



Western Australia

Mineral Sands (Cooljarloo) Mining and Processing Agreement Act 1988

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Defined terms

Mineral Sands (Cooljarloo) Mining and Processing Agreement Act 1988

An Act to ratify an agreement on behalf of the State with Yalgoo Minerals Pty. Ltd. and KMCC Western Australia Pty. Ltd. and TIO2 Corporation N.L. and Kerr-McGee Chemical Corporation with respect to the mining of mineral sands and the construction and operation of a synthetic rutile plant and a titanium dioxide pigment plant.

1. Short title

This Act may be cited as the *Mineral Sands (Cooljarloo) Mining and Processing Agreement Act 1988*¹.

2. Commencement

This Act shall come into operation on the day on which it receives the Royal Assent¹.

3. Interpretation

In this Act unless the contrary intention appears —

2017 variation agreement means the agreement a copy of which is set out in Schedule 2;

the Agreement means the agreement a copy of which is set out in Schedule 1 and, except in section 4(1), includes that agreement as varied from time to time in accordance with its provisions and by the 2017 variation agreement.

[Section 3 amended: No. 14 of 2017 s. 4.]

4. Ratification and authorisation

- (1) The Agreement is hereby ratified.
- (1A) The 2017 variation agreement is ratified.
- (2) The implementation of the Agreement is authorised.
- (3) Without affecting the *Government Agreements Act 1979*, the Agreement has effect notwithstanding any other Act or law.

[Section 4 amended: No. 14 of 2017 s. 5.]

Schedule 1 — Mineral Sands (Cooljarloo) Mining and Processing Agreement

[s. 3]

[Heading amended: No. 19 of 2010 s. 4; No 14 of 2017 s. 6.]

THIS AGREEMENT is made this 8th day of November 1988

BETWEEN

THE HONOURABLE PETER M'CALLUM DOWDING, LL.B., M.L.A.,
Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called "the State") of the first part YALGOO MINERALS PTY. LTD. a company incorporated in Western Australia and having its registered office at 4th Level, 1050 Hay Street, West Perth and KMCC WESTERN AUSTRALIA PTY. LTD. a company incorporated in Western Australia and having its registered office at care of Robox Nominees Pty. Ltd., 35th Floor, R & I Tower, 108 St. George's Terrace, Perth (hereinafter called "the Joint Venturers" in which term shall be included their respective successors and permitted assigns) of the second part and TIO2 CORPORATION NL a company incorporated in Western Australia and having its registered office at 4th Level, 1050 Hay Street, West Perth and KERR-McGEE CHEMICAL CORPORATION a company incorporated in the State of Delaware in the United States of America and having its principal place of business at Kerr-McGee Center, Oklahoma City, Oklahoma, United States of America (hereinafter called "the Guarantors") of the third part.

WHEREAS:

- (a) the Joint Venturers have established the existence of a heavy mineral sands ore body within the mining areas as hereinafter defined and desire to mine the ore body and to process the ore at a dry processing plant to be established by the Joint Venturers near Muchea;
- (b) the Joint Venturers also desire to construct and operate a synthetic rutile plant adjacent to the dry processing plant near Muchea and a titanium dioxide pigment plant at Kwinana;
- (c) the Joint Venturers intend to provide such facilities and services as may be necessary for their activities under this Agreement and for the accommodation and welfare of their workforce;

- (d) KMCC and Tific (hereinafter defined) have agreed to enter into a Joint Venture relating to the exploration of the Jurien tenements (hereinafter defined); and
- (e) the State for the purpose of promoting employment opportunity and development within Western Australia has agreed to assist the Joint Venturers upon and subject to the terms of this Agreement.

NOW THIS AGREEMENT WITNESSES:

Definitions

1. In this Agreement subject to the context —

“advise”, “apply”, “approve”, “approval”, “consent”, “certify”, “direct”, “notify”, “request”, or “require”, means advise, apply, approve, approval, consent, certify, direct, notify, request, or require in writing as the case may be and any inflexion or derivation of any of those words has a corresponding meaning;

“approved project” means the project relating to the mining of heavy mineral sands within the mining areas and the establishment of a dry processing plant at Muchea as described in the bound volume entitled “Project Description” initialled by or on behalf of the Minister and the Joint Venturers for the purpose of identification;

“approved proposal” means a proposal approved or determined under this Agreement;

“Clause” means a clause of this Agreement;

“commencement date” means the date the Bill referred to in Clause 3 comes into operation as an Act;

“Commissioner of Main Roads” means the Commissioner of Main Roads appointed under the *Main Roads Act 1930*;

“Commonwealth” means the Commonwealth of Australia and includes the Government for the time being thereof;

“EP Act” means the *Environmental Protection Act 1986*;

“heavy minerals” means titaniferous minerals (including ilmenite rutile and leucosene) and magnetite zircon monazite kyanite staurolite xenotime

and garnet resulting from the separation of heavy mineral concentrates;

“heavy mineral concentrates” means heavy mineral ore concentrated prior to separation into component heavy minerals;

“heavy mineral ore” means any rock soil or sand bearing heavy minerals mined from the Mining Lease;

“Joint Venturers’ workforce” means the persons (and the dependants of those persons) connected directly with the Joint Venturers’ activities under this Agreement, whether or not such persons are employed by the Joint Venturers;

“Jurien Mining Lease” means the Mining Lease granted pursuant to Clause 6 and according to the requirements of the context shall describe the area of land demised as well as the instrument by which it is demised;

“Jurien tenements” means Exploration Licence 70/153 and includes any mining lease or mining leases granted to Tific or to Tific and KMCC in respect of the land the subject of that Exploration Licence;

“KMCC” means the said KMCC Western Australia Pty. Ltd.;

“Land Act” means the *Land Act 1933*;

“local authority” means the council of a municipality that is a city, town or shire constituted under the *Local Government Act 1960*;

“Mining Act” means the *Mining Act 1978*;

“mining areas” means the areas coloured green and red on the plan marked “A” (initialled by or on behalf of the parties hereto for the purpose of identification);

“Mining Lease” means the Mining Lease granted pursuant to Clause 5 and according to the requirements of the context shall describe the area of land demised as well as the instrument by which it is demised;

“Minister” means the Minister in the Government of the State for the time being responsible for the administration of the Act to ratify this Agreement and pending the passing of that Act means the Minister for the time being designated in a notice from the State to the Joint Venturers and includes the successors in office of the Minister;

“Minister for Mines” means the Minister in the Government of the State for the time being responsible for the administration of the Mining Act;

“month” means calendar month;

“notice” means notice in writing;

“person” or “persons” includes bodies corporate;

“private road” means a road (not being a public road) which is either constructed by the Joint Venturers in accordance with the approved project or an approved proposal or agreed by the parties to be a private road for the purposes of this Agreement;

“public road” means a road as defined by the *Road Traffic Act 1974*;

“Railways Commission” means the Western Australian Government Railways Commission established pursuant to the *Government Railways Act 1904*;

“said State” means the State of Western Australia;

“State Energy Commission” means the State Energy Commission of Western Australia as described in section 7 of the *State Energy Commission Act 1979*;

“subclause” means subclause of the Clause in which the term is used;

“synthetic rutile” means upgraded ilmenite containing an average titanium dioxide (TiO₂) content of not less than 90%;

“this Agreement” “hereof” and “hereunder” refer to this Agreement whether in its original form or as from time to time added to varied or amended;

“Tific” means Tific Pty. Ltd. a company incorporated in Western Australia and having its registered office at 4th Level, 1050 Hay Street, West Perth.

Interpretation

2. In this Agreement —

- (a) monetary references are references to Australian currency unless otherwise specifically expressed;

- (b) power given under any clause other than Clause 24 to extend any period or date shall be without prejudice to the power of the Minister under Clause 24;
- (c) clause headings do not affect the interpretation or construction;
- (d) words in the singular shall include the plural and words in the plural shall include the singular according to the requirements of the context;
- (e) reference to an Act includes the amendments to that Act for the time being in force and also any Act passed in substitution therefor or in lieu thereof and any regulations and by laws for the time being in force thereunder; and
- (f) any covenant or agreement on the part of the Joint Venturers under this Agreement shall be deemed to be a joint and several covenant or agreement as the case may be.

