing in nature, or its duration cannot be ascertained at the time of the submission of the notice referred to in clause 17.2(a), the Supplier must provide a written report to the Purchaser Representative in relation to the delay on a weekly basis.

**17.3 Extension of Time Claim**

- a) Within 7 Working Days of when a Qualifying Cause of Delay commences, the Supplier must, if it wishes to claim an extension of time in respect of the Qualifying Cause of Delay, provide a written claim to the Purchaser Representative, noting that it is a claim under this clause 17.3 and including:
- (i) the number of days extension of time to the Date for Delivery being claimed (which cannot exceed the number of days estimated by the Supplier pursuant to clause 23.2(b)(iv));
  - (ii) details of the extent and the cause of the delay and all other facts on which the claim is based;
  - (iii) a revised Delivery Program properly demonstrating how the Qualifying Cause of Delay has or will cause a delay to the Date for Delivery; and
  - (iv) such further evidence as the Purchaser Representative reasonably requires.
- b) Where the effect or the cause of the Qualifying Cause of Delay is continuing in nature, or its duration cannot be reasonably ascertained at the time of the submission of the claim referred to in clause 17.3(a), the Supplier must (in addition to complying with clause 17.3(a) above):
- (i) provide a written report to the Purchaser Representative in relation to the Qualifying Cause of Delay on a weekly basis until such time that the effect or the cause of the Qualifying Cause of Delay can be reasonably ascertained; and
  - (ii) within 7 Working Days of when the effect or the cause of the Qualifying Cause of Delay can be reasonably ascertained submit a further written claim to the Purchaser Representative, noting that it is a claim under this clause and including those matters referred to in clause 17.3(a)(i) to 17.3(a)(iv).
- c) The Supplier is only entitled to an extension of time to a Date for Delivery (under the Contract or otherwise at common law or equity) where:
- (i) the Supplier has provided all required notices under clause 17.2 and a proper written claim under clause 17.3(a); and
  - (ii) the Supplier satisfies the Purchaser Representative (acting reasonably) that:
    - (A) the cause of the delay is a Qualifying Cause of Delay;





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- (B) if the Qualifying Cause of Delay occurs:
1. on or before the Date for Delivery, the progress of the Works is or has been delayed by the Qualifying Cause of Delay and the Supplier is or will be delayed in achieving the Date for Delivery; or
  2. after the Date for Delivery: the progress of the Works is or has been delayed by the Qualifying Cause of Delay and the Supplier is or will be delayed in achieving Delivery by the Date for Delivery;
- (iii) the Supplier has satisfied its obligations under clause 17.1; and
- (iv) the delay is not caused by the failure of the Supplier to fulfil its obligations under the Contract or any act or omission of the Supplier or its Personnel.
- d) In the event that there is, or will be, a delay to the achievement of Date for Delivery and the Supplier fails to submit the notices required pursuant to clause 17.2 and a proper written claim under clause 17.3(a) within the times required then:
- (i) the Supplier has no entitlement to make a claim for an extension of time as a result of the delay;
  - (ii) the Supplier must achieve Date for Delivery regardless of the delay;
  - (iii) the Supplier has no claim against the Purchaser or its Personnel for any delay to the achievement of Date of Delivery, including any entitlement to delay compensation under clause 17.4; and
  - (iv) the Supplier is not relieved of any Liability to the Purchaser for any failure to satisfy its obligations to meet the Date for Delivery by reason of the delay, including any liability to pay liquidated damages.
- e) If more than one event causes concurrent or overlapping delays and the cause of at least one of those events, but not all of them, is not a Qualifying Cause of Delay then, to the extent of the concurrency or overlap, the Supplier will not be entitled to an extension to the Date for Delivery.
- f) Subject to the Supplier having an entitlement to claim an extension of time to the Date for Delivery pursuant to this clause 17.3, within 25 Working Days of the later of:
- (i) receipt of a proper written claim made under clause 17.3(a);
  - (ii) to the extent a specific number of days could not be determined when the written claim made under clause 17.3(a) was required, receipt of a further written notice from the Supplier with the number of days extension of time claimed; and
  - (iii) the date on which the full extent of the delay the Supplier has or will suffer as a result of the Qualifying Cause of Delay can be reasonably ascertained by the Purchaser Representative;
- Purchaser Representative must:
- (iv) grant a reasonable extension of time to the Date for Delivery, taking account of the provisions of this clause 17.3; and
  - (v) to the extent that the Purchaser Representative does not grant the full extension of time claimed, provide reasons.



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- g) In determining a reasonable extension of time caused by a Qualifying Cause of Delay, the Purchaser Representative must have regard to whether the Supplier has taken all reasonable steps to preclude or eliminate the occurrence of the cause and minimise the consequences of the delay (which may include reasonable alterations to the Delivery Program or the Supplier's operations).
- h) Notwithstanding that the Supplier has not claimed an extension of time to the Date for Delivery, the Purchaser Representative may at any time before the issue of the Certificate of Final Completion by notice in writing to the Supplier, extend the Date for Delivery or any Separable Portion for any reason. The Purchaser Representative is not required to exercise its discretion under this clause 17.3(h) for the benefit of the Supplier.

**17.4 Delay Compensation**

The Supplier's sole remedies in respect of any delay arising from a Qualifying Cause of Delay are:

- a) an extension of time under clause 17.3(f), subject to the Supplier's compliance with clause 17;
- b) if and only if an extension of time to the Date for Delivery is granted under clause 17.3(f) and the relevant Qualifying Cause of Delay is a Compensable Cause, the Supplier's reasonable additional On-Site Overheads (if any) actually incurred as a direct result of the extension of time granted to the Date for Delivery, with such amount to be claimed under this clause 17.4.
- c) Without limiting the foregoing, the Supplier acknowledges that it is not entitled to any damages, costs or expenses arising from a Qualifying Cause of Delay other than in the circumstances described in clause 17.4(b).

32. Clause 17.6 is deleted and replaced with:

**17.6 Force Majeure Event**

- a) An Affected Party will not be liable for any delay or failure to perform any of its obligations under the Contract to the extent that it is prevented from carrying out obligations by a Force Majeure Event provided it gives written notice of such Force Majeure Event to the other Party as soon as possible after (and, in any event, no later than 3 Working Days after) the beginning of the Force Majeure Event and complies with clause 17.6(b).
- b) Within 7 Working Days after giving the notice referred to in clause 17.6(a), the Affected Party must give a further notice that must:
  - (i) specify the obligations the Affected Party cannot perform;
  - (ii) fully describe the Force Majeure Event;
  - (iii) estimate the time during which the Force Majeure Event will continue; and
  - (iv) specify the measures proposed to be adopted to mitigate, remedy or abate the Force Majeure Event.



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- c) The Affected Party must:
- (i) remedy or abate the Force Majeure Event to the extent reasonably practicable;
  - (ii) resume performance of its affected obligations as soon as reasonably possible; and
  - (iii) take all action reasonably practicable to mitigate any Liabilities that may be suffered by the other Party as a result of its inability to carry out its obligations under the Contract.
- d) If:
- (i) an Affected Party cannot, because of a Force Majeure Event notified by it under this clause 17.6, perform its affected obligations under the Contract for a period of 6 consecutive months despite its reasonable endeavours to do so; and
  - (ii) the Parties have consulted with each other during the period, but are unable to agree as to what reasonable steps should be taken,
- then, at the expiration of the 6 month period, either Party may terminate the Contract on giving written notice to the other Party.

33. Clauses 18.2 to 18.6 are deleted and replaced with the following:

18.2 General

- a) The Supplier must conduct tests of the Works and any part thereof in accordance with the Contract and applicable Standards or where there are no Standards, in accordance with generally accepted practices.
- b) Unless otherwise provided in the Contract, the Party obliged to conduct a test or requiring a test to be conducted must give the other Party reasonable notice of not less than 12 Working Days of the date on which the test will be conducted.
- c) If any tests are to be carried out at premises not at the Site, the Supplier must at the Purchaser's request provide the Purchaser and its Personnel with suitable access and a safe working environment to allow them to observe those tests.
- d) The Supplier must prepare and submit to the Purchaser Representative test results and (where required by the Purchaser Representative) test samples forthwith upon completion of any test.
- e) The Supplier must maintain the register of manufacture, Inspection and Test Plans, destructive and nondestructive testing and inspection activities as required under the Contract and notify the Purchaser of any changes to the information therein as soon as practicable.

18.3 Cost of Testing

- a) If the Purchaser Representative directs the Supplier to conduct any tests that are additional to those required by clause 18.2(a), the additional Direct Costs of the testing will be borne by the Purchaser.
- b) Any Party may require a test to be repeated. Subject to clause 18.3(c), the cost of the repeat test will be borne by:



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- (i) the Party that conducted the previous test if the result of a repeat test is different from the previous test; or
  - (ii) the Party that required the repeat test if the result of the repeat test is the same as the previous test.
- c) The Supplier will be responsible for the cost of any additional testing that:
  - (i) is necessary because a test has been failed or any part of the Works has been replaced or rectified where the replacement or rectification was performed because of a Defect in the Works; or
  - (ii) shows the Works are defective or not otherwise in accordance with the Contract.
- d) Notwithstanding clause 18.3(a), if the Purchaser Representative gives to the Supplier reasonable notice that it desires to inspect any part of the Works before it is erected or assembled, and the Supplier nevertheless erects or assembles that part of the Works without first having given to the Purchaser Representative a reasonable opportunity of making an inspection, any expense incurred as a result of dismantling or opening up and reassembling the Works to allow the Purchaser Representative to subsequently conduct such an inspection shall be borne by the Supplier.

**18.4 Delay**

- a) If a Party unduly delays conducting a test which it is obliged to conduct then the other Party may by notice to the delaying Party require the test to be commenced within 3 Working Days of the giving of the notice. If within that period of 3 Working Days the delaying Party has not conducted the test and the Purchaser Representative has not issued a notice under clause 18.4(b), the other Party may proceed to conduct the test at the delaying Party's risk and expense.
- b) The Purchaser Representative may:
  - (i) notify the Supplier that a test is deemed to have been conducted and resulted satisfactorily; or
  - (ii) notify the Parties that a test to be conducted by the Purchaser or the Purchaser Representative will be delayed until it is practical to conduct the test.
- c) If a test is delayed by the Purchaser, this will constitute a Qualifying Cause of Delay.

Clause 18.7 is renumbered as clause 18.5.

34. Clause 20.1(a) is amended by inserting the words "and any Works, regardless of ownership," after the words "in the Equipment" and adding new paragraph (c) as follows:

- c) Risk includes responsibility for any loss and the reinstatement thereof.

35. Clause 21.1 is amended by deleting the last paragraph.

36. Clause 21.1 is amended by inserting new paragraph (b):



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- b) The Purchaser Representative may, if it is of the opinion that the Equipment is Acceptable, issue a Certificate of Acceptance for the relevant Separable Portion or the whole of the Works (as applicable), even though no request for one has been made by the Supplier, however, the Purchaser Representative is not obligated to do so and need not exercise its discretion in favour of the Supplier.

37. Clauses 21.2 to 21.8 inclusive are deleted and replaced by:

- 21.2 The Equipment when delivered by the Supplier must be complete and ready for immediate erection by the erection contractor on Site.
- 21.3 Upon taking Delivery of the Equipment, the Purchaser may, if not satisfied that it or any part is substantially in accordance with the requirements of the Contract, issue to the Supplier an Advice of Non-Acceptance of the Equipment or any part. The notice must set out the reasons for the non-compliance.
- 21.4 If ownership of the Equipment has not already passed to the Purchaser, it will pass to the Purchaser on the date the Certificate of Acceptance is issued.
- 21.5 If the Purchaser issues an Advice of Non-Acceptance of the Equipment or any part, the Supplier must within 3 days submit a proposal as to the replacement and/or correction of the Equipment or part including the time frame for doing so. The Purchaser may, at its option, accept or reject the proposal.
- 21.6 The Supplier shall promptly:
  - a) comply with any proposal accepted by the Purchaser under subclause 21.5; and
  - b) give written notice to the Purchaser upon the Supplier's compliance with that proposal whereupon subclause 21.1 shall apply.
- 21.7 Upon taking delivery of any such replacement or corrected Equipment, the provisions for Acceptance and Non-Acceptance apply as set out above.
- 21.8 Completion
  - a) When the Supplier considers that a Separable Portion or the whole of the Works (as applicable) has achieved Completion, the Supplier must notify the Purchaser Representative in writing.
  - b) Following notification by the Supplier pursuant to clause 21.8(a), the Purchaser Representative will inspect the relevant Separable Portion or the whole of the Works and conduct any testing the Contract or the Purchaser Representative requires and will notify the Supplier of any matters requiring alteration or completion in order to comply with the Contract.
  - c) When the Purchaser Representative is satisfied that the relevant Separable Portion or the whole of the Works (as applicable) has achieved Completion, the Purchaser Representative will issue a Certificate of Completion to the Supplier stating:



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- (i) the date on which the Separable Portion or the whole of the Works (as applicable) achieved Completion; and
    - (ii) any matters, omissions or Defects in the Separable Portion or the whole of the Works (as applicable) that the Supplier must make good and the date by which the Supplier must do so (but if no date is specified, the Supplier must make good any such matters, omissions or Defects as soon as is practicable).
  - d) The Purchaser Representative may, if it is of the opinion that a Separable Portion of the Works or the whole of the Works (as applicable) has achieved Completion, issue a Certificate of Completion for the relevant Separable Portion or the whole of the Works (as applicable) under clause 21.8(c) even though no request for one has been made by the Supplier, however, the Purchaser Representative is not obligated to do so and need not exercise its discretion in favour of the Supplier.
- 21.9 When satisfied that the whole of the Works has been performed in accordance with the Contract, the Purchaser Representative will issue a Certificate of Final Completion to the Supplier stating the date on which the last of the Defects Liability Periods expired.
- 21.10 No certificate issued under the Contract will be evidence that the Works, including any design performed or any materials or Equipment, provided are in accordance with the Contract or of the accuracy of any claim made by the Supplier, nor will any such certificate negate or limit any of the rights, powers and remedies of the Purchaser or the Purchaser Representative or prejudice any claim by the Purchaser.
38. Clause 22 is amended by deleting paragraph (b) to (e) and replacing with:
- b) The Supplier must, at its own expense, make good or replace (as the case may be) in a proper and acceptable condition as quickly as possible (and causing as little inconvenience to the users of the Equipment as is reasonably possible) the Equipment that are defective before or during the Defects Liability Period and will be responsible for any loss suffered (including delay costs) or damage to the Equipment or other parts of the Works or the property of the Purchaser or its Personnel which may be caused directly or indirectly by the Defect or by the making good or replacement thereof.
  - c) The Supplier must, at its own expense, provide all technical support necessary to make good or replace any part of the Equipment that are defective before or during the Defects Liability Period including but not limited to the provision of engineers, supervisors and any other Supplier Personnel located on-Site for the duration of any period of Defect rectification to ensure the prompt rectification of all Defects.
  - d) The Supplier must notify the Purchaser Representative before the Supplier commences any remedial work prior to Completion or during the Defects Liability Period and the Supplier must ensure that such work does not interfere with or disrupt the normal activities of the occupants of the Works without the prior written permission of the Purchaser Representative.
  - e) The Purchaser Representative may give the Supplier notice:



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- (i) during the Defects Liability Period, requiring the Supplier to make good any defects or omissions in the Works; or
  - (ii) at any time prior to Completion, requiring the Supplier to make good any Defects in the Works.
- f) The Purchaser may make good a Defect at the risk and expense of the Supplier but without limiting any other rights which the Purchaser may have against the Supplier in respect of the Defect if:
  - (i) a Defect is not remedied by the Supplier within 10 days after the Purchaser Representative has provided notice under clause 22(e);
  - (ii) the Purchaser considers in its absolute discretion that rectification is urgently necessary in order to ensure continuity, timely commencement or resumption of its operations; or
  - (iii) the Purchaser Representative determines urgent rectification is necessary:
    - (A) to prevent loss or damage to the Works or to any property;
    - (B) to prevent disruption of the whole or any part of the operations of the Purchaser or its Personnel; or
    - (C) to prevent a risk to HSEC.
- g) In the event the Purchaser exercises its discretion to make good any Defects under clause 22(f):
  - (i) the costs incurred by the Purchaser to correct, replace or repair parts of the Equipment or any part thereof including an additional administration cost of 10% will be a debt due and payable by the Supplier to the Purchaser and may be deducted from the Contract Sum. The costs incurred will be assessed by the Purchaser at its sole discretion and the amount assessed and the 10% administration cost will be payable by the Supplier;
  - (ii) any further loss or damage suffered by the Purchaser by reason of the Equipment or any part thereof being defective, including delay costs, will be assessed by the Purchaser in its sole discretion. The loss or damage so assessed will be a debt due and payable by the Supplier to the Purchaser and may be deducted from the Contract Sum; and
  - (iii) the Supplier must send a representative to site to view defects, the correction, replacement or repair if directed to do so by the Supplier. Should the Supplier fail to do so, it may not contest the Supplier's assessment as to whether the Equipment or any part is defective.
- h) The Purchaser has no obligation to allow the Supplier to carry out rectification of any Defects under this clause 22.
- i) The Supplier must ensure that all Subcontracts contain a provision on the same terms as this clause 22.
- j) The Supplier's liability to the Purchaser under this clause 22 shall be in addition to and without prejudice to any cause of action, conditions or warranty in the Purchaser's favour expressed or implied by statute or implied or available at common law or otherwise. For the purpose of this clause 22 the Supplier contracts on its own behalf and on behalf of and as trustee for its Subcontractors.



39. Clause 23.1 is amended by deleting paragraph (c) and replacing with the following paragraphs:

- c) The Purchaser Representative may direct a Variation to the Works and the Supplier must comply with that Direction.
- d) The Supplier must not alter the Works or deviate from the requirements of the Contract except as directed in writing by the Purchaser Representative.
- e) If the Purchaser Representative directs a Variation to omit any part or parts of the Works, those omitted Works may be carried out by another Supplier or the Purchaser. The Purchaser Representative shall value such a Variation under clause 23.4.
- f) The difference in cost, if any, occasioned by Variations directed or approved in writing by the Purchaser Representative shall be added to or deducted from the Contract Sum as the case may require in accordance with clauses 23.2 and 23.4.
- g) Except where otherwise provided in the Contract the Purchaser Representative shall not direct a Variation after Completion. A Direction to carry out a Variation after Completion shall not set time at large.
- h) No Variation will invalidate the Contract.
- i) The Purchaser Representative may at any time, request the Supplier to advise the Purchaser Representative of the estimated cost of performing a proposed Variation and the impact that performing the proposed Variation may have on the Date for Delivery. The Supplier must promptly respond to the Purchaser Representative's request.

40. Clause 23.2 is deleted and replaced with the following paragraphs:

- a) As soon as possible, but in any event not later than 3 Working Days after the date on which the Purchaser Representative directs the Supplier to perform a Variation or the Purchaser Representative gives a Direction to the Supplier that is not expressly identified as a Variation, but which the Supplier considers to be a Variation, the Supplier must submit to the Purchaser Representative a statement advising:
  - (i) details of the relevant Direction;
  - (ii) the Supplier's estimated price of performing the Variation; and
  - (iii) the Supplier's estimated impact that the Variation may have on any applicable Date for Delivery supported by detailed evidence.
- b) Within 7 Working Days after the date on which:
  - (i) the Purchaser Representative directs the Supplier to perform a Variation; or
  - (ii) the Purchaser Representative gives a Direction to the Supplier that is not expressly identified as a Variation, but which the Supplier considers to be a Variation,the Supplier must submit to the Purchaser Representative:
  - (iii) a fully detailed quotation supported by measurements and other evidence of cost for performing the Variation; and
  - (iv) the Supplier's estimated impact that the Variation will have on the Date for Delivery supported by detailed evidence.
- c) The Supplier's strict compliance with the requirements of clauses 23.2(a) and 23.2(b) by the relevant time limits specified in those clauses shall be a





precondition to the entitlement for the Supplier to claim an adjustment to the Contract Sum.

- d) If the Purchaser Representative approves the Supplier's statement submitted under clause 23.2(b), the Purchaser Representative will prepare a Variation Notice. The Variation Notice shall accord with the Supplier's statement as approved by the Purchaser Representative and will be binding on the Parties.
- e) If the Purchaser Representative does not approve the Supplier's statement submitted under clause 23.2(b) and the Purchaser Representative and the Supplier are unable to agree upon the price of the Variation within 7 Working Days then the price of the Variation will be valued under clause 23.4.

41. Clause 23.3 is amended by deleting the last sentence and replacing with:

Unless the Purchaser Representative otherwise directs in the notice approving the Variation, the Supplier shall not be entitled to an extension of time to the Date for Delivery or extra payment, in respect of the Variation or anything arising out of the Variation which would not have arisen had the Variation not been approved.

The Purchaser Representative shall not be obliged to approve a Variation for the convenience of the Supplier.

42. Clause 23.4 is amended by deleting paragraph (iv) and replacing with the following:

(iv) reasonable rates or prices in respect of the work valued on the basis that the work is (or has been) performed using Best Industry Practice

43. Clause 23.4 is amended by deleting the words "but not overheads" and replacing with "and Off-Site Overheads but not On-Site Overheads (unless the Variation results in a reduction to the On-Site Overheads).

44. Clause 23.4 is amended by adding new paragraph 23.4(c)

(c) The amount determined by the Purchaser Representative shall be provided to the Supplier by way of a Variation Notice.

45. Clause 23 is amended by adding new subclause 23.5 as follows:

The Supplier acknowledges and agrees that the Purchaser may, in its sole discretion carry out or engage other contractors to carry out the work or part of the work omitted pursuant to subclause 23.1 and the Supplier further acknowledges and agrees it shall make no claim whatsoever in equity or in law against the Purchaser arising from such omission.

