

Terms & Conditions

TERMS AND CONDITIONS OF SALE

1. GENERAL

1.1. Definitions

In these terms and conditions, the following definitions shall apply:

“**Blanket Order**” means an Order submitted to the Company by the Buyer which contains multiple delivery dates over a period of time.

“**Bulk Order**” means any Order for loose material Goods submitted by the Buyer to the Company.

“**Buyer**” means any customer placing an Order with the Company.

“**Company**” means Kilwaughter Minerals Limited (Company Number NI001351).

“**Contract**” means the contract between the Company and the Buyer for the sale and purchase of the Goods, in accordance with the terms and conditions hereafter appearing and which shall include an Order duly accepted by the Company.

“**Data Protection Legislation**”:

- a. to the extent the UK GDPR applies, the law of the United Kingdom or of a part of the United Kingdom in force from time to time which relates to the protection of personal data.
- b. to the extent the EU GDPR applies, the law of the European Union or any member state of the European Union to which the Buyer or Company is subject and as is in force from time to time, which relates to the protection of personal data.

“**Delivery**” includes performance of services as the context may admit and may be effected by the Company, by carriers or collection by the Buyer in accordance with clause 3.

“**EU GDPR**” means the General Data Protection Regulation ((EU) 2016/679).

“**EEA**” means the European Economic Area.

“**Force Majeure Event**” means an event beyond a party’s reasonable control as further defined within clause 13.

“**Goods**” the goods (or any part of them) set out in the Order which include the supply of services to be supplied by the Company to the Buyer.

“**Intellectual Property Rights**” means patents, rights to inventions, copyright and related rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, the right to sue for passing off, rights in designs, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim

priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“Order” means the Buyer's order for the Goods submitted by the Buyer to the Company for acceptance and issued either by way of fax, telephone, email or post being either acceptance of the Company's quotation or as set out in the Buyer's purchase order form.

“Price” means the price of the Goods and Delivery thereof as stated in the quotation provided by the Company and subsequent Order, subject to clause 4 below.

“UK Data Protection Legislation” means all applicable data protection and privacy legislation in force from time to time in the UK including UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and any laws which implement any such laws in the UK.

“UK GDPR” has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

“Controller”, “Processor”, “Personal Data”, “Data Subject”, “Personal Data Breach”, “processing”, “appropriate technical” and “organisational measures” have the meanings as defined in the UK Data Protection Legislation.

2. BASIS OF CONTRACT

- 2.1. These terms and conditions apply to the Contract to the exclusion of any other terms and conditions which the Buyer might seek to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.2. The Order constitutes an offer by the Buyer to purchase the Goods in accordance with these terms and conditions. The Buyer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3. The Order shall only be deemed to be accepted on the earlier of (a) the Company issuing written acceptance of the Order or (b) on Delivery of the Goods at which point the Contract shall come into existence.
- 2.4. The Buyer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Buyer that is inconsistent with these terms and conditions.
- 2.5. A quotation or estimate for the Goods given by the Company are an invitation to treat only and shall not constitute an offer. A quotation for Delivery shall be provided based on the Company's haulage charges at the time the quotation is provided. A quotation or fee estimate for the Goods and Delivery shall only be valid for thirty days from the date of its issue, unless otherwise specified by the Company within the quotation or in writing. In circumstances where the Company experiences cost rises relating to costs associated with

the quotation, the Company reserves the right to amend the quotation within the 30 day period.

- 2.6. Once an Order is accepted by the Company, the Buyer shall become liable for the whole cost of the Order. If any information supplied by or on behalf of the Buyer is insufficient incorrect inaccurate or misleading or if the buyer notifies the Company of any amendment or requirements in relation to any Order (including Delivery requirements) after acceptance thereof by the Company, such change to the Order shall be strictly subject to the approval and acceptance of the Company and appropriate adjustment to the Price, Delivery date or Delivery schedule and other matters as the Company shall consider fair and reasonable. The Buyer shall be liable for all additional costs including labour and Delivery arising from the amendment to the Order.
- 2.7. Any amendment to an Order shall only be effective when accepted by the Company in writing and signed by a duly authorised representative of the Company.
- 2.8. If the Company supplies Goods that require a special order such as but not limited to non-standard colour, non-standard volume per pack as determined and communicated by the Company upon acceptance of the Order, the Buyer must accept the quantity that is delivered and pay for the whole amount that is produced and delivered.
- 2.9. The Company reserves the right to correct any typographical, clerical or other error or omission within any correspondence, literature, quotation, Order, pricing schedule or invoice, which shall be subject to correction without any liability.

