

DEED OF VARIATION

Handwritten notes and signatures in the top right corner, including the number 2152201 and other illegible scribbles.

DEED OF VARIATION

for the

Nickmont Superannuation Fund

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Deed for a regulated self managed superannuation fund established under the Superannuation Industry (Supervision) Act 1993 as amended, suitable for up to four members.

## **DEED OF VARIATION**

**This deed of variation** is made by the Trustee named in the Signing Schedule ['Schedule'] hereto, on the date as shown in that Schedule.

### **BACKGROUND**

- A. The superannuation fund [the 'Fund'] is an indefinitely continuing fund governed by the Existing Deed under the control of the Trustee (being the current trustee of the Fund), relevant details as shown in the Schedule.
- B. The Trustee (or, where applicable, a former trustee) has previously made an irrevocable election for the Fund to be a *regulated superannuation fund* under the provisions of the Superannuation Industry (Supervision) Act 1993 [the 'Act'].
- C. Each Member's entitlement in the Fund (exclusive of any death or disablement insurance effected in respect of a Member) is determined from the balance shown in an individual account or accounts maintained by the Trustee.
- D. The Trustee is empowered under the Existing Deed (by way of the clause or rule as shown in the Schedule) to amend, alter, modify or add to any of the provisions of the Existing Deed subject, as the case requires, for certain conditions to be met and/or for other parties as may be referred to in the Existing Deed to give their consent to any such amendments.
- E. In order to encompass current superannuation conditions, the Trustee desires that the Existing Deed be amended and, where applicable, has obtained the necessary consent to the alterations contained in this deed of variation, such consent evidenced as required by those parties' signatures on the Schedule.
- F. The Trustee warrants that the alterations to be made to the Existing Deed do not reduce or adversely affect any Member's accrued entitlements in the Fund as at the date of this deed of variation nor is there any change in the beneficial ownership of any assets now held by the Trustee on behalf of the Fund.
- G. The Trustee further warrants that any other conditions referred to in paragraph D. above at the date of this deed of variation have been met or will be met and now wishes to alter the Existing Deed in the manner as stated hereunder.

### **OPERATIVE PROVISIONS**

- (a) With the exception noted in item (b) below, the Existing Deed shall be and is hereby amended by the deletion of all existing clauses, rules and schedules and the substitution by the Clauses and Schedule as now contained herein.
- (b) If, on the date this deed of variation is executed, a Member (or other Beneficiary) is in receipt of a *defined benefit pension* payable from the Fund (such term as set out in the Act), any clauses or rules in the Existing Deed or other operative provisions establishing or applicable to that pension shall specifically be retained in order to continue to pay such pension to the Member for the agreed term (and, where applicable, to a reversionary beneficiary following the Member's death).
- (c) The Fund shall at all times continue to either maintain a corporate trustee (being a constitutional corporation under the Act) or otherwise satisfy the trustee requirements of the Act relating to a *regulated superannuation fund*.
- (d) The Fund is maintained as a *self managed superannuation fund* under the Act and, if the Fund ceases to meet the necessary conditions for such a Fund, the Trustee will either take action to cause the Fund to meet those conditions or arrange for the Fund to be otherwise administered pursuant to the provisions of the Act.
- (e) The Trustee covenants that the Fund will be maintained to provide benefits to Members in accordance with the Primary Purpose as described herein (as well as being able to provide other benefits as permitted under the Deed, such benefits being ancillary to the Primary Purpose) and undertakes to perform and observe the agreements, covenants, trust stipulations and conditions of this amended Deed.

## 1.....DEFINITIONS

1.1 Definitions. In this Deed unless the context otherwise requires:

'Act' means the Superannuation Industry (Supervision) Act 1993 as amended from time to time.

'Auditor' means the auditor appointed pursuant to sub-clause 3.5(a).

'Benefit' means any amount paid or payable by the Trustee out of the Fund pursuant to the Deed to or in respect of a Member and includes a payment by way of a lump sum or a Pension.

'Beneficiary' means a person entitled to receive a Benefit either now or in the future including, as the case requires, a Dependant of a Member.

'Clause' means a clause or sub-clause of this Deed.

'Contributions' means payments to the Fund by, or on behalf of, Members in accordance with the terms of this Deed.

'Deed' or 'this Deed' means this document as amended or substituted from time to time by the Trustee by power of Clause 9.10.

