



ALFRED H KNIGHT

## TERMS AND CONDITIONS OF BUSINESS

### ALFRED H KNIGHT MINERAL PROCESSING UK LIMITED

#### 1. INTERPRETATION

1.1 The following definitions and rules of interpretation apply in these Terms:

**Approval Form:** the written approval form (included in the Proposal) supplied by AHK to the Client, which can be used by the Client to indicate its acceptance of the Proposal.

**Business Day:** a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

**Commencement Date:** has the meaning given in clause 3.2.

**Contract:** these Terms and the relevant Proposal.

**Client:** the person, firm or company identified on the Proposal.

**Deliverables:** the deliverables identified in the Proposal.

**AHK:** Alfred H Knight Mineral Processing UK Limited registered in England and Wales with company number 04607181 whose registered office is at 14 Tresillian Business Park, Tresillian, Truro, Cornwall, England, TR2 4HF.

**Intellectual Property Rights:** patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, 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.



**Proposal:** AHK's written proposal setting out the proposed work programme (including a description of the Services), sample requirements, turnaround times, Deliverables and cost schedule.

**Samples:** the samples to be provided by the Client to AHK as set out in the Proposal.

**Services:** the services, including the Deliverables, supplied by AHK to the Client as set out in the Proposal.

- 1.2 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.3 Any words following the Terms **including, include** for **example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those Terms.
- 1.4 A reference to **writing** or **written** includes fax and email.

## 2. APPLICATION OF TERMS

2.1. These Terms shall:

- (a) apply to and be incorporated in the Contract; and
- (b) prevail over any inconsistent terms or conditions contained in, or referred to in, the Client's order, purchase order, confirmation of order, specification, or implied by law, trade custom, practice or course of dealing.

2.2. No addition to, variation of, exclusion or attempted exclusion of any term of the Contract shall be binding on AHK unless in writing and signed by a duly authorised representative of AHK.

## 3. BASIS OF CONTRACT

- 3.1. The Client's signing of the Approval Form constitutes an offer by the Client to purchase the Services in accordance with these Terms.
- 3.2. The Approval Form shall only be deemed to be accepted when AHK issues a signed version of the Approval Form at which point, and on which date, the Contract shall come into existence ("**Commencement Date**"). Any Proposal prepared by AHK is only valid for a period of 30 Business Days.

## 4. SUPPLY OF SERVICES

- 4.1. AHK shall supply the Services to the Client in accordance with the Proposal in all material respects.



- 4.2. AHK shall use all reasonable endeavours to meet any performance dates for the Services specified in the Proposal, but any such dates shall be estimates only and time shall not be of the essence for the performance of the Services.
- 4.3. AHK reserves the right to amend the Proposal if necessary to comply with any applicable law or regulatory requirement or if the amendment will not materially affect the nature or quality of the Services, and AHK shall notify the Client in any such event.
- 4.4. AHK warrants to the Client that the Services will be provided using reasonable care and skill.

## 5. CLIENT'S OBLIGATIONS

### 5.1. The Client shall:

- (a) ensure that the information set out in the Proposal is complete and accurate in all material respects;
- (b) co-operate with AHK in all matters relating to the Services;
- (c) provide AHK with the Samples, information and materials which are set out in the Proposal or AHK may reasonably require in order to supply the Services;
- (d) package and label the Samples (if requested) with the instructions set out in the Proposal;
- (e) complete the Hazard Assessment Form and return to AHK with the Samples;
- (f) obtain and maintain all necessary licences, permissions and consents which may be required for the Services before the date on which the Services are to start;
- (g) comply with all applicable laws; and
- (h) comply with any additional obligations as set out in the Proposal.

### 5.2. If AHK's performance of any of its obligations under the Contract is prevented or delayed by any act or omission by the Client or failure by the Client to perform any obligation ("**Client Default**"):

- (a) without limiting or affecting any other right or remedy available to it, AHK shall have the right to suspend performance of the Services until the Client remedies the Client Default, and to rely on the Client Default to relieve it from the performance of any of its obligations in each case to the extent the Client Default prevents or delays AHK's performance of any of its obligations;
- (b) AHK shall not be liable for any costs or losses sustained or incurred by the Client arising directly or indirectly from AHK's failure or delay to perform any of its obligations as set out in this clause 5.2; and
- (c) the Client shall reimburse AHK on written demand for any costs or losses sustained or incurred by AHK arising directly or indirectly from the Client Default.

