

## 1 Interpretation

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- 1.1 Subject to the terms of any contract, deed or agreement, these standard terms and conditions for the supply of services in Australia apply when NTU issues a Purchase Order to a contractor for the supply of services only after which a contract is formed made up of the Purchase Order, these terms and conditions for the supply of services and (if any) schedules (including any annexures to any schedules) or other specified documents. To the extent permitted by Law and to the extent the Contractor's terms and conditions are supplied to NTU in respect of the Services (in any form), those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order (even if any representative of NTU signs those terms and conditions or annexes the terms and conditions to this Purchase Order).
- 1.2 In these terms and conditions, unless the context requires otherwise:
- (a) **"Contractor"** means the entity providing the Services.
  - (b) **"Building Code of Australia"** has the meaning given to the term 'Building Code' in Regulation 3 of the *Building Regulations 2012 (WA)*.
  - (c) **"Commencement Date"** has the meaning ascribed to it in the Purchase Order form to which these terms and conditions are attached.
  - (d) **"Date for Completion"** has the meaning ascribed to it in the Purchase Order form to which these terms and conditions are attached.
  - (e) **"Defects Liability Period"** means the period commencing on the Commencement Date and ending on the date that is 12 months after the Date of Completion (as defined below).
  - (f) **"Expiry Date"** has the meaning ascribed to it in the Purchase Order form to which these terms and conditions are attached.
  - (g) **"Fixed Term"** means the period of time that is expressed as a fixed period of time in the Purchase Order form to which these terms and conditions are attached for which the Services are to be provided and begins on the Commencement Date and ends on the Expiry Date.
  - (h) **"Government Agency"** means any government, governmental or semi-governmental agency, authority, department or other body or any person who is charged with administration of any Law.
  - (i) **"Goods"** means any goods to be delivered by the Contractor as described in the 'Description' and 'Vendor Stock Number' columns of the Purchase Order form to which these terms and conditions are attached.
  - (j) **"GST"** means the tax payable on Taxable Supplies under the GST Law.
  - (k) **"GST Law"** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.
  - (l) **"Hourly Rates"** means the rate structure, if specified, in Description & Part Number column or

the 'Unit Price (ex GST)' column of this Purchase Order.

- (m) **"Law"** means:
  - (i) any legislation, ordinance, regulation, by-law, order, rule, legislative instrument, award, proclamation or Australian industry standard published by Standards Australia; and
  - (ii) any authorisations, certificates, licences, consents, permits, approvals and requirements of any Government Agency.
- (n) **"NTU"** means Northern Minerals Limited ABN 61 119 966 353 of Level 1, 675 Murray Street, West Perth in the State of Western Australia.
- (o) **"NTU Policies"** means NTU's policies, rules, procedures and associated standards, as notified by NTU from time to time to the Contractor, including the document titled 'Health and Safety Requirements'.
- (p) **"Price"** means the price in the Total Price column detailed in the Purchase Order form to which these Purchase Order Conditions are attached.
- (q) **"Purchase Order"** means a purchase order issued by NTU to the Contractor and / or (as the context may require) the contract between NTU and the Contractor that consists of the documents described in clause 1.1.
- (r) **"Services"** means the services or a combination of Goods and services described in the 'Description' and 'Vendor Stock Number' columns of the Purchase Order form to which these terms and conditions are attached.
- (s) **"Site"** means any mine site owned, operated or controlled by NTU, including the Browns Range Project Mine Site.
- (t) **"Term"** means the period from the Commencement Date to the Date/s for Completion.

