

# **Alliance Contracting Pty Ltd**

## **SERVICES ORDER TERMS AND CONDITIONS**

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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions.

In the Service Order, unless the context otherwise requires:

“Active delay” means a delay that is not chargeable to the Alliance Contracting Pty Ltd.

“Cancellation Date” means the date specified in a Notice of Default issued pursuant to Clause 31.

“Certificate of Currency” means a dated Certificate of Currency issued by the Insurer, not an insurance broker.

“Commencement Date” means the date specified in the Service Order.

“Compensation” means the cost reimbursable rates, lump sums or schedule of prices and other allowable reimbursements to be paid to the Supplier for the performance of the Services described in the Service Order.

“Completion Date” means the date specified in the Service Order.

“Supplier’s Representative” means the representative appointed by the Supplier.

“Supplier” is the business entity selected by the Alliance Contracting Pty Ltd to provide the Services

“Dispute” means any disagreement, difference of opinion or dispute between the Parties arising out of the Service Order.

“Force Majeure” means an event or cause that is an act of God, fire, flood, war, strike, industrial dispute or lockout; and is beyond the control of the party claiming force majeure, not able to be overcome by the exercise of reasonable care by that party and could not have been reasonably foreseen by that party.

“In Active delay” means a delay that is chargeable to the Alliance Contracting Pty Ltd.

“JSA” means Job Safety Analysis.

“Latent Condition” means physical conditions on the Site or its surroundings, including artificial things but excluding weather conditions, which differ materially and substantially from those physical conditions which should reasonably have been anticipated by a skilled, experienced and competent Supplier at the Date of Service Order. Notwithstanding the above where a condition, which would otherwise be a latent condition, can be overcome by the application of good engineering practice and procedures, then it shall not be a Latent Condition, provided that the extra cost or time in doing so is not unreasonable.

“Liabilities” means liability, loss (of any nature including consequential loss), damage (of any nature including aggravated and punitive), cost, claim, suit, action, demand,

expense or proceeding whatsoever whether actual, contingent or prospective and whether known or unknown, and howsoever arising including under any statutory instrument (including by way of ordinance, code, by-law, directive or otherwise or any regulation or other delegated authority rising thereunder) from time to time or at common law or in equity or otherwise.

“Notice of Termination,” means a notice issued pursuant to **clause 29.2**.

“Alliance Contracting Pty Ltd’s Representative” means the representative appointed by the Alliance Contracting Pty Ltd.

“Scope of Services” means the Services as specified by the Alliance Contracting Pty Ltd and as covered in the Service Order.

“Service Order” means an order issued by the Alliance Contracting Pty Ltd for specified services.

“Services” means the services or work to be provided to by the Supplier as described in a Service Order as the context permits.

“SoP” means a Standard Operating Procedure.

“Site” means the Alliance Contracting Pty Ltd’s areas of operation.

“Sub-Supplier” means any Person, firm, or company, including a vendor or consultant, engaged by the Supplier to perform any or all of the Services on behalf of the Supplier.

## 1.2 Interpretation.

In the Service Order, unless the context otherwise requires:

- (a) a reference to any document is a reference to that document as varied, novated or replaced from time to time;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a gender includes all genders;
- (d) the use of the word “including” does not limit what else might be included;
- (e) a reference to a thing includes all or any part of it;
- (f) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a person or entity includes a natural person, a partnership, corporation, trust, association, unincorporated body, authority or other entity;

- (h) a reference to a party includes that party's legal personal representatives, successors and permitted assigns;
- (i) a term which purports to bind or benefit two or more persons binds or benefits them jointly and severally;
- (j) headings are for convenience only and are not intended to affect interpretation; and
- (k) a reference to a statute, ordinance, code or other law includes regulations and other instruments issued under it and consolidations, amendments, reenactments or replacements of any of them.

## **2. GOVERNING LAW, CONSTRUCTION AND NATURE OF THE SERVICE ORDER.**

### **2.1 Governing Law.**

The laws of the State in which the site is located will govern the Service Order. The Parties submit to the non-exclusive jurisdiction of the courts of that State.

### **2.2 Construction and Nature of the Service Order.**

The Alliance Contracting Pty Ltd hereby engages the Supplier to perform the Services. The relationship between the Alliance Contracting Pty Ltd and the Supplier is that of Alliance Contracting Pty Ltd and independent Supplier. The Supplier shall be solely responsible for the satisfactory performance of the Services in accordance with the terms and conditions of the Service Order.

Without limiting the foregoing, the Supplier and its personnel must not be treated as an agent, employee, or servant of the Alliance Contracting Pty Ltd for purposes of any federal, state, territorial, or local employment laws, regulations, rules, or Contracts, including without limitation, worker's compensation and employment taxes.

The Supplier shall not have any right or authority to represent the Alliance Contracting Pty Ltd in any matter whatsoever, including entering into agreements on behalf of the Alliance Contracting Pty Ltd or otherwise binding the Alliance Contracting Pty Ltd in any manner.

### **2.3 Service.**

When Alliance Contracting Pty Ltd requires the Supplier to supply the Services, the Alliance Contracting Pty Ltd will from time to time until the Completion Date place a Service Order with the Supplier and the Supplier must supply the Service ordered by the Alliance Contracting Pty Ltd in each Service Order.

### **2.4 Currency.**

Unless otherwise provided, prices are in Australian currency.

## 2.5 Language.

Communications between the Alliance Contracting Pty Ltd, the Alliance Contracting Pty Ltd's Representative and the Supplier shall be in the English language.

## 2.6 Legal costs.

Each of the parties must bear their own legal costs in relation to the preparation and execution of this Agreement save that the Supplier must be responsible for all stamp duty associated with the stamping of this Agreement.

## 3. SUPPLIER'S INVESTIGATIONS AND THE SITE.

### 3.1 Site investigations.

The Supplier represents that:

- (a) It has informed itself of the nature of the work and materials and plant and equipment necessary for the supply of the Services, and of the conditions, facilities and services at the Site.
- (b) It has informed itself as to the availability of labour and accommodation required and all labour conditions and conditions of employment relevant to the supply of the Services both on and off the Site.
- (c) It has satisfied itself as to the correctness and sufficiency of its tender or other proposal (if any) for the Services and its tender or other proposal (if any) is sufficient to cover the cost of everything necessary for the supply of the Services in accordance with the Service Order.
- (d) It has made its own deductions and interpretations as to the difficulties of supplying the Services.
- (e) Failure by the Supplier to do all or any of the things it is deemed to have done under Clause 3 shall not relieve the Supplier from any of its obligations under the Service Order.
- (f) The Alliance Contracting Pty Ltd shall not be liable for any Liabilities incurred or suffered by the Supplier as a result of its reliance in any way upon any information given to it by the Alliance Contracting Pty Ltd.

## 4. STANDARDS OF SERVICES

### 4.1 Extent of the Services.

The Supplier must perform the Services as stated in the Scope of Work stated as part of the Service Order. In the event Service Orders are issued to the Supplier for discrete packages of Work, each Service Order shall include a Scope of Work. The Supplier must not perform any

Services or provide any Services not authorised in the form of a properly executed Service Order.