'Dependant' means any person who qualifies as a dependant of a Member for superannuation purposes under the terms of the Regulations.

'Disablement' means, in respect of a Member, a physical or mental condition, the severity of which enables a Benefit to be paid to the Member pursuant to the terms (and subject to the conditions) of the Regulations.

'Fund' means the Contributions, and all cash and other property into which the Contributions may be converted or invested, and includes all property of whatever kind that may be transferred to the Trustee pursuant to the terms of this Deed.

'Individual Account' means the account or accounts maintained for a Member pursuant to Clause 7.

'Member' means any person who, in accordance with the Regulations, is eligible to be a member of the Fund and has been admitted to the Fund by the Trustee.

'Pension' means a Benefit payable at a yearly rate by instalments (such payments meeting the standards set out in the Regulations).

'Preservation' means a requirement that payment of a Benefit from the Fund must be deferred until one of the release conditions referred to in the Regulations has been satisfied or met in respect of the Member.

"Primary Purpose" means:

- (a) If and when the Trustee is a company: the provision of retirement benefits in respect of Members either by way of lump sums or pensions; or
- (b) If and when any Trustee is an individual: the provision of retirement benefits in respect of Members by way of old age pensions as defined in the Regulations.

'Regulations' means the Superannuation Industry (Supervision) Act 1993, the Superannuation Industry (Supervision) Regulations, the Tax Act, the Superannuation Guarantee (Administration) Act 1992, the Superannuation Guarantee Charge Act 1992 and the regulations made & promulgated under such Acts (including any enactment made by way of amendment of or in substitution for any of the foregoing acts or regulations) and all orders of any Relevant Authority having the force of law relating to Self Managed Superannuation Funds and any further act regulation direction or rule relating to such funds.

'Relevant Authority' means the Australian Taxation Office, the Australian Prudential Regulation Authority, Centrelink or any other government authority empowered to establish and administer any Regulations in respect of Self Managed Superannuation Funds.

'Self Managed Superannuation Fund' has the meaning ascribed to it by the Act.

'Tax Act' means the Income Tax Assessment Act 1936, and the Income Tax Assessment Act 1997, both as amended from time to time, and the Regulations made pursuant to those Acts.

1.2 Plural and gender of words. In the Deed, unless inconsistent with the subject matter or context, words importing one gender shall include the other gender and words importing the singular number shall include the plural number and vice versa.

1.3 Headings to Clauses. The headings in the Deed are for convenience and reference only and shall not affect its interpretation.

1.4 Defined words. For convenience, the first letters of words and expressions defined in the Deed are indicated by capital letters, but the absence of a capital letter shall not alone imply that the word or phrase is used with a meaning different from that given by its definition.

1.5 Exercise of rights under the Deed. In respect of a corporate Trustee, all powers and rights conferred on the Trustee under the Deed may be fully exercised by resolution of its directors or by any person or persons having the written authorisation of such directors to so act on their behalf.

1.6 Deed governed by State Laws. Unless otherwise decided by the Trustee (unanimously in the event of individual Trustees), the Deed shall be governed in accordance with the laws of the State of the Commonwealth of Australia shown in the original Trustee's address.

1.7 Arbitration. If any questions or dispute shall arise with respect to the Fund or to the construction or meaning of the Deed, and if the Trustee so requires, the question or dispute shall be referred to a single arbitrator agreed to by the parties to the question or dispute, but in default of agreement, to an arbitrator appointed pursuant to the provisions of the relevant statute relating to arbitration of disputes in the State referred to in Clause 1.6. If the Trustee requires any question or dispute to be referred pursuant to this Clause, no right of action shall accrue in respect thereof until the question or dispute has been adjudicated upon by the arbitrator.

## **2.....APPLICATION OF REGULATIONS**

2.1 Notwithstanding any provision of this Deed to the contrary, each provision of the Regulations (to the extent it applies to or is required to be observed by the trustee of a Self Managed Superannuation Fund so that it will be or remain a regulated Self Managed Superannuation Fund) will apply to the Fund as though that provision had been specifically incorporated in this Deed.

2.2 In the event of any conflict between a provision of the Regulations and a provision in this Deed, the former shall prevail over the latter.

## **3.....TRUSTEE**

3.1 The following general provisions shall relate to the Trustee:-

(a) Vacancy in office. An existing Trustee shall cease to forthwith hold that position if that person or corporate body resigns (or dies, in the case of an individual) or becomes ineligible to act pursuant to the requirements of the Regulations.

