

Project Rex Report

Privileged and Confidential

16 December 2019

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Disclaimer

This report is not intended to be read or used by anyone other than Ashurst Australia (Ashurst) on behalf of its client TerraCom Limited (TerraCom).

We prepared this report solely for Ashurst's use and benefit in accordance with and for the purpose set out in our engagement letter with Ashurst dated 29 August 2019. In doing so, we acted exclusively for Ashurst and its client TerraCom and considered no-one else's interests.

We accept no responsibility, duty or liability:

- To anyone other than Ashurst or TerraCom in connection with this report;
- To Ashurst or TerraCom for the consequences of using or relying on it for a purpose other than that referred to above; and
- We make no representation concerning the appropriateness of this report for anyone other than Ashurst and TerraCom. If anyone other than Ashurst or TerraCom chooses to use or rely on it they do so at their own risk.

This disclaimer applies:

- To the maximum extent permitted by law and, without limitation, to liability arising in negligence or under statute; and
- Even if we consent to anyone other than Ashurst and TerraCom receiving or using this report.

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For the purposes of preparing this report, reliance has been placed on the representations, information and instructions provided to us. We have not sought to verify the accuracy or completeness of the information made available to us, nor have we conducted any procedures in the nature of an audit of the information or assumptions therein in any way, other than has been specifically stated in this report.

Whilst our engagement involved the analysis of financial information and accounting records, it did not constitute an audit in accordance with Australian Auditing Standards or a review in accordance with Australian Auditing Standards applicable to review engagements and accordingly no such assurance is provided in our report.

This report is prepared based on information made available to us up to the date of this report and we reserve the right to amend our opinions, if necessary, based on factual information that comes to our attention after that date.

We recognise that parties named in this report may not fully agree with our interpretation of events, and will be especially sensitive to the extent that our findings appear adverse to them. Parties referred to remain entitled to a presumption of innocence within the usual framework of the legal system.

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1. Executive summary

1.1 Background

The Board of TerraCom engaged Ashurst to provide TerraCom with legal advice on matters arising in relation to a former employee, including allegations of misconduct that the former employee made against TerraCom and certain executives thereof. Ashurst were instructed to carry out an investigation into these allegations. Ashurst engaged PwC on 29 August 2019 on behalf of TerraCom to provide forensic support in connection with the investigation.

PwC were advised that the former employee initially raised concerns to TerraCom through meetings with TerraCom Chief Executive Officer (CEO) Mr Danny McCarthy (Mr McCarthy) and Chief Financial Officer (CFO) Mr Nathan Boom (Mr Boom) on 13 August 2019. PwC were advised that the former employee raised further concerns to Mr McCarthy, directly to Ashurst, and to Mr Craig Ransley following the 13 August meetings, and that the former employee provided Mr Ransley with a number of hardcopy documents¹. The concerns raised by the former employee, along with documents they provided, were provided to PwC by Ashurst in document *Initial Brief to PwC*² along with *Annexures 1*³, *2*⁴, and *3*⁵, and document *Extract of Further Communication from Individual*⁶. A further communication from the former employee⁷ that provided additional information relating to the concerns was also reviewed.

The concerns are summarised below:

Ref.	Summary of concern	Section
3(a)	TerraCom colluded with a third party testing provider to overstate the quality of coal (specifically Net Calorific Value (NCV)) recorded on Commercial Invoices and Certificates of Analysis relating to a significant number of coal shipments.	3.4.2
3(b)	Mr McCarthy was aware of the overstatement of coal quality and had instructed the former employee to continue this practice.	3.4.5
3(c)	The fraudulent overstatement of coal quality was partly concealed through the use of a sub-agent by Noble for the payment of bribes to conceal the purported overstatement, of which TerraCom was aware.	3.4.6

PwC's scope involved meetings with TerraCom in relation to relevant business processes, review of a sample of business records and targeted searches of email correspondence. Further detail regarding the background of the matter, and scope (including scope limitations) and approach followed by PwC is detailed in Section 2.

