
EQUIPMENT SALE AGREEMENT

This Agreement is made this XX day of XX XX

BETWEEN

Oaky Creek Coal Pty Ltd, as manager for and on behalf of the Oaky Creek Joint Venture (ABN 17 010 202 936) of Level 38, Gateway, 1 Macquarie Place, Sydney NSW 2000 ("**Disposing Party**"); and XX of XX ("**Acquiring Party**").

RECITALS

The Acquiring Party has offered to purchase and Disposing Party has agreed to sell the equipment described below in clause 1.1 ("**Equipment**") on the terms of this Agreement.

OPERATIVE PROVISIONS

1. DESCRIPTION OF EQUIPMENT & PURCHASE PRICE

- 1.1 Subject to the terms and conditions of this Agreement, the Disposing Party agrees to sell and the Acquiring Party agrees to purchase the Equipment described below subject to the conditions set forth herein.

Description:

- XX

Each item of Equipment sold under this Agreement is hereinafter referred to as a "**Unit**".

- 1.2 The Acquiring Party acknowledges and agrees that each Unit sold under this Agreement is non-operational, non-serviceable and the use of any Unit sold under this Agreement for the purpose the Unit was designed and/or manufactured may present risks to the health and safety of persons. Accordingly, the Acquiring Party agrees that each Unit sold under this Agreement will not be used for:
- the purpose for which the Unit was designed and/or manufactured; or
 - any purpose other than as scrap or to yield spare parts through the removal of individual components from the Unit.
- 1.3 The Disposing Party undertakes to make all Units available for dismantling and removal by the Acquiring Party no later than 30 days from XX XX XX in Schedule A (Components) or such other period as is mutually agreed by both parties. The Disposing Party also undertakes to have made all Units available for sale by XX XX XX.

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- 1.4 The Acquiring Party acknowledges receipt of the items of documentation relating to the Equipment as described in Schedule B (Documentation).
- 1.5 In the event that the Disposing Party becomes aware of a Unit experiencing a component failure prior to the delivery of the Equipment to the Acquiring Party, any evidence of a failing or failed component not otherwise notified to the Acquiring Party in the documentation relating to the Equipment as described in Schedule B (Documentation) is to be notified to the Acquiring Party as soon as reasonably practicable after the Disposing Party becomes aware of the failing or failed component.

2. PURCHASE PRICE

- 2.1 All monetary values in this agreement are stated in Australian Dollars.

Unit prices –

- **\$XX** (including GST)

*Total Purchase Price – **\$XX** (including GST)*

- 2.2 Separate invoices will be issued for each individual transaction.
- 2.3 In the event of a Unit experiencing a major component failure prior to the delivery of the Equipment to the Acquiring Party, the Purchase Price for that Unit may be adjusted by the mutual agreement of Disposing Party and the Acquiring Party. Any amendment to the Purchase Price will take into account, amongst other factors, the cost variance between a pre-failure repair and a post-failure repair of the component.
- 2.4 The Acquiring Party reserves the right to a final inspection of all Units prior to invoicing. Any major accident damage, chassis cracking or major repairs outside normal wear and tear may also be amended in the Purchase Price.
- 2.5 Any amendment to the Purchase Price will be determined on a case-by-case basis following a detailed inspection and report by an agreed independent body. In the event that an amended Purchase Price cannot be agreed upon, then that particular Unit will be excluded from this Agreement. Such exclusion of a Unit will not give reason for the termination or setting aside of this Agreement.
- 2.6 Unless mutually agreed by both parties in writing, failure by the Acquiring Party to remove a Unit from the Disposing Party's site within 8 weeks of the invoice date will entitle the Disposing Party to further invoice the Acquiring Party a holding fee of \$1,000 per calendar month per Unit.

3. PAYMENT

- 3.1 The Disposing Party will invoice the Acquiring Party upon making each Unit available to the Acquiring Party. These invoices will be payable within 30 days from invoice date.
- 3.2 Payment of the full **Unit Price** for each individual item of Equipment is payable prior to that item of Equipment being removed from the Disposing Party's site.

3.3 Payment shall be made by electronic funds transfer to:

Name: Oaky Creek Holdings Pty Ltd

BSB Code: 062-815

Account No: 1047 0022

3.4 The Disposing Party may set-off or deduct from any amounts due to the Acquiring Party any money due or which may become due from the Acquiring Party to the Disposing Party in respect of this Agreement.

4. REMOVAL OF EQUIPMENT

The Acquiring Party may remove the Equipment following receipt by the Disposing Party of an executed copy of this Agreement, payment of the full Purchase Price for each item of Equipment stated above and receipt of a statement of authorisation from Disposing Party releasing each individual Unit to the Acquiring Party. If the Equipment is being removed from a mine site operated by the Disposing Party, transport and salvage operations must be coordinated with the Disposing Party's Site Senior Executive or the Site Senior Executive's authorised delegate.

