

1. DEFINITIONS AND INTERPRETATION

1.1 In this Contract:

"Change Order" means a written amendment by Kestrel to the Goods and/or Services;

"Conditions" means these Standard Terms and Conditions;

"Contract" means the agreement between the Supplier and Kestrel consisting of the PO, these Conditions and any other documents expressly referred to in the PO;

"day" means the period of time commencing at midnight and ending 24 hours later;

"Delivery" or **"Delivered"** means the delivery of Deliverables by the Supplier to the nominated Delivery Point and the acceptance of the Deliverables by Kestrel;

"Delivery Date" means the date for Delivery specified in the PO;

"Delivery Point" means the place(s) or site(s) where the Goods and/or Services are to be delivered or Deliverables are to be delivered as specified in the PO;

"Deliverables" means those Goods and/or Services to be Delivered as described in the PO;

"Force Majeure" means an event 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, and which could not have been reasonably foreseen, and includes (provided the foregoing conditions have been met):

(a) an act of God;

(b) cyclones, fire, and flood; or

(c) acts of war, acts of public enemies, terrorist acts, riots, or civil commotions.

"GC" means a provision of these Conditions;

"Goods and/or Services" means the goods and/or services described in the PO and, if applicable, the works to be carried out at the Site;

"Intellectual Property Rights" includes patents, inventions, know-how, processes, designs, databases, copyrights, trademarks, brands, logos, domain names, business names, moral rights and any other intellectual property rights;

"Kestrel" means Kestrel Coal Pty Ltd (ABN 42 079 044 689) as agent for and on behalf of Kestrel Coal Resources Pty Ltd (80% percentage interest) and Mitsui Kestrel Coal Investment Pty Limited (20% percentage interest) who are severally liable (and not jointly liable nor joint and severally liable) in accordance with their

interests as participants in the Kestrel Coal Joint Venture;

"Party" or **"Parties"** means Kestrel and the Supplier;

"Personnel" means directors, officers, employees, representatives, agents, contractors or subcontractors.

"PO" means the Purchase Order form containing an order for Goods and/or Services to which these Conditions are attached;

"Price" means the total amount payable to the Supplier set out in the PO;

"Site" means any place owned or controlled by Kestrel where the Goods and/or Services are to be Delivered or carried out by the Supplier;

"Site Manager" means any person appointed by the Supplier under GC 9;

"Site Rules and Regulations" means the rules and regulations applicable to the Site as advised to the Supplier by Kestrel as amended from time to time;

"Supplier" means the person, company or corporation referred to in the PO as the "Vendor" and to whom the PO is issued, and where two or more persons are referred to in the PO, then the obligations on their part shall bind and be observed and performed by them jointly and severally;

"Taxes" means any and all present and future sales, use, personal, property, real property, value added, goods and services, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, fees, withholdings, imposts, levies, duties or other charges of any nature whatsoever or whensoever imposed (other than taxes on Kestrel's net income) by any government, governmental, semi-governmental or other relevant authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable; and

"Valid Tax Invoice" means an invoice provided by the Supplier that must include substantiation for the amount invoiced, the PO number and the Supplier's bank account details for payment by electronic bank transfer.

1.2 In this Contract

(a) headings are for convenience only and do not affect the interpretation;

and unless the context indicates a contrary intention:

(b) a reference to this Contract or another instrument includes any variation or replacement of either of them;

(c) the singular includes the plural and vice versa;

(d) if a period of time is specified and dates from a given day or the day of an actual event, it is to be calculated exclusive of that day;

(e) a reference to a third person or a third Party is a reference to a person who is not a Party to this Contract;

(f) "includes" in any form is not a word of limitation;

(g) a reference to "A\$", "\$A", "dollar" or "\$" is a reference to Australian currency; and

(h) a reference to any statute or delegated legislation includes consolidations, amendments, re-enactments and replacements.

