Export Coal Supply Contract (FOB)

Part A

1. CONTRACTUAL DOCUMENTATION

1.1 Documents comprising the Contract

The documents comprising the Contract are:

(a) this Part A;

(b) Part B - Loading Port Terms; and

(c) Part C - General Terms and Conditions; and

(d) any other document that the parties agree in writing forms part of the Contract.

1.2 Inconsistency between documents

If there is any discrepancy, inconsistency or ambiguity within or between the documents comprising the Contract, the discrepancy, inconsistency or ambiguity must be resolved by applying the following in order of precedence:

(a) this Part A;

(b) Part B - Loading Port Terms;

(c) Part C - General Terms and Conditions; and

(d) any other document that the parties agree in writing forms part of the Contract.

PARTICULARS

1. Date	23 October 2026	
2. Seller	**Name:**	Yancoal Australia Sales Pty Ltd
	ABN:	88 167 884 460
	Address:	Level 18, Tower 2, 201 Sussex St, Sydney, New South Wales 2000 Australia
	Telephone:	+61 2 8583 5387
	Attention:	Mr. Ray Shi, Mr. Johnny Wang
	Email:	ray.shi@yancoal.com.au johnny.wang@yancoal.com.au
	For all Logistics, Shipping, Commercial, Laytime, Demurrage and Despatch matters, please use email contact Shipping.Stems@yancoal.com.au.	

3. Buyer	**Name:** Yancoal International Trading Co., Limited **Address:** Room 2007, Tower One, Lippo Center, 89 Queensway, Hong Kong **Telephone:** +852 5318 6008 **Facsimile:** +852 2808 2302 **Attention:** Mr. Allen Wang **Email:** yancoalinthk@163.com wangjilei@shandong-energy.com sunzhiyi@shandong-energy.com zhangyoufeng@shandong-energy.com linrihuan@shandong-energy.com	
4. Term	3 years starting on 1st January 2027. Each year being a 12-month period.	
5. Coal Brand/Type	Australian Thermal Coal	
6. Contract Quantity	6,000,000 MT	
7. Delivery Periods, Laycan and Delivery Quantities	**Delivery Period**	**Delivery Quantity**
Delivery Period 1	Year 1– 1 January 2027 – 31 December 2027	2,000,000 metric tonnes for the 12-month period, being 500,000 metric tonnes per quarter.
Delivery Period 2	Year 2– 1 January 2028 – 31 December 2028	2,000,000 metric tonnes for the 12-month period, being 500,000 metric tonnes per quarter.
Delivery Period 3	Year 3 – 1 January 2029 – 31 December 2029	2,000,000 metric tonnes for the 12-month period, being 500,000 metric tonnes per quarter.
8. Shipping Tolerance	+/-10% at Buyer's Option	
9. Contract Price (per tonne)	The Contract Price per metric tonne of each Shipment shall be the average Market Index for all published days of the calendar month in which the laycan for that shipment commences, adjusted by the Annual Relativity applicable for the relevant Delivery Period and the relevant Product (A, B or	

	C) , FOB at NCIG or PWCS Terminal, Newcastle Australia Basis 5,500 kcal/kg net as received with fractions pro-rata. The Provisional Invoice Price of each Shipment shall be the Market Index published in the third week prior to the first day of the Laycan for that Shipment, adjusted by the Annual Relativity applicable for the relevant Delivery Period and the relevant Product (A, B or C) , FOB at NCIG or PWCS Terminal, Newcastle Australia Basis 5,500 kcal/kg net as received with fractions pro-rata. Where "Market Index" to mean the API5 Price Index in USD per metric tonne as published in the Argus/McCloskey's coal price index report under the heading "International Coal Price Indexes: Australia (FOB Newcastle) API5." Where "Annual Relativity" for each Product (A, B or C) to mean the calculated weighted average of the adjustment to the API5 Price Index which is used to calculate the Contract Price of all Comparable Annual Contracts for the same Delivery Period, rounded to two (2) decimal places. A Comparable Annual Contract is one that is: • A contract term equal or greater than 12 months; • agreed between the Seller and a non-related Chinese end user customer; • for the same quality of coal being any or any combination of Product A (5500 NAR Specification), Product B (5250 NAR Specification) and Product C (5100 NAR Specification); • to be delivered in the same Delivery Period; • agreement is made on or before the 15th December in the calendar year prior to the relevant Delivery Period; • with contract volume equal or more than 500,000t per annum. The weighted average calculation of the Annual Relativity is to be verified and confirmed by Yancoal's independent auditor. In the event the Provisional Invoice is used for LC payment purposes, and the actual Base Price is available afterwards, the final price shall be calculated and adjusted based on this and the Seller shall issue a Final Invoice. Any settlement between the Provisional Invoice and Final Invoice will be remitted by Telegraphic Transfer within Business Days after the Final Invoice Date issued by the Seller or the Debit Note issued by the Buyer, whichever is applicable.

	Worked Example of the calculation of Annual Relativity: *Assume that the Seller has 3 Comparable Annual Contracts for delivery of tonnes in Delivery Year Y.* *(i) 500,000mt of 5500 NAR coal at a Contract Price of API5(Month of Laycan Start) + USD 1.60 per metric tonne;* *(ii) 600,000mt of 5500 NAR coal at a Contract Price of API5 (Month of Laycan Start) + USD1.65 per metric tonne; and* *(iii) 700,000mt of 5500 NAR coal at a Contract Price of API5 (Month of Laycan Start) + USD1.70 per metric tonne.* *The Annual Relativity for Delivery Year Y is calculated as:-* $\frac{\text{SUM (Contract Volume x adjustment)}}{\text{SUM (Total Contract Volume)}}$ $= \frac{(500{,}000 \times 1.60) + (600{,}000 \times 1.65) + (700{,}000 \times 1.70)}{1{,}800{,}000}$ *= + USD 1.66 per metric tonne*
10. Quality Adjustments	**Price Adjustment** The Invoice price for each Shipment shall be determined by: a) applying the Calorific Value Adjustment as set out below to the Contract Price; b) Each such adjustment will be rounded to 2 decimal places. **Net Calorific Value Adjustment** If the actual Net Calorific Value of Coal for a Shipment as set out in the Certificate of Analysis for that Shipment ("Actual Calorific Value") is different to the Base Calorific Value, the Contract Price for that Shipment will be adjusted as follows: Contract Price x $\frac{\text{Actual Net Calorific Value}}{\text{Base Calorific Value}}$
11. Payment	Telegraphic Transfer
12. Loading Port	Carrington Coal Terminal, Port of Newcastle Kooragang Coal Terminal, Port of Newcastle Newcastle Coal Infrastructure Group, Port of Newcastle At the Seller's option; Seller ensures one safe berth, one safe port.
13. Delivery Basis	FOB (spout trimmed only)
14. Rejection Limit applicable	Yes

15. Specifications (ISO Standard)

Product A (5500 NAR)			
Item	**Basis**	**Typical Content**	**Rejection Limit (not applicable unless otherwise stated above at item 14)**
Total Moisture	As received	10.0%	15.0% Max
Ash Content	Air Dried	22.0%	24.0% Max
Inherent Moisture	Air Dried	2.5%	
Volatile Matter	Air Dried	28.0%	35.0% Max or 22.0% Min
Total Sulphur	Air Dried	0.80%	1.00% Max.
Net Calorific Value	As received	5,500 kcal/kg	5,300 kcal/kg min.
HGI		47	40 min
AFT(IDR)	(°C)	1560	Below 1200
Size 0-50mm		97.5%	
Mercury(Hg)	Dried basis		0.6 μg/g Max
Arsenic (As)	Dried basis		80 μg/g Max
Phosphorus (P)	Dried basis		0.15% Max
Chlorine(Cl)	Dried basis		0.30% Max
Fluorine(F)	Dried basis		200 μg/g Max

Product B (5250 NAR)			
Item	**Basis**	**Typical Content**	**Rejection Limit (not applicable unless otherwise stated above at item 14)**
Total Moisture (%)	ARB	10.0	Above 14.0
Inherent Moisture (%)	ADB	2.5	
Ash (%)	ADB	25.0	Above 27.0
Volatile Matter (%)	ADB	28.5	Below 22% or Above 35%
Total Sulphur (%)	ADB	0.80	Above 1.00
Net Calorific Value (kcal/kg)	ARB	5250	Below 5050
Hargrove Grindability Index		47	Below 40
AFT (IDR) (°C)		1560	Below 1200
Size (0 – 50mm) (%)		97.5	
Chlorine (DB)			Above 0.3%
Fluorine (DB)			Above 200 µg/g
Mercury (DB)			Above 0.6 µg/g
Arsenic (DB)			Above 80 µg/g
Phosphorus in Coal (DB)			Above 0.15%

Product C (5100 NAR)			
Item	**Basis**	**Typical Content**	**Rejection Limit (not applicable unless otherwise stated above at item 14)**
Total Moisture (%)	ARB	10.0	Above 14.0
Inherent Moisture (%)	ADB	2.5	
Ash (%)	ADB	27.0	Above 30.0
Volatile Matter (%)	ADB	27.0	Below 22% or Above 35%
Total Sulphur (%)	ADB	0.80	Above 1.00
Net Calorific Value (kcal/kg)	ARB	5100	Below 4800
Hargrove Grindability Index		47	Below 40
AFT (IDR) (°C)		1560	Below 1200
Size (0 – 50mm) (%)		97.5	
Chlorine (DB)			Above 0.3%
Fluorine (DB)			Above 200 µg/g
Mercury (DB)			Above 0.6 µg/g
Arsenic (DB)			Above 80 µg/g
Phosphorus in Coal (DB)			Above 0.15%

	The Buyer may request a switch option ("Switch Option") to: reduce the Total Quantity of Product A (default product); and increase the Total Quantity of Product B and/or Product C accordingly, across the period of the Contract Term, provided that a) the Buyer notifies, in writing, their request to the Seller no later than two (2) full months prior to the first day of the respective Delivery Month for such coal ("Switch Option"); and b) this request is agreed, in writing by the Seller.
	The seller shall provide additional certificate for analysis results of the below specification.
	Gross Calorific Value (MAF) As analyzed ..... no rejection
	Gross Calorific Value (MMMF) As analyzed ..... no rejection
	Gross Calorific Value (DMMF) As analyzed ..... no rejection
	Gross Calorific Value (ARB) As analyzed ..... no rejection
	Gross Calorific Value (ADB) As analyzed ..... no rejection
	Volatile Matter (DAF) As analyzed ..... no rejection
	Volatile Matter (ARB) As analyzed ..... no rejection
	Volatile Matter (MMMF) As analyzed ..... no rejection
	Ash (DB) As analyzed ..... no rejection
	Total Sulphur (DB) As analyzed ..... no rejection
	G-Index As analyzed ..... no rejection
	Y-Index As analyzed ..... no rejection
	Volatile Matter (DMMF) As analyzed ..... no rejection
	ASH FUSION TEMPERATURE(REDUCING) As analyzed ..... no rejection
	ASH FUSION TEMPERATURE(oxidizing) As analyzed .....no rejection
	Photopermeability – As analyzed ..... no rejection
	Ash (ARB) As analyzed ..... no rejection
	Total Sulphur (ARB) As analyzed ..... no rejection
	Fixed carbon (ADB) As analyzed ..... no rejection
	Size(0-1mm) 10% no rejection
	Size(0-10mm) 50% no rejection
	size 0-2mm As analyzed ..... no rejection
	Nominal topsize(mm) 50 ..... no rejection
	Radioactive Detection of Coal As analyzed ..... no rejection
	Hydrogen Value (ADB) As analyzed ..... no rejection

	ULTIMATE ANALYSIS (DB) As analyzed ..... no rejection FULL ASH ANALYSIS (DB) As analyzed ..... no rejection
16. Base Calorific Value at Constant Volume	5,500 kcal/kg Net As Received
17. Independent Inspection Authority	SGS Australia ALS or BV Newcastle, Australia to be mutually agreed by Buyer and Seller
18. Contract Number	EXS-YAS-YIT-THC-027-001

SPECIAL CONDITIONS

1. At clause 1.1 "Definitions" of Part C the following definitions are added:

Annual Caps means Annual caps on coal sales under the YIT Framework Agreement For Coal Sales proposed by Yancoal Australia Ltd, in its absolute discretion.

