

Terms & Conditions for the Supply of Technical Services

1. Definitions

In these Terms and Conditions:

“**Albion Process Technology**” means:

- (a) the fine grind atmospheric leaching technology patented by Glencore and Highlands and known as the “Acid Albion Process”, being more particularly described in Australian Patent No. 700850 “Atmospheric Mineral Leaching Process” and includes the Technical and Commercial Information; and
- (b) the Glencore patented process of fine grinding followed by atmospheric leaching known as the “Alkaline Albion Process” and described in Australian Patent No. 744356 “Method for treating precious metal bearing minerals” and includes the Technical and Commercial Information.

“**Agreement**” means the agreement established in accordance with clause 2.2 and includes these Terms and Conditions and the Quotation.

“**Client**” means the person to whom the Quotation is addressed.

“**Client’s Documentation**” means all calculations, worksheets, specifications, manuals, procedures, design, data, software and documents (in written or electronic form) supplied by or on behalf of the Client to **Core Metallurgy** before or during the course of performance of the Technical Services and includes any improvements to such things developed by the Client during the course of performance of the Technical Services.

“**Core Metallurgy**” means **Core Metallurgy Pty Limited (A.B.N. 97 132 575 752)**.

“**Core Metallurgy’s Existing Documentation**” means all calculations, worksheets, specifications, manuals, procedures, design, data, software and documents (in written or electronic form) prepared or to be prepared by **Core Metallurgy** and any of its subcontractors for the purposes of the project (other than the Project Documentation) and includes any improvements to such things developed by **Core Metallurgy** and any of its subcontractors during the course of performance of the Technical Services.

“**Fee**” means the fees and any expenses set out in the Quotation, as varied in accordance with these Terms and Conditions.

“**Force Majeure**” means an event or circumstance which is beyond the control and without the fault or negligence of the party affected and which by the exercise of reasonable diligence the party affected was unable to prevent provided that event or circumstance is limited to the following:

- (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, insurrection of military or usurped power, requisition or compulsory acquisition by any governmental or competent authority;
- (b) earthquakes, flood, fire or other physical natural disaster, but excluding weather conditions regardless of severity;

- (c) strikes or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected party, its sub-Contractors or its suppliers, and which affect an essential portion of the works, but excluding any industrial dispute which is specific to the performance of the works or this contract;
- (d) a global health epidemic or pandemic

“Owners” means in relation to the:

- (a) Toowong Process Technology, Toowong Process Pty Ltd;
- (b) Albion Process Technology, Glencore Queensland Limited in respect of the Alkaline Albion Process and Glencore Queensland Limited and Highlands Frieda Limited and OMRD Frieda Co Ltd in respect of the Acid Albion Process.

“Project Documentation” means all calculations, worksheets, specifications, manuals, procedures, design, data, software and documents (in written or electronic form) which were or will be first prepared or created by **Core Metallurgy** and any of its subcontractors to satisfy its obligations under this document to perform the Technical Services.

“Quotation” means any quotation that **Core Metallurgy** sends to the Client in connection with the performance of the Technical Services.

“Report” means any report that **Core Metallurgy** prepares in connection with the Technical Services.

“Technical Services” means the technical services described in the Quotation.

“Technical and Commercial Information” means the technical and commercial information and technology including designs, plans and drawings, specifications, flowsheets, operating and maintenance instructions, computer programmes, sequences, loads, engineering data, design or construction information, capital and operating cost information and other information whether of a technical or commercial nature relating to the Toowong Process Technology or the Albion Process Technology (as applicable).

“Toowong Process Technology” means the patented process of leaching arsenic from concentrates known as the Toowong Process and described in Australian Patent No. 2011318234 ‘Method for treating arsenic containing materials’ and any improvements (whether patented or not) to the process, and includes the Technical and Commercial Information.

2. Formation of Agreement

2.1. **Core Metallurgy** has sent to the Client a Quotation in connection with the performance of the Technical Services.

2.2. The Quotation is not an offer to perform the Technical Services, but is only an invitation for the Client to make an offer requesting performance of the Technical Services in accordance with the Quotation. Acceptance of the Client’s offer by **Core Metallurgy** occurs only if **Core Metallurgy** gives written notice of acceptance to the Client or if **Core Metallurgy** commences performance of the Technical Services in accordance with the Client’s offer.

