

# Oyu Tolgoi Purchase Order General Conditions for the Supply of Goods (and Associated Services)

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## 1. Definitions and interpretation

### 1.1 Definitions

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

**Accumulation Period** means the period commencing on the first day of a calendar month and ending on the last day of that calendar month.

**Affiliate** means any corporation, company, partnership, limited partnership, limited liability company, joint venture, or other form of enterprise, which controls, is controlled by, or is under common control with, a Party. Control, when used as a verb, means the ability, directly or indirectly through one or more intermediaries, to direct or cause the direction of the management and policies of such entity through (i) legal or beneficial ownership of voting securities or membership interests; (ii) the right to appoint managers, directors or corporate management; (iii) contract; (iv) operating agreement; (v) voting trust; or otherwise; and when used with respect to a person, means the actual or legal ability to control the actions of that person; and when used as a noun means an interest which gives the holder the ability to exercise any of the foregoing powers.

**Applicable Laws** means any local, state, provincial, territorial, national or federal laws, legislation, statutes, regulations, rules, treaties and orders of a Government Agency which are applicable in the jurisdiction(s) where the Supply is to be performed and used or which relate to a Party's rights or obligations under the Contract.

**Associated Services** means the services (if any) identified in the Purchase Order that are to be performed by the Supplier.

**Business Day** means any day which is not a Saturday, a Sunday or a public holiday and on which banks are open for business in the place in respect of which an obligation is to be performed or, in respect of Clause 32, the place to which a Notice is sent.

**Cancellation Date** is defined in Clause 27.2(b)(iii).

**Claim** means any action, suit, proceeding or demand of any kind (including by or against any or all of the Company or its Personnel by Personnel of the Supplier or any third party).

**Commercial Invoice** means an invoice or other document, including without limit a credit note or debit note, in a form that is valid under the Applicable Law of the jurisdiction in which a liability to pay Indirect Transaction Taxes is imposed, claimed, levied or assessed, which must be held by a person for that person to be able to claim Input Tax Credits.

**Company** means Oyu Tolgoi LLC.

**Company Competencies** is defined in Clause 18.5(b).

**Company Induction Courses** is defined in Clause 18.5(a).

**Company Representative** is, initially, as defined in the Purchase Order, and includes:

- (a) such other person as the Company may, in writing, substitute for that representative; or
- (b) any person authorised by that representative to perform any of that representative's powers, duties, discretions or authorities.

**Company's Personal Data** means the Personal Data that the Company transfers to the Supplier from time to time in connection with the Contract.

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

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

**Consignment Stock** means Goods that are delivered to the Delivery Point by the Supplier and title remains with the Supplier and may be ordered by the Company in accordance with Clause 4.2.

**Contract** is defined in Clause 2.1.

**Contract Price** is defined in Clause 9.1.

**Customs Duties** means any tax or tariff imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the import or export of Goods.

**Deducted Amount** is defined in Clause 13.2.

**Defects Liability Period** means (as applicable) the period identified as such in the Purchase Order or, where such period is not identified in the Purchase Order, the period of 1 year following receipt of a particular Good by the Company.

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

**Dispute** is defined in Clause 28.1.

**Dispute Notice** is defined in Clause 28.1.

**Dispute Representative** is defined in Clause 28.2(a).

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

**Domestic Mongolian Supplier** means a supplier that is registered as a Mongolian business entity or individual and a Mongolian taxpayer.

**Excise Duties** means any tax imposed, claimed, levied or assessed by, or payable to, any Government Agency in relation to the production or manufacture of Goods.

**Facilities** means any transportation services at the Site, medical or toilet facilities.

**Force Majeure** means an event or cause which is beyond the control of the Party claiming force majeure, not able to be overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the force majeure by that Party, and which could not have been reasonably foreseen, and includes (subject to satisfying the requirements of the foregoing):

- (a) an act of God (other than adverse weather);

- (b) cyclones, fire, flood; or
- (c) acts of war, acts by Mongolian Government Agencies, acts, acts of public enemies, terrorist acts, riots or civil commotions.

**Foreign Supplier** means a supplier that is not registered as a Mongolian business entity or individual and Mongolian taxpayer.

**Goods** means the goods, materials, supplies, equipment or other items identified in the Purchase Order.

**Government Agency** means any government or governmental, regulatory semi-governmental, administrative, municipal, fiscal or judicial body, department, commission, authority, tribunal, agency bureau, Official, minister, Crown corporation, or entity, dispute settlement panel or body or other law-, rule- or regulation-making entity.

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

**HSEC Management Plan(s)** is defined in Clause 18.4(a).

**HSEC Policies and Standards** is defined in Clause 18.3(a).

**Indemnified Parties** means the Company and the Company's Personnel.

**Indirect Transaction Taxes** means any value added tax, goods and services tax or similar tax including, without limit, sales, use or consumption taxes, imposed, claimed, levied or assessed by, or payable to, any Government Agency, but does not include any related penalty, fine or interest thereon.

**Input Tax Credit** means any entitlement to a credit for, or offset against, reduction in or refund of, Indirect Transaction Taxes, in relation to any acquisition or the receipt of any supply.

**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 which may subsist or may hereafter subsist in works or any subject matter, rights in relation to inventions (including all patents and patent applications), trade secrets and know-how, rights in relation to designs (whether or not registerable), rights in relation to registered or unregistered trade marks, circuit layout designs and rights in relation to circuit layouts, but excludes non-assignable moral rights and similar non-assignable personal rights of authors and producers.

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

**Mongolian VAT Receipt** means a receipt that complies with the requirements of Mongolian Value Added Tax (VAT) Law.

**Mongolian Workplace Payment** means the Mongolian workplace fee imposed under the Law of Mongolia on Sending Labour Force Abroad and Receiving Labour Force and Specialists from Abroad for foreign (non-Mongolian) workers in Mongolia who are engaged in the performance of services or delivery of any Goods hereunder (whether employed by the Supplier or by Sub-contractors).

**Official** includes:

- (a) any officer or employee of any Government Agency, or any person acting in an official capacity on behalf of any such Government Agency;

- (b) any officer, employee or official of a political party;
- (c) any candidate for political office; or
- (d) any officer or employee of a public international organisation (for example, the United Nations, IMF or World Bank).

**Offshore Services** means Associated Services physical performed or provided outside the territory of Mongolia and are exempt from withholding tax.

**OSH Laws** means the Labour Law enacted on 14 May 1999, Law of Mongolia on Occupational Safety and Health enacted on 22 May 2008 and the Norms for Establishing a Council and Employing a Health and Safety Officer by Order No. A/114 of the Minister of Labour of Mongolia issued June 22 2015, the Regulation for Organizing Occupational Safety and Health training and exams by Order No. A/33 of the Minister of Labour of Mongolia issued February 5, 2016 and associated laws, norms and regulations, as introduced and amended from time to time.

**Onshore Services** means Associated Services physical performed or provided inside the territory of Mongolia and such Services may be and liable to 20% withholding tax (subject to applicable tax treaty exemption or reduction in rates).

**Party** means a party to the Contract.

**Payment Term** is defined on the Purchase Order.

**Personal Data** means information relating to identifiable individuals and includes (but is not limited to all information relating to individuals that is protected by privacy laws or data protection laws in the country where:

- (a) the individuals are located; or
- (b) the data relating to those individuals is processed.

**Personnel** means:

- (a) in relation to the Supplier, any of its employees, Sub-contractors (including Sub-contractors' Personnel), agents and representatives involved either directly or indirectly in the performance of the Supply;
- (b) in relation to the Company, or a member of the Rio Tinto Group, any of its past or present officers, employees, agents or representatives; and
- (c) in relation to a Sub-contractor, any of its employees, agents or representatives involved either directly or indirectly in the performance of the Supply.

**Processing** means collecting, holding, using, transferring, destroying and any other dealing.

**Purchase Order** means individual purchase orders as may be issued by the Company to the Supplier in respect of the supply of Goods or the performance of Associated Services which shall be subject to the terms of the Contract.