46. Clause 23 is amended by adding new subclauses 23.6 and 23.7 as follows:

23.6 If the Supplier has or may have had an entitlement to claim delay costs pursuant to clause 17.4 then it must claim those costs in accordance with and pursuant to clause 17 and it is not entitled to claim such delay costs pursuant to this clause 23.



23.6 For the avoidance of any doubt, the Supplier must proceed to perform a Variation notwithstanding that the effect of the Variation is yet to be agreed or determined in accordance with clause 23.2.

47. Clause 24.1 is deleted and the following subclauses added:

#### 24.1 Progress Claim

The Supplier shall claim payment in accordance with Item 32 hereinafter referred to as a "progress claim".

An early progress claim shall be deemed to have been made on the date for making that claim.

Each progress claim shall be given in writing to the Purchaser and shall include details of the Equipment supplied and delivered and may include details of other moneys then due to the Supplier pursuant to provisions of the Contract.

All progress claims must be delivered in duplicate, namely a paper copy and electronic version addressed to the Purchaser (or such other person as may be nominated in writing by the Purchaser) and delivered to the Purchaser's address specified in item 2 (and if no address is specified to the Purchaser's principal place of business in Western Australia).

The Supplier acknowledges and agrees that notwithstanding any term of the Contract to the contrary:

- a) Any claim for payment that does not strictly comply with the requirements of this subclause 24.1, 24.2 and 24.3 shall not be a valid progress claim made pursuant to the Contract;
- b) The Purchaser shall not be required to issue any progress certificate pursuant to subclause 24.4 in respect to such claim, and
- c) The Purchaser shall have no obligation to pay any sum claimed by the Supplier in any such claim unless and until this subclause 24.1 is strictly complied with.

#### 24.2 Supplier Warranties

In making a progress claim (whether under the Contract or under the Security of Payment Act, if applicable), the Supplier warrants to the Purchaser that:

- (a) it has completed that part of the Works that is described in the progress claim;
- (b) there are no Defects in the Works described in the progress claim that are known to the Supplier and have not otherwise been reported to the Purchaser Representative;
- (c) the figures appearing in the progress claim are accurate;
- (d) it has complied with all of the obligations imposed on it by the Contract where those obligations have to be complied with at or before the time of



the making of the progress claim, including the obligation to comply with the any Anti-Corruption Laws;

- (e) it is not aware of any claim by the Supplier against the Purchaser or its Personnel that is not identified in the progress claim, an earlier progress claim or a notice previously given to the Purchaser in accordance with the Contract;
- (f) the Works are progressing in accordance with the Approved Delivery Program;
- (g) all Subcontractors and employees of the Supplier have been paid all moneys due and payable to them in respect of the part of the Works described in the progress claim;
- (h) all assessments or contributions required to be paid pursuant to any applicable Legislative Requirements in relation to health, safety or workers compensation or this Contract have been paid by the Supplier;
- (i) it is entitled to payment of the amount claimed; and
- (j) the part of the Works and the Equipment (or any part of them) described in the progress claim and all previous progress claims are free and clear of liens (other than any liens extinguished upon receipt of payment in respect of that progress claim).

#### 24.3 Statutory Declarations

- (a) Notwithstanding any other provision of the Contract, the Purchaser may require as a prerequisite to any payment or the release of any Security that the Supplier provide a statutory declaration (to be provided in the form set out in Schedule R or such other form approved or requested by the Purchaser Representative) by the Supplier Representative or other evidence satisfactory to the Purchaser that:
  - (i) all claims or demands against the Supplier which might remain or become a lien or charge against the Works have been paid or satisfied;
  - (ii) all persons for whom it is responsible have been paid all moneys payable to them, whether by the Supplier or a Subcontractor, in respect of their employment on or in relation to the Works; and
  - (iii) all Subcontractors have been paid all moneys payable to them in respect of all matters performed by them in respect of the Works.
- (b) If the Supplier owes any Subcontractor or Supplier's Personnel money in connection with the Works, and:
  - (i) that money has been outstanding under the relevant Subcontract for more than 7 Working Days and the Supplier cannot satisfy the Purchaser Representative that there is a valid reason for that outstanding money not having been paid; or
  - (ii) the Purchaser becomes obliged to make a payment to that Subcontractor or Supplier's Personnel,

the Purchaser may pay the Subcontractor or Supplier's Personnel the outstanding amount and the outstanding amount so paid will be a debt due from the Supplier to the Purchaser.



#### 24.4 Certificates

The Purchaser shall, within 14 days after receiving such a progress claim, issue to the Supplier:

- a) A progress certificate evidencing the Purchaser's opinion of the moneys due from the Purchaser to the Supplier pursuant to the progress claim and reasons for any difference ('progress certificate'); and
- b) A certificate evidencing the Purchaser's assessment of retention moneys and moneys due from the Supplier to the Purchaser pursuant to the Contract.

If the Supplier does not make a progress claim in accordance with Item 32, the Purchaser may issue the progress certificate with details of the calculations and shall issue the certificate in paragraph (b).

Within 7 days of receiving a progress certificate issued by the Purchaser pursuant to subclause 24.4, the Supplier will deliver a Tax Invoice in duplicate, namely a paper copy and electronic version for the sum certified by the Purchaser addressed to the Accounts Payable, Sandvik Mining and Construction Australia Pty Ltd (or such other person as may be nominated in writing by the Purchaser) and delivered to the Purchaser's address specified in Item 2 (and if no address is specified to the Purchaser's principal place of business in Western Australia).

Notwithstanding any term of the Contract to the contrary, the Supplier acknowledges and agrees that Purchaser shall have no obligation to pay any sum certified by the Purchaser unless and until the Supplier delivers a Tax Invoice strictly in accordance with this subclause.

Subject to the provisions of this subclause, the Purchaser shall within the period stated in Item 33 after receiving a Tax Invoice delivered strictly in accordance with this subclause and after receiving both such certificates, pay to the Supplier the balance of the progress certificate after deducting retention moneys and setting off such of the certificate in paragraph (b) as the Purchaser elects to set off. If that setting off produces a negative balance, the Supplier shall pay that balance to the Purchaser within 7 days of receiving written notice thereof.

Neither a progress certificate nor a payment of moneys shall be evidence that the subject Works has been carried out satisfactorily. Payment other than final payment shall be payment on account only.

The existing clauses 24.2 to 24.6 are renumbered as 24.5 to 24.9 inclusive.

48. Clause 25.2(b) is amended by adding as new subparagraph (D) "comply with Special Conditions 3.11 and 3.12;" and renumbering existing subparagraph (D) and (E) as (E) and (F).

49. Clause 25.10 is added as follows:

##### 25.10 Obligations on Termination

In the event of either party giving a notice of termination in accordance with clause 17.6, 25 or 26, the Supplier must:



- (a) immediately cease performance of the terminated Works subject to any Directions made by the Purchaser Representative or Purchaser;
- (b) not place any further orders nor enter into any further subcontracts;
- (c) immediately take all reasonable steps to protect property in the possession of the Supplier in which the Purchaser has or may acquire an interest;
- (d) comply in all respects with any Directions contained in the termination notice or given by the Purchaser or Purchaser Representative;
- (e) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination;
- (f) within 4 Working Days after the termination notice, provide the Purchaser with a detailed report in such form as the Purchaser may require in relation to the Works performed up to and including the date of the termination notice;
- (g) return to the Purchaser any items issued to the Supplier by the Purchaser during the Term as soon as reasonably practicable;
- (h) enable the Purchaser or its nominee to take possession of any part of the Works and all things incorporated in the Works or on the Site or purchased for incorporation in the Works;
- (i) provide the Purchaser with any Information (whether complete or incomplete) prepared by or on behalf of the Supplier;
- (j) remove its Plant and Machinery and the Temporary Works unless otherwise directed by the Purchaser Representative (the Purchaser Representative is not permitted to direct otherwise where the Supplier gives the Purchaser notice of termination under clause 25.7);
- (k) offer the Purchaser first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Contract at its depreciated value;
- (l) if directed by the Purchaser to do so:
  - (i) assign or novate in favour of the Purchaser any Subcontracts or rights under any Subcontracts entered into or obtained by the Supplier in connection with carrying out the Works; and/or
  - (ii) terminate any Subcontracts and recover from the Subcontractors any items issued to the Subcontractor or paid for by the Purchaser or the Supplier during the Term; and
- (m) take any other action relating to the termination of the Contract which the Purchaser may reasonably require.

50. Clause 28.1 is amended by adding paragraph (c) as follows:

- (c) All Disputes must be resolved in accordance with the process in this clause 28.

51. Clause 28.2 is amended by deleting "14 days" and replacing with "7 Working Days" and inserting the words "senior representatives of the" after the words "receiving a notice of Dispute, the"

52. Clause 28.2 is amended by deleting paragraph (b).

53. Clause 28.3 is deleted and replaced with the following:

Either Party may commence arbitration in respect of a Dispute if:



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- a) the Dispute is not resolved within 20 Working Days of a notice of Dispute being given in accordance with clause 28.1(a); or
- b) a Party convenes a meeting or conference under clause 28.2 and the other Party fails to attend that meeting or conference,

in which case the Dispute will be finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce in force at the date of the commencement of the arbitration (**ICC Arbitration Rules**) by one arbitrator appointed in accordance with the ICC Arbitration Rules. The place of the arbitration shall be Singapore. The language of the arbitration shall be English.

54. Clause 29.2(a) is amended by adding paragraph (vi) as follows:

- (vi) the costs of correcting, replacement or repair of defects or the loss and damage suffered as a result of the Equipment or any part being defective. The amounts payable by the Supplier in respect thereof shall not be included in the limit stated in Item 37.

55. Clause 31 is added as follows:

**No Fault Termination or Suspension**

Notwithstanding any other clause of this Contract to the contrary, the Purchaser may at any time, in its absolute discretion, terminate or suspend the Work under the Contract in whole or in part by giving the Supplier written notice to that effect.

For the avoidance of doubt, the Purchaser's absolute discretion under this clause is not subject to any implied term as to good faith and may be exercised whether or not there is any breach of the contract or default of any kind by either party.

If the Contract is terminated pursuant to this subclause the Supplier shall deliver to the Purchaser the Equipment and its component parts, materials and other things on this site or off the site, including at the Supplier's workshops or elsewhere, which are required for the Work under the Contract or for incorporation into the Head Contract works.

It is a fundamental term of the Contract that if directed to do so under the clause:

- (a) The Supplier must immediately deliver up the Equipment and the other items referred to in this subclause to the Purchaser;
- (b) The Supplier must deliver up the Equipment and the other items referred to in this subclause to the Purchaser notwithstanding any actual or alleged non-payment of monies due under the contract or any other alleged or actual default or breach of contract on the part of the Purchaser;
- (c) The Supplier irrevocably authorises the Purchaser to attend upon the Supplier's land, workshops or such other place where the Equipment and the other items referred to in this subclause are situated and take possession of the Equipment and the other items referred to in this subclause;



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- (d) The Purchaser's obligation to pay the Supplier pursuant to subclause 16.4 will not arise unless and until the Supplier has done all in its power to deliver up free and uninterrupted possession of the Equipment and the other items referred to in this subclause to the Purchaser.

56. Clause 32 is added as follows:

This Contract contains the entire agreement between the parties. Any previous understanding, agreement, representation or warranty relating to the subject matter of the Contract or any document comprising the Contract is replaced by this Contract and has no further effect.

57. Clause 33 is added as follows:

Assignment on termination

33.1 Notwithstanding any other term of the Contract, in the event that the Contract is terminated pursuant to clauses 25, 26 or 31 or as a consequence of the Supplier's repudiation of the Contract, the Supplier shall immediately deliver all completed or partly completed Information to the Purchaser.

33.2 To give effect to this clause, the Supplier agrees that it will, if directed in writing by the Purchaser to do so, assign all of its rights and benefits in respect to the Information (whether completed or partly completed) that has been created by a third party pursuant to any agreement or other arrangement with the Supplier on terms and conditions to be determined by the Purchaser in its sole discretion and hereby appoints the Purchaser as its attorney to execute a deed of assignment on behalf of the Supplier to give effect to any assignment pursuant to this subclause.

58. Clause 34 is added as follows:

General provisions

34.1 Notwithstanding any other provision of the Contract, no approval, consent, permission or certificate given by the Purchaser Representative or the Purchaser, including without limitation in respect of design, will diminish or relieve the Supplier from any of its obligations or responsibilities under the Contract.



### 3 SPECIAL CONDITIONS

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The General Conditions of Contract are amended and/or supplemented by these Special Conditions as follows:

#### 3.1 DEFINITIONS

For the purpose of this Contract, the following definitions shall apply:

“**The Purchaser**” means Sandvik Mining and Construction Australia Pty Limited.

“**The Principal**” means RTA Weipa Pty Ltd ABN 54 137 266 285.

“**The Supplier**” means **[#insert]**

“**Work under the Contract**” and “**Works**” means the supply of all materials, goods or services, whether expressly described, implied or necessary for the delivery of the Equipment pursuant to the Contract or by reason of any applicable Legislative Requirements governing the Works, and includes any Variations.

“**Shall**” means to express a provision that is binding between the Purchaser and the Supplier.

“**A day**” is a calendar day.

#### 3.2 NATURE OF CONTRACT

**[if Bidder elects to price Lump Sum] The Contract Sum is Fixed and Firm for the duration of the Contract and not subject to change for any reason, including but not limited to Rise and Fall or adjustment for currency exchange fluctuations between the Australian dollar and other currencies.**

**[if Bidder elects to price via Schedule of Rates] The Unit Rates in the Schedule of Rates are Fixed and Firm for the duration of the Contract and not subject to change for any reason, including but not limited to:**

- (a) Rise and Fall; or**
- (b) adjustment for currency exchange fluctuations between the Australian dollar and other currencies; or**
- (c) quantity changes; or**
- (d) complexity of Work.**

The Contract Sum, unless otherwise agreed, is the full inclusive cost of the Work under the Contract and includes all incidental and contingent expenses, risks and works of every kind necessary to complete the Work under the Contract in full accordance with the Contract Specification.

The Supplier shall pay all taxes, levies, duties, import duties and assessments of every nature due in connection with the Work under the Contract and shall make any and all payroll deductions and withholding's required by law, and hereby indemnifies and holds harmless the Purchaser from any liability on account of any and all such taxes, levies, duties,





assessments and deductions.

Except as otherwise specified, the Supplier shall procure and pay for all permits, licenses, certifications and other applicable governing authority requirements and inspections, other than inspections performed by the Purchaser, and shall furnish any documentation, bonds, security or deposits required to permit performance of the Works.

### 3.3 LIQUIDATED DAMAGES

In addition to any sum payable as liquidated damages pursuant to subclause 17.5, the Supplier shall pay the following further liquidated damages:

- 3.3.1 In the event any of the information as detailed in [Schedule D – Deliverables](#) is not delivered by the date specified, the Total Contract Sum will be reduced by 0.5% per calendar day up to a maximum of 7.5% of the total Contract Sum.

### 3.4 PURCHASER SUPPLIERS CODE OF CONDUCT

The Supplier acknowledges that a copy of the Purchasers Suppliers Code of Conduct was received with the Conditions of Tendering and agrees to comply with the Code of Conduct during the performance of the Contract.

### 3.5 RIGHT TO WITHHOLD PAYMENTS OR BACKCHARGE

If the Supplier fails to perform or observe any obligation, term, condition, or stipulation contained in the Contract, then the Purchaser may immediately (and without having to give prior notice to the Supplier) withhold all or part of any amount payable under the Contract until such time as the Supplier remedies the failure. The exercise by the Purchaser of any right to withhold any amount under this Special Condition 3.5 shall not limit any other right that the Purchaser may have under the Contract or otherwise

If the Supplier fails to remedy any fabrication or assembly deficiency or omission or error or warranty claim within 28 days written notice of such from Purchaser then Purchaser shall be entitled to take all measures required to rectify the deficiency or error or warranty claim (collectively "Rectification Work"); including but not limited to engaging other suppliers to perform this Rectification Work. Further, Purchaser shall be entitled to backcharge Supplier for amounts associated with Rectification Work or withhold payment from Supplier in accordance with this Special Condition 3.5 for amounts associated with Rectification Work.

### 3.6 SUPPLIER WARRANTIES

#### 3.6.1 WARRANTIES

The Supplier warrants that the Works, all workmanship and each element of the Works:

- (i) will be in accordance with the Contract;
- (ii) will be of good and merchantable quality;
- (iii) will be Fit for the Intended Purposes;
- (iv) will comply with applicable Standards;
- (v) will comply with applicable Laws (including conditions of approvals);



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- (vi) will be performed in accordance with Best Industry Practice;
  - (vii) will be free from all defects and imperfections affecting performance;
  - (viii) will be undertaken in an efficient, professional, timely, environmentally responsible and cost effective manner; and
  - (ix) will have a life expectancy and whole life maintenance and operating cost commensurate with that which would be expected applying Best Industry Practice.
- (b) The warranties given by the Supplier in Special Condition 3.6.1(a) remain unaffected notwithstanding:
- (i) that any part of the design of the Works has been carried out by or on behalf of the Supplier and included in the Contract;
  - (ii) any receipt or review of, comment or direction on the design work performed by the Supplier under the Contract, by the Purchaser or the Purchaser Representative; and
  - (iii) any Variation.
- (c) The Supplier must obtain, for the benefit of the Purchaser, all usual and customary trade warranties from its Subcontractors, manufacturers and suppliers including those specified in Item SC1 of Annexure Part A (**Trade Warranties**) and must assign to the Purchaser the benefit of all such warranties on the Date of Delivery.

**3.6.2 GENERAL**

The Supplier warrants that:

- (a) all Information used for performance of the Contract are Fit for the Intended Purposes;
- (b) it is aware that the Purchaser is relying upon the Supplier's knowledge, experience and judgment for the Works to be Fit for the Intended Purposes; and
- (c) it is aware that the Purchaser and the Purchaser Representative are not experts in the design of the Works and the Supplier shall not rely on their knowledge in performing the Contract.

**3.6.3 ACCURACY OF INFORMATION**

Without limiting any other provision of this Contract, any design information or assistance provided by the Purchaser or its Personnel to the Supplier shall be treated as preliminary only and does not in any way relieve the Supplier from its responsibility for the final design of the Works.



#### 3.6.4 SUPPLIER'S DESIGN PERFORMANCE OBLIGATIONS

- (a) The Supplier is responsible for the design of the Works in accordance with the Contract and to conform to the design criteria specified in, or reasonably inferred (including design intent) from, the Contract.
- (b) The description of the Works set out in the Contract represents the Parties' best efforts to define the technical information and tasks necessary for performance of the Works. However, the Parties acknowledge that the Supplier must perform all such work and supply all such services, goods and materials not specifically mentioned in the Contract but which can be reasonably inferred from the Contract, or which a competent and diligent Supplier ought to have inferred from the Contract, as being required for the proper performance of the Works as if such work, services, goods and materials were expressly mentioned in the Contract.
- (c) In addition to reviewing design documentation, the Purchaser may monitor and oversee the design, fabrication, transportation and erection processes, personnel and systems of the Supplier and its Subcontractors to seek to ensure that the Works are performed in accordance with the Contract, and for this purpose the Supplier must:
  - (i) provide the Purchaser's Personnel with full access to the premises of the Supplier and its Subcontractors at which the Works are carried out;
  - (ii) provide the Purchaser's Personnel with a safe working environment and all facilities described in the Contract or otherwise reasonably required by the Purchaser's Personnel at those premises, including power, utilities, telephones, broadband internet connections, workspaces and a safe working environment; and
  - (iii) fully cooperate with, and comply with all reasonable Directions of, the Purchaser or the Purchaser's Personnel.
- (d) Where required by the Purchaser Representative, the Supplier must submit design documentation for review by a third party auditor nominated by the Purchaser. The Supplier must thereafter fully cooperate with the auditor and promptly provide them with all information and assistance required to carry out their audit.
- (e) The Purchaser's oversight and monitoring of the processes, personnel and systems of the Supplier under Special Condition 3.6.4(c) and any third party audit carried out under Special Condition 3.6.5(d) shall not relieve the Supplier from responsibility for the adequacy of the design and the Works, or any other Liability imposed upon it by the Contract or at Law, or prejudice the Purchaser's rights against the Supplier whether under the Contract or at Law.

#### 3.6.5 SUPPLIER'S OBLIGATIONS FOR SCHEDULES, DRAWINGS, SPECIFICATIONS

- (a) The Equipment stated in the Contract represents the minimum standard acceptable to the Purchaser for the purposes of the Contract. The Supplier shall not reduce the quality of the Equipment stated in the Contract without prior approval by the Purchaser Representative. Such approval shall not relieve the



Supplier from its obligations to provide the Works Fit for the Intended Purposes, nor shall such approval in any way render the Purchaser or Purchaser Representative liable should the Works not be Fit for the Intended Purposes.

- (b) Receipt and review of any design documentation by the Purchaser Representative in accordance with the Contract is solely for the purpose of monitoring the performance of the Supplier, and such review in no way lessens the obligations of the Supplier or causes either the Purchaser Representative or the Purchaser to undertake any responsibility or duty of care to the Supplier. The Supplier is totally responsible for the design of the Works in accordance with the Contract.

### 3.7 COPYRIGHT

Ownership of all Intellectual Property Rights associated with the Works and any documentation provided by the Supplier pursuant to the Contract is vested in the Purchaser. The Purchaser is entitled without limitation to assign all or any part thereof of such rights to the Principal.