## 2 Carrying out the Services

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- 2.1 The Contractor must:
- (a) commence the Services by the Commencement Date and:
    - (i) where the Purchase Order specifies a Date for Completion, bring the Services to Completion by the Date for Completion; or
    - (ii) where the Purchase Order specifies a Fixed Term, perform the Services for the Fixed Term;
  - (b) properly and diligently execute the Services with the degree of skill, care and competence expected of a skilled tradesman, or a technical or professional person (as the case may be), experienced in performing the same or similar work to the Services;
  - (c) perform the Services in accordance with good and accepted industry practices, to NTU's reasonable satisfaction and in accordance with the Purchase Order;
  - (d) carry out all directions from NTU which do not require the Contractor to breach any Law;

- (e) comply with the NTU Policies which are available on request. The Contractor acknowledges that the obligations set out in the NTU Policies, (including any referenced documents) which may be updated from time-to-time, are deemed to be incorporated into this Purchase Order; and
- (f) comply with all applicable anti-bribery and anti-corruption Laws.

### 3 Plans

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- 3.1 If Services are to be provided at a Site, the Contractor shall, within seven (7) days of any request by NTU, provide to NTU for NTU's approval:
  - (a) an environmental management plan;
  - (b) a quality assurance plan;
  - (c) a health and safety plan; and
  - (d) such other plans as NTU may reasonably require from time to time.
- 3.2 The Contractor shall not be entitled to access to the Site until such plans have been approved by NTU.

### 4 Variations to the Services

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- 4.1 NTU may at any time and from time to time vary the Services by giving notice in writing to the Contractor.
- 4.2 If NTU varies the Services, then the parties will endeavour to agree on any adjustment to the Price or other fee payable under the Purchase Order. If both parties do not agree to the cost of the variation within seven (7) days then clause 4.3 will apply.
- 4.3 If the parties cannot agree on the cost of the variation, NTU will make a valuation. The valuation will be based on the Hourly Rates, or if no Hourly Rates are specified, on reasonable rates. The valuation determined by NTU is final and binding on the parties.

### 5 Compliance

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- 5.1 The Contractor must comply, at its own cost, with all applicable Law, the NTU Policies and requirements of any Government Agency having jurisdiction over the Services. Where applicable, the Services will comply with the Building Code of Australia.
- 5.2 The Contractor warrants that it has all approvals, authorisations, certificates, licences, consents and permits required from any Government Agency or professional body to carry out the Services.
- 5.3 The Contractor will be responsible for all occupational safety and health and industrial relations issues.
- 5.4 Where the Services are carried out on a Site, the Contractor shall comply with all directions of the registered manager under the *Mines Safety & Inspection Act 1994* (WA).
- 5.5 The Contractor will ensure that all personnel who perform the Services (whether of the Contractor or otherwise) are suitably qualified, skilled and experienced and, where required, have all necessary accreditations required under Law to perform the Services for which they are engaged. NTU, at its sole discretion, may reject any personnel who are unqualified who must be demobilised at the Contractor's cost.

### 6 Confidential information

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- 6.1 The Contractor must not, at any time, without the consent of NTU, divulge to any person any information concerning the Purchase Order or the operations, dealings, transactions, contracts or commercial affairs of NTU.

### 7 Standard of Services

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- 7.1 Without limiting any other warranty or obligation under this Purchase Order, the Contractor warrants as follows:
  - (a) all personnel engaged in the performance of the Services are skilled, trained, qualified and competent to perform the Services and they will perform the Services in accordance with good and accepted industry practices in a competent, skilled and efficient manner;
  - (b) the Contractor will only appoint or engage in the performance of the Services, personnel who are skilled and experienced in their trades and professions;
  - (c) the Services will comply strictly with the requirements of the Purchase Order (including, without limitation, any drawings, specifications, design or description supplied by NTU) and all Law (including, without limitation, all relevant mines safety and inspection laws);
  - (d) the Contractor is aware of the purpose for which NTU is acquiring the Services, and that the Services will be, and will remain suitable and fit for that purpose and be free from Defects in materials, workmanship and design;
  - (e) the Services will be performed to the standard of care, skill and diligence that would normally be expected of a reputable and competent organisation providing services similar to the Services; and
  - (f) the Services, any work resulting from the performance of the Services and NTU's use of such work will not infringe any intellectual property rights of any person.
- 7.2 If at any time during the Defects Liability Period the Services, or any plant, equipment, materials or Goods used by the Contractor in connection with the Services, are Defective, NTU may direct the Contractor to replace, correct, remove or vary such Defect at no cost to NTU. If the Contractor fails to comply with the direction to NTU's satisfaction, NTU may engage others to carry out the work, the cost of which shall be a debt due from the Contractor to NTU.
- 7.3 Alternatively, NTU may accept the Defective work, plant, equipment, materials or Goods and assess the amount of any loss it suffers as a result of the relevant Defect, and the amount so assessed shall be a debt due from the Contractor to NTU. NTU's assessment is final and binding on the parties.