#### 4.2 Standard of Service.

The Supplier must provide:

- (a) The Services in accordance with the terms of the Service Order and in consideration of the Compensation.
- (b) All of the Services shall be provided in an efficient manner and in accordance with any applicable legislation, laws or regulations.
- (c) All of the Services shall be of the highest standard prevailing in the Mining and Construction industries and in accordance with the Alliance Contracting Pty Ltd's scope of work, specifications and standards and the relevant SAA standards.
- (d) Any equipment used by the Supplier in the performance of the Services shall be in safe working condition, comply with all legislation that is applicable to such equipment and shall be operated by suitably qualified and competent Persons.
- (e) In relation to the supply of any Goods as part of the Services, the Supplier shall obtain, at its cost, all usual trade warranties, and any warranties specifically requested by the Alliance Contracting Pty Ltd. At completion of the Services the Supplier shall assign the benefit of these warranties to the Alliance Contracting Pty Ltd and provide copies of the warranties to the Alliance Contracting Pty Ltd.
- (f) Goods supplied by the Supplier as part of the Services shall be new, of merchantable quality and fit for their intended purpose and the Supplier shall have good and marketable title to such Goods.

#### 4.3 Practical Completion.

When the Supplier believes it has completed the Services in accordance with the Scope of Work and in accordance with a Service Order, it must notify the Alliance Contracting Pty Ltd of such completion.

#### 4.4 Errors, Defaults and Omissions.

Within fifteen (15) days thereafter, the Alliance Contracting Pty Ltd shall advise the Supplier in writing of any errors, defaults or omissions in the Services for which the Supplier is responsible under the Service Order. As soon as any such errors, defaults or omissions are corrected (or as soon as the fifteen (15) day period for such notice has expired, if the Alliance Contracting Pty Ltd does not advise the Supplier of any such errors or omissions within the period), the Alliance Contracting Pty Ltd shall accept the Services in writing or it shall otherwise be deemed accepted. Acceptance must in all cases mean the turnover of the completed Services deliverables itemised in the Scope of Work, as applicable

#### 4.5 Acceptance.

Acceptance of Services or the Alliance Contracting Pty Ltd taking possession of the completed Services, as applicable, shall not constitute a waiver of the indemnity provisions herein or of the Supplier's performance obligations set forth in the Service Order.

#### 4.6 Records.

The Supplier must maintain a true, correct and complete set of records, including books and accounts, prepared in accordance with generally accepted accounting principles and accounting standards in Australia. Records relating to the costs and expenses for which the Supplier seeks compensation or reimbursement hereunder, including payroll and time records for the Supplier's personnel and Sub-Supplier's personnel billed under the Service Order, and any payments to any Sub-Suppliers on a cost reimbursable basis. Such records must be made available at no cost to the Alliance Contracting Pty Ltd and must detail in particular all fully accounted costs and must be made available to audit, inspection, and copying by the Alliance Contracting Pty Ltd or its designated representative during the term of the Service Order and for a period of two (2) years following any termination or completion of the Service Order.

#### 4.7 Commissioning.

The Supplier must advise the Alliance Contracting Pty Ltd at least twenty four hours before the time of commissioning any plant or equipment and must at all times fully comply with the recommendations of manufacturers in relation to such commissioning.

### 5. CONFLICT OF INTEREST.

The Supplier must not engage in any activity that would in any way adversely affect the Supplier's ability to deliver the Services in an independent and reliable manner. The Supplier will not accept any payment, gift or favor from any person in relation to the delivery of the Services unless the Supplier first obtains the Alliance Contracting Pty Ltd's consent. The Supplier warrants to the Alliance Contracting Pty Ltd that it has no professional or Contractual obligations which currently, or will during the term of the Service Order, conflict with the delivery of the Services.

### 6. NOTICES.

#### 6.1 Compliance Notices.

The Supplier shall give all notices necessary to comply with the requirements mentioned in clause 12.1,12.3and 12.4 and shall pay all fees payable in connection with those requirements.

#### 6.2 Form of Notices.

A notice will be taken to have been given if it is in writing and signed by or on behalf of the

party giving the notice and either:

- (a) delivered personally;
- (b) sent by ordinary pre-paid post to the other party,
- (c) sent by facsimile transmission,
- (d) sent by e-mail.

6.3 Delivery of Notices. A notice is deemed given if:

- (a) personally delivered, upon delivery;
- (b) mailed to an address in Australia, an actual delivery to the addressee as evidenced by Australia Post documentation or three (3) clear days after the date of posting (whether actually received or not), whichever is the earlier;
- (c) sent by facsimile, on the date and time of receipt of the completed facsimile transmission by the party sending the facsimile but only if the sending facsimile machine reports that the notice was sent in its entirety to the correct facsimile number.
- (d) sent by e-mail on the date and time of receipt of the completed e-mail transmission by the party sending the e-mail provided that the sending e-mail device has a tracking facility and verifies the date and time the message was received by the recipient.

## 7. SUBCONTRACT ORDERING AND ASSIGNMENT.

7.1 The Supplier must not Subcontract the performance of any of its obligations under the Service Order without the prior written consent of the Alliance Contracting Pty Ltd. If the Alliance Contracting Pty Ltd permits Subcontracting the acts and omissions of the Sub-Supplier will be taken to be the acts and omissions of the Supplier. The Alliance Contracting Pty Ltd may withdraw its permission to Subcontract at any time and without penalty.

7.2 Service Orders Responsibilities.

If the Alliance Contracting Pty Ltd permits Subcontracting, the acts and omissions of the Sub-Supplier shall be taken to be the acts and omissions of the Supplier. The Supplier's responsibilities and Liabilities under the Service Order or Service Orders shall not be diminished or otherwise affected by the Supplier Subcontracting any obligation.

7.3 Supplier's Warranty.

The Supplier warrants all Services performed by Sub-Suppliers in the same manner as if the Supplier had performed the Services itself.

7.4 Assignment.

The Supplier must not assign or transfer all or any of the Supplier's rights or obligations

under the Service Order to any third party without the written consent of the Alliance Contracting Pty Ltd. The Alliance Contracting Pty Ltd may assign or transfer all or any of the Alliance Contracting Pty Ltd's rights and obligations under the Service Order to any third party without the consent of the Supplier.

## 8. LATENT CONDITIONS.

8.1 Notification If during the execution of the work under the Service Order, the Supplier becomes aware of a Latent Condition, the Supplier shall forthwith, and where possible before the Latent Condition is disturbed, use the Notification Book to provide written notice thereof to the Alliance Contracting Pty Ltd's Representative. If required by the Alliance Contracting Pty Ltd's Representative, the Supplier shall provide to the Alliance Contracting Pty Ltd's Representative a statement in writing specifying:

- (a) the Latent Condition encountered and in what respects it differs materially and substantially from that anticipated by the Supplier.
- (b) the additional work and additional resources which the Supplier estimates to be necessary to deal with the Latent Condition;
- (c) the time the Supplier anticipates will be required to deal with the Latent Condition and the expected delay in achieving the date for Completion;
- (d) the Supplier's estimate of the cost of the measures necessary to deal with the Latent Condition; and
- (e) other details reasonably required by the Alliance Contracting Pty Ltd's Representative.

### 8.2 Extension of Time and Cost.

Delay caused by a Latent Condition may justify an extension if a Latent Condition causes the Supplier to –

- (a) carry out additional work;
- (b) incur extra cost which the Supplier could not reasonably have anticipated at the time of tendering, a valuation shall be made under Clause 35.

### 8.3 Time Bar.

In making a valuation, pursuant to Clause 10.2, regard shall not be had to the value of any additional work carried out, or extra cost incurred, more than 28 days before the date on which the Supplier gives the written notification required by Clause 10.1.

## **9. COPYRIGHT, INTELLECTUAL PROPERTY AND PATENTS.**

### **9.1 Retention of Ownership.**

Any drawings, designs, plans, specifications, manuals, models, programs or other forms of recording ideas prepared, drawn, devised, written or constructed by the Supplier or the Representative as part of the performance of the Services shall be and shall remain the absolute property of the Alliance Contracting Pty Ltd.

