IRON ORE (SAVAGE RIVER) DEED OF VARIATION ACT 1990

No. 25 of 1990

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AN ACT to approve, ratify and implement a Deed of Variation of a lease in respect of the Savage River Mine

[Royal Assent 31 August 1990]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

Short title

1—This Act may be cited as the *Iron Ore (Savage River) Deed of Variation Act 1990*.

Commencement

2—(1) This section and section 1 commence on the day on which this Act receives the Royal Assent.

(2) Except as provided in subsection (1), this Act commences on such day as may be fixed by proclamation.

Interpretation

3—(1) In this Act—

"the Deed" means the Deed of Variation a copy of which is set out in Schedule 1;

"law of the State" means an Act of the Parliament of the State and any subsidiary legislation made under any such Act.

(2) If a word or expression used in this Act is defined in the Deed, that word or expression shall, unless the contrary intention appears in this Act, have the same meaning in this Act as in the Deed.

Approval, ratification and implementation of Deed

4—In accordance with clause 2.1 of the Deed—

(a) the Deed is approved and ratified; and

(b) the provisions of the Deed have the force of law as if those provisions were enacted by this Act; and

(c) the State by its relevant Ministers and Agencies is authorized, empowered and required—

(i) to do all things necessary or expedient to implement and enforce the Deed; and

(ii) to exercise the powers, rights and discretions conferred on them respectively under the Deed; and

(iii) to discharge the obligations imposed on them under the Deed; and

(d) the laws of the State—

(i) are modified so far as may be necessary to give full effect to the Deed; and

(ii) shall, except where the contrary intention appears in the Deed, be construed subject to any such modification.

Provisions of Deed to prevail over laws of State

5—If there is an inconsistency between a provision or term of the Deed and a provision of a law of the State, the provision or term of the Deed prevails.

Regulations

6—The Governor may, on the recommendation of the Minister administering the *Iron Ore (Savage River) Agreement Act 1965* made after consulting Pickands Mather & Co. International, make regulations for the purposes of this Act.

SCHEDULE 1

DEED OF VARIATION

THIS DEED made the 26th day of June 1990 between **THE CROWN IN RIGHT OF THE STATE OF TASMANIA** (in this Deed called "the State") of the one part and **PICKANDS MATHER & CO. INTERNATIONAL** a Company organised and existing under the laws of the State of Delaware in the United States of America and registered as a foreign Company under the Companies (Tasmania) Code and having its principal place of business in the State of Tasmania at 9th Floor AMP Building 86 Collins Street Hobart, of the other part (in this Deed called "the Company").

RECITALS

1. Subject to the satisfaction of certain conditions including the execution of this Deed by the parties to it the Company proposes to enter into an Agreement to acquire the rights and interests and assume the responsibilities under a lease dated 3rd June 1966 made between The Honourable Eric Elliott Reece MHA the then Premier and Minister for Mines of one part and Dahlia Mining Co. Ltd. and Northwest Iron Co. Ltd as the lessees of the other part as partially assigned by Deed of Assignment dated 31st March 1981 between The Honourable Darrell John Baldock of the first part Dahlia Mining Co. Ltd. of the second part and Sumitomo Metal Australia Pty. Ltd. (formerly Sumimetal Australia Pty. Ltd.) Nippon Steel Australia Pty. Ltd. Nisshin Steel Australia Pty. Ltd. Kawasaki Steel (Australia) Pty. Ltd. and NKK Australia Pty. Ltd. of the third part. For the purposes of convenience the parties named in the lease dated 3rd June 1966 as the lessees and the parties of the third part in the deed dated 31st March 1981 are collectively referred to as "the Original Lessees". The lease has been varied on the occasions recorded in the First Schedule hereto.

2. In accordance with the lease the State granted the Original Lessees or certain of them certain supplementary leasehold interests as listed in the Second Schedule to this Deed. In this Deed the lease the amendments thereto and the supplementary leases and amendments thereto are collectively referred to as "the Principal Lease".

3 The Principal Lease is current until 2nd June 1996.

4. The Company and the State wish to amend the terms of the Principal Lease in accordance with the power contained in the Principal Lease and have agreed to enter into this Deed in order to evidence their agreement.

SCHEDULE 1—*Continued*

5. This Deed is for the sake of better understanding divided into parts.

OPERATIVE

NOW THIS DEED WITNESSES AS FOLLOWS:

PART 1 DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

In this Deed unless the context otherwise requires:

"ACQUISITION AGREEMENT" means the Agreement referred to in Recital 1.

"AGENCIES" means the Governor (in his capacity to make regulations under any statute), the Director of Environmental Control, the Inspector and any of the following:

(a) a body corporate that is incorporated, or another body that is established, for a public purpose by or under any statute or in the exercise of the Royal Prerogative; or

(b) a person holding an office under the Crown or in a body corporate referred to in paragraph (a) or in a public agency.

"CESSATION OF MINING OPERATIONS" means for the purposes of the ERP and this Deed that date which is the earlier of:—

(a) the end of the second consecutive month in which no Iron Ore Products have been shipped except:

(i) for reasons beyond the control of the Company;

(ii) because the operation of the Savage Project is suspended under Part 5 which suspension is appealed or revoked by the end of that second consecutive month; or

(iii) where the Licence is revoked and the Company has appealed the revocation or the revocation is withdrawn by the end of that second consecutive month, and

(b) the date of the service on the Director of Environmental Control of a notice from the Company notifying him of the closure and permanent shut down of the mine involved in the Savage Project.

"DEED" or **"THE DEED"** means this Deed of Variation (including all Schedules and Annexures hereto)

"DEED OF ASSIGNMENT" means the Deed between the parties therein in the form attached to this Deed as Annexure "A".

"DIRECTOR OF ENVIRONMENTAL CONTROL" means the person appointed and holding office pursuant to Section 5 (1) of the Environment Protection Act, 1973 and his successors in office.

SCHEDULE 1—*Continued*

"ERP" means the plan evidencing the Company's obligations with respect to the rehabilitation of lands disturbed as a result of the operation by the Company and the Original Lessees of the industry as that term is defined in the Iron Ore (Savage River) Agreement Act 1965 as has been prepared by and at the cost of the Company pursuant to Part 5 hereof.

"ENVIRONMENT PROTECTION ACT" means the Environment Protection Act 1973 (Tas.).

"ENVIRONMENTAL REHABILITATION WORKS" means works required to be effected or carried out by the Company relating to the protection, management and rehabilitation of the environment as a result of the operation of the Savage Project whether referred to in the ERP or otherwise.

"INSPECTOR" shall have the meaning as under the Mines Inspection Act 1968.

"IRON ORE PRODUCTS" shall mean and include iron ore concentrates iron ore pellets and other processed iron ore products not having an iron content by weight (dry analysis) of more than Seventy two per centum (72%).

"MATERIAL CHANGE" means for the purposes of Part 5 a change after the Starting Date and during the Savage Project of the kind specified in Section 29 (1) (a)—(d) of the Environment Protection Act occurring in respect of any one or more of the events specified therein the effect of which cannot be satisfactorily dealt with under the ERP.

"MINISTER" means the Premier for the time being of the State of Tasmania or such other Minister of the Crown as the Premier may nominate from time to time in the manner provided in Clause 6.6.

"MINISTER FOR ENVIRONMENT AND PLANNING" means the Minister for the time being responsible for the administration of the Environment Protection Act.

"MINISTER FOR RESOURCES AND ENERGY" means the Minister for the time being responsible for the administration of the Iron Ore (Savage River) Agreement Act 1965, the Mining Act 1929 and the Mines Inspection Act 1968.

"POLLUTION" has the meaning assigned to that expression by the Environment Protection Act.

SCHEDULE 1—*Continued*

"RATIFYING ACT" means the Act approving and ratifying this Deed and more particularly described in Clause 2.1.

REFERENCE TO THE STATE means the State of Tasmania.

REFERENCE TO A STATUTE includes all subsiduary legislation made under that Statute and any legislation that replaces or amends that Statute.

"SAVAGE PROJECT" means the industry operated by the Original Lessees or by the Company as permitted assign of the Original Lessees as the case may be as the term "industry" is defined in the Iron Ore (Savage River) Agreement Act 1965 (Tas.).

"STARTING DATE" means 1st October 1990 Provided Always that:

(a) the Ratifying Act has by that date received the Royal Assent;

(b) the Company has notified the Minister of Resources and Energy that completion has occurred under the Acquisition Agreement;

(c) that part of the Act which ratifies the Deed of Variation has (by proclamation made on or before 26th October 1990) commenced with effect on and from 1st October 1990;

(d) the Minister for Resources and Energy and the Company do not agree on an alternative date.

WORDS importing only persons include corporations associations and/or bodies and vice versa in each respective case.

WORDS importing the singular number include the plural and vice versa and a reference to a gender includes the other gender.

1.2 INTERPRETATION

In the interpretation of this Deed, unless the context otherwise requires:—

(a) the respective obligations of the parties as set out in this Deed whether positive or negative shall be construed as if each such obligation is a separate and independent agreement or covenant made by one party in favour of the other or others and continuing (unless the context otherwise requires) so long as the same remains to be performed;

SCHEDULE 1—*Continued*

(b) derivatives of any term to which a meaning is assigned in this Deed shall have a corresponding meaning; and

(c) if any part of this Deed or the application thereof to any person or circumstance shall be or become void voidable illegal or unenforceable or this Deed would be void voidable illegal or unenforceable unless any part of this Deed were severed from this Deed that part shall be severable from and shall not affect the continued operation of the rest of this Deed.