**Rio Tinto Group** means the dual listed company structure incorporating Rio Tinto plc and Rio Tinto Limited and including:

- (a) any Affiliate of Rio Tinto plc or Rio Tinto Limited;

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

**Rio Tinto Limited** means Rio Tinto Limited (ABN 96 004 458 404) having its registered office at 33<sup>rd</sup> Floor, 120 Collins Street, Melbourne, Victoria, 3000.

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

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

**Specifications** means the specifications for the Supply and any modification of those specifications as directed by the Company Representative in accordance with the Contract.

**Sub-contractor** means any person engaged by the Supplier in accordance with Clause 35 to perform all or any part of the Supply on behalf of the Supplier.

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

**Supplier Default Notice** is defined in Clause 27.1.

**Supplier Insurances** is defined in Clause 24.1.

**Supplier Representative** is defined in the Purchase Order.

**Supply** means the supply of Goods and the performance of any Associated Services in accordance with the Contract.

**Supply Chain** means all steps and processes involved in the provision of the Supply to the Company, commencing with the sourcing of the Goods and (if applicable) Associated Services and finishing with the use of the Goods and Associated Services by the Company.

**Tax or Taxes** means, unless the contrary intention is expressed, any and all taxes, including, without limitation, Indirect Transaction Taxes, excise, stamp, documentary, customs, import/export, payroll, personal, property, real property, interest equalisation, business, occupation, turnover, income, corporation, capital, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed by any Government Agency or otherwise payable. For the avoidance of doubt, "Taxes" includes Mongolian Workforce Payments.

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

**Term** is defined in Clause 7.

**Termination Notice** is defined in Clause 26.1.

## 1.2 Interpretation

- (a) Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (b) The singular includes the plural and conversely.
- (c) A gender includes all genders.
- (d) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (e) The meaning of general words is not limited by specific examples introduced by including or for example.
- (f) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes all of them.
- (g) A reference to a person or a Party includes a reference to that person's or Party's executors, administrators, successors, substitutes (including persons taking by way of novation), assigns (in the case of a person) and permitted assigns (in the case of a Party).
- (h) A reference to a Clause is a reference to a clause of, these General Conditions.
- (i) A reference to an Act, Law or legislation, includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to *use* in the context of dealing with Intellectual Property Rights includes using, exploiting, copying, adapting, creating derivative works, developing, modifying, disclosing and communicating
- (k) A reference to conduct includes, without limitation, an omission, statement or undertaking, whether or not in writing.
- (l) Where it is provided that the Supplier will perform any act or provide any thing at its cost, this means the Supplier will not be entitled to any additional compensation for such act or thing and the cost will be deemed to be included in the Contract Price. Every exemption, limitation, defence, immunity, indemnity or other benefit contained in the Contract or otherwise to which the Company's Personnel, a member of the Rio Tinto Group or its Personnel is entitled will be held by the Company as trustee for the benefit of, and will extend to protect, the Rio Tinto Group member and those Personnel.
- (m) It is not necessary for the Company, a member of the Rio Tinto Group or their respective Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.
- (n) If the date for payment of any monies under the Contract falls on a day that is not a Business Day, the payment will be due on the following Business Day.

## 2. Evidence of Contract and precedence of documents

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### 2.1 Contract

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

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

### 2.2 Precedence of Contract documents

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

### 2.3 Entire agreement

- (a) The Contract contains the entire agreement between the Company and the Supplier with respect to its subject matter and supersedes all prior communications and negotiations between the Company and the Supplier in this regard, unless those communications expressly form part of the Contract.
- (b) No terms or conditions submitted by either party that are in addition to, different from or inconsistent with those contained herein or in the Purchase Order, including, without limitation, the Supplier's printed terms and conditions, and any terms and conditions contained in any Supplier's quotation, invoice, order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon either party unless specifically and expressly agreed to in a writing signed by duly authorised representatives of both parties.

### 2.4 Amendment to be in writing

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

## 3. Accuracy of information

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### 3.1 No representation by Company

The Company has endeavoured and will continue to endeavour (without being obliged to do so) to ensure the accuracy of any information provided to, or obtained by, the Supplier or its Personnel through a conducted Site visit, a pre-bid conference or otherwise obtained by the Supplier or its Personnel from the Company. However, the Company does not warrant or guarantee the accuracy, sufficiency or otherwise of such information and disclaims all responsibility for it. The Parties acknowledge that

any information so provided is for the convenience of the Supplier only and does not form part of the Contract unless otherwise expressly agreed by the Parties in writing, and that any Tender submitted by the Supplier and its subsequent execution and performance of the Contract is deemed to have been based on the Supplier's own investigations and determinations.

### 3.2 Supplier satisfied with accuracy

The Supplier agrees that it has satisfied itself as to the accuracy of any information given to it at any time prior to the execution of the Contract and accepts full responsibility for any use by it of such information including, without limitation, responsibility for any conclusions drawn by it from such information.

### 3.3 No relief

Failure by the Supplier to do all or any of the things it is deemed to have done under this Clause 3 will not relieve the Supplier from any of its obligations under the Contract.

### 3.4 Company not liable

The Company is not 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 Company.

## 4. Performance by Supplier

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### 4.1 Supply

The Supplier must perform the Supply in accordance with the terms of the Contract and in consideration of the payment of the Contract Price by the Company.

### 4.2 Consignment Stock

If a Contract includes the provision of Consignment Stock, the Supplier must delivery Consignment Stock in accordance with the Contract. The Company is not taken to have purchased or ordered Consignment Stock until such time as it is removed from the warehouse or consumed by the Company.

## 5. Supplier's warranties

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### 5.1 Supplier's warranties

In addition to the warranty contained in Clause 31.2 and the warranty contained in Clause 6.1, the Supplier warrants that:

- (a) all of the Supply will be provided in an efficient manner in accordance with all applicable legislation and laws or regulations;
- (b) all of the Supply will be of the highest standard and in accordance with the Company's specifications (where those specifications are made known to the Supplier) or in the absence of such specifications, in accordance with any applicable standards set by the International Organization for Standardization (ISO) or where there are no such standards applicable internationally recognized standards;
- (c) in relation to the performance of the Supply:

- (i) the Supplier and its Personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work; and
  - (ii) any equipment used on-Site by the Supplier will be in safe working condition, will comply with all legislation which is applicable to such equipment and will be operated by suitably qualified and competent Personnel, to the satisfaction of the Company; and
- (d) in relation to the provision of Goods as part of the Supply:
- (i) the Goods will be of merchantable quality;
  - (ii) the Goods will be free from defects in design, materials and workmanship, and suitable for the relevant purpose of those Goods;
  - (iii) it has good and marketable title to the Goods and the Company will receive title to the Goods free of any charge or encumbrance; and
  - (iv) it will obtain at its cost all usual trade warranties and any warranties specifically requested by the Company and that on completion of the Supply it will assign the benefit of any such unexpired warranties to the Company including any warranties obtained from the Supplier's Sub-contractors.
- (e) all information and materials forming part of the Tender (if any) are true and correct in every respect and are not misleading or deceptive and the Supplier has not withheld from the Company any information concerning the Supplier, its experience or expertise which might reasonably be supposed to be material to the Company in determining whether or not to engage the Supplier to perform the Supply or the price at which or the terms on which the Company would be prepared to engage the Supplier to perform the Supply.

## 5.2 Copies of trade warranties

Copies of trade warranties referred to in Clause 5.1(d)(iv) must be supplied to the Company with Commercial Invoices.

## 6. Defects liability

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### 6.1 Warranty

The Supplier warrants each Good against any defect which arises during the Defects Liability Period.

### 6.2 Commencement of Defects Liability Period

In respect of each Good (excluding Consignment Stock), the Defects Liability Period will commence on and from the date that Good is accepted by the Company Representative in writing. In respect of Consignment Stock the Defects Liability Period commences on the date that the Good is issued from the Company's warehouse.

### 6.3 Rectification of defects

Upon receipt of a notice from the Company Representative of any defect in any Good during the Defects Liability Period due to defective design, materials, workmanship, unmerchantable quality or unfitness for intended purpose, the affected items or parts must be redesigned, repaired or replaced as appropriate by the Supplier at no cost to the Company prior to the expiration of the time specified in the notice. If the Supplier fails to make the necessary redesign, repair or replacement within the period specified, the Company may perform or cause to be performed such redesign, repair or replacement at the Supplier's risk and cost and any costs and expenses incurred by the Company will be recoverable from the Supplier as a debt due and payable.