### 3.8 CONFIDENTIALITY

- (a) All Confidential Information shall be regarded as strictly confidential. The Supplier shall keep secret and confidential and shall not, and must ensure that each of its Personnel do not, use (other than as is necessary for the performance of the Contract) or divulge to any third party without the prior written consent of the Purchaser any Confidential Information.
- (b) The Confidential Information shall be used by the Supplier for the sole purpose of performing the Work under the Contract. The utilisation of the Confidential Information for other purposes is strictly prohibited. The Supplier shall take or cause to be taken such reasonable precautions as may be necessary to maintain secrecy and confidentiality and prevent disclosure to third persons, including obtaining confidentiality agreements from its employees, agents and sub-Suppliers.
- (c) Any breach of this Special Condition 3.8 shall be a substantial breach of the Contract.
- (d) Save in respect of the Purchaser's Personal Information and the Purchaser's rates of wages and conditions for workmen, contractors and employees, Special Conditions 3.8(a) and 3.8(b) do not prevent the Supplier from using and disclosing information which:
  - (i) at the time of the first disclosure by the Purchaser was already in the lawful possession of the Supplier in written form (other than under the Contract);
  - (ii) is or becomes generally available to the public otherwise than by disclosure in breach of the terms of the Contract; or
  - (iii) becomes available to the Supplier from a third person legally entitled to possess the information and provide it to the Supplier, if the use or disclosure accords with the right or permission legally granted to the Supplier by that third person.
- (e) Special Conditions 3.8(a) and 3.8(b) do not prevent the Supplier from disclosing (but not using) information if:



- (i) such disclosure is required by a Legislative Requirement;
  - (ii) the Supplier informs the Purchaser in advance of any such disclosure; and
  - (iii) the Supplier attempts to restrict disclosure and distribution of the information as far as is permitted by Legislative Requirements.
- (f) The Supplier must not take and must not permit photographs to be taken or sketches to be drawn of anything to be delivered under the Contract or of any part of the premises or operations of the Purchaser or its Personnel except for the purpose of the performance of the Contract or with the express prior written consent of the Purchaser.
- (g) At the Purchaser's request, the Supplier must, as soon as reasonably practicable, deliver up, delete or destroy all physical and electronic documents containing Confidential Information, including all copies and anything derived from Confidential Information.

### 3.9 INDEMNITY

The Supplier shall indemnify and keep Purchaser, its respective officers, employees or agents, against all claims, losses, actions, damages, costs (including legal costs) and expenses whatsoever resulting from or caused by an act, omission or negligence of Supplier, its subcontractors, their respective officers, employees or agents in connection with the Work under the Contract (including without limitation the installation, erection, repair, adjustment or operation thereof) or by failure of the Supplier to perform any of its obligations under or of the Work under the Contract to comply with the requirements of the Contract. The Supplier shall indemnify and keep indemnified Purchaser, its respective officers, employees or agents against all claims, losses, actions, damages, costs (including legal costs) and expenses whatsoever resulting from personal injury, including death and disease, or loss of or damage to property to the extent caused directly or indirectly by any intentional or negligent act or omission of the Supplier, its subcontractors or their respective officers, employees or agents in the performance or non-performance of any services required herein.

### 3.10 LOCAL SUPPLIERS

- (a) The Supplier must in the performance of the Contract use personnel, suppliers and manufacturers available locally or if not available locally then otherwise available within Australia, except in those cases where the Supplier can demonstrate it is not possible to do so (taking into account price, quality, delivery and service) or not consistent with relevant Australian Standards and codes of practice applicable to the Works. This includes:
- (i) giving local personnel, suppliers and manufacturers a fair and reasonable opportunity to tender or quote; and
  - (ii) giving preference to personnel, suppliers and manufacturers in the following order:



- (A) those available locally;
  - (B) those available within Australia;
  - (C) those tenders, arrangements or proposals that include local or Australian based participation; and
  - (D) all others.
- (b) Except as otherwise agreed in writing by the Purchaser Representative, the Supplier must include in any Subcontract the same obligations as are referred to in Special Condition 3.10(a) and must report to the Purchaser Representative concerning such Subcontractor's implementation of that condition.
- (c) The Supplier must, within 1 month of the Commencement Date and at monthly intervals thereafter or such other times as nominated by the Purchaser Representative, submit to the Purchaser Representative in the form required by the Purchaser Representative a report concerning the Supplier's implementation of its obligations under Special Condition 3.10.

### 3.11 AVOIDING CONFLICTS OF INTEREST AND CORRUPTION

#### 3.11.1 SUPPLIER'S ACKNOWLEDGEMENT

The Supplier acknowledges that:

- (a) it is of utmost importance to the Parties that the Supplier avoids circumstances which may:
  - (i) give rise to conflicts of interest relating to the performance of the Works by the Supplier and the Supplier's Personnel under the Contract;
  - (ii) give rise to allegations of corruption against the Supplier, the Supplier's Personnel, the Purchaser, the Purchaser's Personnel or the Rio Tinto Group; or
  - (iii) bring the Supplier, the Supplier's Personnel, the Purchaser, the Purchaser's Personnel or the Rio Tinto Group into disrepute; and
- (b) it has been provided with (and has reviewed) copies of the Purchaser's Rules.

#### 3.11.2 SUPPLIER MUST AVOID CONFLICTS OF INTEREST

During the Term, the Supplier must ensure that neither it nor any of its Personnel:

- (a) carry on business;
- (b) enter into any formal or informal arrangements; or
- (c) undertake any obligation,

which would in any way interfere or conflict with, or appear to a third party to interfere or conflict with, the performance of the Works by the Supplier and its Personnel under the Contract.



**3.11.3 SUPPLIER'S REPRESENTATIONS AND WARRANTIES**

- (a) The Supplier represents and warrants that, as at the Contract Date, neither it nor any of its Personnel have:
- (i) carried on business;
  - (ii) entered into any formal or informal arrangements; or
  - (iii) undertaken any obligation,
- which would in any way interfere or conflict with, or appear to a third party to interfere or conflict with, the performance of the Works by the Supplier and its Personnel under the Contract.
- (b) The Supplier represents and warrants that, as at the Contract Date, it and its Personnel have not (either directly or indirectly through a third party) offered, paid or promised to pay, authorised the payment of or transferred money or anything of value to a Government Official (or any person) to secure an improper advantage or benefit in relation to the matters contemplated by the Contract or in connection with the Project.
- (c) The Supplier represents and warrants that:
- (i) as at the Contract Date, no Government Official or Relative of a Government Official has any direct or indirect ownership or other legal or beneficial interest in the Supplier or its Related Body Corporate;
  - (ii) as at the Contract Date, no Government Official serves as an officer, director, employee or agent of the Supplier, or its Related Body Corporate;
  - (iii) until Final Completion is achieved, and subject to Special Condition 3.11.6(b), no Government Official or Relative of a Government Official will have any direct or indirect ownership or other legal or beneficial interest in the Supplier or its Related Body Corporate; and
  - (iv) during the Term, no Government Official will serve as an officer, director, employee or agent of the Supplier, or its Related Body Corporate.

**3.11.4 PROHIBITION ON GIVING OR RECEIVING IMPROPER ADVANTAGE OR BENEFIT**

- (a) In performing its obligations in connection with the Contract, the Supplier and its Personnel shall not (either directly or indirectly through a third party):
- (i) offer, pay, promise to pay, or authorise the giving of money or anything of value to a Government Official (or any person), while knowing or being aware of a probability that all or part of the money or the thing of value may be offered, given or promised (directly or indirectly) to a Government Official (or any person) for the purpose of influencing the act, omission or decision of such Government Official to obtain or retain business related to the Contract, to direct business under the Contract to any person, or to obtain any improper advantage or benefit;



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- (ii) receive money or anything of value in exchange for any improper advantage or benefit in relation to the Purchaser's, the Principal's or the Rio Tinto Group's business; or
- (iii) offer or make unofficial payments or offer anything of value to any Government Official (or any other person) to secure or expedite a routine action or service where that payment is not expressly required by Law.
- (b) In performing its obligations in connection with the Contract, the Supplier shall ensure that it and its Personnel do not engage in any conduct or omission which may contravene any of the Anti-Corruption Laws.

**3.11.5 AGENTS AND SUBCONTRACTORS**

- (a) The Supplier shall perform due diligence in accordance with the procedures and policies in the Purchaser's Rules before retaining or engaging any agents or Subcontractors in connection with the performance of the Contract.
- (b) The Supplier shall ensure that:
  - (i) any agents or Subcontractors engaged by the Supplier to provide goods or services in connection with the Contract shall be obliged to enter into binding contractual commitments which are substantively identical to those in this Special Condition 3.11; and
  - (ii) the terms of the contractual commitments entered into with any such agents or Subcontractor permit termination of such relationships where the Supplier has reasonable grounds to believe that there has been, or is likely to be, a breach of any applicable Anti-Corruption Laws or actions that are inconsistent with the Purchaser's Rules.

**3.11.6 NOTIFICATION REGARDING CHANGE OF INTERESTS**

- (a) The Supplier shall promptly notify the Purchaser in writing of any circumstances that would cause a Government Official or his/her relative to have a direct or indirect ownership, or other legal or beneficial interest of the kind described in Special Condition 3.11.6(b).
- (b) For the purposes of Special Condition 3.11, merely holding shares in the Supplier or its Related Body Corporate that is publicly listed on a stock exchange does not of itself constitute ownership or other legal or beneficial interest in the Supplier or its Related Body Corporate, unless the quantity of shares so held amounts to a shareholding of 5% or more.

**3.11.7 NOTIFICATION OF BREACHES AND CONSEQUENCES**

- (a) The Supplier shall promptly notify the Purchaser if it becomes aware of a possible, potential, suspected or actual breach of:
  - (i) this Special Condition 3.11;
  - (ii) the Rules; or
  - (iii) any Anti-Corruption Laws.





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- (b) The Parties shall meet to discuss the appropriate next steps as soon as reasonably practicable after such notification.
- (c) The Supplier shall cooperate in good faith with the Purchaser in investigating the circumstances relevant to any possible, potential, suspected or actual breach (whether or not there has been notification under Special Condition 3.11.7(a)).
- (d) If the Purchaser determines in its absolute discretion that:
  - (i) there has been a breach of this Special Condition 3.11; or
  - (ii) the Supplier or the Supplier's Personnel have been involved in any conduct that may create a material risk of liability under any Anti-Corruption Law,the Purchaser may treat the breach or conduct as a default and may exercise any rights it may have under the Contract upon the occurrence of a default, but without regard to any waiting periods specified in the Contract.

**3.11.8 INVESTIGATION**

- (a) If the Purchaser has reasonable grounds to suspect a past, present or potential breach by the Supplier or its Personnel of:
  - (i) any applicable Anti-Corruption Laws;
  - (ii) the Purchaser's Rules; or
  - (iii) the Supplier's Ethics Policies and Procedures,in connection with the Contract, the Purchaser may give notice to the Supplier requiring an explanation, copies of documents, and access (for the purposes of interview by internal or external lawyers) to the Supplier's Personnel.
- (b) The Supplier shall give such assistance and access to the documents and the Supplier's Personnel as the Purchaser may reasonably require.

**3.11.9 OBLIGATION TO INDEMNIFY**

- (a) The Supplier shall indemnify the Purchaser, its Personnel, the Principal and the Rio Tinto Group in respect of any Liability incurred as a result of the Supplier's breach of this Special Condition 3.11.
- (b) The Supplier's obligation to indemnify under Special Condition 3.11.9(a) is not limited by any contractual limit on liability.

**3.11.10 ESTABLISHMENT OF POLICIES AND PROCESSES**

- (a) The Supplier shall establish and maintain policies and procedures to:
  - (i) ensure that the Supplier and the Supplier's Personnel comply with the obligations set out in this Special Condition 3.11; and
  - (ii) keep records of the giving or receiving of gifts, entertainment, payments, loans or other benefits to or from the Purchaser's Personnel, any Government Official, or any of the Purchaser's, the Principal's or Rio Tinto Group's other Suppliers or potential Suppliers.



- (b) The Supplier shall ensure that its policies and procedures as contemplated in this Special Condition 3.11.10 contain requirements that training will be provided to its Personnel in relation to the matters addressed by the policies and procedures, and the Supplier shall ensure that its Personnel performing the Works shall undertake such training, and that records of each individual's attendance is retained.

#### 3.11.11 REPORTING AND AUDIT

- (a) The Supplier shall ensure that its Personnel have access to a reporting protocol (such as a telephone hotline or web-based reporting) to report actual or suspected violations of:
  - (i) any applicable Anti-Corruption Laws;
  - (ii) the Purchaser's Rules; or
  - (iii) the Supplier's Ethics Policies and Procedures.
- (b) The reporting tool shall, subject to applicable legal restrictions, allow for anonymous reporting.
- (c) When requested by the Purchaser (but no more frequently than once every 3 months), the Supplier shall provide a detailed report on its compliance with the requirements of this Special Condition 3.11.
- (d) The report contemplated in Special Condition 3.11.11(c) shall contain any additional information the Purchaser may reasonably require from time to time.
- (e) When requested by the Purchaser (but no more frequently than once every 12 months), the Supplier shall allow its records relating to its compliance with the requirements of this Special Condition 3.11 to be inspected by the Purchaser.

### 3.12 Ethics

#### 3.12.1 ETHICS PLAN

- (a) Within 10 Working Days of the Contract Date, the Supplier shall submit to the Purchaser:
  - (i) written confirmation that the Supplier has appropriate policies and procedures in place to ensure that the requirements of Special Condition 3.11 will be met (**Ethics Policies and Procedures**) and that all of the Supplier's Personnel engaged on the Contract have received training to ensure that they are aware of and will comply with the Ethics Policies and Procedures (**Ethics Training**); or
  - (ii) a written proposal to implement the Ethics Policies and Procedures (**Ethics Proposal**). The Ethics Proposal shall include a program for delivery of Ethics Training to all of the Supplier's Personnel engaged on the Contract within 3 months following the Contract Date, with details of the dates for and contents of the Ethics Training.



- (b) If the Purchaser is not satisfied that the Ethics Policies and Procedures notified by the Supplier under Special Condition 3.12.1(a) are adequate, it shall notify the Supplier of its further requirements and direct the Supplier to submit an Ethics Proposal to address those further requirements and the Supplier shall do so within 10 Working Days of such direction.
- (c) The Purchaser may direct the Supplier to make any amendments to its Ethics Proposal it may reasonably require to address the requirements of Special Condition 3.11. The Supplier shall make such amendments as are directed by the Purchaser and resubmit the Ethics Proposal within 5 Working Days of receiving the Purchaser's comments.
- (d) The Ethics Policies and Procedures or the Ethics Proposal shall, in either case once approved by the Purchaser, be known as the Ethics Plan.
- (e) The Supplier shall comply with the Ethics Plan.
- (f) The Supplier shall give the Purchaser 15 Working Days' prior written notice of any Ethics Training it carries out and shall give the Purchaser the opportunity to attend and participate in the Ethics Training.

#### 3.12.2 COMPLIANCE BY SUBCONTRACTORS

The Supplier shall:

- (a) record every Subcontract in writing; and
- (b) include as a condition of every Subcontract that the Subcontractor must comply with obligations equivalent to those in Special Condition 3.11 of the Special Conditions and this Special Condition 3.12.

#### 3.13 PRIVACY AND DATA PROTECTION

- (a) In addition to its obligations under the *Privacy Act 1988* (Cth) or any other Legislative Requirement, the Supplier agrees to:
  - (i) only Process the Purchaser's Personal Information for the purposes of the Contract if the Supplier has the prior written consent of the Purchaser or it is otherwise required by a Legislative Requirement;
  - (ii) put into place and maintain appropriate technical and organisational measures against unauthorised and/or unlawful Processing of or access, loss, destruction, misuse, modification, disclosure or damage to the Purchaser's Personal Information or any of the Personal Information in connection with the Contract;
  - (iii) take all necessary steps to ensure that its Processing of the Purchaser's Personal Information will be fair and lawful and, for this purpose, the Supplier may reasonably enquire of the Purchaser as to the manner in which the Purchaser obtained the Purchaser's Personal Information;
  - (iv) ensure that Personal Information is treated as Confidential Information; an



- (v) at the expiration or earlier termination of the Contract, or when the Personal Information is no longer needed for a purpose connected to the Contract, ensure:
  - a. Personal Information is transferred to the Purchaser; or
  - b. all reasonable steps are taken to destroy or permanently de-identify the information within 30 days, at the Purchaser's election.
- (b) If an individual complains to the Purchaser that the Supplier (or any of its Personnel) has handled his or her Personal Information inappropriately, the Purchaser must promptly give the Supplier sufficient details about the complaint to minimise any further misuse.
- (c) If an individual complains to the Supplier that the Supplier (or any of its Personnel) has handled his or her Personal Information inappropriately, the Supplier must:
  - (i) promptly inform the Purchaser of the complaint; and
  - (ii) if the individual has consented, provide the Purchaser with the Personal Information that is the subject of the complaint.

### 3.14 WORKING HOURS

#### 3.14.1 SUPPLIER TO NOTIFY PURCHASER REPRESENTATIVE OF WORKING HOURS

Prior to commencement of work, the Supplier must notify the Purchaser Representative of its normal times and periods of work and must give the Purchaser Representative at least 24 hours' notice of any alteration in its working hours or periods of work as the case may be.

#### 3.14.2 PURCHASER REPRESENTATIVE CAN GIVE DIRECTION TO VARY WORKING HOURS

- (a) Notwithstanding Special Condition 3.14.3, the Purchaser Representative shall be entitled at any time to give Directions to the Supplier as to the hours or days on which the Supplier must perform the Works. If such a Direction is given to the Supplier by the Purchaser Representative and the direction:
  - (a) was not given in response to a request by the Supplier under Special Condition 3.14.4;
  - (b) was not directly, or indirectly a result of an act or omission of the Supplier or its Personnel;
  - (c) was not required as a result of a Force Majeure Event; or
  - (d) was not necessitated or contemplated by any other provision of the Contract,such Direction will constitute a Variation (and the Supplier may claim under clause 23 its reasonable additional costs (if any) incurred as a result of the Direction) and may be grounds for an extension of time under clause 17.4 of the General Conditions of Contract.

#### 3.14.3 SUPPLIER TO ONLY WORK SPECIFIED DAYS

The Supplier shall not be entitled to work on days or at hours other than those specified by the Purchaser Representative as being the days generally applicable for the performance of work on the Site unless the prior approval of the Purchaser Representative is obtained,



which may be granted (either absolutely or conditionally) or withheld at the Purchaser Representative's absolute discretion. The days and hours generally applicable are shown in the Contract.

#### **3.14.4 APPROVAL TO WORK VARIED HOURS**

If, at the request of the Supplier, approval to work days or hours varying from those referred to in Special Condition 3.14.3 is given by the Purchaser Representative, all additional costs arising from such variation in working hours, including additions to wage rates payable to the Supplier's employees, together with any additional expenses incurred by the Purchaser by reason of altered catering, transport or other arrangements, worksite lighting and equipment hire shall be borne by the Supplier.

#### **3.14.5 ADDITIONAL COSTS**

If, as a result of a written request from the Purchaser Representative, additional hours or shift work is required to be worked by the Supplier's employees in order to ensure the completion of the Works earlier than the Date of Delivery, all additional reasonable and necessary costs of such additional hours or shift work including the additions to wage rates payable to the Supplier's employees together with any additional reasonable and necessary expenses resulting from altered catering arrangements, worksite lighting and equipment hire shall be borne by the Purchaser and valued under clause 23.4.

### **3.15 PROPORTIONATE LIABILITY LEGISLATION**

- (a) It is agreed that to the maximum extent permitted by any applicable Law:
- (i) the Proportionate Liability Legislation is excluded in relation to all and any rights, obligations or liabilities of either Party under the Contract whether such rights, obligations or liabilities are sought to be enforced in contract, tort or otherwise;
  - (ii) all rights, obligations and liabilities under or in connection with the Contract are to apply, even where the relevant circumstances involve a failure to take reasonable care and the existence of concurrent wrongdoers unlimited and otherwise unaffected by anything that, but for this Special Condition 3.15, may have limited or otherwise affected those rights, obligations and liabilities;
  - (iii) the Supplier must not seek to apply the provisions of the Proportionate Liability Legislation in relation to any claim by the Purchaser against the Supplier (whether in contract, tort or otherwise);
  - (iv) if any of the provisions of the Proportionate Liability Legislation are applied to any claim by the Purchaser against the Supplier (whether in contract, tort or otherwise), the Supplier will indemnify the Purchaser and its Personnel against any Liabilities which the Purchaser cannot recover from the Supplier because of the operation of the Proportionate Liability Legislation; and
  - (v) the Parties will ensure that any arbitrator (if any) appointed under or in connection with the Contract agrees that it will have no power to apportion liability under the provisions of the Proportionate Liability Legislation.
- (b) The Supplier will include in each Subcontract which it has with a Subcontractor, and will use all reasonable endeavours to ensure that each Subcontractor will include in any further contract that it enters into with a third party for the performance of the Works, provisions on the same terms as those set out in this Special Condition 3.15.



(c) In this Special Condition 3.15, "Proportionate Liability Legislation" means Chapter 2, Part 2 of the *Civil Liability Act 2003* (Qld) or any applicable equivalent statutory provisions in any other state, territory or Commonwealth legislation of Australia.