### **9.2 Proprietary Rights.**

Any proprietary rights in any invention or piece of know how (whether patentable or not) devised by the Supplier or the Representative as part of the performance of the Services shall be and shall remain the property of the Alliance Contracting Pty Ltd.

### **9.3 Claim on intellectual property rights.**

The Supplier will and, where the Services are performed by a Representative will cause the Representative to also, execute all documents, forms, memoranda, applications and the like to vest in the Alliance Contracting Pty Ltd legal and beneficial ownership to such intellectual property. The Supplier will not, and where the Services are performed by a Representative will ensure that the Representative does not, make or suffer to be made any claim for such intellectual property rights in competition with either the Alliance Contracting Pty Ltd or its assignee.

## **10. COMPLIANCE WITH STATUTORY REQUIREMENTS.**

### **10.1 Compliance.**

The Supplier shall comply with the requirements of all Acts of the Parliament of the Commonwealth of Australia and the State of Australia in which the services are supplied, and the requirements of all ordinances, regulations, by-laws, Contracts and proclamations made or issued thereunder and with the lawful requirements of public, municipal and other authorities in any way affecting or applicable to the Service Order.

### **10.2 Alteration to the Federal Trades Practices Act.**

The parties agree that the Definition of 'Consumer', contained in Section 4B of the Trade Practices Act 1974, shall be used amended such that Section 4B(2)(a) reads as follows: "the prescribed amount is the value of the Services supplied under this Service Order or, if a greater amount is prescribed for the purposes of this paragraph, that greater amount".

### **10.3 Environmental Laws.**

The Supplier must comply with and ensure that each of its employees; agents and Sub-Suppliers comply with the conditions imposed by:

- (a) all applicable State and Federal Environmental Acts and Regulations; and

- (b) all Environmental Protection Act licences held at any time by the Alliance Contracting Pty Ltd applicable to the Site.

#### 10.4 Flora and Fauna.

The Supplier must, and must ensure that its employees, agents and Sub-Suppliers, comply with all Federal, State and Local Government legislation, regulations or by-laws as applicable to flora and fauna on the Site.

### 11. LICENSING AND APPROVALS

The Supplier will, at its own cost, obtain all licenses and approvals required to enable the Services to be conducted. The Supplier shall comply with all Applicable Laws and all directions and requirements of any Government Authority in conducting the Services.

### 12. COMPLIANCE WITH THE ALLIANCE CONTRACTING PTY LTD'S Management System (AIMS) including HEALTH, SAFETY, ENVIRONMENTAL AND COMMUNITY RELATIONSHIP REQUIREMENTS.

#### 12.1 Induction Training.

The Supplier (the organization) must ensure that the Supplier (if an individual) and those of its employees, agents and Sub-Suppliers required to enter the Site for any purpose, at the Supplier's expense, successfully undergo or have undergone within 12 months prior to the Commencement Date, the Alliance Contracting Pty Ltd's standard induction training program and site access requirements as directed by the Alliance Contracting Pty Ltd.

#### 12.2 Occupational Health and Safety.

The Supplier must and must ensure that its employees, agents and Suppliers comply at all times with all applicable Occupational Health and Safety requirements and the Alliance Contracting Pty Ltd's directions given from time to time regarding health or safety matters while the Supplier or any employee, agent or Supplier of the Supplier is on the Site.

#### 12.3 Development of Safe Procedures.

The Supplier shall liaise with the Alliance Contracting Pty Ltd and develop safe working procedures, via JSA's and SoP's to the satisfaction of the Alliance Contracting Pty Ltd Representative, for the execution of the Services in accordance with Applicable Law. The Supplier's JSA's shall be submitted for review on the Alliance Contracting Pty Ltd's JSA form, a copy of which is on the Exhibits.

#### 12.4 Safety and environmental Meetings.

The Supplier must, if requested to do so, participate in all meetings relevant to the Site which occur whilst the Supplier or any of its employees, agents or Sub-Suppliers are on the Site. The Alliance Contracting Pty Ltd specifically has the authority to require any Sub-Supplier's to attend these meetings.

### 12.5 Accidents / Incident and/or Spillage.

The Supplier must immediately report to the Alliance Contracting Pty Ltd any incident, accident or spillage on or off Site of any material that is considered to be dangerous or hazardous to the environment and must further demonstrate that remedial action was immediately implemented to minimise the hazard and/or pollution arising from the event. The Supplier must submit to the Alliance Contracting Pty Ltd a written report detailing the incident/accident/spillage involving caused or contributed to by the Supplier or any of its employees, agents and Suppliers on or near to the Site within twenty-four (24) hours of the occurrence.

### 12.6 Flora and Fauna.

The Supplier must, and must ensure that its employees, agents and Sub-Suppliers, comply with the Alliance Contracting Pty Ltd's environmental procedures as applicable to flora and fauna on the Site.

The Supplier must not and must ensure that its employees, agents and Suppliers do not:

- (a) destroy, clear or remove from the Site any native species of flora and fauna;
- (b) introduce any exotic species of flora and fauna to the Site;
- (c) disturb any native vegetation on the Site without the permission of the Alliance Contracting Pty Ltd's Representative;
- (d) bring any pets, firearms, weapons, alcohol or drugs to the Site.
- (e) The Supplier must and must ensure that its employees, agents and Suppliers:
- (f) take all steps necessary to minimise damage to the environment when on the Site and to existing facilities including public roadways on the Site;
- (g) restrict movement on the Site to defined public roads.

### 12.7 Directions of Alliance Contracting Pty Ltd's Representative.

The Supplier must and must ensure that its employees, agents and Suppliers comply at all times while on the Site with the directions of the Alliance Contracting Pty Ltd on health, safety, environmental and community matters.

## 13. CONFIDENTIALITY AND THE MEDIA.

### 13.1 Confidentiality.

The Supplier shall keep confidential and not disclose to any party, any information whatsoever relating to the Service Order, the Alliance Contracting Pty Ltd's operations or any matters relating to the Alliance Contracting Pty Ltd's affairs as long as the same remain unpublished and not available to the public at large without first obtaining the written consent of the Alliance Contracting Pty Ltd.

#### 13.2 Media.

The Supplier and its employees, agents and Sub-Suppliers must not make any statement to the media on behalf of the Alliance Contracting Pty Ltd or in relation to the delivery of the Services. All enquires from the media must be referred to the Alliance Contracting Pty Ltd. The Supplier must immediately notify the Alliance Contracting Pty Ltd of all events that arise in the course of delivering the Services, which are likely to receive attention from the media.

### 14. ALLIANCE CONTRACTING PTY LTD PROVIDED FACILITIES AND SERVICES.

#### 14.1 Use of facilities.

The Alliance Contracting Pty Ltd's facilities will not be available to the Supplier unless specifically provided for in the Service Order. Where use of the Alliance Contracting Pty Ltd's Facilities is desired and not specifically provided for in the Service Order or directed by the Alliance Contracting Pty Ltd, the Supplier must seek the Alliance Contracting Pty Ltd's consent, which the Alliance Contracting Pty Ltd may give, subject to conditions or withhold at its absolute discretion.