Yancoal Australia Limited means a company registered in Australia listed on the Australian Stock Exchange (ASX) and Hong Kong Stock Exchange (HKEX), ACN 111 859 119 of Darling Park - Tower 2, Level 18, 201 Sussex Street, Sydney NSW 2000 Australia and sole shareholder of the Seller.

YIT means Yancoal International Trading Co. Ltd

YIT Framework Agreement For Coal Sales means the framework agreement in relation to the sale of coal by Yancoal Australia Limited and/or its subsidiaries to YIT and/or its associates (excluding Yankuang Energy Group Co., Ltd and/or its subsidiaries) commencing on or around the date of this agreement.

2. At clause 1.1 "Definitions" of Part C the following definition is deleted its entirety and replace as follows

"Incoterms" means the INCOTERMS 2020 published by the International Chamber of Commerce.

"Payment Documents" (a) "Certificate of Origin issued by the Independent Surveyor at loading port;"

3. A new clause 2A is added to Part C:

2A Condition Precedent

2A.1 Conditions

The validity of the agreement is conditional upon the satisfaction of the following condition precedent:

(a) receipt of all regulatory approvals required by Yancoal Australia Limited to enter into the YIT Framework Agreement For Coal Sales, and to set the Annual Caps, including, but not limited to, receipt of approval from the ASX and HKEX (as may be required);

(b) receipt of shareholder approval by Yancoal Australia Limited to enter into the YIT Framework Agreement For Coal Sales, and to set the Annual Caps (as may be required); and

(c) receipt of all approvals required by YIT to enter into the YIT Framework Agreement For Coal Sales (as may be required).

(together "**Conditions**")

2A.2 Status of Conditions

The Seller and the Buyer (as applicable) must promptly notify the other within 3 days if they become aware that any Condition is satisfied, is no longer required or becomes incapable of being satisfied.

2A.3 Failure to Conditions

Either party may terminate this Agreement by notice to the other party if any Condition:

(d) has become incapable of being satisfied; or

(e) has not been satisfied on or before 31st/12/2026.

4. **Clause 3.3 and 3.4 of Part B is deleted and replaced with "The Seller must load the Vessel at the following average rates per WWD of 24 consecutive hours (SHINC) and is liable to pay Demurrage to the Buyer, for any time lost after expiration of Laytime at the following rates:**

Vessel Size DWT (Metric Tons)	Loading Rate (Metric Tons per day)	Demurrage per 24hrs ($US)
Up to 20,000	10,000	The daily demurrage rate expressed in US Dollars applicable to each cargo shall be declared by the Buyer at the time of vessel nomination and be in accordance with Current Charter Party rates at the time of nomination. The despatch rate is equivalent to half of the demurrage rate.
20,001 - 45,000	10,000	
45,001 - 60,000	20,000	
60,001 - 75,000	25,000	
75,001 - 100,000	30,000	
100,001 -125,000	35,000	
125,001-150,000	40,000	
150,001 and above	45,000	

Following acceptance of vessel nomination, the Buyer shall provide an extract of the Charter Party of which commercial information is redacted except demurrage and despatch rate.

5. **Clause 4.1(a) of Part C is deleted and replaced with:**

The Seller shall, at its own cost, appoint the "Independent Inspection Authority" to cause a representative sample to be taken from each Shipment in accordance with the ISO Standards. The representative sample shall be divided into three parts to provide:

(i) one sample for analysis by the Independent Inspection Authority at the loading port (the "Loading Port Sample");
(ii) one sample to be retained by the Independent Inspection Authority in a suitable airtight container properly sealed and labelled until 30 (thirty) days after the bill of lading date for the vessel. The Buyer may at any time within 30 (thirty) days prior to the bill of lading date for the vessel advise in writing and specifying the delivery address that this sample is to be delivered in a suitable airtight container properly sealed and labelled to the Buyer at the Seller's expense within 15 (fifteen) days of the Bill of Lading date;
(iii) one sample to be retained by the Independent Surveyor in a suitable airtight container properly sealed and labelled until ninety (90) calendar days after the bill of lading date for the vessel (the "Umpire Sample").

6.The following clauses are inserted in clause 4.1 of the General Terms and Conditions:

(e) Either party (the "**Challenging Party**") may within 60 days after the date of the Bill of Lading, by notice in writing to the other party, challenge any value contained in the Certificate of Analysis.

(f) If a notice is given in accordance with clause 4.1(e), the Umpire Sample shall be analysed by the [SGS Australia Pty Ltd, Bureau Veritas or ACTest Pty Ltd (part of the ALS Laboratory group) Independent Inspection Authority confirmed by both parties], as selected by and at the cost of the Challenging Party (the "**Umpire**"). The Umpire shall issue a certificate of sampling and analysis for the value or values in the Certificate of Analysis that has been challenged by the Challenging Party ("**Umpire Certificate of Analysis**").

(g) If any value in the Umpire Certificate of Analysis is different to the corresponding value in the Certificate of Analysis and is not within the tolerances allowed by the Standards, the value in the Umpire Certificate shall replace the value in the Certificate of Analysis, and the

parties shall make any consequential adjustments to the Contract Price and make any payment required following this change to the Contract Price.

(h) To the extent that the results of the Umpire Analysis for the parameter(s) in question are within ISO reproducibility limits of the value(s) obtained by the Independent Inspection Authority, the value(s) obtained by the Independent Inspection Authority shall be final, and the cost of the Umpire Analysis shall be paid by the challenging Party. To the extent that the results of the Umpire Analysis for the parameter(s) in question are not within ISO reproducibility limits of the values obtained by the Independent Inspection Authority, then the results of the Umpire Analysis will replace the values obtained by the Independent Inspection Authority, and the cost of the Umpire Analysis will be paid by the Seller.

7.Clause 6.4 of Part C is deleted and replaced with

"Buyer's Bank charges on Buyer's account; Seller's bank charges on Seller's account."

8.Definition "Payment Documents" (a) in Part C shall be deleted and replaced with:

-Certificate of Origin issued by the Independent Surveyor at loading port;"

9.Definition "Payment Documents" (a) (d) (e) in Part C shall be added:

- Certificate of Draft Survey in 1 original and 3 copies issued by Independent Surveyor at the loading port

Additional certificates to be emailed to buyer's appointed address within **10** working days after B/L date

- Certificate of origin or certificate of origin form for issued by Australian Chamber of Commerce and Industry (ACCI)

- Additional certificate of analysis in 1 original and 3 copies issued by Independent Surveyor at loading port for full analysis of total specifications listed above.

- Certificate of Hold Cleanliness in 1 original and 3 copies issued by Independent Surveyor at the loading port.

10. Clause 12.1 of Part C is deleted and replaced with:

Shipping Schedule

(a) Unless otherwise agreed, Shipments are to be evenly spread throughout the Delivery Period (by reference to vessel estimated time of arrival at the Loading Port).

(b) No later than 14 days prior to the time of vessel ETA, the Buyer must nominate to the Seller, for approval by the Seller, the Laycan and the approximate cargo size for all Shipments scheduled for delivery in that Delivery Period.

11. Clause 12.5 (b) of Part C "At least ten (10) days piror to the commencement of Laycan, and" is deleted

12. Clause 14.1(b) of Part C is deleted and replaced with:

Where the Port of Newcastle is the Loading Port, NOR shall be tendered by the Vessel and accepted by the Seller after arrival at the Loading Port, or where NPC Vessel Arrival System (VAS) is in operation, the

"Notified Arrival Time", determined in accordance with the VAS, whether in berth or not, whether in free pratique or not, ATDN SSHINC, provided the Vessel in all respects ready to load. If, prior to commencement of loading, the Vessel is found not to be ready in all respects, then any time already counted towards Laytime or Turntime between the time of discovery that the Vessel is not ready in all respects until the time that the Vessel becomes ready will not be counted as Demurrage or towards Laytime or Turntime.

13.Clause 22.5 of Part C is deleted and replaced with:

"Any Dispute must be resolved by arbitration in accordance with the Rules of Singapore International Arbitration Centre ("SIAC Rules") which are deemed to be incorporated by reference into this clause 22.5. The seat of the arbitration will be Singapore and the language of the arbitration will be English. Unless the parties otherwise agree, each party will appoint one arbitrator, and the two arbitrators so appointed will appoint the third arbitrator. If a party fails to appoint an arbitrator, then the Singapore International Arbitration Centre will be the appointing authority on behalf of that party."

Clause 26.1 of Part C is deleted and replaced with: The Contract is governed by the laws of Singapore.

14.Clause 1.1 and 9.1 of Part C are amended as follows:

Clause 1.1 "Definitions", the term "US LIBOR" and its definition are deleted.

Clause 1.1 "Definitions", the term "Default Rate" is added with the following definition: "means, in relation to any period, the thirty (30) day average of the Secured Overnight Financing Rate ("SOFR") published by the New York Federal Reserve on the first day of such period or, if no such rate is then published, then on the next succeeding day on which such rate is so published, always provided that the Default Rate shall have a floor of zero and, if for any reason the Default Rate ceases to be available for a period of ten consecutive days, then the Fallback Rate shall apply instead of the Default Rate".

Clause 1.1 "Definitions", the term "Fallback Rate" is added with the following definition: "means the short-term interest rate target set by the Federal Open Market Committee and published on the Federal Reserve's website, or if the Federal Open Market Committee does not target a single rate, the mid-point of the short-term interest rate target range set by the Federal Open Market Committee as published on the Federal Reserve's website, always provided that the Fallback Rate shall have a floor of zero".

Clause 9.1(b) is deleted and replaced with the following: "Interest on an unpaid amount accrues each day at a rate equal to the sum of Default Rate and 4% per annum and is capitalised (if not paid) every seven days".

15. Clause 26.11 is added in Part C of the Contact

26.11 Restriction on resale

The Buyer:

(a) cannot resell Coal purchased from the Seller under this Contract to any purchaser located outside of mainland China unless authorised by the Seller,

(b) must not knowingly sell, cause or permit any other person to promote, market or sell Coal directly or indirectly to any customer for consumption outside of mainland China except approved by the Seller;

(c) cannot resell Coal purchased from the Seller under this Contract to Existing Customers on a "Free On Board" basis; and

(d) cannot resell Coal purchased from the Seller under this Contract to Prospect Customers on a "Free On Board" basis.

For the avoidance of doubt, the Buyer can resell Coal purchased from the Seller under this Contract to Existing Customers and Prospect Customers if the sale is on "Cost, Insurance, Freight" or "Cost and Freight Free to Port" in China or the price is paid in RMB.

The list of Existing Customers and Prospect Customers will be agreed by the parties in writing from time to time.

EXECUTED AS AN AGREEMENT.

EXECUTED by Yancoal Australia Sales Pty Ltd ABN 88 167 884 460

Signature

SHARIF BURRA, CEO
Name, Title

EXECUTED by Yancoal International Trading Co., Limited
For and on behalf of
Yancoal International Trading Co., Limited
兗煤國際貿易有限公司

Signature
Authorized Signatory(ies)

JILEI WANG, Associate Business Director
Name, Title

PART B

LOADING PORT TERMS

1. LOADING TERMS AT BRISBANE

1.1 Application of clause

(a) This section 1 applies where the Loading Port is the Port of Brisbane, Queensland.

(b) The Loading Port of Brisbane, Queensland is under the control of Queensland Bulk Handling Pty Ltd (ABN 46 010 284 509) (**"QBH"**), and the loading of Vessels is under the control of QBH.

(c) The Buyer must ensure that Vessels comply with the port and loading requirements as stipulated from time to time by QBH or any other relevant authority.

1.2 Loading requirements

Maximum port specifications for the coal loading berth(s) at the Loading Port as advised are:

(a) Maximum length overall: 240 metres;

(b) Maximum beam: 43 metres; and

(c) Designed sailing draft on the next high tide: 13.3 metres + tide – UKC (UKC = 10% of sailing draft).

1.3 Loading and Demurrage rates

(a) The Seller must load the Vessel at the following average rates per WWD of 24 consecutive hours (excluding Sundays, local and public holidays, unless used) and is liable to pay Demurrage to the Buyer, for any time lost after expiration of Laytime at the following rates:

Vessel Size DWT (Long Tons)	Loading Rate (Long Tons per day)	Demurrage per 24hrs (US$)
Up to 14,999	12,500	To be negotiated
15,000 – 29,999	12,500	$7,000
30,000 – 44,999	20,000	$8,000
45,000 – 59,999	20,000	$8,500
60,000 – 74,999	25,000	$9,500
75,000 – 99,999	35,000	$11,500
100,000 – 124,999	40,000	$14,000
125,000 – 149,999	40,000	$16,000
150,000 – 179,999	45,000	$18,000
180,000 and above	50,000	$20,000

1.4 Despatch

The Buyer must pay Despatch to the Seller for all Laytime saved.

