# Drilling Mud Agreement

## Date

2024

## Parties

1. **Skye Sands Pty. Ltd.** ABN 19 128 839 789 of 19 Yazaki Way Carrum Downs VIC 3201 (**Skye Sands**)

2. **……** ABN…….. of Adress …….. (**Customer**)

## Background

Skye Sands has agreed to provide the Services to the Customer and the Customer has agreed to engage Skye Sands to provide or perform the Services on the terms set out in this Agreement.

## Agreed terms

**1. Definitions and interpretation**

**1.1 Definitions**

In this Agreement:

**Accepted Work Order** means a Work Order that has been accepted by Skye Sands under clause 5.3;

**Agreed Services** means Services agreed to be provided by Skye Sands as specified in an Accepted Work Order;

**Agreement** means this agreement including the background and any schedules;

**Authorisation** means:

(a) an authorisation, consent, right, certificate, licence, permit, declaration, exemption, notarisation or waiver, however described (including any renewal or partial renewal); and

(b) any authorisation or consent regarded as given by a Government Agency where, in relation to something that can be prohibited or restricted by law if the Government Agency takes action within a specified period, that period expires without that action being taken;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Melbourne, Victoria;

**Commencement Date** means the date of this Agreement;

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

**Drilling Muds** means drilling muds to be delivered to the Site satisfying all the classification criteria outlined in Table 1 under T130-NH of the EPA Publication 1827.2: Waste Classification Assessment Protocol;

**EPA** means the *Environment Protection Act 2017* (Vic);

**Event of Default** means, in relation to a party, the occurrence of any one or more of the following events or circumstances:

(a) the party fails to comply with any of its material obligations under this Agreement;

(b) an Insolvency Event occurs in relation to the party;

(c) a notice of deregistration of the party is given under sections 601AA(5) or 601AB(5) of the Corporations Act;

(d) any representation, warranty or statement made or repeated by the party in or in connection with this Agreement is untrue or misleading in any material respect (including by omission) when so made or repeated;

(e) the party becomes unable to perform all of its obligations and take all actions contemplated under this Agreement; or

(f) a material provision of this Agreement that purports to impose an obligation on the party is or becomes void, voidable, illegal or unenforceable or of limited effect (other than because of equitable principles or laws affecting creditor's rights generally);

**Force Majeure Event** means any act, event or cause, other than a lack of funds, which:

(a) directly or indirectly results in a party being prevented from or delayed in performing any of its material obligations under this Agreement; and

(b) is beyond the reasonable control of that party;

**Government Agency** means any government or any public, statutory, governmental (including a local government), semi-governmental or judicial body, entity, department or authority and includes any self-regulatory organisation established under statute;

**GST** has the meaning given to that expression in the GST Act;

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

**Insolvency Event** means, in respect of a party, the occurrence of any one or more of the following events or circumstances:

(a) the party is unable to pay all its debts as and when they become due and payable;

(a) any step is taken to wind up, bankrupt, or appoint an administrator, controller, receiver, a receiver and manager, a liquidator or a provisional liquidator or other like person to the party or any of its assets, operations or business; or

(b) the party ceases or threatens to cease to carry on business or a substantial part of it;

**Personnel** means the employees, officers, agents and contractors of a person;

**Prescribed Rate** means the rate that is 2% per annum above the rate specified from time to time under section 2 of the *Penalty Interest Rates Act 1983 (Vic)*;

**Schedule** means the Schedule to this Agreement;

**Services** means the disposal and/or re-use of Drilling Muds;

**Site** means the site situated at 65 Harold Road, Skye, Vic 3977; and

**Work Order** means an order for Services in the form referred to in clause 5.2.

**1.2 Interpretation**

In this Agreement, unless the context requires otherwise:

(a) the singular includes the plural and vice versa;

(b) headings are used for convenience only and do not affect the interpretation of this Agreement;

(c) other grammatical forms of a defined word or expression have a corresponding meaning;

(d) a reference to a party is to a party to this Agreement and includes that party's executors, administrators, successors, permitted assigns and permitted substitutes;

(e) if something is to be or may be done on a day that is not a Business Day then it must be done on the next Business Day;

(f) "person" includes a natural person, partnership, body corporate, association, joint venture, governmental or local authority, and any other body or entity whether incorporated or not;

(g) a reference to all or any part of a statute, rule, regulation or ordinance (**statute**) is to that statute as amended, consolidated, re-enacted or replaced from time to time;

(h) "include", "for example" and any similar expressions are not used, and must not be interpreted, as words of limitation;

(i) money amounts are stated in Australian currency unless otherwise specified;

(j) a reference to a time of day is to that time in Melbourne, Victoria; and

(k) a reference to any agency or body that ceases to exist, is reconstituted, renamed or replaced, or has its powers or functions removed (**defunct body**) is to the agency or body that performs most closely the powers or functions of the defunct body.

