

Annexure D - Terms and Conditions of Convertible Notes issued by ANCOA NL (formerly Emu Nickel NL)

Deed Poll by ANCOA NL

Terms and Conditions of Convertible Notes issued by ANCOA NL

This Deed Poll is entered into by ANCOA NL (ABN 50 127 291 927) (the *Issuer*) for the benefit, amongst others, of the holders from time to time of the Notes.

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply to these Terms and Conditions unless the context requires otherwise.

Accrued Interest means interest accrued in accordance with Condition 4.1 but not yet paid to the Noteholder in accordance with Condition 4.2 including, for the avoidance of doubt, any interest accrued in accordance with Condition 4.2(b).

Adjustment Rules means the rules for adjustment under the Conversion Formula set out in **Exhibit A**.

ASX means the Australian Securities Exchange.

Authorised Officer means, in respect of the Issuer, any director or secretary or any person from time to time nominated as an Authorised Officer by the Issuer by a notice to Noteholders accompanied by certified copies of signatures of all new persons so appointed together with their contact details (including telephone number, facsimile number and email address).

Business Day means any day on which banks are open for normal banking business in Perth, Western Australia excluding Saturdays, Sundays and public holidays in Perth, Western Australia.

Charge means the equitable (unregistered) share pledge in the form attached as **Exhibit D**.

Conversion Date means, in respect of Notes which are the subject of a Conversion Notice, the date on which they are converted (being a date permitted by Condition 5.2).

Conversion Formula means one (1) Share for each Note, or such other number of Shares per Note as is calculated in accordance with the Adjustment Rules.

Conversion Notice means a notice given in accordance with Condition 5.1(a) and substantially in the form set out in **Exhibit B**.

Conversion Shares means Shares to be issued to a Noteholder upon conversion of Notes in accordance with Condition 5.

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

Default Notice means a notice given in accordance with Condition 8.1.

Event of Default means any of the events of default mentioned in Condition 7.

Face Value means the face value of each Convertible Note being equal to the Exercise Amount [[at an issue price to the public of \$0.30 being] of \$0.425 per Note].

Interest Payment Dates means the dates falling on the last day of January, April, July and October in each year rests after (and not including) the first anniversary of the Listing Date, up to and including the earlier of the Conversion Date and the Redemption Date.

Issue Date means the date on which the Notes are issued.

Issuer means ANCOA NL (ABN 50 127 291 927).

Issuer Group means the Issuer, its subsidiaries and its controlled entities.

Listing Date means the date the Shares are first quoted for trade on the open platform of the ASX.

Listing Rules means the ASX Listing Rules.

Maturity Date means the fifth (5th) anniversary of the Listing Date.

Notes means the notes issued under these Terms and Conditions.

Noteholder means the person whose name appears in the Register as being entitled to such Notes.

Note Certificate means a certificate in the form attached as **Exhibit C**, issued by the Issuer and representing the number of Notes specified on that certificate.

Prescribed Interest Rate means 12.5% per annum.

Redemption Date means the date upon which the Issuer redeems the Notes by repayment of the Face Value and Accrued Interest (if any) in accordance with these Terms and Conditions.

Register has the meaning given in Condition 2(b).

Share means a fully paid ordinary share in the capital of the Issuer.

Shareholder means a holder of Shares in the Issuer.

Trading Day means a day on which the ASX is open for trading, provided that if no closing price is reported in respect of the relevant Shares on the ASX for one or more consecutive dealing days, such day or days will be disregarded in any relevant calculation and shall be deemed not to have existed when ascertaining any period of trading days.

VWAP means the arithmetic average of the daily volume weighted average sale price of Shares sold on the ASX during the Trading Day (subject to excluding certain special trades, crossings, overseas trades and trades pursuant to exercise of options, and appropriate adjustments being made in respect of reconstructions, consolidations, divisions or reclassifications of Shares into a lesser or greater number of securities, other than a buyback or capital reduction, during the relevant period, and in respect of certain other market circumstances to adjust for market anomalies, such as suspensions of trading).

1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural and the converse.
- (b) A gender includes all genders.
- (c) Where a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (e) A reference to a condition or annexure is a reference to a condition of, or annexure to, these Terms and Conditions.