2. FORMATION OF THE CONTRACT AND TERM

2.1 Where there is an executed written agreement in force between the Supplier and Kestrel which relates to Goods and/or Services the subject of the PO, then the PO is issued pursuant to and subject to the terms and conditions of the relevant agreement and the remaining provisions of these Conditions are of no effect.

2.2 Where there is no other written agreement in force between the Supplier and Kestrel which relates to Goods and/or Services the subject of the PO, then this Contract constitutes the entire agreement between the Supplier and Kestrel. Except as may be specifically provided in the PO, any terms and conditions contained in or relating to any other documents, including any of the Supplier's documents, in respect of the Goods and/or Services, are of no effect.

2.3 No terms stated by the Supplier in accepting or acknowledging the Contract will be binding unless Kestrel's prior written consent has been given.

2.4 In the absence of any written acceptance or acknowledgment of the Contract by the Supplier, the commencement of any work by the Supplier in connection with the Goods and/or Services or the provision of any Deliverables will be deemed an acceptance of the Contract.

2.5 The Contract will commence on the earlier of the date of acceptance or acknowledgment of the Contract by the Supplier or the date the Supplier commences to perform any work under the Contract, and will remain in force until the completion by the Supplier of all of its obligations under the Contract,

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unless terminated earlier in accordance with the Contract.

3. PERFORMANCE AND DELIVERABLES

3.1 The Supplier must perform and supply the Goods and/or Services and provide the Deliverables at the times, dates and Delivery Points specified in the PO.

3.2 Where the Supplier fails to perform or supply the Goods and/or Services (or any part thereof) or fails to provide the Deliverables to the Delivery Point by the relevant Delivery Date, such failure will constitute a material breach of the Contract, and Kestrel may:

- (a) deduct or withhold a reasonable amount from payments due to the Supplier under the Contract having regard to the failure to perform, supply or Deliver; and/or
- (b) terminate the Contract in accordance with GC 11.1(c).

3.3 Partial performance or supply of the Goods and/or Services or partial provision of the Deliverables (including the supply of non-compliant Goods and/or Services or Deliverables) by the relevant Delivery Date constitutes a failure to deliver and/or perform, and GC 3.2 applies, unless Kestrel confirms in writing that partial performance, supply or Delivery is acceptable.

3.4 If a licence, certificate or consent of any government or other authority is required for the performance or supply of the Goods and/or Services, the Supplier must obtain such licence, certificate or consent at the Supplier's expense and produce evidence of it to Kestrel on demand.

3.5 The value of the Goods and/or Services performed and supplied must not be greater than the Price, unless quantity amendments have been made to the Contract by the issue of a Change Order.

4. NON-COMPLIANT GOODS AND/OR SERVICES

4.1 The Supplier must, at no additional cost to Kestrel, ensure that all Goods and/or Services are performed, supplied, reported and presented in a professional manner consistent with best professional practice.

4.2 Notwithstanding that payment has been made to the Supplier, Kestrel will not be deemed to have accepted the Goods and/or Services unless and until Kestrel have had a reasonable

opportunity to inspect them and have notified the Supplier of Kestrel's acceptance.

4.3 If any Goods and/or Services (or any part of them) are defective, or do not comply with the Contract, Kestrel may send a notice to the Supplier rejecting such Goods and/or Services, and requiring that they are re-supplied or re-performed by the Supplier within a specified period of time, which must not be less than 10 days.

4.4 If the defective or non-compliant Goods and/or Services are not re-performed or re-supplied by the Supplier within the period of time specified in Kestrel's notice provided under GC 4.3, then:
(a) Kestrel may re-perform or re-supply such Goods and/or Services, or have a third party re-perform or re-supply them, and any costs incurred by Kestrel in doing so shall be to the Supplier's risk and cost; and
(b) Kestrel may immediately terminate the Contract, in whole or in part, and the Supplier must refund within 14 days of the termination date any payments made by Kestrel for any such Goods and/or Services which have been rejected by Kestrel.