### 3.16 ASSIGNMENT ON SALE OF PURCHASER

(a) Supplier hereby acknowledges that it is the intention of Sandvik AB to seek a third party buyer for its mining systems business (the **Sale Business**) of which this Contract forms part, such sale having been announced on 1 October 2015 (the **Planned Sale**), and, accordingly, notwithstanding any contrary provision in this Contract, Supplier irrevocably and unconditionally:

(i) consents to the transfer of this Contract by Purchaser (both rights and obligations) to any party which acquires all or part of the Sale Business (the **Buyer**) or to a member of the Buyer's group or to an intermediate holding company within Sandvik AB's group (the **Relevant Transferee**); and

(ii) waives any rights it may have, and obligations which Purchaser has, under any provision of this Contract, and any breach by Purchaser of this Contract, in each case arising from a change in the ownership or control of Purchaser, or of an intermediate holding company within Sandvik AB's group to which the Contract has been transferred pursuant to paragraph (a) above, as a consequence of the Planned Sale;

(iii) agrees to execute such documents as may reasonably be required by Purchaser to give effect to the transfer of the rights and obligations of the Purchaser under this Contract to the Relevant Transferee.



## 4 SCHEDULES

### 4.1 SCHEDULE A – CONTRACT SUM BREAKDOWN

#### 4.1.1 SUMMARY OF CONTRACT SUM

[Note for Bidders: Preliminaries shall be priced on a lump sum basis; however Bidders may elect to bid fabrication and assembly work as a lump sum amounts or a via schedule of rates]

<u>SEPARABLE PORTION</u>	<u>DESCRIPTION</u>	<u>AMOUNT IN</u>
<u>1</u>	<u>STACKER BBST1001</u>	
	<u>1P Stacker Preliminaries</u>	
	<u>1A Stacker Fabrication and Delivery to Assembly Yard</u>	
	<u>1B Stacker Assembly and Installation of Purchaser Supplied Components</u>	
<u>2</u>	<u>RECLAIMER BBBWR1001</u>	
	<u>1P Reclaimer Preliminaries</u>	
	<u>2A Reclaimer Fabrication and Delivery to Assembly Yard</u>	
	<u>2B Reclaimer Assembly and Installation of Purchaser Supplied Components</u>	
<u>3</u>	<u>SHIPLOADER BBSL1001</u>	
	<u>3P Shiploader Preliminaries</u>	
	<u>3A Shiploader Fabrication and Delivery to Assembly Yard</u>	
	<u>3B Shiploader Assembly and Installation of Purchaser Supplied Components</u>	
	<u>Provisional Sums</u>	

1. Schedule A Pricing Schedules is attached for a detailed breakdown of the above Contract Sum summary. For avoidance of doubt, Purchaser shall only measure and Supplier shall only be paid for line items listed in the Schedule A Pricing Schedules excel spreadsheet, or the subject of executed Variations. Descriptions of items in Schedule A.1.3 Lump Sum Amounts, Schedule A.1 Quantity Measurement or Schedule B Unit Rates shall not of itself provide a basis to either measure that item or pay for that item.
2. Subsection 4.1.2 shall apply to preliminaries, which shall be priced on a lump sum basis.
3. Subsection 4.1.3 shall apply to fabrication, assembly and installation work that is priced on a lump sum basis.



4. Schedule A.1 shall apply to measure work under the Contract, whether priced on a lump sum basis or via a schedule of rates.
5. Schedule B shall apply to fabrication, assembly and installation work that is priced on a schedule of rates basis.

#### **4.1.2 PRELIMINARIES**

1. The price shall be exclusive of GST or VAT.
2. Preliminary amounts are lump sum and are fixed and firm and shall not be subject to escalation.
3. The description of work in the Schedule of Prices is not necessarily complete in all respects and reference shall be made to the documents constituting the Contract which are to be read in conjunction with the Schedule of Prices.
4. Notwithstanding any term of the Contract to the contrary, the prices in Schedule of Prices shall be deemed to include all costs, fees, charges and expenses incurred by the Supplier of the performance of the item of work.
5. The description of items of work in the Schedule of Prices shall be deemed to include for all work necessary to complete the work under the Contract whether or not such work is described in the Schedule of Prices or any item therein and the Supplier acknowledges and agrees that the prices include an allowance for all such necessary work.
6. Items against which no price is entered shall be deemed to be covered by the other prices in the Schedule of Prices.
7. Mobilisation amounts shall be payable upon completion of mobilisation. Demobilisation amounts shall be payable upon completion of demobilisation.
8. Documentary preliminary items shall be payable upon approval of submitted documentation.
9. Remaining preliminary items shall be payable based on percentage complete of actual measured progress for the Work.

#### **4.1.3 LUMP SUM AMOUNTS**

1. Where the work under the Contract is to be priced wholly or in part by reference to prices included in the Schedule of Prices as Lump Sum Items, the following provisions shall apply.
2. The price shall be exclusive of GST or VAT.
3. Lump sum amounts are fixed and firm and shall not be subject to escalation.
4. Quantities in attached Schedule A Pricing Schedule are determined from preliminary load reports and measured in accordance with Schedule A.1. Purchaser Supplied





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Components have been counted. Supplier agrees these quantities are sufficiently accurate for them to provide Lump Sum prices for Work under the Contract.

5. Purchaser shall advise Supplier of Total actual final quantities. Total actual final quantities shall be determined by Purchaser from the final load reports, after consideration of the Shop Detail Drawings and Engineering Design Drawings. Purchaser Supplied Components shall be counted. Measurement shall be in accordance with Schedule A.1.
6. Supplier shall be entitled to review and discuss measurement of additional quantities, provided any such claim for additional quantities is submitted as a Variation Claim.
7. Lump sum line item amounts for fabrication, assembly and installation activities shall only be subject to change on a per machine, per line item basis if the percentage quantity change between the total actual final measured quantity and the stated quantity for that line item in the Schedule of Prices increases or decreases by 2.5% or more.
8. The lump sum amount for individual line items shall increase or decrease by the actual percentage change between the actual final measured quantity and the stated quantity in the Schedule of Prices for that individual line item, less the 2.5% allowance.  
  
For example:
  - a) a 6% quantity increase for an individual line item shall result in a 3.5% increase to the lump sum amount for that line item;
  - b) a 7% quantity reduction for an individual line item shall result in a 4.5% decrease to the lump sum amount for that line item; and
  - c) a 1% quantity increase for an individual line item shall result in no change to the lump sum amount for that line item.
9. The description of work in the Schedule of Prices is not necessarily complete in all respects and reference shall be made to the documents constituting the Contract which are to be read in conjunction with the Schedule of Prices.
10. Notwithstanding any term of the Contract to the contrary, the prices in Schedule of Prices shall be deemed to include all costs, fees, charges and expenses incurred by the Supplier of the performance of Work.
11. The description of items of work in the Schedule of Prices shall be deemed to include for all work necessary to complete the work under the Contract whether or not such work is described in the Schedule of Prices or any item therein and the Supplier acknowledges and agrees that the prices include an allowance for all such necessary work.
12. Items against which no price is entered shall be deemed to be covered by the other prices in the Schedule of Prices.
13. For any item in the Schedule of Prices for which the quantity is nominated as being a provisional quantity, the product of the provisional quantity and the rate shall be the provisional sum for that item.



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14. The prices shall be deemed to include the costs of labour, materials, Plant and Machinery, tools, temporary works, scaffolding, transportation and the Technical Contract Specification, including all Customs Duty and any fees required by relevant Commonwealth, State and Local Authorities excepting those to be paid by the Purchaser as specified in the Contract.
15. Where a price is listed in the Schedule of Prices for a particular item of work or service, the total cost of the work or service shall be deemed to be covered by the price for that item. Where no such price is listed for a particular work or service, the cost of the work or service shall be deemed to be included in the prices for the item or items of work associated with that work or service.
16. Where an item of work or service is of a general nature and not associated with any other particular item or items in the Schedule of Prices, the cost thereof shall be deemed to be included in the prices in the Schedule of Prices generally.
17. The Schedule of Prices shall be deemed to include for all Work under the Contract, including but not limited to, the following:
  - All labour and supervision;
  - All services, plant, equipment and machinery;
  - Supply of all materials (except those explicitly stated as Purchaser Supplied Components, including miscellaneous items such as trial assembly bolts/nuts/washers, shims and packers;
  - All consumables;
  - All first fill lubricants;
  - All temporary works and scaffolding;
  - All fabrication of steelwork, including quantity take offs, QA/ QC requirements, NDT testing, welder qualifications, material certification, painting and blasting, packaging for transport to assembly area and transport to the assembly area;
  - All assembly of fabricated steelwork, including unpackaging and storage whilst awaiting assembly;
  - Module assembly and trial fit up, including compliance with Purchaser instructions in respect of these activities;
  - All installation activities of Purchaser Supplied Components, including taking delivery of, unpackaging, care of, storage of, preservation of and maintenance of Purchaser Supplied Equipment and all required supports, brackets and labels;
  - Installation of all cable ladders, cable trays, covers, brackets, tees, reducers, conduits and associated supports and fittings,
  - Cable pulling, terminations, testing of electrical items and glanding;
  - Installation of all handrails, kickplates, stairs, ladders and floor grating, including all associated brackets, supports, fixtures and fittings;
  - All piping works, including brackets, bends and fittings
  - Provision of all documentation;
  - Bolt tightening;
  - All touch up paint;
  - All messing, accommodation, air fares and transport (including Supplier's Personnel to and from the Assembly Yard);
  - All fees, licences, royalties and the like;
  - All statutory on cost insurances and fixed costs;



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- All profit and overheads;
  - Rise and fall for the duration of the Contract Period;
  - All other costs associated with the Works (including any repairs or remedial works in connection with the Defects Liability Period).
18. The Supplier has satisfied itself as to the meaning of each item and the prices inserted shall be deemed to be fully inclusive of the cost of the work described fixed or placed in position and cover its obligations under the Contract and all matters and things necessary for the proper execution, completion and maintenance of the goods. No claim for additional payment will be allowed for any error or misunderstanding by the Supplier in this respect.
19. Prices are inclusive of allowance for any Supplier's minimum order quantities on materials.
20. Items of cost which are specified to be included in the lump sum prices for Mobilisation and Demobilisation shall be deemed not to be included in the remaining items of the Schedule.
21. Where an item which is priced as a lump sum covers continuing expenditure throughout the period of the work under the Contract and cannot be readily measured on the basis of progress relating to that particular item, interim measurement of that item shall be made by reference to percentage complete of actual measured progress.

**4.1.4 FURTHER CONTRACT SUM BREAKDOWN**

At any time during execution of the work under the Contract, the Purchaser Representative may require the Supplier to provide a more detailed price breakdown than that provided in this Schedule for the purpose of facilitating monitoring and assessment of progress and approving payment claims, and the supplier shall provide such further price breakdown promptly.

**4.1.5 PROVISIONAL SUM ITEMS**

1. The following Provisional Sum represent an estimated allowance in the Contract Sum for each Item of Provisional Sum work. Notwithstanding Provisional Sum amounts below after Contract Award, Purchaser may request Supplier to provide a Lump Sum price or a "Not To Exceed Estimate" to perform work in accordance with Schedule G Dayworks Rates.
2. Supplier is not to commence Provisional Sum work until Purchaser provides specific written instruction to do so. Such instruction shall include details of the final approved pricing basis.
3. Purchaser shall issue a Variation to reduce the Contract Sum by the Provisional Sum amount listed in the table below, and to increase the Contract Sum by either the agreed Lump Sum amount or the final approved cost of the Work if Provisional Sum work is performed under Schedule G Dayworks Rates. Supplier shall not be paid for Provisional Sum work until the Variation is executed by Purchaser and Supplier.



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ITEM	DESCRIPTION	PROVISIONAL SUM AMOUNT	PRICING BASIS
PS1	No Load Commissioning of Stacker		Schedule G Dayworks
PS2	No Load Commissioning of Reclaimer		Schedule G Dayworks
PS3	No Load Commissioning of Ship Loader		Schedule G Dayworks
PS4	Counterweight Concrete Removal – Shiploader		Bidder to advise
TOTAL			

**4.1.6 OPTIONAL ITEMS**

1. In consideration of the Purchaser evaluating the Bids and entering into the Contract, the Contractor gives the Company an irrevocable option, exercisable in writing on or before the dates set out below, to incorporate into the Contract any one or more of the items included in this Schedule ("Option"). Unless otherwise advised the Option shall be for the lump sum prices detailed in this Schedule.
2. The amounts shown in this Schedule shall not be subject to rise and fall, and are inclusive of all overheads and profit for each item listed, but exclude GST.
3. The exercise by the Company of any or all of the options below or the failure to exercise any or all of the following options, shall not in any way alter the Contractor's obligations to complete the Work under Contract in the manner and within the times stated in the Contract, nor shall it entitle the Contractor to any change in the Contract Sum or any other compensation payable under the Contract, other than the net value of the exercised optional work as stated below.

ITEM	DESCRIPTION	OPTION AMOUNT	EXERCISE DATE
Opt1	Advance ordering of nominal 450 tonne of steel for Reclaimer portal, slew deck and bucket wheel boom		
Opt 2	Credit back to Purchaser if Purchaser Free Issues Assembly Yard to Contractor		
Opt3	Installation of Wear Liners		
a	Reclaimer Wear Liners (SOW Subsection 2.3.2 Item 14, 15 and Subsection 2.6)		
b	Ship Loader Wear Liners (SOW Subsection 2.3.2 Item 23 and Subsection 2.6)		
c	Stacker Wear Liners (SOW Subsection 2.3.2 Item 28 and Subsection 2.6)		
Opt 4	Installation of High Pressure Pumps		
a	Stacker (SOW Subsection 2.3.2 Item 32a)		
b	Reclaimer (SOW Subsection 2.3.2 Item 32a)		
c	Ship Loader (SOW Subsection 2.3.2 Item 32a)		
Opt 5	Storage, preservation, care and maintenance at Contractor's Assembly Yard after completion of Commissioning and prior to		



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ITEM	DESCRIPTION	OPTION AMOUNT	EXERCISE DATE
	shipping		
a	Stacker	per week or pro rated part thereof	
b	Reclaimer	per week or pro rated part thereof	
c	Ship Loader	per week or pro rated part thereof	
Opt 6	Storage, preservation, care and maintenance at Purchaser's free issued Assembly Yard after completion of Commissioning and prior to shipping		
a	Stacker	per week or pro rated part thereof	
b	Reclaimer	per week or pro rated part thereof	
c	Ship Loader	per week or pro rated part thereof	
TOTAL			



## 4.2 SCHEDULE A.1 QUANTITY MEASUREMENT

### 4.2.1 INTRODUCTION

1. The purpose of Schedule A.1 Quantity Measurement is to provide a clear and uniform basis for the measurement and the pricing of the Work under Contract.
2. The methods of measurement laid down herein shall be applicable to the preparation of the Schedule of Rates before the Work under Contract has commenced and to the measurement of Work under Contract, irrespective if priced as Lump Sum or via a Schedule of Rates.

### 4.2.2 MEASUREMENT

1. Purchaser shall calculate final quantities from the final Load Report, and after consideration of the Shop Detail drawings and the last and final revisions of the Engineering Design Drawings and after counting Purchaser Supplied Components listed in Schedule A Pricing Schedules.
2. Where differences are found between the final Load Report, the Shop Detail Drawings and the Engineering Drawings, the final Shop Detail Drawings shall take precedence. All quantities shall be measured against the relevant codes as stated in the in attached Schedule A Pricing Schedule and as described herein. Code number and code values as stated in the Shop Detail Drawings shall not be taken as the basis to determine the applicable Lump Sum price or Unit Rate and quantities. The Purchaser's Representative shall determine the applicable Lump Sum price or Unit Rate and quantity in case of any ambiguity.

Note: Shop Detail Drawing is defined as a drawing developed from the Engineering Drawings to enable fabrication of the Works as applicable.

Engineering Drawing is defined as a design drawing issued by the Purchaser's engineer.

3. Measurement of quantities shall be net and no allowance shall be made in any measured quantities for:
  - (a) waste or rolling margin;
  - (b) loose and attached connections, cleats, stiffeners, gussets, end plates, caps and the like;
  - (c) shims, packers, welding material and paint; or
  - (d) bolts, nuts or washers (either those for trial assembly purposes or for final assembly) .
4. Measurement before calculations shall be taken to the next 0.001 of a metre (m), square metre (m<sup>2</sup>) or cubic metre (m<sup>3</sup>), 0.1 of a litre (l) and 0.001 of a tonne (t).

### 4.2.3 BILLING UNITS

1. Where the unit of billing is the metre (m), square metre (m<sup>2</sup>) or cubic metre (m<sup>3</sup>), PBS total quantities shall be billed to the nearest whole unit rounding up from 0.5 of a unit and down from any part below (for example a facility total of 29.50m<sup>2</sup> will be billed at 30m<sup>2</sup> whereas 29.499m<sup>2</sup> will be billed as 29m<sup>2</sup>). PBS totals of less than one whole unit shall be rounded up to one whole unit, whether greater or less than



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0.5 of a unit. For example a PBS total measure of 0.274m2 will be billed as 1m2.  
Refer to Table below.

2. Where the unit of billing is the tonne (t), PBS total quantities shall be billed to the full one hundredth of a tonne (2 decimal places) rounding up from 0.005 of a tonne and down from any part below (for example a facility total of 75.015t shall be billed at 75.02t whereas 75.0149t will be billed as 75.01t). PBS totals of less than 0.01 tonne shall be rounded to the nearest 0.01 tonne whether greater or less than 0.005t. For example a PBS total measure of 0.0026t (or 2.6kg) will be billed as 0.01t. Refer to table below. In cases where there are no whole units, a zero (0) shall be placed immediately before the decimal point.
3. Items with Unit of Measure of “No”, “Ea” or “Each”, “Set” and “Lot” “can only be billed as whole units.
4. Metric units of measure and metric quantities are defined by the use of the International System of Units (SI Units).
5. Unit symbols shall be in accordance with AS 1000.

Unit of Measure	Abbreviation UOM	Measure to	Facility level billing rounded to nearest
Metre	m	0.001	1
Square Metre	m <sup>2</sup>	0.001	1
Cubic Metre	m <sup>3</sup>	0.001	1
Tonne	t	0.001	0.01
Litre	L	0.1	1
Each / Number / Item / Lot / Set	Ea / No / Item / Lot / Set	1	1

**4.2.4 SUPPLY, FABRICATION AND ASSEMBLY OF STEELWORK**

1. Steelwork is categorised as follows:
  - (a) primary steelwork – steelwork required for the machine’s structural integrity;
  - (b) secondary steelwork – steelwork required for people to safely access and move around the machine; and
  - (c) tertiary steelwork – steelwork that is not primary or secondary yet is required for the operation of the machine.

Purchaser has provided a mass distribution spreadsheet by PBS area in attached Schedule A Pricing Schedule to assist Supplier understand steelwork allocation amongst the three categories. Purchaser shall make any required determination in respect of categorising steelwork between primary, secondary or tertiary for measurement purposes.

2. Measurement of steelwork shall be limited to measurement of:
  - (a) plate;
  - (b) rod and bar;
  - (c) rails;
  - (d) rolled profiles/ sections;



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- (e) circular, square and rectangular hollow sections;
  - (f) built-up members;
  - (g) chequer plate;
  - (h) Floor grating, hand rails, stair treads, ladders and mesh guards;
  - (i) Cable ladders and piping services; and
  - (j) Brackets and other such connections for field devices, mechanical items, cable ladders or piping;
3. For avoidance of doubt the following shall not be measured as steelwork:
- (a) Any non Carbon-Manganese Steel;
  - (b) Chutes;
  - (c) Liners & wear plates;
  - (d) Pins, shafts and bushes;
  - (e) Launderers;
  - (f) Guarding;
  - (g) Transport supports and temporary attachments;
  - (h) Suncovers and storage boxes.
4. The unit of measurement for steelwork shall be tonnes and the weight shall be calculated by multiplying the length of the member by the net theoretical weights per metre of the steel members exclusive of rolling margin. The weight of platework and chequer plate shall be calculated by multiplying the net area of the said plate by the net theoretical weights per square metre. Steel sections shall be measured from centreline to centreline of adjoining members, except for columns which shall be measured from RL of underside of base plate to RL of top of column.
5. Base plates to columns and splice plates (other than splice plates requested by the Contractor) shall be measured and shall be categorised as the same item as that of the steel section to which they relate. No deductions shall be made for splay at ends, mitres, notches, holes, slots and the like. For plates and members of irregular shape, measurement shall be based on the net weight of steel at 7,850 kg per cubic metre.

**4.2.5 SUPPLY, FABRICATION AND ASSEMBLY OF STEEL CHUTEWORK**

- 1. The unit of measurement shall be tonnes and shall include the weight of all steel plate and steel sections including flanges, stiffeners, cleats, fixing brackets for linings gussets and the like but shall exclude the weight of shims, packers, bolts, nuts, washers and surface treatment.
- 2. Steel plate shall be measured as the net area of plate with the weight calculated on the basis of 7,850 kilogram's per cubic metre. The weight of steel sections shall be calculated by multiplying the net length of the member by the net theoretical weights per metre of the steel members exclusive of rolling margin.

**4.2.6 INSTALLATION OF WEAR PLATES, WEAR BARS AND WEAR BILLETS**

- 1. The unit of measurement of wear plates shall be square metres and shall be measured as the net area of the wear plate.
- 2. The unit of measurement of wear bars shall be linear metres and shall be measured as the net length of the wear bar.





3. Note: Composite wear plates comprising lengths of wear bar fused to a backing plate shall be measured as wear plates in square metres as described above (e.g. "Duablock" wear plates).
4. Wear billets shall be enumerated.

#### 4.2.7 INSTALLATION OF PURCHASER SUPPLIED MECHANICAL ITEMS

1. Purchaser Supplied Mechanical Equipment shall be enumerated individually.
2. For avoidance of doubt, lump sum prices for Installation of Purchaser Supplied Mechanical Items shall include for installation, surveying, alignment, bolting, coupling, installation of labels, terminations, installation of guarding, touch up paint and all other work required for each individual item of Mechanical Equipment to be ready for no load commissioning.