1.5 Priority Vessels

(a) For vessel to be classified as priority, vessel must be able to maintain the following loading rates and minimum vessel size. If these requirements cannot be met the vessel is categorised as non-priority.

(i) Average Load Rate 2,400 t/ph

(ii) Average Instantaneous Pour Rate 2,750 t/ph

(iii) Required Berth Rate (first to last line) 2,000 t/ph

(iv) If the deadweight tonnes of the vessel is 24,000t or less then the Vessel is categorised as non-priority for berthing.

(b) Non-priority vessel means that if another priority vessel arrives at the Port of Brisbane with a similar ETA the other priority vessel can be loaded first. Similarly, if the non-priority vessel has berthed but not finished loading within the allowed priority vessel timing, the vessel, with 8 hours notice from the coal terminal, must be moved to allow the next priority vessel to berth and load.

(c) Delays due to non-priority vessel restrictions at Brisbane Port shall not be counted as laytime whether the Vessel is on Demurrage or not. These delays will be classed as Vessel Requirements.

2. LOADING TERMS AT GLADSTONE

2.1 Application of this clause

(a) This section 2 applies where the Loading Port is the RG Tanna Coal Terminal; Barney Point Coal Terminal; or Wiggins Island Coal Terminal ("WICET") at Gladstone, Queensland.

(b) The Loading Port of Gladstone is under the control of Gladstone Ports Corporation Limited (ACN 131 965 896) ("GPC"), and the loading of Vessels is under the control of GPC.

(c) The Buyer must ensure that Vessels comply with the port and loading requirements as stipulated from time to time by GPC or any other relevant authority.

2.2 Loading requirements

(a) Maximum port specifications for the coal loading berth(s) at the Loading Port as advised are:

(i) RG Tanna Coal Terminal:

(A) length overall - 315 metres;

(B) draft - 17 metres;

(C) beam - 55 metres;

(D) width of channel - 180 metres;

(E) depth of channel - 16 metres;

(F) length of wharf - 1491 metres;

(G) depth alongside wharf - 18.8 metres;

(H) turning basin diameter - 600 metres; and

(I) turning basin depth - 10.4 metres.

(ii) WICET

(A) Minimum acceptable vessel size is 40,000 dwt;

(B) Maximum acceptable vessel size is 220,000 dwt;

(C) length overall - 320 metres;

(D) maximum draft - 18 metres;

(E) beam – 50.1 metres;

(F) maximum berthing displacement 140,000t;

(G) width of channel - 180 metres;

(H) depth of channel - 16 metres;

(I) depth alongside wharf - 18.8 metres;

(J) turning basin diameter - 600 metres;

(K) turning basin depth - 10.4 metres;

(L) deck handling gear is not acceptable; and

(M) mid-ship gangways are not acceptable.

2.3 Loading and Demurrage rates

The Seller must load the Vessel at the following average rates per WWD of 24 consecutive hours (excluding Sundays, local and public holidays, unless used) and is liable to pay Demurrage to the Buyer, for any time lost after expiration of Laytime at the following rates:

Vessel Size DWT (Long Tons)	Loading Rate (Long Tons per day)	Demurrage per 24hrs (US$)
Up to 14,999	12,500	To be negotiated
15,000 – 29,999	12,500	$7,000
30,000 – 44,999	20,000	$8,000
45,000 – 59,999	20,000	$8,500
60,000 – 74,999	25,000	$9,500
75,000 – 99,999	35,000	$11,500
100,000 – 124,999	40,000	$14,000
125,000 – 149,999	40,000	$16,000
150,000 – 179,999	45,000	$18,000
180,000 and above	50,000	$20,000

2.4 Despatch

The Buyer must pay Despatch to the Seller for all Laytime saved.

3. LOADING TERMS AT NEWCASTLE

3.1 Application of this clause

(a) This section 3 applies where the Loading Port is Newcastle, New South Wales.

(b) The Loading Port of Newcastle, New South Wales, is under the control of the Newcastle Port Corporation (**"NPC"**) and the loading of Vessels is under the control of PWCS or NCIG.

(c) The Buyer must ensure that Vessels comply with the port and loading requirements as stipulated from time to time by NPC, PWCS or NCIG (as the case may be) or any other relevant authority.

3.2 Loading requirements

Maximum port specifications for the coal loading berth(s) at the Carrington Coal Terminal ("CCT"), the Kooragang Coal Terminal ("KCT") and the NCIG Terminal as advised are:

(a) Maximum length overall:

(A) CCT: 300 metres;

(B) KCT: 300 metres; and

(C) NCIG: 300 metres;

(b) Maximum beam:

(A) CCT: 47 metres;

(B) KCT: 50 metres; and

(C) NCIG: 50 metres;

(c) Designed sailing draft on the next high tide:

(A) CCT: 15.2 metres + tide – UKC;

(B) KCT: 15.2 metres + tide – UKC; and

(C) NCIG: 15.2 metres + tide – UKC,

(UKC = 10% of sailing draft).

3.3 Loading and Demurrage rates

The Seller must load the Vessel at the following average rates per WWD of 24 consecutive hours (excluding Sundays, local and public holidays, unless used) and is liable to pay Demurrage to the Buyer, for any time lost after expiration of Laytime at the following rates:

Vessel Size DWT (Long Tons)	Loading Rate (Long Tons per day)	Demurrage per 24hrs ($US)
Up to 20,000	10,000	To be negotiated
20,001 – 45,000	10,000	5,000
45,001 – 60,000	20,000	8,500
60,001 – 75,000	25,000	9,500
75,001 – 100,000	30,000	11,500
100,001 – 125,000	35,000	14,000

125,001 – 150,000	**40,000**	**16,000**
150,001 and above	**45,000**	**18,000**

3.4 Despatch

The Buyer must pay Despatch to the Seller for Laytime saved.

3.5 Vessel Arrival System

(a) For the purposes of this paragraph 3.5:

(i) **"Vessel Arrival System"** or **"VAS"** is the system proposed by Newcastle Port Corporation in order to manage the arrival of vessels to load coal at the Loading Port.

(ii) **"Notified Arrival Time"** or **"NAT"** has the meaning as described in the Rules.

(iii) **"Loading Time"** has the meaning as described in the Rules.

(iv) **"Rules"** means the Vessel Arrival System Rules as published by NPC from time to time and Rule has a like meaning.

(b) Whilst the VAS is in effect, this paragraph 3.5 will prevail to the extent of any inconsistency with section 3 of this Part B.

(c) If the vessel is subject to NAT, the Notice of Readiness must be tendered on or after NAT for the purpose of calculating Laytime.

(d) The Buyer must exert its best endeavours to make all necessary arrangements with the Vessel to ensure compliance with the Rules.

EXPORT COAL SUPPLY CONTRACT (FOB)
GENERAL TERMS AND CONDITIONS

Version 3 Issued 29th April 2016

Part C – General Terms and Conditions

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GENERAL TERMS AND CONDITIONS

1. INTERPRETATION

1.1 Definitions

The following definitions apply in the Contract:

"Affected Party"	has the meaning given in clause 19.1(a).
"Air Dried Basis"	means the condition of a sample of Coal after the moisture in the sample has reached equilibrium with the laboratory atmosphere by exposure to it and "Air Dried" will be construed accordingly.
"As Received Basis"	means the condition of a sample of Coal at the time the sample was taken and "As Received" will be construed accordingly.
"Authorised Person"	has the meaning given in clause 23.3(a).
"Bill of Lading"	means the bill of lading for a Shipment.
"Business Day"	means any day (other than a Saturday, Sunday or public holiday) on which banks in Sydney, Australia and the capital city of the country in which the Buyer is incorporated are open for general banking business.
"Buyer"	has the meaning given in the Particulars.
"Calorific Value or CV"	means the amount of heat liberated per unit of mass of Coal when it is burned under conditions specified under the Standards and expressed in kilocalories per kilogram.
"Certificate of Analysis"	means a certificate of sampling and analysis for Coal analysed in accordance with clause 4.1.
"Certificate of Origin"	means a certificate which describes the product and tonnes of Coal loaded by the Seller in accordance with the rules of the country of origin and destination country.
"Certificate of Weight"	means a certificate of weight issued in accordance with clause 4.2.
"Coal"	means the product specified in the Particulars under the heading "Coal Brand/Type".
"Commercial Invoice"	has the meaning given in clause 6.1.
"Consequential Loss"	means: (a) any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business, loss of contract, loss of use, loss of goodwill, loss of production and any other economic loss (whether the loss is direct or indirect); (b) any direct or indirect financing costs or increase in operating costs; or (c) any loss or other amounts that are special, indirect or

consequential, whether present or future, fixed or unascertained, actual or contingent.

"Contract"	means the agreement between the Buyer and the Seller in relation to the sale and purchase of Coal which comprises the documents listed in clause 1 of Part A.
"Contract Price"	has the meaning given in the Particulars.
"Contract Quantity"	has the meaning given in the Particulars (as adjusted in accordance with the terms of this Contract).
"Corporations Act"	means the *Corporations Act 2001* (Cth).
"Default Rate"	means, in relation to any period, the thirty (30) day average of the Secured Overnight Financing Rate [("SOFR")] published by the New York Federal Reserve on the first day of such period or, if no such rate is then published, then on the next succeeding day on which such rate is so published, always provided that the Default Rate shall have a floor of zero and, if for any reason the Default Rate ceases to be available for a period of ten consecutive days, then the Fallback Rate shall apply instead of the Default Rate.
"Delivery Period"	means the relevant delivery period specified in the Particulars.
"Delivery Quantity"	means the relevant quantity of Coal for a Delivery Period specified in the Particulars (as adjusted in accordance with the terms of this Contract).
"Demurrage"	means the financial compensation payable by the Seller if time used in completing loading of the Vessel is greater than Laytime.
"Demurrage Rate"	means the applicable rate detailed in paragraphs 1.3, 2.3 and 3.3 of Part B.
"Despatch"	means the amount payable, if any, for Laytime saved in completing loading of the Vessel and being 50% of the relevant Demurrage Rate.
"Dollar, and USD"	means the lawful currency of the United States of America.
"DWT"	means the weight in Tonnes of cargo, stores, fuel, ballast, passengers and crew carried by the ship when loaded to her maximum appropriate loadline.
"Event of Force Majeure"	means any act, event or circumstance or combination of act, events or circumstances, which is not within the reasonable control of the Affected Party and as a direct or indirect result of which the Affected Party is unless otherwise excused, prevented or delayed in performing any of its obligations under this Contract, including in respect of both parties:

(a) war (whether declared or undeclared), acts of terrorism, sabotage, blockage, revolution, riot, insurrection, mobilisation, civil commotion or acts of public enemies;

(b) acts of God, including storms or cyclones, wind and waves arising from a cyclone, action of the

elements, epidemics, severe tropical storms, landslides, earthquakes, floods, bridge failure or road or rail closure due to washouts, impassability or natural disaster;

(c) strikes, lockouts, stoppages or other forms of industrial action;

(d) accidents (including accidental emissions of pollutants or hazardous substances), fire, explosion, radioactive contamination and toxic or dangerous chemical contamination;

(e) action or inaction of any government or Government Agencies or other competent authority (including any court of competent jurisdiction), including expropriation, restraint, order, prohibition, intervention, requisition, requirement, direction, embargo or regulation or control on imports, exports or foreign exchange;

(f) blockages or obstructions of the navigational channel, approach or berth at the Loading Port,

and including in respect of the Seller:

(g) a breakdown, failure of or interruption to the Seller's (or its Related Bodies Corporate) equipment, facilities, mines, processing or washing plant;

(h) a breakdown, failure, interruption or reduction in capacity to railroads or port, handling and loading facilities;

(i) any action or inaction by any third party including action or inaction of a joint venture partner or mine manager that prevents the Seller from fulfilling its obligations under this Contract;

(j) any failure or inability of a third party contracted by either the Seller or the mine manager to deliver, transport, handle or load any Coal (including Coal used for blending) whether or not pursuant to a contractual entitlement; or

(k) cumulative loading interruptions or exceptions of 24 running hours or more.

but does not include:

(l) financial hardship resulting in the inability to pay amounts when due or the inability of a party to make a profit or achieve a satisfactory rate of return resulting from performance or failure to perform its obligations under the Contract;

(m) loss of customers, loss of market share or reduction in the demand for coal; and

(n) failure or inability to perform attributable to the market or sale price for coal or currency devaluation.