4.5 If Kestrel requests the Supplier to remove any person from the performance or supply of the Goods and/or Services on the grounds that, in Kestrel's opinion, that person is not complying with the requirements of the Contract or is otherwise lacking in appropriate skills or qualifications, engaging in misconduct, or acting incompetently or negligently, then the Supplier must comply and promptly replace the person, at the Supplier's cost.

5. RISK AND TITLE

5.1 Without prejudice to Kestrel's rights under GC 4, unless otherwise specified in the Contract, ownership of the Goods and/or Services or the Deliverables passes to Kestrel on the earlier of:
(a) Delivery of the Goods and/or Services or Deliverables; or
(b) payment for any of the Goods and/or Services prior to Delivery of the Deliverables.

5.2 Where ownership of any Goods passes to Kestrel before Delivery, the Supplier must ensure that the Goods are properly stored and protected, and kept separate from goods of a similar nature and labelled the property of Kestrel. The Supplier must indemnify and keep

Kestrel indemnified from and against all losses, claims, liabilities and expenses (including legal and other professional fees and expenses) arising out its failure to comply with this GC 5.2.

6. CONTRACT PRICE AND PAYMENT

6.1 The Supplier is deemed to have satisfied itself of the correctness and sufficiency of the Price which, except as otherwise provided in the PO, covers all the Supplier's obligations under or in connection with the Contract.

6.2 Kestrel is only liable to pay for Goods and/or Services specified in the PO at the Price stated in the PO.

6.3 Subject to the Supplier providing a complete Valid Tax Invoice to Kestrel at the address for the submission of invoices indicated on the PO, Kestrel will make payments due to the Supplier within the time stated in the PO.

6.4 If Kestrel becomes aware that a subcontractor to the Supplier is entitled to suspend work pursuant to the *Building Industry Fairness (Security of Payment) Act 2017* (Qld) or the Supplier has otherwise failed to pay a subcontractor, Kestrel may (in its sole and absolute discretion) pay the subcontractor such money that is, or may be, owing to the subcontractor for work forming part of the Goods and/or Services. The cost thereby incurred shall be deducted from the Price.

6.5 If Kestrel is required by any law to deduct an amount in respect of Taxes from a payment under the Contract, Kestrel will pay the Supplier the difference between the payment due under the Contract to the Supplier and the amount deducted.

6.6 Kestrel may set-off any amount owing to Kestrel from the Supplier against any amount owed to the Supplier by Kestrel. Kestrel may also separately recover from the Supplier any debt owed by the Supplier to Kestrel arising out of or in connection with the Contract.

6.7 Unless otherwise notified by Kestrel in writing, all payments made by Kestrel to the Supplier will be by electronic bank transfer.

6.8 Should any Taxes be levied on, in respect of, or in relation to, the Goods and/or Services, these will be to the Supplier's account. The Supplier will be responsible for payment of those Taxes and will immediately provide Kestrel with

documentary evidence of payment if payment is made by the Supplier on Kestrel's behalf.

6.9 Where the amount payable to the Supplier for a supply of Goods and/or Services under or in connection with the Contract is based on the actual or reasonable costs incurred by the Supplier, the amount which the Supplier is entitled to be paid will be reduced by any input tax credits available to the Supplier, or the Supplier's representative member, in respect of such costs.

6.10 The Supplier acknowledges and agrees that if a legislative requirement requires Kestrel to deduct an amount in respect of withholding tax from a payment under the Contract such that the Supplier would not actually receive on the due date the full amount provided for under the Contract, then on the due date Kestrel must pay:

- (a) the relevant authority an amount equal to the amount deducted in accordance with applicable law and give the original receipt to the Supplier; and
- (b) the Supplier an amount equal to the full amount provided for less the deducted amount.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 The Supplier agrees that all Intellectual Property Rights created or produced by providing the Goods and/or Services will be owned by Kestrel.