PART 2 APPROVAL AND RATIFICATION BY PARLIAMENT

2.1 Subject to Clause 2.2 the Minister shall, as soon as practicable after the execution of this Deed, ensure that there is introduced into the Parliament of the State a Bill for an Act to provide, inter alia, that:—

2.1.1 this Deed shall by the Ratifying Act be ratified and approved;

2.1.2 the provisions of this Deed have the force of law as if those provisions were enacted by the Ratifying Act;

2.1.3 the State by its relevant Ministers and Agencies be authorised, empowered and required to do all such things necessary or expedient to implement and enforce this Deed and for the exercise of the powers, rights and discretions conferred on them respectively under this Deed or for the discharge of all obligations imposed on them under this Deed; and

2.1.4 certain legislation be modified so far as is necessary to give full effect to this Deed.

2.2 The Minister shall, subject to the terms hereof, endeavour to secure:

(a) the enactment of the Ratifying Act on or before 31st August 1990, and

(b) the commencement of all sections of the Ratifying Act by 26th October 1990 (with retrospective operation to 1st October 1990 or such other alternative date agreed by the Minister and the Company if necessary).

SCHEDULE 1—*Continued*

Provided—

(i) the Company has notified the Minister on or before 31st July 1990 that all material conditions under the Acquisition Agreement (other than the enactment of the Ratifying Act) have been met, and

(ii) that the State has received notification of the completion of the Acquisition Agreement by 15th October 1990.

2.3 Unless the notification referred to in Clause 2.2 (ii) is given by the 15th October 1990 the State shall be under no further obligation to ensure that a commencement date of that part of the Act which ratifies this Deed is proclaimed.

2.4 In the absence of an agreement under paragraph (d) of the definition of Starting Date in circumstances where the matters covered by any one or more of paragraphs (a)-(c) of that definition has or have not occurred by 26th October 1990 this Deed shall cease and determine and thereafter the parties shall have no claim against each other with respect to any matter or thing arising out of, done or omitted to be done or performed under this Deed except under Clause 6.3 hereof.

2.5 Parts 3, 4 and 5 and Part 6 other than Clause 6.3 take effect on the Starting Date. Parts 1 and 2 and Clause 6.3 take effect on the date of this Deed.

2.6 The Company shall notify the Minister for Resources and Energy of the date the last party executed the Acquisition Agreement and the date of completion of the Acquisition Agreement forthwith after the date of the respective execution and of that completion.

PART 3 FINANCIAL REQUIREMENTS

3.1 RENTAL

In the place of the rental reserved under Clause 4 (a) of the Principal Lease the Company shall from the Starting Date pay to the State an annual rental for each year or part thereof at the rate prescribed by Regulation under the Mining Act 1929 in force for the year in question payable for mineral leases, such rental being payable annually in advance with the first payment required to be made on the Starting Date (after making allowance for that part of the annual rent previously paid for the period from the Starting Date to the expiry of the year for which the rent had been paid).

SCHEDULE 1—*Continued*

3.2 ROYALTY

In lieu of the provisions stipulated in Clause 4 (b) of the Principal Lease the following shall apply with effect from the Starting Date.

3.2.1 There shall be payable by the Company to the State on a quarterly basis in respect of each quarter (as defined in sub-clause 3.2.3 of this Part) or part of a quarter after the Starting Date a Royalty calculated in accordance with the following formula:

The greater of 15 cents per tonne of Iron Ore Products sold or Profits Royalty where:

Profits Royalty equals 5 per cent of assessable profits for assessable profits greater than zero but equal to or less than 20 per cent of Actual Sales Revenue plus:

10 per cent of assessable profits for assessable profits greater than 20 per cent of Actual Sales Revenue.

3.2.2 For the purposes of the formula referred to in sub-clause 3.2.1

3.2.2.1 Profits Royalty for the quarter in any financial year will be calculated by first calculating the amount of the Profits Royalty payable on the assessable profits of the Company for the period ("Relevant Period") commencing on the first day of the financial year and ending on the last day of that quarter under review, and then deducting from that amount the amount of Profits Royalty previously paid or payable in that financial year. If the total amount of Royalty previously paid in the Relevant Period is greater than the amount of the Royalty payable for the Relevant Period under the formula referred to in sub-clause 3.2.1 the appropriate refund will be made by the State.

SCHEDULE 1—*Continued*

3.2.2.2 Royalty owed from the calculation under sub-clause 3.2.2.1 will be paid according to sub-clause 3.2.6 of this Deed. Refunds due to the Company under sub-clause 3.2.2.1 will be made by the State within 30 days of the furnishing of the return under sub-clause 3.2.6. Assessable profits will be arrived at by deducting from Actual Sales Revenue the following costs and expenses to the extent that such costs and expenses are undertaken as part of the Savage Project:

(a) all costs and expenses of an operating nature incurred by the Company which costs and expenses are attributable to the mining and production of Iron Ore Products including, without limitation, insurance premiums;

(b) all actual stockpiling expenses incurred in respect of Iron Ore Products;

(c) reasonable administrative and management costs and overheads relative to the Savage Project for the relevant quarter as determined by the Minister for Resources and Energy;

(d) to the extent that the same is not included as a cost and expense under the preceding paragraphs, changes to the provisions made in the relevant quarter in the books of account of the Company for each quarter other than the first quarter after the Starting Date for long service leave, holiday pay, sick leave and leave-in-lieu of a 35 hour week and superannuation benefits and other entitlements of its employees that relate to employees engaged in the conduct of the Savage Project and, in respect of those employees who are not engaged full time in relation to the Savage Project, such provisions shall be pro rated on the basis of the time actually spent by such employees in relation to the conduct of the Savage Project;

SCHEDULE 1—*Continued*

(e) obligations for resource tax or similar taxes, rent, charges, stamp duty, other duties, rates, tariffs, or levies (but excluding income tax) imposed by the Commonwealth Government of Australia or the State of Tasmania or any local government bodies having jurisdiction;

(f) royalties payable to Dayosi Pty. Ltd. its successors or its assignees;

(g) depreciation on mining lease fixtures, plant and equipment acquired after the date of settlement of the Acquisition Agreement at that rate or those rates agreed between the Company and the Minister for Resources and Energy, having regard to the economic life of the relevant asset, or failing agreement within 30 days after the date on which that Minister and the Company first confer on the relevant asset, then as determined by an independent expert under Clause 6.5;

(h) depreciation on mining lease fixtures, plant and equipment acquired on or before the Starting Date which shall be deemed to have an opening value of $2,000,000 and which shall be depreciated on a straight-line basis over 5 years;

(i) An amount for management, administration, marketing, technical, financial and the like services, being 3 per cent of Gross Proceeds Receivable payable to any Related Company including Pickands Mather & Co;

Provided however that there shall not be deducted from the said Actual Sales Revenue any private or override royalties paid to any persons whomsoever other than as allowed under (f) above nor any costs or expenses incurred by the Company as the result of a transaction between the Company and a Related Company other than as allowed under (i) above and further provided that there shall not be deducted from or added to the said Actual Sales Revenue either:

(a) interest payable or receivable; or

(b) any loss or gain attributable to a movement in currency exchange rates on borrowings by the Company for the purposes of the Savage Project; or

SCHEDULE 1—*Continued*

(c) any operating expense which arises by reason of any breach by the Company of the Principal Lease as amended by this Deed or any negligence on the part of the Company or its servants or agents nor in respect to any costs of any nature incurred in respect to the enforcement of or any dispute arising under the Principal Lease as amended by this Deed or otherwise howsoever concerning the terms of the Principal Lease as amended by this Deed or the relationship of the parties hereto or otherwise in respect of the rights or obligations of the parties under the Principal Lease as amended by this Deed; or

(d) any amount for management, administration, marketing, technical, financial and the like services other than as provided for in (i) above.

