

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context otherwise requires, the following terms have the meanings given when used in this Contract.

Authorisation means any consent, authorisation, registration, filing, lodgement, permit, licence, agreement, notarisation, certificate, permission, direction, declaration, authority or exemption that is required with respect to the Supplier's entry into this Contract or performance of its obligations under this Contract.

Authority means any:

- (a) governmental or semi-governmental or local government authority, administrative body, department, commission, agency, instrumentality or minister; or
- (b) judicial body or tribunal, or statutory corporation.

Business Day means a calendar day ending at 5.00pm, other than a Saturday, Sunday or public holiday in Biloela, Queensland.

Company means the party so named in this Contract.

Company Policies means the policies, codes and principles published by the Company and such other policies, codes and principles notified by the Company to the Supplier from time to time.

Consequential Loss means loss of revenue, profit, income, bargain, opportunity or anticipated savings.

Contract means the Purchase Order, these Standard Purchase Conditions and any other document stated in the Purchase Order to form part of this Contract.

Contract Price means the price specified in the Purchase Order.

Corporations Act means the *Corporations Act 2001* (Cth).

Default Rate means the daily buying rate displayed at or about 10.30am (Sydney time) on the Reuters screen BBSW page for Australian bank bills of a 90-day duration (or if that daily buying rate is no longer published, such other daily rate as the parties may agree) plus two percent.

Goods means the goods specified in the Purchase Order (if any).

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

Law means:

- (a) Commonwealth, State, Territory or local legislation including regulations, by-laws and other subordinate legislation;
- (b) common law;
- (c) Authorisations, conditions in respect of any Authorisations and any management plans or other documents required to be prepared under a condition of any Authorisations; and
- (d) guidelines, orders or codes of a Commonwealth, State, Territory or local government, or Authority with which the Supplier is required to comply.

Losses means losses, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person.

Manager means Batchfire Callide Management Pty Ltd ABN 75 009 666 200.

Mine Owners means the owners of the Callide Mine from time to time, at the commencement of the Contract being:

Entity	ABN	Participating Interest
Batchfire Callide Pty Ltd	55 081 022 228	66.66%
Batchfire Callide No. 2 Pty Ltd	92 004 784 454	33.33%

Personnel means employees, agents, representatives, officers and contractors (and in the case of the Company, does not include the Supplier).

Purchase Order means the order for Goods and/or Services issued by the Company to the Supplier.

Services means the services specified in the Purchase Order (if any).

SHE Requirements means:

- (a) all relevant Law and government requirements relating to workplace health and safety (including health and safety legislation specifically applicable to the coal mining industry) and the environment; and
- (b) the Company Policies with respect to health, safety and the environment as advised by the Company to the Supplier.

Site means the Callide Mine Site or any other premises owned or controlled by the Company.

Site Regulations and Policies means the regulations and policies relating to health, safety and security at the Site, including but not limited to any SHE Management Plan, and such other corporate or Site-specific policies of the Company, as may be developed or amended from time to time.

Supplier means the party so named in this Contract.

Supplier Personnel means the Supplier's employees, agents and subcontractors, and employees, agents and contractors of the subcontractors.

1.2 Rules for interpreting this Contract

In this Contract unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this Contract;
- (b) the singular includes the plural and vice versa;
- (c) words importing a gender include other genders;
- (d) the words 'include' and 'including' are to be construed without limitation;
- (e) other grammatical forms of defined words or expressions have corresponding meanings;
- (f) a reference to:
 - (i) a clause, schedule or appendix is a reference to a clause or schedule to this Contract;
 - (ii) any legislation or statutory instrument or regulation is construed in accordance with the *Acts Interpretation Act 1901* (Cth) or the equivalent State legislation, as applicable;
 - (iii) a document or agreement includes a reference to that document or agreement as novated, altered or replaced from time to time;
 - (iv) 'A\$', '\$A', 'AUD', 'dollar' or '\$' is a reference to Australian currency;
 - (v) a person includes any individual, firm, body corporate, partnership, unincorporated association, government, state or agency of a state, joint venture or authority; and
 - (vi) a party includes its executors, administrators, successors and permitted assigns;
- (g) if the due date for anything to be done under this Contract falls on a day that is not a Business Day, then it must be done on the next Business Day.