Ratification and operation

3. (1) The State shall introduce and sponsor a Bill in the Parliament of Western Australia to ratify this Agreement and endeavour to secure its passage as an Act prior to 15 December 1988 or such later date as the parties may agree.
- (2) The provisions of this Agreement other than this Clause and Clauses 1 and 2 shall not come into operation until the Bill referred to in subclause (1) has been passed by the Parliament of Western Australia and comes into operation as an Act.
- (3) If before 15 December 1988 or such later date as aforesaid the said Bill has not commenced to operate as an Act then unless the parties hereto otherwise agree this Agreement shall then cease and determine and no party hereto shall have any claim against any other party hereto with respect to any matter or thing arising out of done performed or omitted to be done or performed under this Agreement.
- (4) On the said Bill commencing to operate as an Act all the provisions of this Agreement shall operate and take effect notwithstanding the provisions of any Act or law.

Implementation of approved project

4. The Joint Venturers shall subject to and in accordance with this Agreement and the EP Act and any approvals and licences required under that Act implement the approved project in accordance with the terms thereof.

Mining Lease

5. (1) Notwithstanding the provisions of the Mining Act on application made to the Minister for Mines by the Joint Venturers, not later than 3 months after the commencement date, for a Mining Lease over so much of the mining areas as they desire and in respect of which the Joint Venturers or either of them then hold mining leases or other mining tenements the State shall upon the surrender of all mining leases and other mining tenements held by the Joint Venturers or either of them in respect of land within the mining areas cause to be granted to the Joint Venturers a Mining Lease of the land so applied for such Mining Lease to be granted under and, except as otherwise provided in this Agreement subject to the Mining Act but in the form of the Schedule hereto and subject to such of the conditions of the surrendered mining leases and mining tenements as the Minister for Mines determines and such other conditions as the Minister for Mines may impose pursuant to section 84 of the Mining Act.
- (2) Subject to the performance by the Joint Venturers of their obligations under this Agreement and the Mining Act and notwithstanding any provisions of the Mining Act to the contrary the term of the Mining Lease shall be for a period of 21 years commencing from the date of receipt of the application therefor under subclause (1) with a right to an extension pursuant to subclause (2) of Clause 35 but otherwise there shall be no right for any renewal of the said term or any extension thereof.
- (3) The State shall ensure that during the currency of this Agreement and subject to compliance with their obligations hereunder the Joint Venturers shall not be required to comply with the expenditure conditions imposed by or under the Mining Act in regard to the Mining Lease.
- (4) The Joint Venturers shall at all times permit the State and third parties with the consent of the State (with or without stock, vehicles and rolling stock) to have access to and to pass over the Mining Lease (by separate route, road or railway) so long as that access and passage

does not unduly prejudice or interfere with the operations of the Joint Venturers under this Agreement PROVIDED THAT the provisions of this subclause shall not apply to privately owned land in the Mining Lease.

- (5) The Joint Venturers shall not mine any land within the area coloured red on the said plan marked “A” until proposals relating to the establishment of a titanium dioxide pigment plant at Kwinana shall have been approved or determined pursuant to Clause 10.
- (6) Notwithstanding the provisions of this Clause the Joint Venturers may from time to time with the approval of the Minister for Mines subject to survey if required by the Minister for Mines at the Joint Venturers’ expense, surrender to the State all or any portion or portions (of reasonable size and shape) of the Mining Lease (with abatement of future rent in respect to the area surrendered) provided however that such portion or portions have been rehabilitated and/or restored in accordance with the approved project or approved proposals as the case may be and any condition relating thereto applicable pursuant to the Mining Lease in manner acceptable to the Minister for Mines.
- (7) Notwithstanding the provisions of the Mining Act the Joint Venturers may from time to time during the currency of this Agreement apply to the Minister for areas held by the Joint Venturers under an exploration licence or mining lease granted under the Mining Act to be included in the Mining Lease. The Minister shall confer with the Minister for Mines in regard to any such application and if they approve the application the Minister for Mines shall upon the surrender of the relevant mining tenement include the area the subject thereof in the Mining Lease subject to such of the conditions of the surrendered mining tenement as the Minister for Mines determines. In respect of any such land:
 - (a) the land shall in addition to any conditions so determined by the Minister for Mines be subject to the same terms covenants and conditions as apply to the Mining Lease;
 - (b) the Minister for Mines may make such apportionment of rents as may be necessary in connection therewith;
 - (c) the land may be included notwithstanding that the survey of the land has not been completed but subject to correction to accord with the survey when completed at the Joint Venturers’ expense.

Jurien tenements

6. (1) If KMCC and Tific decide to undertake commercial mining in respect of the Jurien tenements and give written notice to the Minister informing him of that decision the following provisions shall apply:
- (a) subject to paragraph (d) below, the Minister for Mines notwithstanding the Mining Act shall on application by KMCC and Tific and upon surrender of the Jurien tenements cause to be granted to KMCC and Tific the Jurien Mining Lease in respect of the land within the Jurien tenements so applied for, such Jurien Mining Lease to be granted under and, except as otherwise provided in this Agreement subject to the Mining Act but in the form (*mutatis mutandis*) of the Schedule hereto and subject to such of the conditions of the Jurien tenements as the Minister for Mines determines and such other conditions as the Minister for Mines may impose pursuant to section 84 of the Mining Act;
 - (b) the term of the Jurien Mining Lease shall be a period expiring on the day of expiration of the initial term of the Mining Lease;
 - (c) all of the provisions in this Agreement shall apply *mutatis mutandis* with respect to the Jurien Mining Lease including, without limiting the generality of the foregoing, the rights of renewal contained in Clause 35; and
 - (d) Tific shall execute in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with, observe and perform the provisions of this Agreement on the part of the Joint Venturers insofar as those provisions relate *mutatis mutandis* to the Jurien Mining Lease.

Royalties

7. (1) The Joint Venturers shall pay to the State in respect of all minerals mined or produced by the Joint Venturers from the Mining Lease and used, sold, transferred or otherwise disposed of by them royalties at the rates from time to time prescribed under or pursuant to the provisions of the Mining Act.

- (2) The Joint Venturers shall —
- (a) comply with the provisions of the Mining Act and regulations thereunder with respect to the filing of production reports and royalty returns and the assessment, verification and payment of royalties;
 - (b) promptly report in writing to the Minister for Mines details of all minerals of economic significance discovered in, on or under the lands the subject of the Mining Lease;
 - (c) lodge with the Department of Mines at Perth such periodical reports and returns as may be prescribed in respect of the Mining Lease pursuant to regulations under the Mining Act; and
 - (d) as and when required by the Minister for Mines from time to time install and thereafter maintain in good working order and condition meters for measuring movements of minerals mined and minerals produced of such design or designs and at such places as the Minister for Mines may require.

Synthetic rutile plant

8. (1) The Joint Venturers shall on or before 31 December 1988 (or by such extended date as the Minister may allow as hereinafter provided) and subject to the EPA Act and the provisions of this Agreement submit to the Minister to the fullest extent reasonably practicable their detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect to the establishment and operation of a synthetic rutile plant at Muchea to process ilmenite from the mining areas and having a production capacity of not less than 130 000 tonnes of synthetic rutile per annum which proposals shall make provision for the Joint Venturers' workforce required in connection with the plant and shall include the location, area, layout, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of the said plant and of each of the following matters, namely —
- (a) the mining and concentration of heavy mineral ore and the separation of heavy mineral concentrates into heavy minerals and the transport of heavy minerals to and the processing thereof in

- the plant and the transport of bulk materials and commodities to the plant;
- (b) roads;
 - (c) housing and accommodation for the Joint Venturers' workforce and the provision of utilities and services and associated facilities in connection herewith;
 - (d) water supplies;
 - (e) energy supplies;
 - (f) railways;
 - (g) use of local professional services labour and materials and measures to be taken with respect to the engagement and training of employees by the Joint Venturers, their agents and contractors;
 - (h) an environmental management programme as to measures to be taken, in respect of the Joint Venturers' activities under this Agreement, for the protection and management of the environment.
- (2) The provisions of Clause 23 shall not apply to subclause (1).
- (3) Each of the proposals pursuant to subclause (1) may with the approval of the Minister or if so required by him be submitted separately and in any order as to the matter or matters mentioned in one or more of paragraphs (a) to (h) of subclause (1).
- (4) At the time when the Joint Venturers submit the said proposals they shall —
- (a) submit to the Minister details of any services (including any elements of the project investigations design and management) and any works materials plant equipment and supplies that they propose to consider obtaining from or having carried out or permitting to be obtained from or carried out outside Australia together with their reasons therefor and shall, if required by the Minister, consult with the Minister with respect thereto; and

- (b) furnish to the Minister's satisfaction evidence of —
 - (i) marketing arrangements demonstrating the Joint Venturers' ability profitably to sell or use heavy mineral products in accordance with the said proposals;
 - (ii) the availability of finance necessary for the fulfilment of the operations to which the said proposals refer; and
 - (iii) the readiness of the Joint Venturers to embark upon and proceed to carry out the operations referred to in the said proposals.