### 15. SUPPLIER'S PROVIDED SERVICES AND FACILITIES

This clause has been intentionally deleted

### 16. INDEMNITY AND LIABILITY.

#### 16.1 Liability for injury to persons.

As against the Alliance Contracting Pty Ltd the Supplier is liable for and must indemnify, defend and hold harmless the Alliance Contracting Pty Ltd Indemnified Parties against any Liability in respect of:

- (1) personal injury, including,
  - (a) illness, or
  - (b) psychiatric injury or condition; and
- (2) death to any natural person, arising out of or in the course of, or caused by or during the execution of the Supplier's rights or obligations under, or the Suppliers Performance of, the Service Contract, or any activity directly or indirectly associated with the Service Order, the Works or work under the Service Order and regardless of any fault, negligence or other Liability asserted or proven. Notwithstanding anything to the contrary contained in this clause, the Supplier shall not be obliged to indemnify,

defend or hold harmless the Alliance Contracting Pty Ltd for any Liability to the extent that it arises from the Alliance Contracting Pty Ltd's or a Alliance Contracting Pty Ltd's Employees' negligence.

#### 16.2 Liability for damage to property.

As against the Alliance Contracting Pty Ltd the Supplier is liable for and must indemnify, defend and hold harmless the Alliance Contracting Pty Ltd Indemnified Parties against any Liability in respect of any loss of, damage, destruction or injury to or loss of use of any property, including real, personal and intangible property and including the property of the Alliance Contracting Pty Ltd or a Alliance Contracting Pty Ltd's Employee arising out of or in the course of, or caused by the execution of the Supplier's rights or obligations under, or the Supplier's Performance of, the Service Order, or any activity directly or indirectly associated with the Service Order, the Works or work under the Service Order and regardless of any fault, negligence or other Liability asserted or proven.

Notwithstanding anything to the contrary contained in this clause, the Supplier shall not be obliged to indemnify, defend or hold harmless the Alliance Contracting Pty Ltd for any Liability to the extent that it arises from the Alliance Contracting Pty Ltd's or a Alliance Contracting Pty Ltd's Employees' negligence.

#### 16.3 Exclusion of Liability

To the full extent allowed by law and subject to clear expression to the contrary elsewhere in this Agreement:

- (a) the Supplier and the Supplier's Personnel assume to the extent of their negligence all risks and potential liabilities arising out of the performance of the Services or Work including risks and potential liabilities arising directly or indirectly out of the presence of the Supplier's Personnel pursuant to this Agreement on or travelling on a Alliance Contracting Pty Ltd provided service to or from any area owned, occupied or otherwise controlled by the Alliance Contracting Pty Ltd; and
- (b) the parties agree that the Alliance Contracting Pty Ltd shall not be liable for any Liability of the Supplier or the Supplier's Personnel arising out of the performance of the Services or Work including any Liability of the Supplier or the Supplier's Personnel arising directly or indirectly out of the presence of the Supplier's Personnel pursuant to this.

#### 16.5 Indemnities for breach.

The Supplier must indemnify, defend and hold harmless the Alliance Contracting Pty Ltd Indemnified Parties against any Liability in respect of claims by a third party (including consequential loss suffered by a third party) arising from any breach by the Supplier of any other clauses contained in the general conditions herein. Subject to clause 17.5, neither Party is Liable to the other for consequential loss.

## 17. INSURANCE.

### 17.1 Insurances to be maintained by Supplier.

The Supplier must at its own cost and expense effect and maintain, with an insurer or insurers acceptable to the Alliance Contracting Pty Ltd, for so long as it is performing or causing to be performed the Services, the following insurances:

Public and Product Liability Insurance covering liability relating to death, bodily injury, loss of property and damage to property (including all matters covered by the indemnities in Clause 17.3 and 17.5 inclusive) for the amount of Ten Million Dollars (\$10,000,000.00) in respect of any one incident and \$50,000 max deductible.

The Public and Product Liability Insurance:

- (a) should have the Alliance Contracting Pty Ltd named as co-insured on the Certificate of Currency and if that is not achievable by the exercise of reasonable endeavours then have the Alliance Contracting Pty Ltd's interest noted on the policy;
- (b) must not exclude Supplier's Employees where the claimant under the policy is the Alliance Contracting Pty Ltd; and
- (c) should contain a waiver of the insurer's rights of subrogation to the Alliance Contracting Pty Ltd's rights where the Alliance Contracting Pty Ltd is a named insured or co-insured under the Supplier's policies of insurance;

Worker's Compensation Insurance covering Liability, including any applicable worker's compensation legislation, to the Supplier's Employees engaged in doing anything for the purpose of the performance of the Work or executing the Supplier's rights or obligations under the Service Order to provide common law cover for not less than Fifty Million Dollars (\$50,000,000.00) in respect of any one accident to one Employee and in the aggregate.

Motor vehicle Insurance covering all motor vehicles, if any, operated by the Supplier in connection with the Services including:

- (a) Comprehensive Motor Vehicle Insurance with a minimum liability for loss of or damage to property for the amount Ten Million Dollars \$10,000,000.00) with \$5,000 max deductible
- (b) Compulsory Third Party Bodily Injury Indemnity Insurance as required by and provided with registration of the motor vehicle by the relevant Government Authority; and
- (c) to the extent that Compulsory Third Party Bodily Injury Indemnity Insurance is not available or applicable in the area in which the motor vehicle will be operated insurance covering liability resulting from bodily injury to or the death of any person to a minimum value of Ten Million Dollars (\$10,000,000.00) with \$5,000 max deductible.

Any other insurances specified.

## 17.2 Proof of Insurance.

7 days prior to the Commencement Date, and there after within 14 days of a request to do so, the Supplier must provide the Alliance Contracting Pty Ltd with a copy of all Certificates of Currency for each insurance policy to be effected in accordance with this Service Order signed by either the Supplier's insurer or insurance broker.

The Supplier must immediately notify the Alliance Contracting Pty Ltd of the cancellation or lapse of any insurance policy.

## 17.3 Grounds to Refuse Claim.

The Supplier must not do, or cause or allow any Supplier's Personnel to do, any act or make any omission which may provide grounds for an insurer to refuse payment of any claim made under any insurance policy effected in accordance with this Service Order.

## 17.4 Sub-Suppliers.

If the Supplier Subcontract Orders any part of the Services, with the Alliance Contracting Pty Ltd's prior written approval, or pursuant to any other right or obligation under this Service Order, then the Supplier must cause the Sub-Supplier to effect similar insurance (to the extent applicable) to that specified in this clause and must provide proof of such insurance in accordance with **clause 18.1**

## 17.5 Failure to Maintain Insurance.

If the Supplier fails to effect or to keep in force any of the insurance which is required by the Service Order to be effected, then the Alliance Contracting Pty Ltd may, in addition to any other rights and remedies it may have.

- (a) effect and keep in force any such insurance and pay any such premiums as may be necessary for that purpose and may recover as a debt due from the Supplier the amount so paid and the amount of any excess borne by the Alliance Contracting Pty Ltd or deduct such amounts from any monies due to the Supplier pursuant to this Service Contract; and/or
- (b) suspend payment of any monies due under the Service Order until the Supplier fulfils its obligations under

## 18. ALLIANCE CONTRACTING PTY LTD'S REPRESENTATIVES

### 18.1 Alliance Contracting Pty Ltd's Representatives.

For the purposes of the Service Order the Alliance Contracting Pty Ltd Representative will be Alliance Contract Operations Manager or his appointed Representative as set out below:

### 18.2 Alliance Contracting Pty Ltd's appointed Representative.

The Alliance Contracting Pty Ltd's appointed Representative shall be responsible for the giving of Instructions to the Supplier concerning the day to day operations and activities of the Service Order that do not amend the terms and conditions of the Service Contract.

### 18.3 Alliance Contracting Pty Ltd's Operations Manager.

The Alliance Contracting Pty Ltd's Operations Manager shall be responsible for the giving of all instructions to the Supplier concerning the Service Order relationship between the parties, including all variations to the terms and conditions of the Service Order.