(b) New appointment. Where a further Trustee is to be appointed pursuant to the requirements of the Regulations (including a possible appointment following a vacancy arising under sub-clause 3.1(a)) such appointment will be made by the remaining Trustees or, if there is no such Trustee, by the Members. In the event that no individual Trustee remains alive, the position of Trustee shall be exercised by the legal personal representative of the last surviving Member. Any new appointment of a Trustee shall only be made where, after such appointment, the new Trustee continues to meet the relevant requirements of the Regulations.

(c) Continuity of obligation. A Trustee, on ceasing to be a Trustee, shall do everything necessary to transfer the Fund to the new Trustee and shall deliver all Fund records and other books to the remaining or new Trustee.

(d) Fees. The Trustee cannot charge fees for being a trustee but proper expenses incurred in carrying out such function can be paid or reimbursed from the Fund.

3.2 Powers of Trustee.

(a) The Trustee shall, in its sole and absolute discretion, do all acts and things as it considers necessary or expedient for the proper administration, maintenance and preservation of the Fund and in the performance of its obligations under the Deed. Any costs associated with any decision made by the Trustee shall be a proper outgoing of the Fund.

- (b) Investments. The Trustee has power to invest all monies and assets forming part of the Fund in investments of any kind (not limited to investments permitted by law for the investment of trust funds) and vary and transpose such investments with or without security as though the Trustee was the beneficial owner thereof. In the event that the law of any State applies so as to restrict the power of the Trustee with respect to the investment of monies forming part of the Fund, the Trustee must observe such law. Subject to the foregoing, the Trustee may invest in:
- (i) any investments for the time being authorised by the laws of the Commonwealth of Australia or any State or Territory thereof for the investment of trust funds;
  - (ii) any mortgage of or charge on freehold property wheresoever located;
  - (iii) any deposit or loan with any company, or other organisation whatsoever;
  - (iv) any purchase or acquisition of shares, fixed interest investments and options of any company or organisation wheresoever situated, as well as any derivative issue called by whatsoever name;
  - (v) any mortgage of or charge on any personal or other property including assets of a wasting or depreciable nature;
  - (vi) any policy of insurance or annuity contract, interests for life or any lesser terms or in reversion;
  - (vii) any purchase or acquisition of any real or personal property and the improvement or extension thereof;
  - (viii) any purchase or acquisition of any interests either jointly or in partnership or in any unit of interest including units or sub-units of any unit trust or mutual fund wheresoever situated;
  - (ix) any discounting of loans, mortgages, contracts, hire purchase agreements or leases; or by direct lending in any of the same investments;
  - (x) any other investments which the Trustee could make if it was acting as an individual person and not as Trustee;
- provided that the Trustee shall not make any investment that may be prohibited by the Regulations.
- (c) Appointment of investment manager. The Trustee may appoint in writing on such terms as it sees fit one or more organisations to act on behalf of the Trustee in the investment of part or all of the Fund assets.

3.3 Indemnity of Trustee. The Trustee shall, subject to the Regulations, be indemnified out of the Fund against all liabilities incurred in the exercise of its duties other than in the case of fraud or wilful misconduct.

3.4 Covenants. The Trustee shall:

- (a) act honestly in all matters concerning the Fund;
- (b) exercise, in relation to all matters affecting the Fund, the same degree of care, skill and diligence as an ordinary prudent person would exercise in dealing with property of another for whom the person felt morally bound to provide;
- (c) ensure that the Trustee's duties and powers are performed and exercised in the best interests of the Members;
- (d) keep the money and other assets of the Fund separate from any money and assets, respectively:
  - (i) that are held by the Trustee personally; or
  - (ii) that are money or assets, as the case may be, of an employer of a Member or other associate of a Member;
- (e) not enter into any contract, or do anything else, that would prevent the Trustee from, or hinder the Trustee in, properly performing or exercising the Trustee's functions and powers;
- (f) formulate and give effect to an investment strategy that has regard to the whole of the circumstances of the Fund including, but not limited to, the following:
  - (i) the risk involved in making, holding and realising, and the likely return from, the Fund's investments having regard to its objectives and its expected cash flow requirements;
  - (ii) the composition of the Fund's investments as a whole including the extent to which the investments are diverse or involve the Fund in being exposed to risks from inadequate diversification;
  - (iii) the liquidity of the Fund's investments having regard to its expected cash flow requirements;
  - (iv) the ability of the Fund to discharge its existing and prospective liabilities;

- (g) if there are any reserves of the Fund, formulate and give effect to a strategy for their prudential management, consistent with the Fund's investment strategy and its capacity to discharge its liabilities (whether actual or contingent) as and when they fall due;
- (h) allow a Member access to any prescribed information or any prescribed documents.

