



## 1. The Contract

- 1.1 The Contract is constituted by:
- (a) these Terms and Conditions;
  - (b) the Purchase Order; and
  - (c) any other terms and conditions relating to the supply relationship between the parties which are agreed by the parties and recorded in written correspondence between the parties (the "Additional Terms").
- 1.2 Unless expressly provided otherwise, if there is any inconsistency between the Purchase Order, these Terms and Conditions and the Additional Terms then, to the extent necessary to resolve such inconsistency, the documents comprising this Contract apply in that order.

## 2. Definitions and Interpretation

- 2.1 The following definitions apply unless the context requires otherwise.

**"Australian Resident"** means a resident as defined in the *Income Assessment Act 1936* (Cth).

**"Force Majeure"** means any of the following events or circumstances:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, rebellion, terrorism, revolution, insurrection, military or usurped power, munitions of war, or civil war;
- (b) riot, commotion or civil disorder not directed at or caused by the Supplier;
- (c) explosive materials, ionising radiation or contamination by radioactivity not caused by the Supplier; or
- (d) natural catastrophes such as flood, earthquake, hurricane, typhoon and volcanic activity.

**"Goods"** means the goods specified in the Purchase Order (including any parts of the goods specified) and includes any goods used during the performance of any Services or which are to be delivered to OZ Minerals in providing the Services.

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

**"GST"** means the Goods and Services Tax as defined in the Tax Act.

**"Intellectual Property Rights"** means all industrial and intellectual property rights whether protectable by statute, at common law, or in equity, including all copyright and similar rights, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs, and rights in relation to trade-marks.

**"Law"** means:

- (e) any present or future requirements of any statute, regulation, order, rule, subordinate legislation, common law, equity or other document enforceable under such laws;
- (f) any lawful requirements, directions or instructions of any Government Agency; and
- (g) the listing rules of any recognised stock exchange.

**"OZ Minerals"** means OZ Minerals Prominent Hill Operations Pty Ltd or the relevant related body corporate of OZ Minerals Limited set out in the Purchase Order.

**"OZ Minerals Policies and Procedures"** includes any policy, procedure, publication or guideline of OZ Minerals (as amended from time to time) that is provided by OZ Minerals to the Supplier or that is publicly available.

**"Purchase Order"** means the purchase order relating to the Supply to OZ Minerals and which is attached to these Terms and Conditions or separately dispatched.

**"Services"** means the services to be performed as specified in the Purchase Order (including any part of the specified services and the results of the specified services).

**"Supplier"** means the person, firm or company to whom the Purchase Order is directed and who will provide the Supply to OZ Minerals.

**"Supplier Personnel"** means any of the Supplier's employees, sub-contractors, agents and representatives involved in providing the Supply and includes any other person for whose conduct the Supplier is liable under any Law.

**"Supply"** means the Services to be performed (if any) and the Goods to be delivered by the Supplier (if any).

**"Standards"** means all standards, specifications, requirements (including testing requirements) and rules issued by the various standards association bodies or required by Law.

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

"Taxes" means all taxes, fees, levies, duties and charges imposed or assessed in respect of the provision of the Supply under any Law.

- 2.2 A reference to an agreement or document is to the agreement or document as amended, supplemented, novated or replaced except to the extent prohibited by the Contract or that other agreement or document.
- 2.3 A reference to *conduct* includes an omission, statement or undertaking, whether or not in writing.
- 2.4 Mentioning anything after *included, including, for example,* or other similar expressions does not limit what else might be included.
- 2.5 A reference to *writing* includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- 2.6 A reference to a document (or any similar word) includes a reference to all electronic, magnetic, photographic and other mediums by which information may be stored or reproduced.