### 8 Completion

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- 8.1 Where this Purchase Order specifies a Date for Completion:
  - (a) "Completion" shall mean:

- (i) the Services are, in NTU's opinion, completed without Defects, in accordance with this Purchase Order;
  - (ii) there is no legal or other impediment to prevent the Services being used for their intended purpose; and
  - (iii) the Contractor has provided to NTU all documents and other information required to be provided by the Purchase Order or reasonably requested by NTU.
- (b) When the Contractor considers the Services have reached Completion, it shall notify NTU. NTU will assess whether Completion has been achieved and either:
- (i) certify the date on which Completion was achieved ("**Date of Completion**"); or
  - (ii) advise the Contractor of what further work is required to achieve Completion; and
  - (iii) if the Contractor is delayed in reaching Completion by the Date for Completion by any act of NTU or NTU's agents (other than an act of NTU or its agent in the proper exercise of a right under this Purchase Order), the Contractor shall notify NTU in writing of such delay within seven (7) days of the delay commencing. Subject to the Contractor providing notice within such period, NTU will make an assessment of the extent (if any) to which the Date for Completion has been affected and make a reasonable adjustment to the Date for Completion. NTU's assessment is final and binding on the parties.
- (c) the Contractor is aware of the purpose for which NTU is acquiring the Goods, and that the Goods will be, and will remain, for the Warranty Period, suitable and fit for that purpose, of good and merchantable quality and free from all Defects;
  - (d) the Goods will conform throughout the Warranty Period in all respects with drawings, specifications, and samples provided or notified by the Contractor to NTU and will comply with the functional and performance criteria set out in the Purchase Order and relevant Australian standards and codes;
  - (e) NTU will have the full benefit of any manufacturer's warranties that apply to the Goods or any part of the Goods (or any of their component parts);
  - (f) the Goods will be suitably packaged by the Contractor to avoid any damage occurring to the Goods prior to risk in the Goods passing to NTU;
  - (g) the Goods will be suitably packaged to conform, as a minimum, to the standard as directed by NTU and the Contractor acknowledges that any such direction (which may be updated from time-to-time), is deemed to be incorporated into this Purchase Order;
  - (h) the Goods do not infringe any patent, trademark, copyright or other intellectual property rights of any nature or interests of any third party; and
  - (i) all relevant consumer safety standards relating to the Goods have been complied with.
- 9.3 Should any safety improvement(s) be made to the Goods, or other items, supplied by the Contractor as part of this Purchase Order, then the Contractor shall provide notice to NTU detailing the:
- (a) safety improvement(s) made to the Goods or other items;
  - (b) reason(s) that the improvement(s) were required; and
  - (c) indicative cost of implementing the improvement(s).

