

1 Interpretation

- (a) In this Agreement, unless the context indicates otherwise:
- (i) a reference to a party to this Agreement includes the party's successors, permitted substitutes and permitted assigns;
 - (ii) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
 - (iii) a reference to legislation or to a provision of legislation is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (iv) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
 - (v) a reference to 'month' means calendar month;
 - (vi) the word, 'includes' and any variation is to be read as if followed by the words 'without limitation'; and
 - (vii) this Agreement is not to be interpreted against the interests of a party because that party was responsible for the drafting of it or a part of it.

2 Agreement

- (a) Subject to clause 2(b), the following documents form the entire agreement between the parties:
- (i) the Purchase Order;
 - (ii) these terms and conditions; and
 - (iii) any other documents referred to in the Purchase Order
- (Agreement).** Any statement, representation or promise made in any document, negotiation, discussion regarding the Goods or the Services has no effect except to the extent expressly set out or incorporated by reference in the Agreement.
- (b) If the Principal and the Contractor enter into a subsequent agreement for the supply of the Goods or Services (**Specific Agreement**) then the Specific Agreement shall also form part of the Agreement between the parties.
- (c) This Agreement applies and will continue to apply to the Goods and Services, despite any subsequent purchase order, terms and conditions on an invoice, or any other terms and conditions, issued by the Contractor regarding the Goods or the Services.
- (d) Any inconsistency, discrepancy or ambiguity between the documents listed in clause 2(a), will be resolved by giving precedence to the document highest in the list except if a Specific Agreement has been entered into, in which case will take precedence and except to the extent directed by the Principal under clause 2(e).
- (e) The Principal may direct the Contractor as to the interpretation to be followed and the Contractor must comply with that direction.

- (f) Except as provided in this Agreement, the Contractor will not be entitled to claim as a result of or in connection with any ambiguity or discrepancy in this Agreement or any direction by the Principal under clause 2(e).
- (g) Any review, comment, approval or non-approval of any document does not relieve the Contractor of any of its obligations or liabilities under this Agreement.
- (h) The Principal may direct the Contractor at any time to vary, amend, increase, decrease, omit or change the quality, character, extent or amount of the Goods or Services, including the Delivery Date of the Goods or Services (**Variation**). If the Principal decreases or omits any Goods and Services, it may provide those Goods & Services itself or procure them from others. If the parties cannot agree to the adjustment to the Price, the Principal will price the Variation using reasonable rates and prices.

3 Quality

- (a) The Contractor must obtain all permits, approvals and licenses required by Law to supply the Goods and perform the Services.
- (b) The Contractor warrants that the Goods or the Services:
- (i) comply with the Law and applicable Australian Standards; and
 - (ii) are fit for the purposes for which goods or services of the same kind are commonly supplied and for any other purpose made known to the Contractor.
- (c) The Contractor warrants that the Goods:
- (i) are new, of merchantable quality and free from defects in materials and workmanship;
 - (ii) conform precisely in quality, quantity, specification and all other respects with any description provided to the Principal by the Contractor or nominated by the Principal to the Contractor;
 - (iii) are free from all liens, charges and encumbrances of any kind; and
 - (iv) comply with any samples inspected by the Principal prior to or after the Purchase Order was issued.
- (d) The Contractor warrants that it is an experienced provider of services similar to the Services and will perform the Services with all due skill and care.

4 Delivery and completion

- (a) Delivery will have occurred only when the Contractor has:
- (i) delivered the Goods (free of Defects) to the Site, and unless otherwise specified in the Purchase Order, unloaded the Goods at the location designated by the Principal or in the Purchase Order;
 - (ii) provided all documentation required by the Principal including any third-party warranties required under clause 6(e); and
 - (iii) completed the Services (including the provision of all deliverables and products of the Services to the Principal) and received written confirmation of completion from the Principal.

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- (b) The Contractor must achieve Delivery by the Delivery Date and in any case expeditiously and without delay.
- (c) If the Goods or the Services are not Delivered by the Delivery Date, the Principal will be entitled to claim as a debt due all costs, losses, expenses and damages which it suffers or incurs for each day that Delivery is delayed beyond the Delivery Date, until the earlier of:
 - (i) termination of the Agreement by the Principal; or
 - (ii) Delivery is achieved.
- (d) The Contractor is entitled to an extension of time to the Delivery Date if a Delay Event causes a delay to Delivery, provided the Contractor notifies the Principal in writing of the cause, expected duration and its efforts to minimise the effect of the Delay Event, within 3 Business Days of when the Contractor should have become aware of the Delay Event, failing which the Contractor will not be entitled to any extension of time to the Delivery Date.
- (e) The Principal will reasonably determine what, if any, extension of time will be granted to the Contractor and will notify the Contractor accordingly.
- (f) The Contractor is not entitled to claim any costs for delay or disruption (whether the delay or disruption arises out of a Delay Event or otherwise).
- (g) The Contractor may not subcontract any of its obligations without the prior consent of the Principal. Despite any consent, the Contractor remains responsible for all acts and omissions of its subcontractors and must ensure that they comply with all applicable terms and conditions of the Agreement.