Consideration of proposals

- 9. (1) Subject to the EP Act, in respect of proposals pursuant to subclause (1) of Clause 8 the Minister shall —
 - (a) approve of the said proposals either wholly or in part without qualification or reservation; or
 - (b) defer consideration of or decision upon the same until such time as the Joint Venturers submit a further proposal or proposals in respect of some other of the matters mentioned in subclause (1) of Clause 8 not covered by the said proposals; or
 - (c) require as a condition precedent to the giving of his approval to the said proposals that the Joint Venturers make such alteration thereto or comply with such conditions in respect thereto as he (having regard to the circumstances including the overall development of and the use by others as well as the Joint Venturers of all or any of the facilities proposed to be provided) thinks reasonable and in such a case the Minister shall disclose his reasons for such conditions,

PROVIDED ALWAYS that where implementation of any proposals hereunder has been approved pursuant to the EP Act subject to conditions or procedures, any approval or decision of the Minister under this Clause shall if the case so requires incorporate a requirement that the Joint Venturers make such alterations to the proposals as may be necessary to make them accord with those conditions or procedures.

- (2) The Minister shall within two months after receipt of the said proposals pursuant to subclause (1) of Clause 8 or where the said proposals are to be assessed under section 40(1)(b) of the EP Act then within two months after service on him of an authority under section 45(7) of the EP Act give notice to the Joint Venturers of his decision in respect to the said proposals.
- (3) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) the Minister shall afford the Joint Venturers full opportunity to consult with him and should they so desire to submit new or revised proposals either generally or in respect to some particular matter.
- (4) If the decision of the Minister is as mentioned in either of paragraphs (b) or (c) of subclause (1) and the Joint Venturers consider that the decision is unreasonable the Joint Venturers within two months after receipt of the notice mentioned in subclause (2) may elect to refer to arbitration in the manner hereinafter provided the question of the reasonableness of the decision PROVIDED THAT any requirement of the Minister pursuant to the proviso to subclause (1) shall not be referable to arbitration hereunder.
- (5) Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Joint Venturers shall implement the proposals as approved or determined pursuant to this Clause in accordance with the terms thereof.

Titanium dioxide pigment plant

10. (1) The Joint Venturers shall on or before 30 June 1989 (or by such extended date as the Minister may allow as hereinafter provided) and subject to the provisions of this Agreement submit to the Minister to the fullest extent reasonably practicable their detailed proposals (including plans where practicable and specifications where reasonably required by the Minister) with respect to the establishment and operation of a titanium dioxide pigment plant at Kwinana to process heavy mineral products and having a production capacity of not less than 54,000 tonnes of titanium dioxide pigment per annum which proposals shall make provision for the Joint Venturers' workforce required in connection herewith and shall include the location, area, lay-out, design, quantities, materials and time programme for the commencement and completion of construction or

the provision (as the case may be) of the said pigment plant and such of the matters mentioned in paragraphs (d) to (h) of subclause (1) of Clause 8 as the Minister may require.

- (2) The provisions of subclauses (2) to (4) of Clause 8 and the provisions of Clause 9 shall *mutatis mutandis* apply to proposals submitted pursuant to subclause (1).
- (3) The State acknowledges that if directions are given pursuant to subsection (1) of section 73 of the EP Act to the Joint Venturers in respect of the site for the said pigment plant and the Joint Venturers are not either of the persons mentioned in paragraphs (a) or (b) of subsection (2) of that section the Joint Venturers shall be entitled to be reimbursed the cost of complying with those directions in accordance with subsection (2) of that section.
- (4) If the Joint Venturers fail to submit proposals pursuant to subclause (1) by the date required by that subclause the State may, without prejudice to its other rights under this Agreement, require the Joint Venturers to surrender to the State the area coloured red on the said plan marked “A” out of the Mining Lease and the Joint Venturers shall forthwith comply with such requirement.

Additional proposals

11. If the Joint Venturers at any time during the continuance of this Agreement desire to significantly modify expand or otherwise vary their activities carried on pursuant to this Agreement (including levels of production) beyond those activities specified in the approved project or in any approved proposals or to mine minerals from the Mining Lease in addition to heavy minerals or to extend mining (whether of heavy minerals or other minerals) into any area of the Mining Lease not the subject of the approved project or an approved proposal they shall give notice of such desire to the Minister and within 2 months thereafter shall submit to the Minister detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in paragraphs (a) to (h) of subclause (1) of Clause 8 and other relevant information as the Minister may require. The provisions of Clause 8 and Clause 9 shall *mutatis mutandis* apply to detailed proposals submitted pursuant to this Clause with the additional provision that the Joint Venturers may withdraw such proposals at any time before approval thereof or, where any decision of the Minister in respect thereof is referred to arbitration, within 3 months after the award by notice

to the Minister that they shall not be proceeding with the same. Subject to and in accordance with the EP Act and any approvals and licences required under that Act the Joint Venturers shall implement proposals approved or determined pursuant to this Clause in accordance with the terms thereof.

Protection and management of the environment

12. (1) The Joint Venturers shall in respect of the matters relating to the environment which are referred to in the approved project or which are the subject of approved proposals, carry out a continual programme of investigation, research and monitoring to ascertain the effectiveness of the measures they are taking both generally and pursuant to the approved project or such approved proposals as the case may be for protection and management of the environment.
- (2) The Joint Venturers shall during the currency of this Agreement submit to the Minister —
- (a) not later than 31 December 1989 and 31 December in each year thereafter (except those years in which a comprehensive report is required to be submitted pursuant to paragraph (b) of this subclause) a brief report concerning investigations and research carried out pursuant to subclause (1) and the implementation by the Joint Venturers of the elements of the approved project and approved proposals relating to the protection and management of the environment in the year ending 31 October immediately preceding the due date for the brief report; and
 - (b) not later than 31 December 1991 and 31 December in each third year thereafter, a comprehensive report on the result of such investigations and research and the implementation by the Joint Venturers of the elements of the approved project and approved proposals relating to the protection and management of the environment during the three year period ending 31 October immediately preceding the due date for the detailed report together with a mining plan setting forth the proposed mining operations of the Joint Venturers during the three year period commencing 1 November immediately preceding such due date and the programme proposed to be undertaken by the Joint Venturers during that period in regard to investigation and research under subclause (1) and the implementation by the Joint Venturers of the elements of the approved project and approved

proposals relating to the protection and management of the environment.

- (3) The Minister may within 2 months of receipt of a report pursuant to paragraph (b) of subclause (2) notify the Joint Venturers that he —
 - (a) requires amendment of the report and/or programme for the ensuing 3 years; or
 - (b) requires additional detailed proposals to be submitted for the protection and management of the environment.
- (4) The Joint Venturers shall within 2 months of receipt of a notice pursuant to paragraph (a) of subclause (3) submit to the Minister an amended report and/or programme as required. The Minister shall afford the Joint Venturers full opportunity to consult with him on his requirements during the preparation of any amended report or programme.
- (5) The Minister may within 1 month of receipt of an amended report or programme pursuant to subclause (4) notify the Joint Venturers that he requires additional detailed proposals to be submitted for the protection and management of the environment.
- (6) The Joint Venturers shall within 2 months of receipt of a notice pursuant to paragraph (b) of subclause (3) or subclause (5) submit to the Minister additional detailed proposals as required and the provisions of Clause 9 shall *mutatis mutandis* apply to those proposals.