2.3. The rights and obligations of the parties under these Terms and Conditions apply upon formation of an Agreement in connection with the Technical Services in accordance with clause 2.2

3. Performance of Technical Services

- 3.1. **Core Metallurgy** agrees to perform the Technical Services in accordance with these Terms and Conditions.
- 3.2. In performing the Technical Services, **Core Metallurgy** is an independent consultant and is not an employee, agent or partner of the Client.
- 3.3. The Client must co-operate fully with **Core Metallurgy** to assist **Core Metallurgy** to perform the Technical Services.
- 3.4. **Core Metallurgy** may engage another contractor or consultant to assist it in a specific area of the Technical Services. **Core Metallurgy** will not require the Client's consent where it is paying for the fees and costs of such consultant. If however **Core Metallurgy** is of the view that the cost of the contractor or consultant should be a disbursement to the account of the Client, then it will be required to first obtain the Client's consent to such engagement.

4. Fees and Terms of Payment

- 4.1.
 - (a) The Client must pay to **Core Metallurgy** the Fee at the time and in the manner set out in the Quotation. Unless the Quotation expressly states otherwise, the Client must pay the Fee within 14 days after the date of each invoice from **Core Metallurgy**.
 - (b) Any amount not paid within the period specified in clause 4.1(a) will attract interest from the date of invoice until payment at the Reserve Bank of Australia published cash rate plus 5% per annum.
 - (c) Payments received will be applied firstly against any interest owing under clause 4.1(b) and secondly against the outstanding invoice amount.
- 4.2. The Fee is exclusive of any tax, duty or other impost in connection with the Technical Services. In addition to GST referred to in clause 13 of these Terms and Conditions the Client must pay any tax, duty or impost in addition to the Fee other than any income tax levied on or payable by **Core Metallurgy** pursuant to the Income Tax Assessment Act (Cth).
- 4.3. If **Core Metallurgy** is required to perform any technical services that are different or additional to the Technical Services set out in the Quotation, **Core Metallurgy** must, if it wishes to increase the Fee, issue a further quotation for the technical services which are additional or different. If the Client does not accept the further quotation as issued, **Core Metallurgy** will not be required to provide the additional or different technical services. If **Core Metallurgy** is no longer required to perform any of the Technical Services set out in the Quotation because of the difference or variation, **Core Metallurgy** will reduce the Fee by an amount that relates to the Technical Services set out in the Quotation that are no longer required.

5. Intellectual Property

- 5.1 Subject to clause 5.2, **Core Metallurgy** shall either grant or ensure that the person legally entitled to do so grants to the Client all present and future right title and interest including all intellectual property rights (excluding any third party intellectual property rights) in all Project Documentation PROVIDED THAT this clause 5.1 does not apply to and shall not in any way prejudice **Core Metallurgy's** continued ownership of any existing knowhow or other intellectual property rights exercised by **Core Metallurgy** for the purpose or in the course of preparing or creating the Project Documentation.

5.2 Clause 5.1 does not apply to intellectual property rights developed during the performance of the Technical Services relating to the Toowong Process Technology or the Albion Process Technology. For the avoidance of doubt all intellectual property rights, including any improvements in the Toowong Process Technology and the Albion Process Technology, remain with the respective Owners.

5.3 Ownership of all the Client's Documentation (including all intellectual property rights) remains with the Client.

5.4 **Core Metallurgy** may use the Client's Documentation only for the purposes of performing the Technical Services and subject to any reasonable limitations on use imposed by the Client in writing to **Core Metallurgy**, provided that **Core Metallurgy** may store Client Information in the temporary or permanent memory of any computer, storage unit, disk or file server at **Core Metallurgy's** offices.

Core Metallurgy shall:

(a) as soon as practicable after completion of the Technical Services; or

(b) when required by the Client by written notice to do so,

do the following:

(i) deliver to the Client one complete set of the Report and all Project Documentation, and the Client's Documentation in the custody or control of **Core Metallurgy**, and

(ii) provide the Client with reasonable access to **Core Metallurgy's** Existing Documentation reasonably relating to or necessary to properly use the Report and Project Documentation produced by **Core Metallurgy**.