- (h) the rights and remedies of the Company are without limitation to its rights or remedies at Law or under any other provision of this Contract.

2 DOCUMENTS FORMING THIS CONTRACT

- (a) If there is any discrepancy, inconsistency or ambiguity between a Purchase Order and these Standard Purchase Conditions, the Purchase Order shall prevail. The Purchase Order and these Standard Purchase Conditions shall have precedence over any other documents forming part of this Contract.
- (b) If the discrepancy, inconsistency or ambiguity cannot be resolved by applying the above, then the Company will direct the interpretation to be followed.

3 SUPPLY OF GOODS AND/OR SERVICES

The Supplier must supply the Goods and/or perform the Services in accordance with this Contract. If any delay in delivering the Goods or performing the Services occurs or is foreseen, the Supplier must immediately notify the Company of the cause and anticipated length of the delay.

4 WARRANTIES

- (a) The Supplier warrants that the Goods and/or Services must comply with all the requirements of this Contract, relevant Laws, Site Regulations and Policies and any other applicable codes or standards.
- (b) The Supplier warrants that the Goods must:
 - (i) be of merchantable quality and fit for their intended purpose; and
 - (ii) be free from all defects and imperfections affecting performance.
- (c) The Supplier warrants that the Services must be performed at all times:
 - (i) by suitably qualified and experienced Personnel;
 - (ii) in accordance with all relevant laws, government requirements and applicable codes or standards; and
 - (iii) in accordance with best practice standards of diligence, skill, care and efficiency to be expected of a competent Supplier performing services of a similar nature to the Services.

5 TITLE AND RISK

- (a) The Supplier is responsible for any loss or damage to the Goods that occurs while the Goods are at the Supplier's risk.
- (b) Subject to clause 5(c), the Goods are at the Supplier's risk until delivered to the Company and also from the time (if any) of receipt of a notice under clause 6.2.
- (c) If the Supplier is to perform Services on the Goods, the Goods are at the Supplier's risk whilst such Services are being performed on them.
- (d) Title to the Goods passes to the Company on the earlier of payment for the Goods and delivery of the Goods to the Company. If the Goods are replaced by the Supplier, title to the replacement Goods will pass on delivery of the replacement Goods to the Company and title to the Goods being replaced will pass to the Supplier at the same time. Title in rejected Goods will pass on the refund of moneys paid for the rejected Goods.
- (e) When the Goods are delivered to the Company, the Supplier must have good marketable title to the Goods, the Goods must be free from encumbrances, and the Supplier must have the right to sell the Goods to the Company.

6 ACCEPTANCE

6.1 Notification of acceptance

Within 5 Business Days of delivery of the Goods to the Site, the Company may notify the Supplier whether the Goods are accepted or rejected, and if the Company fails to do so, the Goods will be deemed accepted.

6.2 Notice of rejection

If the Goods are rejected, the Company must state the reasons for the rejection and may either:

- (a) require the Supplier to remove the Goods and refund to the Company any amount paid in relation to the Goods;
- (b) direct the Supplier to replace or rectify the Goods; or
- (c) notify the Supplier that the Company elects to accept the Goods and claim damages for the Supplier's failure to comply with this Contract.

If the Supplier is directed to replace or rectify the Goods, the Supplier must notify the Company when the replacement or rectification is completed.

6.3 No acceptance

Neither payment for Goods nor inspection of Goods by the Company constitutes acceptance of Goods that do not comply with this Contract or affects the ability of the Company to subsequently reject the Goods.

7 INSPECTION

The Company may:

- (a) inspect the Goods at any time before the Goods are delivered; and
- (b) inspect or audit the performance of any or all of the Services or the results of such Services.