Use of local labour professional services and materials

13. (1) The Joint Venturers shall, for the purposes of this Agreement —
 - (a) except in those cases where the Joint Venturers can demonstrate it is impracticable so to do, use labour available within the said State;
 - (b) as far as it is reasonable and economically practicable so to do use the services of engineers surveyors architects and other professional consultants, project managers manufacturers suppliers and contractors resident and available within the said State;

- (c) when preparing specifications calling for tenders and letting contracts for works materials plant equipment and supplies (which shall at all times, except where it is impracticable so to do, use or be based upon Australian Standards and Codes) ensure that Western Australian suppliers manufacturers and contractors are given fair and reasonable opportunity to tender or quote; and
 - (d) give proper consideration and where possible preference to Western Australian suppliers manufacturers and contractors when letting contracts or placing orders for works, materials, plant, equipment and supplies where price quality delivery and service are equal to or better than that obtainable elsewhere.
- (2) The Joint Venturers shall in every contract entered into with a third party for the supply of services labour works materials plant equipment and supplies for the purposes of this Agreement require as a condition thereof that such third party shall undertake the same obligations as are referred to in subclause (1) and shall report to the Joint Venturers concerning such third party's implementation of that condition.
- (3) The Joint Venturers shall submit a report to the Minister at monthly intervals or such longer period as the Minister determines commencing from the date of this Agreement concerning their implementation of the provisions of this Clause together with a copy of any report received by the Joint Venturers pursuant to subclause (2) during that month or longer period as the case may be.

Water

14. (1) Where the Joint Venturers require to use underground water for all or part of their water requirements the State subject to the *Water Authority Act 1984* and other relevant Acts shall issue licences to the Joint Venturers for withdrawal of underground water up to the amounts and of the qualities agreed between the State and the Joint Venturers provided that any agreement under this Clause shall be subject to the State being satisfied that such water can be withdrawn without detriment to either the water source or other users.
- (2) Where water is available from an existing State water supply scheme and the Joint Venturers and the State agree that water will be supplied by the State to the Joint Venturers from that scheme for all or part of the water requirements of the Joint Venturers hereunder the State shall

supply such water subject to the provisions of the *Water Authority Act 1984* and relevant Acts and subject to agreement on charges and tariffs to be paid by the Joint Venturers to the State for supply of such water.

- (3) Where water is agreed to be supplied to the Joint Venturers from a State water supply scheme under subclause (2) and the existing scheme requires augmentation or extension to be able to supply such water the Joint Venturers shall meet the full cost of such augmentation or extension.

Electricity and gas

15. The Joint Venturers shall enter into negotiations with the State Energy Commission with a view to obtaining their requirements of electricity and gas for their operations under this Agreement from the State Energy Commission on terms and conditions to be agreed.

Roads

16. (1) The Joint Venturers shall —
- (a) be responsible for the cost of the construction and maintenance of all private roads which shall be used in their operations hereunder;
 - (b) at their own cost make such provision as shall ensure that all persons and vehicles (other than those engaged upon the Joint Venturers' operations and their invitees and licensees) are excluded from use of any private roads specified in approved proposals as not for use by the public; and
 - (c) at any place where any private roads cross any railways or public roads provide at its cost such reasonable protection and signposting as may be required by the Commissioner of Main Roads or the Railways Commission as the case may be.
- (2) In the event that for or in connection with the Joint Venturers' operations hereunder the Joint Venturers or any person engaged by the Joint Venturers uses or wishes to use a public road which is inadequate for the purpose, or any use by the Joint Venturers or any person engaged by the Joint Venturers of any public road results in excessive damage to or deterioration thereof (other than fair wear and

tear) the Joint Venturers shall pay to the State or the local authority as the case may require the whole or an equitable part of the total cost of any upgrading required or of making good the damage or deterioration as may be reasonably required by the Commissioner of Main Roads or relevant local authority having regard to the use of such public road by others.

- (3) Where a road constructed by the Joint Venturers for their own use is subsequently required for public use, the State may, after consultation with the Joint Venturers and so long as resumption thereof shall not unduly prejudice or interfere with the operations of the Joint Venturers under this Agreement, resume and dedicate such road as a public road. Upon any such resumption the State shall pay to the Joint Venturers such amount as the State considers to be reasonable.

Rail transport

17. (1) Subject to subclause (2) the Joint Venturers shall, except as otherwise agreed by the Minister, transport by rail —
- (a) to Muchea all the Joint Venturers' requirements of bulk materials and commodities required for their operations at the mining areas, the dry processing plant and the synthetic rutile plant; and
 - (b) between Muchea and Kwinana all heavy minerals and heavy mineral products produced from the mining areas, the dry processing plant or the synthetic rutile plant.
- (2) The provisions of subclause (1) shall not apply during any period in which the Railways Commission for any reason shall be unable to transport the Joint Venturers' daily requirements by rail.
- (3) (a) The Joint Venturers shall in respect of transport by rail pursuant to this Agreement pay freight charges as agreed with the Railways Commission.
- (b) The Joint Venturers and the Railways Commission shall enter into a freight agreement or freight agreements embodying the terms and conditions under which commodities are to be carried by the Railways Commission pursuant to this Agreement and for all other related matters insofar as they are not provided for in this Agreement and from time to time may add to, substitute for or vary the freight agreement (and the freight agreement as

entered into, added to, substituted or varied shall if the Joint Venturers and the Railways Commission so agree operate retrospectively) and may provide for variation of the obligations referred to in this Clause. The provisions of Clause 22 shall not apply to the freight agreement as entered into, added to, substituted or varied pursuant to this subclause or to any variation with respect to this Clause pursuant to this subclause.

Other infrastructure

18. The Joint Venturers shall confer with the Minister and the relevant local authorities with a view —
- (a) to ensuring that appropriate planning is being made for the provision of adequate serviced land for housing the Joint Venturers' workforce; and
 - (b) to assisting in the cost of providing community, recreation, civic and social amenities, where appropriate, having due regard to the size of the Joint Venturers' workforce and the scope of the Joint Venturers' operations to be carried out pursuant to this Agreement.

Zoning

19. The sites for the dry processing plant, the synthetic rutile plant and the pigment plant may be developed and such plants may be constructed and operated in accordance with this Agreement and the approved project or approved proposals as the case may be notwithstanding any contrary zoning or classification of use of the sites or any of them under the *Town Planning and Development Act 1928*, the *Local Government Act 1960* or any other Act or any by-law regulation or order.

No discriminatory rates

20. Except as provided in this Agreement the State shall not impose, nor shall it permit or authorise any of its agencies or instrumentalities or any local or other authority of the State to impose discriminatory taxes rates or charges of any nature whatsoever on or in respect of the titles property or other assets products materials or services used or produced by or through the operations of the Joint Venturers in the conduct of their business hereunder nor will the State take or permit to be taken by any such State authority any other discriminatory action which would deprive the Joint Venturers of full

enjoyment of the rights granted and intended to be granted under this Agreement.

Assignment

21. (1) Subject to the provisions of this Clause the Joint Venturers or either of them may at any time with the consent of the Minister assign mortgage charge sublet or dispose of the whole or any part of the rights of the Joint Venturers or either of them hereunder (including their respective rights to or as holder of the Mining Lease) and of the obligations of the Joint Venturers hereunder subject however in the case of an assignment subletting or disposition to the assignee sublessee or disponent (as the case may be) executing in favour of the State (unless the Minister otherwise determines) a deed of covenant in a form to be approved by the Minister to comply with observe and perform the provisions hereof on the part of the Joint Venturers to be complied with observed or performed in regard to the matter or matters the subject of such assignment subletting or disposition.
- (2) Notwithstanding anything contained in or anything done under or pursuant to subclause (1) the Joint Venturers shall at all times during the currency of this Agreement be and remain liable for the due and punctual performance and observance of all the covenants and agreements on their part contained in this Agreement PROVIDED THAT the Minister may agree to release the Joint Venturers or either of them from such liability where he considers such release will not be contrary to the interests of the State.
- (3) Notwithstanding the provisions of the Mining Act —
 - (a) no assignment mortgage charge sublease or disposition made or given pursuant to this Clause of or over the mining lease by the Joint Venturers or any assignee sublessee or disponent who has executed and is for the time being bound by deed of covenant made pursuant to this Clause; and
 - (b) no transfer assignment mortgage or sublease made or given in exercise of any power contained in any such mortgage or charge shall require any approval or consent other than such consent as may be necessary under this Clause.