- (f) A reference to a rule is a reference to the Adjustment Rules annexed to these Terms and Conditions as Exhibit A.
- (g) A reference to a party to an agreement or document includes the party's successors and permitted assigns or transferees.
- (h) A reference to an agreement or document is to the agreement or document as amended, novated, supplemented or replaced from time to time (whether or not the parties thereto remain the same), except to the extent prohibited by that agreement or document.
- (i) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form.
- (k) Where the day on or by which any act, matter or thing is to be done is not a Business Day such act, matter or thing must be done on the next Business Day.
- (l) A reference to *Australian dollars* or A\$ or \$ is a reference to the currency of the Commonwealth of Australia.
- (m) A reference to time is to the time in Perth, Western Australia.

2. Form, Denomination and Title

- (a) The aggregate principal amount of the Notes is A\$[INSERT – that proportion of the Purchase Price as is nominated by the Buyer to be satisfied by the issue of Convertible Notes – say if \$30,000,000] divided into [that number Convertible Notes as equals \$30,000,000/the Exercise Amount] Notes with a face value of [\$] being the Exercise Amount] per Note.
- (b) Title to the Notes shall be evidenced by, and transfer of the Notes may only be affected through, registration in a register (*Register*) maintained by the Issuer.
- (c) The Issuer will issue to each Noteholder a Note Certificate representing the number of Notes held by the Holder.
- (d) The Notes are not and are not proposed to be admitted to trading or listing on any stock exchange or market.

3. Status of the Notes

- (a) The Notes and all amounts that become due to the Noteholders in accordance with this document are secured by the Charge.
- (b) Upon issue, the Notes will constitute secured, direct, general and unconditional obligations of the Issuer which rank *pari passu* among themselves and will at all times rank *pari passu* with all other present and future unsecured obligations of the Issuer.
- (c) The Notes do not confer on the Noteholder any entitlement to:
 - (i) vote at a general meeting of shareholders of the Issuer;
 - (ii) receive dividends; or
 - (iii) participate in any issue of securities, other than upon conversion of the Notes.

4. Interest

4.1 Accrual

Notwithstanding any other provision hereof, no interest is payable during or in respect of the Notes for the first year after the Issue Date. Interest accrues on each Note only following the first anniversary of the Listing Date whereupon it will accrue on each of the Interest Payment Dates and be calculated on the Face Value of each Note at the Prescribed Interest Rate.

4.2 Payment of Interest

- (a) The Issuer must pay the accrued interest to each Noteholder on each Interest Payment Date. The Issuer will pay such interest by electronic transfer of immediately available funds into an account nominated by the Noteholder.
- (b) Without limiting the obligation of the Issuer to pay interest in accordance with paragraph (a), interest that is not paid by the Issuer on an Interest Payment Date will be capitalised with interest accruing on that capitalised amount on a daily basis up to the date of actual payment from (and including) the Interest Payment Date at the Prescribed Interest Rate.

5. Right to Convert

5.1 Conversion at the option of the Noteholder

- (a) At any time after the expiration of 3 months of the Listing Date, a Noteholder may, by delivering a Conversion Notice to the Issuer, require conversion of any number of Notes into Shares of the Issuer.
- (b) On receipt of a duly executed Conversion Notice, the Issuer shall effect conversion of the Notes which are the subject of that Conversion Notice within 7 Business Days after the date of receipt of the Conversion Notice, provided that if the Issuer reasonably forms the view that the issue of a cleansing notice under Condition 5.7 on that date would materially prejudice the interests of the Issuer in forcing a disclosure which would not otherwise require disclosure under Listing Rule 3.1, then the Issuer shall be entitled to delay the conversion for a period of up to 15 Business Days. The Issuer's entitlement to delay conversion under this paragraph is subject to the right of Noteholders to convert prior to the record date of a dividend or distribution under Condition 5.4.
- (c) If, within 3 Business Days of receiving a Conversion Notice, the Issuer proposes to rely upon its rights to delay conversion under paragraph (b), then:
 - (i) it must immediately notify the relevant Noteholder of such delay (without specifying the matter or event which does not otherwise require disclosure under Listing Rule 3.1); and
 - (ii) at any time after receipt of a notice in accordance with subparagraph (i) and prior to conversion in accordance with paragraph (iii), the Noteholder shall have the right to withdraw its Conversion Notice; and
 - (iii) provided the Conversion Notice has not previously been withdrawn, on or before the expiration of the 15 day period referred to in paragraph (b), the Issuer must convert the Notes which are the subject of the Conversion Notice and issue a cleansing notice under Condition 5.7.
- (d) Following conversion, the Issuer shall promptly update its register.

