

## TERMS AND CONDITIONS FOR THE PROVISION OF METALLURGICAL AND ANALYTICAL SERVICES

### Definitions and Interpretation

1. In this Agreement, unless the context otherwise requires:

**Acceptance** means:

- (1) the client's written acceptance of the Quotation and these Terms and Conditions; or
- (2) the Client accepting the Quotation and placing a purchase order with Nagrom for the Services or any part thereof; or
- (3) the Client instructing Nagrom to proceed with the Services (whether or not in writing);

**Agreement** means the Quotation, the Acceptance (subject to Clause 2) and these Terms and Conditions;

**Client** means the client specified in the Acceptance;

**Confidential Information** means information that is not publicly available;

**Fees** means the fees specified in the Quotation which, unless stated otherwise, excludes GST and Reimbursable Expenses, but is inclusive of all other costs and charges (such as insurance, duties and taxes and labour);

**IP** means all statutory and proprietary rights in respect of inventions, patents, registered and unregistered designs, registered and unregistered trademarks or applications thereof, circuit layouts, copyright (including future copyright), confidential information, scientific discoveries, know-how, and all other intellectual property rights as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation, 1967 for the full duration of such rights, whenever existing (including now or in the future) and wherever in the world enforceable;

**Nagrom** means Valdrew Nominees Pty Ltd (ACN 008 868 335) of 49 Owen Road, Kelmscott, Western Australia or its successors in title and assigns;

**Quotation** means the quotation for metallurgical and analytical services provided to the Client by Nagrom dated on or around the date of these Terms and Conditions;

**PPSA** means the *Personal Property Securities Act 2009* (Commonwealth);

**Reimbursable Expenses** means the expenses which Nagrom may claim from the Client, as set out in the Quotation which may include, without limitation, travel and accommodation costs and

other out of pocket expenses;

**Report** means any report of Nagrom's findings, recommendations or results resulting from provision of the Services;

**Services** means the services specified in the Quotation and any other services agreed in writing between Nagrom and the Client from time to time;

**Stand-by Rates** means the stand-by rates specified in the Quotation, or if none are specified in the Quotation, Nagrom's standard stand-by rates from time to time;

**Testwork Program** means the program for completion of the Services, as set out in the Quotation or as otherwise agreed between Nagrom and the Client in writing or varied in accordance with the Agreement;

**Variation** means a variation to the Services or any other matter agreed between Nagrom and the Client on the terms and conditions set out in Clauses 18 to 21;

### General

2. The Client acknowledges and agrees that Nagrom will provide the Services to the Client in accordance with the Agreement, which the Client accepts when the Client provides the Acceptance, and they apply to the exclusion of any inconsistent provisions in the Acceptance or on any purchase order or other document issued by the Client.
3. Unless otherwise specified, the terms of the Agreement apply to any Variations that may be agreed or ordered in the scope of the Services and to any additional Services agreed from time to time.

### Provision of Services by Nagrom

4. Nagrom shall provide to the Client the Services described in the Quotation, together with any other services as may be agreed between Nagrom and the Client from time to time in writing.
5. Nagrom will provide the Services with due care and skill, in accordance with the Quotation and in accordance with the Client's specific instructions or, in the absence of specific instructions from the Client in accordance with:
  - (1) any relevant Australian metallurgy industry custom, usage or practice; and/or
  - (2) any methods Nagrom considers appropriate on technical, operational or financial grounds.
6. To the maximum extent permitted by law, all other

terms and warranties expressed or implied by any legislation, the common law, equity, trade, customary usage or otherwise in relation to the supply of the Services under the Agreement or otherwise in connection with the Agreement are expressly excluded.

7. Nagrom's Report and findings reflect Nagrom's findings, opinions and results in relation to the specific samples tested by Nagrom only and do not express any finding, opinion or results in relation to the greater samples from which the tested samples were drawn or the ore body from which the samples were originally taken.
8. Unless Nagrom has agreed in writing otherwise, issue of the Report by Nagrom will complete the Services. On completion of the Services the Client must remove all samples from Nagrom's premises or any other premises at which the samples are stored, within 30 days. If the Client does not remove the samples within this period Nagrom may in its discretion either continue to store the samples, dispose of the samples or return the samples to the Client. Storage of samples for longer than 30 days after completion of the Services will incur a storage charge at Nagrom's applicable storage charges from time to time. If the Client requires return of any samples, or if Nagrom elects to return the samples to the Client pursuant to this Clause the Client must, at Nagrom's option, either pay or reimburse Nagrom for the costs of doing so. If Nagrom disposes of samples pursuant to this Clause the Client must at Nagrom's option, either pay or reimburse Nagrom for the costs of disposing of any samples.