3. DELIVERY

- 3.1. The Company will endeavour to make Delivery at the time and in the manner specified in the Order but any Delivery date given is an estimate only and in no circumstances shall time be made of the essence of the contract. The Company shall not be liable for any delay in the delivery of Goods that is caused by a Force Majeure Event or the Buyer's failure to supply the Company with adequate delivery instructions or any other such instructions relevant to the supply of the Goods.
- 3.2. The Goods shall be delivered to the location and in the manner set out in the Order in respect to the number of Deliveries and any special delivery requirements accepted by the Company. Any changes to the Delivery specification set out in the Order at the request of the Buyer shall be subject to acceptance by the Company and shall incur additional costs pursuant to clause 2.6.
- 3.3. Delivery may be made by instalments if the Company so requires, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Buyer to cancel any subsequent instalment of the Order. Such delivery by instalments shall include where, in the Company's opinion, any part of the Goods is usable by the Buyer independently of other parts, which are not immediately available for delivery.

- 3.4. In the event the Buyer opts to collect the Goods at the Company's premises, either by the Buyer's own transport or by a carrier employed by him, the Company's responsibility for Delivery shall cease when the Goods are handed over to the carrier.
- 3.5. Where Goods are despatched by a carrier the mode of Delivery shall be at the Company's discretion. Delivery is completed upon completion of the unloading of the Goods at the Delivery location. The Buyer shall be solely responsible for unloading of the Goods at the point of Delivery. The Buyer shall indemnify and hold harmless the Company against all liabilities claims or costs arising as a result of the Company or its subcontractor assisting the Buyer in the unloading, loading or other removal of the Goods at the point of Delivery.
- 3.6. Any services provided by the Company in respect of the provision of Goods will be provided on an "as-is" basis and will be true and accurate at the date of Delivery. The Company hereby excludes any warranty, condition, representation or otherwise (whether implied or expressed) in respect of the services to the fullest extent permitted by law.
- 3.7. Non-delivery of the whole or any part of the consignment of Goods must be notified to the Company as soon as possible and no later than five days of despatch and in the case of non-delivery of part of the Goods, must be accompanied with detailed photographic evidence.
- 3.8. The Company shall be deemed to have fulfilled its contractual obligations in respect of Bulk Orders if the Company delivers up to and including 80% of the Goods and the Buyer may not reject such delivery. The Company shall make a pro rata adjustment to the invoice of the Goods to reflect the quantity delivered.
- 3.9. If the Buyer fails to take or accept Delivery of the Goods (as the case may be) following notification from the Company to the Buyer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event:
 - 3.9.1 Delivery of the Goods shall be deemed to have been completed at 9.00 am on the third day after the day on which the Company notified the Buyer that the Goods were ready; and
 - 3.9.2 the Company shall store the Goods until delivery takes place and charge the Buyer for all related costs and expenses (including insurance).
- 3.10. If ten days after the day on which the Company notified the Buyer that the Goods were ready for Delivery the Buyer has not taken or accepted (as the case may be) actual delivery of them, the Company may resell or otherwise dispose of part or all of the Goods and charge the Buyer for any shortfall received for the Goods below that set out in the Order.

4. PRICES

- 4.1. Except as expressly provided in these terms and conditions, the Price of the Goods and Delivery thereof shall be the price set out in the Order.
- 4.2. Any price lists published by the Company are subject to revision by the Company at any time and the Buyer should request a quotation in respect of any prospective Order.
- 4.3. The application of a discount to an Order is at the sole discretion of the Company and the Company shall have the right at any time to withdraw any discount previously given to a Buyer, from its normal prices.
- 4.4. In the event that Goods have not been called-off within 12 months from the date of any Blanket Order, or in the event the date for Delivery set out in the Order is 12 months or more from the date of the Order (**Long Dated Order**), the Company may, by giving notice to the Buyer, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to an increase in costs related to the supply of the Goods, including foreign exchange fluctuations, increases in raw materials and other such manufacturing costs. Such increase shall take effect from the first anniversary of the relevant Blanket Order and any subsequent anniversary thereafter, or in the case of a Long Dated Order, the date of Delivery.
- 4.5. The Price shall not include any import duties, tariffs, clearance charges, taxes brokers fees and other amounts payable (**EX/IM Costs**) in connection with the export and import of the Goods.
- 4.6. Unless otherwise agreed with the Company in writing, the Buyer must at its own cost discharge all export and import clearance formalities (if applicable) including but not limited to obtaining the requisite licences, preparing and filing declarations and discharging all EX/IM Costs.