- (a) The Alliance Contracting Pty Ltd must provide the Supplier with the names and contact details of the Alliance Contracting Pty Ltd's appointed Representatives
- (b) The Alliance Contracting Pty Ltd may from time to time by notice in writing to the Supplier revoke any appointment made pursuant to this clause and appoint another Person as the Alliance Contracting Pty Ltd's appointed Representative.
- (c) Instructions given to the Supplier by any person other than the appointed Alliance Contracting Pty Ltd's Representative, or their delegates appointed in writing, shall not bind the Alliance Contracting Pty Ltd.
- (d) Any instructions given to the Supplier by either of the Alliance Contracting Pty Ltd's Representative shall be deemed given by the Alliance Contracting Pty Ltd, and the Supplier must comply with the Instruction.

## 19. SUPPLIER'S REPRESENTATIVE.

### 19.1 Suppliers Representative.

For the purposes of the Service Order, the Supplier must provide the Alliance Contracting Pty Ltd with the name and contact details of the Supplier's Representative who shall be delegated the following tasks and responsibilities:

- (a) have the power to bind the Supplier in respect of all matters pertaining to the Service Order;
- (b) provide technical advice to the Alliance Contracting Pty Ltd;
- (c) table details supporting the Supplier's performance against agreed KPI criteria;
- (d) discuss and resolve Service Order issues.

Any communication given, or document signed, by the Supplier's Representative will be deemed to have been give or signed by the Supplier and must bind the Supplier.

Matters known to the Supplier's Representative are deemed known to the Supplier.

The Supplier may from time to time by notice in writing to the Alliance Contracting Pty Ltd revoke any appointment made pursuant to this Clause and appoint another person as its Representative.

#### 19.2 Delegation.

The Representative of each party may, by written notice to the other party, delegate all or any of the representative's authority as specified in the notice from time to time provided always that such action is expressed in writing. A delegation of authority may be revoked at any time by like notice.

### 20. SUPPLIER'S PERSONNEL.

The Supplier must notify the Alliance Contracting Pty Ltd's Representative of the full names and qualifications of all of the Supplier's Personnel before the Commencement Date and, in respect of replacement or additional Personnel, before they commence work on the Services. In addition to the above the Supplier must ensure that:

- (a) The Supplier's Personnel shall exercise the standards of diligence, skill and care normally exercised by similarly qualified and competent persons in the performance of comparable Services
- (b) The Supplier must supply all managerial, professional, supervisory, technical, trade and other labour necessary for the satisfactory performance of the Services in accordance with the Service Order.
- (c) The Supplier must ensure that its personnel are licensed and certified as required by law, including all mining industry, safety and engineering certifications, and are qualified, competent, skilled and fit to perform the Services.
- (d) The Alliance Contracting Pty Ltd's Representative may object to any of the Supplier's Personnel who, in the opinion of the Alliance Contracting Pty Ltd's Representative, engage in misconduct or are incompetent or negligent. On receipt of a notice of objection from the Alliance Contracting Pty Ltd's Representative, the Supplier shall remove the relevant personnel from the Site and from the performance of the Services.

### 21. QUALITY.

#### 21.1 Quality of Materials and Work.

The Supplier shall use supply the standards of workmanship, and materials if any, required by the Service Order. In the absence of any requirement to the contrary, the Supplier shall use suitable new materials.

#### 21.2 Quality Assurance.

The Supplier shall, if requirements are so stated in the Service Order:

- (a) Plan, establish and maintain a quality system which conforms to those requirements;
- (b) Provide the Superintendent with access to the quality system of the Supplier and each of the Sub-Suppliers of the Supplier to enable monitoring and quality auditing.

Any such quality system shall be used only as an aid to achieving compliance with the Service Order and to document such compliance. Such system shall not relieve the Supplier of the responsibility to comply with the Service Order

## **22. EXAMINATION AND TESTING.**

### 22.1 Testing.

The Alliance Contracting Pty Ltd may implement random testing to ensure compliance of the Services and any miscellaneous products with the specifications. Should tests conducted by or on behalf of the Alliance Contracting Pty Ltd establish an unacceptable departure from the specifications, payment for the Services may be withheld or reduced in proportion to the diminished effectiveness in the Alliance Contracting Pty Ltd's operations, at the Alliance Contracting Pty Ltd's sole discretion, or the Alliance Contracting Pty Ltd may reject the Services. All costs to rectify or repeat the Services shall be to the Supplier's cost.

### 22.2 Costs of tests.

The costs of and incidental to testing shall be borne by the Alliance Contracting Pty Ltd or paid by the Alliance Contracting Pty Ltd to the Supplier unless :-

- (a) the test shows that the Services and miscellaneous products are not in accordance with the Service Order;
- (b) the test is consequent upon a failure of the Supplier to comply with a requirement of the Service Order.
- (c) where such costs are not to be borne by the Alliance Contracting Pty Ltd, they shall be borne by the Supplier or paid by the Supplier to the Alliance Contracting Pty Ltd.

### 22.3 Certificates -

If requested by the Alliance Contracting Pty Ltd the Supplier must provide the Alliance Contracting Pty Ltd certificates confirming that the Services, and any miscellaneous products, conform to the Specifications.

### **23. WORKING HOURS AND ROSTER.**

Unless otherwise stated the hours of work will not exceed 12 hours per day and fourteen consecutive days without a twenty four hour mandatory break.

### **24. TIME FOR COMMENCEMENT AND COMPLETION.**

#### **24.1 Commencement and completion dates.**

The Services will start on the Commencement Date as stated on the Service Order and will terminate on the Completion Date unless either extended by mutual agreement or terminated earlier in accordance with these terms and conditions.

#### **24.2 Date for deliverables.**

The Supplier must issue to the Alliance Contracting Pty Ltd all the deliverables stated in the Scope of Services. The Supplier is made aware that the Alliance Contracting Pty Ltd may be conducting corresponding Site activities that depend on timely completion of the deliverables.

#### **24.3 Notification of a possible delay.**

If the Supplier believes that the Services shall not be completed by the Completion Date, the Supplier must immediately, upon forming such belief, notify the Alliance Contracting Pty Ltd of the anticipated delay.

#### **24.4 Liability for Compensation.**

If the delay is due to the Supplier's acts or omissions, the Supplier must, after consultation with the Alliance Contracting Pty Ltd, take such remedial steps as necessary, at the Supplier's sole cost and expense, to expedite and accelerate the Services so that the Services are completed on or before the Completion Date. If the delay is due to the Alliance Contracting Pty Ltd's acts or omissions, the extent of the delay, and any additional costs, must be negotiated in good faith, agreed, and recorded as a variation to the Service Order.

### **25. PROGRAM AND PROGRESS.**

#### **25.1 Rate of Progress.**

The Supplier shall proceed with the work under the Service Order with due expedition and without delay.

The Supplier shall not suspend the progress of the whole or any part of the work under the Service Order except where the suspension is under Clause 28.

The Supplier shall give reasonable advance notice if they require any information, materials,

documents or instructions from the Alliance Contracting Pty Ltd.

The Alliance Contracting Pty Ltd may direct in what Contract and at what time the various stages or parts of the Services under the Service Order shall be performed. If the Supplier can reasonably comply with the direction, the Supplier shall do so. If the Supplier cannot reasonably comply, the Supplier shall notify the Alliance Contracting Pty Ltd in writing giving reasons.

If compliance with the direction causes the Supplier to incur more or less cost than otherwise would have been incurred had the Supplier not been given the direction, the difference shall be negotiated in good faith, agreed and processed as a variation to the Service Order.