#### 4.2.8 ~~SUPPLY AND~~ INSTALLATION OF PURCHASER SUPPLIED PIPING

1. Piping shall be measured in linear metres along the centreline of the pipe overall fittings and valves. Bends shall be treated as right angles for measurement purposes.
2. Elbows / bends, tees, reducers, flanges and o'lets are measured separately by enumeration and are treated as extra over the value of the pipeline in which they occur.
3. Elbows / bends of differing bend angles are grouped together for measurement purposes (e.g. 45° and 90° bends are measured together). Where diameters vary in a fitting then the item of measurement is based on the largest diameter applicable to that fitting (e.g. a 60 x 40 reducer will be measured as a 60 reducer).
4. Welded joints are measured separately by enumeration except where included in another item rate (e.g. welding loose flanges to ends of fittings), and the rate shall include for all necessary labour, consumables and testing.
5. Bolt-ups are measured separately by enumeration per connection except where included in the rates for other items (e.g. bolted connections to valves are included with items for valves), and the rate shall include for all necessary labour and materials including bolts, nuts, washers, gaskets, backing rings, etc.

#### 4.2.9 INSTALLATION OF PURCHASER SUPPLIED CABLE LADDERS AND CABLE TRAYS

1. Cable ladder and cable tray with widths of 300mm or more shall be measured. Cable ladder and cable tray with widths of 150mm or less shall not be measured.
2. Cable ladders, cable trays, bends, tees, and reducers shall be measured in linear metres along the centreline of the ladder or tray. Bends shall be treated as right angles for measurement purposes.
3. Brackets, fittings, backing plates and covers to cable ladders/ trays shall not be measured.

#### 4.2.10 INSTALLATION OF PURCHASER SUPPLIED CONDUITS

1. Conduits shall be measured in linear metres.



2. Brackets and fittings for conduits shall not be measured.

#### **4.2.11 INSTALLATION OF PURCHASER SUPPLIED LIGHTING**

1. Light mountings and light fittings shall be measured separately and enumerated.
2. For avoidance of doubt, lump sum prices for installation of Purchaser supplied lighting shall include for installation, bolting, installation of labels, terminations, glanding, installation of any required assembly yard run conduit or cable ladder, touch up paint and all other work required for each light to be ready for no load commissioning.

#### **4.2.12 INSTALLATION OF PURCHASER SUPPLIED EARTHING INSTALLATION**

Earthing cables shall be measured in linear metres as the net length between connection points with no allowance made for wastage, cable sag or termination tails.

#### **4.2.13 INSTALLATION OF PURCHASER SUPPLIED ELECTRICAL EQUIPMENT, INSTRUMENTS AND FIELD CONTROL DEVICES**

1. Purchaser supplied electrical equipment, instruments and field control devices shall be enumerated individually.
2. For avoidance of doubt, lump sum prices for installation of Purchaser supplied electrical equipment, instruments and field control devices shall include for installation, bolting, installation of labels, instrumentation supports, terminations, glanding, installation of any required assembly yard run conduit or cable ladder, touch up paint and all other work required for each individual item of electrical equipment instrument or field control devices to be ready for no load commissioning.

#### **4.2.14 INSTALLATION OF PURCHASER SUPPLIED INSTRUMENT JUNCTION BOXES**

1. Instrument junction boxes shall be enumerated individually.
2. For avoidance of doubt, lump sum prices for installation of Purchaser supplied instrument junction boxes shall include for installation, bolting, installation of labels, supports, terminations, glanding, installation of any required assembly yard run conduit or cable ladder, touch up paint and all other work required for each individual instrument junction box to be ready for no load commissioning.

#### **4.2.15 INSTALLATION OF PURCHASER SUPPLIED CABLES**

1. Purchaser supplied cables shall be measured in linear metres as the net length between termination points with no allowance made for wastage, cable sag or termination tails.
2. Cable terminations are included in the Lump Sum item amounts for Purchaser Supplied Components shall not be measured.



#### 4.3 SCHEDULE B – SCHEDULE OF RATES

##### 4.3.1 SCHEDULE OF RATES

1. The Schedule of Rates and Unit Rates for Schedule of Rates items are to be read in conjunction with Schedule A.1 Quantity Measurement, Scope of Work, Drawings and Specifications.
2. The following shall apply to the Schedule of Rates:
  - (a) All line items shall be priced with a Unit Rate irrespective of the quantity stated, no items in the Schedule of Rates shall be left blank or marked 'NIL' or 'INCLUDED';
  - (b) Engineering drawings issued with the Tender documents are preliminary and indicative only of the type and nature of work to be performed. These drawings are indicative of complexity and are provided for pricing purposes. Changes between drawings issued at tender and shop detail drawings or final Engineering Drawings shall not provide a basis to change the Schedule of Rates nor individual Unit Rates;
  - (c) Various items are deemed included in the Schedule of Rates and Unit Rates and shall not be measured separately. Inclusions in the Schedule of Rates and Unit Rates and expanded descriptions are provided below and in Schedule A.1 Quantity Measurement; and
  - (d) Where any work is shown on a drawing as being on "HOLD", the "HOLD" means that the work has not yet been approved for construction. However the work is included in the Scope of Work and is deemed included in the Schedule of Rates and Unit Rates.

##### 4.3.2 CALCULATION

1. The item prices shall be obtained by multiplying the estimated quantity for each item herein by the applicable rate, and summation of the relevant item prices shall give the total price for each WBS.
2. The final price of the Schedule of Rates portion of the Contract (subject to other provisions of the Contract) shall be obtained by multiplying the actual quantities for the actual work performed by the Supplier by the Unit Rates inserted and summing the amounts for each item. The actual quantities for the actual work performed shall be measured in accordance with the Schedule A.1 Quantity Measurement, verified and accepted by the Purchaser's Representative.

##### 4.3.3 QUANTITY TAKE-OFFS

The Purchaser's Representative shall, within 28 days of issuing the last Engineering Drawing and Shop Detail Drawing for a PBS, issue to the Supplier a completed Quantity Proforma including quantities (in Microsoft Office Excel software), based on the Shop Detailer Consultant's quantities. The Supplier shall, within 28 days of receipt of these quantities, confirm agreement of these quantities or provide details of any quantities that the Supplier does not agree with together with calculations and backup information as appropriate.



#### 4.3.4 UNIT RATES

1. The Unit Rates shall be fixed and firm and not subject to adjustment for rise and fall in costs of labour, materials and other items. The Unit Rates shall apply and remain fixed regardless of actual quantities, difficulty or complexity of the work.
2. Unit Rates shall not be varied for any reason.

#### 4.3.5 UNIT RATES ARE COMPLETE

1. In the Schedule of Rates the descriptions attached to the respective items of the Work under Contract are intended only as a brief description sufficient for identification and are not exhaustive. Any work not described but necessary for the completion of an item of the Work under Contract or any part thereof shall be deemed to be included and priced in the listed item.
2. Unit Rates in the Schedule of Rates shall be deemed to include but not be limited to:
  - (a) Supply of all materials not supplied by the Purchaser;
  - (b) Professional and technical services;
  - (c) Royalties;
  - (d) Taxes;
  - (e) Profit and overhead;
  - (f) Custom duties;
  - (g) Customs and quarantine clearances and the like;
  - (h) Project management and supervision;
  - (i) Compliance with the requirements of Contract;
  - (j) Performance of all reporting in accordance with the Contract;
  - (k) Attendance at scheduled and unscheduled meetings with the Purchaser's Representative;
  - (l) Measurement, preparation of quantity take-off and submission in the Purchaser's Representative's prescribed format and agreement with the Purchaser's Representative;
  - (m) All requirements for obtaining of permits required to carry out the work in accordance with the Contract;
  - (n) Quality control;
  - (o) Inspections, testing and non-destructive testing and all costs in connection therewith including materials, equipment and personnel;
  - (p) Labour and all costs in connection therewith including overtime, penalties, competency assessments, welder pre-qualifications, PPE, safety equipment, tools of trade, consumables and the like;
  - (q) All reasonable costs associated with working adjacent to, below or above existing operating or redundant equipment, structure or services;
  - (r) Making good any damage to existing or new equipment, structures and services effected by the Contractor or their Subcontractors;
  - (s) Design, detailing and supply, complete with calculations, of any temporary supports, temporary bracing and supports, lifting lugs or lifting equipment required;
  - (t) Supply and installation of Registered Certified Plant number and/or other specified labels where required;
  - (u) Supply of equipment, tooling, grease lubrication, fasteners, shims and all other ancillary materials and consumables necessary;
  - (v) Allowance for any waste including rolling margins;
  - (w) Square, raking, splay and circular cutting;



- (x) Surface treatment of all fabricated components including all necessary surface preparation, inspection and testing;
- (y) All required touch up painting (and other surface treatments) including but not limited to:
- (z) Reparation of damage to pre-finished items supplied by the Contractor during fabrication, pre-assembly or transportation, however caused;
- (aa) Reparation of damage caused by the Contractor to Purchaser supplied equipment;
- (bb) Protection of work against damage;
- (cc) Tagging, packaging, marking, handling, loading, lifting, transporting (including all necessary lift studies) including, checking, storing and any double handling required for material and equipment provided by the Contractor or the Purchaser;
- (dd) Trial assembly and disassembly to suit shipping requirement or transportation to Site;
- (ee) Transport to Assembly Yard and then Transport from Assembly Yard free alongside Heavy Lift Ship;
- (ff) All requirements for construction verification;
- (gg) Performance of all necessary surveys including control, setting out and resurveying as necessary to permit establishment of lines and levels; and
- (hh) All other reasonable measures necessary for the proper completion of the Works not specifically mentioned or measured, other than obligations and items which have been measured separately.

#### 4.3.6 SUPPLY, FABRICATION AND INSTALLATION OF STEELWORK

Unit rates for steelwork shall include for the following general inclusions, and for the further specific items as included in the specific steelwork categories below:

- (a) Supply of steel;
- (b) fabrication including all machining and supply of all consumables;
- (c) supply of trial assembly bolts, nuts and washers;
- (d) surface preparation and protective coating;
- (e) packing;
- (f) transport to Assembly Yard;
- (g) all loading and off-loading;
- (h) temporary storage;
- (i) handling;
- (j) erection to required lines and levels;
- (k) bolting;
- (l) site welding;
- (m) connection to existing structures where required;
- (n) supply installation and removal of temporary props and structures;
- (o) testing including NDT;
- (p) repair of protective coating; and
- (q) touch up painting after erection.

#### 4.3.7 SUPPLY, FABRICATION AND INSTALLATION OF STEEL CHUTEWORK

Unit Rates for steel chutework shall include for but not necessarily be limited to supply, drilling and fixing of anchors.



#### 4.3.8 SUPPLY OF WEAR PLATES, WEAR BARS AND WEAR BILLETS

1. Unit Rates for wear plates, wear bars and wear billets shall include for but not necessarily be limited to the following:
  - (a) fabrication to required dimensions including all waste;
  - (b) supply of adhesives, studs, bolts, nuts and washers;
  - (c) installation at shop or site including preparation of surface to be lined, and including any necessary welding and/or bolting;
  - (d) supply and installation of any required backing material; and
  - (e) grouting
2. Unit Rates for wear bars shall also include for any composite fixing section welded to and supplied with the wear bar.

#### 4.3.9 INSTALLATION OF PURCHASER SUPPLIED MECHANICAL EQUIPMENT

Unit Rates for installation of Purchaser supplied mechanical equipment shall include for the following general inclusions, and for the further specific items as included in the specific categories below:

- (a) Installation, alignment and other activities required in accordance with OEM manuals and specifications;
- (b) supply of all consumables;
- (c) supply of bolts, nuts and washers;
- (d) surface preparation and protective coating;
- (e) unpacking;
- (f) transport to Assembly Yard;
- (g) all loading and off-loading;
- (h) temporary storage;
- (i) handling;
- (j) erection to required lines and levels;
- (k) bolting;
- (l) site welding;
- (m) connection to existing structures where required;
- (n) supply, installation and removal of temporary props and structures;
- (o) repair of protective coating; and
- (p) touch up painting after erection.

#### 4.3.10 ~~SUPPLY AND~~ INSTALLATION OF PURCHASER SUPPLIED PIPING

1. Unit Rates for pipes shall include for but not necessarily be limited to:
  - (a) preparation isometric drawings;
  - (b) ~~supply of all materials including wastage;~~ NOT USED
  - (c) shop and/or Site spool fabrication;
  - (d) supply of bolts, nuts and washers;
  - (e) surface preparation and protective coating;
  - (f) line identification, labelling and signage;
  - (g) packing;
  - (h) transport to Assembly Yard;
  - (i) all loading and off-loading;
  - (j) temporary storage;
  - (k) handling;
  - (l) pipe fittings other than bends, tees, reducers, flanges and o'lets which are measured separately;



- (m) screwed or glued joints (welded joints and bolt-ups are measured separately);
- (n) u-bolts, saddles, clamps, guides, packers and pipe supports other than structural steel pipe supports that are detailed on the Drawings and/or supplied by others;
- (o) internal pipe linings (e.g. rubber lining, cement lining);
- (p) installation of all inline equipment, except valves;
- (q) penetrations, including flashings;
- (r) inspection and testing;
- (s) repair of protective coating; and
- (t) touch up painting after installation.

2. Unit Rates for elbows / bends, tees, reducers, flanges and o'lets shall include for but not necessarily be limited to:

(a) all loading and off-loading;

(b) temporary storage;

~~(c)~~ (c) material supply including delivery to site and wastage NOT USED;

~~(d)~~ (d) surface protective treatment and/or paint finish;

~~(e)~~ (e) internal linings (e.g. rubber lining, cement lining);

~~(f)~~ (f) plain, screwed or flanged ends;

~~(g)~~ (g) welding of loose flanges to ends of fitting;

~~(h)~~ (h) screwed or glued end connections, including all necessary consumables; and

~~(i)~~ (i) touch-up of surface protective treatment and/or paint finish.

3. Welded joints are measured separately by enumeration except where included in another item's Unit Rate (e.g. welding loose flanges to ends of fittings), and the Unit Rates shall include for all necessary labour, consumables and testing.

4. Bolt-ups are measured separately by enumeration per connection except where included in the Unit Rates for other items (e.g. bolted connections to valves are included with items for valves), and the Unit Rates shall include for all necessary labour and materials including bolts, nuts, washers, gaskets, backing rings, etc.

#### 4.3.11 INSTALLATION OF PURCHASER SUPPLIED VALVES

Unit Rates for valves shall include for but not necessarily be limited to:

(a) ~~supply of all materials~~ NOT USED;

(b) surface preparation and protective coating;

(c) packing;

(d) transport to Site;

(e) all loading and off-loading;

(f) temporary storage;

(g) transport to the erection site;

(h) handling;

(i) hoisting and installing in place;

(j) bolted, screwed or other specified connection;

(k) removing and re-installing when required to accord with pipe testing or other specified requirements including associated disconnecting and reconnecting operations (e.g. unbolting and rebolting);

(l) provision of temporary pup spools including all necessary installation and removal operations; and

(m) repair of protective coating.



#### 4.3.12 INSTALLATION OF PURCHASER SUPPLIED CABLE LADDERS AND CABLE TRAYS

Unit Rates for cable ladders and cable trays shall include for but not necessarily be limited to:

- (a) Backing plates, covers, fittings including bends, tees and reducers;
- (b) supply of bolts, nuts and washers;
- (c) surface preparation and protective coating;
- (d) packing;
- (e) transport to Assembly Yard;
- (f) all loading and off-loading;
- (g) temporary storage;
- (h) handling;
- (i) connecting plates;
- (j) barrier strips;
- (k) fixings;
- (l) welded and/or bolted joints;
- (m) supports other than structural steel supports that are detailed on the Drawings and/or supplied by others;
- (n) earthing straps between tray splices;
- (o) repair of protective coating; and
- (p) touch up painting after erection.

#### 4.3.13 INSTALLATION OF PURCHASER SUPPLIED CONDUITS

Unit Rates for conduits shall include for but not necessarily be limited to:

- (a) fittings (e.g. bends, tees, conduit boxes);
- (b) fixings;
- (c) supports;
- (d) draw wires;
- (e) surface preparation and protective coating;
- (f) packing;
- (g) transport to Assembly Yard;
- (h) all loading and off-loading;
- (i) temporary storage;
- (j) handling;
- (k) repair of protective coating; and
- (l) touch up painting after erection.

#### 4.3.14 INSTALLATION OF PURCHASER SUPPLIED LIGHTING

Unit Rates for light mountings shall include for:

- (a) supply of bolts, nuts and washers;
- (b) surface preparation and protective coating;
- (c) packing;
- (d) transport to Assembly Yard;
- (e) all loading and off-loading;
- (f) temporary storage;
- (g) handling;
- (h) erection as detailed on the Drawings;
- (i) connection to existing structures where required;
- (j) repair of protective coating; and
- (k) touch up painting after erection.





Unit Rates for light fittings shall include the supply, delivery and installation of the light fitting complete with lamps and diffusers but excluding cable connection which is measured separately.

**4.3.15 INSTALLATION OF PURCHASER SUPPLIED CABLE**

Unit Rates for cables shall include for but not necessarily be limited to:

- (a) installing and terminating in any situation, and fixing in cable trays, in conduit, to surfaces of structures;
- (b) cable joints in running length;
- (c) saddles, cable ties and clips; and
- (d) cable tags.

**4.3.16 INSTALLATION OF PURCHASER SUPPLIED ELECTRICAL EQUIPMENT, INSTRUMENTS AND FIELD CONTROL DEVICES**

1. Unit Rates for Purchaser supplied Electrical equipment, instruments and field control devices shall include for installation, brackets, supports, fixtures and fittings, storage, carting and handling on Site, installation, removing and reinstalling as required for installation testing or other specified requirements.
2. Unit Rates shall also include for integral wiring up, terminations, tubing, labelling, calibration, pre-commissioning, commissioning and any other items necessary for the complete installation.

**4.3.17 INSTALLATION OF PURCHASER SUPPLIED INSTRUMENT JUNCTION BOXES**

Unit Rates shall include for supply, delivery and installation including all necessary brackets, fixings, touch-up of protective surface treatment and labelling.



#### 4.4 SCHEDULE C – LIST OF PROPOSED SUBCONTRACTORS

The following is a preliminary list of Subcontractors proposed in the performance of the Works. This list may not be complete and the Supplier has the right to amend this list in the course of the Contract. The Purchaser shall be informed of any new Subcontractors the Supplier intends to use and shall provide adequate references if required by the Purchaser in accordance with the Contract Terms and conditions for subcontracting.

TABLE 1 – Nominated Subcontractors

ID	PROPOSED SUBCONTRACTORS	DESCRIPTION OF WORK
1		Steel Mills or Suppliers
2		Fabrication sub-contractors
3		Assembly sub-contractors
4		Gridmesh
5		Handrail
6		Galvanizers
7		NDT
8		Surveying
9		Labour hire sub-contractors
10		Material Testing
11		Surface Treatment
12		Heat Treatment
13		Transport service provider
14		Cranes and lifting devices
15		Self Propelled Modular Transporter
16		Electrical Trades Labour
17		Mechanical and Structural Trades Labour
18		Concreting
19		Forging Suppliers
20		Machining
21		Belt Splicing
22		Other (tender to nominate)



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NOTE: The listing of Subcontractors above shall not be construed to be an automatic approval of same. The Purchaser reserves the right to reject any nominated or proposed subcontractors used in the completion of the works. The rejection of any subcontractor is irrevocable and at the complete sole discretion of the Purchaser. No additional costs will be accepted by the purchaser in regard to the rejection of a subcontractor.

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#### 4.5 SCHEDULE D – DELIVERABLES SCHEDULE

The Supplier shall submit data and documents in accordance with the Contract, including as specified in Vendor Document Schedule.



#### 4.6 SCHEDULE E – DELIVERY TIME SCHEDULE

This Delivery Time Schedule shall be the basis for the Approved Delivery Program as detailed in Clause 15 of the General Conditions and addenda to Clause 15 given in Annexure Part C to the General Conditions.

The following Key Milestones shall form an integral part of the Approved Delivery Program.

“Date for PML” means the date by which a Preliminary Materials List, but not drawings or Material Take Offs, pertaining to the respective description shall be issued to Supplier for procurement of primary plate and profile.

“Date for Purchaser Information” means the date by which at least 80% of drawings and the bill of materials pertaining to the respective description shall be issued for manufacture to the Supplier.

“Date for Commencement of Fabrication” means the first cut of steel pertaining to the respective description.

“Date for Completion of Fabrication” means that all primary, secondary and tertiary fabricated items pertaining to the respective description are ready for pre-assembly having been applied surface protection and have been protected for transport to Supplier’s assembly yard and are accompanied by completion verification documentation including release certificates all collated in MDRs.

“Date for Free Issued Components” means the date by which free issued components required for pre assembly and offsite erection activities pertaining to the respective description shall be Delivered at Terminal (DAT). Required at Assembly Yard (RAY) dates shall be nominated by Supplier. RAY dates shall not be before 1 July 2017 and shall be consistent with nominated installation sequence by Supplier.

“Date for Completion of Pre Assembly” means the completion of mechanical and electrical installation pertaining to the respective description including Purchaser punchlisting.

“Date for Delivery” means as defined in the General Conditions of Contract.