GENERAL

3.2.3 For the purposes of the calculation of Royalty in this Clause 3.2, the following principles and definitions shall, save as otherwise specifically provided, be applied:

(a) all accounting terms and expressions shall (as appropriate) be interpreted in accordance with generally accepted accounting practices consistently applied in Australia;

(b) all monetary amounts shall be calculated and stated in Australian currency;

(c) "quarter" means the particular period ending on the last day of March, June, September and December respectively in the applicable financial year in respect of which the calculation of Royalty is being or is required to be made;

(d) "financial year" means the financial year adopted by the Company for the time being;

SCHEDULE 1—*Continued*

(e) Iron Ore Products shall be deemed "sold" when placed upon an ocean vessel or other bulk carrier for transportation to or at the direction of the consumer following the last stage of processing of such Iron Ore Products by the Company provided that if the Company shall at any time hereafter install facilities on the premises leased under the Principal Lease or elsewhere in Tasmania for the reduction of Iron Ore Products produced from iron bearing substances mined from those premises to increase the iron content by weight (dry analysis) to more than seventy-two per centum (72%) then Iron Ore Products delivered to such facilities for reduction therein shall be deemed shipped when delivered to such facilities;

(f) the weights of Iron Ore Products for the purposes of Royalty computation hereunder shall be determined at the time of shipment thereof (or as near such time of shipment as may be reasonably feasible in the circumstances then prevailing) upon belt scales or such other weighing devices of standard design used in the mining industry as may be mutually agreed between the Minister for Resources and Energy and the Company;

(g) the return to be furnished to the Minister for Resources and Energy pursuant to Clause 3.2 for the quarter or part of the quarter ending on the date of termination of this Deed shall be prepared on the notional basis that all stocks of Iron Ore Products on hand at the date of termination of the Company's rights hereunder howsoever or whensoever occurring shall have been sold on that date for such amount as is agreed between the Company and the Minister for Resources and Energy having regard, among other things, to offers or bids for the purchase of like products in similar quantities or, failing agreement within 30 days after the date on which the Company and that Minister first confer on the matter then as determined by an independant expert under Clause 6.5;

(h) "Related Company" means a related corporation as defined by the Companies (Tasmania) Code;

SCHEDULE 1—*Continued*

(i) "Relevant Due Date" means the last day of the quarterly periods ending on the last day of March, June, September and December respectively in the applicable financial year or such other day in such other month having regard to the relevant accounting period adopted by the Company as may be agreed by the Minister for Resources and Energy from time to time;

(j) where the Starting Date does not coincide with the date of commencement of a quarter in the relevant financial year of the Company the basic principles embodied in this Clause 3.2 with regard to the determination of the Royalty payable shall be applied in respect of the period between the Starting Date and the end of such quarterly period in the financial year in which the Starting Date occurs. Without limiting the generality of the foregoing, for the purposes of determining deductions in respect of sales during the said period, those deductions shall be pro-rated in the proportion that the tonnage of Iron Ore Products sold in the relevant period bears to the tonnage of Iron Ore Products sold in the quarter;

(k) other than as allowed by the Minister for Resources and Energy under sub-clause 3.2.2.2 (c) or as allowed under sub-clause 3.2.2.2 (i) for the purposes of determining the Company's operating costs when determining its net liability for the payment of Royalty under this Part the costs and expenses of the Company shall be limited to those costs and expenses directly attributable to the operation of the Savage Project.

3.2.4 For the purposes of this Clause 3.2 the expression "Actual Sales Revenue" means:

3.2.4.1 in the case of Iron Ore Products sold pursuant to an "arm's length" sale, the Gross Proceeds Receivable (as defined in sub-clause 3.2.5) in respect of sales of Iron Ore Products produced after the Starting Date less all costs and expenses incurred or payable by the Company in respect of that sale (including without limitation costs associated with ocean road and rail freight, assaying, sampling, weighing, ship loading and unloading, (including demurrage charges), port charges (including tug and pilot charges),

SCHEDULE 1—*Continued*

stockpiling at wharves, shipping agents' fees, bank charges on sales receipts and payments and government charges on banking transactions and storage and transport of Iron Ore Products) but not including costs and expenses otherwise deductible in determining assessable profits under this Deed and not including any amounts payable to a Related Company nor for any amounts payable for any of the services referred to in sub-clause 3.2.2.2 (i); or

3.2.4.2 in the case of Iron Ore Products which are sold pursuant to a non-arm's length sale, Gross Proceeds Receivable in respect of sales of Iron Ore Products produced after the Starting Date less all costs and expenses incurred or payable by the Company in respect of that sale treating that sale as if it was a sale made on an arm's length basis (including without limitation the costs and expenses described in sub-clause 3.2.4.1) but not including costs and expenses otherwise deductible in determining assessable profits under this Deed and not including any amounts payable to a Related Company nor any amounts payable for any of the services referred to in sub-clause 3.2.2.2 (i) PROVIDED THAT the Minister for Resources and Energy may within 90 days of the Relevant Due Date by notice in writing to the Company dispute the amount of the said Gross Proceeds Receivable, whereupon the Company and the Minister for Resources and Energy shall confer in good faith with a view to determining the amount of the said Gross Proceeds Receivable and, failing agreement within 60 days after the date on which the Company and the Minister for Resources and Energy first confer on the relevant item, then Gross Proceeds Receivable shall be as determined by an independent expert in accordance with Clause 6.5 having regard, among other things, to the existence of alternative offers or bids for the purchase of the Iron Ore Products the subject of the sale in question.

3.2.5 For the purposes of sub-clause 3.2.4, the expression "Gross Proceeds Receivable" means:

SCHEDULE 1—*Continued*

3.2.5.1 in the case of arm's length sales, the amount recorded for Iron Ore Products sold (being where necessary an estimate of the proceeds receivable pursuant to a sales contract) in the accounting records maintained by the Company in respect of the Savage Project in accordance with the applicable Australian Accounting standards and generally accepted Australian accounting practice; or

3.2.5.2 in the case of non-arm's length sales, the amount referred to in sub-clause 3.2.4.2.

3.2.6 The Company shall, during such time as it is obliged to pay Royalties to the State pursuant to this Clause 3.2, promptly and in any event within 30 days of the Relevant Due Date furnish to the Minister for Resources and Energy a return showing all particulars necessary to enable the calculation of the Royalty payable in respect of the quarter immediately preceding the Relevant Due Date and specifying which of the sales to which the particular return relates was a non-arm's length sale, and which of the costs and expenses were the result of a transaction between the Company and a Related Company. The said return shall be accompanied by the amount of the Royalty to be paid to the State as specified in the said return.

3.2.7 The Parties acknowledge that, if at the time of the preparation of a return pursuant to sub-clause 3.2.6 the Company does not have available to it the information required to enable it to calculate the Royalty pursuant to Clause 3.2 on the basis of actual sales receipts and costs and charges, the Company shall calculate the Royalty on the basis of estimates thereof. The parties further acknowledge that the said estimates shall be revised by the Company during the following quarters on the basis of improved estimates as to the anticipated actual sales receipts and costs and charges and that the Company shall adjust each subsequent return taking into account the said improved estimates until the quarter in which the actual sales receipts are received by the Company or the actual relevant costs and charges are paid by the Company (as the case may be) whereupon a final adjustment shall be made.

SCHEDULE 1—*Continued*

3.2.8 Any return furnished pursuant to sub-clause 3.2.6 shall be certified by statutory declaration made by an officer of the Company duly authorised in that regard. Within one hundred and twenty days of the end of the Company's financial year the Company shall provide to the Minister for Resources and Energy a certificate prepared by the Company's external auditors with respect to the returns furnished by the Company pursuant to sub-clause 3.2.6 during the said financial year. Those auditors shall verify the particulars disclosed in the returns required herein.

3.2.9 Within twelve months of the date of the auditors' certificate referred to in sub-clause 3.2.8 the State Auditor-General or an officer approved by the Minister for Resources and Energy may request in writing from the Company reasonable and relevant information in respect of any return the subject of the auditors' certificate and the Company shall provide same as soon as is reasonably practicable after receipt of such request. The right to request such information shall include the right to examine the accounting records of the Company and Related Companies or those parts of such accounting records which relate to the conduct of the operations of the Company or its subsidiaries or Related Companies (as the case may be) in respect of which the Royalty is payable pursuant to this Clause 3.2. If the results of a report provided to the Minister for Resources and Energy by the State Auditor-General or other officer appointed by the Minister for Resources and Energy vary from the particulars contained in a return furnished by the Company pursuant to sub-clause 3.2.6, the Company and the Minister for Resources and Energy shall confer, in good faith, with a view to determining whether an adjustment should be made as between the State and the Company of the amount of any Royalty paid or which should have been paid hereunder and where such adjustment is so agreed the adjustment shall be promptly made between the State and the Company. In the absence of an agreement being reached within 60 days after the date on which the Company and the Minister first confer on this item, the matter shall be referred to an independent expert in accordance with Clause 6.5 and such adjustment (if any) as is determined by the independent expert shall be promptly made between the State and the Company.

SCHEDULE 1—*Continued*

3.2.10 In the event that any Royalty payable to the State by the Company pursuant to this Clause 3.2 is not paid within the time specified for the payment thereof and remains unpaid for a period of 30 days after the due date, the Company shall in addition to such Royalty pay interest on such unpaid Royalty calculated on the basis of the (90) day bank accepted bill rate published as at the due date for payment in the Australian Financial Review or such other publication as the Minister for Resources and Energy may from time to time approve which interest shall accrue from the date specified for the said payment and the State may by action in any court of competent jurisdiction recover the amount of such unpaid Royalty and interest as a civil debt without prejudice to any other right or remedy the Minister for Resources and Energy may have hereunder.

3.2.11 The State and the Company hereby acknowledge that, in the event that the Company assigns, transfers, sub-lets or otherwise disposes of its interest or any part thereof under the Principal Lease as varied by this Deed, it may be necessary to amend the provisions of this Clause 3.2 to ensure the continued effective calculation of the Royalty in accordance with the principles agreed by the State and the Company at the date hereof and contained in this Clause 3.2. The State and the Company hereby agree that in the event that the Company reaches agreement with any of its Related Companies or any third party for the assignment, transfer, sub-lease of other disposition as aforesaid, the State and the Company shall, as soon as is reasonably practicable thereafter, consult in good faith with a view to agreeing such amendments to this Clause 3.2 as are required to be made to ensure the continued effective calculation of the Royalty as above. Notwithstanding the foregoing the total Royalty payable by the Company and its assignee, transferee, sub-lessee or other disponee under this Clause 3.2 (as amended pursuant to this sub-Clause 3.2.11) shall not exceed the total amount which, save for the assignment, transfer, sub-lease or other disposition, would have been payable by the Company under this Clause 3.2.