**2. Supply of Services**

Skye Sands agrees to provide, and the Customer engages Skye Sands to provide, the Services on the terms of this Agreement.

**3. Term**

This Agreement commences on the Commencement Date and continues until it is terminated under clause 13.5 or clause 16.

**4. Specifications**

The quantity, quality and description of the Services supplied under an Accepted Work Order must comply with the details specified in:

(a) any specification or requirement of the Customer that is approved in writing by Skye Sands; and

(b) the relevant Work Order.

**5. Orders**

**5.1 Work Order**

The Customer may only order Services by completing a Work Order and forwarding it by post or email in accordance with clause 20 to Skye Sands.

**5.2 Form of Work Order**

A Work Order from the Customer to Skye Sands must be in writing and in the format (if any) prescribed by Skye Sands and must specify:

(a) the date the order is placed;

(b) full details of the Services required (including the type of material to be delivered, the expected quantity, the origin of the material and any laboratory sample results);

(c) the desired date for provision of the Services or period within which they are to be provided, which must not be less than 5 Business Days after the date of the Work Order; and

(d) any other relevant instructions or information.

**5.3 Acceptance of Work Orders**

(a) A Work Order is accepted by Skye Sands when Skye Sands confirms its acceptance in writing or provides the Customer with the Services.

(b) Skye Sands reserves the right to refuse to provide Services for any reason.

**5.4 Unfilled orders**

If Skye Sands is, or expects to be, unable to satisfy a Work Order placed by the Customer under clause 5.1, whether before or after Skye Sands has accepted that Work Order under clause 5.3:

(a) Skye Sands must immediately notify the Customer of that fact; and

(b) the Customer may then engage an alternative provider to provide the Services the subject of that Work Order.

**5.5 Cancellation or deferral of Accepted Work Order**

An Accepted Work Order cannot be cancelled or deferred by the Customer without Skye Sands' prior written agreement and then only on terms that the Customer will fully indemnify Skye Sands against any loss, damage, cost or liability suffered by Skye Sands as a result of that cancellation or deferral.

**5.6 Inconsistency and variations**

(a) If there is any inconsistency between the terms set out in an Accepted Work Order and the terms of this Agreement, the terms of this Agreement prevail.

(b) Nothing contained in any Work Order, invoice or other document issued by or on behalf of Skye Sands or the Customer in relation to this Agreement or a Work Order varies this Agreement or any individual services contract under this Agreement.

**6. Provision of Services**

**6.1 Skye Sands obligations**

Skye Sands must provide the Agreed Services:

(a) at the Site; and

(b) on the date or within the period, stated in the relevant Accepted Work Order.

**6.2 Deferral of provision of Services**

If provision of Agreed Services is deferred:

(a) at the Customer's request; or

(b) due to any act or omission of the Customer,

when Skye Sands is ready to provide the Agreed Services, the Customer must pay any extra charges, losses or expenses incurred by Skye Sands as a result of the deferral.

**6.3 Price**

(a) Subject to clause 19, the price for Agreed Services will be the GST exclusive price specified in the price list applying at the time of the relevant Work Order, irrespective of the date on which the Agreed Services are provided.

(b) All Drilling Muds delivered by or on behalf of the Customer will be weighed on Skye Sands' weighbridge located at the Site. Gross and tare weights are recorded on every load.

(c) If the Customer or its driver does not weigh in or out correctly the maximum net weight will be charged.

**7. Invoicing and payment**

**7.1 Invoicing**

(a) On or after provision of Agreed Services, Skye Sands must provide an invoice to the Customer for the price of those Agreed Services (**Invoice**).

(b) Each Invoice must be in a form and substance that will constitute a tax invoice (as defined in the GST Act).