Key:

† Supplier to specify

Table 1: Key Milestones Table

ITEM	DESCRIPTION	DATE OF COMPLETION / DELIVERY		
		STACKER (BBST1001)	RECLAIMER (BBBWR1001)	SHIPLOADER (BBSL1001)
1.	Placement of plate steel mill order	†	†	†
2.	Commencement and Completion Dates of Offsite Fabrication and Assembly (Refer Table 2)	Refer Table 2	Refer Table 2	Refer Table 2
3.	Offsite Machine assembly and pre-commissioning complete, ready for commissioning activities	24 Oct 2017	24 Oct 2017	10 Mar 2018
4.	No-Load commissioning complete	07 Dec 2017	07 Dec 2017	24 Apr 2018
5.	Machine modules delivered Free Alongside Ship (FAS)	15 Dec 2017	15 Dec 2017	1 May 2018



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ITEM	DESCRIPTION	A1	A2	B	C	D	E	F
		DATE FOR PML	DATE FOR PURCHASER INFORMATION	DATE FOR COMMENCEMENT OF FABRICATION	DATE FOR COMPLETION OF FABRICATION	DATE FOR FREE ISSUED COMPONENTS (RAY DATES)	DATE FOR COMMENCEMENT OF PRE ASSEMBLY	DATE FOR COMPLETION OF PRE ASSEMBLY
2.	FABRICATION AND MODULE PRE ASSEMBLY							
2.1	STACKER (BBST1001)							
2.1.01	Long travel bogies and equalisers	Refer Schedule M	Refer Schedule M	†	†	†	†	†
2.1.02	Portal including cross equaliser			†	†	†	†	†
2.1.03	Slew deck			†	†	†	†	†
2.1.04	Discharge boom incl. conveyor system			†	†	†	†	†
2.1.05	Tripper car assembly			†	†	†	†	†
2.1.06	Chute assemblies			†	†	†	†	†
2.1.07	Ground mounted structures			†	†	†	†	†
2.1.08	Transport Structures			†	†	†	†	†
2.1.09	Mechanical and electrical services			†	†	†	†	†
2.2	RECLAIMER (BBBWR1001)							
2.2.01	Long travel bogies and equalisers	Refer Schedule M	Refer Schedule M	†	†	†	†	†
2.2.02	Portal including cross equaliser			†	1 Jul 17	†	†	†
2.2.03	Slew deck and pylon assembly			†	1 Jul 17	†	†	†
2.2.04	Bucket wheel boom assembly including mast and suspension links			†	1 Jul 17	†	†	†
2.2.05	Bucket wheel assembly			†	†	†	†	†
2.2.06	Counterweight boom and rocker including counterweight assembly			†	†	†	†	†
2.2.07	Tripper car structures including equipment platform and conveyor systems steel structure			†	†	†	†	†
2.2.08	Chute assemblies			†	†	†	†	†
2.2.09	Ground mounted structures			†	†	†	†	†
2.2.10	Transport Structures			†	†	†	†	†
2.2.11	Mechanical and electrical services			†	†	†	†	†
2.3	SHIPLOADER (BBSL1001)							
2.3.01	Long travel bogies and equalisers	Refer Schedule M	Refer Schedule M	†	†	†	†	†
2.3.02	Portal including cross equaliser			†	†	†	†	†
2.3.03	Slew deck and pylon assembly			†	†	†	†	†



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ITEM	DESCRIPTION	A1	A2	B	C	D	E	F
		DATE FOR PML	DATE FOR PURCHASER INFORMATION	DATE FOR COMMENCEMENT OF FABRICATION	DATE FOR COMPLETION OF FABRICATION	DATE FOR FREE ISSUED COMPONENTS (RAY DATES)	DATE FOR COMMENCEMENT OF PRE ASSEMBLY	DATE FOR COMPLETION OF PRE ASSEMBLY
2.3.04	Discharge boom and pylon assembly			†	†	†	†	†
2.3.05	Counterweight boom assembly			†	†	†	†	†
2.3.06	Tripper car assembly			†	†	†	†	†
2.3.07	Chute assemblies			†	†	†	†	†
2.3.08	Ground mounted structures			†	†	†	†	†
2.3.09	Transport Structures			†	†	†	†	†
2.3.10	Mechanical and electrical services			†	†	†	†	†



#### 4.7 SCHEDULE F – PROGRESS CLAIM SCHEDULE

1. Progress payments shall be made following completion of the Milestones below.
2. Progress payments for fabrication and assembly shall be made in accordance with approved measured progress. Preliminaries and Transport shall not be measured in approved measured progress.
3. Progress payments for Supplier provided Steel (ie MS1 and MS2) shall only be made following delivery, including delivery of all required QA/ QC documentation and material certification.
4. Any amounts for Preliminaries shall be progressed and paid for in accordance with Subsection 4.1.2.
5. Amounts for transport of Machine Modules from Assembly Yard free alongside Heavy Lift Ship (FAS Incoterms 2010) shall be paid after delivery of Machine modules under hook free alongside Heavy Lift ship.

ITEM No.	DESCRIPTION	% OF EACH SP'S CONTRACT SUM AMOUNT (LESS PRELIMINARIES & TRANSPORT )	RELEVANT SEPARABLE PORTIONS
Prelims	Preliminaries – measured & paid separately		
Transport	Transport – paid following delivery free alongside Ship		
MS1	Delivery from Steel Mill of least 450t of Primary Steel	5%	SP1, 3 & 5
MS2	Delivery from Steel Mill of balance of Steel	5%	SP1, 3 & 5
MS3	Attainment of 25% approved measured progress	20%	SP1 - 6
MS4	Attainment of 50% approved measured progress	20%	SP1 - 6
MS5	Attainment of 75% approved measured progress	25%	SP1 - 6
MS6	Attainment of 100% approved measured progress	25%	SP1 - 6
	Total	100%	





## 4.8 SCHEDULE G – DAYWORKS RATES

### 4.8.1 GENERAL

1. Schedule G Dayworks Rates shall only apply if the Purchaser directs that they apply.
2. Schedule G Dayworks Rates shall be fixed for the duration of the Contract.
3. All labour, plant and materials to be used on Dayworks shall be approved daily in writing by the Purchaser's Representative prior to commencement of the dayworks utilising a Dayworks Estimate Sheet. Changes in resources employed on any item of Dayworks may be made only with the written permission of the Company's Representative.
4. Daily Timesheets shall be submitted by 12 noon on the first working day after the day on which the dayworks were performed.
5. Only the time engaged in the actual work directed by the Company's Representative to be carried out as Daywork under the Contract will be allowed. Idle time, travelling time and non-productive time in respect of labour and Constructional Plant will not be allowed.
6. Where the Constructional Plant shown is not available the nearest equivalent shall be substituted and stated. The period worked by any Constructional Plant shall be measured to the nearest quarter hour above the actual working time.
7. For the avoidance of doubt, the rates contained in this schedule are fully inclusive of all costs incurred as a result of or in connection with the performance of the Dayworks, including for delay and disruption, and the Contractor shall have no other entitlement arising out of or in connection with the performance of the Dayworks.

### 4.8.2 EXCLUSIONS

All assembly, erection, verification, and pre commissioning work is included Scope of Work under the Contract. Schedule G Dayworks rates shall not apply to such work.

### 4.8.3 LABOUR DAYWORKS RATES

The rates for labour in this Schedule shall include all costs, including project costs associated with the provision of labour, including but not limited to:

- (a) provision of suitably qualified and experienced personnel for organising, controlling and carrying out no load commissioning, load commissioning and performance testing.
- (b) salaries, wages, overtime, premium payments, payroll tax, superannuation guarantee levy, sick leave, annual leave, long service leave, public holidays, staff provident fund, staff medical benefits, contract staff bonus and the like;
- (c) insurances (including workers' compensation insurance);
- (d) supervisory staff including foremen;
- (e) inspection staff;
- (f) all tools, consumables and accessories including use and maintenance of hand tools and appliances and non mechanical plant and equipment such as ladders, scaffolding and the like;
- (g) administration and overheads;



- (h) office expenses wherever incurred;
- (i) producing and/or amendment of "as constructed" drawings;
- (j) any travel, accommodation and living expenses and transport (including Contractor's personnel to and from the fabrication location to the Assembly Yard);
- (k) transport around the fabrication location and the Assembly Yard;
- (l) other overhead costs; and
- (m) profit, margins and mark-ups of any type whatsoever.

#### 4.8.4 CONSTRUCTIONAL PLANT DAYWORKS RATES

The rates for Constructional Plant in this Schedule shall include all costs, including project costs associated with the provision of Constructional Plant, including but not limited to:

- (a) depreciation;
- (b) insurances;
- (c) licences and permits;
- (d) mobilisation and demobilisation to fabrication location and Assembly Yard;
- (e) wear and tear, repairs and maintenance, including any repairs to comply with the Purchaser's Representative or occupational health and safety requirements;
- (f) consumables including fuel, lubricants and spare parts;
- (g) fittings and attachments required for safe and efficient operation;
- (h) travel and standby time arising from maintenance, repairs and absence of operators;
- (i) other overhead costs; and
- (j) profit, margins and mark-ups of any type whatsoever.

#### 4.8.5 REWORK

1. In the event that Rework is required then Purchaser may either request a lump sum price to complete the rework or instruct that rework is to be performed using Schedule G Dayworks Rates. Purchaser shall then issue a written Site Instruction and a Variation. Supplier shall be paid following execution of Variation by Supplier and Purchaser.
2. Supplier shall have no entitlement to any additional payment amounts if the rework arises due to Supplier's failure to conform to the requirements of the Contract. In this instance all rework is to be free of charge and completed as soon as practicable. Purchaser may withhold payment or backcharge Supplier under Special Condition 3.6 if Supplier does not complete rework as soon as practicable.
3. In the event that Purchaser directs that rework shall be done under Schedule G Dayworks Rates then:
  - (a) removal/ disassembly activity performed by personnel or constructional plant shall be done per Schedule G Dayworks Rates;
  - (b) Purchaser shall advise whether removed/ disassembled item should be scrapped, or repaired and reutilised. If scrapped then Supplier must dispose of scrapped items at Nil cost to Purchaser;
  - (c) Any repair activities shall be done per Schedule G Dayworks Rates;
  - (d) Purchaser shall instruct what, if any replacement material the Supplier shall furnish;



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- (e) Schedule G Labour and Constructional Plant Dayworks Rates shall apply for reinstallation activities
- (f) Schedule G Rework Rates for Additional Supplier provided Materials shall apply for quantities of Supplier provided replacement material. Supplier provided replacement material shall be measured in accordance with Schedule A.1 Quantity Measurement.

**4.8.6 MATERIALS**

Materials costs shall be invoiced costs including freight to the Site of net quantities actually used less any cash or trade discounts plus a percentage mark-up of 1.5%.

**4.8.7 HIRE PLANT**

Costs of hire plant including operating and maintenance costs to carry out dayworks as approved by the Purchaser's Representative shall be the invoiced cost less any cash or trade discounts plus a percentage mark-up of 1.5%

**4.8.8 STANDBY**

1. The Contractor shall at all times remain responsible for the efficiency and productivity of its labour and Constructional Plant.
2. Standby shall only be applicable at the Assembly Yard during No-Load Commissioning or Commissioning works and shall be limited to 8 hours per day. Except as provided in this Clause the Contractor shall not be entitled to reimbursement for any other costs relating to the particular standby event.
3. Further to Subsection 4.8.8.2, standby will only be authorised by the Purchaser's Representative if:
  - (a) Access to the Works is not possible (through no fault of the Contractor);
  - (b) The personnel and plant involved cannot be redirected to other duties after all possibilities have been explored; and
  - (c) The personnel and plant involved are required for subsequent the Work under Contract.
4. Where standby is authorised by the Purchaser's Representative then the Contractor's claim for the costs shall be limited to:
  - (a) Standby costs for the number and classification of labour agreed to by the Purchaser's Representative as being unable to be efficiently and productively employed calculated in accordance with the standby rates listed; plus
  - (b) Standby costs for the specific items of plant for which the Purchaser's Representative determines that no use is available elsewhere on the Works and that they should not be demobilised, and calculated in accordance with the standby rates listed.



#### 4.9 SCHEDULE H – ORGANISATION CHART AND RESUMES OF KEY PERSONNEL

The Supplier shall submit, prior to award, a chart that indicates the Supplier's proposed organisation for the Contract to supervisor level. Key personnel listed below for whom resumes have been submitted are to be asterisked on the chart. Resumes for each key person proposed to be assigned shall contain at least the following information; Position, Name, Age, Education and Qualifications, Relevant Experience, Employment History and reporting relationship.

KEY PERSONNEL (NAME)	POSITION	REPORTING RELATIONSHIP



4.10 SCHEDULE I – SHOP MANPOWER

	WEEK No	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	14	18	19	20	21	22
CLASSIFICATION	AWARD																						
QUANTITY																							



#### 4.11 SCHEDULE J – QA/QC QUESTIONNAIRE

The Supplier shall submit with its quotation the documentation as listed below for the appropriate AS/NZS ISO 9000 series Quality System.

- Completed QA questionnaire;
- Evidence of third party assessment of Tenderer's Quality System (or Product), if applicable;
- Copy of Tenderer's QA Manual (where not certified to AS/ NZS ISO 9001;
- Typical Quality Management Plan for similar works
- Provide a resource loaded proposed Quality Organisation Chart
- A copy of current Quality Certification
- A copy of a typical internal audit report & typical audit schedule/ plan
- A copy of a typical ITP for similar work

Company Name: \_\_\_\_\_

Address\*: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

\* Premises from where work will be carried out or originated

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#### SECTION I

State the Supplier's Representative who is responsible for monitoring, controlling and documenting quality?

Name: \_\_\_\_\_

Position: \_\_\_\_\_

Reporting to - Name: \_\_\_\_\_

Position: \_\_\_\_\_

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#### SECTION II

Has your Company been assessed and certified against a recognized and comparable Quality Standard? YES NO

If YES, please state and provide evidence of the following:

Quality Standard: \_\_\_\_\_

Assessment Body / Organisation: \_\_\_\_\_

Registration No.: \_\_\_\_\_

Approval Date: \_\_\_\_\_

Expiry Date: \_\_\_\_\_



Scope of Registration:

If NO, provide full details of QA/QC System that currently complies with AS/NZS ISO 9000 series and is in place and submit evidence that assessment and accreditation procedures has commenced. Refer to Section III.

### SECTION III

When completing these questions, please reference the relevant clause or section number in your Quality Manual and relevant internal procedure number

Do you operate a quality system?	Yes/ No
Does it comply with a recognized Quality Standard?	Yes/ No
Do you have and implement procedures for the following:	
• Tender and Contract Review	Yes/ No & Procedure Number
• Design Control	Yes/ No & Procedure Number
• Inspection and Test Plans	Yes/ No & Procedure Number
• Records which Demonstrate Compliance with Requirements	Yes/ No & Procedure Number
• Corrective Action	Yes/ No & Procedure Number
• Identification and segregation of non-conforming product	Yes/ No & Procedure Number
• Documentation and Change Control	Yes/ No & Procedure Number
• Inspection - Goods Inward – Status	Yes/ No & Procedure Number
• Control of Inspection, Measuring and Test Equipment	Yes/ No & Procedure Number
• Control of Purchased Material and Services	Yes/ No & Procedure Number
• Control of Purchaser Supplied Material	Yes/ No & Procedure Number
• Control of Special Processes	Yes/ No & Procedure Number
• Packaging, shipping, handling and storage	Yes/ No & Procedure Number
• Identification & traceability	Yes/ No & Procedure Number
• Manufacture/construction	Yes/ No & Procedure Number
• Quality audits	Yes/ No & Procedure Number
• How long are quality records maintained?	
• Have you been audited for quality?	
• When? Please state dates:	
• By Whom? Please state organization:	
• Against which Standard / Code?	



## 4.12 SCHEDULE K – OCCUPATIONAL HEALTH AND SAFETY

### 4.12.1 HEALTH, SAFETY, ENVIRONMENT AND COMMUNITY

- (a) The Supplier is responsible for the health and safety of its Personnel and any other person affected by its Works.
- (b) The Supplier must submit proposed HSEC plans for review by the Purchaser Representative within 5 Working Days of a request by the Purchaser Representative to do so and in any case prior to commencing any Works on Site. The Supplier must ensure that all HSEC plans comply with all Rules, all Laws and any other obligations under the provisions of the Contract.
- (c) The Purchaser Representative will review the proposed HSEC plans and provide the Supplier with required amendments to the HSEC plan within 12 Working Days of receipt.
- (d) The Supplier must make any amendments required to comply with its obligations under WHS Legislation. The Supplier must then resubmit the proposed HSEC plan within 2 Working Days. The procedure in this clause 4.12.1(d) and clause 4.12.1(c) will continue to apply if the Purchaser Representative requires any further amendments.
- (e) The Purchaser Representative may, in its absolute discretion:
  - (i) direct that the Works must not commence, or be suspended from being performed (as the case may be); or
  - (ii) prevent the Supplier's access to the Site, until the Supplier provides compliant HSEC plans, in accordance with WHS Legislation.
- (f) Any delay caused to the Works arising from the HSEC plans will be the responsibility of the Supplier.
- (g) The Purchaser Representative may at any time request the Supplier to amend the HSEC plans, in which case the procedure in clauses 4.12.1(b), 4.12.1(c) and 4.12.1(d) will apply.
- (h) The Supplier must comply, and ensure all Supplier Personnel comply with the current HSEC plans.
- (i) The Supplier must provide for the medical and health care support and requirements of its Personnel, including provision for medical evacuation. Unless otherwise specified in the Contract, the Purchaser will not be responsible in any respect for the provision of medical or health care services to the Supplier or its Personnel.
- (j) The Supplier must take all reasonable and prudent precautions to avoid any negative impact of its operations on the Environment.
- (k) The Supplier must take all reasonable precautions to avoid any negative impact of its operations on the local host community.

### 4.12.2 SUPPLIER'S COMPLIANCE WITH WHS LEGISLATION

- (a) For the purposes of this clause 4.12.2, the term "Personnel" means:





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- (i) in relation to the Supplier, any of its Workers (including Subcontractors, Subcontractor's Personnel, agents and representatives involved either directly or indirectly in the performance of the Contract);
  - (ii) in relation to a Subcontractor, any of its Workers (including Subcontractors, Subcontractor's Personnel, agents and representatives involved either directly or indirectly in the performance of the Contract); and
  - (iii) in relation to a Relevant Party engaged as principal contractor or appointed as operator as defined in the MQSH Act ("**Operator**"), any of its Workers (including Subcontractors, Subcontractor's Personnel, agents and representatives involved either directly or indirectly in the performance of the Works referred to in the Contract).
- (b) The Supplier must ensure that:
- (i) it, and its Personnel, comply at all times with the requirements of all applicable WHS Legislation and must provide the Purchaser on request with evidence (including any documents requested) that it, and its Personnel, are complying with applicable WHS Legislation;
  - (ii) all Equipment and Plant and Machinery used on the Site or at a Transfer Depot by its Personnel are without risks to the health and safety of any person;
  - (iii) any hazardous or dangerous substances used on the Site or at a Transfer Depot by its Personnel will be handled, used and stored in a manner that is safe and without risks to health and safety;
  - (iv) it has systems in place to identify, assess, control, eliminate (or if it is not possible to eliminate reduce so far as is reasonably practicable) and review risks and hazards at the Site or at a Transfer Depot;
  - (v) there are in place appropriate systems of work for the Works and that those systems of work are safe and without unacceptable risk to health and safety and are reviewed and maintained as appropriate;
  - (vi) only appropriately experienced, skilled and qualified persons are engaged to carry out the Works;
  - (vii) appropriate information, instruction, training and supervision is provided for all its Personnel;
  - (viii) adequate facilities are provided for the welfare at work of its Personnel, including ensuring access to those facilities;
  - (ix) it monitors its Personnel and the conditions at the Site and any other location at which the Works are performed to prevent illness or injury of workers arising from the Site and the Works;
  - (x) it regularly conducts health, safety and security audits of the Works and the Site, retains copies of audit documents and promptly provides the Purchaser with copies of such audit documents upon request; and
  - (xi) in its contracts with Subcontractors, the Supplier will retain for itself the ability to exercise full control over the activities of Subcontractors in relation to work health and safety matters.



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- (c) No comment upon nor any review by the Purchaser or its representatives of the Supplier's HSEC plans provided in accordance with clause 4.11.1 will affect any warranty or guarantee given by the Supplier or relieve the Supplier of any of its liabilities or obligations under the Contract.
- (d) The Supplier must consult, cooperate and coordinate with the Purchaser and any other Supplier performing work on Site in relation to any shared HSEC issues.
- (e) The Supplier must, and must ensure that its Personnel, comply with all reasonable HSEC plans, rules and procedures of the Purchaser in the Contract and as advised from time to time by the Purchaser to the Supplier.
- (f) The Supplier must, and must ensure that its Personnel:
  - (i) do not do anything or fail to do anything that would cause the Purchaser to be in breach of the applicable WHS Legislation; and
  - (ii) do all things reasonably required by the Purchaser to assist the Purchaser in discharging any obligations the Purchaser may have under applicable WHS Legislation in connection with the Site and the Works.
- (g) The Supplier must, and must ensure that its Personnel, cooperate and not unreasonably hinder the Purchaser's access to the Site, the Works the Supplier's Personnel and relevant documentation where such access is reasonably requested or required by the Purchaser:
  - (i) to comply with its own obligations under applicable WHS Legislation; or
  - (ii) for the purpose of the Purchaser monitoring the compliance of the Supplier, or its Personnel, with its obligations under applicable WHS Legislation.
- (h) The Supplier must notify the Purchaser immediately of any incident notifiable or reportable under applicable WHS Legislation connected with the Site or the Works. The Supplier must prepare a detailed incident investigation report and provide a copy of it to the Purchaser within 10 days of the relevant incident occurring. Each such incident investigation report must include details of the relevant facts, underlying causes, recommendations and remedial actions to be taken or improvements to be made.
  - (i) In the event of any incident connected with the Site or the Works, to which clause 4.11.1(h) applies, the Supplier must provide copies of all documents and records requested by the Purchaser relevant to the incident and ensure that its Personnel do the same (including any correspondence with any Government Agency).
  - (j) If the Purchaser wishes to conduct its own incident investigation into any incident notifiable or reportable under applicable WHS Legislation connected with the Site or the Works the Supplier must, and must ensure that its Personnel, cooperate fully with the Purchaser's incident investigation including by providing prompt information about, and access to, relevant documents and its Personnel.
- (k) The Supplier must, and must ensure that its Personnel, comply with all lawful directions relating to health and safety issued by any Government Agency.
- (l) If the Supplier fails to comply with any of its obligations in this clause 4.11.2, the Purchaser may have the Supplier's obligations carried out by the Purchaser or by others and the cost incurred by the Purchaser in having those obligations carried out will be a debt due from the Supplier to the Purchaser.
- (m) To the maximum extent permitted by Law, the Supplier indemnifies the Purchaser and its Personnel from and against any claim or Liabilities suffered or incurred by



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or against the Purchaser to the extent caused or contributed to by a breach by the Supplier of its obligations under this clause 4.11.2.