## 6. CHARGES AND PAYMENT



- 6.1. The price for the Services shall be the price set out in the cost schedule in the Proposal. If one or more cost schedules are included in the Proposal, the Client shall indicate on the Approval Form which cost schedule has been selected.
- 6.2. AHK shall raise invoices in British pounds sterling unless otherwise stated for the Services in accordance with the payment terms set out in the Proposal.
- 6.3. The Client shall pay each invoice submitted by AHK in full, and in cleared funds, within 30 days of the date of the invoice. Time for payment shall be of the essence of the Contract.
- 6.4. The Client shall reimburse AHK for the following expenses:
- (a) all reasonable travel costs (which includes fares, accommodations, subsistence and visa costs), which will be charged at cost plus 10%;
  - (b) mileage, which will be charged at £0.50 per mile; and
  - (c) flight costs, which will be charged at business class rates, provided that documentary evidence is provided to the client.
- 6.5. All amounts payable by the Client under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by AHK to the Client, the Client shall, on receipt of a valid VAT invoice from AHK, pay to AHK such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.
- 6.6. Without prejudice to any other right or remedy that AHK may have, if the Client fails to pay AHK on the due date AHK may:
- (a) charge interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause will accrue each day at 4% a year above the Bank of England's base rate from time to time; and
  - (b) suspend the Services until payment has been made in full.
- 6.7. All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

## 7. INTELLECTUAL PROPERTY RIGHTS

- 7.1. All Intellectual Property Rights in, or arising out of, or in connection with the Services shall be owned by AHK.
- 7.2. AHK grants to the Client a non-exclusive, royalty-free licence to use the Deliverables for the purpose of receiving and using the Services and the Deliverables in its business.
- 7.3. The Client shall not sub-license, assign or otherwise transfer the rights granted by clause 7.2.

## 8. CONFIDENTIALITY



- 8.1. Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 8.2.
- 8.2. Each party may disclose the other party's confidential information:
- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 8; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 8.3. Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

## 9. LIMITATION OF LIABILITY

- 9.1. The following provisions set out the entire financial liability of AHK (including without limitation any liability for the acts or omissions of its employees, agents and subcontractors) to the Client in respect of:
- (a) any breach of the Contract howsoever arising;
  - (b) any use made by the Client of the Deliverables; and
  - (c) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.
- 9.2. All warranties, conditions and other Terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 9.3. Nothing in these Terms excludes the liability of AHK:
- (a) for death or personal injury caused by AHK's negligence; or
  - (b) for fraud or fraudulent misrepresentation.
- 9.4. Subject to clause 9.3:
- (a) AHK shall not in any circumstances be liable, whether in tort (including without limitation for negligence or breach of statutory duty howsoever arising), contract, misrepresentation (whether innocent or negligent) or otherwise for loss of profits; loss of business; loss of contract; loss of use; loss or corruption of data or information; any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses; and
  - (b) AHK's total liability in contract, tort (including without limitation negligence or breach of statutory duty howsoever arising), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the price paid for the Services.
- 9.5. This clause 9 shall survive termination of the Contract.



## 10. TERM AND TERMINATION

- 10.1. The Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with clause 10.2, until either party gives to the other not less than three months' written notice to terminate, expiring on or after the first anniversary of the Commencement Date.
- 10.2. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- (a) the other party fails to pay any amount due under the Contract on the due date and remains in default not less than seven days after being notified in writing to make such payment;
  - (b) the other party commits a material breach of its obligations under the Contract and (if such breach is remediable) fails to remedy that breach within 14 days after receipt of notice in writing to do so;
  - (c) the other party 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;
  - (d) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or
  - (e) the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 10.3. On termination of the Contract:
- (a) the Client shall immediately pay to AHK all of AHK's outstanding unpaid invoices and interest and, in respect of the Services supplied but for which no invoice has been submitted, AHK shall submit an invoice, which shall be payable by the Client immediately on receipt; and
  - (b) the Client shall return all Deliverables which have not been fully paid for. If the Client fails to do so, then AHK may enter the Client's premises and take possession of them. Until they have been returned, the Client shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
- 10.4. Termination of the Contract shall not affect any rights, remedies, obligations and liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 10.5. Any provision of the Contract that expressly or by implication is intended to have effect after termination shall continue in full force and effect.



## 11. ASSIGNMENT

- 11.1. The Client shall not, without the prior written consent of AHK, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.2. AHK may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

## 12. NOTICES

- 12.1. Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Proposal.
- 12.2. Any notice shall be deemed to have been received:
- (a) If delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - (b) If sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
  - (c) If sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 12.3. This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

## 13. 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.

## 14. WAIVER

A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of



that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.

## 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 acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it shall have no claim for innocent or negligent misrepresentation based on any statement in the Contract.

## 16. THIRD PARTY RIGHTS

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

## 17. VARIATION

Except as set out in these Terms, no variation of the Contract shall be effective unless it is agreed in writing and signed by the parties (or their authorised representatives).

## 18. GOVERNING LAW AND JURISDICTION

- 18.1. The Contract and any disputes or claims arising out of or in connection with it or its subject matter or formation (including without limitation non-contractual disputes or claims) are governed by and construed in accordance with the law of England and Wales.
- 18.2. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).