(c) If the Customer requires a purchase order to be shown on the Invoice, it must provide this information to Skye Sands prior to the Drilling Muds being unloaded at the Site by:

(i) forwarding the appropriate information to sales@skyesands.com.au prior to the arrival of the Drilling Muds at the Site; and/or

(ii) providing the appropriate information to the Customer's truck driver to advise at the time of completing a delivery docket.

**7.2 Payment**

(a) If the Customer has not established an account with Skye Sands, the Customer must pay Skye Sands the amount invoiced on delivery of the Drilling Muds at the Site.

(b) Once the Customer has established an account with the Skye Sands, the Customer must pay Skye Sands the

amount invoiced within 14 days after the date of the Invoice.

**7.3 Default in payment**

If the Customer defaults in the payment of any money payable under this Agreement, or any other agreement between Skye Sands and the Customer, for a period of more than 5 Business Days, then Skye Sands may do one or more of the following:

(a) suspend performance of its obligations under this Agreement until the amount outstanding is paid in full;

(b) charge interest on the amount outstanding at the Prescribed Rate, calculated from and including the date on which the payment became due until but excluding the date on which the payment is made, which interest is payable on Skye Sands making written demand to that effect; and

(c) terminate this Agreement.

**7.4 Other rights and obligations not affected**

The exercise by Skye Sands of any of its rights under clause 7.3 does not affect:

(a) the Customer's obligations; or

(b) any other rights or remedies Skye Sands may have in relation to the default by the Customer,

under this Agreement or any other agreement between Skye Sands and the Customer.

**8. Skye Sands' general obligations**

Skye Sands must when carrying out work for the purposes of providing the Agreed Services exercise reasonable care, skill and attention.

**9. Customer's general obligations**

The Customer must:

(a) at its own expense, procure the delivery of the Drilling Muds to the Site;

(b) at its own expense, comply with all relevant State and Federal legislation and guidelines (as applicable) regarding sampling and/or classifying of the Drilling Muds for transport, supply, disposal and re-use;

(c) ensure that all its truck drivers and/or passengers:

(i) report directly to Skye Sands' office at the Site and complete all required paperwork (including confirming the address of origin of load (street and suburb)) before unloading the Drilling Muds at the Site;

(ii) undertake one Site induction prior to the first time they unload Drilling Muds at the Site;

(iii) strictly abide by the speed limits at the Site, including a 10 km/h speed limit within Skye Sands' facility and a 5 km/h speed limit within the treatment plant, office areas and weighbridge area

(iv) abide by any instructions given by Skye Sands or its Personnel;

(v) do not use mobile phones or cameras while the truck is unloading at the Site;

(vi) use a dedicated vehicle to avoid cross contamination;

(vii) collect a docket from Skye Sands' weighbridge computer upon departure;

(viii) sign and return a declaration and checklist in the form set out in the Schedule; and

(ix) are otherwise aware of Skye Sands' criteria and procedures prior to delivery of the Drilling Muds at the Site;

(d) perform and observe all its obligations under this Agreement and any Accepted Work Order;

(e) provide Skye Sands with all instructions, documentation and technical information (**Customer's Information**) necessary for Skye Sands to provide any Agreed Services;

(f) use its reasonable endeavours to ensure that all Customer's Information provided to Skye Sands by the Customer is fit for the purpose intended and free from any defects (and, despite any other provision of this Agreement, if any Customer's Information is defective in any way or requires any amendment or modification, Skye Sands may claim the reasonable costs of any such amendment or modification from the Customer); and

(g) co-operate and ensure that its Personnel co-operate fully with Skye Sands and its Personnel.

**9.2 Operating hours**

(a) The Customer may only access the Site during Skye Sands' operating hours of 6.00 am to 5.00pm Monday to Saturday. No access to the site is

allowed on Sundays or public holidays.

(b) Skye Sands may restrict access to the site.

**9.3 Acceptance of Drilling Muds**

(a) The Customer represents and warrants that any Drilling Muds delivered to the Site:

(i) satisfy all the classification criteria outlined in Table 1 under T130-NH of the EPA Publication 1827.2: Waste Classification Assessment Protocol;

(ii) do not contain any contaminated contents and are not contaminated with fuels, oils, asbestos, or any other potential pollutants;

(iii) comprise of only naturally occurring organic matter including tree roots, grass, and shrubs; and

(iv) were not generated from drilling in marine environments and/or when additives or contaminants are introduced during drilling or excavation operation.