#### 25.2 Program.

For the purposes of Clause 27, a 'program' is a statement in writing showing the dates by which, or the times within which, the various stages or parts of the work under the Service Order are to be executed or completed.

The Supplier shall not, without reasonable cause, depart from a program furnished to the Alliance Contracting Pty Ltd.

### 26. SUSPENSION OF THE SERVICES.

#### 26.1 Alliance Contracting Pty Ltd's right to suspend.

The Alliance Contracting Pty Ltd may suspend performance of all or any portion of the Services at any time by providing written notice to the Supplier. Upon receipt of a suspension notice, the Supplier must:

- 1) cease performance of the Services to the extent specified in the notice and on the date and time specified; and
- 2) take such other action as is specified in the notice or as may be necessary to minimise costs associated with the suspension.

#### 26.2 Supplier's Compensation.

Provided the Supplier complies with the requirements of Clause 28 the Supplier shall, as full compensation for the suspension, be paid:

- 1) an agreed standby charge for actual costs incurred by the Supplier to keep its organisation, personnel, and equipment committed to the Services on a standby basis; and
- 2) the actual amount of agreed reasonable costs incurred by the Supplier for demobilising and remobilising its personnel and equipment.

### 26.3 Resumption of Work.

Upon receipt of a written notice from the Alliance Contracting Pty Ltd to resume the Services, the Supplier must resume performance of the Services as specified in such notice and subject to the terms of this Service Order.

### 27. LIENS and ENCUMBRANCES.

The Supplier must indemnify and keep indemnified the Alliance Contracting Pty Ltd in respect of all claims, liens or other encumbrances in relation to wages due and payable by the Supplier to its Personnel or in respect of any claims, liens or other encumbrances made by the Supplier's Personnel, manufacturers and suppliers.

If the Supplier fails to indemnify the Alliance Contracting Pty Ltd in accordance with this Clause, the Alliance Contracting Pty Ltd may treat the matter as a default in accordance with Clause 32.1.

### 28. REMOVAL OF THE SUPPLIERS EMPLOYEE FOR BREACHES.

If a breach occurs of any of Health, Safety, Environment and Community Service Order obligations the Alliance Contracting Pty Ltd may refuse entry to the Site to the person concerned or require that the person concerned immediately leave the Site. The Supplier's obligations shall not be diminished, reduced or otherwise affected and the Supplier shall not be entitled to any Compensation because any person is refused entry to the Site or required to leave the Site.

### 29. DEFAULT AND TERMINATION.

#### 29.1 Default.

If the Supplier breaches any term of this Service Order, the Alliance Contracting Pty Ltd may serve a Notice of Default on the Supplier. The Notice of Default shall:

- 1) require the Supplier to remedy the breach within a specified time period that the Alliance Contracting Pty Ltd considers reasonable or state that the breach is incapable of remedy; and
- 2) state that if the breach is not remedied within the time specified or is incapable of remedy, the Alliance Contracting Pty Ltd may by notice to the Supplier either suspend, wholly or partly, payment to the Supplier under the Service Order until the default has been remedied or terminate the Service Order either in whole or in part with effect from the Cancellation Date.

#### 29.2 Termination with notice by the Alliance Contracting Pty Ltd.

The Alliance Contracting Pty Ltd may, with written notice to the Supplier terminate, in whole or part, the Service Order for any reason. The Supplier shall not have any claim for damages, loss, expenses or costs, including loss of anticipated profits, loss of use and consequential loss, on account of or arising out of the termination of this Service Order by the Alliance

Contracting Pty Ltd pursuant to this Clause other than specified in this Service Order.

### 29.3 Immediate termination by the Alliance Contracting Pty Ltd.

The Alliance Contracting Pty Ltd may terminate the Service Order with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier ceases to carry on business; or
- (b) the Supplier disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business; or
- (c) the Supplier takes any step to enter into an arrangement or compromise with its creditors; or
- (d) the Supplier ceases to be able to pay its debts as they become due; or
- (e) any step is taken by a mortgagee or other encumbrancer to enter into possession or dispose of the whole or any part of the Supplier's assets or business; or
- (f) any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person over the Supplier or the whole or any part of the Supplier's assets, business or undertaking.

## 30. EFFECTS OF TERMINATION.

### 30.1 Supplier's obligations on Terminate.

On receipt of a Notice of Termination the Supplier must:

- (a) cease performance of the Services in accordance with, but only to the extent specified in, the Notice of Termination;
- (b) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- (c) immediately take all possible action to render the Services safe and ensure the safety of all Personnel; and
- (d) take any other action reasonably required by the Alliance Contracting Pty Ltd in relation to the termination.

### 30.2 Termination Date.

On the date of termination specified in the Notice of Termination the Supplier must:

- (a) provide the Alliance Contracting Pty Ltd with a detailed report in such form as the

Alliance Contracting Pty Ltd may require in relation to the Services performed up to and including the date of termination;

- (b) return to the Alliance Contracting Pty Ltd any items issued to the Supplier by the Alliance Contracting Pty Ltd during the period of the Service Order;
- (c) offer the Alliance Contracting Pty Ltd first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Service Order to be purchased by the Alliance Contracting Pty Ltd at its depreciated value or such other value as agreed by the Parties; and
- (d) take any other action relating to the termination of the Service Order as the Alliance Contracting Pty Ltd may reasonably require.

### 30.3 Compensation for Termination.

Within 30 days of the date of termination specified in the Notice of Termination, the Alliance Contracting Pty Ltd must pay the Supplier an amount to compensate the Supplier for loss or damage directly attributable to the termination (less any amounts previously paid and subject to any rights which the Alliance Contracting Pty Ltd may have to suspend, withhold or set-off payments) as agreed between the Supplier and the Alliance Contracting Pty Ltd. In no event must the Supplier be entitled to recover any loss of profits arising as a result of termination.

If the Parties fail to agree on this amount the Dispute shall be settled in accordance with Clause 42.

### 30.4 Assignment

Upon termination or expiration of the Service Order, the Supplier must, upon the Alliance Contracting Pty Ltd's request, assign to the Alliance Contracting Pty Ltd any license, permit, Service Order, Subcontract Order, purchase Contract or other agreement pertaining to the Services.

### 30.5 Rights.

Termination of the Service Order operates without prejudice to any rights, which may have accrued to either party prior to such termination.

## 31. VARIATIONS.

### 31.1 Right to vary the Services.

During the performance of the Services the Alliance Contracting Pty Ltd's Representatives may issue instructions to alter, amend, omit, add to or vary the Services. The Supplier shall carry out the Services in accordance with such an instruction and be bound by the same conditions, so far as they are applicable, as if the Instruction were part of the work originally included in the Services.

### 31.2 Supplier requested variations.

At the discretion of the Alliance Contracting Pty Ltd's Representative, a variation will not be issued to the Supplier unless it is preceded by a notification issued by the Supplier.

### 31.3 Variations

In the event of a variation to the Services in originating from the Alliance Contracting Pty Ltd's Representative may, in his absolute discretion;

- (a) extend the Completion Date or, in the case of an omission, reduce the Completion Date; and,
- (b) approve payment for Services performed in accordance with any such variation shall, to the extent applicable, be in accordance with the Service Contract terms and conditions.

## 32. DAYWORKS AND MISCELLANEOUS WORKS.

### 32.1 Additional or misc works.

The Alliance Contracting Pty Ltd's Representative may direct additional or miscellaneous works be carried out as Daywork.

### 32.2 Records of costs.

The Supplier shall thereafter each day record particulars of all resources used by the Supplier for the execution of the Daywork and by 9.00 am the following day furnish to the Alliance Contracting Pty Ltd's Representative the particulars and copies of such time sheets and other documents evidencing the cost of the Daywork.