"Fallback Rate"	means the short-term interest rate target set by the Federal Open Market Committee and published on the Federal Reserve's website, or if the Federal Open Market Committee does not target a single rate, the mid-point of the short-term interest rate target range set by the Federal Open Market Committee as published on the Federal Reserve's website, always provided that the Fallback Rate shall have a floor of zero".
"FOB"	has the meaning given in the INCOTERMS.
"General Terms and Conditions"	means the general terms and conditions set out in this Part C.
"Government Agency"	(a) a government or government department or other body; (b) a governmental, semi–governmental or judicial person including a statutory corporation; and (c) a person (whether autonomous or not) who is charged with the administration of a law.
"INCOTERMS"	means the INCOTERMS 2010 published by the International Chamber of Commerce.
"Independent Inspection Authority"	has the meaning given in the Particulars.
"Insolvency Event"	for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, taking of any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event under the laws of any applicable jurisdiction.
"Invoice Amount"	means the Invoice Price multiplied by the Invoice Weight
"Invoice Price"	means final price of the Coal, being the Contract Price, as adjusted, if applicable, in accordance with the Quality Adjustments.
"Invoice Weight"	means the weight of Coal specified in a Certificate of Weight, as adjusted, if applicable, in accordance with the Quality

	Adjustments.
"Joint Venture Participants"	means the Joint Venture Participants, if any, identified in the Particulars.
"Laycan"	means the period when a Vessel must arrive at the Loading Port to load Coal agreed in writing by the Parties.
"Laytime"	means the time allowed for loading of the Vessel as determined in accordance with clause 15.2.
"Letter of Credit"	means documentary credit that is: (a) unconditional, unrestricted and irrevocable; (b) issued through a prime internationally recognized bank acceptable to the Seller that is able to be confirmed at a bank approved by the Seller (if required by Seller); (c) payable on sight at the Australian counter of that bank; (d) in compliance with the Uniform Customs and Practice for Documentary Credits (2007 Revision – International Chamber of Commerce Publication No. 600); and (e) in compliance with clause 8.2.
"Loading Port"	has the meaning given in the Particulars.
"Loading Port Terms"	means the loading port terms set out at Part B.
"Long Ton"	means an imperial weight of 2,240 pounds (being approximately 1,016 kilograms)
"Marine Terminal Liability Regime"	means any agreement to be entered into between the owner or operator of a Loading Port, or an applicable Government Agency, and the owners of vessels in respect of the loading of Shipments at the Loading Port which sets forth the liability and provided remedies between such persons for losses arising from the performance by such persons of their duties in connection with such loading. The Marine Terminal Liability Regime includes any marine terminal manual, any conditions of use or other regulatory instruments (whether as agreed by the master of a vessel or mandatorily applied, including those applicable by law), or any portion thereof that contain such liability provisions.
"Mine"	has the meaning given in the Particulars.
"New Tax"	means any Tax that did not exist as at the date of the Contract.
"NCIG"	means Newcastle Coal Infrastructure Group Pty Ltd ABN 35 111 228 221.
"Notice of Readiness" or "NOR"	means a notice to be given by or on behalf of the Buyer to the Seller that the Vessel is in all respects ready to load the Coal for shipment to the Buyer in accordance with the Contract.
"NPC"	means Newcastle Port Corporation, managers of Newcastle

Harbour shipping movements.

"Particulars"	means the particulars of the Contract set out at Part A.
"Payment City"	has the meaning given in the Particulars.
"Payment Documents"	means: (a) Certificate of Origin issued by the Seller; (b) Commercial Invoice signed by the Seller; (c) one set of three originals and three non-negotiable copies of the 'clean on board' Bill of Lading (d) Certificate of Weight; and (e) Certificate of Analysis.
"Purpose"	has the meaning given in clause 23.2(a).
"PWCS"	means Port Waratah Coal Services Ltd ABN 99 001 363 828.
"Quality Adjustment"	means the adjustments to the Contract Price (and the weight of the Coal, if applicable) to be made under paragraph 10 of Part A of the Particulars in relation to the quality of the Coal.
"Quarter"	means each period of 3 months in a Delivery Period, with the first Quarter in a Delivery Period commencing at the beginning of that Delivery Period.
"Rail Infrastructure"	means the railway and associated infrastructure used to transport the Coal from the Mine to the Loading Port.
"Rejection Limit"	means the rejection limit for a component of the Coal, as set out in the far right hand column of the Specifications;
"Sanction"	means any sanction, regulation, statute, official embargo measures or any 'Specially Designated Nationals' or 'Blocked Persons' lists, or any equivalent lists maintained and imposed by the United Nations, the European Union, Her Majesty's Treasury in the United Kingdom, the United States Department of Treasury's Office of Foreign Assets Control, the Commonwealth of Australia or any other Government Agency.
"Sanctioned Person"	means any person who: (a) is subject to a Sanction; (b) is connected, directly or indirectly, to any person who is subject to a Sanction; or (c) the Seller, acting reasonably, believes is or may be connected with a person who is, directly or indirectly, subject to a Sanction.
"Seller"	has the meaning given in the Particulars.
"Shipping Documents"	means those documents specified in clause 8.4.

"Shipping Schedule"	has the meaning given in clause 12.1(c).
"Shipping Tolerance"	has the meaning given in the Particulars.
"Shipment"	means the Coal loaded or to be loaded into a vessel for sale and delivery to Buyer under this Contract.
"Special Conditions"	means any special conditions set out at Part A.
"Specifications"	means the specifications for each component of the Coal set out in paragraph 15 of the Particulars.
"Standards"	means the relevant analysis standards published by the International Organization for Standardization (ISO).
"Tax"	means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost, fee, deduction, goods and services tax, compulsory loan or withholding obligation of whatever nature, whether direct or indirect by whatever method collected or recovered, and includes any interest, fine, penalty, charge, fee or any other amount imposed by a Tax Authority.
"Tax Authority"	means any Governmental Agency responsible for the assessment, collection, withholding or administration of Tax in any country or jurisdiction.
"Term"	means the term of the Contract, as set out in the Particulars.
"Tonne"	means a metric tonne of 1,000 kilograms.
"Transaction"	means the sale of Coal from the Seller to the Buyer under the Contract.
"Turn Time"	has the meaning given in clause 16.1.
"Typical Specification"	means the typical specification for a component of the Coal as set out in the Specifications.
"VAS"	Vessel Arrival System as imposed by Newcastle Port Corporation
"Vessel"	means a motor marine bulk carrier chartered by or on behalf of the Buyer to transport the Coal.
"Weather Working Day" or "WWD"	means a working day of 24 consecutive hours except for any time when weather, tides or other environmental conditions prevents the loading of the vessel or would have prevented it, had work been in progress.

1.2 Rules for interpreting the Contract

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting the Contract, except where the context makes it clear that a rule is not intended to apply.

(a) A reference to:

(i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re–enacted or replaced, and includes any subordinate legislation issued under it;

(ii) a document (including the Contract) or agreement, or a provision of a document (including the Contract) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

(iii) a party to the Contract or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;

(iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and

(v) anything (including a right, obligation or concept) includes each part of it.

(b) A singular word includes the plural, and vice versa.

(c) A word which suggests one gender includes the other genders.

(d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

(e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

(f) A reference to **information** is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

(g) The word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing.

(h) The expressions **subsidiary**, **holding company** and **related body corporate** have the same meanings as in the Corporations Act.

1.3 Non Business Days

If a payment (but for this clause) must be made or done on a day on which the relevant banks in the Payment City are not open to process that payment, then it must be made or done on the preceding Business Day.

1.4 Multiple parties

(a) If the Buyer is made up of more than one person, then unless otherwise specified in the Particulars:

(i) an obligation of those persons is several in equal proportions; and

(ii) a right of those persons is held by each of them severally.

(b) If the Seller is acting as the disclosed agent of two or more Joint Venture Participants, then the Buyer acknowledges and agrees that:

(i) the Seller enters into the Contract as agent for and on behalf of each Joint Venture Participant;

(ii) the liability of each Joint Venture Participant under the Contract is several in proportion to its respective proportionate interest from time to time in the joint venture between those Joint Venture Participants; and

(iii) a right of those Joint Venture Participants is held by each of them severally.

1.5 The rule about "contra proferentem"

The Contract is not to be interpreted against the interests of a party merely because that party proposed the Contract or some provision in it or because that party relies on a provision of this Contract to protect itself.

2. TERM

This Contract is valid for the Term and terminates at the end of the Term unless terminated earlier in accordance with clause 20.

3. PRICE AND QUANTITY

3.1 Quantity

The Seller agrees to sell and make available for delivery and the Buyer agrees to purchase and take delivery of the Delivery Quantity for each Delivery Period and the Contract Quantity on the terms of the Contract.

3.2 Price

The price payable by the Buyer to the Seller for Coal delivered during the Term is the Contract Price, as adjusted, if applicable, in accordance with the Quality Adjustments.

3.3 Delivery

In each Delivery Period the Seller must deliver and, the Buyer must take delivery of, the quantities of Coal specified in clause 3.1 on a reasonably even spread basis over the Delivery Period.

3.4 Variation in Quantity and Delivery

Except as otherwise specified in this Contract, the quantity of Coal specified in clause 3.1 and the Delivery Period specified in clause 3.3 cannot be varied unless the Parties agree in writing.

4. QUALITY AND WEIGHT DETERMINATION

4.1 Quality

(a) The Seller must cause a representative sample to be taken from each Shipment by the Independent Inspection Authority in accordance with the Standards, and cause such sample to be analysed by the Independent Inspection Authority.

(b) The Seller must provide the Buyer with a Certificate of Analysis from the Independent Inspection Authority for each Shipment showing the results of such analysis for each item specified in the Specifications.

(c) The results of the Certificate of Analysis will, except in the case of manifest error, be conclusive and final and will be the basis of the payment for the relevant Shipment.

4.2 Weight

(a) The Seller must engage a licensed marine surveyor to determine the weight of each Shipment at the Loading Port to the nearest Tonne.

(b) The Seller must provide the Buyer with a draft survey certificate for each Shipment (**"Certificate of Weight"**) confirming the weight of each Shipment.

(c) The Certificate of Weight will, except in the case of manifest error, be conclusive and final and will be the basis of payment for the relevant Shipment.

4.3 Cost of Quality and Weight Determination

The cost of determining the quality and weight of Coal in accordance with clause 4.1 and 4.2 will be for the account of the Seller.

4.4 Buyer's right to observe

The Buyer may, at its own cost, nominate personnel to attend and observe the determination of the quality of Coal and weight of the Shipment at the Loading Port (subject to the discretion of the Loading Port). The Seller must use its reasonable endeavours to facilitate such attendance and observation.

4.5 Discrepancy

If the Buyer reasonably determines, as a result of an analysis and/or a draft survey conducted at the discharging port, that there is a material difference between the results so obtained and those set forth in the Certificate of Weight or the Certificate of Analysis, then the Buyer and the Seller must consult together to determine the cause of such difference and may mutually agree on measures designed to avoid a recurrence of the discrepancy, which may include where appropriate a change of the Independent Inspection Authority.

4.6 Sole remedy

(a) If the row in the Particulars named "Rejection Limit applicable" specifies "No" or is blank, then there is no Rejection Limit and the Buyer is not entitled to reject Coal by reason of any non-compliance with the Specifications. If the row in the Particulars named "Rejection Limit applicable?" specifies "Yes", then this clause 4.6 shall apply.

(b) If the Certificate of Analysis shows that the sample taken by the Independent Inspection Agency exceeds the Rejection Limit, the Buyer may (unless clause 4.6(c) applies), within five days of the receipt of the Certificate of Analysis by the Buyer, notify the Seller that:

(i) the sample exceeds the Rejection Limit; and

(ii) the Buyer intends to reject the Coal if the parties are not able to agree an appropriate financial adjustment in respect of the sample exceeding the Rejection Limit.