## 7. Term

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The Contract will commence on the earlier of the date of acknowledgment of receipt of the Purchase Order by the Supplier or the date the Supplier commences to perform the Supply, and will remain in force, unless terminated earlier in accordance with the Contract, until the completion by the Supplier of all of its obligations under the Contract (**Term**).

## 8. Delivery, title and risk

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### 8.1 Delivery

The Supplier must deliver the Goods to the Delivery Point on or before the date specified in the Contract. Time is of the essence in relation to the obligation to complete delivery of Goods to the Delivery Point on or before the date specified in the Contract.

### 8.2 Title

- (a) Full unencumbered title to each Good (excluding Consignment Stock) will pass to the Company upon the earlier of:
  - (i) the Company making payment in full to the Supplier for that Good; or
  - (ii) the Good being delivered to the Delivery Point, (if applicable) inspected in accordance with Clause 17 and accepted by the Company Representative.
- (b) Full unencumbered title to each item of Consignment Stock will pass to the Company upon the earlier of:

- (i) the Company making payment in full to the Supplier for that Associated Good; or
- (ii) the Associated Good being removed from the Company's warehouse or otherwise being consumed by the Company.

### 8.3 Risk

Risk in each Good will remain with the Supplier until its delivery to, and acceptance by the Company Representative.

## 9. Contract Price

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### 9.1 Contract Price

The **Contract Price** means the aggregate amount payable (excluding Indirect Transaction Taxes payable in accordance with Clause 10) by the Company to the Supplier in relation to the Supply.

### 9.2 Contract Price to be inclusive

All expenses incurred by the Supplier in relation to the provision of the Supply, including, without limitation, travel expenses and subsistence expenses, will be deemed to be included in the Contract Price and the Contract Price includes any applicable Taxes.

## 10. Taxes

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### 10.1 Taxes, Indirect Transaction Taxes and Withholding Tax – Foreign Supplier

- (a) If the Supplier is a Foreign Supplier then the provision of this Clause 10.1 shall apply.
- (b) The Supplier is responsible at its own cost for complying with all Applicable Laws, regulations and administrative requirements of any Government Agency relating to Taxes.
- (c) Payment of Taxes
  - (i) Except as provided in Clause 10.1(c)(ii) below, the Supplier is responsible for paying (which term, for purposes of this Clause 10.1(c)(i), includes withholding and remitting, as applicable) any and all Taxes arising or imposed by or under the authority of any Governmental Authority anywhere in the world in connection with the performance of services (or delivery of any goods) under this Contract. In this respect, the Supplier shall apply for and use its best endeavors to receive the benefit of all VAT credits and refunds available under Applicable Law. The Supplier shall also consult and cooperate with the Company in seeking, and use its best endeavors to obtain, exemptions from or reductions

in customs and import duties payable on materials or components intended for incorporation into goods (if any). All Taxes payable by the Supplier shall be included in the Contract Price and shall not be in addition to the Contract Price.

- (ii) Subject to Clause 10.1(c)(iii) below, the Company is responsible for paying the following Taxes arising or imposed by or under the authority of the government of Mongolia in connection with the performance of services (or delivery of any goods) under this Contract for any services performed (or any Goods delivered) within the territory of Mongolia, Company is responsible for paying any Mongolian Value-Added Tax imposed on such services (or goods) under Chapter 3 of the Mongolian Value-Added Tax Law ("Mongolian VAT").

- (iii) The Company shall pay any Taxes under Clause 10.1(c) by direct payment to the relevant Mongolian tax authority if direct payment is permitted by law. If direct payment is not permitted by law, the Supplier shall pay such Taxes and the Company shall reimburse the Supplier therefor.

- (d) As the Supplier is not a registered Mongolian business entity and taxpayer, the Company will deduct withholding tax from payments to the Supplier if required under Mongolian law. In such circumstances, commencing with the first Commercial Invoice submitted by the Supplier, the Company will deduct from payments to Supplier the withholding tax that Company is legally obligated to withhold, remit such tax to the appropriate Government Agency, and forward the appropriate receipts or similar documentation to Supplier evidencing such remittance. Such withholding taxes payable by Company will be included in the Contract Price, not in addition to the Contract Price.

- (e) A domicile certificate will be required if the Supplier provides Onshore Services and if the Supplier's country has a double tax treaty with Mongolia. If the Supplier is Foreign Supplier, then the Supplier must provide with its first invoice and annually thereafter to the Company hereunder this valid certificate of domicile from its applicable taxation authority. If the Supplier fails to provide a valid certificate of domicile, or if such certificate of domicile fails to



demonstrate to the Company's reasonable satisfaction that the Supplier is entitled to an exemption from or a reduced rate for any Mongolian withholding tax in accordance with a double-taxation treaty between Mongolia and the Supplier's country of domicile, then the Company shall deduct withholding tax at the full standard rate under Mongolian law in accordance with the General Conditions.

- (f) If the Foreign Supplier as a result of providing any Onshore Services within the territory of Mongolia causes a permanent establishment to arise within Mongolia, then it shall inform the Company as soon as possible, register itself for Mongolian income tax purposes, and file its own tax returns and pay its own taxes on the income earned from providing these Onshore Services within the territory of Mongolia. The Company will then not deduct any withholding taxes during the period the permanent establishment exists and the Supplier will accordingly indemnify the Company from any tax liability arising from failing to deduct this withholding tax including any associated fines, penalties and interest.
- (g) The Supplier must issue separate Commercial Invoices for all:
  - (i) Goods; and
  - (ii) Onshore Services;
  - (iii) Offshore Services; and
  - (iv) expenses that are stated as cost reimbursable.
- (h) Upon written request from the Company, the Supplier must provide to the Company:
  - (i) any and all other information and forms necessary to enable the Company to comply with any request for tax information from any Government Agency, including company registration and VAT registration certificates; and
  - (ii) Commercial Invoices in form and substance satisfactory to the Company.
- (i) If a payment by the Company to the Supplier hereunder does not include a withholding tax deduction but such deduction was required under applicable law, or if a payment to the Supplier hereunder does include a withholding tax deduction but under applicable law such deduction was required to be made at a higher rate, then the Supplier shall reimburse or otherwise pay the Company the amount that should have been deducted or deducted at a higher rate within fourteen (14) days of receiving an official receipt (or certified copy thereof)

or other documentation evidencing the amount that was required to have been deducted or deducted at a higher rate.

- (j) Supplier releases, indemnifies and shall defend the Company from and against any and all liabilities, claims, damages, losses and expenses (including reasonable attorneys' fees, fines, penalties and interest thereon) arising from the Supplier or any Sub-contractor's failure to discharge its obligations with respect to Taxes and tax laws.

#### **10.2 Taxes, Indirect Transaction Taxes and Withholding Tax – Domestic Mongolian Supplier**

- (a) If the Supplier is a Domestic Mongolian Supplier then the provision of this Clause 10.2 shall apply.
- (b) The Supplier is responsible at its own cost for complying with all Applicable Laws, regulations and administrative requirements of any Government Agency relating to Taxes.
- (c) Payment of Taxes
  - (i) The Supplier is responsible for paying (which term, for purposes of this Clause 10.2(c), includes withholding and remitting, as applicable) any and all Taxes arising or imposed by or under the authority of any Governmental Authority anywhere in the world in connection with the performance of the services (or delivery of any goods) under this Contract. In this respect, the Supplier shall apply for and use its best endeavors to receive the benefit of all VAT credits and refunds available under Applicable Law. The Supplier shall also consult and cooperate with the Company in seeking, and use its best endeavors to obtain, exemptions from or reductions in customs and import duties payable on materials or components intended for incorporation into goods (if any). All Taxes payable by the Supplier shall be included in the Contract Price and shall not be in addition to the Contract Price.
- (d) Upon written request from the Company, the Supplier must provide to the Company:
  - (i) any and all other information and forms necessary to enable the Company to comply with any request for tax information from any Government Agency, including company registration

- and VAT registration certificates;
  - (ii) Commercial Invoices in form and substance satisfactory to the Company; and
  - (iii) Mongolian VAT Receipts in a form that complies with the requirements of Mongolian Value-Added Tax Law.
- (e) Supplier releases, indemnifies and shall defend the Company from and against any and all liabilities, claims, damages, losses and expenses (including reasonable attorneys' fees, fines, penalties and interest thereon) arising from the Supplier or any sub-Supplier's failure to discharge its obligations with respect to Taxes and tax laws.
- (f) As the Supplier is a company registered in Mongolia, the Supplier acknowledges that if the Contract specifies that the Company will provide the Supplier with accommodation, food or flights then:
- (i) the Company will issue a Commercial Invoice to the Supplier for the cost associated with such accommodation, food or flights including the VAT applicable on accommodation, food or flights; and
  - (ii) the Supplier may issue a Commercial Invoice to the Company an amount equal to the invoice provided by the Company.