The Alliance Contracting Pty Ltd's Representative may direct the manner in which matters are to be recorded.

## 33. INVOICING INSTRUCTIONS.

### 33.1 Draft Progress claim.

The Supplier shall provide the Alliance Contracting Pty Ltd with a draft progress claim, accompanied by documentation supporting the draft as soon as services completed but no later than one (1) days of the end of the month the services have been completed. Prior to its acceptance by the Alliance Contracting Pty Ltd, the Alliance Contracting Pty Ltd is not liable to make any payment pursuant to an Invoice submitted under and in accordance with this Clause.

### 33.2 Invoicing for Service Order work.

Where Service Orders have been issued the Supplier shall submit an invoice in respect of each Service Order. Invoices for work instigated by a Service Order must specify:

- (i) the relevant Service Order Number;
- (ii) the amount due to the Supplier in Australian Dollars;

### 33.3 Invoicing Instructions for Service Order works.

- (a) The Alliance Contracting Pty Ltd prefers one invoice per Service Order.
- (b) The Alliance Contracting Pty Ltd may permit multiple invoices per Service Order
- (c) The Alliance Contracting Pty Ltd WILL NOT permit one invoice quoting multiple Service Orders.
- (d) The Suppliers invoice constitutes a Tax Invoice for the purposes of and as defined in Clause 39.
- (e) the Invoice shall be addressed and sent to Alliance Contracting Pty Ltd at the address as stated on the Order not later than (5) five days after the end of the month the works were undertaken.

### 33.4 Final Progress Claim and Final Invoice.

A Final Invoice endorsed "Final Invoice", accompanied by a Final Progress Claim shall be submitted for payment within 28 days after completion of Services and submission of all deliverables. The Alliance Contracting Representative may require a Final Progress Claim, Final Invoice and a Release Form to be completed stating that the Supplier has no claims against the Alliance Contracting Pty Ltd. Final payment shall not relieve the Supplier of any obligation under Service Order warranties.

## 34. PAYMENTS.

### 34.1 Payment Period.

The Alliance Contracting Pty Ltd shall pay the Supplier within thirty (35) days of receipt of an invoice.

### 34.2 Full Compensation.

The payments made to the Supplier in accordance with terms of the Service Contract shall be deemed the sole method to compensate the Supplier for the performance of the Services in accordance with all of the terms and conditions of the Service Order. Under no circumstances shall the Supplier be entitled to additional payments as a result of Services performed or actions taken that do not comply with the terms of the Service Order except where expressly notified.

### 34.3 Rise and Fall.

Unless stated otherwise, all of the rates, prices mark-ups and other things that comprise Compensation are fixed and are not subject to adjustment for rise and fall in the cost of labour, materials or any other items or for fluctuations in currency exchange rates.

#### 34.4 Statutory Declarations.

If requested to do so the Supplier shall furnish to the Alliance Contracting Pty Ltd a signed Statutory Declaration stating that all labour and materials furnished and equipment used during the period covered by any invoice have been paid for in full and that the Services are not subject to liens or claims on account thereof.

#### 34.5 Payments on Account.

Payments made as monthly progress payments shall not be evidence of the value of work or an admission of liability or evidence that the work has been executed satisfactorily but shall be a payment on account only.

#### 34.6 Provisional Payments.

The Alliance Contracting Pty Ltd reserves the right to make provisional payment against an invoice in respect of a disputed progress payment pending audit and reconciliation of the total charge.

### 35. TAXES AND THE GOODS AND SERVICES TAX.

#### 35.1 Definitions

“GST” means a goods and services tax imposed by the GST Legislation;

“GST Act” means the A New Tax System (Goods and Services Tax) Act 1999;

“GST Legislation” means the GST Act and associated legislation and regulations and words defined in the GST Legislation have the same meaning in this Service Order;

“GST Rate” at any particular time, means, the rate (expressed as a percentage) at which GST is payable by the Supplier of a Taxable Supply at that time;

“Input Tax Credit” means the amount of input tax credit available to a Party under Division 11 and/or Division 15 of the GST Act;

“Price” has the same meaning attributed to "price" in Section 9-75 of the GST Act;

“Recipient” means either Party when it is the recipient of a Supply;

“Supplier” means either Party when it makes a Supply;

“Supply” means any supply pursuant to this Service Order including but not limited to a

Taxable Supply;

“Tax Invoice” has the same meaning as "tax invoice" in Section 29-70 of the GST Act;

“Taxable Supply” has the same meaning as in Section 9-5 of the GST Act;

“Value” is the GST exclusive value of a Supply and has the same meaning attributed to “value” in Section 9-75 of the GST Act.

### 35.2 Adjustment for GST

- (a) All amounts specified in this Service Order as being payable by either Party to the other are exclusive of any GST applicable.
- (b) If a Supply under or in connection with this Service Order constitutes a Taxable Supply, the Supplier may recover from the Recipient an amount on account of GST in addition to any payment or other consideration for the Supply.
- (c) The additional amount is equal to the Value for the Supply multiplied by the prevailing GST rate.

### 35.3 Tax Invoice.

If any Supply is a Taxable Supply, then:

- (a) the Supplier must provide to the recipient a Tax Invoice within seven (7) days of each delivery of Products (ie from when the Supply is made); and
- (b) notwithstanding any contrary provision in this Service Order, the Recipient is not obliged to make any payment under this Service Order unless the Supplier has provided a Tax Invoice in respect of the Taxable Supply attributable to that payment.

### 35.4 Reimbursable Costs.

If the Supplier purchases or acquires a Taxable Supply for which it is entitled to be reimbursed by the Alliance Contracting Pty Ltd under the terms of this Service Order, the Supplier agrees that the reimbursable amount shall be reduced by the full amount of the Input Tax Credit to which the Supplier is entitled.

### 35.5 Payment of taxes.

The Supplier must pay or cause to be paid at the time when due and payable (and at the Supplier's own cost and the Supplier shall have no claim against the Alliance Contracting Pty Ltd in respect of any sum paid):

- (a) all income, profit, gains, franchise or personal property taxes, levied on, assessed to or payable by the Supplier in relation to the performance of the Services;

- (b) all taxes, duties, fees or charges imposed on or payable in relation to the Service Order or the Performance of the Works including all sales, excise, Goods and Service Tax, value added, sale and use, consumption and use and other taxes, all stamp duties, customs and excise duties and other like duties;
- (c) all employment related taxes including payroll tax, fringe benefits tax and other taxes imposed on or payable by the Supplier in respect of the Supplier's Employees;
- (d) all contributions or payments imposed on or payable by the Supplier in respect of the Supplier's Employees pursuant to any applicable law or award or Service Order between the Supplier and a Supplier's Employee or any trade union, association of employees or like associations of individuals in relation to labour procurement including contributions or payments in respect of wages, salaries or other emoluments, worker's compensation coverage, unemployment or sickness benefits or insurance, long service leave, old age or retirement benefits, superannuation, pensions, annuities and welfare funds;
- (e) all storage, license, permit, registration or other like fees or charges payable in relation to the Performance of the Services; and
- (f) any amounts payable with respect to any withholding and prescribed payment tax retention obligations imposed by law.

### **36. DEDUCTIONS FROM PAYMENTS, IE BACK CHARGES AND OFF SETS.**

#### **36.1 Invoice for use of the Alliance Contracting Pty Ltd's facilities.**

Except as specifically provided for the use of the Alliance Contracting Pty Ltd's Facilities will be to the account of the Supplier and will be invoiced to the Supplier at cost, such cost to be determined by the Alliance Contracting Pty Ltd if not provided for in the Service Order. Any amounts invoiced to the Supplier (plus Goods and Services Tax) are a debt due and payable by the Supplier to the Alliance Contracting Pty Ltd.