5. QUALITY LIABILITIES AND INDEMNITIES

- 5.1. The Company warrants that all Goods will be inspected by the Company before Delivery to ensure freedom from defects and general compliance with the Order and further that on delivery and for a period of 12 months from the date of manufacture (warranty period) the Goods shall:
 - 5.1.1 conform in all material respects with their description and any applicable specification;
 - 5.1.2 be free from material defects in design, material and workmanship;
 - 5.1.3 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979).
- 5.2. In the event the Goods purchased by the Buyer are part of the Company's K Systems range, the Buyer may apply to the Company for an extended warranty guarantee in respect of such Goods for a period of up to 25 years, subject to the satisfaction of pre-

conditions to such application and acceptance by the Company. For further details in respect of the extended warranty please contact your area sales manager.

- 5.3. The Buyer shall examine the Goods immediately upon Delivery unless contrary is agreed in writing with the Company.
- 5.4. Damage to the Goods in transit must be notified to the Company and the carrier in writing and supported by detailed photographic evidence of the subject Goods as soon as possible and no later than within three days of Delivery
- 5.5. Save for those circumstance where damage has arisen in transit as set out at clause 5.4, subject to clause 5.6, if:
 - 5.5.1 the Buyer gives notice in writing to the Company during the warranty period within a reasonable time of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - 5.5.2 the Company is given a reasonable opportunity of examining such Goods; and
 - 5.5.3 the Buyer returns any allegedly defective part or parts of such Goods to the Company's place of business at the Buyer's cost within fourteen days of the request by the Company to do so;

the Company shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods. In the event that no liability attaches to the Company in respect of the Goods, the Buyer shall discharge those costs arising from any test carried out to such part or parts of the Goods together with the costs of return to the Buyer, such cost to be certified by the Company.

- 5.6. The Company shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
 - 5.6.1 the Buyer makes any further use of such Goods after giving notice in accordance with clause 5.5;
 - 5.6.2 the defect arises because the Buyer failed to follow the Company's instructions as to storage, namely that the Goods should be stored off the ground in dry conditions protected from frost and direct sunlight and should not be stacked to a height exceeding 1 meter, or any further oral or written instructions as to the storage issued;
 - 5.6.3 the defect arises because the Buyer failed to follow the Company's oral or written instructions as to commissioning, application, use and maintenance of the Goods or (if there are none) good trade practice regarding the same;
 - 5.6.4 the defect arises as a result of the Company following any mistake of the Buyer in the description of the Goods within the Order;
 - 5.6.5 the Buyer alters, amends or repairs such Goods without the written consent of the Company;

- 5.6.6 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal working conditions;
 - 5.6.7 the Goods have not been used within 12 months' from the date of manufacture, being the shelf-life of the Goods and as such the warranty period provided; or
 - 5.6.8 the Goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.7. Except as provided in this clause 5, the Company shall have no liability to the Buyer in respect of the Goods' failure to comply with the warranty set out in clause 5.1. For the avoidance of doubt, this warranty does not extend to samples provided by the Company.
- 5.8. The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, are excluded from the Contract.
- 5.9. These conditions set out in this clause 5 shall apply to any repaired or replacement Goods supplied by the Company. For the avoidance of doubt, the warranty period of any repaired or replacement Goods shall be the unexpired warranty period of the original Goods identified at clause 5.1.
- 5.10. Samples must only be regarded as a general indication of the Goods to be supplied. It is the responsibility of the Buyer to satisfy itself as to the suitability for the purpose for which the material is required and that it complies with the specification of the employing authority. Any sample product or colour charts supplied and/or exhibited to the Buyer are supplied solely for information and in no way import any express or implied conditions or warranties as to quality, description, fitness for purpose or merchantable quality and the Buyer shall be deemed to have satisfied itself as to such matters prior to ordering the Goods. The supply and/or exhibition of such sample, models or colour charts shall not cause any contract concluded to be a contract by way of sample.
- 5.11. The Goods are manufactured with natural raw materials and as such are subject to natural variations in colour. Such variations are not considered a defect and shall not give rise to a breach of the warranty at clause 5.1. The Buyer acknowledges that it should purchase Goods from the same batch to reduce the likelihood of variations in colour arising.
- 5.12. The Buyer is obliged to follow any safety data sheets, application instructions, technical data sheets and safety information on packaging where available and if no such information is available, in line with good practice and health and safety standards expected within the Buyer's industry.
- 5.13. Nothing in this clause 5 shall limit or exclude the Company's liability for:
- 5.13.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 5.13.2 fraud or fraudulent misrepresentation;
 - 5.13.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or

5.13.4 defective products under the Consumer Protection Act 1987.