### 3.5 Other obligations of Trustee concerning the Fund

- (a) Auditor. The Trustee shall appoint an auditor of the Fund in accordance with the Regulations.
- (b) Minutes of Decisions. The Trustee shall maintain appropriate minutes to record its decisions.
- (c) Financial assistance. Except as permitted by the Regulations, the Trustee shall not lend money, nor provide financial assistance, to a Member or other persons as specified in the Regulations.
- (d) Borrowing. The Trustee may borrow money only as permitted by the Regulations. Interest payable on any such borrowings shall be a proper outgoing of the fund.
- (e) Charging of Fund assets. The Trustee may only use Fund assets as security for a Fund investment as permitted by the Regulations.

## 4.....ADMINISTRATION OF FUND

### 4.1 Financial records to be maintained. The Trustee shall:

- (a) keep account of all moneys received and disbursed from the Fund and of all dealings in connection therewith;
- (b) collect, and pay promptly into a bank (or some other authorised investment account) in the name of the Fund or Trustee, all moneys paid to the Fund;
- (c) make suitable arrangements for the custody of financial records and custody of documents relating to the Fund investments.

4.2 Annual accounts. The Trustee shall comply with the Regulations relating to the maintenance of accounting and other records for a Self Managed Superannuation Fund and the preparation of reports therefrom. The financial statements, as aforesaid, shall be audited as required by the Regulations.

### 4.3 Administrative functions. The Trustee may carry out the following functions for the Fund:

- (a) Where a Member or Beneficiary requests the Trustee to hold one or more specific investments in the Fund to fully or partially provide for their Benefits, the Trustee may in its absolute discretion agree with such request and (if so) establish and maintain an account or sub-account under Clause 7 for that purpose and ensure that income and net gains or losses are credited or debited to those accounts;
- (b) Where a transfer of account balances and/or Contributions between Individual Accounts of the same or different Members is permitted under the Regulations (including splitting of such balances or Contributions) - make the said transfer as requested or approved by a Member in accordance with any procedure required by the Regulations;
- (c) Maintain separate balances in an Individual Account or sub-account in order to meet any current or future payment to be made to a spouse, or former spouse, of a Member as a result of a marital breakdown and such entitlement may furthermore be established as a separate Individual Account for the spouse concerned or be treated as an amount able to be transferred under Clause 5.3 or be dealt with in any other way as directed or permitted under the Commonwealth Family Law Acts or regulations.
- (d) Establish and maintain such reserve accounts for purposes as decided by the Trustee (including, but not restricted to: a reserve to reduce the fluctuation in the earning rate credited from year to year to Individual Accounts; and a reserve to enable an additional Benefit to be paid in respect of a deceased Member to offset the detriment incurred in that Member's relevant Individual Accounts by any taxation paid on prior year's Contributions, such amount as determined pursuant to the Tax Act) and to which shall be credited amounts determined by the Trustee for such relevant purpose and to which payments or transfers shall be debited as decided by the Trustee from time to time.

4.4 Copy of Deed and financial statements available to Members. A copy of the Deed and the latest financial statements shall be made available on request by any Member or Beneficiary.

4.5 Information to be supplied. Information requested by the Trustee from a Member or Beneficiary to assist in the proper administration of the Fund must be given. The Trustee need not verify any information given as aforesaid.

4.6 Advice. The Trustee may seek advice or services from any person or any firm in order to provide for the proper administration of the Fund and shall be entitled to act on advice given and meet the relevant costs of that advice or service from the Fund.

## 5.....MEMBERSHIP

5.1 Application to join the Fund. The Trustee shall provide a written statement to a prospective Member setting out that person's right to receive Benefits pursuant to the Deed and such other matters required in order to satisfy the Regulations. A person applying to join the Fund shall, where the Trustee so decides, make application in the form required by the Trustee. The Trustee shall consider any such application and in its absolute discretion may admit the applicant as a Member of the Fund.