## 11. Customs and Excise Duties

- (a) Where the Company elects to acquire Goods that are inclusive of freight costs, the Supplier will:
- (i) be responsible for, and remit payment of all Customs Duties assessed by or payable to any Government Agency as well as any other foreign shipping charges; and
  - (ii) where applicable, ensure that the Goods may be imported free of Customs Duties through the use of applicable bilateral free trade agreements (or the equivalent).
- (b) Regardless of the shipping or freight terms used, the Supplier will, at the Company's request, provide the Company with all information and documentation necessary for the Company to comply with Applicable Laws in relation to applications or certifications for Customs Duties concessions or bilateral free trade agreements (or the equivalent), in each case in form and substance satisfactory to the Company. Where the Company

succeeds in such applications, the Supplier will obtain Custom Duties refunds and pass on any Customs Duties savings to the Company.

- (c) Regardless of the shipping or freight terms used, the Supplier must provide all documentation identified in the Contract prior to delivery of the Goods to the relevant freight forwarding company. The Supplier acknowledges that where the Company is responsible for freight costs then the Company's freight forwarding company may refuse to take the Goods if the documentation is incomplete or inaccurate and the Goods will not be considered delivered until the documentation is complete and correct.

## 12. Payments to Supplier

### 12.1 Method of payment

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

### 12.2 Commercial Invoices

- (a) The Supplier must, unless otherwise agreed with the Company, render an Commercial Invoice to the Company in relation to the provision of the Supply at the end of each month during the period in which Supply is provided and calculated by reference to the prices, fees or other amounts specified in the Purchase Order.
- (b) Commercial Invoices must be in a form acceptable to the Company and must contain the following information:
- (i) the number of the Purchase Order to which the Commercial Invoice relates;
  - (ii) a brief description of the Supply provided in the period covered by the Commercial Invoice; and
  - (iii) any further verification or documentation in relation to the Commercial Invoice as is reasonably required by the Company.

### 12.3 Payment of Commercial Invoices

Subject to Clauses 12.4, 13, 24.6(e)(i) and 27.2(b), the Company must pay to the Supplier the amount shown on the Commercial Invoice by the Payment Date.

### 12.4 Disputed Commercial Invoices

If the Company disputes any amount shown on an Commercial Invoice, it must notify the Supplier within

21 days of receipt of the Commercial Invoice and must pay any amounts not in dispute in accordance with Clause 12.3, provided that the payment by the Company of any amount the subject of a disputed Commercial Invoice is not to be considered as an acceptance of the amount in dispute or of the Company's liability to make that payment.

### 12.5 Errors or exceptions in invoicing

Without limiting Clause 12.3, if the Supplier discovers or is advised of any errors or exceptions relating to its invoicing for the Supply, the Supplier and the Company will jointly review the nature of the errors or exceptions, and the Supplier must, if appropriate, take prompt corrective action and adjust the relevant invoice or refund overpayments.

## 13. Deduction from payments

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### 13.1 Deductions

The Company may:

- (a) deduct from any moneys due or becoming due to the Supplier pursuant to Clause 12.3 the following amounts (plus any Indirect Transaction Taxes in respect of such deductions payable in accordance with Clause 10):
  - (i) all debts and moneys due from the Supplier or its Personnel to the Company;
  - (ii) all Liabilities which the Company may have paid, suffered or incurred and which or for which the Supplier or its Personnel is or are liable to bear, pay or reimburse to the Company (including pursuant to any indemnity contained in the Contract); and
  - (iii) the cost of remedying any defective or damaged Goods or performance of the Associated Services below a standard acceptable to the Company; or
- (b) without prejudice to the Company's rights pursuant to any other provision of the Contract, if the Supplier fails to perform any of its obligations under the Contract, without notice withhold payment of all or part of any amount payable to the Supplier under the Contract, until the matter has been remedied.

### 13.2 Deductions and withholdings required by law

- (a) If the Company is required by law to withhold or deduct any amount (**Deducted Amount**) from an amount payable under the Contract, the Deducted Amount will be treated as having been paid to the Supplier when it is withheld or deducted and the Company will not be liable to pay any amount on account of the Deducted Amount to the Supplier.

- (b) If the Company fails to withhold or deduct a Deducted Amount, the Company may:

- (i) give notice to the Supplier demanding payment of an amount equal to the Deducted Amount and the Supplier will pay that amount to the Company within 30 days of receiving the notice;
- (ii) deduct an amount equal to the Deducted Amount from any amounts payable by the Company to the Supplier and the amount so deducted will be treated as having been paid to the Supplier when it is deducted and the Company will not be liable to pay any amount on account of the Deducted Amount to the Supplier; or
- (iii) recover an amount equal to the Deducted Amount by a combination of a demand under Clause 13.2(b)(i) and deducting an amount under Clause 13.2(b)(iii),

and in each case where the failure to withhold or deduct the Deducted Amount arises as a result of any act, omission or oversight of the Supplier, the Deducted Amount will include any fines, penalties or interest payable by the Company in respect of the Deducted Amount.

### 13.3 Notification of withholding or deductions

The Company must notify the Supplier of the details of any amounts withheld or deducted pursuant to Clauses 13.1 or 13.2.

## 14. No minimum purchase or exclusivity

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### 14.1 No minimum purchase

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

### 14.2 No exclusivity

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

## 15. Supplier Personnel

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### 15.1 Supplier Personnel

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

### 15.2 Engagement of Personnel

The Supplier must ensure that all Personnel of the Supplier engaged to provide any part of the Supply

comply with Clauses 29 and 31 with respect to Confidential Information and Intellectual Property Rights.

### 15.3 Company may object to Personnel

The Company Representative may object to any of the Supplier's Personnel who, in the opinion of the Company Representative, is lacking in appropriate skills or qualifications, engages in misconduct or is incompetent or negligent. The Supplier must remove such Personnel upon receipt from the Company Representative of notice requiring it to do so and must not re-employ that person in connection with the Supply without the prior written consent of the Company Representative. In addition, the Supplier must at its cost replace such removed Personnel with suitably qualified, competent, skilled and approved Personnel.

### 15.4 Supplier responsibilities

- (a) Unless otherwise specified in the Contract, the Supplier is responsible for providing all necessary visas and work permits required for its Personnel to complete the Associated Services (if applicable).
- (b) Without limiting Clause 22, the Supplier is responsible for making all payments to the Mongolian Government with respect to the engagement of its Personnel pursuant to Applicable Laws, including but limited to all payments for Social Insurance required to be made pursuant to the Law of Mongolia on Social Insurance.
- (c) If applicable, the Supplier is responsible for:
  - (i) the supply of all labour, supervision, tools, equipment, materials, safety equipment and other requirements necessary for the Supplier to provide any Associated Services in accordance with the Contract;
  - (ii) providing for the movement of its Personnel on the Site at all times and all vehicles (if applicable) and drivers used for this purpose must be properly licensed and all vehicles must comply with the requirements of any applicable road safety and traffic laws, legislation and regulations; and
  - (iii) the health and safety of its Personnel at the Site.

## 16. Packing, despatch and transport

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### 16.1 Supplier responsible

The Supplier is responsible, at its cost, for packing and transporting the Goods to the Delivery Point.