**QUESTIONNAIRE**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

ID	Description	Response
1	<b>Workers Compensation Insurance</b>	
(a)	Name of your Insurance Company	
(b)	Your Insurance Rating for:- <ul style="list-style-type: none"><li>• Current Year:</li><li>• Previous Year:</li><li>• Preceding previous year:</li></ul>	

2	<b>Lost Time Records for Previous Year</b>	
(a)	Number of Lost Work day cases:	
(b)	Total employee hours worked:	

3	<b>Training</b>	
(a)	Does your Company provide training in Safety for employees?	
(b)	State the type of training:	

4	<b>Safety Representative(s)</b>	
(a)	Which person within your Company is held accountable for Occupational Health and Safety? <ul style="list-style-type: none"><li>• Name:</li><li>• Title:</li><li>• Experience:</li></ul>	



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(b)	Who will be your Company's Representative for monitoring and controlling safety during the Contract? <ul style="list-style-type: none"> <li>Name:</li> <li>Position:</li> <li>Qualifications:</li> <li>Experience</li> </ul>	
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		Notes	
<b>Conformance to Legislation</b>	Does your company have a formal Health, Safety and Environment Policy?		YES / NO
	Is the HSE policy authorised and signed by a senior person?		YES / NO
	Is your HSE policy regularly revised / updated?		YES / NO
	Does your company have a formal Health and Safety System(s) and Manual?		YES / NO
	Are your Health and Safety System and Manual regularly revised / updated?		YES / NO
	Is your Health and Safety System compliant to ISO18001?		YES / NO
	Is your HSE System reviewed against legislation?		YES / NO
	Do you have an environmental management manual or control plan?		YES / NO
	Is your environmental management system certified and/or compliant to ISO 14000 standard?		YES / NO
	Is your environmental management system regularly reviewed / updated?		YES / NO
<b>HSE System Documentation.</b>	Does your HSE Mgt System cover Risk Management?		YES / NO
	Does your HSE Mgt System cover Emergency Procedures?		YES / NO
	Does your HSE Mgt System cover Fire Prevention?		YES / NO



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	Does your HSE Mgt System cover Electrical Safety Procedures?		YES / NO
	Do you use an electrical check system for equipment?		YES / NO
	Does your HSE Mgt System cover Mechanical Safety Procedures?		YES / NO
	Does your HSE Mgt System cover Noise?		YES / NO
	Does your HSE Mgt System cover Fitness for Duty - Fatigue?		YES / NO
	Does your HSE Mgt System cover Particulates & Gases / Vapours?		YES / NO
	Does your HSE Mgt System cover Tagging / Isolation / Lockout procedures?		YES / NO
	Does your HSE Mgt System cover Dangerous Goods / Hazardous Substances?		YES / NO
	Do you have a safety data sheet (SDS) manual / file?		YES / NO
	Are SDSs kept close to where the substances are stored and / or used?		YES / NO
	Are your personnel trained in the use of substances?		YES / NO
	Does your HSE Mgt System cover reporting of Hazards / Near Misses?		YES / NO
	Does your HSE Mgt System cover Accident Notification and Investigation?		YES / NO
	Does your HSE Mgt System cover Personal Protective Equipment (PPE)?		YES / NO
	Does your HSE Mgt System cover Workplace Inspections?		YES / NO
	Does your HSE Mgt System cover Hot Work Procedures?		YES / NO
	Does your HSE Mgt System cover Manual Handling standards?		YES / NO
	Does your HSE Mgt System cover Lifting Gear standards?		YES / NO
	Does your HSE Mgt SYstem cover Working at Heights standards?		YES / NO



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	Does your HSE Mgt System cover Confined Space standards?		YES / NO
	Does your HSE Mgt System cover Risk Assessments / Job Hazard Analysis standards?		YES / NO
	Does your HSE Mgt System cover Toolbox Meetings?		YES / NO
	Does your HSE Mgt System cover Employee Skills and Competencies?		YES / NO
	Does your HSE Mgt System cover Ergonomics / RSI / Health Monitoring?		YES / NO
	Does your HSE Mgt System cover Rehabilitation / Workers' Compensation?		YES / NO
	Does your HSE Mgt System cover Fitness for Duty - Drugs and Alcohol standards?		YES / NO
	Does your HSE Mgt System cover use of company vehicles?		YES / NO
	Does your HSE Mgt System cover specifics of the State WH&S Acts and Regulations?		YES / NO
	Are statutory health and safety signs properly displayed on your site?		YES / NO
Management commitment to and employee involvement in HSE Process	Do you have a dedicated (full-time) HS Mgt System role and person in your organisation?		YES / NO
	Do you have a part-time HS Mgt System role and person in your organisation?		YES / NO
	Do you rely on an external consultant for Health and Safety matters?		YES / NO
	Does an Employee Health and Safety Group / Committee exist?		YES / NO
	Are there documented outcomes and action lists from this group / committee?		YES / NO
	Are all employees advised of the outcomes from the Committee?		YES / NO
	Do employees have easy access to Health and Safety System and Manual?		YES / NO
	Do employees have easy access to Environment System and Manual?		YES / NO
	Are HSE objectives / targets & progress communicated to all employees?		YES / NO



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	Can you provide evidence that employees are trained in health, safety and environment?		YES / NO
	Are Tool Box Talks used for health, safety and environment feedback?		YES / NO
	Are there dedicated health, safety and environment feedback sessions for employees?		YES / NO
	Do you conduct random tests on employees for Drugs and / or Alcohol?		YES / NO
	Do you conduct random tests on sub-contractors for Drugs and / or Alcohol?		YES / NO
	Do you have a program to assess the fitness for work for all employees?		YES / NO
	Do you conduct regular internal health, safety and environment audits in your operation?		YES / NO
	Does senior management participate in internal HSE audits in your operation?		YES / NO
	Is there a system of follow up to ensure issues identified in HSE audits are closed out?		YES / NO
	Are all employees advised of the results of HSE audits?		YES / NO
	Do you conduct HSE audits of the sub-contractors that you use?		YES / NO
	Do you have a HSE Suggestion process?		YES / NO
	Do you have a system of employee HSE incentives?		YES / NO
	Is anyone in your company trained in first aid?		YES / NO
HSE Performance	Are you a fatality free workplace? (you have never had a fatality)		YES / NO
	Is your LTIFR < 3? (Lost Time Injuries / million manhours)		YES / NO
	Is your LTIFR < 6?		YES / NO
	Is your LTIFR < 10?		YES / NO
	Is your Lost Time Injury Severity Rate < 20? (Days lost / million manhours)		YES / NO



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	Is your Lost Time Injury Severity Rate < 100?		YES / NO
	Is your Lost Time Injury Severity Rate < 200?		YES / NO
	Is your Environmental Event rate < 1 per year		YES / NO
	Is your Environmental Event rate < 3 per year		YES / NO
HSE measurement and monitoring performance process	Do you keep a record of statistics on medical treatments (eg MTIFR)?		YES / NO
	Do you monitor / compare medical treatment trends across all your sites / projects?		YES / NO
	Do you keep a record of statistics on Lost Time Injuries (eg LTIFR)?		YES / NO
	Do you monitor / compare LTIFR trends across all your sites / projects?		YES / NO
	Do you monitor / report health, safety and environment statistics regularly? Eg monthly?		YES / NO
	Do you monitor health, safety statistics in accordance with AS 1885?		YES / NO
	Can you report HSE incidents that occurred at each customer site?		YES / NO
	Do you conduct HSE Self-Audits on your own sites?		YES / NO
	Can you provide formal evidence of results of these self-audits?		YES / NO
	Do you use perform Safety Observation / Trend Analysis?		YES / NO
	Do you keep a record of statistics on Drug and Alcohol testing / results?		YES / NO
	Do you record & investigate Near Misses?		YES / NO
	Do you benchmark your HSE performance against comparative companies?		YES / NO





#### 4.13 SCHEDULE L – QUALITY DOCUMENTATION REQUIREMENTS

##### 4.13.1 MANUFACTURER’S DATA REPORT (MDR)

ALL MDRs (Manufacturer’s Data Report) are to be a machine Specific and standalone document, with appropriate bookmarks as per the MDR content list below.

The MDR to be compiled & collated in accordance with contract specifications and MDR contents list. Refer to:

- Approved Master MDR index 726-20010-IDX-QA-0001
- Company Specification 25977-000-3PS-G000-00001



#### 4.14 SCHEDULE M – PURCHASER’S DRAWING AND DATA SCHEDULE

Item	SMC Document Group	Forecast Date Prelim Material Lists	Forecast Date 80% Drawings IFC
3.1	STACKER (BBST1001)		15-Dec-16
3.1.1	Long travel bogies and equalisers		15-Dec-16
3.1.2	Portal including cross equaliser		15-Dec-16
3.1.2.1	Portal Secondary Steel Structure		30-Jan- <del>16</del> <u>17</u>
3.1.3	Slew deck		15-Dec-16
3.1.3.1	Slew deck Secondary Steel Structure		30-Jan- <del>17</del> <u>16</u>
3.1.4	Discharge boom and including conveyor system steel structure, mast and suspension links, and counterweight assembly		15-Dec-16
3.1.4.1	Discharge boom Secondary Steel Structure		30-Jan- <del>17</del> <u>16</u>
3.1.5	Tripper car Main Steel Structure		15-Dec-16
3.1.5.1	Tripper Car Secondary Steel Structure		30-Jan- <del>17</del> <u>16</u>
3.1.6	Chute assemblies		15-Feb- <del>17</del> <u>16</u>
3.1.7	Ground mounted structures		28-Feb- <del>17</del> <u>16</u>
3.1.8	Mechanical and electrical services		15-Dec-16
3.2	RECLAIMER (BBBWR1001)		
3.2.1	Long travel bogies and equalisers	14-Oct-16	15-Dec-16
3.2.2	Portal including cross equaliser	14-Oct-16	15-Dec-16
3.2.2.1	Portal Secondary Steel Structure	14-Oct-16	30-Jan- <del>17</del> <u>16</u>
3.2.3	Slew deck and pylon assembly	14-Oct-16	15-Dec-16
3.2.3.1	Slew deck and Rocker Secondary Steel Structure		30-Jan- <del>17</del> <u>16</u>
3.2.4	Bucket wheel boom assembly including mast and suspension links	14-Oct-16	15-Dec-16
3.2.4.1	Bucket Wheel Boom Secondary Steel Structure		30-Jan- <del>17</del> <u>16</u>
3.2.5	Bucket wheel assembly		15-Dec-16



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Item	SMC Document Group	Forecast Date Prelim Material Lists	Forecast Date 80% Drawings IFC
3.2.6	Counterweight boom and rocker including counterweight assembly		15-Dec-16
3.2.6.1	Rocker and Counterweight Boom Secondary Steel Structure		30-Jan- <del>17</del> 16
3.2.7	Not Used		
3.2.8	Chute assembly		15-Dec-16
3.2.9	Ground mounted structures		15-Dec-16
3.2.10	Mechanical and electrical services		15-Dec-16
3.3	SHIPLOADER (BBSL1001)		
3.3.1	Long travel bogies and equalisers		15-Dec-16
3.3.2	Portal including cross equaliser		15-Dec-16
3.3.2.1	Portal Secondary Steel Structure		30-Jan- <del>17</del> 16
3.3.3	Slew deck and pylon assembly		15-Dec-16
3.3.3.1	Slew deck Secondary Steel Structure		30-Jan- <del>17</del> 16
3.3.4	Discharge boom and pylon assembly		15-Dec-16
3.3.4.1	Discharge boom Secondary Steel Structure		30-Jan- <del>17</del> 16
3.3.5	Counterweight boom assembly		15-Dec-16
3.3.5.1	Counterweight boom Secondary Steel Structure		30-Jan- <del>17</del> 16
3.3.6	Tripper car assembly		15-Dec-16
3.3.6.1	Tripper Car Secondary Steel Structure		30-Jan- <del>17</del> 16
3.3.7	Chute assemblies		15-Dec-16
3.3.8	Ground mounted structures		15-Dec-16
3.3.9	Mechanical and electrical services		15-Dec-16



4.15 SCHEDULE N – VENDOR RECOMMENDED SPARE PARTS PRICING – NOT USED



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#### 4.16 SCHEDULE 0 – ENVIRONMENTAL, SAFETY AND HEALTH MANAGEMENT PLAN



#### 4.17 SCHEDULE P – DEED OF NOVATION - PURCHASER

### DEED OF NOVATION – PURCHASER

This Deed of Novation is made the \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ (Deed).

Between:

- (1) Sandvik Mining and Construction Australia Pty Ltd (ABN 62 003 771 382) whose registered office is at [insert] (Sandvik);
- (2) [insert] whose registered office is at [insert] (Supplier); [and]
- (3) [insert] whose registered office is at [insert] (New Purchaser).

And is supplemental to the Contract No726-15001, titled Steel Fabrication and Offsite Erection dated [insert date] between Sandvik and the Supplier (Contract).

Terms defined in the Contract have the same meaning in this Deed unless an alternative definition is expressly provided in this Deed.

It Is Agreed:

1. Sandvik hereby novates to the New Purchaser the whole of Sandvik's interest, rights and obligations as the Purchaser under the Contract.
2. The New Purchaser agrees to be bound by all the terms of the Contract in every way as if it were an original party to the Contract in place of Sandvik. The Supplier agrees to be bound by and to perform the terms of the Contract in every way as if the New Purchaser were and had always been named in the Contract in place of Sandvik.
3. The Supplier, the New Purchaser and Sandvik agree that the terms of the Contract will apply as though the acts and omissions of the Supplier and Sandvik respectively in relation to or in connection with the Contract were and had been the acts and omissions of the Supplier and the New Purchaser in relation thereto or in connection therewith.
4. Sandvik and the Supplier hereby irrevocably and unconditionally mutually release and discharge each other from any and all obligations and liabilities to each other under the Contract.
5. Subject to the terms of this Deed, the Contract will remain in full force and effect.
6. This Deed will be governed by, construed and take effect in accordance with the laws of Queensland and the parties hereby submit to the non-exclusive jurisdiction of the Queensland Courts.

In Witness whereof this Deed has been duly executed and delivered the day and year first before written.

Executed and delivered as a deed.

EXECUTED by SANDVIK MINING AND CONSTRUCTION AUSTRALIA PTY LTD (ABN 62 003 771 382) in accordance with section 127(1) of the Corporations Act:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

EXECUTED by [NAME AND ABN OF SUPPLIER] in accordance with section 127(1) of the Corporations Act:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

EXECUTED by [NAME AND ABN OF NEW PURCHASER] in accordance with section 127(1) of the Corporations Act:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

#### 4.18 SCHEDULE Q – DEED OF NOVATION – SUPPLIER

### DEED OF NOVATION – SUPPLIER

This Deed is made the \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (Deed)

Between:

- (1) Sandvik Mining and Construction Australia Pty Ltd (ABN 62 003 771 382) whose registered office is at [insert] (Sandvik);
- (2) [insert] whose registered office is at [insert] (Supplier);
- (3) [insert] whose registered office is at [insert] (Incoming Supplier);

And is supplemental to the Contract 726-15001, titled Steel Fabrication and Offsite Erection dated [insert date] between Sandvik and the Supplier (Contract).

#### Definitions

**Effective Date** means [insert date].

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

Terms defined in the Contract have the same meaning in this Deed unless an alternative definition is expressly provided in this Deed.

It is agreed that:

- (a) On and from the Effective Date:
  - (i) the Supplier novates to the Incoming Supplier the whole of the Supplier's interest, rights and obligations as the Supplier under the Contract;
  - (ii) the Incoming Supplier agrees to be bound by all the terms of the Contract in every way as if it were an original party to the Contract in place of the Supplier (unaffected by the discharge and release of the Supplier by Sandvik in clause (a)(iv) of this Deed), including obligations and Liabilities that existed or arose before the Effective Date as a result of the Supplier's conduct (the **Obligations and Liabilities**);
  - (iii) the Supplier, the Incoming Supplier and Sandvik agree that the terms of the Contract will apply as though the acts and omissions of the Supplier and Sandvik respectively in relation to or in connection with the Contract were and had been the acts and omissions of the Incoming Supplier and Sandvik in relation thereto or in connection therewith;
  - (iv) on the basis that the Incoming Supplier has assumed Contract Obligations and Liabilities, Sandvik and the Supplier irrevocably and unconditionally mutually release and discharge each other from any and all obligations and Liabilities to each other under the Contract;
  - (v) each reference in the Contract to the Supplier is to be read as a reference to the Incoming Supplier; and



- (vi) the Incoming Supplier must comply with the Contract in favour of the Supplier.
- (b) The Incoming Supplier must within 7 days of executing this Deed, provide Sandvik with replacement bank guarantees in the same amount and form as those that have been provided by the Supplier under clause 63.1 of the General Conditions and are still held by the Purchaser under the Contract (**the Replacement Security**).
- (c) Upon receipt of the Replacement Security, Sandvik will release to the Supplier any Security which was procured by the Supplier and which is then held by the Purchaser under the Contract.
- (d) Subject to the terms of this Deed, the Contract will remain in full force and effect and will otherwise be unamended by this Deed.
- (e) This Deed will be governed by, construed and take effect in accordance with the laws of Queensland and the parties hereby submit to the non-exclusive jurisdiction of the Queensland Courts.

In Witness whereof this Deed has been duly executed and delivered the day and year first before written.

**Executed and delivered as a deed.**

EXECUTED by Sandvik Mining and  
Construction Australia Pty Ltd (ABN 62 003  
771 382) in accordance with section 127(1)  
of the Corporations Act:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

EXECUTED by [NAME AND ABN OF  
SUPPLIER] in accordance with section  
127(1) of the Corporations Act:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

EXECUTED by [NAME AND ABN OF  
INCOMING SUPPLIER] in accordance with  
section 127(1) of the Corporations Act:

\_\_\_\_\_  
Director

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

#### 4.19 SCHEDULE R – STATUTORY DECLARATION

### FORM OF STATUTORY DECLARATION

I, ....., of ....., do solemnly and sincerely declare that:

1. I am [insert Position held in Supplier organisation] of [insert Supplier's name] [insert ABN] (Supplier) and am authorised to make this declaration on behalf of the Supplier.
2. The Supplier has entered into a contract (Contract No.: 726-15001 with [insert Purchaser Name here] to perform Steel Fabrication and Offsite Erection works dated [insert date here] (Contract).
3. Terms not otherwise defined in this statutory declaration have the same meaning as in the Contract.
4. [delete if statutory declaration is made in relation to return of Security] This statutory declaration is made pursuant to clause 24.3 of the Contract in relation to Progress Claim No. [insert] submitted by the Supplier on [insert].
5. [delete if statutory declaration is made in relation to a Progress Claim] This statutory declaration is made pursuant to clause 3 of the Contract in relation to [insert details of security held by the Purchaser].
6. All persons for whom the Supplier is responsible have been paid all moneys which as at the date of this declaration are payable to them, whether by the Supplier or a Subcontractor, in respect of their employment on or in relation to the Works, with the exception of the following:
  - (a) [insert relevant details, including names and addresses of persons, amounts owing, and whether those amounts are in respect to wages, holiday pay, allowances, etc – if no exceptions, insert "no exceptions apply"]
7. All Subcontractors have been paid all moneys which as at the date of this declaration are payable to them by the Supplier in respect of all matters performed by them in respect of the Works, with the exception of the following:
  - (a) [insert relevant details, including names and addresses of Subcontractors, amounts owing, and whether those amounts are in respect of materials supplied, work performed, etc – if no exceptions, insert "no exceptions apply"]
8. All claims or demands against the Supplier which might remain or become a lien or charge against the Works have been paid or satisfied, with the exception of the following claims or demands:
  - (a) [insert relevant details]

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the *Oaths Act 1867* (QLD).

Declared at \_\_\_\_\_ on \_\_\_\_\_

(place where declaration made) (date of declaration)

by \_\_\_\_\_

Signature of person making the declaration

before me: \_\_\_\_\_

Commissioner for Declarations / Justice of the Peace / Lawyer

#### 4.20 SCHEDULE S – PROGRAM

Supplier shall submit with Tender a Gantt chart Delivery Program including, at a minimum:

1. All Key Milestones, refer Schedule E and Schedule M;
2. The following requirements as specified in Part B0 Appendix 3 Planning, Progress and Reporting Requirements:
  - i. Fabrication Activities summarised by WBS Level 3;
  - ii. Assembly & Erection Activities summarised by WBS Level 4;
  - iii. "Steel Structure" Activity Code;
  - iv. "PBS" (Pricing Breakdown Structure) Activity Codes L1 and L2.
3. Cost loaded activities in alignment with the Contract Price;

Supplier shall deliver a detailed Delivery Program 20 Working Days from Award consistent with all the requirements of Part B0 Appendix 3, to the approval of the Purchaser. Supplier shall submit draft versions of the Delivery Program at 2 weeks and 3 weeks after Award for Purchaser's comment.