### 3. Performance / Delivery

- 3.1 When providing the Supply to OZ Minerals, the Supplier must deliver all Goods (if any) and perform all Services (if any) at the address nominated on the Purchase Order and on the date or dates specified in the Purchase Order or to another address or later date reasonably requested in writing by OZ Minerals.
- 3.2 The Goods delivered to OZ Minerals must be accompanied by:
- (a) a delivery docket or packing slip (or other similar documentation) which quotes the Purchase Order number, item number, units of measure, quantity delivered, the name of the OZ Minerals representative who made the Purchase Order and any other requirements specified in the Purchase Order; and
  - (b) all relevant manufacturer or Supplier instructions concerning the use of the Goods and all relevant manufacturer or Supplier warranties in respect of the Goods.

### 4. Quality and description of Goods

- 4.1 The Supplier must ensure that the Goods:
- (a) match the description in the Purchase Order;
  - (b) correspond with any sample provided to OZ Minerals by the Supplier;
  - (c) comply with all relevant Standards and Laws (including in relation to packaging and labelling, occupational health and safety and the environment) and any relevant information in relation to such compliance is provided to OZ Minerals; and

- (d) be new and of merchantable quality, fit for purpose and free from any defects.

### 5. Quality of Services

- 5.1 The Services must:
- (a) match the description of the Services in the Purchase Order;
  - (b) correspond in nature and quality with any Services demonstrated to OZ Minerals by the Supplier;
  - (c) correspond in quality with any result which the Supplier showed could be achieved by the Services;
  - (d) be performed:
    - (i) by appropriately qualified and trained personnel; and
    - (ii) with due care and skill; and
  - (e) be fit for the purposes for which those types of services are commonly procured and for any other purposes which are specified in the Purchase Order.
- 5.2 The performance of the Services must comply with all relevant Standards and Laws (including in relation to packaging and labelling and occupational health and safety and the environment) and any relevant information in relation to such compliance is provided to OZ Minerals.

### 6. Hazardous Materials

- 6.1 The Supplier must transport and store all hazardous materials and dangerous Goods in accordance with all Laws, Standards and OZ Minerals Policies and Procedures and must provide OZ Minerals with the relevant materials safety data sheet ("MSDS") for all such materials and Goods.
- 6.2 No hazardous materials or dangerous Goods may be delivered to OZ Minerals until the relevant MSDS has been provided to OZ Minerals.

### 7. Acceptance

- 7.1 OZ Minerals may require the Supplier to provide evidence, acceptable to OZ Minerals, that the Supply is in accordance with the Contract and the Supplier must provide such evidence within the time prescribed in the request.
- 7.2 The Supply is accepted by OZ Minerals upon the later of:
- (a) if a request is made by OZ Minerals in accordance with clause 7.1, OZ Minerals determining at its discretion that the evidence provided to it by the Supplier is satisfactory; and
  - (b) the passage of a reasonable period of time for OZ Minerals to inspect the Goods after delivery and to inspect and test the results of any Services after performance.

