

# **Doral Mineral Sands Pty Ltd**

## **Standard Terms and Conditions**

# Doral Mineral Sands Pty Ltd

## Standard Terms & Conditions (2002)<sup>1</sup>

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### 1 Definitions

1.1 In this Agreement, unless the context otherwise requires:

**Agreement** means this agreement between the Company and Contractor evidenced by the Order, the standard terms and conditions, any Special Conditions and all other documents annexed to this Agreement or specifically incorporated by reference;

**Business Day** means a day on which banks are open for general banking business in Western Australia;

**Claim** means any claim, action, suit, demand, proceeding, notice, litigation, investigation or judgement whether based in contract, tort, under statute or otherwise;

**Commencement Date** means the commencement date (if any) specified in the Order or other document annexed to this Agreement or specifically incorporated by reference;

**Company** means Doral Mineral Sands Pty Ltd (ACN 096 342 451) or a related corporation as named in the Order and its successors and permitted assigns;

**Completion Date** means the completion date specified in the Order or other document annexed to this Agreement or specifically incorporated by reference;

**Confidential Information** means all information (other than information already in the public domain) provided by the Company to the Contractor, including this Agreement;

**Contractor** means the person, firm or company named in the Order who is required to supply the Services and includes all persons engaged by the Contractor, whether or not employed by the Contractor;

**Contract Price** means the amount payable by the Company to the Contractor under this Agreement as may be varied in accordance with this Agreement and includes, without limitation, all costs and expenses incurred by the Contractor in relation to the Services, including any applicable GST, customs duties, and fringe benefit tax payable in relation to provision of the Services and shall not be subject to rise and fall or to any change by reason of exchange rate fluctuations or for any other cause unless specifically stated in this Agreement;

**Employee Claims** means any Claim in respect of any death, injury or occupational disease of any person employed or engaged by the Contractor which arises out of, or is caused by, the supply or non-supply of the Services by the Contractor;

**Good Operating Practices** means the practices, methods and acts used by a contractor who in the performance of service exercises that degree of diligence, prudence and foresight reasonably and ordinarily exercised by skilled and experienced contractors engaged in the same type of services in similar conditions;

**Goods** means any materials, supplies, plant, equipment, or other things to be supplied as part of the Services by the Contractor to the Company, as specified in this Agreement;

**GST** means goods and services tax or similar value added tax levied or imposed in Australia pursuant to the A New Tax System (Goods and Services Tax) Act 1999 (Cth);

**Intellectual Property** means all intellectual property rights existing anywhere in the world including any patent, design right, copyright, trade mark, protected circuit layout, trade secret, Confidential Information, or other right whether existing under statute, at common law or in equity or otherwise;

**Liability** means all liabilities, losses, damages, outgoings, costs and expenses of whatever description, and whether present, unascertained, contingent or prospective;

**Personnel** means the directors, officers, employees, contractors and agents of the Contractor or the Company as the case may be;

**Order** means the purchase order forming part of this Agreement;

**Safety Management Plan** means the safety management plan of the Company;

**Services** means the work to be performed by the Contractor as specified in this Agreement, and includes the supply, hire or provision of any Goods and any and all other work, additions, substitutions and variations required by Company or agreed between Company and the Contractor in writing;

**Site** means the Company's premises or other place (if any) designated in the Order;

**Site Rules** means all rules, regulations, directives and policies of the Company, which are intended to be of general application to any person at the Site dealing with health and safety, environmental protection, fire prevention, security, alcohol and drugs and emergencies, as amended in accordance with this Agreement;

**Special Conditions** means the special conditions (if any) set out in the Annexure to this Agreement;

**Tax Invoice** means any document or record treated by the Commissioner of Taxation as a tax invoice or as a document entitling a recipient to an input tax credit;

**Term** means the period commencing on the Commencement Date and ending on the Completion Date, subject to early termination under clause 12;

**Third Party Claim** means any Claim in respect of:

- (a) loss or destruction of, or injury or damage to, or loss of use of any real or personal property;
- (b) any personal injury to or death of any person,

arising out of, or caused by, the supply or non-supply of the Services by the Contractor.