## 9 Warranties for Goods

- 9.1 The Contractor must obtain all product warranties and other warranties required by the Purchase Order. The warranties must be obtained in NTU's name, validly assigned to NTU or, if this is not possible, held by the Contractor on behalf of NTU and enforced by the Contractor to ensure that NTU obtains the benefit of warranties.
- 9.2 Should the Contractor supply Goods as part of this Purchase Order, the Contractor warrants to NTU in respect of the Goods that:
- (a) it has complete ownership of the Goods, free of any security interests, charges, encumbrances or liens of any nature and will provide the Goods to NTU on that basis and that NTU will be entitled to clear, complete and quiet possession of the Goods;
  - (b) if the Goods are found to be Defective for any reason within the warranty period specified in the Purchase Order (or if no such period is specified the warranty period will be two years from the Date of Completion) ("**Warranty Period**"), NTU will be entitled to return the Defective Goods to the Contractor and at the Contractor's expense, the Contractor will (at NTU's option) either replace or repair the Goods or reimburse to NTU the cost of replacing or repairing the Goods;
- 9.4 The Contractor shall not provide any asbestos or asbestos containing Goods to NTU.
- 9.5 The notification under clause 9.3 by the Contractor must be made to NTU within 14 days of the Contractor becoming aware of the safety improvements. Clause 9.3 and this clause 9.5 shall survive any termination or expiration of this Purchase Order.
- 9.6 The warranties in clauses 7 and this clause 9 apply and continue to apply regardless of whether the Services or Goods (as applicable) comply or do not comply (as the case may be) with the Purchase Order and even though NTU may have accepted the Services or Goods or may examine, or may have had the opportunity to inspect or test, the Services or Goods or part of the Services or Goods and irrespective of whether or not the examination reveals or ought to have revealed the existence of Defects.
- 9.7 The provisions of clause 7 and this clause 9 do not in any way restrict or diminish any other rights or remedies that NTU may have in respect of the Services and the Goods and are in addition to any other warranties or conditions whether express or implied or whether granted by statute or otherwise.

## 10 Insurance

### 10.1 Policies of Insurance

The Contractor must throughout the Term and /or Fixed Term take out and maintain with insurers and on terms and conditions acceptable to NTU and at its own expense at least the following insurance policies in relation to risks, liabilities or occurrences arising or which may arise out of the performance, purported performance or non-performance of or in connection with the Purchase Order:

(a) a comprehensive public and products liability policy to cover sums which the Contractor may become liable to pay as compensation consequent upon death of, or bodily injury (including disease or illness) to, a person and loss of, or damage to, property, happening anywhere in Australia arising out of or in connection with this Purchase Order. The limit of liability provided by this policy must not be less than \$20 million per single occurrence in respect of public liability and not less than \$20 million in aggregate per annum in respect of product liability, and such policy must include a waiver of subrogation clause under which the underwriter of the policy agrees to waive all rights of subrogation it has or may have against NTU, its directors, its related bodies corporate, as defined in the *Corporations Act 2001* (Cth), or its employees (both past and present). The policy must not exclude:

- (i) claims for damages made by a worker (as defined by the applicable worker's compensation legislation ) against NTU unless NTU is the worker's employer (pursuant to a contract of services);
- (ii) claims for recoveries of any payments made under the provisions of any compulsory worker's compensation legislation, but only where the claim is being made against NTU when NTU is not the employer (pursuant to a contract of services) of the worker in respect of whom the worker's compensation was paid and in respect of which the recovery is being sought;
- (iii) claims arising from accidental or sudden pollution

(b) workers' compensation (including occupational disease where required by Law) insurance in respect of all claims and liabilities arising, whether at common law or under statute relating to workers compensation or employer's liability, from any accident or injury to any person employed by the Contractor in connection with this Purchase Order. The Contractor must ensure its employees are insured under a worker's compensation scheme where the employees meet the definition of a worker for the application of worker's compensation insurance as defined by each states' (or countries') workers' compensation acts. in the absence of any applicable workers' compensation act, the Contractor must purchase employer's liability

insurance with an adequate limit of liability. the Contractor must ensure that all subcontractors are similarly insured in respect of their employees. The insurance must, where permitted by law:

- (i) note NTU as principal for both Act and common law benefits;
  - (ii) not contain any term, condition or exclusion to the effect that or which operates so that the insurer is only liable to indemnify NTU against its liability to the employee if the Contractor also has some liability to pay damages to the employee at common law;
  - (iii) not contain any term, condition or exclusion to the effect which operates so that the insurer's liability to indemnify NTU is limited to the total amount that the Contractor is liable to pay or has paid the employee by way of damages at common law;
  - (iv) contain a clause under which the underwriter of the policy agrees to waive all rights of subrogation it has or may have against NTU, its directors, its related bodies corporate, as defined in the *Corporations Act 2001*(Cth), or its employees (both past and present);
  - (v) provide cover in respect of each and every claim for an amount not less than the minimum statutory requirements and \$50,000,000 at common law for any one event.
- (c) if the Services include or are related to the provision of professional advice or services, professional indemnity insurance to cover the Contractor's liability in respect of acts, errors or omissions in the professional advice or services provided by the Contractor pursuant to this Purchase Order. Such policy shall have a limit of liability not less than \$5,000,000.
- (d) if the performance of the Services requires the Contractor or the Contractor's employees, agents, contractors and subcontractors to use motor vehicles, a comprehensive motor vehicle insurance which must cover liabilities in respect of injury to, or death of, a person or loss, damage or destruction to property caused in connection with such motor vehicles and which must, unless prohibited by Law:
- (i) extend to cover any bodily injury not insurable under statutory insurance in respect of registered motor vehicles;
  - (ii) contain a clause under which the underwriter of the policy agrees to waive all rights of subrogation it has or may have against NTU , its directors, its related bodies corporate, as defined in the *Corporations Act 2001* (Cth), or its employees (both past and present); and
  - (iii) cover any person who drives, uses or is in charge of the insured motor vehicle with the Contractor's express or implied consent or who at the time was within the insured

motor vehicle as a passenger with the consent of the Contractor.

- (e) where the Contractor is supplying Goods, insurance for the Goods up to the time they are delivered and installed (if required) for an amount not less than their replacement value.
- (f) other insurances required by Law or reasonably required by NTU or which a reasonable and prudent person would consider to be appropriate in supplying the Goods and/or providing the Services.

10.2 NTU as Principal

The Contractor must ensure that all policies of insurance listed in clauses 10.1(a), 10.1(e) and 10.1(f) required to be taken out by the Contractor include NTU as a named insured or otherwise insures NTU as principal to the extent the loss, damage, and/or liability arises directly or indirectly from the performance, purported performance or non-performance of or in connection with the Purchase Order.

10.3 Severability and Cross Liability

The policies noted in 10.1(a), 10.1(e) and 10.1(f) must include a severability and cross liability clause which has the effect that neither the inclusion of more than one insured under a policy nor any act, omission, breach or default by an insured shall in any way affect the rights of any other insured, it being intended that the policy should be construed as if a separate contract of insurance had been entered into by each insured; but not so as to increase the insurer's limit of liability and with respect to loss, damage and/or liability arising directly or indirectly from the performance, purported performance or non-performance of or in connection of the Purchase Order .

10.4 Notification of NTU

The Contractor shall:

- (a) notify NTU immediately of any cancellation or replacement or expiry of a relevant insurance policy and of any change to the policy which affects NTU's interests;
- (b) as soon as practicable, inform NTU in writing of any occurrence that may give rise to a claim against NTU, its directors, its related bodies corporate, as defined in the *Corporations Act 2001* (Cth), or its employees (both past and present) under an insurance policy which is required to be taken out under this clause and arises from the performance of or the terms of this Purchase Order and shall keep NTU informed of subsequent developments concerning the claim or potential claim. Upon the Contractor becoming aware of a claim or potential claim, it must provide, and continue to provide, all information, documents and records relating to that claim or potential claim to NTU. This obligation includes granting to NTU free and unrestricted access to any site the subject of a claim or potential claim so that NTU may make and conduct its own investigations. The Contractor shall ensure that its subcontractors in respect of their operations similarly inform NTU; and

- (c) provide whatever notices are required by the relevant parties to the insurers under the insurances required under this clause.