7.2 The ownership of all Intellectual Property Rights owned by the Supplier and Kestrel which were created or produced prior to commencing the performance or supply of the Goods and/or Services will remain with the owner, and the owner grants an irrevocable, transferable, royalty free and perpetual licence to the other Party to use those rights to the extent required to perform or supply the Goods and/or Services or using, copying or modifying the Deliverables.

7.3 The Supplier must do everything necessary to ensure that the use, copying or modifying of the Deliverables by Kestrel does not infringe any rights, including Intellectual Property Rights, of another person or entity.

8. OBLIGATIONS

8.1 The Supplier warrants and must ensure that:

- (a) the Goods and/or Services will comply with the specifications in the Contract and any other specifications,

- requirements or instructions made known to the Supplier by Kestrel;
- (b) the Goods and/or Services are of high quality, fit for purpose, and free from defects or computer viruses;
- (c) the Goods and/or Services are, and at the time that title passes to Kestrel will be, free and clear of all liens and encumbrances;
- (d) the Goods and/or Services comply with all laws, rules or regulations in force at the time of performance;
- (e) the use, copying or modification of the Deliverables does not infringe any rights, including Intellectual Property Rights, of another person or entity;
- (f) in providing the Goods and/or Services and Deliverables, the Supplier:
 - i. informs itself of and complies with all applicable health, safety and environmental laws and regulations, as may be amended from time to time; and
 - ii. complies with all safety, health, environmental or other policies, guidelines, procedures and requirements in relation to the Site; and

(g) the Supplier provides the Goods and/or Services and Deliverables exercising the care, skill and diligence reasonably expected of a competent, professional supplier of goods and/or services similar to the Goods and/or Services.

8.2 The Supplier must ensure that Kestrel receives the benefit of all warranties provided by the Supplier's subcontractors.

8.3 Kestrel's rights and remedies in this Contract are cumulative and are not exclusive of any rights or remedies provided at law or otherwise.

8.4 Kestrel's acceptance of the Goods and/or Services and Deliverables does not relieve the Supplier from any of the Supplier's warranties, obligations or liabilities under or in connection with this GC 8.

9. SITE

9.1 This GC 9 applies in the event that any Goods and/or Services are to be performed on the Site.

9.2 Kestrel must provide the Supplier with access to the Site as reasonably required for the proper performance of any Goods and/or Services. The Supplier acknowledges and agrees that it will not be given exclusive access to the Site.

9.3 Whilst on Site, the Supplier and any of its employees, agents or subcontractors must:

- (a) adhere to all applicable Site Rules and Regulations; and
- (b) not enter any area on the Site for which it does not have express permission or authorisation to enter; and
- (c) keep the Site free from all unnecessary obstructions and must at regular intervals remove any surplus materials, wreckage, rubbish or temporary works.

9.4 From the commencement of performance or supply of any Goods and/or Services on Site until completion of demobilisation at the Site, the Supplier must appoint a suitable person to act as the Site Manager. The Site Manager must personally supervise the performance or supply of all Goods and/or Services and be present at the Site throughout normal working hours except when on leave, sick or absent for reasons connected with the proper performance or supply of the Goods and/or Services. Whenever the Site Manager is absent from the Site, a suitable person must be appointed to act as its deputy.

9.5 In respect of any Site visit, or prior to the performance or supply of Goods and/or Services at the Site, the Supplier and its Personnel must, in addition to the Supplier's own Site induction covering safety and other aspects of the Goods and/or Services, attend a Kestrel Site induction covering safety and other aspects of the Site. The Supplier shall not be entitled to any additional costs above the Price for attending such safety inductions, unless otherwise agreed by Kestrel in writing.

9.6 The Supplier must ensure that the working environment at the Site where the Goods and/or Services are to be performed is safe, without risks to the safety or health or exposure to hazards of its employees, subcontractors, suppliers, Kestrel, any Personnel of Kestrel or any member of the public.