#### **36.2 Off set.**

Without limiting the Alliance Contracting Pty Ltd's other rights and remedies, any money becoming due from the Supplier to the Alliance Contracting Pty Ltd under the Service Order or otherwise, may be deducted by the Alliance Contracting Pty Ltd from any money due, or which becomes due, from the Alliance Contracting Pty Ltd to the Supplier or any money of the Supplier held by the Alliance Contracting Pty Ltd.

The Supplier may not deduct any money due from the Alliance Contracting Pty Ltd to the Supplier under the Service Order or otherwise from any money due, or which becomes due, from the Supplier to the Alliance Contracting Pty Ltd or any money of the Alliance Contracting Pty Ltd held by the Supplier.

### **37. DISPUTE RESOLUTION.**

### 37.1 Notice of Dispute.

If a Dispute between the Supplier and the Alliance Contracting Pty Ltd:

- (1) arises out of or in connection with the Service Order, including a Dispute concerning a direction given by the Alliance Contracting Pty Ltd; or
- (2) arises in connection with a claim at common law, in equity or under Legislation in connection with the Service Order;

then either party may give a Notice of Dispute to the other party identifying and providing details of the Dispute. Pending settlement of any dispute or disagreement the parties shall proceed diligently with performance under the Service Order.

### 37.2 Notice of Dispute not to be given before other process followed.

The Supplier must not submit a Notice of Dispute in respect of a Claim for any extra costs, loss or damage unless the claim has previously been submitted to and determined in writing by the Alliance Contracting Pty Ltd's Representative. Where a Claim has been submitted to the Alliance Contracting Pty Ltd and has not been determined by the Alliance Contracting Pty Ltd's Representative within 28 days then the Claim will be deemed to have been rejected by the Alliance Contracting Pty Ltd at the end of that time and a Notice of Dispute (NoD) may be given.

### 37.3 Representatives to meet.

The representatives named below must meet and endeavour in good faith to resolve the Dispute in the time frames set out below:

- (1) Within 14 days after receipt of a NoD, the Supplier's Representative (SR) is to meet with the Alliance Contracting Pty Ltd's Representative (ACR).
- (2) If not resolved within 14 days after the receipt of the NoD, the SR is to meet with Alliance Contracting Pty Ltd Operations Manager and ACR.
- (3) If not resolved within 28 days after the receipt of the NoD, the SR is to meet with the Alliance Contracting Pty Ltd's Australia's General Manager and Operations Manager.
- (4) At all meetings each party shall be represented by a person having authority to formally agree at the meeting to any resolution of or method of resolving the Dispute.
- (5) Both parties' representatives must sign the minutes of all meetings.
- (6) Each party is liable for its own costs.

### 37.4 Expert Determination.

If the Dispute is not settled within 56 days after receipt of the NoD then the claim may be submitted to expert determination in accordance with The Institute of Arbitrators & Mediators Australia Expert Determination Rules. A copy of the rules can be found at the following address. <http://www.iama.org.au/expert.htm>

The expert's decision shall be final and binding on all Parties and give rise to a legal right capable of enforcement by the Courts.

### **38. FORCE MAJEURE.**

If a party is affected, or likely to be affected in whole or in part from carrying out its obligations under the Service Order (other than an obligation to pay money) as a result of Force Majeure, it must promptly notify the other party. The notice must:

- 1) specify the obligations it cannot perform;
- 2) fully describe the event of Force Majeure;
- 3) estimate the time during which the Force Majeure shall continue; and
- 4) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

Following this notice, and while the Force Majeure continues, the obligations which cannot be performed (other than an obligation to pay money) because of Force Majeure shall be suspended.

- (a) The party that is prevented from carrying out its obligations under the Service Order as a result of Force Majeure must remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible.
- (b) The party that is prevented from carrying out its obligations under the Service Order as a result of Force Majeure must take all action reasonably practicable to mitigate any Liabilities suffered by the other party as a result of its failure to carry out its obligations under the Service Order.

An amendment to the Completion Date is the Supplier's sole remedy for any delays resulting from an event of Force Majeure, and the Supplier is not entitled to payment for any damages, costs or expenses in connection with the event of Force Majeure.

### **39. NO WAIVER.**

The failure of the Alliance Contracting Pty Ltd to enforce any specific breach by the Supplier of this Service Order or any part hereof shall not constitute a waiver of any subsequent breach thereof nor of any other cause of termination.

### **40. SURVIVAL.**

Notwithstanding any termination of this Service Order, any obligation by any party, which has not been fully observed or performed, shall survive such termination.

#### **41. CLEANING UP.**

The Supplier shall keep the Site and the work clean and tidy. The Supplier shall regularly remove rubbish and surplus material. Within 14 days after the Date of Completion the Supplier shall remove Temporary Works and Plant.

If the Supplier fails to clean up the Alliance Contracting Pty Ltd's Representative may, after the reasonable notice in writing to the Supplier, have the work of cleaning and tidying up carried out by other persons and the reasonable cost incurred by the Alliance Contracting Pty Ltd will be deducted from the Supplier payment via the off set provisions in Clause 40.2.

#### **42. WARRANTY AND DEFECTS LIABILITY PERIOD.**

The Supplier warrants all Services and Goods provided pursuant to the Service Order against any defect in material or workmanship for a three month period from the date of completion of the Services or such other period as may be stated in any Service Order or agreed between the Parties.

#### **43. PRIVACY.**

The Supplier agrees that:

- (a) it shall not disclose personal information to the Alliance Contracting Pty Ltd regarding its directors, officers, employees, Sub-Suppliers, agents or representatives without first obtaining that person's consent to the disclosure and their express agreement to the Alliance Contracting Pty Ltd Group Privacy Statement (available from [www.Alliance Contracting Pty Ltd.com.au](http://www.Alliance Contracting Pty Ltd.com.au) or the Alliance Contracting Pty Ltd's Privacy Officer);
- (b) by submitting personal information to the Alliance Contracting Pty Ltd relating to its directors, officers, employees, Sub-Suppliers, agents or representatives or causing any such person to seek access to any site of the Alliance Contracting Pty Ltd, it has warranted and represented to the Alliance Contracting Pty Ltd that it has complied with this clause;
- (c) it shall ensure that its Sub-Suppliers comply with this clause in respect of their directors, officers, employees, Sub-Suppliers, agents and representatives as if they were the Supplier and shall be liable for any failure of its Sub-Suppliers to comply with this clause; and
- (d) it shall indemnify the Alliance Contracting Pty Ltd and the directors, officers and employees of the Alliance Contracting Pty Ltd against any liability, loss, damage, cost, expense, claim, suit, action, demand, proceeding, penalty and fine of any nature suffered, imposed or incurred as a result of a breach of this clause.

Where the Supplier is a natural person or is a partnership, joint venture or other unincorporated association comprised of natural persons, the Supplier acknowledges that it has (or each of them have) read and agreed to the Alliance

Contracting Pty Ltd Australia Group Privacy Statement (available from [www.Alliance Contracting Pty Ltd.com.au](http://www.AllianceContractingPtyLtd.com.au). or the Alliance Contracting Pty Ltd's Privacy Officer).

#### **44. ENTIRE AGREEMENT.**

This Service Order contains the full understanding and agreement between the Parties and will not be modified, varied, added to or amended in any respect except where such modification, variation, addition or amendment is reduced to writing and executed by the Parties.