1.2 Where two or more persons are included in the term Contractor, then the obligations on their part will bind and be observed and performed by them jointly and each of them severally.

1.3 Time will be of the essence of this Agreement in all respects.

1.4 If there is any conflict or inconsistency, this Agreement will be interpreted in the manner most likely to have been intended by Company.

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### 2 Acceptance of Agreement

2.1 The Company engages the Contractor to perform the Services.

2.2 The Order when properly authorised is the only form which will be recognised by the Company as authority for charging Services to its account.

2.3 Any qualification to the Contractor's acceptance of this Agreement, is void and of no force or effect unless:

- (a) agreed to in writing by the Company as a variation to this Agreement; or

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<sup>1</sup> To be used when contracting for Services of less than \$150,000 value.

- (b) the qualification is the provision by the Contractor of a warranty that exceeds the requirements of this Agreement.
- 2.4 In the absence of written acceptance of the terms of this Agreement by the Contractor the commencement of any part of this Agreement by the Contractor including delivering Goods, shall be deemed an acceptance and an agreement shall be formed only in the terms set forth in this Agreement.
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### **3 Price and Payment**

- 3.1 Subject to clause 3.2, the Company must pay the Contractor the Contract Price for the Services. Where no Contract Price is indicated in the Order or other document annexed to this Agreement or specifically incorporated by reference, the price payable by the Company to the Contractor shall be a fair and reasonable price for the Services.
- 3.2 The Contractor must submit a Tax Invoice to the Company to support the claim for payment. The Tax Invoice must be in a form acceptable to the Company and must contain the following information:
- (a) the Order number;
  - (b) a brief description of the Services supplied;
  - (c) the period in which those Services were supplied;
  - (d) any further information stipulated in any applicable GST legislation, or by the Company, so that the Company will receive the benefit of any input tax credit in relation to the supply of the Services; and
  - (e) such other accurate verification documentation as may be requested by the Company.
- 3.3 Subject to Clause 3.4, payment will be made by the Company within 30 days of Tax Invoice monthend date, unless otherwise agreed, provided and to the extent that nothing is then in dispute in relation to the Services.
- 3.4 If the Company disputes any amount claimed by the Contractor to be due and payable, the Company will notify the Contractor specifying the reasons for the dispute. Payment of the disputed portion will be withheld until settlement of the dispute. The Company will pay the undisputed portion of the Tax Invoice.
- 3.5 If the Contractor is entitled to be reimbursed by the Company for a cost or expense incurred in relation to the Services, the reimbursement must not include any GST component of the cost or expense for which an input tax credit may be claimed by the Contractor.
- 3.6 The Contractor acknowledges that taxation and prescribed payments legislation and similar applicable from time to time may require the Company to pay part of the Contract Price to the Australian Taxation Office, to the credit of the Contractor, unless the Contractor, at the time of submitting invoices, provides the Company with written evidence of exemptions from such payment obligations.
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### **4 Warranties and obligations**