5.2 Transfers from another fund. Where a Member is or was a member of any other superannuation fund and there is paid to the Trustee an amount from that other fund for the benefit of such Member, the Trustee shall credit the Individual Account of the Member with the transferred amount.

5.3 Transfers to another fund. Where a Member (or Beneficiary) joins or is eligible to join any other fund which is considered to be a complying superannuation or retirement arrangement under the Regulations, the Trustee may at the request of the Member (or Beneficiary, as the case applies) transfer to the trustee of the other fund an amount up to the balance held in that person's Individual Account(s).

## 6.....CONTRIBUTIONS

6.1 Member Contributions. A Member may make Contributions to the Fund as permitted by the Regulations.

6.2 Other Contributions. Any other person or party may make Contributions to the Fund in respect of a Member as permitted by the Regulations.

6.3 Transfer of assets. Contributions can be made by transfer of allowable investments to the Fund in accordance with the Regulations.

## 7.....INDIVIDUAL ACCOUNTS

7.1 Individual Accounts. The Trustee shall establish one or more Individual Accounts in respect of each Member, each separate account being equal to:

- (a) Any Contributions and transfers to the Fund to that account by or in respect of the Member (including any transfer made by the Trustee from a reserve account maintained by the Fund); plus
- (b) Net earnings credited to that account; less
- (c) Any Benefit payments and other outgoes applicable to that account as determined by the Trustee.

7.2 Other provisions relating to Individual Accounts.

- (a) More than one Individual Account may be maintained for a Member to properly record separate types of transactions or entitlements including for the purpose of distinguishing between different Pensions in course of payment or accounts still able to accept further Contributions and transfers.
- (b) The Trustee may maintain such sub-accounts within each Individual Account to properly record any specific entitlement or other information that may be required by the Regulations or as deemed necessary by the Trustee. Credits and/or debits against any sub-account shall be determined by the Trustee after taking into account the requirements of the Regulations.
- (c) The earnings credited to each Individual Account or any sub-account shall be allocated to such Accounts on a basis determined by the Trustee and may include the relevant share of any diminution in the value of Fund assets (or specific assets maintained under Clause 4.3(a)) that has occurred.

- (d) All amounts held in each Individual Account are fully vested for the benefit of the relevant Member.
- (e) In the event of the death of a Member, the Trustee may maintain an Individual Account for each Beneficiary who is to receive a Pension from the Fund.

## 8.....BENEFITS

### 8.1 Member Benefits.

- (a) Application. Benefits payable to or in respect of a Member under this Deed shall be made from accounts established pursuant to Clause 7. Any Benefit will be payable as set out in this Clause 8.1 or Clause 8.2, and the conditions of Clause 8.3 will apply.
- (b) When payable. In the event of a Member having satisfied a Preservation requirement and accordingly becoming entitled to an immediate payment of a Benefit and requesting such a Benefit be paid, the Trustee shall (subject to Clause 8.2) pay a Benefit to the Member up to the amount requested by the Member but not exceeding the amount standing to the credit of that Member's Individual Account(s).
- (c) Benefit payable on death of Member.
  - (i) In the event of the death of a Member (including following the commencement of any Pension), the Trustee shall pay a Benefit in respect of the Member equal to the balance held in the deceased Member's Individual Account(s) and such Benefit shall be paid or commence to be paid no later than required by the Regulations.
  - (ii) The Benefit payable in respect of the deceased Member shall be paid as follows:
    - (A) where a legally binding nomination given by the deceased Member is in effect: to the parties referred to in that nomination; or
    - (B) in all other cases: to the Member's Dependants (or, subject to the provisions of the Regulations, to any other person or party as may have been nominated by the Member and accepted as such by the Trustee), in such proportion as decided by the Trustee in its absolute discretion or, where there are no Dependants or other nominated persons or if the Trustee declines to make a determination, to the legal personal representative of the deceased Member.

### 8.2 Pension Requirement.

- (a) Old age pension. Where the Primary Purpose of the Fund is the provision of retirement benefits by way of old age pensions, the Benefit payable to a Member on retirement will be a Pension, the terms of which satisfy the requirements of the Regulations relating to old age pensions.
- (b) Lump sum option. The application of sub-clause 8.2(a) to pay a Pension shall not prevent a Member from requesting that part or all of the relevant Benefit be paid as a lump sum (such lump sum being derived or commuted from the pension entitlement) and the Trustee shall accede to such request.