8 DEFECTS LIABILITY PERIOD

- (a) The Supplier must, at its expense, rectify any defect discovered within 12 months of the Goods being used by the Company or 18 months from the delivery of the Goods, whichever is earlier.
- (b) If the Supplier fails to rectify a defect within a reasonable time after receiving notice of the defect, the Company may, without prejudice to its other rights, rectify the defect and the costs incurred in doing so will be a debt due from the Supplier to the Company.

9 WORK ON-SITE

Subject to clause 10, if, in providing the Goods or performing the Services, the Supplier requires access to the Site, the Supplier must take all reasonable steps to cause minimal disruption to the activities of the Company and follow any directions given by the Company while on-Site.

10 SAFETY, HEALTH AND ENVIRONMENT

10.1 Supplier's Obligations

- (a) The Supplier acknowledges:
 - (i) the importance that the Company places on establishing and maintaining high standards in relation to workplace health and safety, the protection of the environment and positive stakeholder relationships;
 - (ii) the importance of compliance with the Company's Site Regulation and Policies; and
 - (iii) that the Company is committed to eliminating work related injuries and occupational illnesses.
- (b) The Supplier must, at its cost:
 - (i) acquaint itself with the SHE Requirements; and
 - (ii) when on Site or travelling to the Site, comply with all SHE Requirements, all applicable Laws relating to health, safety and the environment, and any direction given by the Company in respect of the SHE Requirements.
- (c) The Company may refuse to permit any Supplier Personnel from entering the Site, or direct the Supplier to remove any Supplier Personnel from Site, if such personnel do not comply with the SHE Requirements or Company Policies or otherwise are, in the reasonable opinion of the Company, unacceptable. The Supplier must promptly comply with any such request.

- (d) If requested by the Company, the Supplier must ensure the Supplier Personnel undertake, at the Supplier's expense, a Site induction prior to accessing the Site.

10.2 Reporting of Incidents

The Supplier must immediately report to the Company any incident relating to workplace health and safety or the environment in connection with the Supply, that occurs on the Site, or which otherwise poses an unacceptable risk to workplace health and safety.

11 INTELLECTUAL PROPERTY

- (a) The Supplier warrants that no part of the Services under this Contract nor the use of the Goods by the Company will infringe the intellectual property rights of a third party.
- (b) Except where otherwise expressly provided in this Contract, nothing in this Contract will affect any intellectual property rights owned or held by either party at the commencement of this Contract.

12 ASSIGNMENT AND NOVATION

- (a) The Company may assign or novate all or any part of this Contract, or its rights or obligations under this Contract without the prior consent of the Supplier and the Supplier must execute any document or take any step necessary to effect any assignment or novation.
- (b) The Supplier must not assign or novate this Contract or any or all of its rights under this Contract without the prior consent of the Company (which consent is not to be unreasonably withheld).

13 INSURANCE

- (a) Unless specified otherwise, the Supplier must have in effect the following insurances prior to the provision of the Goods and/or performance of the Services, and maintain at all times while this Contract is in force, at the Supplier's expense:
- (i) public and products liability insurance in the amount of [\$20,000,000];
 - (ii) motor vehicle insurance covering both personal injury and property damage arising from the use of registered motor vehicles; and
 - (iii) workers compensation insurance as required by applicable Laws.
- (b) Each insurance effected or maintained by the Supplier in accordance with this clause 13, must be with an insurer that has a credit rating of Standard and Poor's A- or better and is authorised by the Australian Prudential Regulatory Authority, or has otherwise been approved by the Company.
- (c) If requested by the Company, the Supplier must promptly provide such evidence as the Company reasonably requires that the insurances required by this clause 13 are in effect.