6. Delays

6.1. If events beyond the control of the Client or **Core Metallurgy** result in delay to any schedule agreed for the provision of the Technical Services, that schedule will be amended to the extent necessary to compensate for the delay. If the delay exceeds thirty (30) days, **Core Metallurgy** may submit a supplemental quotation which sets out any increase in costs or loss incurred by **Core Metallurgy** as a result of the delay. If the Client does not accept the quotation, either party may terminate this Agreement.

6.2. If **Core Metallurgy** is delayed by the Client, then **Core Metallurgy** will be entitled to an extension of time for providing the Technical Services equal to the delay and to adjust the Fee to reflect any increase in costs or loss incurred as a result of the delay.

7. Termination/Suspension

7.1 The Client may terminate the services of **Core Metallurgy** if:

(a) **Core Metallurgy** is in substantial breach of its obligations relating to the Technical Services and that breach has not been remedied within thirty (30) days after receipt of a written notice from the Client identifying the breach and requiring the breach to be remedied; or

(b) **Core Metallurgy** is insolvent or any insolvency proceeding has been taken against **Core Metallurgy**.

7.2 **Core Metallurgy** may suspend or terminate its obligations relating to the Technical Services:

(a) if any money payable to **Core Metallurgy** has been outstanding for more than thirty (30) days or the Client is insolvent or any insolvency proceeding has been taken against the Client; or

(b) if the Client is in substantial breach of any of its obligations relating to the Technical Services and that breach has not been remedied within thirty (30) days after receipt of a written notice from **Core Metallurgy** requiring the breach to be remedied.

7.3 On termination the Client shall pay **Core Metallurgy** all invoice and interest amounts outstanding at the date of termination, and further Fee amounts applicable to all Technical Services rendered up to the date of termination.

8. Warranty

Core Metallurgy warrants that it will perform the Technical Services with due care and skill in a competent and professional manner and in accordance with generally applicable industry standards.

9. Limitation of Liability

9.1 All express or implied warranties, representations, statements, terms and conditions in connection with the Technical Services, these Terms and Conditions and the Quotation that are not contained in these Terms and Conditions are excluded to the fullest extent permitted by law.

9.2 Nothing in this Agreement will exclude, restrict or modify any condition, warranty, right or remedy implied or imposed by any statute or regulation if it cannot lawfully be excluded, restricted or modified.

9.3 The liability of **Core Metallurgy** for breach of any term, condition or warranty will be limited to one or more of the following as determined by **Core Metallurgy** in its absolute discretion:

(a) supply of the Technical Services again; or

(b) payment of the cost of having the Technical Services supplied again.

9.4 To the fullest extent permitted by law, the limit of **Core Metallurgy's** aggregate liability to the Client or to any third party in connection with this Agreement and the performance or non-performance of the Technical Services by **Core Metallurgy**, for any claim will not exceed the Fee.

9.5 Without limiting clause 9.4, **Core Metallurgy** is not liable in any circumstance, whether for misrepresentation, breach of warranty, breach of a term or condition, in contract, tort or otherwise, for indirect, incidental, consequential or punitive loss, damages or expenses in connection with this Agreement and the performance or non-performance of the Technical Services by **Core Metallurgy** even if **Core Metallurgy** has been advised or is otherwise aware of their possible existence.

10. Specific Disclaimer

Without limiting clauses 8 or 9 of these Terms and Conditions, **Core Metallurgy** will perform the Technical Services subject to the following specific disclaimers:

(a) **Core Metallurgy** will perform the Technical Services and prepare the Report based on the information that the Client provides to **Core Metallurgy** and **Core Metallurgy's** understanding of the Client's requirements. **Core Metallurgy** is not responsible for any loss or damage arising out of any inaccurate, incomplete or misleading information that the Client gives to **Core Metallurgy**.