#### 4.21 SCHEDULE T – SITE PROVISIONS

These shall only be applicable if Site works are included in the Tenderer's offer.

##### 4.21.1 DEFINITIONS

"Access Date" means the date so specified Item 5B of Annexure Part A, or if no date is specified, the date agreed in writing with the Company Representative (if any).

"Cultural Heritage Management Plan" means a plan so named prepared in accordance with the *Aboriginal Cultural Heritage Act 2003* (Qld).

"Separate Suppliers" means contractors engaged by the Company on Site to deliver the Project, other than the Contractor and its Subcontractors.

##### 4.21.2 SITE

- (a) The Supplier must comply with all Site rules notified to the Supplier by the Purchaser Representative.
- (b) Throughout the performance of the Works, the Supplier must keep the Site clean and tidy and promptly remove all waste.
- (c) Unless otherwise expressly specified in the Contract, the Supplier is responsible for the cost of transporting its Personnel to and from the Site.
- (d) The Supplier Representative must be present on the Site throughout the performance of the Works.
- (e) Except as required by Law, the Supplier must not affix or exhibit, or permit any third party to affix or exhibit, any sign, light, embellishment, advertisement, name or notice on or to any land or structure on the Site without the prior written consent of the Purchaser Representative.
- (f) In the event of any breach of clause 4.21.2(a) or clause 10.1(a)(iv) of the General Conditions of Contract, the Purchaser may:
  - (i) require the Supplier, the Supplier's Personnel, and/or any other Person to leave the Site immediately; and
  - (ii) require the Supplier and/or any of its Personnel to remove any material or substance from the Site at the Supplier's cost,and the Supplier must ensure such request is immediately complied with and take all possible action to ensure the safety of all Personnel.
- (g) Subject to any Cultural Heritage Management Plan, all fossils, coins, articles, minerals of commercial value, and objects of antiquity and structures and other remains and things of geological and archaeological interest discovered on the Site shall be dealt with in accordance with any applicable Law, but as between the Purchaser and the Supplier, shall be deemed to be the property of the Purchaser. The Supplier must take all reasonable precautions to prevent its Personnel from removing and damaging any such article or thing and must immediately upon discovery thereof and before removal or any further disturbance of the area concerned, inform the Purchaser Representative of such discovery. The Supplier must carry out at the expense of the Purchaser the Purchaser Representative's orders as to the disposal of the same. The Supplier must not resume work in the area concerned until permitted by the Purchaser Representative. Time lost shall be treated as a "suspension" under clause 16 of the General Conditions of Contract.

- (h) The Supplier must not cut down any trees without the prior approval of the Purchaser Representative.
- (i) The Supplier acknowledges and agrees that the Purchaser's operations take precedence over the performance of the relevant part of the Works for which the Supplier is responsible. The Supplier must at all times consult with the Purchaser Representative and obtain 20 days prior approval for any action likely to interfere with the Purchaser's operations. The Purchaser Representative will reply to any such request within 7 days of such request. All shut down time or isolated plant outages shall be at times convenient to and nominated by the Purchaser Representative.
- (j) The Purchaser, the Purchaser Representative and other Suppliers shall have the right to use, without charge and without material interference to the performance of the Works, the Temporary Works including any roads, bridges and installations which have been constructed or acquired by the Supplier for the purposes of the Contract.
- (k) The Supplier must not, without prior written approval of the Purchaser Representative or unless the Contract so provides, use the Site or permit or suffer the Site to be used for any purpose other than in connection with the Works (including camping or any residential purposes).

#### **4.21.3 ACCESS**

##### **4.21.3.1 RIGHT OF ACCESS**

The Purchaser will give the Supplier access from the Access Date to a sufficient portion of the Site (including access to the rail) to commence the Works (or the relevant Separable Portion of the Works), and thereafter give the Supplier access to such further portions of the Site as may, from time to time, be necessary for performing the Works, provided in each case that:

- (a) the Supplier has complied (and is compliant) with clauses 10.1(b) and 13.4(a) of the General Conditions of Contract; and
- (b) for that part of the Site for which access is being sought:
  - (i) it is not earlier than any time specified in the Contract or the Approved Program or as otherwise agreed in writing for the Supplier to commence the carrying out of the Works or to be given access;
  - (ii) the Supplier has given the Purchaser Representative not less than 10 Working Days' notice before commencing the Works;
  - (iii) the Supplier has obtained all permits, licences, registrations and approvals and given all notices required to be obtained or given by Law or any Government Agency necessary for the performance of the particular Works to be undertaken; and
  - (iv) the Supplier has demonstrated to the Purchaser Representative's reasonable satisfaction that it is ready, willing and able to carry out the relevant Works.

##### **4.21.3.2 NATURE OF INTEREST**

Access to the Site will confer on the Supplier a right to only such use and control as is necessary to enable the Supplier to perform the Works.

#### **4.21.3.3 DELAY IN PROVIDING ACCESS**

A refusal or failure by the Purchaser to provide access to any part of the Site in circumstances where the Supplier has failed to satisfy the conditions specified in clause 4.21.3.1, or has otherwise caused or contributed to the failure, will not give rise to an extension of time or any other claim against the Purchaser.

#### **4.21.4 OTHERS ON SITE**

- (a) The Supplier will not have exclusive possession of the Site, but only access to the areas allocated by the Purchaser Representative as are necessary, in the opinion of the Purchaser Representative, to enable it to perform the Works.
- (b) The Supplier must co-operate with and not impede the Purchaser, its Personnel, Separate Suppliers and any Subcontractors and other suppliers (whether employed or engaged by the Purchaser or not) involved in the delivery of the Project or any other activities which interface with the Works and must give those persons any information or data reasonably necessary or expedient to ensure the proper performance of their respective work.
- (c) The Supplier must at its own expense, as requested by the Purchaser Representative from time to time, attend site coordination meetings convened by the Purchaser Representative.
- (d) Subject to the Supplier's compliance with clause 4.21.4(b), the Purchaser will ensure that the activities of the Purchaser and any Separate Suppliers do not unreasonably interfere with the performance of the Works in a manner that could not have been reasonably foreseen by an experienced and competent Supplier at the time of entry into the Contract and when scheduling and performing the Works.
- (e) The Supplier must not employ at the Site in relation to the Works any employee or former employee of any other employer at the Site without the prior agreement of such employer.

#### **4.21.5 COOPERATION WITH SUBCONTRACTORS AND OTHER SUPPLIERS**

##### **4.21.5.1 COOPERATION**

- (a) Where Equipment or services which form part of the Works are to be supplied to or by third parties (whether nominated by the Purchaser or the Supplier), the Supplier must cooperate with the Subcontractors, suppliers and the Purchaser's other Suppliers and give them any information or data reasonably necessary or expedient to ensure proper performance of their respective work.
- (b) The information or data referred to in clause 4.21.5.1(a) includes, but is not limited to, the provision of design data, drawings or other documents.

##### **4.21.5.2 FAILURE TO COOPERATE**

Failure of the Supplier to cooperate and/or provide information to other Suppliers, suppliers or Subcontractors in accordance with clause 4.21.5.1 shall be a breach of Contract within the meaning of clause 25.2 of the General Conditions of Contract

#### **4.21.6 ENVIRONMENT, CLEANING AND DRAINING OF THE SITE**

##### **4.21.6.1 COMPLIANCE WITH OBLIGATIONS**



Without limiting the general obligations set out in Special Condition 3.6 and clause 11 of the General Conditions of Contract, the Supplier must comply at all times while on the Site and any area under the control or possession of the Purchaser, and must ensure that its Personnel comply and that all work undertaken on the Site complies, with the requirements of this clause 4.21.6.

#### *4.21.6.2 POLLUTION*

The Supplier must ensure that the work practices employed by it and its Personnel will not pollute or damage the Environment.

#### *4.21.6.3 PREVENTION OF POLLUTION*

The Supplier must have sufficient equipment and trained Personnel to contain any spill or leakage of any substance likely to pollute or damage the Environment, if not contained until appropriate help can be provided.

#### *4.21.6.4 MONITOR WATER DISCHARGES*

The Supplier must monitor all discharges of water made by the Supplier to ensure compliance with the Purchaser's consents.

#### *4.21.6.5 REPORT*

The Supplier shall report immediately to the Purchaser Representative all spills or leakages of any substance likely to pollute or damage the Environment or any incident or occurrence breaching or likely to breach the Purchaser's consents.

#### *4.21.6.6 KEEPING WORKS DRY*

The Supplier must carry out all drainage, pumping and overhead protection required to keep the Works dry. The costs incurred shall be the Supplier's responsibility unless both:

- (a) the flooding was caused by the Purchaser or its Personnel (other than the Supplier and any Subcontractor engaged by it); and
- (b) the Supplier immediately advises the Purchaser Representative of the flooding.

#### *4.21.6.7 KEEP CLEAN AND TIDY*

During construction of the Works, the Supplier must remove all rubbish generated by its construction operations to a place nominated by the Purchaser Representative and must keep the Site clean and tidy to the satisfaction of the Purchaser Representative. Upon the achievement of Delivery the Supplier must remove all workshops and any Temporary Works which it has constructed for its convenience, all its Plant and Machinery, all rubbish accumulated during the construction of the Works and, except as otherwise provided in the Contract, all Equipment not forming part of the Works, and must leave the Site in a clean and tidy condition fit for immediate use and occupation. If the Supplier fails within a reasonable time to remove such workshops, Temporary Works, Plant and Machinery, rubbish (accumulated or otherwise) and Equipment, the Purchaser may have them removed at the Supplier's sole risk and expense.

#### *4.21.6.8 DISPOSAL OF WASTE*

The Supplier must, at its own cost, dispose of all water, excavated materials non-returnable packaging of Purchaser supplied items and other waste at disposal areas as directed by the Purchaser Representative.

#### **4.21.7 EXPLOSIVES**

Without limiting the general obligations set out in Special Condition 3.6 and clause 11 of the General Conditions of Contract, the Supplier must not bring, handle, store or use any explosives on the Site without in each case first receiving the permission of the Purchaser Representative. Such permission shall not relieve the Supplier from any obligations or duties relating to the handling, storage or use of explosives whether under any of the provisions of the Contract or otherwise.

#### **4.21.8 VEHICLES**

Without limiting the general obligations set out in Special Condition 3.6 and clause 11 of the General Conditions of Contract, the Supplier must ensure all vehicles conform to the requirements of all relevant Laws and the Supplier must conform and ensure that its Personnel conform with any Purchaser transport regulations which apply to the Site.

#### **4.21.9 REMOVAL**

The Purchaser shall, without prejudice to its rights or the rights of the Purchaser Representative elsewhere in the Contract, be entitled to remove or require the removal from the Site of any person who fails to comply with any of the Purchaser's transport regulations and the Supplier must replace any person so removed at no cost to the Purchaser and in such circumstances shall not be entitled to claim an extension of time under clause 17.

#### **4.21.10 INJURY AND DAMAGE**

Without limiting the general obligations set out in Special Condition 3.6 and clauses 2 and 11 of the General Conditions of Contract, and any other clause in the Contract, the Supplier must report immediately to the Purchaser Representative any accident, safety incident, injury or dangerous circumstances occurring or arising in the performance of the Works and any damage to the Purchaser's property or to the property or person of any third parties and any act, matter or thing which causes such event. The Supplier must permit and must procure such further permission as may be necessary for the Purchaser Representative, or any person nominated by it, to make such inspections and interviews and take such statements from the Supplier and persons for whom it is responsible as the Purchaser Representative shall think fit, for the purposes of determining the causes and effects of such accident, injury or dangerous circumstances.

## **4.22 SCHEDULE U – CONTRACTOR’S WORKFORCE AND INDUSTRIAL RELATIONS**

### **4.22.1 LABOUR**

The Supplier must supply all labour, supervisory and other personnel necessary for the proper performance of the Works (including for ensuring the Works are completed on or before the Date for Delivery).

### **4.22.2 SKILLED PERSONS**

- (a) The Supplier must only employ such persons as are careful, skilled and experienced in their respective trades and callings, for the performance of the Works.
- (b) The Supplier must obtain the Purchaser's approval to provide any on-Site training of its Personnel. Such approval shall be in the Purchaser's sole and unfettered discretion and absent any such approval all persons involved in the performance of the Works must be appropriately skilled and trained before attending Site.

### **4.22.3 SUPPLIER RESPONSIBLE FOR INDUSTRIAL RELATIONS IN RESPECT OF EMPLOYEES**

The Supplier shall be responsible for industrial relations in respect of all persons for whom it is responsible, but must not make any commitment to any person or union or employees organisation on any matter affecting or likely to affect the Project without consulting the Purchaser Representative.

### **4.22.4 STABLE INDUSTRIAL RELATIONS ENVIRONMENT**

The Supplier and its Subcontractors must exercise cooperation with other Suppliers and their Subcontractors on the Site in order to maintain a stable industrial relations environment. The Supplier must, as requested by the Purchaser Representative from time to time attend meetings convened by the Purchaser Representative for the purpose of discussing industrial matters.

### **4.22.5 SUPPLIER TO KEEP PURCHASER REPRESENTATIVE INFORMED**

The Supplier must keep the Purchaser Representative fully informed of any dispute with its employees, with any union or employees organisation, or of any demand for wages or conditions in excess of or outside the scope of current and applicable industrial awards or registered industrial agreements. No commitment whatsoever in response to these claims shall be made by the Supplier or its Subcontractors without consulting the Purchaser Representative.

### **4.22.6 EMPLOYEE RELATIONS AND INDUSTRIAL RELATIONS**

- (a) The Supplier must observe the provisions of:
  - (i) any industrial relations directive or advice that the Purchaser Representative may issue to the Supplier from time to time; and
  - (ii) any enterprise or site agreement relating to conditions of employment or in connection with the Site.
- (b) The Supplier must prepare and submit to the Purchaser Representative for approval an employee relations management plan based on the employee

relations management plan requirements and procedures provided by the Purchaser (which are annexed to the Contract).

- (c) The Supplier must not mobilise to Site until its employee relations management plan has been approved by the Purchaser Representative and the Supplier will not be entitled to make any claim (for money or an extension of time to the Date for Delivery) in relation to any employee relations management plan that is not approved by the Purchaser Representative because the submitted plan is not in accordance with the Contract.
- (d) When performing the Works, the Supplier must comply with the employee relations management plan approved by the Purchaser Representative.

#### **4.22.7 CONSULTATION WITH PURCHASER REPRESENTATIVE**

The Supplier must not, without consulting the Purchaser Representative, enter into any enterprise agreement or other employment contract with respect to any area of conditions forming part of or related to the Works.

#### **4.22.8 PERIODIC CONSULTATION WITH PURCHASER REPRESENTATIVE**

- (a) For the purposes of keeping the Purchaser Representative advised of the Supplier's activities in respect of industrial relations, the Supplier must, in respect of its employees and all other persons for whom it is responsible, advise the Purchaser Representative:
  - (i) on a daily basis of:
    - (A) injury statistics (including the number of lost time injuries and time lost); and
    - (B) the number of employees by classification; and
  - (ii) on a fortnightly basis (or as often as otherwise required by the Purchaser Representative) of:
    - (A) hours worked;
    - (B) wages paid;
    - (C) lost time through absenteeism; and
    - (D) lost time through accident or industrial bans or other limitations on work.
- (b) The information is to be supplied in such form or contained within such presentation as is acceptable to the Purchaser Representative.

#### **4.22.9 TIME AND HOURS WORKED RECORDS**

The Supplier must permit the Purchaser Representative, at any reasonable time, to inspect and take copies of the Supplier's records in relation to time and hours worked by the Supplier's Personnel in performing the Works.

#### **4.22.10 SUPPLIER ENSURE EACH EMPLOYEE FAMILIAR WITH CONDITIONS OF EMPLOYMENT**

The Supplier must ensure that each of its employees is familiar with and accepts the conditions of its employment and signs a copy of those conditions as evidence of such acceptance in a form approved by the Purchaser Representative.

#### **4.22.11 SUPPLIER MUST ONLY DEAL WITH AUTHORISED REPRESENTATIVES**

The Supplier must recognise and deal with only employee representatives authorised to act on behalf of employees. The rights of such representatives under any relevant Law,

award or applicable agreement shall be respected but the Supplier must ensure they are not abused or exceeded.

#### **4.22.12 AMENITIES**

- (a) The Supplier shall be responsible for the provision of all Site amenities for its employees which are not otherwise provided by the Purchaser.
- (b) The Supplier must ensure amenities:
  - (i) are of good standard, no less than prescribed by any applicable Law or award and not less than accepted standards in industry, and of a standard similar to that provided by other employers at the Site for their employees;
  - (ii) are available throughout working hours from the commencement of work by the Supplier on Site and at a location to be designated by the Purchaser Representative; and
  - (iii) include hot water for making tea or coffee, food heaters and refrigerated storage for employees' food and drink.
- (c) The Supplier must ensure that cool drinking water is readily available to its employees.

#### **4.22.13 ACCOMMODATION**

The Supplier must not charge its employees for any accommodation provided for its employees under the Contract.

#### **4.22.14 TRANSPORTATION**

- (a) Unless otherwise agreed in writing the Supplier shall be responsible for the transportation of its employees on the Site at all times. Vehicles and drivers used for this purpose must be properly licensed and safe and suitable for the purpose.
- (b) Travel will be permitted only on those roads and parking only in those areas designated by the Purchaser Representative. The Purchaser Representative may issue passes for the Supplier's working vehicles and other vehicles as it deems necessary. All Site traffic rules must be obeyed. When entering or leaving the Site, all vehicles must stop to be recognised.
- (c) The Purchaser Representative reserves the right to conduct personnel and vehicle inspection while on the Site.
- (d) The Site speed limit for all types of vehicles must be adhered to.

#### **4.22.15 MEDICAL CARE**

Where medical facilities are not otherwise available, the Supplier shall be responsible for the provision of such facilities for its employees, Subcontractors and their employees.

#### **4.22.16 TOILET FACILITIES**

If directed by the Purchaser, the Supplier must provide toilet and hand washing facilities for the use of its employees at or near the Site as directed by the Purchaser Representative.

#### **4.22.17 EMPLOYEES OF OTHER SITE EMPLOYERS**

During the Term, the Supplier must not employ or hire the employees of any other Suppliers engaged on the Site without the Purchaser Representative's prior consent. The Supplier must not do anything nor cause anything to be done whereby employees of the Purchaser, the Purchaser Representative, or of any other Supplier engaged on the Site are either directly or indirectly induced to leave the employment of the Purchaser, Purchaser Representative or such other Supplier.

#### **4.22.18 OBJECTION BY PURCHASER REPRESENTATIVE**

The Purchaser Representative shall in its absolute discretion be entitled to object to any representative of, or person employed by, the Supplier or its Subcontractors in the performance of the Works. In such case, the Supplier must immediately remove such person upon receipt of the Purchaser Representative's notice in writing requiring it to do so and must ensure it and its Subcontractor does not re-employ such person in relation to the Works without the prior written approval of the Purchaser Representative.

#### **4.22.19 APPROVAL OF PURCHASER REPRESENTATIVE**

The Supplier must obtain the Purchaser Representative's approval before any person employed by the Supplier or by any of its Subcontractors commences work at Site. In seeking such approval, the Supplier must inform the Purchaser Representative of the name of that person, the capacity in which he or she is proposed to be employed and details of his or her previous employment.

#### **4.22.20 SUPPLIER NOT TO DEAL WITH UNION**

To the maximum extent permitted by law, the Supplier must not hire labour for work at the Site through a union or by negotiation with union officials or representatives.

#### **4.22.21 SECURITY**

Notwithstanding any security arrangements made by the Purchaser, the Supplier shall be responsible for all aspects of security within its work area. The Supplier shall be responsible for all tools and equipment on issue to, or being used by, its employees and shall provide suitable lock - up facilities for that purpose. The Supplier must promptly report to the Purchaser Representative all incidents of loss, theft, damage or vandalism.

#### **4.22.22 RAIN**

If practicable and safe to do so, work shall continue during rain. The Supplier shall be responsible for ensuring safe working conditions for its Personnel and the supply and issue of appropriate wet weather gear. Before a decision is made to cease work because of rain, the Supplier must consult with the Purchaser Representative.

#### **4.22.23 DAILY ATTENDANCE RECORDS**

The Supplier must maintain daily attendance records of each person, for whom it is responsible and identify the reason for all absences. Information is to be supplied at a time and in a form required by the Purchaser Representative from time to time.

#### **4.22.24 VISITORS**

All visitors, such as suppliers, bidders, business agents, etc, are subject to the Purchaser Representative's approval and must check in at the Site gate, be met at the Site gate by a Supplier representative and be escorted to the Purchaser Representative for proper clearance to the Site. While on Site, visitors will be subject to all Site procedures and regulations.

#### **4.22.25 SUPPLIER NOT RELIEVED OF LEGAL OBLIGATIONS**

Nothing contained in this clause 4.22 shall derogate in any way from the Supplier's obligations under any applicable Laws.



SANDVIK MINING AND CONSTRUCTION AUSTRALIA PTY LTD  
(MATERIALS HANDLING PROJECTS)

## Certificate of Final Completion

Issued To:

Date Issued:

Project:

Order Number:

Contract Title:

Contact Number:

Certificate Number:

Date of Final Completion:

Date Defects Liability Period expired:

We hereby certify that the whole of the work listed below under the above Contract attained Final Completion in accordance with the Contract

th day of 201x

This certificate is issued without limitation of the responsibilities under the Conditions of Contract

**Description of the work attaining Final Completion:**

All works in the above referenced Contract or if no contract issued the tender documents.

**On behalf of Sandvik Mining and Construction Australia Pty Ltd (Materials Handling Projects)**

\_\_\_\_\_  
Name

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date