- For the avoidance of doubt, payment for the Supply or the signing of delivery documents does not constitute acceptance of the Supply.
- 7.3 Subject to clause 8, the title and risk in any Goods passes to OZ Minerals upon acceptance of the Supply.
- 8. Rejection**
- 8.1 OZ Minerals may, at any time and despite any acceptance of the Supply, reject the Supply if it reasonably determines that:
- (a) the Supply does not comply with the Contract;
  - (b) the Supplier has breached any terms of the Contract; or
  - (c) if Goods are specified in the Purchase Order, the Goods are delivered in greater quantity than is specified.
- 8.2 If OZ Minerals rejects the Supply, OZ Minerals may at its election and without limiting its other rights under the Contract or at Law:
- (a) require the Supplier to re-supply any or all of those Goods or remedy a defect in the Services performed or re-do the Services at no additional cost to OZ Minerals;
  - (b) require the Supplier to provide a credit or a refund to the value of any or all the relevant Goods or Services;
  - (c) require the Supplier to reimburse OZ Minerals for any expenses incurred by OZ Minerals in making good any defective Goods and any defective Services provided; or
  - (d) return any rejected Goods to the Supplier at the Supplier's risk and expense.
- 8.3 OZ Minerals may return any Goods that have been incorrectly ordered by OZ Minerals. If OZ Minerals decides to return such Goods, it is required to pay only the freight and handling charges associated with effecting the return of such Goods to the Supplier.
- 9. Price**
- The price of the Supply is inclusive of all costs of the Supplier whether foreseen or unforeseen, including all insurance and Taxes (other than GST) (if any) which must be paid by the Supplier.
- 10. GST**
- 10.1 Words or expressions used in this clause which are defined in the Tax Act or, if not so defined, then which are defined in the *Trade Practices Act 1974* (Cth), have the same meaning in this clause.
- 10.2 The Supplier must submit tax invoices in compliance with the Contract and OZ Minerals Policies and Procedures, and OZ Minerals will have no obligation to pay any part of the price or any other amount due under the Contract until it receives such a tax invoice for the relevant amount.
- 10.3 The Supplier must be registered for GST.
- 10.4 Despite any other provision in the Contract, if a party ('Supplying Party') makes a taxable supply under or in connection with the Contract on which GST is imposed:
- (a) the consideration payable or to be provided for that supply under the Contract but for the application of this clause ('GST exclusive consideration') is increased by, and the recipient of the supply ('Receiving Party') must also pay to the Supplying Party, an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing on the date the supply is made; and
  - (b) the amount by which the GST exclusive consideration is increased must be paid to the Supplying Party without set off, deduction or requirement for demand, at the same time as the GST exclusive consideration is payable or to be provided.
- 10.5 All tax invoices must comply with the requirements of the Tax Act (as a 'tax invoice') and be submitted by the tenth business day of the month following the month in which the Services are accepted.
- 11. Terms of payment**
- 11.1 All payments will be made at the end of the month following the month in which acceptance of the Supply occurs.
- 11.2 Where a tax invoice is required to be delivered by the Supplier, payment will not be made until the end of the month following the month in which the tax invoice is delivered.
- 11.3 Making a payment will not be construed as evidence or an admission that the Supply has been supplied in accordance with the Contract but is a payment on account only.
- 11.4 Invoices should be forwarded to:
- (a) the address specified on the Purchase Order; or
  - (b) if no address is specified or provided in writing to the Supplier by OZ Minerals: [OZ Minerals Limited, Level 9, 31 Queen Street, Melbourne VIC 3000].
- 11.5 OZ Minerals may set off against any amount due for payment by OZ Minerals to the Supplier any amount the Supplier owes OZ Minerals. This clause does not limit OZ Mineral's right to recover those amounts any other way.

## 12. Termination

- 12.1 OZ Minerals may, without cause and at any time, terminate the Contract prior to the provision of the Supply and OZ Minerals will not be liable to the Supplier in any respect by reason of any such termination.
- 12.2 Without limiting its rights under clause 12.1, OZ Minerals may at its discretion pay the Supplier such sum in respect of any Services rendered by the Supplier up to the date of termination (if any) as it determines.

## 13. Insurance

- 13.1 Before commencing the provision of the Supply under the Contract, the Supplier must effect and maintain all insurances:
- (a) required by Law, OZ Minerals Policies and Procedures, any applicable Standards or the Contract;
  - (b) required to cover OZ Minerals, the Supplier, the Supplier Personnel and any relevant third parties (including any sub-contractors) for their respective rights, interests and liabilities under the Contract or under any Law; and
  - (c) which a prudent supplier would maintain in providing the Supply.
- 13.2 The Supplier must provide on demand by OZ Minerals evidence satisfactory to OZ Minerals of the insurances referred to in clause 13.1.