#### **Client's Obligations**

9. Unless otherwise agreed in writing between Nagrom and the Client:
  - (1) the Client must deliver the samples f.o.b to Nagrom's facility, accurately identified and labeled together with all supporting information requested by Nagrom to ensure proper identification and analysis of the samples;
  - (2) the Client shall be responsible for providing a sample, test item, or component which is adequate for processing and any and all uses to which the Client shall apply the results;
  - (3) the Client must inform Nagrom within a reasonable period in advance of Nagrom receiving the samples of any dangers, actual or potential, associated with the samples including, for example, the presence or risk of radiation, toxic or noxious or explosive

elements or materials, environmental pollution or poisons; and

- (4) the Client must provide Nagrom with all information relevant to provision of the Services and any specific requirements of the Client as soon as practicable, and in any event prior to the date Nagrom commences the Services. Without limiting anything else in this sub-clause, the Client acknowledges that changes or additional requirements may cause delays in completion of the Services or any part of the Testwork Program, and that Nagrom will not be liable in any way for any such delay.
- (5) The Client must nominate a person to act as its representative and primary point of contact for Nagrom for any matter relating to the Agreement and the Services. The Client covenants that the Representative has the authority to bind the Client in respect of any matter relating to the Agreement and the Services. The Client acknowledges that Nagrom will only be obliged to deal with the Representative in relation to matters relating to the Agreement and the Services, but if authorised to do so in writing Nagrom may agree to liaise with other parties nominated in writing by the Client.

#### **Terms of Payment**

10. The Client must pay Nagrom, without deduction or set-off, the Fees, the Reimbursable Expenses and any other money payable pursuant to the Agreement at the times and in the manner specified in the Quotation or if no time for payment is specified in the Quotation, within 14 days of invoice.
11. If any money payable under the Agreement is not paid by the due date for payment, the Client must pay interest on that money at the overdraft interest rate charged from time to time by Nagrom's bankers on overdraft facilities of less than \$100,000.00 plus 2%, calculated from the due date until the date of payment, plus any costs and expenses incurred by Nagrom in collection of overdue amounts (including, but not limited to, legal costs on solicitor/client basis).

#### **Liability and Indemnity**

12.
  - (1) To the maximum extent permitted by law, Nagrom will not in any circumstances be liable for any form of indirect or consequential loss arising out of the provision of the Services or otherwise in connection with the Agreement, including but not limited to loss

of revenue, loss of profit or any other loss, arising out of or in connection with the performance or non-performance of the Services.

- (2) To the maximum extent permitted by law, Nagrom's aggregate liability for all damages not excluded under Clause 12(1) (regardless of the legal basis on which they arise or are incurred) for Services provided under the Agreement is limited to the amount of the Fees or, if the Quotation provides that the Fees are payable according to different stages of the Services, the amount of Fees for the relevant stage. For the avoidance of doubt, Fees does not include any Reimbursable Expenses or any other amounts paid to any third party.
- (3) The Client agrees to indemnify and keep indemnified Nagrom in respect of all actions, claims, proceedings, losses, damages, costs and expenses (including legal fees on a solicitor/client basis) and other liabilities of whatever nature, whether foreseeable or not, and whether direct or indirect, incurred by Nagrom in respect of any claim by a third party arising in connection with the Agreement, except to the extent that such third party claim arises as a result of Nagrom's negligence, willful misconduct or breach of the Agreement.
- (4) Without limiting any other provision of the Agreement, Nagrom will not be responsible for any failure to meet its obligation to provide the Services in accordance with the Agreement or any other failure to comply with the Agreement to the extent that the failure is caused or contributed to by any event beyond Nagrom's reasonable control.
- (5) The Client acknowledges that its use of or reliance on any monitoring, analysis, reports, written advice or other information or work performed for or provided to the Client by Nagrom under the Agreement is the sole responsibility of the Client, and that Nagrom accepts no liability in relation to such use or reliance, or any matter arising from the Client's use or reliance.