8.3 Benefit conditions. Subject to the provisions of Clause 8.2, the Benefit payable to or in respect of a Member shall be one or more of the benefits permitted to be paid under the terms of the Regulations current at the time such Benefit is determined. The form of the Benefit (whether a Pension and/or a lump sum); the terms on which the Benefit is paid; the Individual Account from which it is paid; & the amount, timing and details thereof, will be as agreed between the Trustee and the Member (or other Beneficiary) and be subject to the conditions and/or restrictions applicable under the Regulations current at the time such Benefit is determined, with specific details itemised pursuant to Clause 8.8.

### 8.4 Additional death and Disablement Benefits where covered by Insurance.

- (a) The Trustee may insure any Member for additional Benefits to be payable on death or Disablement. Where the Trustee has effected such death and/or Disablement insurance, the amount received under that insurance in the event of a Member's death or Disablement shall be used to increase the Individual Account of the relevant Member.
- (b) In respect of Disablement, the Trustee is specifically entitled to insure a Member for an income benefit payable for a period of up to two years (or for such other benefit and payment conditions as may be permitted under the Regulations).



(c) Premiums payable to effect any such insurance may, at the sole discretion of the Trustee, be debited against an Individual Account of the relevant Member or may be treated as a general Fund expense.

8.5 Reversionary benefits. The terms of any Pension payable to a Member may include a subsequent Benefit payable to one or more Dependants following the relevant Member's death and the details of such Benefit, if applicable, shall be included in the minute prepared pursuant to Clause 8.8.

8.6 Commutation of Pension. A Member or Beneficiary in receipt of a Pension shall be entitled to commute all or any part of that Pension with the intent of stopping it (for the purpose of deferring the payment of the Benefit to a later time) or for taking an immediate lump sum Benefit or for converting it to another Pension, provided such action is in accordance with the requirements of the Regulations.

8.7 Finalisation of Benefit. The payment of any Benefit from an Individual Account is limited to the balance of that account. All payments to or in respect of the Member from an Individual Account shall cease when its value is reduced to zero.

8.8 Trustee to minute details of Benefit. The Trustee must prepare and retain a minute setting out the details of each Benefit paid or payable under this Clause 8 and such minute (as acknowledged by signature of the relevant Member or Beneficiary) shall be conclusive proof to any party that the terms of the Benefit are as stated in that minute.

8.9 Receipt. Any person to whom a Benefit is payable shall, if requested by the Trustee, furnish the Trustee with a receipt and release in the form from time to time required by the Trustee.

8.10 Annuity purchase. In lieu of paying any Pension from the Fund, a Member or Beneficiary to whom a Pension is payable may elect to have an appropriate annuity purchased from an authorised provider and, in order to provide for that purpose, the Trustee will transfer the relevant Individual Account balance in cash to such annuity provider. The Trustee shall not be bound or concerned to see to the application of that Account.

#### 9.....GENERAL PROVISIONS RELATING TO THE FUND

9.1 Deduction of tax. The Trustee is specifically entitled to deduct from any Benefit, Contribution or other amount received or payable by the Fund any form of taxation in respect of such amount and to remit that tax to the applicable authority.

9.2 Expenses of administration. All costs, charges and expenses incurred in the administration of the Fund may be paid by the Trustee from the Fund, or may (if applicable) be paid by one or more employers of a Member if they so chose.

9.3 Payment of Benefits in specie. The Trustee may, with the agreement of the Member or Beneficiary to whom a Benefit is payable, transfer investments of the Fund of equivalent value to such Member or Beneficiary in lieu of paying in money the whole or part of the amount otherwise payable under the provisions of this Deed.

9.4 Variation to Fund conditions. The Trustee shall have the power to vary or limit Benefits and/or Contributions, or impose restrictions on or vary Fund conditions, in order to ensure the Fund gains or retains maximum taxation concessions and any other concessions available to it under the Regulations. The Trustee shall notify any Member who may be affected by such action.