5.2 Conversion actions

On the Conversion Date, the Issuer shall:

- (a) convert each Note which is the subject of that Conversion Notice into one Share (subject to adjustment in accordance with the Conversion Formula);
- (b) apply the Face Value of each Note which is the subject of that Conversion Notice, as payment for the Share or Shares referred to in paragraph (a);
- (c) allot and issue the Shares referred to in paragraph (a) to the Noteholder;
- (d) cause the Conversion Shares to be registered in the name of the Noteholder; and
- (e) pay to the Noteholder, by electronic transfer of immediately available funds into an account nominated by the Noteholder, any Accrued Interest on each Note the subject of that Conversion Notice,

upon the occurrence of which the principal and any interest payable under this Agreement on each Note the subject of that Conversion Notice will be deemed to have been fully discharged by the Issuer.

5.3 Conversion adjustment

- (a) On any adjustment under the Conversion Formula, the resulting number of Shares to be issued to a Noteholder under a Conversion Notice will be aggregated, and if not equal to a whole number of Shares, shall be rounded down to the nearest whole number of Shares.
- (b) The Issuer must give notice in writing of any adjustment to Noteholders as soon as practicable after the determination thereof.
- (c) All calculations of any nature whatsoever under the Terms and Conditions shall be performed by the Issuer unless otherwise specified.

5.4 Dividend and Conversion Process

The Issuer will provide sufficient notice to the Noteholders prior to the record date for a dividend or distribution to allow the Noteholders (should they elect to do so), to convert their Notes pursuant to Condition 5.1 and to receive the relevant dividend or distribution.

5.5 Becoming a Member

On allotment and issue of Conversion Shares to the Noteholder, the Noteholder authorises the Issuer to enter the Noteholder's name in the Issuer's register of shareholders and agrees to be bound by the terms of the Issuer's constitution.

5.6 Quotation of Shares

The Issuer will, on or before a Conversion Date, take all steps necessary to have the Conversion Shares issued on the Conversion Date quoted on the financial market operated by the ASX (including making an application for quotation immediately upon issue of the Conversion Shares) and cause to be issued to the Noteholder a certificate or holding statement for the Conversion Shares.

5.7 Cleansing notice

The Issuer will lodge a notice with ASX that complies with sections 708A(5) and 708A(6) of the Corporations Act as soon as practical, and in any event no later than 5 Business Days, after issuing the Conversion Shares on the Conversion Date.

5.8 Ranking of Shares issued on conversion

Each Share which comprises the Conversion Shares issued on conversion of a Note will be issued as fully paid and will rank equally with all other Shares then on issue.

5.9 Adjustment if no approval given

During the period in which the Notes remain outstanding, to the extent conversion of Notes by a Noteholder would require:

- (i) shareholder approvals under the Corporations Act (including section 606 of the Corporations Act, if the issue would cause the Noteholder to acquire a relevant interest in more than 20% of the shares of the Issuer); or
- (ii) approval by the Treasurer under the *Foreign Acquisitions and Takeovers Act 1975* (Cth),

the Issuer shall not be obliged to make such conversion, and shall convert only such Notes as is permitted by law without such approval (for example conversion of Notes into shares comprising 19.9% of the Issuer in order to comply with (a) above, or conversion of Notes into shares comprising 15% of the Issuer, if necessary to comply with (b) above). In such event, Notes in excess of the amount converted by the Issuer in accordance with this clause shall remain on issue save that their Maturity Date shall be deemed amended by these terms to be the Conversion Date.

6. Redemption of the Notes

6.1 Redemption at maturity

Unless previously redeemed or converted, the Notes will be redeemed on the Maturity Date by the Issuer paying to the Noteholders the amount equal to the Face Value of each Note plus any accrued but unpaid interest.

6.2 Additional Rights for Noteholders to Require Redemption

A Noteholder may also require the Issuer to redeem its Notes under Condition 8.