3.2.12 The Principal Lease is amended by the deletion in Clause 6 (u) (i) of the words "gravel and sand" and inserting in lieu thereof the words "mining products as defined in the Mining Act 1929 excluding iron ore products".

SCHEDULE 1—*Continued*

3.3 LIABILITY FOR STAMP DUTY

The total stamp duty payable under the Stamp Duties Act, 1931 in respect of the transfer of the interest and liability of the Original Lessees in and to the Savage Project ("the Transfer") including without limitation:—

(a) the instrument or instruments evidencing or effecting a conveyance or contract for the sale of:—

(i) the freehold land owned by the Original Lessees;

(ii) the Principal Lease;

(iii) fixtures, plant and equipment and moveable chattels employed in the Savage Project;

(b) the instrument or instruments evidencing or effecting any indemnities given to the Original Lessees in respect of liabilities assumed by the Company in respect of the Savage Project;

(c) this Deed and any bond referred to in the Deed;

shall not in the aggregate exceed that sum being the duty payable at the rate specified at Item 7 of Part I of Schedule 2 to the Stamp Duties Act, 1931 and applicable to a conveyance of property having a value of $2,000,000.

PART 4 PORT LATTA IMPROVEMENTS

The Principal Lease is amended with effect from the Starting Date as follows:

(1) by deletion of the word "may" where first appearing in Clause 6 (g) (ii) and the insertion in lieu thereof of the word "shall";

(2) by deletion in Clause 6 (g) (ii) of the words commencing from "except" and concluding with the word "termination";

(3) by the addition after the words "entitled" where twice occurring in Clause 6 (g) (ii) of the words "and required".

PART 5 REHABILITATION REQUIREMENTS

5.1 The parties accept and acknowledge that except as modified by addition or otherwise in this Part 5 and to the extent necessary to give effect to the ERP , the provisions of this Part do not alter, affect or vary in any way whatsoever the parties respective rights, powers, duties or obligations under the Environment Protection Act all of which are (subject to the same exception) to the extent necessary confirmed.

SCHEDULE 1—*Continued*

5.2 The Original Lessees operated the Savage Project under Licence no. 3600 issued pursuant to Part IV of the Environment Protection Act (the "Licence"). The Licence is current.

5.2.1 The Company will as soon as practicable after the date of execution of this Deed make application in accordance with Section 31 of the Environment Protection Act for a transfer of the Licence to itself with effect from the Starting Date. As part of its application the Company will comply with the requirements of the said Section 31. Prior to the Director of Environmental Control consenting to the transfer the Company shall have prepared, lodged and had approved by the Director of Environmental Control the ERP which will be attached to and form part of the Licence with effect from the Starting Date.

5.2.2 The Company shall not fail to comply in all material respects with terms of the ERP. Reference to the ERP shall include the modified ERP or any further ERP under this Clause 5.5.

5.2.3 Compliance in all material respects with the terms of the ERP shall satisfy the Company's rehabilitation obligations whether arising under the Principal Lease, the Licence or under the Environment Protection Act or any other Statute Regulation or other requirement. The parties acknowledge that the terms of the ERP may require such modification (to be evidenced by agreement between the Director of Environmental Control and the Company) as the Director of Environmental Control and the Company consider to be desirable in view of the availability of more accurate or more complete data or technological developments or other matters not contemplated at the time when the relevant ERP was approved or determined as aforesaid.

5.3 Subject to payment of the relevant annual renewal fee and satisfactory compliance by the Company with the conditions of the Licence and its obligations arising under this Part 5, the Licence will remain current during the initial term of the Principal Lease but in any event not later than 2nd June 1996.

5.4 The conditions of the Licence as amended from time to time shall apply to the Company as transferee following the transfer, as if it were the party originally named therein. With effect from the Starting Date the Licence shall be varied as follows:

(a) by inserting in Condition 1, after the words "Regulations thereunder", the words "as modified by the Iron Ore (Savage River) Agreement Ratification Act 1990".

SCHEDULE 1—*Continued*

(b) by deleting Conditions 33 and 42, and

(c) by adding Condition 43 as follows:—

43 (a) rehabilitation of all areas associated with Savage River Mines shall be undertaken in accordance with the approved Environmental Rehabilitation Plan prepared by John Miedecke and Partners Pty. Ltd;

43 (b) for the purposes of this condition, the rehabilitation of the off-shore loading facility at Port Latta is not included in the ERP and shall be considered under the provisions of the Environment Protection (Sea Dumping) Act 1987.

5.5 Where a Material Change occurs during the Savage Project, not being one within the scope of the ERP, the Company shall, upon request of the Director of Environmental Control, prepare and submit to him a further ERP in accordance with guidelines which are determined by him, the costs of preparation of which are payable by the Company. Once completed to the requirements and satisfaction of the Director of Environmental Control or, failing completion, following the preparation of such further ERP by the Director of Environmental Control, the further ERP shall be attached to the Licence as a condition of the Licence and its requirements thereafter observed in the same manner as the ERP referred to in sub-clause 5.2.2. The Company shall be liable for payment of the costs of preparation by the Director of Environmental Control of the further ERP. The Company shall have a right of appeal under the Environment Protection Act in respect of decisions by the Director pursuant to this Clause 5.5 and the addition to the Licence of that condition.

5.6 Subject to any specific provision in the ERP as may be applicable, the Company will at all times promptly take all necessary action to prevent Pollution from the Savage River Project occurring or, in circumstances where such Pollution has nevertheless occurred, the Company shall promptly take all necessary steps required to mitigate the effect of such Pollution. In the event that, in the opinion of the Director of Environmental Control, Pollution which is sufficiently hazardous or detrimental to the environment has occurred, is occurring or is likely to occur as a result of the Savage Project and which Pollution is not within the scope of the ERP then, upon written notice by him in that regard, the Company shall not fail to take such immediate action as is in his opinion required to mitigate the effect of such Pollution and shall submit to the Director of Environmental

SCHEDULE 1—*Continued*

Control a program for the on-going mitigation of such Pollution as may be required. In the event that the Company fails to take immediate action as required by this Clause 5.6 then the Director of Environmental Control may exercise the right to require the Company to suspend the operation of the Savage Project in the same manner as the right to suspend is contemplated and covered by Clause 5.7 following and subject to the right of appeal in Clause 5.7.

5.7 Where a failure of the Company under sub-clause 5.2.2 is not remedied in a manner satisfactory to the Director of Environmental Control within such reasonable time as is prescribed by notice in writing by the Director of Environmental Control he shall be entitled to direct the Company to suspend the operation of the Savage Project or relevant part thereof and forthwith on receipt of such a direction the Company shall do and cause to be done all such acts, matters and things as required to suspend the operation of the Savage Project or relevant part thereof and shall not recommence such operations until such time as either:

(a) the approval of the Director of Environmental Control is obtained;

(b) the Company has done or caused to be done all acts, matters and things required to rectify the failure to take action or comply as the case may be to the satisfaction of the Director of Environmental Control; or

(c) until such time as the Bond has been reinstated as provided for under sub-clause 5.9.2 following action by the State pursuant to Clause 5.10.

The Company shall have the same right of appeal under the Environment Protection Act in respect of the exercise by the Director of Environmental Control of the right pursuant to Clause 5.6 or this Clause 5.7 of this Deed to require the Company to suspend the operation of the Savage Project or the relevant part thereof, as if there had been a revocation of the Licence as provided for under the Act, and the provisions of that Act in respect of appeals shall be construed accordingly provided that until the appeal is finally concluded in the Company's favour the Company's obligation to suspend the operation of the Savage Project or the relevant part thereof shall continue.

5.8 In the event that:

SCHEDULE 1—*Continued*

5.8.1 any failure of the kind described in Clause 5.6 is not immediately remedied (if the same is capable of being immediately remedied) no prior notice being required to be given to the Company to remedy or commence to remedy or (if the same is incapable of being remedied immediately) action has not been taken independently or within 3 days of receipt of a notice issued by the Director of Environmental Control pursuant to Clause 5.6 (or such longer period as the Director of Environmental Control may approve) to commence to remedy the failure and diligently to prosecute that remedy, or

5.8.2 any failure of the kind described in sub-clause 5.2.2 where the Company has previously received a notice from the Director of Environmental Control that the failure is one which if not remedied will involve him in being satisfied in terms of sub-clause 5.8.3 has not been immediately remedied by the Company (if the same is capable of being immediately remedied) or (if the same is incapable of being remedied immediately) action has not been taken within 30 days of receipt of a notice issued by the Director of Environmental Control pursuant to Clause 5.7 (or such longer period as the Director of Environmental Control may approve) to commence to remedy the failure and diligently to prosecute that remedy; and in either case,

5.8.3 the Minister for Environment and Planning is satisfied that the Company's failure under either sub-clause 5.8.1 and/or 5.8.2 or any result or consequence of failure under those sub-clauses

(a) in the case of a failure under sub-clause 5.8.1, has led to or allowed to continue Pollution sufficiently hazardous or detrimental; or

(b) in the case of a failure under sub-clause 5.8.2, is significant enough,

to warrant revocation of the right to operate under the Licence (in circumstances where the Minister for Environment and Planning determines that a suspension of the operation under Clause 5.7 is not appropriate) the Minister for Environment and Planning may by notice in writing to the Company revoke the Company's right to operate under the Licence.