10.5 Certificates of Currency

The Contractor shall, upon written notice by NTU, produce for inspection by NTU, certificates of currency for each insurance that the Contractor is required to take out under this Purchase Order. The acceptance, by NTU, of any certificate of currency, which does not meet the requirements of this clause 10, shall not be considered or construed as a waiver by NTU of the Contractor's obligations under this clause 10.

10.6 Maintenance of Policies of Insurance

- (a) NTU has the right to take out and maintain any policy of insurance required by this clause if the Contractor fails to do so and NTU reserves the right to treat the failure to take out and maintain any policy of insurance required by this clause as a default under this Purchase Order and refuse the Contractor and its personnel access to all or any part of any premises occupied or controlled by NTU that the Contractor and its personnel have cause to access in the performance of the Purchase Order until the required insurance policies are in place.
- (b) The Contractor agrees to reimburse NTU for any expenses, including any excess or deductible, NTU incurs in taking out and maintaining any policy of insurance under this clause and NTU may, in its sole discretion, deduct such expenses incurred by NTU from any amounts due by NTU to the Contractor.
- (c) The Contractor must not knowingly do or omit to do, or permit or suffer to be done, any act or omission whereby any of the insurances referred to in this clause may be vitiated, rendered void or voidable.
- (d) The Contractor's obligation to effect and maintain the insurance policies set out in this clause 10 is independent of and in no way limits the Contractor's liability under clause 11 (Liability and indemnities) and shall not be taken into account when construing clause 11 (Liability and indemnities).
- (e) The Contractor must ensure that its sub-contractors have the benefit of or effect and maintain insurance policies to the same effect and on the same terms as the contractor insurance policies.

10.7 Payment of Excess

The Contractor is liable to pay any excess, deductible or self-insured retention ("**Excess**") under any of its insurance policies and will indemnify NTU, its directors, its related bodies corporate, as defined in the *Corporations Act 2001* (Cth), or its employees (both past and present) against any Excess. This indemnity is independent of, and not subject to any limitations attaching to, any other indemnity imposed on the Contractor under the Purchase Order.