### 16.2 Where Company to arrange transport

If, pursuant to the terms of the Contract, the Company is obliged to arrange transport of all or some of the Goods, then the Supplier must notify the Company Representative of the details of those

Goods ready for despatch in sufficient time to enable transport to be arranged.

### 16.3 Preparation for transport

The Supplier must pack and protect all Goods ready for despatch in accordance with all instructions provided by the Company and best practice having regard to methods of carriage and handling and to the weather conditions through which they will pass whilst being transported to the Delivery Point. The Supplier must provide and fit all lifting and handling devices required for lifting and handling the Goods in transit.

### 16.4 Notification of despatch dates

The Supplier must notify the Company Representative promptly of the date of despatch of each item and the estimated date of arrival at the Delivery Point.

## 17. Inspection

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### 17.1 Inspection

The Company Representative has the right to inspect any of the Goods at any time to determine whether the Goods are in accordance with the Contract and are to the standard provided for in the Contract.

### 17.2 Access

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

### 17.3 Cost of inspections

- (a) Subject to Clause 17.3(b), if upon inspection after a direction by the Company Representative to dismantle or open up any part of a Good, the Good so inspected is in accordance with the Contract, the whole of the expense incurred as a result of the dismantling or opening up and reassembly will be borne by the Company. If the Good is found not to be in accordance with the Contract the whole of the expense so incurred, including without limitation, any costs associated with putting that Good into a condition which is in accordance with the Contract, will be borne by the Supplier.
- (b) If the Company Representative gives the Supplier reasonable notice that the Company Representative wants to inspect any portion of a Good before it is assembled, and the Supplier assembles that Good without first giving the Company Representative a reasonable opportunity to inspect, any expense incurred as a result of dismantling or opening up and reassembling that Good will be borne by the Supplier.

#### 17.4 Testing

The Supplier must conduct tests of the Goods or parts of the Goods in accordance with the Contract and otherwise as required in accordance with the relevant standards set by the Australian Standards Association and any applicable industry codes or, where there are no such standards or codes, in accordance with generally accepted practices.

### 18. Health, safety, environment and community

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#### 18.1 Application of Clause

This Clause 18 applies to the extent the Supplier or any of its Personnel are required to be on, or near the vicinity of, the Site for the purposes of the Supply.

#### 18.2 Supplier acknowledgement

The Supplier acknowledges that there is a direct relationship between the Supplier's HSEC performance and the success of the Company's business.

#### 18.3 Compliance with health, safety, environmental and community laws, policies and standards

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

- (a) without limiting Clause 21, the Company's health, safety, environmental and community policies and associated standards applicable from time to time (a copy of which will be provided to the Supplier) (**HSEC Policies and Standards**);
- (b) without limiting Clause 22, all relevant HSEC legislation and laws in force from time to time (specifically Article 27.3 of the Law of Mongolia on Labour Safety and Health enacted on May 22, 2008 and the Norms for Establishing a Council and Employing a Health and Safety Officer, Order No. 126 of the Ministry of Social Welfare and Labour issued December 2, 2008 setting out the requirements for an employer to have a health and safety officer);
- (c) the HSEC conditions contained in this Clause 18; and
- (d) the approved HSEC Management Plan.

#### 18.4 Health, Safety, Environmental and Community Management Plan

- (a) If the Company requests, the Supplier must, within 30 days after such request, submit a proposed HSEC management plan(s) (**HSEC Management Plan(s)**) in accordance with the HSEC Policies and Standards, for review by the Company Representative.
- (b) The Company Representative will review the proposed HSEC Management Plan(s) and provide the Supplier with any

request for amendments within 10 Business Days of receipt of the proposed HSEC Management Plan(s). The Supplier must resubmit the proposed HSEC Management Plan incorporating amendments requested by the Company Representative within 3 Business Days of receiving the Company's comments.

- (c) The Company may prevent or suspend the Supplier and its Personnel from performing work on-Site unless and until the HSEC Management Plan(s) and any requested amendments to it have been approved by the Company Representative.
- (d) The Company Representative may at any time direct the Supplier to amend the approved HSEC Management Plan(s) to adequately reflect any amendments to the relevant HSEC legislation and laws or the HSEC Policies and Standards.
- (e) The Supplier must keep a copy of the approved HSEC Management Plan(s) at its on-Site office or work area at all times during the Term.

#### 18.5 Induction courses

- (a) Each of the Supplier's Personnel must attend all appropriate and relevant induction courses required by the Company (**Company Induction Courses**).
- (b) Where, pursuant to the operating rules for specific areas of the Company, any of the Supplier's Personnel are required to have specific skills for the performance of the Supply (**Company Competencies**), the induction and training requirements in relation to those Company Competencies must:
  - (i) be included in the HSEC Management Plan(s);
  - (ii) to the extent they are not set out in the Specifications, be confirmed with the Company Representative; and
  - (iii) be undertaken by the relevant Personnel prior to the commencement of any work on, or near the vicinity of, the Site.
- (c) Unless otherwise agreed:
  - (i) the Company will arrange and pay for the Company Induction Courses and will be responsible for the costs of Supplier Personnel attending the Company Induction Courses; and
  - (ii) the Supplier will arrange and pay for all training courses in respect of Company Competencies and will be responsible for the costs of

Supplier Personnel attending such training courses.

- (d) The Supplier must arrange and provide at its own cost training for its Personnel in accordance with the requirements of the OSH Laws and must retain all training records (including exam results) for its Personnel at its premises.
- (e) Any person visiting the Supplier on Site to meet Personnel working on the Site, and who is not performing any type of manual work, will also be required to attend the relevant Company Induction Courses. However, this requirement will not apply if the visitor is accompanied at all times whilst on Site by a person who has attended all relevant Company Induction Courses, and has Company Competencies in relation to access to the Site.

#### 18.6 Supplier to remain liable

Nothing in this Clause 18 (including the approval of the HSEC Management Plan(s)) limits or removes any obligation or duty imposed on the Supplier or any of its Personnel (whether under the Contract or otherwise) to secure or have regard to the health and safety of any of its Personnel.

### 19. Right of audit of Supplier performance

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#### 19.1 Audit

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

- (a) the HSEC Management Plan(s) and the HSEC conditions set out in Clause 18; and
- (b) the Company policies identified in Clause 21.

#### 19.2 Action by Supplier

Without limiting any other rights or remedies available to the Company as a result of the Supplier's non-compliance with any of the conditions, policies and standards referred to in Clause 18 or 21 if deficiencies are identified by an audit undertaken under Clause 19.1 the Supplier must take prompt corrective action and notify the Company of such action.

### 20. Access to Site

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#### 20.1 Access

Without limiting Clause 24.6(e) or this Clause 20, the Company will grant to the Supplier access to the Site on and from the date of the Contract and the Supplier must give the Company Representative at least 7 days' notice before commencing the Supply on the Site.

### 20.2 Supplier obligations

- (a) Prior to commencement of the Supply on the Site, the Supplier must notify the Company Representative of its normal times and periods of work and must give the Company Representative at least 24 hours' notice of any alteration in its working hours or periods of work.
- (b) The Supplier must at all times consult with the Company Representative and obtain 14 days' prior written approval for any action likely to interfere with the Company's operations. The Company Representative must reply to any such request within 7 days of receipt of such request.

### 20.3 Right to deny access

If the Supplier or its Personnel fail to comply with any of the requirements of Clauses 18, 20, 21 or 22 then the Company Representative may in its discretion:

- (a) deny that person or those persons access to the Site or permit such access subject to terms and conditions the Company Representative thinks appropriate; and/or
- (b) require the Supplier and/or any of its Personnel to remove any material or substance from the Site at the Supplier's cost.

and the Supplier must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, personnel and the environment.

### 20.4 No exclusive possession

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

### 21. Compliance with Company policies

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#### 21.1 Oyu Tolgoi LLC Policies

During the Term, the Supplier must, and must ensure that its Personnel, comply with each of the rules and policies of the Company or the Rio Tinto Group, as notified by the Company from time to time by notice to the Supplier in writing.