SCHEDULE 1—*Continued*

5.9 As security to the State for the due performance and fulfilment by the Company of the ERP and to secure the Company's compliance with its obligations under sub-clause 5.2.2, and clauses 5.5 and 5.6 and 5.7 hereof, the Company will obtain before the Starting Date at the Company's own cost and expense in favour of the State and in or substantially in the form attached to this Deed as Annexure "B" or in such other form as may be approved by the Minister for Environment and Planning a bond (hereinafter called "the Bond") by an Obligor which is an Australian Trading Bank or other financial institution approved by the State (together with its successors and permitted assigns in this Deed called "the Obligor") providing for payment to the State by the Obligor of such amount as shall be owing or payable by the Company under this Part 5 at any time or times forthwith upon receipt by the Obligor of a notice in writing under the hand of the Minister for Environment and Planning that the sum of money set out therein (calculated in accordance with sub-clause 5.9.2 and arising as a result of the Company's failure to comply with the requirements of either or both sub-clause 5.2.2 and Clause 5.6 and pursuant to an election by the State under Clause 5.10 to have recourse to the Bond and a notice given under Clause 5.10) is payable by the Company to the State pursuant to its environmental rehabilitation obligations under this Part.

The Minister for Environment and Planning acknowledges and agrees that he will not exercise or enforce his rights under the Bond (including making the written demand referred to in the Bond) unless the Company has failed duly to perform or fulfill its obligations under Part 5 with respect to environmental matters in the manner and time prescribed or allowed by this Deed or the ERP. In the event of any such failure and the serving of a written demand on the Obligor, the Minister for Environment and Planning shall at the same time serve a copy of the written demand on the Company.

5.9.1 The Bond duly completed and stamped shall be delivered to the State by the Company prior to the Starting Date with liability thereunder commencing on the Starting Date.

5.9.2 At the date of execution by the Obligor of the Bond the limit of liability of the Obligor shall be the sum of $3,000,000 provided that the State may carry out a review of the Bond based on a requirement to increase the amount of the Bond resulting from:

(a) an increase required by reference to the following CPI formula; or

SCHEDULE 1—*Continued*

(b) an increase in the estimated costs of the Company's rehabilitation obligation represented by the further ERP required under Clause 5.5 of this Deed;

or on a requirement to reinstate the Bond following the exercise by the State of its rights under this Part 5. The following principles and procedures will operate in respect to a review under this sub-clause 5.9.2.

5.9.2.1 The Minister for Environment and Planning may give notice as provided for in Clause 5.10 and thereupon, if accepted by the Obligor in the manner and in the time provided in the Bond (except where sub-clause 5.9.2.2 applies automatically) the Obligor will become liable forthwith under the provisions of the Bond to guarantee the Company's performance under this Part 5 for the amount of the original amount bonded and for the amount of increase or for reinstatement of the Bond to that amount for which the Obligor was liable prior to recourse by the State to the Obligor under this Part. If the Obligor prefers, the original Bond shall be released to the Obligor in return for a new Bond for the amount equal to the amount originally bonded and the amount of the increase. If the Obligor refuses to accept liability hereunder the provisions of sub-clause 5.9.3 shall operate.
For the purposes of this Part 5 the requirement to reinstate security shall occur in the event of a failure by the Company to comply with the requirements of either sub-clause 5.2.2 or of Clause 5.6 which failure results in action by the State under Clause 5.10. The amount of money required to reinstate the Bond shall be the difference between the amount of the Bond prior to recourse by the State and the amount available after such recourse.

5.9.2.2 For the purposes of this Part 5 the amount of the Bond shall be reviewed annually on the anniversary of the Starting Date as relates to an increase by reference to the following CPI formula and at any time as relates to a requirement to increase the Bond due to a Material Change which

SCHEDULE 1—*Continued*

brings into operation the provisions of Clause 5.5. If at the time of such review the liability of the Company for bonding purposes exceeds the maximum liability of the Obligor under the Bond at the time of the relevant review (as certified by the Minister for Environment and Planning acting upon the advice of the Director of Environmental Control) then the State shall give notice in writing to the Obligor within the period of 28 days following the relevant review that the State requires the amount of the Bond to be increased or reinstated in accordance with the provisions contained in this Part 5 and of such increased amount or reinstatement amount and as provided for in the Bond the Obligor shall advise the State within a period of 28 days of the date of the State's notification of its acceptance (partial or otherwise) or refusal to accept liability for the amount of the increase or reinstatement of security notified. Notwithstanding the foregoing the liability of the Obligor shall increase automatically following the annual CPI review with effect from notification of the additional amount involved by the Minister for Environment and Planning to the Obligor. For the purposes of the annual CPI review the amount of the Obligor's liability for the year (hereinafter called "the Relevant Year") commencing on the relevant anniversary of 1st October 1990 (the "Starting Date") shall be calculated in accordance with the following formula:

$$\text{Existing Liability} \times \frac{C2}{C1}$$ where:

C1 is the Consumer Price Index (All Groups) for the City of Hobart as published by the Australian Bureau of Statistics for the quarter ending immediately prior to the Starting Date in respect of the first review and immediately prior to the commencement date of the year preceding the Relevant Year in respect of each subsequent review.

SCHEDULE 1—*Continued*

C2 is the Consumer Price Index (All Groups) for the City of Hobart as published by the Australian Bureau of Statistics for the quarter ending immediately preceding the commencement of the Relevant Year provided that if at any time the Consumer Price Index (All Groups) figure for the City of Hobart published by the Australian Bureau of Statistics be discontinued or modified, the Australian Bureau of Statistics shall be asked to nominate the index or authority which in its opinion is the most practical for the purpose of measuring any variation in the cost of living in the City of Hobart as between the commencement date and the relevant anniversary date and such index or authority shall be adopted for the purpose of this Clause provided that should the Australian Bureau of Statistics fail to nominate an index or authority practical for the purposes of measuring any variation in the cost of living in the City of Hobart then the amount of the increase shall be such amount as the parties may agree, prior to the commencement of the relevant year.

5.9.2.3 The Company and the Director of Environmental Control shall confer in good faith with a view to agreeing the estimated costs of the Company's rehabilitation obligation represented by the further ERP requirement under Clause 5.5 of this Deed and failing agreement within 7 days after the further ERP is attached as a condition of the Licence the indepentant expert shall estimate such costs under Clause 6.5.

5.9.3. If following such review or requirement to reinstate and by the time mentioned in the Bond the Obligor does not accept liability for the increased amount or for reinstatement of the original amount bonded calculated in accordance with sub-clause 5.9.2 then the Company shall within thirty days of written demand by the State under the hand of the Minister of Environment and Planning provide the State with an additional Bond in or substantially in the form attached to this deed as Annexure "B" or such other form as may be approved by the Minister for

SCHEDULE 1—*Continued*

Environment and Planning and by an Australian Trading Bank or other financial institution approved by the State for the amount of the proposed increase or amount required to reinstate the Bond as the case may be, calculated in accordance with the provisions of sub-clause 5.9.2.2, (liability for which was denied by the Obligor). The Company's failure to comply with the obligation to provide an additional Bond or reinstate the Bond shall represent a failure allowing the State to exercise its rights under Clause 6 (a) (iii) of the Principal Lease.

5.9.4 Although the Bond shall primarily operate as security for the Environmental Rehabilitation Works on completion by the Company of the Savage Project the Bond shall also stand as security for such of the on-going Environmental Rehabilitation Works as are part of the requirements of the ERP while the Company is operating the Savage Project during the term of the Licence and for failures of the kind contemplated by Clause 5.6 and 5.7 hereof.

5.9.5 If and so long as the total sum of the estimated cost of completing the Environmental Rehabilitation Works is less than the amount which is available to the State for recourse under the Bond at any time or times, of which the Director of Environmental Control shall be the sole judge, the Company shall be at liberty to apply to the Director of Environmental Control as the execution and provision of the Environmental Rehabilitation Works progresses and proceeds for a reduction in the amount secured by the Bond. On making any such application the Company shall produce to the Director of Environmental Control such information as he may require including but without limiting the generality of the foregoing, particulars of costs. After considering the application and all information at his disposal the Director of Environmental Control shall estimate the cost of completing the Environmental Rehabilitation Works. On notifying the Company and the Obligor of such sum the liability of the

SCHEDULE 1—*Continued*

Company under this Deed and of the Obligor pursuant to the Bond shall be deemed to be reduced to the amount of the said estimate.

5.9.6 Subject to the provisions hereof the Bond or any additional Bond shall be held and retained by the Director of Environmental Control on behalf of the State until the completion by the Company of its obligations under this Deed.