**11 Liability and indemnities**

- 11.1 The Contractor acknowledges that if the Contractor enters NTU's premises or any Site, the Contractor does so at its own risk. The Contractor must ensure that its employees, agents, contractors and subcontractors are also aware that they enter NTU's premises and Sites at their own risk.
- 11.2 To the extent permitted by Law, the Contractor is liable for and must indemnify NTU and keep NTU indemnified from and against any liability and/or any loss or damage of any kind whatsoever, arising directly or indirectly from:
- (a) any breach of any warranty or any of the terms and conditions of this Purchase Order by the Contractor or any person for whom the Contractor is responsible;
  - (b) the illness, injury or death of any of the Contractor's employees, agents, contractors and/or subcontractors arising out of the performance, purported performance or non-performance of or in connection with this Purchase Order;
  - (c) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:
    - (i) the Goods and / or Services; and/or
    - (ii) the entry onto, and the activities undertaken on and in, NTU's premises and Sites by the Contractor and/or the Contractor's employees, agents, contractors and/or subcontractors;
  - (d) any criminal act, fraud, negligence or wilful act or omission by the Contractor and/or any of the Contractor's employees, agents, contractors and/or subcontractors arising out of the performance, purported performance or non-performance of or in connection with this Purchase Order;
  - (e) any claim made against NTU by any of the Contractor's employees, agents, contractors and/or subcontractors in respect of any Law concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or Purchase Order of a competent industrial tribunal;
  - (f) any fine or penalty imposed for breach of an applicable Law in connection with the supply of the Goods and/or performance of the Services by the Contractor;
  - (g) loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the Contractor and/or the Contractor's employees, agents, contractors and/or subcontractors and used in connection with this Purchase Order; and
  - (h) any claim that the Goods, the Services or the results of the Services, anything the Contractor does in supplying NTU with the Goods and/or the Services, or NTU's use of the Goods or the results of the Services infringes or allegedly infringes the intellectual property rights of any person.
- 11.3 The Contractor is not liable under clause 11.2 to the extent that the losses and/or liabilities were caused or contributed to by a negligent act or omission of or wilful misconduct by NTU or any negligent act or omission of or wilful misconduct by any person in respect of which NTU is vicariously liable.
- 11.4 Every indemnity, exemption, limitation, defence, immunity or other benefit (including any benefit arising from the insurances referred to in clause 10) contained in this Purchase Order to which NTU is entitled is held by NTU for the benefit of, and extends to protect, each of NTU's directors, employees (past and present), agents, contractors and subcontractors (excluding the Contractor and the Contractor's directors, employees (past and present), agents, contractors and subcontractors) and NTU's related bodies corporate, as defined in the *Corporations Act 2001* (Cth), and their employees (past and present), agents, contractors and subcontractors (excluding the Contractor and the Contractor's employees (past and present), agents, contractors and subcontractors).
- 11.5 Each indemnity in this Purchase Order is a continuing obligation separate and independent from the Contractor's other obligations and not in any way limited by the Contractor's, the Contractor's employees', agents', contractors' and subcontractors' entitlement to be indemnified under any one or more of the Contractor's insurance policies referred to in clause 10 and survives termination of this Purchase Order.
- 11.6 It is not necessary for NTU to incur expense or make payment before enforcing a right of indemnity conferred by this Purchase Order.
- 11.7 Notwithstanding anything to the contrary in this Purchase Order, whether express or implied, and notwithstanding any breach of contract, negligence or other breach of duty on the part of NTU or the Contractor or any person or persons for whom they may be responsible, NTU and the Contractor shall not be liable to each other in respect of any loss or liability:
- (a) for loss of use of property which has not been physically lost, damaged or destroyed; or
  - (b) for business interruption, loss of actual or anticipated revenue, income or profits however arising,
- unless caused by fraud or wilful default.

## **12 Payment**

- 12.1 NTU shall, subject to the Contractor complying with its obligations under the Purchase Order, pay to the Contractor the Price in accordance with this clause 12.
- 12.2 Where the Purchase Order specifies a Price, the Price will be the Contractor's total entitlement for the provision of the Services. If the Purchase Order does not specify a Price (or only specifies an estimated Price), then the Contractor will be paid in accordance with the Hourly Rates set out in the Purchase Order.
- 12.3 The Contractor must provide to NTU a payment claim (in the form of a tax invoice) for payment of the Services in a form acceptable to NTU at the following times:
- (a) where the Purchase Order specifies a Date for Completion, within seven (7) days after the Date of Completion (as defined in clause 8.1(b)); or