5.14. Subject to clause 5.13:

5.14.1 the Company shall under no circumstances whatsoever be liable to the Buyer, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, any indirect or consequential loss, or damage to goodwill arising under or in connection with the Contract; and

5.14.2 the Company's total liability to the Buyer in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the Goods.

5.15. The Buyer shall indemnify and hold the Company harmless in respect of any claim or any loss or damage to any person or property occasioned directly or indirectly by or arising from the use or operation (otherwise than by the Company) or possession of any part of the Goods and from negligence (including the use of any part of the Goods otherwise than in accordance with the Company's operating instructions and manuals together with all health and safety obligations set out at clause 5.12 above) or default (including any non-compliance with any obligation imposed by these terms and conditions or any delay, wrong information or lack of required information) or misuse of the Goods by or on the part of the Buyer or any person or persons other than the Company and this indemnity shall extend to any costs and expenses incurred by the Company and shall continue in force notwithstanding the termination of any agreement between the Buyer and the Company.

6. INTELLECTUAL PROPERTY RIGHTS

6.1. The Buyer acknowledges that all Intellectual Property Rights in respect of the Goods are owned by the Company.

6.2. The Buyer covenants with the Company that it shall forthwith notify the Company of any allegation of infringement of any patent registered design trade mark copyright or other intellectual property right enjoyed by the Company or by the manufacturer or supplier of the Goods or any part thereof.

7. PAYMENT

7.1. The Price is exclusive of amounts in respect of VAT. The Buyer shall, on receipt of a VAT invoice from the Company, pay to the Company any additional amounts in respect of VAT as are chargeable on the supply of the Goods.

7.2. Unless otherwise provided in the Order the Company will endeavour to invoice the month in which despatch takes place.

- 7.3. Unless otherwise agreed in writing with the Company, payment in full and in clear funds shall be due to the Company thirty days after the end of the month in which the Company's invoice was dated and time is the essence for payment. In the event that the Buyer wishes to make payment in a currency other than Sterling, the Buyer must notify the Company of such when submitting an Order and which shall be subject to written acceptance by the Company. Should the Company issue such written consent, the exchange rate applicable shall be the exchange rate at the date of the Order.
- 7.4. If the Buyer (being a company) enters into administration liquidation or receivership or (being an individual) becomes bankrupt in either case makes any arrangement with his creditors or commits a material or serious breach of this agreement (and in the case of such a breach being remediable fails to remedy it within seven days of receiving notice to do so) he will be deemed to have repudiated the Contract.
- 7.5. Interest is payable at 2% per month above the Bank of England base rate from time to time on any payment or part thereof due and owing to the Company following the expiry of the thirty day period set out at clause 7.3 above. Such interest shall accrue on a daily basis from the due date until payment is received, whether before or after judgment.
- 7.6. The Company reserves the right any time at its discretion to demand security for payment before continuing with or delivering any Order.
- 7.7. The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law).
- 7.8. In the event that the Company in its sole discretion agrees a credit account with the Buyer, the Company reserves the right to withdraw or reduce said credit account at any time.

8. CONFIDENTIALITY

- 8.1. All information supplied by the Company in any form (other than information in the public domain) is supplied in confidence to the Buyer and the Buyer undertakes not at any time during the Contract and for a period of two years after termination of the Contract disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Company without the Company's express written consent and then only on conditions equivalent to this condition and with an express notification that the information was provided for the Buyer only and is not intended to be relied upon by any other party.
- 8.2. The Buyer shall take all necessary precautions to ensure that all such information is treated as confidential by the Buyer, his staff, agents and subcontractors.