(c) The Buyer may not give a notice under clause 4.6(b) if:

(i) the relevant Shipment has been discharged;

(ii) the Coal has been co-loaded onto a Vessel with other coal in the same hatch; or

(iii) the Coal has otherwise been blended with other coal.

(d) If the Buyer gives the Seller notice in accordance with clause 4.6(a), the Buyer and the Seller must negotiate for a period of five days from the date of such notice with a view to reaching a financial adjustment as a result of the sample exceeding the Rejection Limit.

(e) If the parties are not able to reach agreement in the period referred to in clause 4.6(d), the Buyer may within two days of expiry of the period referred to in clause 4.6(d), reject the Coal by notice in writing to Seller provided that if the Buyer elects to unload the Shipment or does not reject the Coal within two days of expiry of the period referred to in clause 4.6(d):

(i) it may not reject the Coal; and

(ii) it will be deemed to have waived all of its rights in relation to the Coal exceeding the Rejection Limit.

(f) If the Buyer exercises its right to reject the Coal in accordance with clause 4.6(e), then:

(i) the Buyer is not liable to pay for such Shipment;

(ii) if the Buyer has already paid for such Shipment, the Seller must promptly refund the amount received upon return of the Payment Documents to the Seller;

(iii) to the extent title has not been retained by the Seller, title in the Shipment reverts to the Seller on rejection;

(iv) disposal of the Coal will be for the Seller's account;

(v) the Buyer must send the Payment Documents to the Seller (or as directed by the Seller) within two Business Days of the notice given under clause 4.6(e);

(vi) risk in the Coal reverts to the Seller on return of the Payment Documents, or, if the Payment Documents are couriered, upon receipt by the Seller from the Buyer of a copy of the Payment Documents and the Air Way Bill by which the Payment Documents have been couriered;

(vii) the Delivery Quantity for that Delivery Period and the Contract Quantity will be reduced by the amount of the rejected Coal;

(viii) such rejection and cancellation, together with return of the amount paid for such rejected Coal (if relevant) will be the Buyer's sole remedy in connection with such rejected Coal and Shipment;

(ix) the Buyer must instruct the Vessel (and the Vessel's master) carrying the Shipment to take such actions as are directed by the Seller (at the Seller's cost), including if and as directed by the Seller, instructing the Vessel's master to discharge the Vessel without presentation of the Payment Documents and giving such assurances and indemnities as required by the Vessel's master (subject, to the extent that the Buyer has acted in accordance with the Seller's instructions and has not been negligent, to receiving an indemnity from the Seller in respect of such indemnities and assurances); and

(x) other than as expressly set out in this clause 4.6(f), neither party will have any further liability to the other in connection with such rejected Coal or Shipment.

5. DELIVERY, TITLE AND RISK

5.1 Free On Board

All Coal sold subject to the Contract will be delivered FOB spout trimmed to the Buyer's nominated Vessel at the Port of Loading in accordance with the Shipping Schedule. If there is any inconsistency between INCOTERMS and the terms of this Contract, this Contract will prevail.

5.2 Title

Title in the Coal in respect of each Shipment will pass from Seller to the Buyer upon receipt by the Seller of payment of 100% of the Invoice Amount in cleared funds from the Buyer.

5.3 Risk

All risk in respect of each Shipment will pass from the Seller to the Buyer as the Coal is placed on board the Vessel at the Loading Port.

6. INVOICING AND SHIPPING DOCUMENTATION

6.1 Invoice

(a) On receipt by the Seller of the Certificate of Analysis and Certificate of Weight, the Seller must prepare and issue an invoice to the Buyer which sets out:

(i) the Invoice Price;

(ii) the Invoice Weight;

(iii) the Invoice Amount; and

(iv) the date of the Bill of Lading,

("**Commercial Invoice**").

6.2 Adjustment for fractions

If, as a result of a Quality Adjustment to the Contract Price calculated in accordance with the Particulars, the Invoice Amount is a fraction, the Invoice Amount must be rounded to two decimal places.

6.3 Issue of Bill of Lading

The Buyer must ensure that the Bill of Lading is signed and released by the Vessel's master or agent immediately on completion of loading of the Vessel at the Loading Port, in accordance with the *Carriage of Goods by Sea Act 1991* (Cth).

6.4 Payment costs

All banking charges, fees and costs arising from or in connection with any payment from the Buyer to the Seller for a Shipment, whether by telegraphic transfer or Letter of Credit, will be for the account of the Buyer.

7. PAYMENT BY TELEGRAPHIC TRANSFER

This clause 7 applies where the Particulars specify that the payment terms are "Telegraphic Transfer".

7.1 Despatch of shipping documentation

On completion of loading each Shipment, the Seller must within 5 days of date of Bill of Lading send copies by email and originals by courier of the Payment Documents to the Buyer:

7.2 Payment terms

(a) The Buyer must pay the amount of the Commercial Invoice ("**Invoice Amount**") within 10 days of the date of the Bill of Lading or six days after receipt by Buyer of Shipping Documents by email, whichever is later.

(b) The Buyer is not entitled to withhold payment of the Invoice Amount where the Bill of Lading has not been released in accordance with clause 6.3.

(c) The Buyer must pay the Invoice Amount by telegraphic transfer to the account specified in the Commercial Invoice and must include a reference to the name of the Vessel and the date of the Bill of Lading in the remittance message.

7.3 Payment without deduction

The Buyer must make payment of the Invoice Amount in accordance with clause 7.2 without any set–off or counterclaim or any other deduction and (to the extent permitted by law) free and clear of, and without deduction or withholding for or on account of, any Taxes.

7.4 Deductions and withholdings

If at any time an applicable law obliges the Buyer to make a deduction or withholding in respect of Taxes from a payment to the Seller under the Contract, the Buyer must:

(a) notify the Seller of the obligation promptly after the Buyer becomes aware of it;

(b) ensure that the deduction or withholding does not exceed the minimum amount required by law;

(c) pay to the relevant Government Agency on time the full amount of the deduction or withholding and promptly deliver to the Seller a copy of any receipt, certificate or other proof of payment; and

(d) indemnify the Seller against the deduction or withholding by paying to the Seller, at the time that the payment to the Buyer is due, an additional amount that ensures that, after the deduction or withholding is made, the Seller receives a net sum equal to the sum that it would have received if the deduction or withholding had not been made.

7.5 Right to suspend

If the Buyer fails to comply with this clause 7 in any respect, the Seller may, without prejudice to any other rights under the Contract and acting reasonably, suspend performance of the Contract upon notice to the Buyer.

8. LETTER OF CREDIT PAYMENT TERMS

This clause 8 applies where the Particulars specify that the payment terms are Letter of Credit.

8.1 Buyer to establish Letter of Credit

The Buyer must arrange for a Letter of Credit acceptable to the Seller at the Seller's sole discretion to be received by a bank nominated by the Seller not later than 15 days prior to the scheduled arrival of the Vessel at the Loading Port.

8.2 Requirements for Letter of Credit

The Letter of Credit must:

(a) be issued by a prime internationally recognised bank acceptable to the Seller;

(b) be unconditional, unrestricted and irrevocable;

(c) be in an amount in USD, sufficient to cover 105% of the maximum amount that may payable for the relevant Shipment (after taking into consideration the maximum Shipping Tolerance which may apply to that Shipment);

(d) be freely negotiable or, if local banking rules or customs require it to be restricted, restricted to a negotiating bank nominated by the Seller;

(e) state that "CONGENBILL" or other charter party Bills of Lading are acceptable;

(f) provide for reimbursement by telegraphic transfer within three Business Days of the negotiating bank's claim;

(g) allow for confirmation by the Seller at a bank approved by the Seller (with the confirmation fees to be for the Seller's account); and

(h) have an expiry date not less than 60 days after the last date of the Laycan.

8.3 Letter of Credit not acceptable to the Seller

(a) In the event that the Letter of Credit is not acceptable to the Seller at the Seller's sole discretion, then the Buyer must arrange for the issuing bank to amend the Letter of Credit in accordance with the Seller's requests.

(b) Any shipping delays and associated costs (which will include Demurrage) incurred due to a delay in a Letter of Credit acceptable to the Seller being received by the bank nominated by the Seller are the responsibility of the Buyer.

(c) In the event of any delay to a Letter of Credit acceptable to the Seller being received by the nominated bank, the Seller will not accept the Notice of Readiness and Laytime will not start.

8.4 Payment

(a) The Seller may draw against the Letter of Credit established by the Buyer under clause 8.1, the Invoice Amount for each Shipment on presentation to the negotiating bank of the shipping documents set out below (or as mutually agreed between the Parties), on completion of loading each Shipment;

(i) Certificate of Origin issued by the Seller;

(ii) Commercial Invoice signed by the Seller;

(iii) one set of three originals and three non–negotiable copies of the "clean on board" Bills of Lading;

(iv) Certificate of Weight; and

(v) Certificate of Analysis.

(b) Without limiting the Seller's rights under clause 8.4(c) if the amount received by the Seller under the Letter of Credit on the relevant payment date is less than the Invoice Amount, the Buyer must within two Business Days in the Payment City of written demand by the Seller pay to the Seller an amount equal to the Invoice Amount less the amount received by the Seller under the Letter of Credit, together with any accrued interest payable under clause 9 in respect of that amount.

(c) If the Seller at any time reasonably considers that the Letter of Credit does not have sufficient available credit to meet the Buyer's payment obligations for the next Shipment, the Buyer must, within five Business Days in the Payment City of receiving notice of such deficiency from the Seller, provide a replacement Letter of Credit with sufficient available credit to meet the Buyer's payment obligations for that Shipment.

8.5 Currency

All payments under the Contract must be made in USD.

8.6 Right to suspend

If the Buyer fails to comply with its obligations under this clause 8, the Seller may, without prejudice to any other rights under the Contract and acting reasonably, suspend performance of the Contract upon written notice to the Buyer.

9. INTEREST

9.1 Overdue payments

(a) The Buyer must pay interest on each amount that is not paid when due, from (and including) the day on which it falls due to (but excluding) the day on which it is paid in full, at the rate calculated in accordance with clause 9.1(b). This interest must be paid on demand.

(b) Interest on an unpaid amount accrues each day at a rate equal to the sum of Default Rate and 4% per annum, and is capitalised (if not paid) every seven days.

(c) This clause 9.1 does not affect the Buyer's obligation to pay each amount under the Contract when it is due.

9.2 Interest after judgment

If a liability of the Buyer becomes merged in a judgment or order, the Buyer, as an independent obligation, must pay interest on the amount of that liability, from (and including) the date of the judgment or order until it is paid in full, at the higher of the rate that applies under the judgment or order and the rate calculated in accordance with clause 9.1(b).

9.3 Accrual and calculation of interest

Interest under this clause 9:

(a) accrues daily; and

(b) is calculated on the basis of the actual number of days on which interest has accrued and of a 365 day year.

10. MATERIAL ADVERSE CHANGE

10.1 Definitions

For purposes of this clause 10:

(a) **"Material Adverse Change"** means, in respect of the Buyer, any event or circumstance, or series of events or circumstances, which in the Seller's reasonable opinion will have a material adverse effect on:

(i) the consolidated long term creditworthiness of the Buyer or its affiliates; or

(ii) the Buyer's ability to perform its obligations under the Contract; and

(b) **"Adequate Assurance"** means cash or a Letter of Credit.

10.2 Material Adverse Change

(a) Upon the occurrence of a Material Adverse Change, the Seller may deliver a written demand to the Buyer requesting that the Buyer provide Adequate Assurance to the Seller.

(b) If the Seller requests Adequate Assurance, the Buyer must deliver Adequate Assurance to the Seller within 10 Business Days of its receipt of the Seller's written demand for Adequate Assurance.

(c) The Seller may hold the Adequate Assurance until the earlier of:

(i) in the Seller's reasonable opinion, the Material Adverse Change has been remedied or no longer exists; or

(ii) the Contract has been terminated and the Buyer's obligations under the Contract have been discharged.

10.3 Right to suspend

If the Buyer fails to comply with its obligations under this clause 10, the Seller may, without prejudice to any other rights under the Contract and acting reasonably, suspend performance of the Contract upon written notice to the Buyer.

10.4 Right of set-off

The Seller may set off the Adequate Assurance against any amount that is or may become owing to it by the Buyer under the Contract.