5.9.7 If there is at any time more than one Obligor, the Minister for Environment and Planning shall observe any request of the Company as to which Obligor is to be notified under sub-clause 5.9.2.2 or 5.9.5.

5.9.8 Any reference under this Deed to "Obligor" shall where the context so requires be a reference to all Obligors.

5.9.9 If an Obligor elects to terminate its liability under a Bond by payment of an amount where no demand has been made, the amount paid to the State shall be refunded to the Company in return for a further Bond of the type referred in Clause 5.9 for the amount involved delivered to the State.

5.10 Should the Company duly fail to perform or fulfill its obligations under this Part 5 with respect to environmental matters or any part thereof in the manner and time prescribed or allowed herein (or within the ERP) the State may at its election have recourse to the Obligor or to the Company, or partly to the Obligor to the extent of its obligation under the Bond and partly to the Company, to the extent of such sum as the Minister for Environment and Planning, acting upon the advice of the Director of Environmental Control certifies by notification in writing upon the Obligor or the Company or on both parties jointly and severally (and in such case informing the Obligor and the Company that recourse is being made on them jointly and severally) as represents the fair estimated cost of the State completing the environmental rehabilitation obligations provided for in this Part 5, including but not limited to those matters required to be performed or carried out under the ERP which costs shall include the relevant Department or Departments of State's charges for supervision administration and overheads and where contractors are engaged on behalf of the State to perform

SCHEDULE 1—*Continued*

the rehabilitation works including all applicable contract charges. The Company shall be required to meet the actual costs of the State for works carried out promptly upon notification of those costs to the extent not already recovered from the Company or the Obligor. Failure to meet those costs shall represent a failure allowing the State to exercise its rights under Clause 6 (a) (iii) of the Principal Lease.

5.11 The State shall be at liberty to apply any sum or sums paid to it pursuant to Clause 5.10 hereof following a notice issued under this Part 5 as far as the said sum or sums shall extend to or towards all or any one or more of the following:

5.11.1 in carrying out work not done or undertaken by the Company under this Part 5 within the times respectively stipulated herein;

5.11.2 in altering or amending any improperly completed work done or undertaken by the Company under this Part 5; and

5.11.3 in carrying out such other Environmental Rehabilitation Work (including any addition or extension to any Environmental Rehabilitation Works carried out by the Company) whether within or outside or partly within and partly outside the Savage Project as the Director of Environmental Control may consider necessary to mitigate the effects of any uncompleted or improperly completed or partly completed work of the Company or to make any such uncompleted or improperly completed or partly completed work in the opinion of the Director of Environmental Control more effective or useful.

5.12 Notwithstanding the termination of the Lease by expiration of time or otherwise nor the Cessation of Mining Operations the Company shall not be relieved from its obligations under the ERP and for that purpose shall be entitled to enter into and upon the former premises leased under the Principal Lease to the extent to which such entry is reasonably necessary to enable the Company to carry out the Environmental Rehabilitation Works required by this Part 5.

SCHEDULE 1—*Continued*

5.13 Provided that the Director of Environmental Control and Planning is satisfied that the Company has at all relevant times complied in all material respects with the ERP or, in respect of a failure to comply, has remedied the failure, Section 26 (3) of the Environment Protection Act shall not apply in determining the extent of the Company's environmental rehabilitation obligations. The Company acknowledges that Section 26 (3) will continue to apply in respect to all other matters associated with the operation of the Savage Project under the Licence.

5.14 Where the Company is in breach of its environmental rehabilitation obligations under this Part 5 and that breach occurs while the Principal Lease as varied by this Deed is still current the State its agents servants employees contractors and sub-contractors and their servants shall have the full and free right and liberty to enter upon the premises leased under the Principal Lease with all necessary plant and equipment to carry out, at the cost of the Company, Environmental Rehabilitation Works.

5.15 The provisions of Section 20, Section 26 (3), Section 32 and Section 55 of the Environment Protection Act and Section 5, Section 41 and Section 57 of the Mines Inspection Act 1968 shall not apply to the Company's obligations under the ERP save as provided for in this Deed and the ERP.

5.16 The provisions of this Part 5 (and any related definitions in this Deed and the ERP) shall also apply and take effect as if set out in full in the Principal Lease with effect on and from the Starting Date, but with the substitution wherever appearing herein of "the Lessees" for "the Company" Provided that:—

(a) except as provided in sub-clause 5.9.3 the Company's failure to comply with any or all of sub-clause 5.2.2, Clauses 5.5, 5.6 and 5.7 of this Deed and the Company's failure referred to in sub-clause 5.8.3 of this Deed, shall not represent a failure allowing the State to exercise its rights under Clause 6 (a) (iii) of the Principal Lease, and

SCHEDULE 1—*Continued*

(b) any such failure by the Company will allow the State to exercise the rights available to it under this Part 5 in respect of that failure (including the suspension or revocation of the Company's right to operate under the Licence and the State's rights under this Part and under the Bond in respect to such failure).

PART 6 GENERAL

6.1 COMPLIANCE WITH PRINCIPAL LEASE ON ASSIGNMENT

6.1.1 Provided that:—

(a) the parties named in the Deed of Assignment have executed that Deed being in the form attached to this Deed as Annexure "A" and the Obligor has executed the Bond; and

(b) the Company has returned that Deed and the Bond to the State following their stamping in the Office of the Commissioner of Stamp Duties (or the Company has given an undertaking to attend to stamping)

the State will:

(i) execute the Deed of Assignment; and

(ii) hand over the Deed of Assignment at the time of completion of the Acquisition Agreement.

6.1.2 The State acknowledges that the entry by the Company into the Deed of Assignment and this Deed whereunder it covenants to comply with and observe the obligations under the Principal Lease as amended by this Deed represents the Company's compliance as assignee with the requirements of Clause 6 (d) (ii) of the Principal Lease.

6.2 ACKNOWLEDGEMENT OF CONDITIONS APPLICABLE ON APPLICATION TO EXTEND LEASE TERM:

In the event that the Company seeks an extension of the initial term of the Principal Lease the Company acknowledges that the State's approval of an extension past 2nd June 1996 will require the parties to renegotiate and come to an agreement on all relevant matters including financial return to the State and environmental rehabilitation requirements.

SCHEDULE 1—*Continued*

6.3 COSTS:
The Company shall pay all the legal costs, charges and expenses of the State of and incidental to the preparation, execution, stamping (except as provided in Clause 3.3 or otherwise agreed between the State and the Company) and completion of this Deed and of the Bond required to be provided pursuant to Part 5 hereof.

6.4 TERMS OF PRINCIPAL LEASE TO HAVE FULL FORCE AND EFFECT.
Except to the extent that the terms and conditions of the Principal Lease are varied expressly or by necessary implication by the terms and conditions of this Deed or the Deed of Assignment the said Principal Lease as amended by this Deed remains in full force and effect and the respective liabilities, rights and duties of the parties named therein are confirmed.

6.5 INDEPENDENT EXPERT

6.5.1 If any matter, question, difference or dispute whatsoever is by this Deed required to be referred to an independent expert for determination then and in every such case such matter, question, difference or dispute shall be referred to an independent expert as hereinafter provided.

6.5.2 Reference to an independent expert hereunder shall be to a single independent expert to be agreed between the Company and the other party or parties to the reference and in the absence of such agreement within fourteen (14) days of the first attempt to reach such agreement shall be to two (2) independent experts, one (1) to be appointed by the Company and the other by the other party or parties to the said reference. Each party to the reference shall notify the other of the name of the independent expert appointed by it. If a party fails to appoint an independent expert within twenty eight (28) days of the abovementioned first attempt to reach agreement the other party or parties to the reference may notify the party of that failure; if the party does not appoint its independent expert within seven (7) days after receipt of the notification of its failure, the independent expert appointed by the other party or parties to the reference shall be deemed to be the single independent expert agreed between all parties to the reference. The two (2) independent experts shall appoint an umpire before proceeding with the reference. A single independent expert or two (2) independent experts (as the case may

SCHEDULE 1—*Continued*

be) are hereinafter in this Clause 6.5 referred to as the experts . In the event that the two (2) experts cannot agree on the person to be appointed as umpire within thirty (30) days of their appointment, the umpire shall be appointed by the President for the time being of The Institute of Chartered Accountants in Australia.

6.5.3 Within thirty (30) days of the date upon which the last of the experts is notified to a party pursuant to sub-clause 6.5.2 each party shall provide a written submission to the experts and a copy of such submission shall be provided to the other party. there shall accompany such submission any supporting information communicated by the relevant party to the other party during negotiations upon the matter for determination. Subject to sub-clause 6.5.5, no information which is new or additional so far as the other party is concerned may be presented to the experts unless the occurrence giving rise to such information took place or first became generally known after the relevant negotiations had concluded provided that the experts may consider such new or additional information as they, in their discretion, determine to be relevant to the question, difference or dispute requiring determination.

6.5.4 The other party shall have thirty (30) days from receipt thereof within which to respond in writing to the experts and the relevant party to such new information.

6.5.5 Except as provided in this Clause 6.5, neither party shall communicate with the experts pending their determination save only to provide any clarification sought by the experts in respect of a submission provided pursuant to sub-clause 6.5.3 and such clarification shall be provided by the party from whom it is sought within fourteen (14) days of a request therefor.