9. DATA PROTECTION

- 9.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 9.2. The parties acknowledge that for the purposes of the Data Protection Legislation, and to the extent said legislation applies to each party, the Buyer is the Controller and the Company is the Processor. Schedule 1 sets out the scope, nature and purpose of the processing by the Company, the duration of the processing, the types of Personal Data and categories of Data Subject.
- 9.3. Without prejudice to the generality of clause 9.1, the Buyer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Company for the duration and purposes of the Contract.
- 9.4. Without prejudice to the generality of clause 9.1, the Company shall, in relation to any Personal Data processed in connection with the performance by the Company of its obligations under the Contract:
 - 9.4.1 process that Personal Data in accordance with its privacy policy or on the written instructions of the Buyer, unless the Company is required by the Data Protection Legislation to otherwise process that Personal Data;
 - 9.4.2 ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;
 - 9.4.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - 9.4.4 where required under the Data Protection Legislation notify the Buyer of a Personal Data Breach; and
 - 9.4.5 only transfer any Personal Data outside of the United Kingdom or EEA where the following conditions are fulfilled:
 - i. appropriate safeguards are provided in relation to the transfer;
 - ii. the Data Subject had enforceable rights and legal remedies; and
 - iii. the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data transferred.

- 9.4.6 at the written direction of the Buyer, delete or return Personal Data and copies thereof to the Buyer on termination of the Contract unless required by domestic laws to store the Personal Data; and
 - 9.4.7 maintain complete and accurate records and information to demonstrate its compliance with this clause 9 and immediately inform the Buyer if, in the opinion of the Company, an instruction infringes the Data Protection Legislation.
- 9.5 Without prejudice to clause 9.1, the Buyer consents to the Company appointing the third-party processors outlined within Schedule 1 as third-party processors of Personal Data under the Contract. The Company confirms that it has entered or (as the case may be) will enter with the third-party processors written agreements incorporating terms that are substantially similar to those set out at this clause 9.

10. ASSIGNMENT AND SUB-CONTRACTING

- 10.1. The Company may at any time assign, transfer, charge or sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract as it sees fit.
- 10.2. The Buyer may not assign, transfer, charge, sub-contract, declare trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the Company.

11. TITLE AND RISK IN GOODS

- 11.1. The title in Goods shall not pass from the Company to the Buyer until the earlier of:
 - 11.1.1 the Company receives payment in full and clear funds of all sums due or owing to the Company from the Buyer on account; or
 - 11.1.2 the Buyer sells the Goods in accordance with the Company's agreement in which case ownership of the Goods will pass to the Buyer immediately before the Goods are delivered to the Buyer's customer.
- 11.2. Until title to the Goods has passed to the Buyer, the Buyer shall:
 - 11.2.1 notify the Company immediately if it becomes subject to any of the events listed in clause 14.1;
 - 11.2.2 ensure the Goods remain readily identifiable as the Company's property;
 - 11.2.3 not remove, reface or obscure any identifying mark on or relating to the Goods;
 - 11.2.4 maintain the Goods in a satisfactory condition in accordance with the storage requirements pursuant to clause 5.6.2 above; and
 - 11.2.5 keep the Goods insured against all risks for their full price on the Company's behalf from the date of Delivery. In the event that a claim is submitted on said policy of insurance prior to the title in the Goods passing to the Buyer, the sum recovered in respect of the Goods from said policy shall be paid to the Company.

11.3. If before title has passed to the Buyer and the Buyer becomes subject to any of the events listed in clause 14.1, then without prejudice to any of its other rights or remedy the Company may at any time:

11.5.1 require the Buyer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

11.5.2 if the Buyer fails to do so promptly, enter any premises of the Buyer or of any third party where the Goods are stored in order to recover and resell the Goods.

11.4. The risk in the Goods shall pass to the Buyer on completion of Delivery at the location specified by the Buyer in the Order or in the event that the Buyer has elected to collect the Goods at the Company's premises, the risk in the Goods shall pass to the Buyer immediately prior to loading of the Goods by the Buyer onto appropriate transport.

12. LIEN

Until the Company has received payment in full for any Goods from the Buyer the Company shall have a general and specific lien on all the Buyer's property in the possession or control of the Company for all monies due to the Company from the Buyer.

13. FORCE MAJEURE

13.1. Force Majeure Event means any circumstance, event or sequence of events not within a party's reasonable control including, including but not limited to:

13.1.1 earthquake, flood, storm, drought, other natural disaster or act of God;

13.1.2 epidemic or pandemic;

13.1.3 terrorist attack, civil war, threat or preparation of war, national emergency invasion, insurrection, riots, imposition of sanctions, embargo or breaking off of diplomatic relations;

13.1.4 nuclear, chemical or biological contamination or sonic boom;

13.1.5 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;

13.1.6 collapse of buildings, fire, explosion or accident;

13.1.7 any labour or trade dispute, strikes, industrial action or lockouts;

13.1.8 non-performance or part-performance by suppliers or subcontractors;

13.1.9 failure of the transportation of any equipment, machinery supply or materials required by a party for performance of the Contract;

13.1.10a shortage of raw materials;

13.1.11 interruption or failure of services rendered by any public utility.