11. CONDITIONS CONCERNING TRANSPORTATION AT ALL PORTS

11.1 Obligation of the Buyer

(a) The Buyer will be solely responsible for the arrangement, and bear the risk, of ocean transportation of the Coal purchased under the Contract and must arrange for and provide such number of Vessels, which comply with clause 11.2, at the Loading Port as are required to enable the Buyer to take delivery of such Coal.

(b) In assuming the obligation under clause 11.1(a), the Buyer will be solely responsible for:

(i) the payment of port charges, tonnage dues, light dues and other Tax assessments or charges which are customarily payable on or with respect to the Vessel at the Loading Port; and

(ii) any damages, costs, penalties, interest, fines and other losses arising as a result of loss of or damage to the Vessel, including without limitation, loss of or damage to the Vessel caused by the operator of the Loading Port or its employees, contractors or agents.

11.2 Buyer's obligations with respect to Vessels

(a) The Buyer must ensure that each Vessel is:

(i) classed for carriage of coal in bulk and otherwise be seaworthy and suitable for the mechanical loading, carriage and discharge of Coal;

(ii) maintained, repaired, operated and provided in a manner compatible in all respects with the Loading Port and in compliance with Australian and international maritime regulations;

(iii) a vessel that was constructed less than 20 years prior to the last day of the Laycan;

(iv) acceptable to the relevant Government Agencies and conforms with all laws in force at, or applicable to, the Loading Port including to secure the safe and unhindered loading of Coal in bulk;

(v) a single deck bulk carrier which is of such size, draught, airdraught and other dimensions to permit it to safely enter, berth, lay alongside, load and discharge and depart always safely afloat from the Loading Port and Discharge Port.

(b) The Buyer represents and warrants that each Vessel will:

(i) be classed highest Lloyds (+100 A1) or equivalent;

(ii) be in a thoroughly seaworthy condition;

(iii) comply in every respect with all international and local regulations, including regulations of the Loading Port, including the terms of the applicable Marine Terminal Liability Regime (or similar document establishing the liability between the vessel and the Loading Port), and all regulations governing the carriage by sea of coal in bulk;

(iv) be operated to internationally accepted standards by operators, officers and crew who have obtained a high standard of expertise in ship operation;

(v) be covered by all the insurance policies (and for that level of coverage) customary for vessels of a similar nature to the Vessel, including entered with a Protection and Indemnity (**"P&I"**) Club, which must be a member of the International Group of P&I Clubs, for third party liability cover and the compulsory level of cover against marine pollution liability as required by any applicable Government Agency from time to time;

(vi) be up to date with all required surveys, inspections, certificates and documents that are required under the laws of the flag state of the Vessel and of Australia as required under the *International Convention for the Safety of Life at Sea 1974*;

(vii) not be owned, chartered, operated or controlled by a Sanctioned Person; and

(viii) be maintained in accordance with the provisions of this clause 11.1(b) for the duration of the voyage.

11.3 Rejection of Vessel

(a) The Seller may reject the Buyer's nominated Vessel if the Vessel does not comply with Loading Port regulations or the requirements of this Agreement.

(b) If the Buyer's nominated Vessel is rejected by the Seller under clause 11.3(a) or by the operator of the Loading Port (for any reasons whatsoever), then the Buyer must nominate a replacement Vessel in sufficient time to ensure that the schedules submitted under clause 12 are complied with by the Buyer.

(c) The Seller has no liability to the Buyer in relation to the rejection of a Vessel,

(d) The acceptance of a Vessel will not constitute acceptance of that Vessel when nominated for any subsequent loading.

11.4 Insurance

(a) The Buyer must maintain, for each Shipment:

(i) adequate cargo insurance for all commercially insurable risks for the full value of each Shipment; and

(ii) adequate marine insurance (including insurance against hull and machinery risks) and charterer's liability insurance.

(b) For liability for any loss or damage suffered by any third party arising as a result of the acts or omissions of the Vessel, the insurance to be maintained by the Buyer must be from a P&I Club that is part of the International Group of P&I Clubs.

(c) The Buyer must provide the Seller with acceptable proof of currency and coverage of the insurances required by this clause 11.4(a) at least seven days prior to the scheduled arrival of the vessel nominated by the Buyer at the Loading Port.

11.5 Obstruction to Loading Port

If the Vessel sinks, becomes an obstruction for the Loading Port or becomes an environmental hazard, the Buyer must take all reasonable steps to facilitate the removal of the obstruction or hazard.

11.6 Damage to Loading Port or other vessels

The Buyer indemnifies the Seller and its related bodies corporate on demand for any cost, expense, damage, penalties, liability, interest, fine or other loss suffered or incurred by the Seller or any of its related bodies corporate arising from or in connection with (and irrespective of any negligence) a vessel nominated by Buyer, including blockage of port or berth, damage to the nominated vessel or

any other vessels, stevedore damage, damage to port or berth or loading facilities, damage to the environment, personal injury claims, breach of law or breach of the Marine Terminal Liability Regime.

11.7 Arrest of Vessel or Sanctioned Person

If the Vessel has been arrested or the Seller, acting reasonably, considers the owner, charterer, or operator of the Vessel, or any other person involved in the Transaction, to be a Sanctioned Person, the Seller may suspend performance of the Contract and request the Buyer to provide an alternate Vessel.

12. CONDITIONS CONCERNING SHIPPING SCHEDULE

12.1 Shipping Schedule

(a) Unless otherwise agreed, Shipments are to be evenly spread throughout the Delivery Period (by reference to vessel estimated time of arrival at the Loading Port).

(b) At least three months prior to the commencement of each Delivery Period, the Buyer must submit to the Seller, for approval by the Seller, a shipping schedule indicating the quantity of Coal to be shipped during each Quarter in that Delivery Period.

(c) At least 30 days prior to commencement of each Quarter the Buyer must submit to the Seller for approval by the Seller, a shipping schedule (**"Shipping Schedule"**) indicating the quantity of the Coal compromising each Shipment scheduled for delivery during each month of that Quarter.

(d) No later than 30 days prior to the commencement of each month, the Buyer must nominate to the Seller, for approval by the Seller, the Laycan and the approximate cargo size for all Shipments scheduled for delivery in that month.

12.2 Variation by Vessel's master

(a) The quantities of Coal to be loaded onto each Vessel may be increased or decreased by an amount up to the Shipping Tolerance of the scheduled tonnage for that Vessel at the discretion of the Vessel's master.

(b) Notwithstanding the foregoing, the Seller is not obliged to supply Coal in excess of the total Contract Quantity, unless agreed otherwise in writing by the Parties.

12.3 No two Vessels

Should the Buyer request multiple Vessel nominations with the same Laycan and arrival at the Loading Port, the Seller must reasonably consider such request, but reserves its rights on acceptance depending on the situation, for example Vessel queuing constraints and cargo availability.

12.4 Notification of arrival

The Buyer must arrange for the Vessel's master to advise the Seller of its estimated time of arrival at the Loading Port:

(a) at the time of departure from the last port preceding the voyage to the Loading Port, if known; and

(b) Fourteen days, ten days seven days, 48 hours and 24 hours, prior to the Vessel's expected time of arrival at the Loading Port.

12.5 Vessel nomination

(a) The Buyer must ensure that the Vessel arrives at the Loading Port within the Laycan agreed in writing by the Parties. Any subsequent changes to the Laycan must be agreed by the Parties in writing.

(b) At least ten (10) days prior to the commencement of Laycan, and not later than fourteen (14) days prior to the expected date of arrival of Vessel at Loading Port, the Buyer must nominate a Vessel that conforms to the relevant guidelines and regulations of the Port Authority and Loading Terminal as in force from time to time. The Buyer must notify the Seller of:

(i) the name of the Vessel and IMO number;

(ii) the Vessel's estimated time of arrival at the Loading Port;

(iii) the actual quantity of Coal to be loaded on the Vessel; and

(iv) should the Vessel have not previously loaded at the Loading Port, then the following information will be required at the time of nomination:

- Type of ship
- Date built
- Draft
- Breadth
- Length (LOA)
- Gross registered tonnage (GRT)
- Tonnes per centimetre (TPC)
- Bow to bridge m
- Bow to no.1 hatch
- Bow to midship draft marks
- Bridge to last hatch
- Gangway location
- Bow to top of gangway
- Gangway length
- Number of holds
- Number of hatches
- Smallest hatch dimensions
- Hatch type

In addition to the above, the Vessel must provide a copy of a relevant terminal loading plan and complete a Loading Port Vessel Questionnaire and supply the following certificates:

- Vessel's ISS Certificate
- Certificate of Class
- Document of Compliance
- Safety Management Certificate

12.6 Minimum Shipments

The Shipments contained in each Shipping Schedule must provide for a minimum quantity of two hatches of Coal.

13. LOADING TERMS

The loading terms for the relevant Loading Port, being:

(a) the Port of Brisbane;

(b) the Port of Gladstone; or

(c) the Port of Newcastle,

are set out in Part B.

14. NOTICE OF READINESS – APPLICABLE TO ALL PORTS

14.1 Notice of Readiness - tender requirements

(a) Where the Port of Gladstone or the Port of Brisbane is the Loading Port, the NOR to load must be tendered by the Vessel to the office of the Buyer's agent after arrival of the Vessel at the limits of the Loading Port between 0900 and 1700 hours Monday to Friday and 0900 and 1200 hours Saturday (local time at the Loading Port). At the discretion of the relevant authority at the Loading Port, the NOR may be accepted subject to the NOR being tendered within the agreed Laycan and the Vessel being in all respects ready to load, in Free Pratique and customs cleared. If prior to commencement of loading, the Vessel is found not to be ready in all respects, the NOR may, at the discretion of the relevant authority be deemed invalid and any time already counted toward Laytime or Turn Time will be re-set and the Vessel must re-tender its NOR.

(b) Where the Port of Newcastle is the Loading Port, NOR shall be tendered by the Vessel and accepted by the Seller after arrival at the Loading Port, or where NPC Vessel Arrival System (VAS) is in operation, the "**Notified Arrival Time**", determined in accordance with the VAS, whether in berth or not during office hours, between 0900 and 1700 hours Monday to Friday and 0900 and 1200 hours Saturday, provided the Vessel is in free pratique and in all respects ready to load. If prior to the commencement of loading, the Vessel is found not to be ready in all respects, the NOR may, at the discretion of the relevant authority be deemed invalid and any time already counted toward Laytime or turn Time will be reset and the Vessel must re-tender its NOR.

(c) If:

(i) the Vessel is prevented from entering the commercial limits of the Loading Port because a loading berth, layberth or anchorage is not available under the order of the Seller or the port authorities; and

(ii) the Vessel's master warrants that the Vessel is otherwise physically ready in all respects to load,

the NOR may be tendered by radio and otherwise in accordance with clause 14.1(a).

(d) If, upon berthing, the Vessel is not ready in all respects to load, then the original NOR tendered by the Vessel is invalid and the Vessel must tender another NOR when the Vessel is ready in all respects to load. Time lost until the Vessel is ready does not count as Laytime used.

15. LOADING RATE AT ALL PORTS AND SETTLEMENT OF DEMURRAGE

15.1 Determination of loading rate

(a) When the Vessel is fully loaded at the Loading Port, the Vessel's DWT will be used to determine the applicable loading rate.

(b) When the Vessel is only partially loaded at the Loading Port, the loading rate will be determined by the tonnage loaded onto the Vessel at the Loading Port.

(c) For the purposes of this clause 15.1, **"partial loading"** includes when upon completion of loading:

(i) a hatch remains empty; or

(ii) the vessel is loaded to:

(A) less than 95% for panamax vessels; or

(B) 85% for cape size vessels

15.2 Calculation of Laytime

The allowable Laytime for a Vessel is calculated by dividing the actual quantity of Coal loaded on the Vessel by the applicable loading rate for the Vessel at the Loading Port.

15.3 Laytime Statement

The Seller or its agent must prepare the Laytime Statement based on the Statement of Fact for each Shipment. The Seller must use its reasonable endeavours to provide the Buyer with the Laytime Statement within one month of issue of the Bill of Lading.

15.4 Payment for Demurrage

(a) The Seller must pay Demurrage to the Buyer to the extent that the Laytime calculated in accordance with this Contract exceeds the allowable Laytime calculated in accordance with clause 15.2.