9.7 The Supplier must ensure that safe work practices are in place in relation to the performance of its (and its employees') duties at the Site where the Goods and/or Services are to be performed. The Supplier must record those work practices in documented work health and safety policies and procedures that include:

- (a) organisation structure and responsibilities;
- (b) safe work practices; and

(c) work health and safety training and induction, performance monitoring and auditing and inspection procedures.

9.8 The Supplier must notify Kestrel of any health, safety and environmental incident, accident, injury, loss or damage of any kind which occurs whilst Goods and/or Services are being performed or supplied under this Contract immediately following the occurrence of such incident.

9.9 When requested to do so by Kestrel, the Supplier must give copies of all documents relevant to any incident referred to at GC 9.8 and also authorise Kestrel and its representatives or agents to conduct interviews with the Supplier's Personnel regarding all matters relevant to such incident.

9.10 The Supplier is responsible for industrial relations matters of its own workforce. Kestrel must not interfere in the industrial and personnel matters of the Supplier, but may give guidance and assistance where Kestrel considers it necessary.

9.11 As between Kestrel and the Supplier, valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value found on the Site will be and remain the property of Kestrel. Immediately upon the discovery of these items, the Supplier must:

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give Kestrel written notice of the discovery.

9.12 The Supplier's extra costs necessarily incurred in connection with GC 9.11, which may include an allowance for off-site overheads and profit, will be added to the Price.

10. INDEMNITY AND INSURANCE

10.1 Subject to GC 10.2, the Supplier must indemnify and keep Kestrel and Kestrel's Personnel indemnified from and against all losses, claims, liabilities and expenses of any kind (including, but not limited to, legal and other professional fees and expenses) arising out of:

- (a) injury or death to any person or damage to or destruction of any of Kestrel's property, infrastructure or equipment, whether caused directly or indirectly out of the performance of work under the Contract by the Supplier;
- (b) a breach by the Supplier or its Personnel of any of the Supplier's

obligations (including any warranty) under the Contract;

(c) any negligent act or omission or wilful misconduct by the Supplier or its Personnel arising out of the performance of the Contract; or

(d) any claim, action, suit, proceeding or demand of any kind made against Kestrel by any of the Supplier's Personnel in respect of relevant labour legislation.

10.2 The indemnity provided in GC 10.1 does not apply to the extent that the injury, death, damage, destruction or loss is the result of Kestrel's negligence or wilful misconduct.

10.3 The parties are not entitled to recover from each other any amount representing any kind of indirect or consequential loss or damage, including loss of profit, loss of use, loss of contracts, or loss of revenue arising out of or in connection with this Contract.

10.4 The Supplier must effect and maintain all insurances:

- (a) as stated in the PO; and
- (b) which a prudent, competent, professional supplier of the Goods and/or Services would effect and maintain, including comprehensive public and products liability insurance, professional indemnity insurance, workers compensation insurance, motor vehicle insurance, and any other insurances required by law.

11. TERMINATION OR EXPIRY

11.1 Kestrel may immediately terminate the Contract by written notice to the Supplier:

- (a) where these Conditions expressly permit Kestrel to do so;
- (b) for convenience, but provided that 10-days prior notice is given by Kestrel to the Supplier; or
- (c) if the Supplier breaches any obligation under the Contract, and such breach is not remedied by the Supplier within the cure period specified in a notice to be sent by Kestrel to the Supplier, which must not be less than 10 days.

12. CONFIDENTIALITY

12.1 The Supplier must treat all information, data and materials provided by Kestrel as confidential and must not use it for any purpose other than for provision or supply of the Goods and/or Services or disclose it to any third party without Kestrel's prior written consent, unless:

- (a) such information has already become generally available to the public other

than as a result of a breach of this GC 12.1; or

(b) the disclosure is required to comply with any applicable law or regulation, provided that prior to such disclosure the Supplier gives notice to Kestrel with full particulars of the proposed disclosure.

12.2 Upon termination or expiry of the Contract and/or upon Kestrel's request, the Supplier must return or, at Kestrel's option, destroy, all such information and provide evidence of such destruction.