13.2. Provided it has complied with clause 13.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure Event

(Affected Party), the Affected Party shall not be in breach of the Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

13.3. Save for in relation to payment due and owing in accordance with clause 7, the corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.

13.4. The Affected Party shall:

13.4.1 as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the agreement; and

13.4.2 use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

14. TERMINATION

14.1. Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if:

14.1.1 the Buyer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within five days of that party being notified in writing to do so;

14.1.2 the Buyer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;

14.1.3 the Buyer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or

14.1.4 the Buyer's financial position deteriorates to such an extent that in the Company's opinion the Buyer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

14.2. Without limiting its other rights or remedies, the Company may suspend provision of the Goods under the Contract or any other contract between the Buyer and the Company if the Buyer becomes subject to any of the events listed in clause 14.1.1 to clause 14.1.4, or the

Company reasonably believes that the Buyer is about to become subject to any of them, or if the Buyer fails to pay any amount due under the Contract on the due date for payment.

- 14.3. Without limiting its other rights or remedies, the Company may terminate the Contract with immediate effect by giving written notice to the Buyer if the Buyer fails to pay any amount due under the Contract on the due date for payment.
- 14.4. On termination of the Contract for any reason the Buyer shall immediately pay to the Company all of the Company's outstanding unpaid invoices and interest.
- 14.5. Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract that existed at or before the date of termination.
- 14.6. Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

15. ENTIRE AGREEMENT

- 15.1. The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 15.2. Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in this agreement.

16. THIRD PARTY RIGHTS

No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.

17. VARIATION

No variation of these terms and conditions shall be effective and binding unless such variation has been agreed in writing and signed by the parties or their authorised representatives.

18. WAIVER

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

19. SEVERANCE

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

20. NOTICES

- 20.1. Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or email.
- 20.2. A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 20.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second working day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by email, one working day after transmission.
- 20.3. The provisions of this clause 20 shall not apply to the service of any proceedings or other documents in any legal action.

21. LAW

- 21.1. The Contract, any dispute or claim arising out of or in connection with it or its subject matter shall in all respects be governed by and construed in accordance with the laws of Northern Ireland.
- 21.2. Each party to the Contract irrevocably agrees that the courts of Northern Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with the Contract or its subject matter or formation.

SCHEDULE 1

Data Processing by the Company

<p>The subject matter and duration of the processing</p>	<p>The processing relates to the provision of Goods to the Buyer in accordance with the Contract between the Buyer and the Company. The processing will continue for as long as the Contract is in place and subject to the Company's data retention requirements and legal obligations.</p>
<p>The nature and purpose of the processing</p>	<p>The nature of processing means the collection, recording, organisation, structuring, storage, use, disclosure by transmission or otherwise making available, erasure and destruction of the Personal Data. The purpose of the processing is the provision of the Goods to the Buyer for the purposes of fulfilling the contractual obligations, legal or regulatory obligations and where the Buyer has consented, to provide marketing information.</p>
<p>The type of personal data being processed</p>	<p>Identity and contract data, primarily: name, position of Buyer contact within the organisation, email address, telephone number and residential address (where the Buyer is an individual).</p>
<p>The categories of data subjects</p>	<p>Company customers, prospective customers and employees' of Company customers</p>
<p>Permitted Purposes</p>	<p>(a) Contract: to provide information about the Goods, manage the Company's relationship with the Buyer, to discharge the Company's obligations under the Contract and for administration of the financial aspects arising under the Contract.</p> <p>(b) Legal Obligations: where applicable, the processing is necessary for compliance with a legal obligation to which the Company is subject.</p> <p>(c) Consent: where the Buyer has consented to the processing for marketing or other identified purposes.</p>
<p>Permitted Recipients</p>	<p>Kilwaughter Minerals (Ireland) Limited Company Number 131611 with registered office address at Classis, Ovens, County Cork.</p> <p>Professional advisers acting as processors or joint controllers including lawyers, bankers, auditors and IT providers, who are based on both the UK and Ireland and provide consultancy, banking, legal, accounting and IT and system administration services.</p>