14 INDEMNITY

- (a) The Supplier must indemnify the Company against:
- (i) any loss of or damage to the Site or any property of the Company or a third party whether located on the Site or otherwise; and
 - (ii) claims in respect of death or injury to any person whether located on the Site or otherwise, arising out of or in connection with the Supply or any act, error or omission of the Supplier or the Supplier Personnel; and
 - (iii) all Losses suffered or incurred by the Company arising in connection with:
 - (A) a breach by the Supplier or Supplier Personnel of any Law in connection with the performance of its obligations under this Contract;
 - (B) the breach by the Supplier of an obligation under this Contract; or

- (C) any negligent act or omission or wilful misconduct of the Supplier or the Supplier Personnel.

- (b) The Supplier's obligation to indemnify in this clause 14 will be reduced to the extent that the Losses were caused by the Company's negligence, breach or wilful misconduct.

15 LIABILITY

15.1 Exclusion of Consequential Loss

Notwithstanding any other provision of this Contract, a party (**First Party**) will not be liable to the other party (**Second Party**) in contract (including under any indemnity), tort (including in negligence or for breach of statutory duty) or otherwise, for any Consequential Loss related to or connected with this Contract, except Consequential Loss:

- (a) incurred as a result of the fraud or wilful, reckless or deliberate breach of this Contract by the First Party (or its Personnel); or
- (b) forming part of a claim by the Second Party for contribution or indemnity from the First Party in respect of claims by third parties for personal injury, death or property damage.

15.2 Several rights and liabilities of Mine Owners

The Supplier acknowledges and agrees:

- (a) the Manager has entered into this Contract as disclosed agent for the Mine Owners;
- (b) the Manager acts as the Mine Owner's agent and has no liability to the Supplier for any act, omission or default under this Contract; and
- (c) the liability of each Mine Owner under this Contract will be several (and not joint nor joint and several) and accordingly:
 - (i) each Mine Owner will only be liable to its equity interest under the joint venture agreement between the Mine Owners, as advised by the Manager to the Supplier from time to time, and as at the Date of Contract is specified in the definition of Mine Owner; and
 - (ii) no Mine Owner will be responsible for the obligations of any other Mine Owner.

16 CONTRACT PRICE AND PAYMENT

16.1 Contract Price

- (a) Subject to clause 16.2, the Company will pay the Supplier the Contract Price in consideration for the Supplier providing the Goods and/or performing the Services.
- (b) The Contract Price is exclusive of GST and all other applicable government taxes, duties, excise and charges.

16.2 Payment by the Company

- (a) The Supplier may submit an invoice to the Company at the times specified in the Purchase Order.
- (b) Subject to the Goods and Services (if applicable) complying with this Contract, the Company must pay the Supplier's invoice by the end of the calendar month following the calendar month in which the invoice is received.
- (c) Each invoice must:
- (i) be in the form of a tax invoice for the purposes of the GST Act;
 - (ii) identify the relevant Purchase Order number;
 - (iii) contain sufficient information to enable the Company to verify the amount claimed; and
 - (iv) comply with any other requirements set out in the Purchase Order.

16.3 Right to Set-Off

The Company may at any time, deduct from any amount due to the Supplier all debts and amounts due from the Supplier to the Company whether under or in connection with this Contract or otherwise.

16.4 Default Interest

Notwithstanding any other remedy available to a party under this Contract or at Law, if a party fails to pay an amount owing to the other party on the due date for payment, that party is liable to the other party for interest at the Default Rate from the due date for payment until the date payment is made.

17 TAXES

Unless otherwise expressly provided in this Contract, the Supplier must pay all taxes (including GST) arising out of or relating to this Contract or the Supplier's performance of its obligations under this Contract.

18 DEFAULT AND TERMINATION

18.1 Supplier Default

If the Supplier is in breach of any of its obligations under this Contract (**Supplier Default**), then the Company may give notice to the Supplier identifying the breach and requesting the Supplier to remedy such breach within the period specified in the notice (such period to be a minimum of 10 Business Days).

18.2 Termination by the Company

The Company may immediately terminate this Contract by notice to the Supplier if:

- (a) the Supplier fails to remedy the Supplier Default to the satisfaction of the Company within the period specified in the notice given under clause 18.1; or
- (b) the Supplier is insolvent.