Variation

22. (1) The parties to this Agreement may from time to time by agreement in writing add to substitute for cancel or vary all or any of the provisions of this Agreement or of the Mining Lease for the purpose of more efficiently or satisfactorily implementing or facilitating any of the objects of this Agreement.
- (2) The Minister shall cause any agreement made pursuant to subclause (1) in respect of any addition substitution cancellation or variation of the provisions of this Agreement to be laid on the Table of each House of Parliament within 12 sitting days next following its execution.
- (3) Either House may within 12 sitting days of that House after the agreement has been laid before it pass a resolution disallowing the agreement but if after the last day on which the agreement might have been disallowed neither House has passed such a resolution the agreement shall have effect from and after that last day.

Force majeure

23. Except as provided in Clauses 8 and 10 this Agreement shall be deemed to be made subject to any delays in the performance of the obligations under this Agreement and to the temporary suspension of continuing obligations under this Agreement that may be caused by or arise from circumstances beyond the power and control of the party responsible for the performance of those obligations including without limiting the generality of the foregoing delays or any such temporary suspension as aforesaid caused by or arising from act of God *force majeure* earthquakes floods storms tempest washaways fire (unless caused by the actual fault or privity of the party responsible for such performance) act of war act of public enemies riots civil commotions strikes lockouts stoppages restraint of labour or other similar acts (whether partial or general) acts or omissions of the Commonwealth shortages of labour or essential materials reasonable failure to secure contractors delays of contracts substantial changes in the world market for products produced pursuant to this Agreement or factors due to overall world economic conditions or factors due to action taken by or on behalf of any government or governmental authority (other than the State or any authority of the State) or factors that could not reasonably have been foreseen PROVIDED ALWAYS that the party whose performance of obligations is affected by any of the said causes shall promptly give notice

to the other party of the event or events and shall use its best endeavours to minimise the effects of such causes as soon as possible after the occurrence.

Power to extend periods

24. Notwithstanding any provision of this Agreement the Minister may at the request of the Joint Venturers from time to time extend or further extend any period or vary or further vary any date referred to in this Agreement or in any approved proposal for such period or to such later date as the Minister thinks fit whether or not the period to be extended has expired or the date to be varied has passed.

Determination of Agreement

25. (1) In any of the following events namely if —
- (a) (i) the Joint Venturers make default (other than a default referred to in paragraph (b)(i) of this subclause) which the State considers material in the due performance or observance of any of the covenants or obligations of the Joint Venturers in this Agreement or in the Mining Lease; or
 - (ii) the Joint Venturers abandon or repudiate this Agreement or their operations under this Agreement
- and such default is not remedied or such operations resumed within a period of 180 days after notice is given by the State as provided in subclause (2) or, if the default or abandonment is referred to arbitration, then within the period mentioned in subclause (3); or
- (b) (i) the Joint Venturers fail to submit proposals pursuant to Clause 8 or Clause 10 or fail to implement any proposals approved or determined under those Clauses in accordance with the terms thereof; or
 - (ii) the Joint Venturers or either of them go into liquidation (other than a voluntary liquidation for the purpose of reconstruction) and unless within 3 months from the date of such liquidation the interest of the Joint Venturer is assigned to the other Joint Venturer or to an assignee approved by the Minister under Clause 21

the State may by notice to the Joint Venturers determine this Agreement.

- (2) The notice to be given by the State in terms of paragraph (a) of subclause (1) shall specify the nature of the default or other ground so entitling the State to exercise such right of determination and where appropriate and known to the State the party or parties responsible therefor and shall be given to the Joint Venturers and all such assignees mortgagees chargees and disponees for the time being of the Joint Venturers' said rights to or in favour of whom or by whom an assignment mortgage charge or disposition has been effected in terms of Clause 21 whose name and an address for service of notice within the said State has previously been notified to the State by the Joint Venturers or any such assignee mortgagee chargee or disponee.
- (3)
 - (a) If the Joint Venturers contest the alleged default abandonment or repudiation referred to in paragraph (a) of subclause (1) the Joint Venturers shall within 60 days after notice given by the State as provided in subclause (2) refer the matter in dispute to arbitration.
 - (b) If the question is decided against the Joint Venturers, the Joint Venturers shall comply with the arbitration award within a reasonable time to be fixed by that award PROVIDED THAT if the arbitrator finds that there was a *bona fide* dispute and that the Joint Venturers were not dilatory in pursuing the arbitration, the time for compliance with the arbitration award shall not be less than 90 days from the date of such award.
- (4) If the default referred to in paragraph (a) of subclause (1) shall not have been remedied after receipt of the notice referred to in that subclause or within the time fixed by the arbitration award as aforesaid the State instead of determining this Agreement as aforesaid because of such default may itself remedy such default or cause the same to be remedied (for which purpose the State by agents workmen or otherwise shall have full power to enter upon lands occupied by the Joint Venturers and to make use of all plant machinery equipment and installations thereon) and the actual costs and expenses incurred by the State in remedying or cause to be remedied such default shall be a debt payable by the Joint Venturers to the State on demand.

Effect of cessation or determination of Agreement

26. On the cessation or determination of this Agreement —

- (a) except as otherwise agreed by the Minister the rights of the Joint Venturers to in or under this Agreement shall thereupon cease and determine but without prejudice to the liability of either of the parties hereto in respect of any antecedent breach or default under this Agreement or in respect of any indemnity given under this Agreement;
- (b) the Joint Venturers shall forthwith pay to the State all moneys which may then have become payable or accrued due and if a surrender has been required by the State under Clause 10(4) but has not been effected the Joint Venturers shall forthwith complete such surrender;
- (c) the Joint Venturers may request that the Mining Lease, subject to subclause (4) of Clause 10, continue in force for its unexpired term as if it were a mining lease under and subject to the Mining Act whereupon the Minister for Mines shall issue the appropriate mining lease or mining leases as the case may require in the stead thereof (and the Jurien Mining Lease if then existing) under the Mining Act for the balance of the term of the Mining Lease but without the benefit of any of the provisions of this Agreement;
- (d) save as aforesaid and as otherwise provided in this Agreement neither of the parties shall have any claim against the other of them with respect to any matter or thing in or arising out of this Agreement.

Provision of finance

- 27. (1) Where under any provisions of this Agreement the Joint Venturers are liable to make payments to the State the Joint Venturers may, subject to the prior consent of the Minister, in lieu of such payments otherwise provide finance or cause finance to be provided to any equal amount to the particular liability in such manner as may be determined by the Minister.
- (2) Where under any provision of this Agreement or any approved proposal the Joint Venturers are liable to make payments to the State for services and facilities to be provided by the State the parties shall subject to the relevant provision or approved proposal enter into an agreement regarding the nature and extent of such payments prior to the commencement of any such work or expenditure.

Environmental protection

28. Nothing in this Agreement shall be construed to exempt the Joint Venturers from compliance with any requirement in connection with the protection of the environment arising out of or incidental to their activities under this Agreement that may be made by the State or by any State agency or instrumentality or any local or other authority or statutory body of the State pursuant to any Act from time to time in force.

Indemnity

29. The Joint Venturers shall indemnify and keep indemnified the State and its servants agents and contractors in respect of all actions suits claims demands or costs of third parties arising out of or in connection with any work carried out by or on behalf of the Joint Venturers pursuant to this Agreement or relating to their activities hereunder or arising out of or in connection with the construction maintenance or use by the Joint Venturers or their servants agents contractors or assignees of the Joint Venturers' works or services the subject of this Agreement or the plant apparatus or equipment installed in connection therewith PROVIDED THAT subject to the provisions of any other relevant Act such indemnity shall not apply in circumstances where the State, its servants, agents, or contractors are negligent in carrying out work for the Joint Venturers pursuant to this Agreement.