7. Events of Default

7.1 Events

Each of the following is an Event of Default (whether or not it is in the control of the Issuer).

- (a) **Default:** The Issuer materially defaults on any payment or other material term or condition in respect of the Notes;
- (b) **Administration, winding up, arrangements, insolvency etc**
 - (i) An administrator, receiver or controller is appointed to the Issuer or a member of the Issuer Group.
 - (ii) Except for the purpose of a solvent reconstruction or amalgamation previously approved by a majority of Noteholders:
 - (A) (i) an application made and not opposed within the time constraints permitted at law; or (ii) an order is made and not appealed (or leave to appeal is not sought) within the time constraints permitted at law; or (iii) proceedings are commenced

and not contested within the time constraints permitted at law; or (iv) a resolution is passed:

- (1) the winding up, dissolution or administration of the Issuer or a member of the Issuer Group; or
 - (2) the Issuer or a member of the Issuer Group entering into an arrangement, compromise or composition with or assignment for the benefit of its creditors or a class of them; or
- (B) the Issuer or a member of the Issuer Group ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of a substantial part of its business.
- (C) The Issuer or a member of the Issuer Group:
- (1) is, or under legislation is presumed or taken to be, insolvent (other than as the result of a failure to pay a debt or claim the subject of a good faith dispute); or
 - (2) stops or suspends or threatens to stop or suspend payment of all or a class of its debts (other than as the result of a failure to pay consequent upon the Issuer disputing in good faith liability).
- (c) the Issuer ceases to be admitted to the official list of the ASX or its Shares are suspended (as a consequence of a breach of the ASX Listing Rules) from trading for more than a total of 5 Trading Days in any 12 month period.

8. Effect of Default

8.1 Default Notice provided

If the Issuer does not remedy an Event of Default within 5 Business Days after any Noteholder has given a notice to the Issuer specifying the default or event and, where applicable, requiring its remedy (*Default Notice*) that Noteholder may:

- (a) elect to exercise the right to convert its Notes into Shares in accordance with Condition 5.1; or
- (b) elect to require the Issuer to redeem their Notes by delivering a redemption notice to the Issuer.

For the avoidance of doubt, the rights of the Noteholder under this Condition 8.1 continue to operate for so long as any default by the Issuer subsists, including after the Maturity Date if the Notes have not been redeemed on the Maturity Date.

8.2 Insolvency Event

At any time while an Event of Default subsists under Condition 7.1(b), any Noteholder may elect to require the Issuer to redeem its Notes by delivering a redemption notice to the Issuer, requiring the Issuer to pay to the Noteholder, within 5 Business Days, the amount equal to the Face Value of each Note plus any accrued but unpaid interest.

9. Transfer of the Notes

- (a) Subject to paragraphs (b) and (c), Noteholders shall be entitled to transfer some or all of their Notes at any time after they are issued but prior to the Maturity Date by written notice to the Issuer

(Transfer Notice) advising details of the intended transferee of the Notes (**Transferee**) and the number of Notes to be transferred to the transferee (which may not be less than the amount specified in clause 10).

- (b) Upon receipt of an Transfer Notice, the Issuer covenants and agrees to meet with the Noteholder at a place agreed or failing agreement at the Issuer's registered office at 10.00am on the date 5 Business Days after the date of the Assignment Notice (**Transfer Settlement**).
- (c) At Transfer Settlement:
 - (i) the Noteholder will deliver to the Issuer:
 - (A) the Note Certificate;
 - (B) the Transfers held by it under the Charge; and
 - (C) if the Transfer Notice relates to all Notes held by the Noteholder, the original Charge held by the Noteholder and a written acknowledgment of discharge of the Charge;
 - (ii) if the Transfer Notice is for less than all Notes held by the Noteholder, in exchange for the documents delivered under (i), the Issuer will deliver to the Noteholder:
 - (A) a replacement Note Certificate for the number of Notes held by the Noteholder after the transfer the subject of the Transfer Notice;
 - (B) replacement signed Transfers (as defined under the Charge) for a pro-rata reduction in the Pledged Assets the subject of the Charge;
 - (C) an amendment to the Charge in the terms reasonably requested by the Issuer to properly reflect the reduced Notes (and Debt) held by the Noteholder;
 - (iii) the Issuer will deliver to the Transferee:
 - (A) a Note Certificate for the Notes the subject of the Transfer;
 - (B) a Charge in favour of the Transferee for the value of the Notes (being the same value as the Debt using that expression as defined in the Charge) transferred to the Transferee – such Charge to be in the same pro-rata amount as the amount referred to in (i)(B) above; and
 - (C) signed Transfers (as defined under the Charge) in respect of the pro-rata number of Pledged Assets to be made the subject of the Charge (when taken together with the Transfers to be held by the transferring Noteholder under (ii)(b) above);
- (d) The happening of Transfer Settlement under this clause is interdependent on all acts specified in clause 9(c), and no action is deemed to occur unless and until all actions have been completed.
- (e) A Transferee must be a sophisticated investor or otherwise exempt offeree for the purpose of section 708 of the Corporations Act.