#### 21.2 Rio Tinto Business Practices and Standards

In performing the Supply, the Supplier must, and must ensure that its Personnel:

- (a) comply or otherwise act in a manner consistent with the Rio Tinto Group's policies entitled "*The way we work*", "*The Supplier Code of Conduct*" and the "*Business Integrity Standard*" (together the **Rio Tinto Business Practices and Standards**) which are available at:

<http://www.riotinto.com/aboutus/policies-standards-and-guidance-5243.aspx>;

- (b) permit the Company to have access to the Supplier's premises, any of its documentation and data (including documents stored in electronic form) and to interview the Supplier's Personnel in connection with the Supply, as necessary for Company Personnel to verify, monitor and audit the Supplier's compliance with the Rio Tinto Business Practices and Standards;
- (c) report all actual, alleged or suspected non-compliance with the Rio Tinto Business Practices and Standards to the Company or through the Rio Tinto Group's Speak-OUT program; and
- (d) cooperate promptly and fully with the Company in any investigation of an alleged or suspected breach of the Rio Tinto Business Practices and Standards.

## 22. Laws

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### 22.1 Compliance with laws

During the Term, the Supplier must:

- (a) comply with all Applicable Laws and Government Agency requirements relating to its obligations under the Contract and ensure that each of its Personnel does the same; and
- (b) in relation to the provision of the Supply, at its cost:
  - (i) obtain all necessary notices;
  - (ii) give all necessary notices;
  - (iii) pay all necessary fees, deposits and Taxes,

and, if requested by the Company, must provide evidence of the matters referred to in this Clause 22.1(b).

### 22.2 Consequences of breach

- (a) The Supplier agrees that it will notify the Company promptly upon discovery of any instance where the Supplier or any of its Personnel fail to comply with Clauses 18, 21 or 22.
- (b) In addition to those consequences identified elsewhere in the Contract, the Company may treat a breach of Clauses 18, 21 and 22 as an event of default and to exercise any rights it may have under the Contract upon the occurrence of an event of default, but without regard to any waiting periods or cure periods specified in the Contract.

## 23. Force Majeure

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### 23.1 Notice of Force Majeure

A Party will not be liable for any delay or failure to perform any of its obligations under the Contract

(other than an obligation to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under the Contract, it gives a notice to the other party that complies with Clause 23.2.

### 23.2 Force Majeure notice

A notice given under Clause 23.1 must:

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

### 23.3 Obligation to remedy and mitigate

The Party that is prevented from carrying out its obligations under the Contract as a result of Force Majeure must:

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

## 24. Insurances

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### 24.1 Supplier Insurances

The Supplier is required, at its cost, to effect and maintain throughout the Term and any additional period specified in the Contract, the relevant insurances described in this Clause 24 (**Supplier Insurances**) in relation to risks or occurrences arising, or which may arise, out of the performance of the Contract.

### 24.2 General and Product Liability Insurance

- (a) Insurance covering all Liabilities in respect of any injury to, or death of, any person not being a person who at the time of the occurrence is engaged in or upon the service of the insured under a contract of service or apprenticeship, or any loss, damage or destruction to property not belonging to nor in the care, custody or control of the insured, however caused. Such insurance must provide cover to an amount of not less than United States Dollars \$1,000,000 for each and every claim.
- (b) The insurance outlined in Clause 24.2(a) must, unless prohibited by law, be endorsed to:
  - (i) insure the Company and its Personnel for their respective rights and interests arising out of the performance of the Contract;

- (ii) include a cross liability clause, noting that each of the parties comprising the insured will be considered as a separate entity, and the insurance applies as if a separate policy has been issued to each such party;
- (iii) waive all express or implied rights of subrogation against the Company and its Personnel arising out of the performance of the Contract;
- (iv) cover "goods in the physical and legal control of the Supplier" for an amount not less than the value of the "goods" held off the Site; and
- (v) include a clause that provides that a breach of a condition or term of insurance by one insured will not adversely affect the cover provided to another insured under the policy.

#### **24.3 Workers' Compensation and Employer's Liability Insurances**

Workers' compensation and employers' liability insurances covering all Liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee of the Supplier or any person deemed to be an employee of the Supplier in accordance with Applicable Laws. If the Supplier is required to perform Associated Services at the Site and its Personnel are Mongolian then the Supplier must carry workers' compensation and employers' liability insurances in addition to those required by Applicable Laws as requested by the Company.

#### **24.4 Supplier's Plant and Equipment**

If the performance of the Contract requires the Supplier to use or provide for use plant and equipment that will be used at the Site in connection with the Contract, the Supplier must maintain or require the owner of such plant and equipment (except where the owner of such plant or equipment is the Company or a member of the Rio Tinto Group) to maintain insurance covering all loss and damage to the supplier's plant and equipment, for its replacement value. The insurance must, unless prohibited by law, waive all express or implied rights of subrogation against the Company and its directors, officers and employees.

#### **24.5 Goods in Transit**

If the performance of the Contract requires the Supplier to transport Goods, unless otherwise advised by the Company in writing, the Supplier will maintain insurance covering loss of or damage to the Goods during transit, regardless of whether the Company has paid for those Goods until the Goods are delivered to the Delivery Point. Such insurance must note the Company as a party insured under the policy.

#### **24.6 Insurance Terms**

- (a) If the Supplier Insurances are subject to the application of any self-insured retention, excess or deductible, the amount of the self-insured retention, excess or deductible must be declared to the Company. The Company reserves the right to require the Supplier to reduce the amount of any self-insured retention, excess or deductible where such amount is considered by the Company as being unreasonable in the circumstances of the Contract.
- (b) The Supplier Insurances must be underwritten by a reputable insurer.
- (c) No provision contained in this Clause 24 will limit the Supplier's liability.
- (d) Before performing any of the Supply, and each time the policies are renewed or varied, the Supplier must provide the Company with an insurance certificate of currency or such other evidence as the Company may reasonably require that the Supplier and its Sub-contractors are insured in accordance with the Contract.
- (e) In the event that the Supplier fails to, or fails to ensure that its Sub-contractors, effect or keep in force any of the insurances required pursuant to the Contract, the Company may do one or more of the following:
  - (i) effect and maintain such insurances and deduct the costs of such insurances from any moneys due to the Supplier;
  - (ii) refuse the Supplier and its Personnel access to all or any part of the Site; and/or
  - (iii) treat the failure to insure as a default under the Contract.
- (f) All Supplier Insurances must not be varied to the detriment of the Company or its Personnel, cancelled or allowed to lapse unless the Supplier has received a written consent from the Company.



#### 24.7 Notification under Supplier's policy

If the Supplier becomes aware of an event which may give rise to a claim involving the Company under any policy of insurance effected by the Supplier as required by this Clause 24, the Supplier must notify the Company and must ensure that the Company is kept fully informed of subsequent action or developments concerning the claim.

#### 24.8 Sub-contractors' insurance

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

#### 24.9 Insurance claims and payments of insurance excess

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

### 25. Indemnities

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#### 25.1 Acknowledgement

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

#### 25.2 Indemnity

Subject to Clause 25.3, the Supplier will indemnify (and will keep indemnified) the Indemnified Parties from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any one or more of the following:

- (a) the breach by the Supplier or its Personnel of any of the Supplier's obligations (including any warranty) under the Contract and/or any Purchase Order;
- (b) any negligent act or omission or wilful misconduct by the Supplier or its Personnel arising out of the performance of the Contract and/or any Purchase Order; or
- (c) any claim made against an Indemnified Party by any of the Supplier's Personnel or any Government Agency in respect of relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, social insurance payments, superannuation or any applicable award, determination or

agreement of a competent industrial tribunal.

#### 25.3 Exclusions

The Supplier will not be liable under Clause 25.2 to the extent that the Liability was caused, or contributed to, by (as the case requires) the Company's negligent acts or omissions or wilful misconduct.

#### 25.4 No requirement for expense before enforcing indemnity right

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

### 26. No fault termination

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#### 26.1 Termination Notice

The Company may terminate the Contract or any part of it by giving the Supplier not less than 30 days' notice of its intention to do so (**Termination Notice**).