18.3 Company Default

- (a) If the Company has failed to pay the Supplier an amount due under this Contract for a period of 60 Business Days after such amount has become due and payable, then the Supplier may give notice to the Company identifying the breach and requesting the Company to remedy such breach within the period specified in the notice (such period to be a minimum of 10 Business Days).
- (b) If the Company fails to pay an amount due in accordance with a notice given by the Supplier under clause 18.3(a), the Supplier may terminate this Contract by giving not less than 20 Business Days' notice of such termination to the Company.

18.4 Termination for the Company's convenience

The Company may terminate this Contract for its convenience in its absolute discretion by giving the Supplier not less than 30 days' notice of termination.

18.5 Consequences of termination

If this Contract is terminated under this clause 18, then:

- (a) the Supplier must cease the carrying out of the provision of the Goods and/or performance of the Services from the date of termination;
- (b) the Supplier must make a claim for payment of all amounts for which it is entitled to be paid under this Contract within 15 Business Days after the date of termination; and
- (c) the Company must pay the Supplier all amounts due and payable to the Supplier for the provision of the Goods and/or performance of the Services properly carried out in accordance with this Contract up to the termination date.

19 DISPUTE RESOLUTION

19.1 Notice of Dispute

If a party considers that a dispute exists in connection with this Contract, that party may give the other party a notice detailing the nature of the dispute (**Notice of Dispute**).

19.2 Process for resolution

- (a) All disputes between the parties in connection with this Contract must be resolved in accordance with this clause 19.
- (b) Within 10 Business Days after receipt of a Notice of Dispute representatives of each of the parties must meet to seek to resolve the dispute.

- (c) If the dispute is not resolved by the representatives of the parties within 15 Business Days after receipt of a Notice of Dispute, then the dispute must be referred to a senior executive of each party for resolution.
- (d) If the dispute is not resolved by the senior executives of the parties within 20 Business Days after referral of the dispute to the senior executives, then either party may refer the dispute to be resolved by mediation conducted in accordance with the Resolution Institute Mediation Rules.
- (e) If the dispute is not resolved by mediation within 20 Business Days after referral of the dispute to mediation, then either party may commence legal proceedings.

19.3 Continued performance and urgent relief

- (a) Notwithstanding the existence of a dispute the parties must continue to perform their respective obligations under this Contract.
- (b) This clause 19 does not prejudice the right of a party to institute legal proceedings to seek urgent injunctive or declaratory relief in relation to any matter arising under this Contract.

20 CONFIDENTIALITY

A party must not (and must ensure that its Personnel do not), without the prior written consent of the other party, disclose confidential information:

- (a) relating to the Goods or Services or a party's business or operations; or
- (b) provided by one party to the other,

or use such information for purposes unrelated to this Contract, unless disclosure is required by an applicable Law, stock exchange listing rule or taxation authority.

21 NOTICES

A notice given under this Contract must be in writing and addressed to the receiving party stated in the Purchase Order (as may be updated by a party from time to time by notice to the other party).

22 MISCELLANEOUS PROVISIONS

22.1 Governing law

This Contract is governed by and must be construed and enforced in accordance with the laws of Queensland, Australia and the parties unconditionally submit to the exclusive jurisdiction of the courts of Queensland, Australia (and courts of appeal from them).

22.2 Entire agreement

This Contract contains the entire agreement between the parties and supersedes all prior arrangements, letters of intent, memorandums of understanding, purchase orders, representations and documents (if any) relating to the Services (including any terms and conditions proposed or delivered to the Company by the Supplier) or this Contract.

22.3 Non-waiver

A provision of, or a right created under, this Contract may not be waived except in writing signed by the party granting the waiver.

A waiver of any provision of or right under this Contract does not constitute a waiver of any other provision or right.

22.4 Survival

Any provisions in this Contract relating to express obligations on termination, and clauses 11, 14, 16, 17, 18, 19, 20, 21 and 22 survive the termination or expiry of this Contract.