10. Minimum Parcels of Notes

A Noteholder may not, absent the consent of the Issuer which consent may in its absolute discretion be withheld with or without reason, hold less than 10% of the Notes outstanding (as determined immediately following the transfer, conversion or redemption).

11. Amendment

These Terms and Conditions may only be amended by the Issuer with the consent of the holders of not less than 70% of the Notes on issue.

12. Exercise of Powers by Noteholders

- (a) If there is only one Noteholder, the sole Noteholder shall exercise all the powers of the Noteholders.
- (b) Subject to paragraph (c), for the purpose of clause 11, if there is more than one Noteholder, each Noteholder shall have the right to participate in a general meeting of Noteholders and to vote to exercise the powers of Noteholders or approve a written resolution of Noteholders. Each Note carries the right to one vote. Unless stipulated otherwise in these Terms and Conditions, decisions shall be deemed to have been given if it is approved by persons who hold, in aggregate, 70% of the outstanding Notes.
- (c) Noteholders shall not be required to hold a meeting for the purpose of clause 11 if a resolution is signed by Noteholders who hold in aggregate 70% of the outstanding Notes.

13. Payments in relation to the Notes

13.1 Form of payment

Any payment to be made pursuant to the terms of this Agreement shall be made by telegraphic transfer of cleared funds, unless the parties agree otherwise.

14. Notices

Any notice, demand, consent or other communication (a *Notice*) given or made under these Terms and Conditions:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be addressed and delivered to the intended recipient at the address or fax number below or the address, email or fax number last notified by the intended recipient to the sender after the date of this Agreement:

- (i) to the Issuer: ANCOA NL
ANCOA NL
C/- PO Box 674 Kalamunda WA 6926
ATTN: Greg Steemson
Email: gsteemson@bigpond.com
- (ii) to Straits Mineral Investments Pty Ltd:
C/- Straits Resources Limited
Level 1
35 Ventnor Avenue
West Perth
WA 6005, Australia
Attention: Chief Financial Officer
e-mail: mgibson@staits.com.au);

(iii) to any other Noteholder To their address or fax number as set out in the Register.

(c) will be taken to be duly given or made when delivered, received or left at the above email, fax number or address. If delivery or receipt occurs on a day which is not a business day in the place to which the Notice is sent or is later than 6pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next business day in that place.

15. Governing Law and Jurisdiction

The Notes are governed by and shall be construed in accordance with the laws of Western Australia, Australia. All disputes arising out of or in connection with the Notes or these Terms and Conditions shall be submitted to the non-exclusive jurisdiction of the courts exercising jurisdiction there.

Exhibit A

Adjustment Rules

The number of Shares into which a Note may be converted shall be subject to adjustment to the extent permitted and required by the ASX Listing Rules as if a Note were an option with an exercise price of \$0.425 (with resulting fractions being rounded down).

Exhibit B

[Conversion Notice is to be in a form to be agreed or failing agreement in such form as is suitable for the purpose and is provided by the Noteholder acting reasonably]

Exhibit C

[Form of Note Certificate is to be in a form to be agreed or failing agreement in such form as is suitable for the purpose and is provided by Emu acting reasonably]

Exhibit D

[Form of Pledge]

Executed and delivered as a deed poll in Perth, Western Australia.

Executed by ANCOA NL

Director Signature

Director/Secretary Signature

Print Name

Print Name