#### 26.2 Obligations upon receipt of Termination Notice

Upon receipt of a Termination Notice, the Supplier must:

- (a) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Goods;
- (b) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination; and
- (c) take any other action reasonably required by the Company in relation to the termination.

#### 26.3 Obligations upon termination

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

- (a) immediately cease performance of the Supply in accordance with, but only to the extent specified in, the Termination Notice;
- (b) provide the Company with a detailed report in such form as the Company may require in relation to the Supply performed up to and including the date of receipt of the Termination Notice;
- (c) return to the Company any items issued to the Supplier by the Company during the Term;
- (d) offer the Company first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Contract to be purchased by the Company at its depreciated value or such other value as agreed by the Parties; and
- (e) take any other action relating to the termination of the Contract as the Company may reasonably require.

#### 26.4 Supplier compensation

- (a) Following termination of the Contract by the Company pursuant to this Clause 26, the Supplier is entitled to recover from the Company out-of-pocket expenses which it has incurred or will incur solely as a result of the Contract and which it is unable to otherwise recover or mitigate, including as a result of (if applicable):
- (i) removing the Supplier's plant and equipment from the Site; and
  - (ii) transporting Supplier Personnel back to their place of engagement.
- (b) The amounts outlined in Clause 26.4(a) represent the only amounts or Liabilities recoverable from the Company by the Supplier following a termination of the Contract by the Company in accordance with this Clause 26.

#### 27. Supplier Default

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##### 27.1 Supplier Default Notice

If the Supplier breaches any term of the Contract, the Company may serve a notice of default (**Supplier Default Notice**) on the Supplier containing the information specified in Clause 27.2.

##### 27.2 Supplier Default Notice requirements

A Supplier Default Notice must:

- (a) either require that the breach be remedied within a specified period of not less than 30 days after service of the Supplier Default Notice on the Supplier or state that the breach is incapable of remedy; and
- (b) state that if the breach is not remedied within the period specified in the Supplier Default Notice or is incapable of remedy, then the Company may by further notice to the Supplier do one or more of the following:
  - (i) elect wholly or partly to suspend payment under the Contract until the breach has been remedied by the Supplier;
  - (ii) take such action as the Company deems necessary to cure the breach (the cost of such action so taken by the Company being recoverable from the Supplier as a debt due to the Company by the Supplier); or
  - (iii) terminate the Contract or any part of it with effect from a specified date (**Cancellation Date**).

#### 27.3 Obligations upon termination

If the Company gives notice pursuant to Clause 27.2(b)(iii), the Contract is terminated from the Cancellation Date and the Supplier must:

- (a) cease performance of the Supply in accordance with, but only to the extent specified in, the Supplier Default Notice;
- (b) immediately take all possible action at its cost to ensure the safety of all Personnel and the protection of all Goods;
- (c) immediately take all possible action to mitigate any Liabilities incurred by it as a result of such termination;
- (d) offer the Company first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Contract to be purchased by the Company at its depreciated value or such other value as agreed by the Parties; and
- (e) take any other action reasonably required by the Company in relation to the termination.

#### 27.4 No prejudice

Notwithstanding the terms of any Supplier Default Notice, no action taken by the Company under this Clause 27 will prejudice the existence of any of its rights and remedies under the Contract which the Company may have as a result of the relevant breach.

#### 28. Dispute Resolution

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##### 28.1 Dispute

In the event of any dispute, question or difference of opinion between the Company and the Supplier arising out of or under the Contract (**Dispute**), a Party may give to the other Party a notice (**Dispute Notice**) specifying the Dispute and requiring its resolution under this Clause 28.

##### 28.2 Dispute Representatives to seek resolution

- (a) If the Dispute is not resolved within 7 days after a Dispute Notice is given to the other Party, each Party must nominate one representative from its senior management to resolve the Dispute (each, a **Dispute Representative**).
- (b) If a negotiated resolution to the Dispute is not forthcoming after thirty (30) days (or such other period of time to which the Parties may agree), Supplier and Company agree that such Dispute shall be submitted to binding arbitration in the Singapore International Arbitration Centre under the UNCITRAL Arbitration Rules. The language to be used in the arbitral proceedings shall be English and the place of arbitration shall be Singapore. The arbitration will be conducted by one (1) impartial arbitrator to be mutually agreed upon by the Parties, or a panel of three (3) arbitrators if the Parties are unable to agree upon a

single arbitrator within thirty (30) days after the first demand for arbitration by one Party to the other (where each Party will appoint one arbitrator and the appointed arbitrators will select an additional arbitrator). The arbitrators, the Parties, their Dispute Representatives and participants shall hold the existence, contents and result of any arbitration in confidence, except to the limited extent necessary to enforce a final settlement agreement, to obtain enforcement of the arbitrators' decision and award, or as otherwise required by Applicable Law.

- (c) The arbitrators shall be bound by, and shall strictly enforce the terms of, this Contract and shall not limit, expand or otherwise modify its terms. The arbitrators shall endeavour to conclude the proceedings and issue their award within 6 months from their appointment. Each Party will bear its own expenses for any such binding arbitration proceedings. The decision and award shall be conclusive and binding upon all Parties and judgment upon the award may be entered in any court of competent jurisdiction.

### **28.3 Performance of obligations during Dispute**

During the existence of any Dispute, the Parties must continue to perform all of their obligations under the Contract without prejudice to their position in respect of such Dispute, unless the Parties otherwise agree.

### **28.4 Urgent interlocutory relief**

Nothing in this Clause 28 prevents a Party from seeking any urgent interlocutory relief which may be required in relation to the Contract.

## **29. Confidentiality**

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### **29.1 Obligation of confidentiality**

The Supplier undertakes and agrees:

- (a) to hold in strict confidence all Confidential Information and not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of providing the Supply; and
- (b) not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), except and solely to the extent necessary for the performance of the Supply,

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

### **29.2 Exceptions**

Clause 29.1 does not apply to:

- (a) information after it becomes generally available to the public other than as a result of the breach of this Clause 29 or any other obligations of confidence imposed on the Supplier; or
- (b) the disclosure of information in order to comply with any applicable law or legally binding order of any court, Government Agency or recognised stock exchange, provided that prior to such disclosure the Supplier gives notice to the Company with full particulars of the proposed disclosure.

### **29.3 Breach of consent**

The breach of any of the conditions contained in a consent granted pursuant to Clause 29.1 will be deemed to be a breach of the Contract.

### **29.4 Supplier acknowledgment**

The Supplier acknowledges that this Clause 29 is for the benefit of not only the Company but also any member of the Rio Tinto Group that has any interest in any Confidential Information.

### **29.5 Indemnity**

Without limiting Clause 25, the Supplier indemnifies the Company and each member of the Rio Tinto Group, and must keep them indemnified, in respect of any Liabilities incurred or sustained by them resulting from a breach of this Clause 29 by the Supplier or its Personnel.

### **29.6 Additional obligations**

The obligations in this Clause 29 are in addition to and do not diminish the obligations of the Supplier in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.

### **29.7 Return of Confidential Information**

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

## **30. Public announcements**

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Except as required by any applicable law or regulatory requirement or as otherwise permitted by the Contract, the Supplier may not make any public announcements or disclosures as to the Contract, or otherwise in relation to the subject matter of the Contract, without the prior written consent of the Company. In this regard, no media release or public announcement will be made in relation to the existence of the Contract without the Company's written approval and should such approval be given, then the wording of such release and the manner of publication must first be approved in writing by the Company.

## 31. Intellectual Property Rights

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### 31.1 Supplier Intellectual Property Rights

The Company acknowledges that the Supplier retains ownership of the Intellectual Property Rights of the Supplier used or created under the Contract and/or in the provision of the Goods or Associated Services. To enable the Company to enjoy the benefit of the Goods and/or Associated Services for the purpose of or in connection with the Rio Tinto Group's business the Supplier grants to the Company a non-exclusive, transferable, royalty free, irrevocable and perpetual licence to use such Intellectual Property Rights for that purpose.

### 31.2 Third party Intellectual Property Rights

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

- (a) it has obtained, or will obtain at no further cost to the Company, from the relevant third party all necessary licences and consents to use, or assignments of, such Intellectual Property Rights; and
- (b) that it will not breach any of the licences or assignments referred to in Clause 31.2(a).