(b) If Demurrage is payable by the Seller in relation to a Shipment, then the Buyer must send a debit note to the Seller for the amount payable and the Seller must within 10 Business Days of receipt pay by inter-bank transfer to the Buyer's nominated account the amount then due to the Buyer.

(c) The Buyer must not set-off or deduct any Demurrage from any amounts due to the Sellers under the Contract.

15.5 Payment for Despatch

(a) The Buyer must pay Despatch to the Seller to the extent that the Laytime calculated in accordance with this Contract is less than the allowable Laytime calculated in accordance with clause 15.2.

(b) If Despatch is payable by the Buyer in relation to a Shipment, then the Seller must send a debit note to the Buyer for the amount payable and the Buyer must within 10 Business Days of receipt pay by inter-bank transfer to the Seller's nominated account the amount then due to the Seller.

16. LAYTIME AT ALL PORTS

16.1 Commencement of Laytime

(a) Subject to clause 16.1(f), Laytime for loading will commence 12 hours (such time period being **"Turn Time"**) after Notice of Readiness has been accepted. If the Turn Time expires on a gazetted holiday, Laytime will not commence until 08:00 hours on the next Business Day (local time at the Loading Port).

(b) If after berthing the Vessel is found not to be ready in all respects to load, Laytime will not commence until the Vessel is in fact ready to load in all respects.

(c) If loading commences prior to the expiry of Turn Time, time actually used in loading during the Turn Time period will count as Laytime.

(d) If an Event of Force Majeure is notified by the Seller in accordance with clause 19.1, the Laytime lost as a result of the Event of Force Majeure will not count as Laytime used unless otherwise specified in this clause 16.1(a).

(e) Time taken to move the Vessel from anchorage to berth will not count as Laytime and no Demurrage will be payable in respect of such time, whether the Vessel is on Demurrage or not.

(f) Once Laytime has commenced, any loading interruption resulting from changing coal types is part of loading and therefore is not a loading interruption.

(g) If the Vessel arrives before the nominated Laycan, Laytime commences no earlier than 12 hours after the commencement of the nominated Laycan. If the Vessel arrives after the expiry of the nominated Laycan, Laytime commences no earlier than the commencement of loading.

(h) Laytime will cease to count at the point of time when loading and all trimming work have been completed.

16.2 Loading interruptions less than 24 hours.

(a) Notwithstanding clause 16.1, all loading interruption(s):

(i) of up to 24 consecutive hours; and

(ii) that are outside of the Seller's control (including but not limited to electrical or mechanical breakdowns and shifting of the Vessel for loading),

will not count as Laytime used provided that the Seller promptly submits to the Buyer after completion of loading a Statement of Facts countersigned by the Vessel's master stating the cause(s) and the period(s) of the loading interruption(s).

(b) Loading interruption(s) shall include but shall not be limited to the following:

(i) Due to waiting on delivery at the Loading Port of another shipper's coal which is to be shipped on the same vessel as the Seller's coal;

(ii) Due to the unavailability of labour at the coal terminal;

(iii) Where the relevant port authority or coal terminal orders preference of loading be given to another vessel which is nearer to completion.

(iv) Where the relevant port authority or coal terminal orders coal loading to cease to allow another vessel to negotiate the Steelworks Channel;

(v) If loading ceases due to mechanical/electrical breakdown to shiploader, conveyor or reclaimer at Loading Port;

(vi) If the coal terminal experiences resource conflict with stacker/reclaimers

16.3 Loading interruptions in excess of 24 hours

Where a loading interruption is in excess of 24 consecutive hours and is a result of the occurrence of an Event of Force Majeure if the Seller notifies the Buyer of the Event of Force Majeure more than 24 hours after the commencement of the Event of Force Majeure, the period of time from the expiry of the 24 hour period until the notification of the Event of Force Majeure will count as Laytime.

16.4 Draft Survey

(a) When the actual time loading is interrupted by an interim draft survey, up to 15 minutes will count as Laytime used for each Vessel. In the event that the Seller or the Buyer requests a further interim draft survey then the following will apply:

(i) actual time consumed in making interim draft surveys requested by the Seller will count as Laytime;

(ii) actual time consumed in making interim draft surveys requested by a Vessel or the Buyer will not count as Laytime whether the Vessel is on Demurrage or not.

(b) In order to have a record of the foregoing, the Statement of Facts will record the time used in conducting interim draft surveys and at whose request the draft survey was carried out.

16.5 On Demurrage

Notwithstanding clauses 16.1 to 16.3 but subject to clause 16.6 and 16.7, once the Vessel is on Demurrage, all time used in loading the Vessel is to count as Laytime.

16.6 Exceptions

Notwithstanding that the Vessel is on Demurrage:

(a) any loading interruption that occurs:

(i) as a result of any act of the Buyer; or

(ii) due to the Vessel's requirements or the Master's instruction (which includes a draft survey, draft check time and deballast time); or

(b) time taken to move the Vessel from anchorage to the berth (all fast),

does not count as Laytime.

16.7 Loading obligations when awaiting tides

(a) Notwithstanding clause 16.5, if the Vessel is permitted by the operator of the Loading Port to wait in berth to take advantage of a higher tide, the Buyer must ensure that loading is stopped at a draught which will enable the Vessel to leave the berth at any intervening high tide and loading is resumed at the predicted time of high water on that intervening high tide.

(b) The Vessel may be required to stop loading to maintain sufficient under keel clearance over low water in accordance with the applicable Loading Port and loading requirements set out in Part B (as applicable).

(c) Notwithstanding clause 16.5, the time incurred as a result of such a stoppage will not count as Laytime even if the Vessel is on Demurrage.

17. COMBINED LOADING TERMS – FOR GLADSTONE AND NEWCASTLE PORTS

17.1 Seller agrees to combined loading

Provided that the operator of the Loading Port is able to achieve maximum utilisation of the loading equipment, the Seller will accept Vessels for combined loading of:

(a) two or more different brands of Coal; or

(b) coal of two or more shippers,

on board the one Vessel at the Loading Port in accordance with this clause 17.

17.2 Terms for combined loading

The relevant loading terms specified in Part B (as applicable) apply to the combined loading of the Vessel except as follows:

(a) if the Loading Port is:

(i) the Port of Gladstone, the NOR must be tendered to the first shipper to load as determined by the Vessel; and

(ii) the Port of Newcastle, the NOR must be tendered to the shipper with the largest quantity of coal to be loaded onto the Vessel,

(in each case such shipper being the **"Lead Shipper"**) and copies of the NOR are to be provided by the Vessel's Master or the Lead Shipper to the other shippers;

(b) Laytime used terminates upon completion of loading onto the Vessel of the final coal type;

(c) determination of:

(i) total cargo weight will be carried out by a draft survey; and

(ii) weights of individual coal types will be pro-rated according to shore weightometer figures, however if weightometer readings are not available, the weight of each coal type will be determined by individual draft survey;

(d) when the Vessel:

(i) is fully loaded at the Loading Port, the Vessel DWT will be used to determine the applicable loading rate to apply for calculation of Laytime allowed; or

(ii) is only partially loaded subject to clause 16.1(b), the applicable loading rate to apply for calculation of Laytime allowed will be determined by the aggregate amount of the two or more different types of coal loaded onto the Vessel;

(e) subject to clause 17.3, the Seller's maximum liability for payment of Demurrage and entitlement to Despatch will be the amount determined with reference to the proportion that the weight of Coal loaded bears to the total cargo weight;

(f) at the Port of Gladstone, the Lead Shipper is responsible for the preparation of the Statement of Facts, Laytime Statement and settlement of Demurrage and Despatch on behalf of the other shippers; and

(g) at the Port of Newcastle, the Lead Shipper is responsible for the preparation of the Statement of Facts. Each individual shipper is responsible for the settlement of their own Laytime Statement and Demurrage and Despatch.

17.3 Limited liability of the Seller

The Seller will have no responsibility or liability for any delay arising from or in connection with the action or inaction of other shippers and any time lost resulting from such delay will, subject to clause 17.2, not count as Laytime.

17.4 Consecutive loading

The Parties agree and acknowledge that the loading terms specified in this clause 17 have been agreed on the basis that one coal type will be completely loaded onto the Vessel before loading of the next coal type is commenced. The Buyer must use its best endeavours to ensure that multiple coal types are loaded consecutively.

18. REVIEW OF LOADING TERMS - ALL PORTS

(a) If the basic conditions at the Loading Port materially change during the Term, or if the loading terms set out in clause 17 and 13 (as applicable) become substantially inconsistent with the customs and practices prevailing in other major Australian coal ports, the Parties, at the request of either party, must meet to review such loading terms.

(b) To the extent that the basic conditions at the Loading Port are mandatory and are inconsistent with this Contract, the Loading Port terms shall prevail.

19. FORCE MAJEURE

19.1 Notification

(a) If a party is prevented, impeded or delayed in whole or in part from carrying out its obligations under the Contract (other than an obligation to pay money) as a result of an Event of Force Majeure (the **"Affected Party"**), it must give notice to the other party (the **"Non-Affected Party"**) as soon as practicable after it becomes aware that the Event of Force Majeure will prevent, impede or delay the due performance of its obligations under the Contract. The notice must:

(i) specify the obligations affected; and

(ii) fully describe the Event of Force Majeure.

(b) The Affected Party must use reasonable endeavours to remove or relieve the Event of Force Majeure and minimise the delay caused by the Event of Force Majeure.

19.2 Relief from performance of obligations

(a) Subject to clause 19.3 and provided that the Affected Party has validly given notice in accordance with clause 19.1, for the duration of the actual delay arising from the Event of Force Majeure specified in the notice, the Affected Party will not be liable to the Non-Affected Party for any delay in, or failure of performance of, its obligations under the Contract provided that nothing in this clause 19.2 will release or suspend:

(i) an obligation of a party to pay a monetary amount or to provide a letter of credit under the Contract; and

(ii) an obligation of the Buyer to submit Shipping Schedules in accordance with this Contract or to take delivery of Coal already loaded or while being loaded on a Vessel at the time of receipt by the Buyer of the notice of the Event of Force Majeure.

(b) The obligations of an Affected Party affected by an Event of Force Majeure will resume as soon as reasonably practicable after it is no longer affected by the Event of Force Majeure and for these purposes, the Seller will continue to be affected by the Event of Force Majeure to the extent there are delays to the mining, railing, loading or shipping schedule resulting from that Event of Force Majeure, notwithstanding that the actual event itself may have ceased.

19.3 Reduction of quantity due to Force Majeure

(a) If an Event of Force Majeure continues to affect a party's obligations under the Contract for a continuous period of 30 days or more, then the quantity of Coal specified in the Particulars which was not able to be delivered due to the Event of Force Majeure following the elapsing of that 30 day period will be cancelled, without penalty or liability. The Delivery Quantity in the relevant Delivery Periods will automatically be adjusted downwards by the quantity of Coal so cancelled.

(b) Subject to clause 19.3(a), upon cessation of a Force Majeure Event, the Affected Party must as soon as practicable resume performance of any obligation suspended as a result of the operation of this clause 19.

19.4 No requirement to settle labour dispute

Nothing in this clause 19 will require the Affected Party to settle or compromise any strike, lockout, stoppage or other labour dispute if it, in its sole discretion, considers that to do so would be contrary to its best interests.

19.5 Term not extended

This clause 19 will provide relief for so long as an Event of Force Majeure continues, but will not operate to extend the Term.

20. TERMINATION

20.1 Termination by agreement

The parties may, by agreement in writing, terminate the Contract with effect from the date agreed by those parties.

20.2 Termination for Insolvency Event

A party may terminate the Contract immediately by notice to the other Party (or the person to whom the Contract is vested as a result of the Insolvency Event) if the other Party suffers an Insolvency Event.

20.3 Termination for material breach

(a) If a party fails to perform or comply with any of its material obligations under the Contract, the non-defaulting party may serve a notice on the defaulting party specifying the default, the time within which the default is to be remedied (which must be at least 10 Business Days) and requiring the defaulting party to remedy the default.

(b) If, within the time specified in a notice served under clause 20.3, the defaulting party fails to remedy the default, the non-defaulting party may, without prejudice to any other rights under the Contract, terminate the Contract by notice in writing to the defaulting party.