(b) Skye Sands may:

(i) require the Customer to provide a soil assessment report in accordance with EPA requirements to confirm that any Drilling Materials to be delivered to the Site are free from contamination; and

(ii) at the Customer's expense, inspect, sample, analyse or test any Drilling Muds in accordance with EPA Publication 1828.2: Waste Disposal Categories – Characteristics & Thresholds before unloading is permitted.

(c) Skye Sands reserves the right to refuse to accept any delivery for any reason including if:

(i) Skye Sands suspects the Drilling Muds do not comply with this Agreement; or

(ii) the Drilling Muds do not have an acceptable colour and/or odour.

(d) The Customer indemnifies Skye Sands for all liability it suffers as a direct or indirect result of the Drilling Muds being contaminated or failing to comply with this Agreement, including the costs of any excavation, transportation or removal of such Drilling Muds and any fines, fees, expenses and/or rectification works required at the Site.

(e) In addition to clause 9.3(d), where Skye Sands is required to obtain additional equipment from a third party to clean up contamination to its drill mud receival pit or facility at the Site, Skye Sands' costs incurred in relation to such equipment will be on-charged to the Customer plus 25%.

(f) For the avoidance of doubt, title to and liability for any Drilling Muds that are contaminated and/or do not comply with this Agreement remain with the Customer.

**10. General rights and duties**

In exercising their rights and discharging their obligations under this Agreement, Skye Sands and the Customer must comply with all relevant provisions of:

(a) all applicable laws for the time being in force;

(b) all applicable standards and codes of practice, if any, for the time being in force; and

(c) all Authorisations applying from time to time to either or both Skye Sands and the Customer,

and ensure that each of their Personnel (if any) also do so.

**11. Sub-contracts**

**11.1 Skye Sands may sub-contract**

Skye Sands may engage or employ any person, sub-contractor, or agent to provide any of the Services required under this Agreement.

**12. Representations and warranties**

**12.1 Representations and warranties**

Each party represents and warrants that, as at the date of execution of this Agreement and on each day during the term of this Agreement:

(a) if it is a corporation, it is registered and validly existing under the laws of the jurisdiction in which it was incorporated;

(b) it has full legal capacity and power to enter into this Agreement and to carry out the transactions that this Agreement contemplates;

(c) all corporate action has been taken that is necessary or desirable to authorise its entry into this

Agreement and its carrying out of the transactions that this Agreement contemplates;

(d) it holds each Authorisation that is necessary or desirable to:

(i) execute this Agreement and to carry out the transactions that this Agreement contemplates; and

(ii) ensure that this Agreement is legal, valid, binding and admissible in evidence,

and it is complying with any conditions to which any of these Authorisations is subject;

(e) this Agreement constitutes legal, valid and binding obligations, enforceable against it in accordance with its terms, subject to any necessary stamping or registration;

(f) neither its execution of this Agreement, nor the carrying out by it of the transactions that this Agreement contemplates, does or will:

(i) contravene any law to which it or any of its property is subject or any order of any Government Agency that is binding on it or any of its property;

(ii) contravene any Authorisation;

(iii) contravene any undertaking or instrument binding on it or any of its property; or

(iv) contravene its constitution;

(g) there are no actions, claims, proceedings, or investigations pending or threatened against it or by, against or before any person that may have a material effect on the subject matter of this Agreement;

(h) it is not the subject of an Insolvency Event; and

(i) it is not entering into this Agreement as trustee of any trust or settlement.

**12.2 Customer's acknowledgement**

The Customer acknowledges that:

(a) all Accepted Work Orders are accepted on the basis that the Customer is responsible for determining the Agreed Services are suitable for any particular purpose or application;

(b) unless otherwise expressly agreed by Skye Sands and to the extent permitted by law:

(i) all data, specifications and information relating to Services contained in Skye Sands' published literature and advice given by Skye Sands or its Personnel is provided only as a guide; and

(ii) in entering into this Agreement and ordering Services, the Customer relies on its own investigations and enquiries in relation to the Services and does not rely on any representation or warranty from Skye Sands other than:

(A) as set out in this Agreement; or

(B) as implied by statute (including the *Competition and Consumer Act 2010 (Cth)*), where any exclusion of the relevant representation or warranty would contravene that statute or render any part of this Agreement void.