6.5.6 The experts or, as the case may be, the umpire shall consider only the submissions provided by each party and shall exclude from consideration information or data which, in their or his opinion, ought not to be taken into account.

SCHEDULE 1—*Continued*

6.5.7 Within thirty (30) days of receipt by the experts of the submission or clarification last received from the parties, the experts shall use their best efforts to confirm or reject the information included in the respective submissions by any appropriate means available to them and shall make a determination upon the matter, question, difference or dispute before them provided that if a party fails to comply in a material way with the procedures contained in this Clause 6.5 and, in particular, fails to provide a written submission in accordance with sub-clause 6.5.3, the experts shall notwithstanding such failure to comply make a determination as herein provided.

6.5.8 In the event that the experts are unable to agree upon a decision pursuant to sub-clause 6.5.7, they shall refer the question to the umpire for a decision in accordance with the provisions of Clause 6.5.

6.5.9 A decision shall be made by the umpire within thirty (30) days of the question being referred to him.

6.5.10 Subject to the other provisions of this Deed, the cost of determination including reasonable legal fees and other costs and disbursements shall be borne as determined by the experts or the umpire (as the case may be) and, in the absence of such determination, by the party against whom the decision has been made pursuant to sub-clauses 6.5.7 or 6.5.8.

6.5.11 The experts or the umpire (as the case may be) acting pursuant to this Clause 6.5 shall act as an expert and not as an arbitrator pursuant to the Commercial Arbitration Act, 1986.

6.5.12 The decision of the experts or the umpire (as the case may be) shall be notified in writing to the parties as soon as practicable and shall be final and binding upon all parties.

6.6 In the event that the Premier for the time being nominates a Minister of the Crown (hereinafter referred to as the "new Minister" , which expression shall include a Minister nominated at any time in substitution for the new Minister) to be the Minister for the purposes of this Deed, the Premier shall, as soon as is reasonably practicable after the formal appointment of the new Minister, notify or cause to be notified the parties of such appointment (which notice shall specify the address of the new Minister for the service of notices under this Deed).

SCHEDULE 1—*Continued*

6.7 COUNTERPARTS
This Deed may be executed in any number of counterparts, all of which when taken together shall be deemed to constitute this Deed.

6.8 GOVERNING LAW
This Deed shall be governed by and construed in accordance with the laws for the time being in force in the State of Tasmania.

IN WITNESS WHEREOF the parties hereto have executed this Deed.

SIGNED SEALED AND DELIVERED for and on behalf of the CROWN IN RIGHT OF TASMANIA by THE HONOURABLE MICHAEL WALTER FIELD being and as Premier for the time being of the State in the presence of:
(Signed) D. W. CHALLEN
Witness.

(Signed) M. W. FIELD
L.S.

and

SIGNED SEALED AND DELIVERED by THE HONOURABLE MICHAEL WILLIAM WELDON being and as Minister for Resources and Energy for the time being of the State in the presence of:
(Signed) A. REEVES
Witness.

(Signed) M. W. WELDON
L.S.

and

SCHEDULE 1—*Continued*

SIGNED SEALED AND DELIVERED by THE HONOURABLE MICHAEL ANTHONY AIRD being and as Minister for Environment and Planning for the time being of the State in the presence of:
(Signed) J. A. RAMSAY
Witness.

(Signed) M. A. AIRD

L.S.

and

EXECUTED by PICKANDS MATHER & CO INTERNATIONAL by being Signed Sealed and Delivered by its Attorney in the presence of:
(Signed) D. C. SCHMIDT
Witness.

(Signed) G. N. CHANDLER II

L.S.

FIRST SCHEDULE

(Record of Variations to the Lease dated 3rd June 1966)

Title of Amendment dated 6.2.68

Memorandum of Agreement dated 6.2.68

Memorandum of Agreement dated 24.6.70

Memorandum of Agreement dated 11.4.73

Memorandum of Agreement dated 3.5.73

Memorandum of Agreement dated 3.5.73

Undertaking of the Minister for Mines dated 22.1.79

Memorandum of Agreement dated 28.3.80

Memorandum of Agreement dated 31.3.81

Memorandum of Agreement dated 30.9.81

SECOND SCHEDULE

(List of Supplementary Leases)

S.L.1	21/11/1968	Pipeline	
S.L.2	21/11/1968	Pelletising	Dahlia Mining
S.L.3	21/11/1968	Plant for Port	Co Ltd and North
S.L.4	21/11/1968	Latta	West Iron Co Ltd,
S.L.5	21/11/1968	Reserve for	
S.L.6	21/11/1968	Pipeline	
S.L.7	20/12/1968	Reserve	
S.L.8	29/07/69	for	
S.L.9	29/07/1969	Pipeline	
S.L.10	02/06/1980	Easement Licence	
S.L.11	02/03/1982	Southern Deposit	The
S.L.12	10/02/1982	Northern Lands	Assignors

ANNEXURE A

DEED OF ASSIGNMENT OF MINING LEASE AND SUPPLEMENTARY LEASES

THIS DEED dated the of 1990 **BETWEEN THE CROWN IN RIGHT OF THE STATE OF TASMANIA** (in this Deed called "the State") of the first part **NORTHWEST IRON CO. LTD.** and **DAHLIA MINING CO. LTD.** corporations organised and existing under the laws of the State of Delaware in the United States of America and registered in the State of Tasmania as foreign companies and **SUMITOMO METAL AUSTRALIA PTY. LTD.** (formerly Sumimetal Australia Pty. Limited) **NIPPON STEEL AUSTRALIA PTY. LTD. NISSHIN STEEL AUSTRALIA PTY. LTD. KAWASAKI STEEL (AUSTRALIA) PTY LTD.** and **NKK AUSTRALIA PTY. LTD.** all corporations incorporated under the laws of the State of New South Wales and registered in Tasmania as recognised companies (all of which corporations are in this Deed called "the Assignors" which expression shall include their respective successors and permitted assigns) of the second part and **PICKANDS MATHER & CO. INTERNATIONAL** a company organised and existing under the laws of the State of Delaware in the United States of America and registered in Tasmania as a foreign company under the provisions of the Companies (Tasmania) Code and having it principal office in this State at 9th Floor, AMP Building, 86 Collins Street, Hobart (together with its successors and permitted assigns in this Deed called "the Assignee") of the third part.

RECITALS

(A) By an Indenture dated 11 October 1965 the Honourable Eric Elliott Reece MHA, the then Premier of the State of Tasmania and Minister for Mines (in this Agreement called "the Premier") agreed with Northwest Iron Co. Ltd. and Dahlia Mining Co. Ltd. in the terms appearing in the First Schedule to the Iron Ore (Savage River) Agreement Act, 1965;

(B) The Indenture provided for many matters dealing with the establishment and operation of mining activities by Northwest Iron Co. Ltd. and Dahlia Mining Co. Ltd. at Savage River in the State of Tasmania;

(C) On 22 December 1965 a Statute entitled "Iron Ore (Savage River) Agreement Act" (in this Agreement called "the Act") was enacted which ratified the said Indenture;

(D) The Act, inter alia, authorised the granting to Northwest Iron Co. Ltd. and Dahlia Mining Co. Ltd. of the mining lease and supplementary leases;

(E) On 3 June 1966 the Premier executed on behalf of the State a Lease ("the Lease") in the form of (or substantially in the form of) the First Schedule to the Indenture of 11 October 1965;

(F) The Lease provided, inter alia, for both assignment (in whole or in part) conditional upon the consent of the Minister for Resources and Energy (at the time of execution of the Lease being known as "the Minister for Mines") (in this Agreement called "the Minister") and for the variation, addition, cancellation or substitution of lease terms by way of an agreement in writing between the Minister and the lessees;

(G) The Lease and the Indenture have been amended on various occasions as are recorded in the First Schedule to this Deed;

(H) On the several dates specified in the Second Schedule to this Deed Supplementary Leases known as "SL1" to "SL10" inclusive were granted by the Minister for Mines for the time being to Northwest Iron Co. Ltd. and Dahlia Mining Co. Ltd.;

(I) Part of the interest of Dahlia Mining Co. Ltd. in the Lease and Supplementary Leases was particularly assigned by Indenture dated 31 March 1981 so that the current lessees are the present Assignors.

(J) The lands described in the Lease and in the Supplementary Leases and the additional Supplementary Leases specified in the Second Schedule to this Deed known as "SL11" and "SL12" which were granted to Northwest Iron Co. Ltd. and Dahlia Mining Co. Ltd. are referred to in the Lease as "the leased premises";

(K) For convenience the Lease and any amendment thereto and the Supplementary Leases and any amendment thereto are in this Deed referred to collectively as "the principal lease";

(L) The Assignee and the Assignors have entered a contract with the intention that the Assignors will assign to the Assignee and the Assignee will take from the Assignors all the right title and interest of the Assignors in and to the principal lease with the Assignors being released and discharged from the obligations requirements and conditions contained in the principal lease and for the Assignee to stand in place of the Assignors so far as the terms and conditions of the principal lease apply to the Assignors and the State has agreed to release and discharge the Assignors upon the condition inter alia, that the Assignee undertakes and agrees to perform observe and comply with the obligations requirements and conditions set forth in the principal lease by the terms of this Deed;

(M) The Assignors and the Assignee have applied for the consent of the Minister to the assignment of the Assignors' interest under the principal lease and the Minister has approved the assignment and has agreed to enter into this Deed to record his consent upon the terms set out in this Deed;

OPERATIVE

Now this Deed witnesses as follows:—

1. The Assignors assign to the Assignee and the Assignee accepts all the right title and interest of the Assignors in the principal lease with effect on and from 1st day of October 1990 ("the Starting Date").