5 Security

- (a) If required by the Principal, the Contractor must provide the Security specified in the Purchase Order.
- (b) Within 10 Business Days of Delivery, the Principal shall release 50% of the value of the Security.
- (c) Within 10 Business Days of the end of the Warranty Period, the Principal shall release any Security then held by the Principal provided that there are no moneys owed from the Contractor to the Principal.

6 Defective goods and services

- (a) If the Principal determines that any of the Goods or Services are unsatisfactory, defective, of inferior quality or workmanship or fail to meet any requirements of this Agreement, (**Defective**) the Contractor must do any of the following, at its own cost, as determined by the Principal in its absolute discretion:
 - (i) re-take possession of the Defective Goods and refund the Price for the Defective Goods to the Principal;
 - (ii) Deliver replacements of the Defective Goods or re-perform the Defective Services; or
 - (iii) repair the Defective Goods or remedy the Defective Services,and reimburse the Principal any loss or damage it has incurred or suffered as a result of the supply of the Defective Goods or performance of the Defective Services.
- (b) The rights under clause 6(a) are in addition to any other rights of the Principal under the Agreement or at Law.
- (c) If the Principal requires the Contractor to re-take possession of Defective Goods, the Contractor must collect the Defective Goods within 7 days from when notified by the Principal, failing which the Principal may (but is not obliged to) return the Defective Goods to the Contractor at the Contractor's cost and risk.

- (d) Unless otherwise stated in the Purchase Order, the Contractor warrants that for the period offered by the Contractor or a period of 12 months, whichever is longer, from the completion of Delivery (**Warranty Period**), it will at its cost repair or replace any Defective Goods or re-perform any Defective Services. Such replacements, repairs or re-performance must be carried out at the times notified by the Principal and so as to minimise any inconvenience to users of the Site.
- (e) The Contractor must do all things necessary to ensure that the Principal has the benefit of any warranties given by any third parties in respect of the Goods and must give the Principal all documentation relating to such warranties. Such third-party warranties are in addition to the warranties of the Contractor.
- (f) If the Contractor fails to act as and when directed under clause 6(a), the Principal may, without further notice to the Contractor, engage a third party to replace or repair Defective Goods or re-perform Defective Services and all costs and damages suffered by the Principal in connection with the Contractor's failure shall be a debt due and payable to the Principal.

7 Title and risk

- (a) Risk in the Goods passes to the Principal on Delivery.
- (b) Title to the Goods passes to the Principal on payment or Delivery (whichever occurs first).

8 PPSA

- (a) In this clause, the words 'Accession', 'Commingle', 'Financing Statement', 'Grantor', 'Personal Property', 'Proceeds', 'Security Interest' and 'Verification Statement' have the meanings given to them in the PPSA.
- (b) The parties acknowledge that this Agreement may constitute a Security Interest in favour of the Principal.
- (c) If the Principal determines that this Agreement (or a transaction in connection with it) is or contains a Security Interest, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Principal asks and considers necessary for the purposes of:
 - (i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;
 - (ii) enabling the Principal to apply for any registration, complete any Financing Statement or give any notification, in connection with the Security Interest; or
 - (iii) enabling the Principal to exercise rights in connection with the Security Interest.
- (d) The Principal is not required to give any notice under the PPSA (including notice of a Verification Statement) unless the notice is required by the PPSA to be given (even though the parties have waived the right to receive notice).
- (e) The Contractor must notify the Principal as soon as the Contractor becomes aware of any of the following:
 - (i) if any Personal Property which does not form part of the Principal's Personal Property becomes an Accession to the Principal's Personal Property and is subject to a Security Interest in favour of a third party;
 - (ii) if any of the Principal's Personal Property is located or situated outside Australia or, upon request by the Principal, of the present location or situation of any of the Principal's Personal Property; or
 - (iii) if the Contractor parts with possession of the Principal's Personal Property.
- (f) The Contractor must not:

- (i) create any Security Interest or lien over any Personal Property that the Principal has an interest in (other than Security Interests granted in favour of the Principal);
- (ii) sell, lease or dispose of its interest in Personal Property that the Principal has an Security Interest in;
- (iii) give possession of the Contractor's Personal Property that the Principal has a Security Interest or the Principal's Personal Property to another person except where the Principal expressly authorises it to do so;
- (iv) permit any of the Principal's Personal Property to become an Accession to or Commingled with any asset that is not part of a site within the Principal's ownership or control; or
- (v) change its name without first giving the Principal 15 Business Days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.
- (g) Everything the Contractor is required to do under this clause is at the Contractor's expense.
- (h) Neither the Principal nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other party authorises the disclosure of such information. This clause does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) (b), (d) and (e) of the PPSA.'

9 Safety and environment

- (a) The Contractor must perform its obligations with due regard for the health and safety of all persons and the protection of environment and must take all precautions necessary to protect the health and safety of all persons and the environment.
- (b) While carrying out Services or performing Delivery at the Site, the Contractor must, and must ensure that its employees, agents and Contractors:
 - (i) attend any inductions the Principal requires before they enter the Site or before they use any plant or equipment at the Site, as determined by the Principal;
 - (ii) comply with all applicable policies and procedures of the Principal and the Site in relation to health, safety and the environment, as well any plans the Principal may require the Contractor to prepare;
 - (iii) comply with all directions issued by the Principal or any other authorised Site supervisor; and
 - (iv) cooperate with others carrying out work at the Site and coordinate its work with the work of others so as to avoid disruption to others.
- (c) The Contractor must immediately advise the Principal, and provide it with a written report, if:
 - (i) the Contractor reasonably believes that any part of the Site or any plant or equipment at the Site is unsafe;
 - (ii) any person engages in work practices that are likely to put safety, health or the environment at risk; or
 - (iii) an incident or accident occurs.
- (d) Entry to the Site by the Contractor and the Contractor's employees, agents and Contractors is at their own risk and the Principal is not responsible for any loss or damage suffered by the Contractor and the Contractor's employees, agents and Contractors while on the Site or any other place provided by the Principal in connection with the Goods or

the Services.

The Contractor must, at its cost, immediately and permanently remove from the Site any person the Principal considers (in its absolute discretion) is behaving in an unsafe or offensive manner.

10 Price and payment

- (a) The Price is fixed and not subject to any increase whatsoever except to the extent expressly set out in the Agreement.
- (b) Unless expressly agreed in writing by the Principal, the Price includes all things necessary to supply the Goods and Services Free Into Store (FIS) and in accordance with the Agreement including:
 - (i) labour, tools, equipment and materials;
 - (ii) complying with all Laws and obtaining all permits, licenses and insurance;
 - (iii) packaging and transport; and
 - (iv) all taxes, duties, levies, excise and other government fees and charges (other than GST).
- (c) The Contractor may only issue a claim for payment on the date or at the time set out in the Purchase Order, and if no date or time is set out, then on or before the last day of the month in which the Goods or Services are supplied (**Payment Claim**). All Payment Claims must be in accordance with the lump sum, rates or units comprising the Price.
- (d) Where a Payment Claim is made before the date or time referenced in the Purchase Order that the Payment Claim shall not be taken to be submitted until the date or at the time referenced in the Purchase Order.
- (e) The Principal will pay the Contractor the Price in respect of the value of the Goods or the Services Delivered in accordance with the Agreement at the end of the month following the month in which the Contractor's Payment Claim is received, except that if the Principal intends to pay less than the amount claimed in a Payment Claim, it may:
 - (i) give the Contractor a payment schedule within 10 Business Days of receipt of the Contractor's Payment Claim setting out the amount it proposes to pay;
 - (ii) pay the amount of the payment schedule (if any); and
 - (iii) if the balance of the Payment Claim is disputed and if the resolution of the dispute determines that the Principal is to pay an amount to the Contractor, the Principal will pay that amount within 30 days.
- (f) If requested by the Principal, the Contractor must submit a statutory declaration which states that at that date, no wages or other moneys are due and owing by the Contractor to employees, agents, Contractors or creditors of the Contractor in connection with the supply of any Goods or Services. If such a request is made by the Principal, the Principal may not pay any Contractor Payment Claims until a satisfactory statutory declaration has been submitted.