**12.3 Reliance on representations and warranties**

Each party acknowledges that:

(a) each other party has executed this Agreement and agreed to take part in the transactions contemplated by this Agreement in reliance on the representations and warranties that are made in this clause 12 and clause 9.3; and

(b) subject to clause 12.3(a), it has exercised its independent skill and judgment and has carried out its own investigations in its decision to enter into this Agreement.

**13. Force Majeure**

**13.1 Giving of notice**

If a party to this Agreement is affected by a Force Majeure Event that party must as soon as practicable give the other party written notice of that fact including:

(a) reasonable particulars of the Force Majeure Event;

(b) details of the obligations affected by it and the extent to which they are affected;

(c) an estimate of its likely duration; and

(d) the steps taken to rectify it.

**13.2 Liability for force majeure**

Subject to clause 13.3, if a Force Majeure Event occurs, the obligations under this Agreement of the party giving the notice are suspended, to the extent to which they are affected by the Force Majeure Event, for the duration of the Force Majeure Event.

**13.3 Effort to overcome**

A party who has given notice of a Force Majeure Event under clause 13.1 must:

(a) use its reasonable endeavours to remove, overcome or minimise the effects of that Force Majeure Event as quickly as reasonably possible; and

(b) keep the other party regularly informed as to the steps or actions being taken to achieve this.

Nothing in this clause 13.3 requires a party to settle any industrial dispute against its will.

**13.4 Alternative arrangements**

(a) If a party fails to perform obligations because of a claimed Force Majeure Event, any other party may (but is not obliged to) make alternative arrangements for the performance of the obligation or obligations, whether by another person or otherwise for so long as the Force Majeure Event continues.

(b) The party making the alternative arrangements:

(i) must notify the other party of the alternative arrangements; and

(ii) is not liable in any way to the other party in respect of the alternative arrangements.

**13.5 Right of termination**

If a Force Majeure Event continues for more than 90 consecutive days, any party to whom notice has been given under clause 13.1 may terminate this Agreement by giving at least 30 days' notice to the other party.

**14. Liability**

**14.1 Limitation of liability**

Subject to this clause 14, each party is not liable to the other party or to any other person for:

(a) any loss or damage of any kind that is directly or indirectly caused by or results from any wrongful, wilful or negligent act or omission of the other party or any of its Personnel; or

(b) any indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, loss of business opportunity, loss of data or loss or damage resulting from wasted management time irrespective of whether:

(i) the loss or damage is caused by or relates to breach of contract, statute, tort (including negligence) or otherwise; or

(ii) the other party or any other person was previously notified of the possibility of the loss or damage.

**14.2 Maximum liability**

Subject to this clause 14, the maximum aggregate liability of Skye Sands for all proven losses, damages and claims arising out of this Agreement, including liability for breach, in negligence or in tort or for any other common law or statutory action, is limited to the amount recovered by Skye Sands under insurance policies it holds in respect of these risks.

**14.3 Exclusion of implied warranties**

Any representation, warranty, condition, guarantee or undertaking that would be implied in this Agreement by legislation, common law, equity, trade, custom or usage is excluded to the fullest extent permitted by law.

**14.4 Non-excludable rights implied by law**

Nothing in this Agreement excludes, restricts or modifies any consumer guarantee, right or remedy conferred on the Customer by the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)* or any other applicable law that cannot be excluded, restricted or modified by agreement.

**14.5 Liability for breach of non-excludable rights**

To the fullest extent permitted by law, the liability of Skye Sands for a breach of a non-excludable consumer guarantee referred to in clause 14.4 is limited, at Skye Sands' option, to:

(a) the supplying of the Agreed Services again; or

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

## 15. Dispute resolution

### 15.1 Delivering a Dispute Notice

If any dispute, controversy or claim arises between Skye Sands and the Customer arising out of, relating to or in connection with this Agreement, including any question regarding its existence, validity or termination (**Dispute**), either party may deliver to the other party a written notice (**Dispute Notice**) which sets out:

(a) the nature of the Dispute; and

(b) the relief or remedy that the party seeks.

### 15.2 Parties must negotiate

During the period of 10 Business Days after delivery of the Dispute Notice, or any longer period agreed in writing by Skye Sands and the Customer (**Initial Period**), each of those parties must use its reasonable endeavours and act in good faith to resolve the Dispute by discussion and negotiation.