- 4.1 The Contractor must:
- (a) commence the Services on the Commencement Date, devote sufficient time and attention to the proper performance of the Services and complete the Services on or before the Completion Date;
  - (b) obtain all applicable permits, licences, exemptions, consents and approvals required for the Contractor to perform the Services;
  - (c) give all notices, and pay all entitlements, fees, and taxes in connection with the Services and its Personnel (including leave entitlements and income, fringe benefits, payroll and withholding taxes);
  - (d) co-operate with staff, contractors and other persons providing goods or services to the Company and must immediately bring to the attention of the Company any conflict which may arise in relation to the Services between the Contractor and any other person;
  - (e) comply with, and ensure that its Personnel comply with, the Site Rules and Safety Management Plan, Mines Safety and Inspection Act and Regulations, Occupational Health and Environmental Regulations and any lawful direction by the Company in respect of the supply of Services; and
  - (f) ensure the Services are in accordance with all relevant standards published by the Standards Association of Australia.
- 4.2 Without limiting any other warranty or obligation under the Agreement, the Contractor warrants as follows in relation to the Services and each part of the Services:
- (a) the Services shall be performed, and any Goods shall be manufactured, to the standard of care, skill and diligence that would normally be expected of a reputable and competent organisation providing goods and services similar to the Services;
  - (b) it and its Personnel are skilled, trained, qualified and competent to perform the Services and that they will perform the Services in accordance with Good Operating Practices in a competent, skilled and efficient manner.
  - (c) the Services shall comply with all relevant statutes, regulations, by-laws and codes (including, without limitation, all relevant mines safety and inspections laws) and with best industry practices;
  - (d) the Services shall:
    - (1) except in the case of professional services (as nominated on the Order) be fit for their intended purpose;
    - (2) be free of defects in materials, workmanship and design;
    - (3) be in good working order and condition in the manner for which they were intended;
    - (4) have a life expectancy commensurate with what would be expected of similar goods provided for similar purposes by a competent and reputable supplier or contractor;
    - (5) be performed or manufactured strictly in accordance with any manufacturing drawings, specifications or description supplied to the Contractor by the Company;
    - (6) be free of defect or failure or malfunction (except to the extent attributable to wrongful use or failure to maintain) during a period of 18 months from the date of performance of Services or delivery of Goods; and
    - (7) be new unless specified otherwise; and
    - (8) be free from any encumbrance or charge in favour of a third party at the time of the sale and/or delivery to the Company.

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## **5 Performance by Contractor**

- 5.1 The parties acknowledge and agree that the relationship between the Company and the Contractor is that of principal and independent contractor.
- 5.2 Nothing in this Agreement will be deemed to constitute the Contractor nor any of its Personnel an employee, partner, agent or representative of the Company and the Contractor nor any of its Personnel will have no authority to incur and will not incur any obligation on the part of the Company, except with, and to the extent of, the prior written authority of the Company.
- 5.3 The Contractor acknowledges that it is liable for payment of all allowances, taxes, premiums and costs, including leave entitlements, holding and sick pay, payroll tax, PAYE tax, costs of insurance or other non-reimbursable costs which arise in connection with the performance of the Services.
- 5.4 The Contractor will only appoint or engage in the performance of any Services, Personnel who are skilled and experienced in their trades and professions, and will remove and replace any Personnel at the request of the Company..
- 5.5 If any of the Contractor's Personnel are temporarily unavailable to provide the Services, the Contractor will at the Company's request replace that person with another person of equal skill and qualifications as approved by the Company. In the event of such temporary unavailability, the Contractor will not be held responsible for any delays in the completion for the Services provided the Contractor notifies the Company in writing of the delay, and the reason for the delay, promptly after its commencement.
- 5.6 The Contractor will supply all materials and equipment required to perform the Services, and the Contractor warrants that all materials used to perform the Services will be new and of the best quality and workmanship of their respective kinds.
- 5.7 On the Completion Date, or upon termination of this Agreement, the Contractor will return to the Company any materials, equipment or other property supplied by the Company to the Contractor in the same condition that it was supplied save for an allowance for fair wear and tear.
- 5.8 The Contractor waives any lien or any other right, title or interest which it might have at any time in respect of any materials or equipment which are incorporated into, or form the whole or part of, the Services and will ensure that a similar provision is included in all contracts with sub-contractors and suppliers who supply any materials and equipment to the Contractor for the purposes of this Agreement.
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## **6 Supervision, testing and inspection**

- 6.1 The Company will determine whether the Services supplied are in accordance with this Agreement and are to the standard, quality and quantity required by the Company.
- 6.2 If any part, or the whole, of the Services supplied by the Contractor are, in the Company's opinion, incomplete or are not substantially in accordance with the requirements of this Agreement:
- (a) the Company will notify the Contractor of such deficiencies;
  - (b) the Contractor must, at its cost, correct such deficiencies in the time specified by the Company; and
  - (c) if the Contractor fails to promptly correct such deficiencies, the Company may make, or cause others to make, such corrections and the costs so incurred by the Company may be deducted from payments to be made to the Contractor under this Agreement or otherwise recovered from the Contractor.
- 6.3 If the Company determines that any remedial, protective, repair or other like works are required to prevent:
- (a) loss of damage to the whole or any part of the Services;
  - (b) loss or damage to any property;
  - (c) personal injury to, or death of, any person; or
  - (d) disruption to the whole or any part of the Company's operations,
- the Company may perform, or cause others to perform, such work at the risk and reasonable expense of the Contractor.
- 6.4 The Company may by notice in writing to the Contractor direct that the whole or any part of the supply of Services be suspended for such time as the Company thinks fit, and upon receipt of the notice the Contractor must immediately suspend the supply of those Services identified in the notice. When the reason for suspension no longer exists, the Company Representative will direct the Contractor to recommence the supply of the Services, and the Contractor must comply with that direction as soon as is reasonably practicable.
- 6.5 The Contractor must do all things reasonably necessary to reduce any cost or expense consequent upon the suspension. The Company will pay the Contractor's reasonable costs and expenses during the period of suspension, unless the reason for the suspension is wholly or partly due to some fault on the part of the Contractor or its Personnel.
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## **7 Risk and title**