## 14. Withholding payment amounts required by Law

- 14.1 OZ Minerals may deduct, withhold or retain from any payment to the Supplier in relation to the Contract any amount OZ Minerals is required by any Government Agency to deduct, withhold or retain or otherwise required by Law to deduct, withhold or retain (a "Withholding Amount") and OZ Mineral's conduct will constitute full discharge of OZ Mineral's obligation to pay the consideration to the extent of that Withholding Amount.
- 14.2 If any consideration paid to the Supplier by OZ Minerals under or in connection with the Contract is paid free of a Withholding Amount, and at any time after such payment, OZ Minerals becomes aware (either by notification from a Government Agency or otherwise), that a Withholding Amount should have been withheld, deducted or retained from such consideration, OZ Minerals shall be entitled to recover from the Supplier any subsequent amount OZ Minerals may be required to pay to a Government Agency for failing to withhold such Withholding Amount (including any amounts required to be withheld). Such payments must be paid to OZ Minerals within 30 days of receipt of written notice from OZ Minerals and in accordance with clause 11. For the avoidance of doubt any such amounts to be recovered from the Supplier will be exclusive of the consideration payable to the Supplier.

## 15. Warranties

- 15.1 The Supplier represents and warrants to OZ Minerals that:
- (a) it is capable of supplying and will supply the Goods and perform the Services as ordered by OZ Minerals in accordance with the Contract;
  - (b) it will perform its obligations under the Contract with due care, skill and diligence and the Goods supplied and the Services performed will be in accordance with the Contract including clauses 3, 4 and 5 of these Terms and Conditions;
  - (c) it will obtain, at its cost, and assign to OZ Minerals the benefit of all usual trade warranties and any other warranties requested by OZ Minerals;
  - (d) it has good and marketable title in any Goods;
  - (e) the Supplier is the sole legal and beneficial owner of any Goods free from all mortgages, charges, encumbrances, liens and other third party rights and claims;
  - (f) it is not insolvent within the meaning of section 95A of the *Corporations Act 2001* (Cth) or otherwise;
  - (g) it has examined and considered information made available by OZ Minerals to the Supplier for the purpose of providing the Supply;
  - (h) it has taken all reasonable measures to ensure that no conflict of interest exists or is likely to arise in the performance of its obligations under the Contract;
  - (i) it will remain fully responsible for the provision of the Supply and all information created or developed or required to be created or developed under the Contract by the Supplier irrespective of any review or acceptance of that Supply or information by OZ Minerals;
  - (j) it is registered for GST;
  - (k) it is an Australian resident;
  - (l) it has not relied upon any representation of, or information provided by, OZ Minerals which is not expressly stated or included in the Contract;
  - (m) it will pay all Taxes (other than any GST); and
  - (n) the use of any Goods and the performance of any Services does not infringe upon, or contribute to the infringement of, any Intellectual Property Rights.
- 15.2 The Supplier acknowledges that OZ Minerals has relied upon such warranties in entering into the Contract.
- 15.3 This clause 15 survives any termination of the Contract.

## **16. Indemnities**

16.1 The Supplier will be liable for, and indemnifies OZ Minerals and OZ Minerals personnel for all actions, claims, costs, charges, damages, expenses, liabilities, losses or damages (including legal costs on an indemnity basis whether incurred by or awarded against OZ Minerals) that OZ Minerals and OZ Minerals personnel may suffer, incur or sustain arising directly or indirectly out of or in connection with:

- (a) the performance, non-performance or any breach of the Contract or of any Law by the Supplier or Supplier Personnel;
- (b) any negligent, wilful or unlawful conduct of the Supplier Personnel;
- (c) the illness, injury or death of any Supplier Personnel arising out of, or in connection with, the provision of the Supply;
- (d) any claim made against OZ Minerals by any Supplier Personnel in respect of any Law;
- (e) the death, illness, or injury of any person or loss or damage to any property of any kind whatsoever, caused or contributed by the provision of the Supply or by Supplier Personnel;
- (f) any false, misleading or deceptive statement or conduct of the Supplier or of Supplier Personnel.

16.2 The Supplier's liability to indemnify OZ Minerals will be reduced proportionally to the extent that any negligent or unlawful act or omission of OZ Minerals contributes to the loss or liability.