### 15.3 Referral to expert

(a) If the Dispute is not resolved within the Initial Period, then the Dispute must be resolved by expert determination administered by the Resolution Institute (**Institute**) and conducted in accordance with the Resolution Institute Expert Determination Rules which are operating at the time the Dispute is referred to the Institute (**Rules**).

(b) The terms of the Rules are incorporated into this Agreement.

### 15.4 Other proceedings

No party may commence any judicial proceedings in relation to the Dispute unless those proceedings are commenced for the purpose of enforcing this clause 15 or to seek interlocutory relief.

## 16. Default and termination

### 16.1 Default notice

If an Event of Default, other than an Insolvency Event, occurs in relation to a party (**Relevant Party**), the other party may give a notice (**Default Notice**) to the Relevant Party specifying the Event of Default and requiring the Relevant Party to remedy the default within 10 Business Days after the Default Notice is given to the Relevant Party.

### 16.2 Termination notice

If a party (**Defaulting Party**):

(a) receives a Default Notice and does not comply with the notice within the relevant period referred to in clause 16.1;

(b) receives a Default Notice on 3 occasions in any period of 12 months; or

(c) is the subject of an Insolvency Event,

then subject to any applicable law, the other party, without limiting its other rights and remedies, may terminate this Agreement by giving to the Defaulting Party notice with immediate effect.

## 17. Consequences of expiry or termination

### 17.1 Outstanding Accepted Work Orders

If this Agreement expires or is terminated for any reason, then except to the extent that the parties otherwise agree:

(a) all outstanding Accepted Work Orders are also terminated as at that date; and

(b) Skye Sands may invoice for, and the Customer remains liable to Skye Sands in respect of, outstanding invoices and charges payable to Skye Sands based on the time validly spent by Skye Sands and its Personnel on Accepted Work Orders, whether completed or not, up to the date of expiry or termination.

### 17.2 Consequences generally

Subject to clause 17.3, on the expiry or termination of this Agreement, this Agreement is at an end as to its future operation except for the enforcement of any right or claim that arises on, or has arisen before, the expiry or termination.

### 17.3 Clauses surviving termination

Despite any other provision of this Agreement, this clause 17 and clauses 1 (Definitions and interpretation), 12 (Representations and warranties), 14 (Liability), 15 (Dispute resolution), 19 (GST) 20 (Notices) and 21 (General) survive the expiry or termination of this Agreement.

## 18. Errors in Skye Sands' documents

(a) Clerical or computation errors and misprints in Skye Sands' documents, including catalogues, price lists, delivery dockets, invoices, statements or credit notes, may be corrected by Skye Sands reissuing the document or by Skye Sands otherwise giving notice of the error or misprint to the Customer with reference to the original document.

(b) The Customer is not entitled to a reduction or variation in the price of the Services or in the Customer's obligations under this Agreement by reason of any such errors or misprints.

**19. GST**

**19.1 Interpretation**

In this clause 19:

(a) terms or expressions which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (**GST Act**) have the same meaning as in the GST Act; and

(b) any reference to a party includes the representative member of a GST group of which that party is a member.

**19.2 Consideration excludes GST**

Unless otherwise expressly stated, all consideration to be paid or provided under this Agreement is expressed exclusive of GST.

**19.3 Payment of GST**

(a) If GST is payable on any supply made under this Agreement, the recipient must pay to the supplier an additional amount (**GST Amount**) equal to the GST payable on that supply at the same time as the consideration for the supply is to be paid or provided.

(b) Clause 19.3(a) does not apply to the extent that:

(i) the consideration for the supply is stated to include GST; or

(ii) GST on the supply is reverse charged and payable by the recipient.

**19.4 Tax invoice**

The recipient need not pay the GST Amount until it has received a tax invoice or adjustment note, as the case may be.

**19.5 Adjustment events**

If an adjustment event arises in relation to a supply made under this Agreement, the GST Amount must be adjusted to reflect that adjustment event. A corresponding payment must be made by the supplier to the recipient or by the recipient to the supplier, as the case may be.

**19.6 Calculation of amounts**

If this Agreement requires an amount to be calculated by reference to another amount (**Reference Amount**) that will be:

(a) received for a taxable supply; or

(b) paid for a creditable acquisition,

then the Reference Amount must be reduced so as to exclude any part of the Reference Amount paid or received on account of GST, as the case may be.