Commonwealth licences and consents

30. (1) The Joint Venturers shall from time to time make application to the Commonwealth or to the Commonwealth constituted agency, authority or instrumentality concerned for the grant to it of any licence or consent under the laws of the Commonwealth necessary to enable or permit the Joint Venturers to enter into this Agreement and to perform any of its obligations hereunder.
- (2) On request by the Joint Venturers the State shall make representations to the Commonwealth or to the Commonwealth constituted agency authority or instrumentality concerned for the grant to the Joint Venturers of any licence or consent mentioned in subclause (1).

Subcontracting

31. The State shall ensure that without affecting the liabilities of the parties under this Agreement either party shall have the right from time to time to

entrust to third parties the carrying out of any portions of the operations which it is authorised or obliged to carry out hereunder.

Stamp duty exemption

32. (1) The State shall exempt from any stamp duty which but for the operation of this Clause would or might be assessed and chargeable on —
- (a) this Agreement;
 - (b) the assignment to KMCC by the said Yalgoo Minerals Pty. Ltd. and Tific of one half of their interests in mining tenements over the mining areas and the Jurien tenements and mining information relating thereto pursuant to a Sale and Purchase Agreement dated 28 October 1988 and made between Minproc Holdings Limited, the said Yalgoo Minerals Pty. Ltd., Tific, KMCC and the said Kerr-McGee Chemical Corporation.
 - (c) any instrument executed by the State pursuant to this Agreement granting to or in favour of the Joint Venturers or any permitted assignee any tenement lease licence easement or other right or rights; and
 - (d) any assignment sublease or disposition (other than by way of mortgage or charge) made in conformity with the provisions of subclause (1) of Clause 21

PROVIDED THAT this subclause shall not apply to any instrument or other document executed or made more than 5 years from the date hereof.

- (2) If prior to the date on which the Bill referred to in Clause 3 to ratify this Agreement is passed as an Act stamp duty has been assessed and paid on any instrument or other document or transaction referred to in subclause (1) the State when such Bill is passed as an Act shall on demand refund any stamp duty paid on any such instrument or other document or transaction to the person who paid the same.

Arbitration

33. (1) Any dispute or difference between the parties arising out of or in connection with this Agreement the construction of this Agreement or as to the rights duties or liabilities of either party hereunder or as to

any matter to be agreed upon between this Agreement shall in default of agreement between the parties and in the absence of any provision in this Agreement to the contrary be referred to and settled by arbitration under the provisions of the *Commercial Arbitration Act 1985* and notwithstanding section 20(1) of that Act each party may be represented before the arbitrator by a duly qualified legal practitioner or other representative.

- (2) Except where otherwise provided in this Agreement, the provisions of this Clause shall not apply to any case where the State the Minister or any other Minister in the Government of the said State is by this Agreement given either expressly or impliedly a discretionary power.
- (3) The arbitrator of any submission to arbitration under this Agreement is hereby empowered upon the application of either of the parties to grant in the name of the Minister any interim extension of any period or variation of any date referred to herein which having regard to the circumstances may reasonably be required in order to preserve the rights of that party or of the parties under this Agreement and an award may in the name of the Minister grant any further extension or variation for that purpose.

Consultation

34. The Joint Venturers shall during the currency of this Agreement consult with and keep the State fully informed on a confidential basis concerning any action that the Joint Venturers propose to take with any third party (including the Commonwealth or any Commonwealth constituted agency authority instrumentality or other body) which might significantly affect the overall interest of the State under this Agreement.

Term

35. (1) Subject to the provisions of Clause 25 and this Clause this Agreement shall expire on the expiration or sooner determination or surrender of the Mining Lease.
- (2) If the Joint Venturers give notice to the Minister during the last six months of the initial term of the Mining Lease that they desire to have the provisions of this Agreement extended for a period of five years, or such longer period not exceeding ten years as the Minister may approve, the Minister providing the Joint Venturers are not in default of their obligations under this Agreement shall extend the term of the

Agreement and the Minister for Mines shall extend the term of the Mining Lease, by endorsement thereon of such extension, accordingly.

- (3) If the Mining Lease is extended pursuant to subclause (2) and continues for the full term of such extension the Joint Venturers may provided they are not in default of their obligations under this Agreement, give notice to the Minister during the first 6 months of the last year of the extended term of the Mining Lease of their desire to have a mining lease under the Mining Act granted to them in respect of such area of the Mining Lease as they nominate in the notice and on expiration of such term the Minister for Mines shall grant a mining lease or mining leases as the case may require under the Mining Act to the Joint Venturers in respect of the area so nominated.

Notices

36. Any notice consent or other writing authorised or required by this Agreement to be given or sent shall be deemed to have been duly given or sent by the State if signed by the Minister or by any senior officer of the Public Service of the said State acting by the direction of the Minister and forwarded by prepaid post or handed to the Joint Venturers at their respective addresses in the said State hereinbefore set forth or other addresses in the said State nominated by the Joint Venturers to the Minister for the purpose of this Clause and by the Joint Venturers if signed on their behalf by any person or persons authorised by them or by their solicitors as notified to the State from time to time and forwarded by prepaid post or handed to the Minister and except in the case of personal service any such notice consent or writing shall be deemed to have been duly given or sent on the day on which it would be delivered in the ordinary course of post.

Guarantee

37. Notwithstanding any addition to deletion or variation of the provisions of this Agreement or any time or other indulgence granted by the State to the Joint Venturers whether or not notice thereof is given to the Guarantors by the State the Guarantors hereby jointly and severally guarantee to the State the due performance by the Joint Venturers of all their obligations to be performed hereunder.

Applicable law

38. This Agreement shall be interpreted according to the law for the time being in force in the State of Western Australia.

THE SCHEDULE

WESTERN AUSTRALIA

MINING ACT 1978

*MINERAL SANDS (COOLJARLOO) MINING AND PROCESSING
AGREEMENT ACT 1988*

MINING LEASE

MINING LEASE NO.

The Minister for Mines a corporation sole established by the *Mining Act 1978* with power to grant leases of land for the purposes of mining in consideration of the rents hereinafter reserved and of the covenants on the part of the Lessee described in the First Schedule to this lease and of the conditions hereinafter contained and pursuant to the *Mining Act 1978* (except as otherwise provided by the Agreement (hereinafter called “the Agreement”) described in the Second Schedule to this lease) hereby leases to the Lessee the land more particularly delineated and described in the Third Schedule to this lease for all minerals subject however to the provisions of the Agreement, to the exceptions and reservations set out in the Fourth Schedule to this lease and to any other exceptions and reservations which subject to the Agreement are by the *Mining Act 1978* and by any Act for the time being in force deemed to be contained herein to hold to the Lessee this lease for a term of twenty-one years commencing on the date set out in the Fifth Schedule to this Lease and any extension thereof pursuant to Clause 35 of the Agreement (subject to the sooner determination of the said term or any extension upon the cessation or determination of the Agreement) upon and subject to such of the provisions of the *Mining Act 1978* except as otherwise provided by the Agreement as are applicable to mining leases granted thereunder and to the terms covenants and conditions set out in the Agreement and to the covenants and conditions herein contained or implied and any further conditions or stipulations set out in the Sixth Schedule to this lease the Lessee paying therefor the rents for the time being and from time to time prescribed pursuant to the provision of the *Mining Act 1978* at the times and in the manner so prescribed and royalties as provided in the Agreement PROVIDED ALWAYS that this lease shall not be determined or forfeited otherwise than in accordance with the Agreement.

In this lease —

“Lessee” includes the successors and permitted assigns of the Lessee.

searching for and for the operations of obtaining petroleum (as so defined) in any part of the land.

FIFTH SCHEDULE

(Date of commencement of the lease).

SIXTH SCHEDULE

(Any further conditions or stipulations).

In witness whereof the Minister for Mines has affixed his seal and set his hand hereto this day of 19.....

IN WITNESS WHEREOF this Agreement has been executed by or on behalf of the parties hereto the day and year first hereinbefore mentioned.