16.3 This clause 16 survives any termination of the Contract.

## **17. Confidentiality**

17.1 The Supplier shall ensure that the Supplier Personnel keep confidential, not disclose to any third party or use (other than for the purposes of this Contract), without the prior written consent of OZ Minerals, any data, information or documents obtained as a consequence of the Contract.

17.2 The obligation referred to in clause 17.1 does not apply to information which becomes generally available to the public other than by disclosure in breach of the Contract or an obligation of confidence owed by the Supplier or Supplier Personnel to OZ Minerals.

17.3 Upon written request by OZ Minerals, the Supplier must return to OZ Minerals (or destroy at OZ Mineral's discretion) all data, information or documents referred to in clause 17.1.

17.4 The Supplier must take all practical steps as may be necessary for compliance with clause 17.

17.5 The Supplier shall not issue any public statement concerning OZ Minerals or its affairs without OZ Mineral's prior written consent.

17.6 This clause 17 survives any termination of the Contract.

## **18. Assignment and Sub-contracting**

18.1 OZ Minerals may assign or novate or otherwise transfer any of its rights or obligations under the Contract at its absolute discretion.

18.2 The Supplier must not, without the prior written consent of OZ Minerals assign, novate, sub-contract or otherwise transfer any of its rights or obligations under the Contract or sub-contract any part of the performance of the Contract.

## **19. Intellectual Property**

19.1 All Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the provision of, the Supply (including all Intellectual Property Rights developed by the Supplier in providing the Supply and any Intellectual Property Rights created or discovered by the Supplier in documents or inventions provided or disclosed by the Supplier to OZ Minerals):

- (a) vests on creation in OZ Minerals; and
- (b) the Supplier assigns all rights, titles and interest in such Intellectual Property Rights to OZ Minerals.

19.2 This clause 19 survives the termination or expiry of the Contract.

## **20. Local suppliers**

20.1 OZ Minerals prefers (wherever possible) to provide local (Australian) suppliers with a full, fair and reasonable opportunity to provide the Supply in relation to the Contract.

20.2 Notwithstanding clause 18, if the provision of the Supply is to be supplied by a sub-contractor to the Supplier, then the Supplier must satisfy the terms and intent of this clause, that is, local (Australian) suppliers must be given a full, fair and reasonable opportunity to submit a prequalification proposal in respect of the provision of the Supply.

## **21. Import duty**

21.1 OZ Minerals may make applications for import duty concessions in relation to the Supply procured in accordance with the Contract.

21.2 The Supplier will provide whatever assistance and information requested by OZ Minerals in a timely manner to assist in such applications.

21.3 Where OZ Minerals succeeds with such applications, the Supplier will obtain duty refunds as requested by OZ Minerals and remit the proceeds to OZ Minerals.

## **22. Force Majeure**

22.1 Where a party is unable, wholly or in part, by reason of Force Majeure, to carry out any obligations under the Contract and that party:

- (a) gives the other party prompt written notice stating the circumstances constituting the Force Majeure, the extent and likely duration of those circumstances and specifying the measures proposed to be adopted to remedy or abate the Force Majeure;
  - (b) makes every reasonable effort to minimise the effects of the Force Majeure; and
  - (c) has not caused or contributed to the Force Majeure,
- then that obligation is suspended so far as it is affected by Force Majeure but must be resumed as soon as reasonably possible after the cessation of the Force Majeure.

## **23. Jurisdiction**

This Contract shall be governed by the laws of Victoria and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that State.

## **24. Amendments**

This Contract may be varied by OZ Minerals at any time by giving the Supplier written notice.

## **25. Waiver**

No waiver by OZ Minerals regarding a breach of any obligation contained or implied in this Contract operates as a waiver of another breach of the same or of any other obligation contained or implied in the Contract.

## **26. Indemnities**

- (a) Each indemnity in this Contract is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of the Contract.
- (b) It is not necessary for OZ Minerals to incur expense or to make any payment before enforcing a right of indemnity conferred by this Contract.