#### **Limitations**

13. The Client acknowledges that the Services are provided in accordance with the scope of work as set out in the Quotation or as otherwise agreed between the Client and Nagrom in writing.
14. Without limiting anything in Clause 13, the Client acknowledges that the Quotation and the scope of work for the Services were prepared without prior knowledge or with limited knowledge of the specific characteristics of the samples or any other matter (except as specifically stated in the Quotation).

15. If any part of the Services or the Report is based on, refers to or otherwise incorporates any work or information supplied to Nagrom by the Client or any third party (even if the third party is a related entity of Nagrom) (**Third Party Information**) the Client acknowledges that Nagrom has not verified the accuracy or completeness of the Third Party Information, except to the extent specified in the Quotation.
16. To the extent that any part of the Services or the Report is based on, refer to or otherwise incorporate any Third Party Information, the Client acknowledges that the Services and Report are contingent on the accuracy and completeness of that information. The Client releases Nagrom from any and all actions, claims, proceedings, losses, damages, costs and expenses or other liabilities of whatever nature, whether foreseeable or not, and whether direct or indirect, incurred by the Client or any other person in connection with or arising out of Nagrom's use, incorporation or reliance upon the Third Party Information provided to it by the Client or any third party.
17. The Client acknowledges that Nagrom is not obliged to update or revise the Quotation, the Report or the Services to take into account any events, circumstances or facts occurring, arising or becoming apparent after Nagrom provides the Quotation or the Report to the Client or carries out the Services.

#### **Variations**

18. The Client may request a variation to the Services by giving Nagrom notice in writing of any proposed variation, and Nagrom and the Client may at any time agree a variation to the Services in writing.
19. On receiving notice of a requested variation Nagrom may advise the Client on whether the proposed variation can be effected, and if so, the likely impact on the Testwork Program for completion of the Services, the Fees and anything else under the Agreement.
20. Nagrom is not bound to carry out any variation to the Services unless it has agreed in writing to carry out that variation.
21. The Client acknowledges that Nagrom is not obliged to carry out any variation unless the Client has given its written approval to do so, including written acceptance of any proposed changes by Nagrom to the Testwork Program, Fees and other matters under this Agreement arising from the proposed variation.

## Report

22. Without limiting Clause 12, the Client acknowledges and agrees that Nagrom will not be liable for any actions, claims, proceedings, losses, damages, costs and expenses or other liabilities of whatever nature, whether foreseeable or not, and whether direct or indirect, incurred by any person other than the Client in connection with or arising out of with the use or, or reliance upon, the Report, for any purpose whatsoever.
23. The Client acknowledges that the Report is only for the Client's use and information and the Client must not sell, provide or release the Report or any part of it to any other person without the express written consent of Nagrom, which may be given or withheld, or given on conditions, in Nagrom's absolute discretion.
24. The Client releases Nagrom from any and all actions, claims, proceedings, losses, damages, costs and expenses or other liabilities of whatever nature, whether foreseeable or not, and whether direct or indirect, incurred by the Client or any other person in connection with or arising out of the unauthorised provision, sale or release of the Report or any part of it without Nagrom's express written approval to do so.
25. The Client agrees to indemnify and keep indemnified Nagrom in respect of all actions, claims, proceedings, losses, damages, costs and expenses (including legal fees on a solicitor/client basis) and other liabilities of whatever nature, whether foreseeable or not, and whether direct or indirect, incurred by Nagrom which arise as a result of the unauthorised provision, sale or release of the Report or any part of it without Nagrom's express written approval to do so.
26. The Client acknowledges that, unless specifically stated in the Report, the Report is not evidence of compliance with any legislation, regulation or law.

## Intellectual Property

27.
  - (1) The IP in all material and information made available by Nagrom to the Client in the course of performing the Services, remains the property of Nagrom.
  - (2) All material and any IP created or developed in the performance of the Services, whether by Nagrom, the Client or any of their employees, agents or contractors shall become the property of Nagrom and the Client hereby assigns, and shall ensure that any of its employees, agents and

subcontractors assign, to Nagrom any of their IP rights, including any future IP rights, in that material, together with all moral rights in that material or property, to the extent permitted by law.