9.5 Forfeiture of Benefits. Any Member or Beneficiary:

- (a) who assigns or charges or attempts to assign or charge any Benefits; or
  - (b) whose Benefits whether by his own act or operation of law become payable to or vested in any other person or organisation; or
  - (c) who for any reason is unable personally to receive or enjoy the whole or any portion of his Benefits or, in the opinion of the Trustee, is incapable of managing his affairs; or
  - (d) who (subject to reasonable enquiries having been made) cannot be located and whose Dependants cannot be located by the Trustee in a five year period after a payment was due to be made to him;
- shall, subject to the Regulations, forfeit further entitlement under the Deed.

The Trustee may hold the forfeited Benefit upon trust and pay it to the Member and/or his Dependants or any one or more of them in such proportions between them and on such terms and at such times as the Trustee in its absolute discretion determines. In lieu of such action the Trustee may, in its absolute discretion, deal with such forfeited Benefit pursuant to Clause 9.6.

9.6 Where full Account not paid. Where, for any reason, no amount or further amount is payable as a Benefit to or in respect of a Member and there remains a balance in that Member's Individual Account(s), the remaining balance of such Account(s) shall, at the sole discretion of the Trustee but subject to the requirements of the Regulations, either be distributed between other Members or transferred to a reserve account for future allocation to Members or be paid to any employer who has contributed to the Fund for the Member or any combination of the foregoing as the Trustee decides.

9.7 Payment to others on behalf of Beneficiaries. When any Beneficiary is under the age of twenty-one years or when in its opinion it would be in the best interests of the Beneficiary, the Trustee may pay all or part of a Benefit to any other person for application on behalf of the Beneficiary and/or to his Dependents and the receipt of the person to whom the Benefit is paid shall be a complete discharge to the Trustee for the payment in respect of that Benefit. The Trustee shall not be bound or concerned to see to the application of the Benefit.

9.8 Benefits not grounds for increasing any claims for damages. The Benefits to which a Member might claim to be entitled to under the Deed shall not be used as grounds for increasing or as a means of assessing damages in any claim made or action brought by a Member against his employer.

9.9 Winding up. Where the Trustee so determines, the Fund shall be wound up and the amount payable in respect of each Member or Beneficiary shall be determined by the Trustee and thereupon be paid or applied in such manner as the Trustee may determine (including transfer to another superannuation or retirement fund) in respect of each such person in complete discharge of the obligations of the Trustee.

9.10 Alterations. The Trustee shall have the power by resolution in writing or by deed to alter, modify or add to any of the provisions of this Deed provided that such alteration does not reduce the obligations as imposed under Clause 2 of the Deed. Any alteration modification or addition so made shall be deemed to have the same effect as if it had been contained in this Deed.

\* \* \* \* \*

**SIGNING SCHEDULE**

**FUND:** Nickmont Superannuation Fund  
c/- E H Larmar & Co  
Riparian Plaza, 71 Eagle St  
Brisbane Qld 4000

**DATE(s):**  
**INITIAL DEED** 31 May 1995  
**SUBSEQUENT VARIATIONS** ----  
the above document(s) referred to as the "Existing Deed"


**AMENDING POWER IN EXISTING DEED:** Clause C12

**TRUSTEE(s):**  Mark Lawrence Dal Pra & Marina Dal Pra

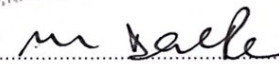
**DATE THIS DEED OF VARIATION EXECUTED:** X 18, June, 2008

In witness of this deed of variation, the individual trustees named above (or, in the case of a corporate trustee, the directors of the trustee company) have executed this document as evidenced by signature hereunder.

  
.....  
Witness

X MD   
.....  
Individual Trustee / Director of Trustee Company \*

  
.....  
Witness

X Marina D.   
.....  
Individual Trustee / Director of Trustee Company \*

.....  
Witness

.....  
Individual Trustee / Director of Trustee Company \*

.....  
Witness

.....  
Individual Trustee / Director of Trustee Company \*


\* Delete one

(A Corporate Trustee may affix its common seal under authority of its directors.)

**Consent to amend the Existing Deed:** Under the terms of the Existing Deed, the following party or parties has to consent to changes to the deed and, by signature hereunder, acknowledges the terms of this deed of variation and gives consent thereto on the date as shown above. Furthermore, it is acknowledged that under this deed of variation, consent to any future changes of the Deed will not be required and any such future changes will be solely determined and executed by the Trustee.

Nickmont Pty Ltd, ACN 064 389 886  
Name of consenting party required  
under the Existing Deed

Principal Employer  
Description of relevant party

X Mark D.   
.....  
Signature(s)