SIGNED by the said
THE HONOURABLE PETER
M'CALLUM DOWDING LL.B.,
M.L.A. in the presence of:

}

PETER DOWDING

D. PARKER
MINISTER FOR ECONOMIC DEVELOPMENT AND TRADE

THE COMMON SEAL of
YALGOO MINERALS PTY LTD
was hereunto affixed by
authority of the Board of
Directors, and in the
presence of:

}

[C.S.]

Director S. D. MEREDITH
Secretary L. W. MARSHALL

THE COMMON SEAL of
KMCC WESTERN
AUSTRALIA PTY LTD was
hereunto affixed by authority
of the Board of Directors,
and in the presence of: }

[C.S.]

Director B. J. MONTGOMERY

Secretary R. C. STEINEPREIS

THE COMMON SEAL of
TIO2 CORPORATION NL
was hereunto affixed by
authority of the Board of
Directors in the presence of: }

[C.S.]

Director R. J. WILDE

Secretary L. W. MARSHALL

Signed for and on behalf
of KERR-McGEE CHEMICAL
CORPORATION by its duly
authorised Vice-President }

B. J. MONTGOMERY
Vice-President

Schedule 2 — 2017 variation agreement

[s. 3]

[Heading inserted: No. 14 of 2017 s. 7.]

2017

**THE HONOURABLE MARK McGOWAN
THE STATE OF WESTERN AUSTRALIA**

and

**TRONOX MANAGEMENT PTY LTD
ABN 59 009 343 364**

**MINERAL SANDS (COOLJARLOO) MINING AND PROCESSING
AGREEMENT 1988**
RATIFIED VARIATION AGREEMENT

[Solicitor's details]

THIS AGREEMENT is made this 26th day of September 2017

BETWEEN

THE HONOURABLE MARK McGOWAN, BA LLB MLA, Premier of the State of Western Australia, acting for and on behalf of the said State and its instrumentalities from time to time (hereinafter called the "**State**") of the first part,

AND

TRONOX MANAGEMENT PTY LTD ABN 59 009 343 364 of Lot 22, Mason Road, Kwinana Beach, Western Australia, (hereinafter called the "**Joint Venturers**" in which term shall be included its successors and permitted assigns) of the second part.

RECITALS:

- A.** The parties to this Agreement are now the parties to the agreement dated 8 November 1988 (the "**Principal Agreement**"), the execution of which by the State was ratified by the *Mineral Sands (Cooljarloo) Mining and Processing Agreement Act 1988*.
- B.** The parties wish to vary the provisions of the Principal Agreement on the terms and conditions set out in this Agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Ratification and operation

- (1) This Agreement, other than this clause, does not come into operation except in accordance with subclause (2).
- (2) This Agreement, other than this clause, comes into operation on the day on which it is ratified by an Act of the Parliament of Western Australia ("**Operative Date**") unless, before that day, it terminates under subclauses (4) or (5).

- (3) The State must introduce in the Parliament of Western Australia before 31 December 2017 or a later date agreed by the parties to this Agreement a Bill to ratify this Agreement and must endeavour to secure its passage as an Act.
- (4) If by 30 June 2018 this Agreement has not been ratified by an Act of the Parliament of Western Australia then, unless the parties to this Agreement otherwise agree, this Agreement terminates on that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.
- (5) The parties agree that if the Principal Agreement is otherwise determined in accordance with its provisions on a day prior to the Operative Date, then this Agreement shall also terminate on and from that day and no party hereto will have any claim against any other party hereto with respect to any matter or thing arising out of, done, performed, or omitted to be done or performed under this Agreement.

2. Variations of the Principal Agreement

The Principal Agreement is hereby varied as follows:

- (1) in clause 1 by:
 - (a) inserting in the appropriate alphabetical positions the following new definitions:

"including" means "including, but not limited to";

"Kwinana pigment plant" means the plant and associated facilities established and operated under this Agreement at Kwinana for the production of titanium dioxide pigment;

"Muceha dry processing plant" means the plant and associated facilities established and operated under this Agreement at Muceha for the separation into component heavy minerals of rock soil or sand bearing heavy minerals which have been concentrated prior to such separation;

"Muceha synthetic rutile plant" means the plant and associated facilities established and operated

under this Agreement at Muchea for the production of synthetic rutile;

"Non-Mining Lease heavy mineral concentrates" means Non-Mining Lease ore concentrated prior to separation into component heavy minerals;

"Non-Mining Lease ore" means any rock, soil or sand bearing heavy minerals mined from areas other than areas within the Mining Lease and whether within or outside Australia;

"titanium slag" means any upgraded titaniferous mineral other than synthetic rutile; and

- (b) in the definition of "heavy minerals" by deleting "heavy mineral concentrates" and substituting "rock, soil or sand bearing heavy minerals which have been concentrated prior to such separation";
- (2) in clause 7 by inserting after subclause (2) the following new subclause:
 - "(3) (a) The Joint Venturers may with the approval of the Minister and for the principal purpose of providing feedstock to any one or more of the Muchea dry processing plant, the Muchea synthetic rutile plant and the Kwinana pigment plant blend:
 - (i) heavy mineral concentrates with Non-Mining Lease heavy mineral concentrates;
 - (ii) a heavy mineral resulting from the separation of heavy mineral concentrates, or blended concentrates as referred to in subparagraph (i) above, with the same type of heavy mineral resulting from the separation of Non-Mining Lease heavy mineral concentrates.

The Minister shall within 2 months after receipt of a request from the Joint Venturers for the Minister's approval to undertake any such blending in accordance with this subclause (3), give notice to the Joint Venturers of his decision in respect of that request.

- (b) The authority given under paragraph (a) is subject to the Minister being reasonably satisfied that there is in place adequate systems and controls for the correct apportionment between the Mining Lease and the areas from which Non-Mining Lease ore is being mined of the quantities of the heavy minerals resulting from the separation of the blended concentrates and/or heavy mineral being blended as the case may be and which systems and controls monitor production, concentration, processing, transportation, stockpiling and shipping activities in respect of all such blended heavy minerals. If at any time the Minister ceases to be so satisfied the Minister may, after consulting the Joint Venturers and provided that the Joint Venturers have not within 3 months after the commencement of such consultation addressed the matters of concern to the Minister's satisfaction, by notice in writing to the Joint Venturers suspend the above authority in respect of the relevant blending arrangements until the Minister is again satisfied in terms of this paragraph (b).
- (c) During the currency of an authority given under paragraph (a) the Joint Venturers must, for the purposes of the correct apportionment referred to in paragraph (b) between the Mining Lease and the areas from which Non-Mining Lease ore is being mined, keep the Minister fully informed of the area or

areas from which Non-Mining Lease ore is being mined.

- (d) The provisions of the Mining Act shall apply with respect to the calculation and payment of royalties in regard to such blended mineral products and the submission and auditing of royalty returns.";

- (3) in clause 11 by:

- (a) deleting in the first line "If" and substituting "Subject to Clause 11A, if"; and
- (b) inserting after "Clause 9":

"(but with the reference in subclause (2) to "section 40(1)(b) of the EP Act" being read as a reference to "Part IV of the EP Act)";

- (4) by inserting after clause 11 the following new clauses:

"Non-Mining Lease heavy mineral concentrates and other Non-Mining Lease derived feedstocks

11A.(1) During the continuance of this Agreement the Joint Venturers may, subject to the EP Act and the other provisions of this Agreement, submit to the Minister detailed proposals (including, in connection with any proposed new works, plans where practicable and specifications where reasonably required by the Minister and any other details normally required by a local government in whose area any such new or modified works are to be situated) with respect to:

- (a) the separation into heavy minerals at the Muchea dry processing plant of Non-Mining Lease heavy mineral concentrates (including as part of blended concentrates as referred to in Clause 7(3)(a)(i));

- (b) the use in the production of synthetic rutile at the Muchea synthetic rutile plant of:
 - (i) blended heavy minerals as referred to in Clause 7(3)(a)(ii);
 - (ii) heavy minerals resulting from the separation of Non-Mining Lease heavy mineral concentrates (including as part of blended concentrates as referred to in Clause 7(3)(a)(i)), whether such separation occurs at the Muchea dry processing plant as referred to in paragraph (a) above or, if the Joint Venturers so wish, elsewhere;