20.4 Sanctioned Person and termination

(a) The Buyer warrants that:

(i) it is not a Sanctioned Person;

(ii) it is not connected, directly or indirectly, to any Sanctioned Person; and

(iii) no Sanctioned Person is involved in the Transaction.

(b) The Buyer must promptly provide the Seller, upon request, with such information as the Seller may reasonably require, to allow the Seller to determine if any person involved in the Transaction is a Sanctioned Person.

(c) Notwithstanding and without limitation to clause 11.7, if the Buyer breaches a warranty contained in clause 20.4(a) or if the Seller, acting reasonably, considers the owner, charterer, or operator of the Vessel, or any other person involved in the Transaction, is a Sanctioned Person, the Seller may immediately suspend deliveries and/or terminate the Contract in whole or in part upon providing written notice to the Buyer, without any liability whatsoever to the Seller.

21. WARRANTIES AND LIABILITY

21.1 Representations and warranties

Each party severally represents and warrants that, on the date of the Contract and on the date of each Shipment:

(a) it is a company limited by shares under the laws of the place of its incorporation;

(b) it has full legal capacity and power to:

(i) own its property and to carry on its business; and

(ii) enter into the Contract and to carry out the transactions that it contemplates;

(c) it has taken all corporate action that is necessary or desirable to authorise its entry into the Contract and to carry out the transactions contemplated;

(d) it holds each authorisation that is necessary or desirable to:

(i) enable it to properly execute the Contract and to carry out the transactions that it contemplates;

(ii) ensure that the Contract is legal, valid, binding and admissible in evidence; or

(iii) enable it to properly carry on its business as it is now being conducted,

and it is complying with any conditions to which any of these authorisations is subject; and

(e) the Contract constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration; and

(f) it has not suffered an Insolvency Event.

21.2 Limitation of warranties

The Buyer acknowledges and agrees that the Seller is not making, and that no person acting on behalf of the Seller has made, any warranty or representation with respect to the Transaction other than as expressly stated in the Contract.

21.3 Exclusion of implied warranties

(a) Except as expressly provided to the contrary in the Contract, all warranties, whether express, implied, statutory or otherwise relating in any way to the Transaction or the Contract generally are excluded to the extent permitted by law.

21.4 No liability for Consequential Loss

(a) Subject to clause 11.6 and clause 21.4(b), but notwithstanding any other provision of this Contract, neither party will be, nor is to be deemed or adjudged liable to the other party in contract (including under any indemnity), tort (including in negligence or for breach of statutory duty) or otherwise, for any Consequential Loss arising from or in connection with the Contract.

(b) Nothing in clause 21.4 limits:

(i) the Seller's ability to recover from the Buyer the:

(A) Contract Price for Coal delivered to the Buyer; or

(B) difference between the Contract Price that would have applied and the price per tonne that the Seller, acting reasonably, sells Coal for where the Buyer fails to take delivery of such quantity of Coal in accordance with this Contract; or

(ii) the Buyer's ability to recover from the Seller for the difference between the Contract Price that would have applied and the price per tonne that the Buyer, acting reasonably, purchases Coal for where the Seller fails to deliver such quantity of Coal in accordance with this Contract.

21.5 Indemnity

(a) The Buyer indemnifies the Seller on demand for any cost, expense, damage, penalties, liability, interest, fine or other loss suffered or incurred by the Seller or any of its related bodies corporate arising from or in connection with:

(i) any involvement in the Transaction of a Sanctioned Person;

(ii) the Seller exercising its rights under clause 11.3; and

(iii) the Seller in removing the obstruction or hazard in accordance with clause 11.5.

(b) The Buyer's liability under this clause 21.5 is reduced proportionately to the extent that the loss or damage incurred by the Seller were caused by the negligent act or omission of the Seller.

22. DISPUTE RESOLUTION

22.1 Definitions

The following definitions apply in this clause 22:

"Dispute" means any dispute or difference between the parties arising out of, relating to or in connection with the Contract or the Transaction, including any dispute or difference as to the formation, validity, existence or termination of the Contract.

22.2 Application

Any Dispute must be determined in accordance with the procedure in this clause 22.

22.3 Dispute Notice

(a) If any Dispute arises, a party to the Dispute (**"Referring Party"**) may by giving notice to the other party or parties to the Dispute (**"Dispute Notice"**) commence the dispute resolution process.

22.4 Condition precedent to arbitration

A party must not commence arbitration under clause 22.5 in respect of a Dispute unless:

(a) a Dispute Notice has been given; and

(b) 15 days has elapsed from the giving of the Dispute Notice (and the Dispute has not been resolved).

22.5 Arbitration

Any Dispute must be resolved by arbitration in accordance with the UNCITRAL Arbitration Rules which are deemed to be incorporated by reference into this clause 22.5. The seat of the arbitration will be Sydney, Australia and the language of the arbitration will be English. Unless the parties otherwise agree, each party will appoint one arbitrator, and the two arbitrators so appointed will appoint the third arbitrator. If a party fails to appoint an arbitrator, then the Australian Centre for International Commercial Arbitration will be the appointing authority on behalf of that party.

22.6 Optional provisions apply

The optional provisions in Division 3 of Part III of the *International Arbitration Act 1974* (Cth) apply to any arbitration conducted under this clause 22.

22.7 Continuance of performance

Despite the existence of a Dispute, the parties must continue to perform their respective obligations under the Contract.

22.8 Interim Relief

Nothing in this clause 23 prevents any party from seeking conservatory, interlocutory or similar interim relief from any court of competent jurisdiction.

22.9 Survive termination

This clause 22 survives the expiry or termination of the Contract.

23. CONFIDENTIALITY

23.1 Definition of Confidential Information

"Confidential Information" means information that:

(a) relates to this Contract or a party; and

(b) is made available by or on behalf of the Discloser to the Recipient, or is otherwise obtained by or on behalf of the Recipient; and

(c) is by its nature confidential or the Recipient knows, or ought to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of the Contract.

Confidential Information includes:

(d) information concerning the existence and terms of this Contract; and

(e) information that is personal information as defined by the *Privacy Act 1988* (Cth).

Confidential Information does not include information that:

(f) is in or enters the public domain through no fault of the Recipient or any of its officers, employees or agents;

(g) is or was made available to the Recipient by a person (other than the Discloser) who is not or was not then under an obligation of confidence to the Discloser in relation to that information; or

(h) is or was developed by the Recipient independently of the Discloser and any of its officers, employees or agents.

23.2 Use and disclosure of Confidential Information

A party (**"Recipient"**) which acquires Confidential Information of another party (**"Discloser"**) must not:

(a) use any of the Confidential Information except to the extent necessary in connection with or to exercise its rights and perform its obligations under the Contract (**"Purpose"**); or

(b) disclose any of the Confidential Information except in accordance with clauses 23.3 or 23.4.

23.3 Disclosures to personnel and advisers

(a) The Recipient may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser (**"Authorised Person"**) if:

(i) the disclosure is necessary to enable the Recipient to perform its obligations or to exercise its rights under the Contract; and

(ii) prior to disclosure, the Recipient informs the Authorised Person of the Recipient's obligations in relation to the Confidential Information under the Contract and obtains an undertaking from the person to comply with those obligations.

(b) The Recipient must ensure that any person to whom Confidential Information is disclosed under clause 23.3(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 23.3(a).

23.4 Disclosures required by law

(a) Subject to clause 23.4(b), the Recipient may disclose Confidential Information that the Recipient is required to disclose:

(i) by law or by order of any court or tribunal of competent jurisdiction; or

(ii) by any Government Agency, the rules of any stock exchange or other regulatory body.

(b) If the Recipient is required to make a disclosure under clause 23.4(a), the Recipient must:

(i) to the extent practicable, notify the Discloser immediately if it anticipates that it may be required to disclose any of the Confidential Information;

(ii) if practicable, consult with and have due regard to any reasonable directions from the Discloser designed to minimise disclosure; and

(iii) if disclosure cannot be avoided:

(A) only disclose Confidential Information to the extent necessary to comply; and

(B) if practicable, use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

23.5 Restrictions on public announcements

Except in the circumstances described in clause 23.4(a) (in which event clause 23.4(b) shall apply, *mutatis mutandis*), no party may directly or indirectly make a public announcement about or comment on the Transaction or the contents of the Contract including any discussions between the parties without the prior written consent of the other party.

23.6 Security and control

The Recipient must:

(a) keep effective control of the Confidential Information; and

(b) ensure that the Confidential Information is secure from theft, loss, damage or unauthorised access or alteration.

23.7 Survival of obligations

The obligations in this clause 23 survive any termination or expiry of the Contract.

24. NOTICES

24.1 How to give a notice

A notice, consent or other communication under the Contract is only effective if it is:

(a) in writing, signed by or on behalf of the person giving it;

(b) addressed to the person to whom it is to be given; and

(c) either:

(i) delivered or sent by pre-paid mail (by airmail, if the addressee is overseas) to that person's address;

(ii) sent by fax to that person's fax number and the machine from which it is sent produces a report that states that it was sent in full; or

(iii) sent by email on the same day to the email address last notified by the intended recipient to the sender (unless an answerback code is received by the sender which indicates that email transmission has not been successful).

24.2 When a notice is given

A notice, consent or other communication that complies with this clause is regarded as given and received:

(a) if it is delivered or sent by fax or email:

(i) by 5.00 pm (local time in the place of receipt) on a Business Day - on that day; or

(ii) after 5.00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day - on the next Business Day; and

(b) if it is sent by mail:

(i) within Australia – three Business Days after posting; or

(ii) to or from a place outside Australia – seven Business Days after posting.

24.3 Address for notices

A person's address and fax number are those set out in the Particulars, or as the person notifies the sender.

25. AMENDMENT AND ASSIGNMENT

25.1 Amendment

The Contract can only be amended or replaced by another document executed by the parties.

25.2 Assignment

(a) Subject to clause 25.2(b), a party may only assign, encumber, declare a trust over or otherwise deal with its rights under the Contract with the written consent of the other party.

(b) The Seller may assign to a third party its rights, in part or in full, to receive payment under the Contract.

26. GENERAL

26.1 Governing law

(a) The Contract is governed by the laws of the State of New South Wales.

(b) Each party submits to the jurisdiction of the courts of the State of New South Wales and of any court that may hear appeals from any of those courts, for any proceedings in connection with the Contract.

(c) The parties agree that the United Nations Conventions on Contracts for the International Sale of Goods and any law giving force to that convention are excluded from, and do not form part of, the Contract.

26.2 Liability for expenses

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering the Contract.

26.3 Relationship between the parties

Neither of the parties is the partner, agent or legal representative of the other party and nothing in the Contract creates any partnership, agency or trust, and no party has the power to bind the other party in any way.

26.4 Services to other persons

Nothing in the Contract will be construed to restrict the ability of the Seller to sell or deliver Coal, or any other coal, to any person nor the Buyer to sell to or receive coal from any other person.

26.5 Giving effect to documents

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that any other party may reasonably require to give full effect to the Contract.

26.6 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

(a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;

(b) a waiver of a right on one or more occasions does not operate as a waiver of that right or as an estoppel precluding enforcement of that right if it arises again; and

(c) the exercise of a right does not prevent any further exercise of that right or of any other right.

26.7 Operation of the Contract

(a) Subject to 26.7(b), the Contract contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Contract and has no further effect.

(b) Any right that a person may have under the Contract is in addition to, and does not replace or limit, any other right that the person may have.

(c) Any provision of the Contract which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make the Contract enforceable, unless this would materially change the intended effect of the Contract.

26.8 Operation of indemnities

(a) Each indemnity in the Contract survives the expiry or termination of the Contract.

(b) A party may recover a payment under an indemnity in the Contract before it makes the payment in respect of which the indemnity is given.

(c) If a provision of the Contract is expressed to:

(i) indemnify;

(ii) exclude or limit any liability of; or

(iii) otherwise benefit,

a person who is not a party to the Contract, the Buyer agrees that the Seller holds the benefit of that indemnity, exclusion, limitation or other benefit on trust for that person and may enforce the Contract on their behalf and for their benefit.

26.9 Consents

Where the Contract contemplates that a party may agree or consent to something (however it is described), that party may:

(a) agree or consent, or not agree or consent, in its absolute discretion; and

(b) agree or consent subject to conditions,

unless the Contract expressly contemplates otherwise.

26.10 Counterparts

This Contract may be executed in counterparts.