¹ We have been instructed that the documents provided to Mr Ransley by the former employee included documents referenced elsewhere in this report as REX0003 and REX0004.

² PwC document reference REX0001.

³ PwC document reference REX0002.

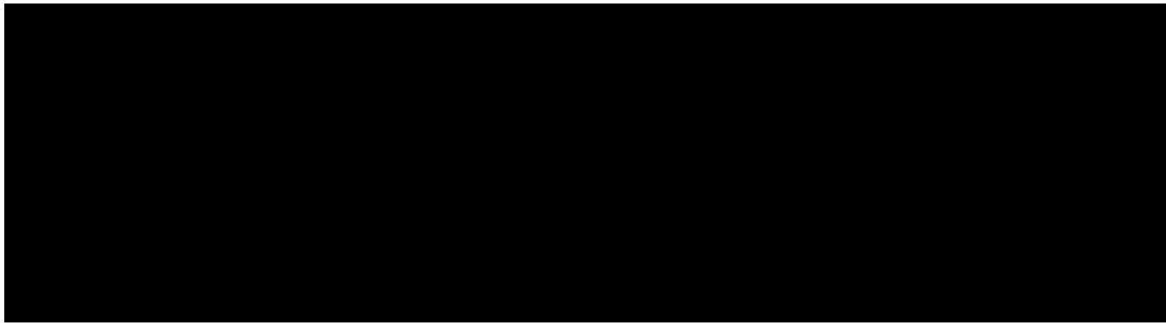
⁴ PwC document reference REX0003.

⁵ PwC document reference REX0004.

⁶ PwC document reference REX0006.

⁷ Email to Ashurst, an extract of which was provided to PwC by email on 24 October 2019.

1.2 Key findings



1.2.3 Concern 3(a)

The former employee advised that details relating to coal quality were fraudulently “*altered to both increase the invoice price and avoid shipment rejection*”⁸.

Documents provided by the former employee relating to two coal shipments show differences in several coal quality measures including NCV. For example, in relation to a coal shipment under a contract with s 47G (1)(a) the former employee provided:

- A Shipping Analysis Report⁹ (dated 17 July 2019), marked “Preliminary” that lists the NCV of the coal tested as s 47G (1)(a)
- An addendum to the related Coal Supply Agreement¹⁰ states that the “Limit of Range” for the NCV is s 47G (1)(a) and
- A Certificate of Analysis¹¹ (dated 17 July 2019) and Commercial Invoice (dated 18 July 2019) that lists the NCV of the coal tested as s 47G (1)(a)

Documents relating to 10 other shipments with similar inconsistencies were identified in email data. In each case, two documents dated on the same date contained different NCV values, and the later document showed a higher value (i.e. a movement in favour of TerraCom). PwC have been advised by TerraCom that coal sampling measurements at different testing points can vary; however, no further information was obtained regarding why there were differences in NCV, and other coal quality measures, between documents dated the same day¹² and issued, in some cases, a few hours apart.

Ashurst invited Mr Tony Garmeister (Mr Garmeister), who was previously employed by TerraCom in the role of General Manager – Commercial, to participate in a meeting with PwC, which he declined. Further consideration could be given to inviting a representative from ALS who is responsible for testing TerraCom coal.

The following email correspondence relating to the testing of TerraCom coal by superintending company ALS was identified through searches of email data:

- An email chain¹³ in July 2018 in which Ms Kerie Miller (Ms Miller, ALS), writing to Mr Tony Garmeister (Mr Garmeister, TerraCom), states “*If they ask for Umpire – this will be interesting as your coal at s 47G (1)(a) and the ash reported does not give that NCV [...] Fingers crossed no umpire sample is requested*”. Mr Garmeister replies “*The reality is that the only one that can ask for some umpire is Noble and they are fully aware of the ins and outs of this one.*”
- In an email¹⁴ in July 2018 regarding the s 47G (1)(a) Ms Miller states “*I have been going thru the moisture and ash checks and have had CV checked at Mackay and Newcastle and these are the best results I can get for this cargo [...] Give me a call please when you are free*”. The Shipping Analysis Report¹⁵ attached to this email

⁸ PwC document reference REX0001, page 3

⁹ PwC document reference REX0003, page 5

¹⁰ PwC document reference REX0003, pages 9 - 11

¹¹ PwC document reference REX0003, page 2

¹² While the documents are dated the same day, neither document explicitly states the date on which the testing was performed.