- 7.1 Title in the Services passes upon delivery to the Company or payment of the Contract Price, whichever occurs first.
- 7.2 All Services shall be at the Contractor's risk until such Services have been delivered to, and accepted by, the Company at the Site.
- 7.3 Where any goods owned by the Company are provided to the Contractor for the purposes of supplying the Services, property in and ownership of those goods remains with the Company.
- 7.4 The Contractor hereby waives any liens it may have over the Goods which are delivered to the Company pursuant to this Agreement, and the Contractor will obtain a similar waiver from any relevant Personnel.
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## **8 Quantity**

The quantity of any Services supplied and the total Contract Price payable under clause 3.1 must not be greater than the amount specified in the Order unless an additional amount is first approved by the Company in writing. The Company may return excess quantities to Contractor at Contractor's expense.

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## **9 Transportation**

- 9.1 All Goods must be packed, marked and transported as specified in the Order but if not specified then in a proper and suitable manner and in all cases in accordance with the proper requirements of the carriers.
- 9.2 The Contractor is liable for any difference in freight charges arising from its failure to follow any transport instructions in the Order or properly describe the Goods transported.

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## 10 Site

- 10.1 Subject to the compliance by the Contractor with the terms of this Agreement, the Company must give the Contractor access to the Site as and when required to enable the Contractor to supply the Services.
- 10.2 The Contractor acknowledges and agrees with the Company that:
- (a) the Company remains in possession of the Site at all times;
  - (b) the Company retains overriding control of the Site and all persons within the Site.
- 10.3 Where the supply of Services requires the Contractor to enter the Site, the Contractor and its Personnel must comply with the Site Rules and the Safety Management Plan which are incorporated into this Agreement.
- 10.4 If the Contractor has not previously received a copy of the Site Rules and Safety Management Plan, the Contractor must request, and the Company must provide the Contractor with, a copy of the Site Rules and Safety Management Plan and the Contractor is responsible for the distribution of the Site Rules and Safety Management Plan to its Personnel.
- 10.5 The Company may amend its Site Rules. The Contractor must comply with such amendments from the time that notice of the amendments are provided to the Contractor.
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## 11 Insurance