- (3) The Client shall indemnify and at all times keep the Nagrom indemnified against any claim arising from or incurred by reason of any infringement or alleged infringement of any other person's IP rights in respect of any services, system or method of performing, working or arrangement used, provided or supplied by the Client or any of its employees, agents or contractors.
- (4) Without limiting anything else in this Clause 26 the Client acknowledges and agrees that Nagrom owns and will retain all IP in the Quotation and the Report and any other documents produced in connection with the Quotation and the Services, including but not limited to drawings, reports, specifications, notes and calculations and the Client shall not use or permit any of Nagrom's IP to be used unless written approval is given by Nagrom.

## Default, Termination and Suspension

28. Nagrom may terminate this Agreement for any reason by giving the Client 30 days' written notice.
29. The Client will be in default if the Client:
  - (1) fails to pay any amount due to Nagrom under the terms of the Agreement by the due date for payment;
  - (2) breaches any other material term of the Agreement and such breach is not remedied within 14 of receiving notice from Nagrom requiring it to do so;
  - (3) in the case of the Client being a body corporate becomes an externally-administered or has an application for winding up filed against it; or
  - (4) in the case of the Client being an individual, it commits an act of bankruptcy or becomes insolvent under administration.
  - (5) If the Client is in default, Nagrom may:
    - (i) terminate the Agreement by written notice to the Client to that effect; and/or
    - (ii) refuse to supply any further Services to the Client and otherwise suspend performance of its obligations under the Agreement; and/or
    - (iii) exercise any other right or remedy available to it under the Agreement, the PPSA or otherwise at law; and/or
    - (iv) declare all monies owing by the Client to Nagrom on any account immediately due and payable.
30. Where the Agreement is terminated in accordance with Clause 27 or 28, the Client must pay Nagrom reasonable remuneration for the Services provided

and Reimbursable Expenses incurred up to and including the date of termination having regard to the Fee and Reimbursable Expenses payable under this Agreement and after termination Nagrom shall have no further liability to the Client arising from the Agreement or the provision of the Services.

31. If Nagrom suspends performance of its obligations under the Agreement it will remain entitled to recover any loss suffered as a result of the suspension. Nagrom shall not be liable for any costs or damages the Client may incur as a result of a suspension by Nagrom pursuant to Clause 29.

### **Dispute Resolution**

32. If there is any dispute between the parties concerning or arising out of the Agreement, the parties shall as a condition precedent to the commencement of any legal proceedings, meet and attempt in good faith to resolve the dispute. If the parties fail to agree within 30 days after first meeting, either party may commence proceedings to resolve the dispute. Nothing in this Clause will prevent a party from seeking urgent injunctive relief.

### **Confidential Information**

- 33.
- (1) Each party must not, without the prior written consent of the other party, disclose to any person any Confidential Information except any Confidential Information that is:
- (i) in, or comes into, the public domain other than as a result of a breach of this Clause;
  - (ii) required to be disclosed by law or by order of a court; or
  - (iii) to be disclosed to legal or other advisors of a party for the purposes of advice in relation to this Agreement.
- (2) Prior to disclosing any Confidential Information as permitted under subclause (1), a party will notify the other party of the proposed disclosure and will provide a copy or particulars of the Confidential Information to be disclosed.
- (3) For the purposes of this Clause, 'Confidential Information' means any information contained in the Quotation, the Report, these Terms and Conditions, and variation to the Services and any other information which a party gives to another party under or in connection with this Agreement that is non-public, confidential or otherwise proprietary in nature.

### **Force Majeure**

34. If Nagrom becomes unable, wholly or in part, by force majeure or any other matter or event beyond Nagrom's reasonable control, to carry out any of its obligations under the Agreement, Nagrom may give the Client written notice of the force majeure, matter or event and the probable extent to which it will be unable to perform, or will be delayed in performing that obligation and, regardless of whether Nagrom gives any such notice, Nagrom will not be required to carry out such obligation so far as it is affected by the force majeure, matter or event.

### **Assignment**

35. The Client must not assign any right or interest in the Agreement without the prior written consent of Nagrom (which Nagrom may give or withhold in its discretion).
36. Nagrom may assign its rights or interests in the Agreement without the consent of the Client.
37. The Agreement binds the parties and their respective successors and permitted assigns.