13. FORCE MAJEURE

13.1 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 a Force Majeure event, it gives a notice to the other Party specifying the obligations that Party cannot perform, fully describing the Force Majeure event, and estimating the time during which the Force Majeure event will continue.

13.2 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 the Force Majeure.

14. ANTI-BRIBERY AND CORRUPTION

14.1 The Supplier shall comply, and shall ensure that the Supplier's Personnel comply with all applicable laws, regulations, codes and sanctions, including but not limited to anti-bribery and corruption, foreign corrupt practices, anti-terrorism and anti-slavery laws and specifically the *Criminal Code Act 1995* (Cth) (Australia), the *Bribery Act 2010* (United Kingdom), the *Foreign Corrupt Practices Act 1977* (United States of America), the *Modern Slavery Act 2018* (Cth) (Australia) and the *Modern Slavery Act 2015* (United Kingdom).

14.2 The Supplier shall not engage in any course of conduct that would cause Kestrel to be in violation of the laws of any jurisdiction, including, without limitation, the laws, regulations, codes and sanctions referred to in this GC 14. The Supplier shall ensure that it has in place and maintains policies and procedures adequate to prevent bribery and corruption, foreign corrupt practices,

terrorism, slavery and human trafficking and to ensure compliance with the applicable laws, regulations, codes and sanctions referred to in this GC 14. The Supplier shall, and shall ensure that its Personnel shall uphold the highest standards of business ethics and conduct, and undertake not to give or receive any advantage that could be perceived as payment or receipt of a bribe, not to make facilitation payments, not to bribe a foreign public official, and not to engage in slavery or human trafficking.

15. GENERAL

15.1 The Supplier must not assign or novate the Contract or subcontract the performance of all or part of the Goods and/or Services without Kestrel's prior written consent.

15.2 Kestrel may assign or novate the Contract, or subcontract or otherwise transfer Kestrel's rights or obligations under this Contract at any time to:

- a) any Related Body Corporate (as that term is defined in the Corporations Act 2001 (Cth)) of Kestrel; or
- b) any third party that is financially capable of meeting Kestrel's obligations under this Contract, without the Supplier's consent, and the Supplier will, when required by Kestrel, enter into a form of documentation provided by Kestrel to give effect to the assignment, novation or transfer under this clause.

15.3 All notices must be in writing, addressed to Kestrel or the Supplier as appropriate, and delivered to the address and/or sent to the email address of the recipient as shown on the PO, or any other address notified in writing by one Party to the other and delivered personally or by email.

15.4 A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.

15.5 A letter or email is deemed to be received:

- (a) in the case of a posted letter, 3 days after posting (5 days in the case of a letter sent by airmail); and
- (b) in the case of an email:
 - i. at the time shown in the delivery confirmation report generated by the sender's email system; or
 - ii. if the sender's email system does not generate a delivery confirmation report within 4 hours of the time the email is sent, unless the sender receives a return email

notification that the email was not delivered, at the time which is 4 hours from the time the email was sent.

15.6 If any provision in these Conditions is invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions.

15.7 To the extent of any inconsistency between the documents forming the Contract, then the order of precedence is:

- (a) the PO; and
- (b) the Conditions.

15.8 The Contract may not be varied or amended except in writing and signed by a duly authorised representative of each of the parties.

15.9 If Kestrel does not exercise a right, remedy or power at any time, this does not mean Kestrel cannot exercise it later.

15.10 The Supplier is an independent contractor in relation to the Contract and the Goods and/or Services, and not Kestrel's employee or agent. This Contract does not create a partnership, joint venture or agency relationship between the parties.

15.11 GCs 6.6, 7, 8, 9.9, 10, 12 and 15 will survive any termination or expiry of the Contract.

15.12 The Contract is governed by the laws of Queensland, and the parties agree to submit to the non-exclusive jurisdiction of the courts of Queensland.