- 11.1 If performance of the Services will involve any of the Contractor's Personnel coming onto the Site, the Contractor must insure its liability against all Employee Claims. The insurance must:
- (a) comply with all statutory requirements including providing any compulsory statutory workers' compensation benefits;
  - (b) provide common law liability to a limit of not less than \$50,000,000 in relation to any one occurrence and unlimited as to the number of occurrences; and
  - (c) be extended to indemnify the Company as principal for Employee Claims.
- 11.2 The Contractor must insure against all Third Party Claims. The insurance must:
- (a) provide cover to an amount of \$10,000,000 in respect of any one claim and unlimited as to the number of claims;
  - (b) include the Company as an additional insured;
  - (c) include a cross liability endorsement that:
    - (1) all agreements and endorsements except limits of liability shall operate in the same manner as if there were a separate policy of insurance covering each party insured; and
    - (2) a failure by any insured party to observe and fulfil the terms and conditions of the policy shall not prejudice the rights of any other insured party; and
  - (d) provide a waiver by the insurer of all rights of subrogation, action or relief against any of the insured parties.
- 11.3 The Contractor must ensure that all motor vehicles used or brought onto the Site are kept licensed in accordance with any laws and insured against Third Party Claims under a comprehensive motor vehicle third party liability policy. The limit of liability shall be not less than \$10,000,000 any one occurrence and unlimited as to the number of occurrences. In addition, where the use of vehicles is required to be insured by virtue of any law relating to the use of such vehicles, Contractor shall ensure full compliance with such requirements.
- 11.4 The Contractor must insure all items of the Contractor's equipment that the Contractor brings onto Site for an amount of not less than its full replacement value (unless otherwise insured to the satisfaction of the Company). Such insurance must be effected and maintained throughout the Term and until such time as the Services have been completed and all of the Contractor's Personnel have departed from the Site.
- 11.5 Where the Services include professional services (as nominated on the Order), the Contractor must arrange and maintain, at its own expense, for the duration of this Agreement, professional indemnity insurance for a limit of indemnity of not less than \$1,000,000.
- 11.6 The Contractor must provide to the Company, upon request, copies of each of the policies, and certificates of currency of each of the policies, of insurances required to be maintained pursuant to this clause 11.
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## 12 Indemnity

The Contractor will be liable for, and will indemnify the Company and its Personnel against, all Liabilities arising out of or in connection with:

- (a) any Third Party Claims;
  - (b) the supply of Services under this Agreement;
  - (c) the presence of the Contractor or any of its Personnel on or about the Site; or
  - (d) any Employee Claims.
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## 13 Termination

- 13.1 The Company may at any time terminate this Agreement by giving the Contractor 5 days written notice. If this Agreement covers standard stock Services, the Company's liability will be to pay for Services delivered prior to termination. If this Agreement covers Services manufactured to the Company's specification, upon receipt of notice of termination the Contractor must cease manufacture, supply or work and will do everything possible to mitigate all costs incurred by it from such termination. Provided that the Contractor is not in default the Company shall pay to the Contractor:
- (a) the reasonable costs incurred by the Contractor in respect of this Agreement prior to the date of termination; and
  - (b) 6% of the above cost in lieu of profit, provided however that the total termination payment plus previous payments under this Agreement shall not exceed the Contract Price.
- 13.2 The Company may terminate this Agreement if the Contractor breaches any term of this Agreement or has a liquidator, administrator, receiver or receiver and manager appointed to it or any of its assets, enters into a scheme of arrangement (other than for the purposes of a solvent reconstruction) or has execution levied against any of its property.
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## 14 Confidentiality

The Contractor must:

- (a) not, without the consent of the Company, directly or indirectly disclose to any person or use the Confidential Information in whole or in part except in fulfilling its obligations under this Agreement;
- (b) not copy or otherwise reproduce any documents containing Confidential Information except as is necessary in fulfilling its obligations under this Agreement;

- (c) on termination of this Agreement or on demand by the Company return all documents containing any Confidential Information including any documents created by the Contractor which contain any Confidential Information;
- (d) use its best endeavours to protect the confidentiality of the Confidential Information; and
- (e) comply with all reasonable requests by the Company regarding the protection of the Confidential Information.

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## **15 Intellectual Property**

- 15.1 The Contractor warrants that in supplying the Services neither the Company nor the Contractor will infringe the Intellectual Property of any third party.
- 15.2 All Intellectual Property created by the Contractor (either by itself or jointly with any third party), in supplying the Services or otherwise pursuant to or incidental to this Agreement will be owned by the Company. The Contractor agrees to notify the Company immediately of the discovery of any such Intellectual Property rights and assigns to the Company its entire right, title and interest in all such Intellectual Property.

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## **16 Assignment and subcontracting**

- 16.1 The Contractor shall not assign or subcontract all or any part of this Agreement without the Company's prior written consent which the Company in its absolute discretion may refuse to give.
- 16.2 No assignment is effective until the assignee has agreed in writing with the Company to perform the Contractor's obligations under this Agreement.
- 16.3 No sub-contract shall in any way relieve the Contractor from full and entire responsibility for the performance of its obligations under this Agreement. The Contractor shall be liable for all acts, errors and omissions of its subcontractors or suppliers. The Contractor shall make any sub-contract subject to the conditions of this Agreement to the extent that they may be applicable.