### **General**

38. This Agreement is governed by and construed in accordance with the laws of Western Australia and any dispute, controversy or claim arising out of or in connection with this Agreement or the breach, termination or invalidity of any term of this Agreement must be referred to the non-exclusive jurisdiction of the courts of Western Australia.
39. The Agreement may only be varied by agreement in writing signed by the parties.
40. The Agreement is the entire agreement between the parties as to its subject matter. It supersedes all prior agreements, quotations, representations, conduct and understandings, and the Client acknowledges that it has not relied on any representation or conduct in deciding whether to enter into the Agreement other than as expressly set out in the Agreement.
41. If there is any inconsistency between the Quotation and these Terms and Conditions, the Quotation will prevail to the extent of any consistency.
42. Each provision of these Terms and Conditions shall be read as separate and severable. If any provision is void or unenforceable for any reason, that provision will be severed and the remainder read and enforced as if the severed portion had never existed.

## **GST**

43.

- (1) In this Clause, the terms “adjustment note”, “GST”, “taxable supply” and “tax invoice” have the meanings given to those terms in the A New Tax System (Goods and Services Tax) Act 1999.
- (2) Unless stated otherwise, amounts set out in the Quotation and the consideration for any other supply in connection with the Agreement does not include GST.
- (3) To the extent that any supply made under or in connection with the Agreement is a taxable supply, the recipient must pay, in addition to the consideration provided under the Agreement, the applicable amount of GST payable in respect of that supply at the same time as the consideration is paid, provided that the supplier has provided the recipient with a valid tax invoice in relation to the supply.

## **No warranty or liability for Third Party’s Equipment or Products**

44. The Client agrees that Nagrom will not be liable in any way, and releases Nagrom to the fullest extent permitted by law in relation to, any actions, claims, proceedings, losses, damages, costs and expenses or other liabilities of whatever nature, whether foreseeable or not, and whether direct or indirect, incurred by the Client or any other person in connection with or arising out of any equipment or products that are not manufactured by Nagrom and which are used by Nagrom or otherwise provided, sold or supplied to the Client in connection with the Services or under the Agreement.

## **Unforeseen Difficulties or Expenses**

45. In the event that unforeseen problems, complications or expenses arise in the course of carrying out the Services Nagrom will use all reasonable endeavours to inform the Client, and shall be entitled to charge additional Fees to cover the extra time and costs necessarily incurred to complete the Services.

## **Site Visits**

46. If the Representative or any other representative of the Client approved in writing by Nagrom is required to attend any site at which the Services are provided the Client must strictly comply with Nagrom’s site visit and safety policies and requirements in force from time to time. Without limiting anything else in this Clause 45, the Client acknowledges that it must make arrangements with

the appropriate Nagrom personnel at least 24 hours prior to any site visit.

## **Personal Property Securities Act 2009**

47.

- (1) In this Clause:
  - (i) financing statement has the meaning given to it by the PPSA;
  - (ii) financing change statement has the meaning given to it by the PPSA;
  - (iii) security agreement means the security agreement under the PPSA created between the Client and Nagrom by the Agreement;
  - (iv) security interest has the meaning given to it by the PPSA.
- (2) The Client acknowledges and agrees that the Agreement:
  - (i) constitutes a security agreement for the purposes of the PPSA;
  - (ii) creates a security interest in any goods or services previously supplied by Nagrom to the Client or any goods supplied by Nagrom to the Client in the future.
- (3) The Client undertakes to:
  - (i) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Nagrom may reasonably require to:
    - (a) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (b) register any other document required to be registered by the PPSA; or
    - (c) correct a defect in a statement referred to in Clause 45(3)(a) or (b).
  - (ii) indemnify, and upon demand reimburse, Nagrom for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any goods charged thereby;
  - (iii) not register a financing change statement in respect of a security interest without the prior written consent of Nagrom;
  - (iv) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Nagrom; and
  - (v) immediately advise Nagrom of any material change in its business practices of selling the

goods which would result in a change in the nature of proceeds derived from such sales.

- (4) Nagrom and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- (5) The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- (6) The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- (7) Unless otherwise agreed to in writing by Nagrom, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- (8) The Client shall unconditionally ratify any actions taken by Nagrom under sub-clauses 45(1) to (8).

#### **Acceptance**

48. By signing a copy of these Terms and Conditions or the Quotation, or by accepting the Quotation and placing a purchase order with Nagrom for the Services or any part thereof, or by instructing Nagrom to proceed with the Services (whether or not in writing) the Client expressly acknowledges that it has read, understood, accepted and is bound by the Agreement, including (without limitation) these Terms and Conditions.