11 Set off

The Principal may set off against any payment due to the Contractor any amount which the Principal determines the Contractor is liable to the Principal, whether for expenses or damages, howsoever that liability may have arisen. If the amount payable by the Principal is insufficient to discharge the liability of the Contractor, the Principal may (without limitation to its rights under this Agreement or at Law) have immediate recourse to the Security given under clause 5.

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12 GST

- (a) The consideration for a Supply made under or in connection with the Agreement does not include GST. If a Supply made under or in connection with this Agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable:
- (i) the Recipient must pay the Contractor an amount equal to the GST for the Supply (in addition to the consideration otherwise payable under this document for that Supply); and
 - (ii) the Contractor must give the Recipient a Tax Invoice for the Supply.
- (b) If either party has the right under this document to be reimbursed or indemnified by another party for a cost incurred in connection with this Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).
- (c) Capitalised terms in this clause 12 have the same meaning as in the GST Act.

13 Indemnities

- (a) The Contractor indemnifies the Principal from any claims, demands, suits, liabilities, actions, costs, losses, expenses, damages or penalties (including legal fees on an indemnity basis), which the Principal may incur arising out of or in connection with:
- (i) loss of or damage to any property of the Principal or third parties;
 - (ii) an exercise of the rights under clause 17(b); or
 - (iii) personal injury or death of any person,
- caused by whole or in part, or in connection with, any breach of contract or act or omission of the Contractor, its employees, agents or subcontractors.

14 Insurance

- (a) The Contractor must take out and keep current all necessary insurance policies reasonably expected of a Contractor of the Goods or the Services including (without limitation):
- (i) public liability insurance for an amount no less than \$20 million for each and every occurrence, from the date of this Agreement until the expiry of the Warranty Period;
 - (ii) workers' compensation insurance as required by Law;
 - (iii) third party comprehensive motor vehicle insurance from the date of this Agreement until expiry of the Warranty Period;
 - (iv) if the Contractor is supplying Goods, insurance for the full replacement value of the Goods; and
 - (v) if specified in the Purchase Order, professional indemnity insurance for not less than \$5,000,000 from the date of this Agreement until seven years after the expiry of the Warranty Period.
- (b) The Contractor must provide the Principal with evidence of the insurance required to be affected in accordance with clause 14(a) within 3 days of a request by the Principal. If the Contractor does not provide the evidence of insurance within that period, the Principal may, after 3 days' notice in writing to the Contractor, take out such insurance itself and the cost of doing so will be a debt due and payable by the Contractor.

If any insurance policy expires during the duration of the Purchase Order, the Principal may withhold any Contractor Payment until valid insurance certificates have been submitted.

15 Consequential loss

Neither party will be liable under or in connection with this Agreement for any indirect or consequential losses or damages, loss of revenue, loss of profit, loss of production or wasted overheads, whether or not such liability arises in contract, tort (including negligence) or any other cause of action at law or in equity.

16 Confidential information

- (a) The Contractor must keep confidential all Confidential Information and not disclose it to any other person, except:
- (i) with the prior written consent of the Principal;
 - (ii) to its professional advisers; or
 - (iii) to any of its workers who have a need to know in order to perform obligations under the Agreement.
- (b) Clause 16(a) does not apply to information that is required to be disclosed by Law or the requirements of a stock exchange, but only to the extent that the information is required to be disclosed.

17 Intellectual property

- (a) All information and materials given to the Contractor by the Principal under this Agreement is the property of the Principal and is only made available to the Contractor on the condition that:
- (i) the materials are to be used only for the purposes of the Agreement; and
 - (ii) if requested by the Principal, all such materials and copies are promptly returned to the Principal or destroyed.
- (b) The Contractor gives the Principal a non-exclusive, transferable, perpetual, royalty free license (including the right to sub-license) to use, modify, maintain or destroy the Goods and the Services, including any information, materials or documents provided as part of, or comprised in, the Goods or the Services.
- (c) The Contractor warrants that the supply and Delivery of the Goods or the Services by it, and the exercise of the rights granted in clause 17(b) by the Principal or any transferee through the Principal, will not infringe any patent, trademark, copyright or other intellectual property right.

18 Termination

- (a) The Principal may terminate the Agreement immediately:
- (i) on written notice to the Contractor if the Contractor becomes insolvent, commits an act of bankruptcy, appoints a liquidator, receiver, manager or controller;
 - (ii) if, in the absolute opinion of the Principal, the Contractor fails to remedy a breach of this Agreement within 7 days (or such other reasonable period which the Principal may specify) after receiving written notice from the Principal requiring it remedy a breach; or
 - (iii) for any reason in the Principal's absolute discretion for its convenience.
- (b) Except as expressly set out in clause 18(c), if the Principal terminates the Agreement in accordance with clause 18(a), the Contractor will not be entitled to any further payment and will have no claim, demand, suit, liability or action

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against the Principal and is not entitled to any costs, losses, expenses, damages or penalties arising out of or in connection with the Agreement or its termination or the supply of the Goods or the Services.