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## **17 Disputes**

If there is any dispute between the parties concerning or arising out of this Agreement, the parties shall as a condition precedent to the commencement of any proceedings, meet to attempt to resolve the dispute. If the parties fail to agree within 30 days after first meeting, either party may commence legal proceedings to resolve the dispute.

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## **18 General**

- 18.1 This Agreement may be varied only by agreement in writing signed by the parties.
- 18.2 If any part of this Agreement is, or becomes, void or unenforceable, that part is, or will be, severed from this Agreement so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.
- 18.3 A failure to exercise or delay in exercising any right, power or privilege by any party will not operate as a waiver of that right, power or privilege. A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of that right, power or privilege, or the exercise of any right, power or privilege.
- 18.4 This Agreement is governed by and is to be construed according to the laws of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.
- 18.5 This Agreement constitutes the entire agreement between the parties with respect to the subject matter of this Agreement and contains all of the representations, warranties, covenants and agreements of the parties in relation to the subject matter of this Agreement as at the date of this Agreement.
- 18.6 All notices and other documents given pursuant to this Agreement must be in writing and may be given by personal delivery or prepaid post to the party to whom the notice is addressed at its address shown in this Agreement or such other address as it may have notified to the other party



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## Annexure A - Special Conditions

### For use for Hire of Goods

Notwithstanding anything contained in the standard terms & conditions, the following provisions apply where the Services comprise the hire of Goods by the Company.

- SC1 Without limiting any other warranty or obligation under this Agreement, the Contractor warrants that it has provided to the Company all information relating to:
- (a) the operating instructions for the Goods;
  - (b) any dangers associated with the Goods;
  - (c) the manufacturer's specifications; and
  - (d) any procedures necessary to ensure that persons properly using the Goods are not exposed to hazards.
- SC2 Unless otherwise stated on the Order, the Contractor must provide the following maintenance services to ensure that the Goods are available for use and operation by the Company at all times in accordance with this Agreement:
- (a) compliance with the recommended maintenance procedures set out in the technical manuals and operating instructions for the Goods;
  - (b) execution of all service and repair activities, including scheduled periodic services, minor and major repairs, mutually agreed accident damage and mutually approved modifications;
  - (c) supply and maintenance of spare parts, materials, lubricants and consumables (other than petroleum fuels);
  - (d) compliance with any statutory maintenance requirements.
- SC3 Upon:
- (a) delivery of the Goods to the Site, the Company shall determine and record the condition of the Goods. The Company shall provide a copy of this record to the Contractor; and
  - (b) the expiry of the Term and prior to the Goods being returned to the Contractor:
    - (1) the Goods will be inspected by the Company and the Contractor; and
    - (2) the Company and the Contractor shall agree any material change in the condition of the Goods from that previously recorded.
- SC4 The Company and the Contractor acknowledge that title and risk in the Goods remains with the Contractor at all times during the Term.
- SC5 If the Goods comprise motor vehicles, the Contractor must insure those Goods in accordance with clause 11.3 of the Standard Terms and Conditions.
- SC6 The Company will be liable for and will indemnify the Contractor against all Liabilities arising out of or in connection with use of the Goods except to the extent that:
- (a) such Liabilities are caused or contributed to by the Contractor or the Contractor's Personnel;
  - (b) the Contractor receives payment or other consideration pursuant to an indemnity under a policy of insurance that the Contractor effects under this Agreement, or would have received but for an act or omission of the Contractor or the Contractor's Personnel that reduces or negates that payment; or
  - (c) such Liabilities arise from fair wear and tear and reasonable use of the Goods.
- SC7 Except as amended by this Special Condition, clause 12 of the Standard Terms and Conditions applies.

### For Sole Traders

Clause 11.1 of the standard terms & conditions shall not apply where the Contractor is a sole trader and unable to obtain workers' compensation insurance.

### For Geo Services

In the case of professional services (as nominated on the Order) in the nature of geological, geophysical or geotechnical services, the professional indemnity insurance maintained under clause 11.4 must have a limit of indemnity of not less than \$500,000.