- (c) the use in the production of titanium dioxide pigment at the Kwinana pigment plant of:
 - (i) synthetic rutile, whether produced at the Muchea synthetic rutile plant as referred to in paragraph (b) above or, if the Joint Venturers so wish, elsewhere;
 - (ii) blended heavy minerals as referred to in Clause 7(3)(a)(ii);
 - (iii) heavy minerals resulting from the separation of Non-Mining Lease heavy mineral concentrates (including as part of blended concentrates as referred to in Clause 7(3)(a)(i)), whether

such separation occurs at the Muchea dry processing plant as referred to in paragraph (a) above or, if the Joint Venturers so wish, elsewhere;

- (iv) if the Joint Venturers so wish, titanium slag,

which proposals shall include the location, area, lay-out, design, quantities, materials and time programme for the commencement and completion of construction or the provision (as the case may be) of each of the following matters:

- (d) the modification or expansion of any one or more of the Muchea dry processing plant, the Muchea synthetic rutile plant and the Kwinana pigment plant including the establishment and operation of new works as part of those facilities;
- (e) water supplies;
- (f) energy supplies;
- (g) if applicable, the transport by road:
 - (i) from the Mining Lease to the Muchea dry processing plant (for processing in that plant) of blended concentrates as referred to in Clause 7(3)(a)(i);
 - (ii) from the Muchea dry processing plant or the Muchea synthetic rutile plant as the case may be to the Kwinana pigment plant (for processing in that plant) of resulting heavy minerals referred to in paragraph (a) above or synthetic rutile produced as

referred to in paragraph (b) above;

(iii) of waste as referred to in paragraph (l) of this subclause (1);

- (h) during the continuance of this Agreement, the temporary storage upon the Mining Lease of Non-Mining Lease heavy mineral concentrates for the purpose of blending with heavy mineral concentrates;
 - (i) any other works, services or facilities desired by the Joint Venturers in connection with the proposed operations;
 - (j) use of local professional services labour and materials and measures to be taken with respect to the engagement and training of employees by the Joint Venturers, their agents and contractors;
 - (k) measures to be taken for the protection and management of the environment including rehabilitation and/or restoration of storage areas upon the Mining Lease; and
 - (l) the disposal or storage of waste resulting from proposed operations at the Muchea dry processing plant, the Muchea synthetic rutile plant and the Kwinana pigment plant as referred to in paragraphs (a), (b) and (c) above.
- (2) The provisions of subclauses (2) to (4) of Clause 8 and the provisions of Clause 9 (but with the reference in subclause (2) to "section 40(1)(b) of the EP Act" being read as a reference to "Part IV of the EP Act") shall *mutatis mutandis* apply to proposals submitted pursuant to subclause (1).
- (3) If the Joint Venturers at any time during the continuance of this Agreement desire to significantly

modify, expand or otherwise vary their activities referred to in subclause (1)(a), (b) or (c) beyond those activities specified in any proposals submitted and approved pursuant to this Clause they shall give notice of such desire to the Minister and if required by the Minister within 2 months thereafter shall submit to the Minister (within such period as the Minister may reasonably require) detailed proposals in respect of all matters covered by such notice and such of the other matters mentioned in subclause (1) as the Minister may require. For the avoidance of doubt, this subclause shall also apply where the Joint Venturers propose to commence undertaking an activity referred to in subclause (1)(a), (b) or (c) which is not already specified in any proposals submitted and approved pursuant to this Clause.

- (4) To avoid doubt the parties acknowledge that that the provisions of this Agreement do not apply to:
- (a) the mining or concentration of Non-Mining Lease ore; or
 - (b) the transport of Non-Mining Lease heavy mineral concentrates (other than as referred to in subclause (1)(g)(i)); or
 - (c) the transport of heavy minerals resulting from the separation of Non-Mining Lease heavy mineral concentrates (other than as referred to in subclause (1)(g)(ii)); or
 - (d) the transport of synthetic rutile produced using heavy minerals resulting from the separation of Non-Mining Lease heavy mineral concentrates (other than as referred to in subclause (1)(g)(ii)); or
 - (e) the transport of titanium slag.
- (5) The Joint Venturers acknowledge that the provisions both of Clause 7(3) and of this Clause 11A are intended to enable them to continue their processing

operations under this Agreement by expanding the sources of feedstock for any one or more of the Muchea dry processing plant, the Muchea synthetic rutile plant and the Kwinana pigment plant. For the avoidance of doubt the Joint Venturers acknowledge that, subject to Clause 23 of this Agreement, they must in accordance with this Agreement and approved proposals continue to operate the Muchea dry processing plant, the Muchea synthetic rutile plant and the Kwinana pigment plant during the continuance of this Agreement.

Provision of services and sharing of Agreement mine infrastructure with proposed Cooljarloo West and Jurien mining projects

- 11B. The Joint Venturers may during the continuance of this Agreement and with the Minister's prior consent use any existing or new works installations or facilities forming part of their mining operations upon the Mining Lease and constructed, held under or used for the purposes of this Agreement for the purposes of developing and operating under and in accordance with the Mining Act their proposed mining projects at:
- (a) Cooljarloo West (upon land the subject of mining leases 70/1314 and 70/1333, any mining lease or leases granted upon the conversion of exploration licences 70/4129 and 70/4130 and such other mining lease or mining leases granted to or acquired by the Joint Venturers for the purposes of their heavy mineral project or projects at Cooljarloo West as the Minister may approve); and
 - (b) Jurien (upon land the subject of mining leases 70/434, 70/435 and 70/436 and such other mining lease or mining leases granted to or acquired by the Joint Venturers for the purposes of their heavy mineral project or

projects at Jurien as the Minister may approve).";

- (5) by deleting clause 17;
- (6) in clause 33 by:
 - (a) in subclause (1) deleting "1985" and substituting "2012"; and
 - (b) in subclause (1) deleting "notwithstanding section 20(1) of that Act"; and
- (7) in clause 35 by:
 - (a) in subclause (3) inserting after the words "Mining Lease as they":

", subject to subclause (4),"; and
 - (b) inserting after subclause (3) the following new subclause:

"(4) The Joint Venturers must include in their nomination under subclause (3) all of the area at the time the subject of the Mining Lease apart from any area or areas of the Mining Lease which, to the satisfaction of the Minister for Mines as confirmed in writing to the Joint Venturers before their nomination is made, has or have, as the case may be, been rehabilitated and/or restored in accordance with the approved project or approved proposals, as the case may be, and any conditions applying thereto under or pursuant to the Mining Lease, this Agreement or the EP Act."

EXECUTED AS A DEED.

SIGNED by the **HONOURABLE**)
MARK McGOWAN, in the)

presence of:)
[Signature]
[Signature]
Signature of witness **Signature of THE HONOURABLE
MARK McGOWAN**

TRENA MCDONALD
.....
Name of witness (block letters)

EXECUTED by **TRONOX**)
MANAGEMENT PTY LTD)
ABN 59 009 343 364 in)
accordance with section 127(1) of)
the *Corporations Act 2001* (Cth))
by authority of its directors:)

[Signature]
Signature of director
[Signature]
Signature of director/~~company~~
~~secretary~~*
*delete whichever is not applicable

STEVEN KAYE
.....
Name of director (block letters)
RICHARD L MUGLIA
.....
Name of director/~~company~~
~~secretary~~* (block letters)
*delete whichever is not applicable

[Schedule 2 inserted: No. 14 of 2017 s. 7.]

Notes

- ¹ This is a compilation of the *Mineral Sands (Cooljarloo) Mining and Processing Agreement Act 1988* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Mineral Sands (Cooljarloo) Mining and Processing Agreement Act 1988</i>	68 of 1988	14 Dec 1988	14 Dec 1988 (see s. 2)
Reprint 1: The Mineral Sands (Cooljarloo) Mining and Processing Agreement Act 1988 as at 27 Jun 2003			
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)
<i>Mineral Sands (Cooljarloo) Mining and Processing Agreement Amendment Act 2017</i>	14 of 2017	5 Dec 2017	s. 1 and 2: 5 Dec 2017 (see s. 2(a)); Act other than s. 1 and 2: 6 Dec 2017 (see s. 2(b))

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
2017 variation agreement.....	3
the Agreement.....	3