¹³ Document reference TER.001 051.0070

¹⁴ Document reference TER.001 047.6381

¹⁵ Document reference TER.001 047.6382

states an NCV of s 47G (1)(a) – a further report sent by Ms Miller less than two hours later for the same shipment states an NCV s 47G (1)(a)

Several other emails from ALS to TerraCom which attach a Shipping Analysis Reports refer to potential phone contact with Ms Miller. In each example identified, the email states “call Kerie if you wish to discuss” or similar, and the NCV later invoiced is higher than referenced in the earlier document. Examples include the s 47G (1)(a).

The total invoiced value of the 12 shipments for which inconsistencies have been identified is s 47G (1)(a). Recalculation of these invoice values based on earlier Shipping Analysis Reports gives a total value of s 47G (1)(a). Therefore, the changes in NCV between the earlier Shipping Analysis Reports and the later certified NCV levels give rise to an increase in invoice value of \$1,151,409 over the 12 shipments.

Four shipments totalling s 47G (1)(a) would have been liable for rejection by the customer under their contract terms had they been certified at the lower NCV levels shown on Shipping Analysis Reports. Any potential losses for shipment rejection have not been quantified – PwC were advised that if a shipment was rejected by the intended customer, TerraCom would have had other options to dispose of the coal product and recover some of the lost sale value.

1.2.4 Concern 3(b) and 3(c)

The former employee did not provide documents to support the concern raised and no further information was identified during work performed to date to support the concern. Some correspondence¹⁹ between TerraCom staff identified through review of email data refers to the use of sub-agents in South Korea by Noble, however the correspondence reviewed did not provide indication or awareness of any bribery and / or corruption on the part of such sub-agents.

Further detail regarding the findings is set out in Section 3.

¹⁶ Document reference TER.001.047.8369

¹⁷ Document reference TER.001.045.0565

¹⁸ Document reference TER.001.045.4565

¹⁹ Document reference TER.001.044.2051: In an email chain in March 2018 between Tony Garmeister and Michael Avery (TerraCom), Tony Garmeister states “We already pay a commission to Noble which covers them for all costs to market and sell the coal. We will not finance their extra sub-agents as well.”

2. Scope and approach

2.1 Scope

PwC were instructed by Ashurst²⁰ to:

- Conduct an information gathering meeting with TerraCom advisor Mr Ransley to discuss:

 - TerraCom's processes for measuring coal quality from the point of extraction to delivery; and
 - Request a limited number of key/example documents in relation to these processes.
- Conduct information gathering meetings with Mr McCarthy and Mr Boom to obtain further detail regarding TerraCom's processes and, if necessary, to request further documents.
- Conduct a review of email data, using targeted search terms to identify potentially relevant correspondence and documents.
- Analyse, alongside information gathered from emails, documents provided by TerraCom in respect of a sample of coal shipments.
- Quantify, to the extent possible, the potential impact of the inconsistencies in NCV identified.

2.2 Sources of information

2.2.1 Communications and documents provided by the former employee

PwC were provided information that had been provided by the former employee in support of their concerns. This information consisted of:

- Statements, both summary and verbatim, of the former employee's concerns;
- Further communications from the former employee in which they provided additional detail regarding the concerns raised; and
- Two document packs assembled by the former employee, reportedly from TerraCom's business records, which include:
 - A 'Commercial Invoice' for coal;
 - A certificate of analysis for the product (which makes statements about coal quality);
 - A Shipping Analysis Report, which records information about coal quality;
 - Other shipping documents related to the sale and shipping of coal; and
 - Part of a Coal Sales Agreement or Standard Coal Trading Agreement which each specify certain quality characteristics of coal.