- (b) where the Purchase Order specifies a Fixed Term, monthly (unless otherwise agreed between NTU and the Contractor).
- 12.4 All invoices provided by the Contractor to NTU must be marked to the attention of:  
**Northern Minerals Limited, Accounts Payable**  
 PO Box 669  
 WEST PERTH WA 6872,  
 or by electronic mail to the address:  
[accountsnm@northernminerals.com.au](mailto:accountsnm@northernminerals.com.au).
- 12.5 Subject to clauses 12.7 and 12.8, and unless otherwise agreed between NTU and the Contractor:
  - (a) if NTU receives the invoice on or before the fifth (5<sup>th</sup>) day of the month immediately following the month in which the Services were performed ("Relevant Month"), that invoice will be paid within 30 days of the end of the Relevant Month; or alternatively,
  - (b) if the invoice is received after the fifth (5<sup>th</sup>) day of the Relevant Month that invoice will be paid within 30 days of the end of the month that immediately follows the Relevant Month.
- 12.6 Payments by NTU under the Purchase Order shall be made by direct electronic deposit to a bank account advised by the Contractor.
- 12.7 If NTU disputes any amount purportedly owed by it to the Contractor under the Purchase Order, NTU must nevertheless pay the amount (if any), which is not disputed, and notify the Contractor of the amount in dispute and the reasons for disputing the amount. The Contractor must provide a credit invoice for the amount in dispute.
- 12.8 Without limiting any other right or remedy NTU may have under the Purchase Order, any debt owing by the Contractor to NTU, or any claim which NTU may have against the Contractor in connection with the Purchase Order, may be deducted from moneys otherwise payable to the Contractor under the Purchase Order.
- 12.9 Where the Services are to be provided for a Fixed Term or for a Price, the Contractor shall not provide Services beyond the Expiry Date and will not be entitled to payment exceeding the Price without obtaining NTU's prior written approval.
- 12.10 Unless specifically agreed otherwise, NTU shall not be obliged to pay an invoice which the Contractor submitted more than 90 days after the date for submitting that invoice pursuant to clause 12.3.

**13 Termination**

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- 13.1 If the Contractor breaches the Purchase Order and fails to remedy such breach after receiving seven (7) days' written notice from NTU to do so, NTU may terminate the Purchase Order.
- 13.2 NTU may terminate this Purchase Order without reason at any time by giving seven (7) days' notice in writing to the Contractor (and NTU will only be liable to the Contractor for the payment of any amounts payable under this Purchase Order to the date of termination). The Contractor will not be entitled to any other payment or

compensation (whether by way of damages or otherwise), including, without limitation, loss of profit.

**14 Subcontracting**

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- 14.1 The Contractor will not subcontract any of the Services without NTU's prior written consent.
- 14.2 The Contractor will be liable for the acts and omissions of any subcontractor (of any tier) it engages in relation to the Services to the same extent in all respects as if the acts and omissions of such subcontractor were its own.

**15 Civil Liability Act**

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- 15.1 Part 1F of the *Civil Liability Act 2002* (WA) is hereby excluded from application to this Purchase Order.

**16 Intellectual Property**

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- 16.1 The Contractor retains ownership of all intellectual property rights of the Contractor which it has prior to this Purchase Order ("**Contractor IP**") with the exception of any intellectual property rights which are enhanced by the Contractor as a result of the Contractor's performance of the Services.
- 16.2 All intellectual property rights enhanced, procured, developed, discovered or generated by the Contractor, NTU or the parties jointly during the course of the Contractor's performance of the Services ("**Project IP**") becomes, and at all times remains, the property of NTU.
- 16.3 The Contractor assigns to NTU all rights, title and interest it has in the Project IP and must do all acts, matters and things, including executing all documents, as may be necessary or reasonable to obtain protection for any Project IP.
- 16.4 The Contractor grants to NTU a non-exclusive, transferrable, royalty free, irrevocable and perpetual licence (with a right to grant sub-licences) to use and copy any Contractor IP which NTU requires in order to enjoy the benefit of the Services.
- 16.5 NTU grants to the Contractor a non-exclusive, non-transferable, royalty free, irrevocable and perpetual licence to use and copy the Project IP for the purpose of performing the Services.

**17 e-Marketplace**

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- 17.1 Should NTU request that the Contractor transact with NTU via an electronic marketplace (e-Marketplace), the Contractor agrees to adopt this method of transacting and acknowledges that it will do so in accordance with the method and timing specified by NTU, at the current rates contained in the Purchase Order, without any other compensation, amendment to the terms of the Agreement or additional cost to NTU.

**18 Governing law**

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- 18.1 This Purchase Order and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes) will be governed by, construed and take effect in accordance with the law in force in Western Australia.