2. The Minister consents to the assignment referred to in Clause 1.

3. The Assignors and the Assignee covenant and agree that the Assignee shall as from the Starting Date take over and assume the benefit and burden of the principal lease and the Assignee undertakes to perform, observe and comply with the obligations, requirements and conditions contained in the principal lease to the extent to which the same remain unperformed, unobserved or not complied with and to be bound by the provisions thereof in all respects and in every way as if the Assignee were party to the principal lease instead of the Assignors and the Assignors relinquish all their right title and interest in and to the principal lease in favour of the Assignee and the Assignee accepts the Assignors right title and interest in and to the same.

4. The execution of this Deed by the State shall not prejudice or affect or constitute a waiver of any of the covenants, conditions or provisions of the principal lease nor the obligations of the Assignors thereunder as assumed by the Assignee herein nor of any of the State of Tasmania's rights powers or remedies thereunder or in respect thereof or consequent upon any breach of the principal lease heretofore occuring all of which shall remain in full force and effect provided however that the State of Tasmania shall be entitled to enforce all or any of its rights, powers or remedies contained in the principal lease only against the Assignee whether in respect of any breach or matter arising either before or after the date of execution of this Deed to the same extent as if the Assignee were a party to the principal lease instead of the Assignors.

5. The State with effect on and from the Starting Date releases and discharges the Assignors from responsibility for performance under the principal lease and accepts the liability of the Assignee under the principal lease in lieu of the liability of the Assignors as if the Assignee were named in the principal lease and the party thereto in place of the Assignors and the Assignors with effect on and from the Starting Date release and discharge the State from all claims and demands whatsoever in respect of the principal lease.

6. Subject only to the variations herein contained the principal lease shall remain in full force and effect.

7. The Minister covenants with the Assignee on behalf of the State for the performance of the obligations of the State under the principal lease.

8. The costs of and incidental to the preparation, completion and stamping of this Deed shall be the responsibility of the Assignee.

9. The State covenants with the Assignee that at the date of this Deed there are no subsisting breaches of obligations or duty by the Assignors to the State pursuant to any provision of the principal lease.

IN WITNESS WHEREOF the parties hereto have caused this Deed to be duly executed all as of the day and year first above written.

SIGNED SEALED AND DELIVERED FOR AND ON BEHALF OF THE CROWN IN RIGHT OF THE STATE OF TASMANIA BY THE HONOURABLE MICHAEL WILLIAM WELDON being Minister for Resources and Energy for the time being and the Minister administering the Iron Ore (Savage River) Agreement Act 1965 and the Mining Act 1929 in the presence of:

.....
Witness.

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FIRST SCHEDULE

LIST OF VARIATIONS TO THE PRINCIPAL LEASE

1. Letter of Amendment dated 6 February 1968 from Minister for Mines.
2. Deed dated 24 June 1970 between Northwest Iron Co. Ltd. and Dahlia Mining Co. Ltd. and The Premier of the State of Tasmania.
3. Deed dated 11 April 1973 between The Treasurer of the State of Tasmania, Pickands Mather & Co. International and P M Holding Co.
4. Deed dated 3 May 1973 between Northwest Iron Co. Ltd. and Dahlia Mining Co. Ltd. and The Premier of the State of Tasmania.
5. Further Deed dated 3 May 1973 between Northwest Iron Co. Ltd. and Dahlia Mining Co. Ltd. and the Premier of the State of Tasmania.
6. Deed dated 18 March 1980 between The Minister for Mines, Northwest Iron Co. Ltd. and Dahlia Mining Co. Ltd.
7. Deed dated 10 February 1982 between The Minister for Mines, Northwest Iron Co. Ltd. and Dahlia Mining Co. Ltd.

SECOND SCHEDULE

LIST OF SUPPLEMENTARY LEASES

S.L. No.	Date	Lessees
1.	21 November 1968	Sumitomo Metal Australia Pty. Ltd. Nippon Steel Australia Pty. Ltd. Nisshin Steel Australia Pty. Ltd. Kawasaki Steel (Australia) Pty. Ltd. NKK Australia Pty. Ltd. Dahlia Mining Co. Ltd. Northwest Iron Co. Ltd.
2.	21 November 1968	As above
3.	21 November 1968	As above
4.	21 November 1968	As above
5.	21 November 1968	As above
6.	21 November 1968	As above
7.	20 December 1968	As above
8.	29 July 1969	As above
9.	29 July 1969	As above
10.	2 June 1980	As above
11.	2 March 1982	Northwest Iron Co. Ltd. and Dahlia Mining Co. Ltd.
12.	10 February 1982	Northwest Iron Co. Ltd. and Dahlia Mining Co. Ltd.

ANNEXURE "B"

BOND

Favouree: To the Crown in right of the State of Tasmania (the Principal).

Business or Trading Name: For Pickands Mather and Co International (the Customer)

..... (the Bank) asks the Principal to accept this Undertaking in connection with a Deed between the Principal and Customer entitled Deed of Variation and dated the day of 1990 (the "Deed of Variation")

In consideration of the Principal accepting this Undertaking the Bank undertakes unconditionally to pay the Principal on written demand from time to time any sum or sums to an aggregate amount not exceeding the total of:

(a) $3,000,000; or

(b) any other amount agreed between the Principal and the Bank.

Plus any additional amount calculated on the annual CPI review under the Deed of Variation, being the amount determined by the Principal from the application of the formula set out in the Schedule to this Bond as notified to the Bank by the Principal from time to time.

The Deed of Variation contains certain provisions for review of the amount of the Bond (in addition to the C.P.I. review), including reinstatement following recourse to the Bond. The Minister for Environment and Planning may from time to time give notice to the Bank of any increase or decrease in the amount of the Bond. If there is a notice of any increase, the Bank shall notify the Principal within 28 days of receiving that notice whether it accepts (in whole or in part) liability for such increased amount. The amount of increase for which liability is accepted or the amount of any decrease specified in the notice from the Minister shall be the amount agreed under paragraph (b) above.

The Bank will pay this amount or any parts of it to the Principal on written demand without reference to the Customer and even if the Customer has given the Bank notice not to pay the money, and without regard to the performance or non-performance of the Customer or Principal under the terms of the Deed of Variation.

For the purposes of this undertaking "written demand" shall mean the delivery to the Bank of:

(i) a written demand specifying the amount required to be paid; and

(ii) a statutory declaration by the Minister for Environment and Planning for the time being of the State of Tasmania certifying that the amount specified in the written demand under (i) is payable by the Customer to the Principal owing to the Customer's failure duly to perform or fulfil its obligations for environmental rehabilitation under the Deed of Variation and associated environmental rehabilitation plan.

Any alterations to the terms of the Deed of Variation or any extensions of time or any other forbearance by the Principal or Customer will not impair or discharge the Bank's liability under this undertaking.

This Undertaking remains in force until one of the following events occurs:—

(a) The Principal notifies the Bank in writing that the Undertaking is no longer required, and

(b) The Bank has paid the said aggregate amount or the balance outstanding to the Principal and at the same time notified the Customer of their payment.

This Undertaking shall in all respects be interpreted in accordance with the laws of the State of Tasmania. All moneys payable hereunder shall be paid at the Head Office of the Department of Environment and Planning, 134 Macquarie Street, Hobart free of all deductions.

DATED at this day of 1990.

SIGNED SEALED AND DELIVERED by
by its Attorney in the presence
of:

.....
A Justice of the Peace.

SCHEDULE TO THE BOND DATED

For the purposes of the annual CPI review the amount of the Obligor's liability for the year (hereinafter called "the relevant year") commencing on the relevant anniversary of 1st October 1990 (hereinafter called "the Starting Date") shall be calculated in accordance with the following formula:

$$\text{Existing Liability} \times \frac{C2}{C1}$$ where:

C1 is the Consumer Price Index (All Groups) for the City of Hobart as published by the Australian Bureau of Statistics for the quarter ending immediately prior to the Starting Date in respect of the first review and immediately prior to the commencement date of the year preceding the relevant year in respect of each subsequent review.

C2 is the Consumer Price Index (All Groups) for the City of Hobart as published by the Australian Bureau of Statistics for the quarter ending immediately preceding the commencement of the relevant year PROVIDED THAT if at any time the Consumer Price Index (All Groups) figure for the City of Hobart published by the Australian Bureau of Statistics be discontinued or modified, the Australian Bureau of Statistics shall be asked to nominate the index or authority which in its opinion is the most practical for the purpose of measuring any variation in the cost of living in the City of Hobart as between the commencement date and the relevant anniversary date and such index or authority shall be adopted for the purpose of this clause provided however that should the Australian Bureau of Statistics fail to nominate an index or authority practical for the purposes of measuring any variation in the cost of living in the City of Hobart then the amount of the increase shall be such amount as the Principal and the Customer may agree, prior to the commencement of the relevant year.