- (c) If the Principal terminates the Agreement in accordance with clause 18(a)(i) or (ii), any costs incurred by the Principal in engaging another person to complete the Contractor's obligations under this Agreement shall be a debt due and payable from the Contractor to the Principal.
- (d) If the Principal terminates the Agreement in accordance with clause 18(a)(iii), the Contractor will be entitled to the reasonable costs incurred by the Contractor in supplying the Goods or the Services up to the date of termination provided that the Principal receives title to any Goods that are paid for in accordance with this clause.

19 Relationship

The Contractor performs its obligations as an independent contractor of the Principal and not as an employee, agent or partner.

20 General

- (a) Where the Contractor comprises more than one person or entity, each of them shall be jointly and severally liable for the full performance of the Contractor's obligations under the Agreement.
- (b) Where any provision of the Agreement is void, illegal or unenforceable, that provision may be severed without affecting the enforceability of the other provisions in the Agreement.
- (c) The Laws in force in New South Wales apply to the Agreement and both submit to the exclusive jurisdiction of the courts of the New South Wales courts, except that the United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement or the supply of the Goods by the Contractor.
- (d) The failure of a party to require full or partial performance of a provision of the Agreement does not affect the right of that party to require performance subsequently.
- (e) No obligation in the Agreement is waived unless it is waived in writing and signed by the parties. A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (f) The Agreement may only be amended by written agreement between the Contractor and the Principal.

21 Dictionary

In this Agreement:

Confidential Information means any information relating to the business or affairs of the Principal or its customers, whether provided to or obtained by the Contractor prior to or after issue of the Purchase Order, except information in the public domain (other than due to breach of the Agreement) or information rightfully in the possession of the Contractor and not subject to an obligation of confidentiality at the time it was obtained by the Contractor.

Contractor means the person described in the Purchase Order.

Defects/Defective has the meaning given to that term in clause 6(a)

Delay Event means:

- (a) delay caused by any negligent act, default or omission of the Principal, the Principal or the Principal other contractors (who are not employed by the Contractor); or
- (b) any other cause specified in the Purchase Order.

Deliver/Delivery means delivery of the Goods or performance of the Services in accordance with clause 4(a).

Delivery Date means the date set out in the Purchase Order.

Goods means the goods, if any, described in the Purchase Order and all applicable Technical Materials.

GST has the same meaning as in the GST Act.

GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Law includes legislation, regulations, by-laws, orders, permits, approvals, licenses, common law and equity.

Principal means Delta Power & Energy (Chain Valley) Pty Ltd t/as Delta Coal ABN 40 621 409 201 and any of its related bodies corporate (as defined in the Corporations Act 2011 (Cth)).

Purchase Order means the purchase order raised by the Principal for the supply of the Goods and Services.

PPSA means Personal Property Securities Act 2009 (Cth).

Price means the amount payable for the Goods or the Services specified in the Purchase Order.

Security means a security in the form of cash or an unconditional bank guarantee from a provider acceptable to the Principal and in a form acceptable to the Principal and in an amount nominated by the Principal.

Services means the services, if any, described in the Purchase Order.

Site means the Chain Valley Colliery or any other place provided by the Principal for the Contractor to perform work arising out of or in connection with the Goods or Services.

Tax Invoice has the same meaning as in the GST Act.

Technical Materials means all plans, designs, drawings, engineering information, data, specifications, reports, accounts, installation instructions, maintenance and operating manuals, spare parts lists and any other technical material reasonably required for the safe installation, use and maintenance of the Goods and Services.

Variation has the meaning given to it in clause 2(h).

Warranty Period means the period calculated according to clause 6(d).

22 Governing Terms and Conditions

The Principal's Terms and Conditions exclusively govern all Purchase Orders issued by the Principal. Any terms or conditions proposed, submitted or referenced by the Supplier (whether in quotations, invoices, or any other related documentation) are of no legal effect and are expressly rejected, unless the Principal has agreed in writing to depart from its Terms and Conditions. No conduct by the Principal including acceptance of goods, services or payment will be construed as acceptance of any Supplier terms and conditions.