- (b) Where the Technical Services relate to the assessment or analysis of sample material, **Core Metallurgy** will perform the Technical Services and prepare the Report based only upon the sample material that the Client provides to **Core Metallurgy**. **Core Metallurgy** is not responsible for any difference between the sample and the material that the Client uses in its business. **Core Metallurgy** recommends that the Client arranges for pilot studies to be conducted to evaluate characteristics over the full range of the material.
- (c) The Report is for the Client's use only and **Core Metallurgy** accepts no liability in connection with the Client providing the Report to a third party.
- (d) **Core Metallurgy** may make recommendations to the Client concerning actions relating to the Client's employees and contractors; **Core Metallurgy** disclaims any authority to direct or supervise the means, methods, techniques, sequences or procedures of construction, operation or maintenance selected by the Client's employees and contractors.

11. Time Limit for Making Claims

The Client will be deemed to have waived all claims against **Core Metallurgy** which have not been made in writing within one (1) year after the date of final invoice rendered by **Core Metallurgy** for the Technical Services. This provision applies subject to any law to the contrary.

12. Indemnity

The Client indemnifies **Core Metallurgy** for any loss or damage arising out of the disclosure of the Report, Project Documentation or any information in connection with the Technical Services to any third party.

13. GST

13.1 The Parties agree that if the whole or any part of any Payment is the consideration for a Taxable Supply, the payer must pay to the payee an additional amount equal to the GST Amount, either concurrently with that Payment or as otherwise agreed in writing.

13.2 The parties agree that a reference to a cost or expense in this Agreement excludes any amount in respect of GST forming part of the relevant cost or expense when incurred by the relevant party for which that party can claim an Input Tax Credit.

13.3 The payee shall provide promptly all information and materials required to allow the payer to claim an Input Tax Credit for the Taxable Supply made to the payer, including providing a tax invoice or adjustment note, if an adjustment has been made. Any tax invoice or adjustment note provided by the payee must comply with the GST Law. Additionally, the tax invoice or adjustment note must show the GST exclusive price for the Taxable Supply, the total amount of GST payable and the GST inclusive price for the Taxable Supply.

13.4 In this clause 13:

- (a) **GST Law** has the meaning given to that term in A New Tax System (Goods and Services Tax) Act 1999, or, if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act;
- (b) **GST** means the goods and services tax as imposed by the GST Law;
- (c) **GST Amount** means any Payment (or the relevant part of that Payment multiplied by the appropriate rate of GST (currently 10%));
- (d) **Input Tax Credit** has the meaning given to that term under the GST Law.

(e) **Payment** means any amount payable under or in connection with this Agreement including any amount payable by way of indemnity, reimbursement or otherwise and includes the provision of any non-monetary consideration.

(f) **Taxable Supply** has the meaning given to that term by the GST Law.

14. Force Majeure

14.1 Neither party is responsible for any failure to perform its obligations under this contract if it is prevented from, or delayed in, performing those obligations by an event of Force Majeure.

14.2 Where there is an event of Force Majeure, the party prevented from, or delayed in, performing its obligations under this contract must immediately notify the other party giving full particulars of the event of Force Majeure and the reasons for the event of Force Majeure preventing that party from, or delaying that party in, performing its obligations under this contract and that party must use its reasonable efforts to mitigate the effect of the event of Force Majeure upon its or their performance of the contract and to fulfill its or their obligations under the contract.

14.3 Upon completion of the event of Force Majeure the party affected must, as soon as reasonably practicable, recommence the performance of its obligations under this contract. Where the party affected is **Core Metallurgy**, **Core Metallurgy** must provide a revised programme rescheduling the works to minimise the effects of the prevention or delay caused by the event of Force Majeure;

14.4 An event of Force Majeure does not relieve a party from liability for an obligation which arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner which matured prior to the occurrence of that event

15. Miscellaneous

15.1 The Agreement is governed by the laws of Queensland. The Client submits to the non-exclusive jurisdiction of the courts of Queensland at Brisbane.

15.2 The Agreement is the entire agreement between **Core Metallurgy** and the Client, and supersedes any previous agreement, arrangement or understanding in connection with the Technical Services.

15.3 In the event of any conflict or inconsistency between the Quotation, Terms and Conditions and any other document constituting the Agreement, the terms of the documents shall take precedence and prevail in the following order:

(a) Quotation; then

(b) Terms and Conditions; then

(c) the remaining documents.