**19.7 Reimbursement and indemnity payments**

If this Agreement requires a party to reimburse or indemnify another party for a cost or expense, the amount of the cost or expense must be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified is entitled for that cost or expense.

**19.8 Survival**

This clause 19 will survive and continue to apply following the termination or completion of this Agreement.

**20. Notices**

**20.1 Giving notices**

Any notice or other communication (**Notice**) to or by a party under this Agreement:

(a) must be given by personal service, by prepaid priority or express post, or by email;

(b) must be in writing (and for the purposes of this clause, a Notice in the body of or attached to an email is in writing), legible and in English addressed (depending on the manner in which it is given) as specified in the Parties section of this Agreement or as otherwise specified in any updated details last notified by the party to the sender by not less than 5 Business Days' Notice given in accordance with this clause (**Specified Contact Details**); and

(c) must be signed by the sender (if an individual) or by that party's authorised officer, agent or representative. A party receiving a Notice is not obliged to enquire as to the authority of the person signing the Notice. A Notice attached to an email in portable document format (.pdf) or another appropriate and commonly used format and signed by the sender in accordance with this clause 20.1(c) complies with this clause and in that case, the covering email need not be so signed.

**20.2 Emailed Work Orders**

A Work Order provided to Skye Sands under clause 5.1 and given by email in accordance with clause 20.1 must be sent to this address: sales@skyesands.com.au, with the words "Work Order" in the subject line of the email.

**20.3 Receipt of Notices**

(a) A Notice given under clause 20.1 is taken to be given by the sender and received by the recipient (whether or not the recipient actually receives it):

(i) if delivered in person, when it is left at the recipient's

address set out in the Specified Contact Details;

(ii) if posted to the recipient's address set out in the Specified Contact Details, at 9.00 am on the third (seventh, if sent to or from an address in another country) day after the date of posting; or

(iii) if sent by email, 2 hours after the time the email is sent to the recipient's email address set out in the Specified Contact Details, as recorded on the sender's email system, unless the sender receives, within that time period, an automatic notification (other than an out of office message) indicating that the email has not been delivered.

(b) If any delivery or receipt would be deemed by clause 20.3(a) to be on a day that is not a Business Day or after 4.00 pm (recipient's time), it is deemed to have been received at 9.00 am (recipient's time) on the next Business Day.

## 21. General

### 21.1 Entire understanding

(a) This Agreement and any Accepted Work Order contain the entire understanding between the parties concerning the subject matter of this Agreement and supersede, terminate and replace all prior agreements and communications between the parties concerning that subject matter.

(b) All terms, warranties and conditions implied or imposed by law are excluded from this Agreement, except any term, warranty or condition the exclusion of which would:

(i) contravene the law which implied or imposed it; or

(ii) cause this clause to be void.

(c) Each party acknowledges that, except as expressly stated in this Agreement, it has not relied on any representation, warranty, undertaking or statement made by or on behalf of another party in relation to this Agreement or its subject matter.

### 21.2 Further assurances

A party, at its own expense and within a reasonable time of being requested by another party to do so, must do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.

### 21.3 No waiver

(a) A failure to exercise, a delay in exercising or partially exercising any power, right or remedy conferred on a party by or in respect of this Agreement does not operate as a waiver by that party of the power, right or remedy.

(b) A single or partial exercise of any power, right or remedy does not preclude a further exercise of it or the exercise of any other power, right or remedy.

(c) A waiver of a breach does not operate as a waiver of any other breach.

### 21.4 Remedies cumulative

Except as set out in this Agreement, the powers, rights and remedies under this Agreement are cumulative with and not exclusive of any powers, rights and remedies provided by law independently of this Agreement.

### 21.5 Severability

Any provision of this Agreement which is invalid in any jurisdiction must, in relation to that jurisdiction, be:

(a) read down to the minimum extent necessary to achieve its validity, if applicable; and

(b) severed from this Agreement in any other case,

without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision in any other jurisdiction.

### 21.6 No assignment

A party cannot assign or otherwise deal with the benefit of this Agreement without the prior written consent of the other party.