### 31.3 Indemnity

- (a) Without limiting Clause 25, the Supplier indemnifies the Company and must keep the Company indemnified in respect of any Liabilities incurred or sustained by the Company resulting from any actual or alleged infringement of any Intellectual Property Rights of any third party arising out of or caused by:
  - (i) the performance of the Supply by the Supplier;
  - (ii) the performance or operations of any other plant, machinery, tools, equipment, process, work, material, matter, thing or method used or supplied by the Supplier; or
  - (iii) the use and enjoyment of the Supply by the Company.
- (b) The Supplier must notify the Company immediately the Supplier becomes aware of a Claim being threatened or made against the Company in relation to any of the matters covered by the indemnity in Clause 31.3(a).
- (c) The Company may require the Supplier to conduct any litigation that may arise from a Claim referred to in Clause 31.3(b) and all negotiations for settlement of that Claim. However, the Supplier must not make any settlement or consent to any judgment, order or verdict against the Company without the Company's prior written consent.

### 31.4 Procurement of Intellectual Property Rights

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

### 31.5 Procedure where Intellectual Property Rights cannot be procured

If the Supplier cannot procure the rights referred to in Clause 31.4 within a reasonable time (but not exceeding 60 days unless the Company Representative otherwise agrees), it must notify the Company Representative accordingly and the Company Representative may direct the Supplier to immediately (at the Supplier's cost):

- (a) alter the Goods or the relevant part of the Goods to avoid infringement or violation of the Intellectual Property Rights or any of them;
- (b) replace the Goods affected or the relevant part of the Goods with work or Goods which do not infringe or violate the Intellectual Property Rights; or
- (c) remove the Goods and reimburse the Company any compensation and other moneys already paid to the Supplier and pay to the Company any costs or other expenses that may have been paid or incurred by the Company in connection with the removed Goods.

## 32. Notices

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### 32.1 Form of Notices

Unless otherwise specified in the Contract, any notice, demand, consent or other communication (**Notice**) given or made pursuant to the Contract must:

- (a) be in writing;
- (b) be marked to the attention of either a director, company secretary or the relevant Company Representative or Supplier Representative for the Party to whom the Notice is addressed;
- (c) where given by the Company, be signed or authorised by either the Company Representative, a director or company secretary of the Company, a manager from the Company's procurement department, or a duly authorised representative of the Company;
- (d) where given by the Supplier, be signed or authorised by either the Supplier Representative, a director or company secretary of the Supplier, or a duly authorised representative of the Supplier; and
- (e) be delivered by prepaid post, by hand or by facsimile to the Party to whom the

Notice is addressed at its address shown in the Contract or such other address as that Party may have notified to the other Party.

### 32.2 Notices deemed given

A Notice will be taken to be duly given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, 2 Business Days after the date of posting (if posted to an address in the same country) or 7 Business Days after the date of posting (if posted to an address in another country); or
- (c) in the case of facsimile, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of the recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

## 33. Costs

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### 33.1 Each Party to bear its own costs

Each Party must bear its own costs arising out of:

- (a) the negotiation, preparation and execution of the Contract; and
- (b) except as expressly provided otherwise in the Contract, any transaction contemplated by the Contract.

### 33.2 Stamp duty

All stamp duty which may be payable in any relevant jurisdiction on or in connection with the Contract, any Purchase Order or other document related to the Contract will be borne by the Supplier.

## 34. Status of Supplier

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### 34.1 Independent contractor

At all times during the Term, and in the provision of the Supply, the Supplier is an independent contractor and will not act as, or be or be regarded as, an agent or employee of the Company, and the Supplier and its Personnel will not be entitled to any benefits which would ordinarily accrue to any employee of the Company by virtue of their status as an employee.

### 34.2 Partnership and joint venture suppliers

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

## 35. Assignment and sub-contracting

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### 35.1 Consent required

The Supplier is not permitted to assign or sub-contract all or any part of the Contract without the prior written consent of the Company, such permission being at the Company's discretion and on whatever terms and conditions the Company may think appropriate, including requiring the proposed assignee or Sub-contractor to be bound by any or all of the provisions of the Contract.

### 35.2 Obligations survive assignment or sub-contract

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

### 35.3 Status of Sub-contractor

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

## 36. Privacy and data protection

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### 36.1 Personal Data

Each Party agrees to comply with their obligations under all Applicable Laws in respect of Personal Data obtained by or disclosed to them pursuant to the Contract.

### 36.2 Warranty

Each Party warrants to the other Party that it has complied with the Privacy Act in obtaining any Personal Data disclosed by it pursuant to the Contract.

### 36.3 Data protection

In addition to its obligations under Clauses 36.1 and 36.2, the Supplier agrees to:

- (a) only Process the Company's Personal Data for the purposes of the Contract;
- (b) not disclose the Company's Personal Data to any other person without the Company's prior written consent, unless the disclosure is required by law;
- (c) immediately notify the Company that the disclosure of the Company's Personal Data may be required by law;
- (d) put into place and maintain appropriate technical and organisational measures against unauthorised and/or unlawful Processing of the Company's Personal Data;
- (e) put into place and maintain appropriate technical and organisational measures against unauthorised access, loss, destruction, misuse, modification, disclosure or damage to the Company's Personal Data; and
- (f) take all necessary steps to ensure that its Processing of the Company's

Personal Data will be fair and lawful and, for this purpose, the Supplier may reasonably enquire of the Company as to the manner in which the Company obtained the Company's Personal Data.

#### 36.4 Individual complaints

- (a) If an individual complains to the Company that the Supplier (or any of its Personnel) has, in the performance of the Contract, handled his or her Personal Data inappropriately, the Company must promptly give the Supplier sufficient details about the complaint to minimise any further misuse.
- (b) If an individual complains to the Supplier that the Supplier (or any of its Personnel) has, in the performance of the Contract, handled his or her Personal Data inappropriately, the Supplier must:
  - (i) promptly inform the Company of the complaint; and
  - (ii) provided the individual has consented, provide the Company with the Personal Data that is the subject of the complaint.

#### 36.5 Supplier indemnity

Without limiting Clause 25, the Supplier indemnifies the Company and must keep the Company indemnified in respect of all Liabilities incurred by or awarded against the Company relating to any breach by the Supplier of its obligations under Applicable Laws or this Clause 36.

#### 37. Waiver

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

#### 38. Further assurances

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

#### 39. Severability

##### 39.1 Severability

Any provision of the Contract which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. This does not invalidate the remaining provisions of the Contract nor does it affect the validity or enforceability of that provision in any other jurisdiction.

##### 39.2 Negotiation in good faith

Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable law and which must

be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

#### 40. Governing law

##### 40.1 Governing Law

The Contract, and all non-contractual obligations arising out of or in connection with it, and the arbitration agreement contained within this Contract, shall be governed by and construed in accordance with the laws of England and Wales. Each Party submits to the non-exclusive jurisdiction of the Courts exercising jurisdiction in Singapore.

##### 40.2 UN Convention – International Sale of Goods

The United Nations Convention on Agreements for the International Sale of Goods, as well as any other similar Applicable Law, is hereby disclaimed to the maximum extent permitted by Applicable Laws.

##### 40.3 Rights of third parties

No person who is not a Party to the Contract shall have any rights under the Contracts (Rights of Third Parties) Act 1999, except in relation to a member of the Rio Tinto Group or the Company's Personnel claiming pursuant to an indemnity.

#### 41. Survival of terms

- (a) The following Clauses will survive expiration or termination of the Contract: 5 (Supplier's Warranties), 10 (Taxes), 13 (Deduction from Payments), 24 (Insurances), 25 (Indemnities), 28.1 (Dispute), 29 (Confidentiality), 31 (Intellectual Property Rights in Supply), and 36 (Privacy and Data Protection).
- (b) Each indemnity in the Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives termination or expiry of the Contract.

#### 42. Contract language

This Contract was drafted in English and any translation hereof was from English. In the event of any conflict or question regarding the content, meaning or interpretation of this Contract, the English-language provisions will prevail.