5. COMMERCIAL TERMS

5. The Acquiring Party owns and is at risk for Equipment in transit. If crane and/or rigging or any other equipment is required to dismantle and/or load the Equipment for removal, all charges associated with dismantling, loading and removal, including equipment hire, labour and freight charges will be to the account of the Acquiring Party. If the Acquiring Party brings equipment onto a mine site operated for the purposes of dismantling and/or loading the Equipment for removal, such equipment must:

- (a) pass the Disposing Party's mine safety inspection; and
- (b) conform with any of the requirements imposed upon the Disposing Party by the *Coal Mining Safety and Health Act 1999* (Qld).

5.2 The Acquiring Party is responsible for all equipment hire costs, dismantling cost, loading costs, freight charges, labour costs, insurance, permit costs and any taxes associated with the dismantling, loading and removal of the Equipment from the Disposing Party's site.

5.3 Ownership of the Equipment does not pass to the Acquiring Party until all payments have been made to Disposing Party and the Equipment has been removed from the Disposing Party's site.

6. DISCLAIMER

6.1 The Equipment is being sold 'as-is, where-is' and the Disposing Party makes no representation or warranty whatsoever either express or implied as to the merchantability or fitness for a particular purpose of any such Equipment or the accuracy of any descriptions of such Equipment.

6.2 Any quantities of spare parts or consumables referred to in this Agreement and included with the sale of the Equipment are estimates only and are subject to final stock count. The Purchase Price will not be varied unless there is a significant variation between the actual and estimated stock quantities, and then only by a pro-rata adjustment.

7. INDEMNIFICATION

- 7.1 Subject to Clause 7.2, the Acquiring Party releases and indemnifies, saves and holds harmless the Disposing Party, its Related Bodies Corporate (as defined in the *Corporations Act 2001* (Cth)) and their respective successors, assigns, employees and agents ("**Indemnified Parties**"), against all liability and loss as a result of the rights granted hereby, including without limitation any injury (including fatal injury) to the Acquiring Party or any other person sustained by or any damage to the property of the Acquiring Party or any other person or third party to whom the Equipment may ultimately be resold or who may use it.
- 7.2 The Acquiring Party must ensure that its officers, members, employees, agents and subcontractors will not do or omit to do anything, which if you had done or omitted to do, would be a breach of its obligations under this Agreement.

8. SITE ACCESS

- 8.1 If the Equipment is to be removed from a mine site operated by the Disposing Party, prior to accessing the Disposing Party's mine site the Acquiring Party must obtain the express permission of the Disposing Party's Site Senior Executive or Site Senior Executive's authorised delegate. All persons entering onto and/or working on the Disposing Party's mine site must complete an induction program and be authorised by the relevant Disposing Party statutory officers before carrying out any work on the Disposing Party's mine site. The Acquiring Party should contact the following Disposing Party representative prior to arrival at site to make the necessary arrangements for site access:

Name: XX

- 8.2 A risk assessment and a Safe Work Method Statement (**SWMS**), Job Safety Analysis (**JSA**) or similar document (however named) pertaining to the dismantling, loading and removal of the Equipment must be completed prior to commencing the dismantling, loading and removal of the Equipment. If the Equipment is to be removed from a mine site controlled by the Disposing Party, the risk assessment and the SWMS or JSA or similar document (however named) must be provided to the Disposing Party's Site Senior Executive or the Site Senior Executive's authorised delegate along with copies of certificates of currency for the Acquiring Party's Public Liability and Workers Compensation Insurance Policies. If the Equipment is to be removed from a site controlled by the Disposing Party other than a mine site the risk assessment, the SWMS or JSA or similar document (however named) and copies of certificates of currency for the Acquiring Party's Public Liability and Workers Compensation Insurance Policies must be provided to the Disposing Party's representative as notified to the Acquiring Party.
- 8.3 While on any site controlled by the Disposing Party, including a mine site, the Acquiring Party, its agents, employees and sub-contractors must at all times comply with and abide by the Disposing Party's policies, procedures, rules and regulations as displayed at the applicable site pertaining to work health and safety, vehicular traffic and conduct.

9. TITLE

The Disposing Party warrants that it has the right to sell the Equipment to the Acquiring Party and that the Equipment is not subject to any charge, encumbrance or lien.

10. ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior written and oral understandings and agreements.

11. GOVERNING LAW

This Agreement is governed by the law in force in Queensland. Each party submits to the non-exclusive jurisdiction of the courts of that place.

SIGNED AS AN AGREEMENT

Disposing Party: Oaky Creek Coal Pty Ltd

By: **XX** Signature: _____

Position: **XX** Date: _____

Acquiring Party: XX

By: _____ Signature: _____
(Print Name)

Position: _____ Date: _____

SCHEDULE A – COMPONENTS

Scrap:

- XX

SCHEDULE B – DOCUMENTATION

Not used