### 21.7 Consents and approvals

Unless this Agreement provides otherwise, where anything depends on the consent or approval of a party, then that consent or approval may be given conditionally, unconditionally or withheld, in the absolute discretion of that party.

### 21.8 No variation

This Agreement cannot be amended or varied except in writing signed by the parties.

### 21.9 Costs

Each party must pay its own legal costs of and incidental to the preparation and completion of this Agreement.

**21.10 Duty**

(a) Any duty (including related interest or penalties) payable in respect of this Agreement or any instrument created in connection with it must be paid by the Customer.

(b) The Customer undertakes to keep Skye Sands indemnified against all liability relating to the duty, fines and penalties.

**21.11 Conflicting provisions**

If there is any conflict between the main body of this Agreement and any schedules or annexures comprising it, then the provisions of the main body of this Agreement prevail.

**21.12 No merger**

Unless otherwise provided in this Agreement, the representations, undertakings, warranties and indemnities of the parties in, or the rights and remedies of the parties under, this Agreement will not merge on the completion of any transaction contemplated by this Agreement but will survive and remain enforceable to the fullest extent.

**21.13 Operation of indemnities**

Unless this Agreement expressly provides otherwise:

(a) each indemnity in this Agreement is a continuing obligation and survives the completion, expiry or termination of this Agreement;

(b) each indemnity given by a party in this Agreement is an additional, separate and independent obligation of the party and no one indemnity limits the operation of any other indemnity; and

(c) a party may enforce and recover a payment under an indemnity in this Agreement before it incurs any expense or makes the payment in respect of which the indemnity is given.

**21.14 Relationship of parties**

The relationship between Skye Sands and Customer for all purposes of this Agreement is that of principal and independent contractor. This Agreement is to be construed in every respect to give effect to this relationship. Nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

**21.15 Counterparts**

(a) This Agreement may be executed in any number of counterparts, each of which is an original. All of the counterparts together constitute the one document, as if the signatures on the counterparts were on a single copy of this Agreement. A counterpart may be physically signed in hard copy, by facsimile or other electronic form, or by any combination of these.

(b) Without limiting this clause or how a party may execute this Agreement:

(i) a party may sign a counterpart by executing a signature page and electronically transmitting a copy of the signed page to each other party or their authorised representative. Each other party will be taken to have received that signed counterpart from the signing party at the time they would be taken to have received it if it were a notice given under this Agreement; and

(ii) signatures on behalf of one party that are on different counterparts will be taken to be, and have the same effect as, signatures on the same counterpart and on a single copy of this Agreement.

**21.16 Governing law and jurisdiction**

(a) This Agreement is governed by and must be construed in accordance with the laws of Victoria.

(b) The parties submit to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to this Agreement, its performance or subject matter.

(c) Each party waives any rights to:

(i) object to the venue of any proceedings; or

(ii) claim that the proceedings have been brought in an inconvenient forum or that the courts of another place are a more convenient forum,

if the proceedings have been brought in a court referred to in clause 21.16(b).

# Schedule – Driver Declaration Form and Checklist

| # | Requirement | Details | Information supplied Y / N / NA |
|---|---|---|---|
| 1 | Date of delivery | | |
| 2 | Truck/vehicle registration number | | |
| 3 | Driver's name | | |
| 4 | Weigh in load | | |
| 5 | Weigh out load | | |
| 6 | Difference in weigh load | | |
| 7 | Company name | | |
| 8 | Company they are making the delivery for | | |
| 9 | Type of material being delivered | | |
| 10 | Number of additional loads expected | | |
| 11 | Source site description including address | | |
| 12 | Attach any sampling results/& or added chemicals | | |

I ……

*(Name & Company)*

declare that to the best of my knowledge, the information provided above is true and accurate and the Drilling Muds

from ……..

*(Address)*

do not contain any contaminated contents and satisfy all of the classification criteria outlined in Table 1 under T130-NH of the EPA Publication 1827.2: Waste Classification Assessment Protocol.

…… ……..

*(Sign)* *(Date)*

**Executed** as an agreement

**Executed** by **Skye Sands Pty. Ltd. ABN 19 128 839 789** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

.....
Signature of sole director

Walter French
.....
Name (please print)

**Executed** by……..ABN…… in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

| | |
|---|---|
| ..... | ..... |
| Signature of director | Signature of director |
| ..... | ..... |
| Name (please print) | Name (please print) |