Some of the documents have annotations or highlights that were reportedly made by the former employee to indicate areas/ details of relevance to the concerns raised.

PwC have treated these documents as genuine business records, and have not, to date, sought to independently verify their provenance.

2.2.2 Meetings with TerraCom

PwC conducted information gathering meetings with the following individuals:

- Mr Ransley on 9 September 2019;

²⁰ By email on 5 September 2019 and subsequently on 7 November 2019.

- Mr McCarthy on 11 September 2019 and 15 November 2019; and
- Mr Boom on 12 September 2019 and 20 November 2019.

2.2.3 Documents requested from TerraCom

A full list of documents requested by PwC and received from TerraCom is detailed in *Appendix 1*. Documents relating to transactions not specifically referenced by the former employee were selected by TerraCom.

These include, but are not limited to:

- Agreements with some of TerraCom's third parties;
- Documents relating to the supply of coal, such as contracts, invoices and certificates of analysis; and

PwC were advised by TerraCom that some of the documents requested could not be obtained. These documents are referenced in *Section 3*.

2.2.4 Email data

Email data was obtained by Ashurst from TerraCom's IT provider with respect to the following individuals, for a period from 1 January 2018 to 30 September 2019:

- Mr McCarthy;
- Mr Boom;
- The former employee; and
- Mr Garmeister.

Items from this email data which were responsive to targeted search terms developed by PwC in conjunction with Ashurst were provided to PwC for review.

2.3 Scope limitations

For the purposes of preparing this report, reliance has been placed on the representations, information and instructions provided to us. PwC have not sought to verify the accuracy or completeness of the information made available to us, nor have PwC conducted any procedures in the nature of an audit of the information or assumptions therein in any way, other than has been specifically stated in this report.

PwC conducted analysis of shipments in relation to Concern 3(a). This analysis was limited to shipments for which sufficient information and documents were available, and PwC have not determined whether the limited number of shipments analysed are representative of all shipments during the period.

During the engagement PwC did not have access to:

- The former employee;
- Mr Garmeister, who is no longer employed by TerraCom and declined an invitation from Ashurst to participate in a meeting with PwC;
- TerraCom employees, other than those specifically referenced in Section 2.2.2;
- ALS representative(s);
- Email files for existing TerraCom employees other than those specifically referenced;
- Laptops computers or other information technology (IT) assets for TerraCom employees or the former employee. PwC were advised that the former employee has, to date, not complied with requests from TerraCom to return the laptop and mobile phone issued to them by TerraCom; and
- All documents requested from TerraCom (refer *Appendix 1* for a full listed of documents requested and received).

3. Findings

3.1 Key processes and contextual information

3.1.1 The relationship between TerraCom and Noble

PwC were advised²¹ that TerraCom's relationship with Noble has several dimensions as set out by Ashurst²². It is noted:

- Noble is TerraCom's marketing agent, operating under an exclusivity agreement²³, signed in September 2016, that governs the way TerraCom makes coal sales (both via Noble and to other customers directly);
- Noble is TerraCom's largest customer. More than 40% of coal sales made by TerraCom over the last 18 months were made to Noble; and
- Noble is a major shareholder in TerraCom, currently owning approximately 13% of TerraCom's shares. The proportion of shares held has varied over time, and notably increased in 2017 as part of a debt-equity swap.²⁴

3.1.2 Coal sales and shipping processes

Coal sales and shipping processes through TerraCom's marketing agent Noble are outlined below based on meetings with TerraCom and documents reviewed to date, including a process diagram²⁵ prepared by TerraCom. PwC were advised a similar process is followed for direct sales to other customers. Points at which coal is quality tested (Testing Events) are referenced.

3.1.3 Sales and contracting

- Coal sales are usually initiated by the issue of a tender by a potential customer (for example, by power generation companies in Japan and Korea). The tender will typically specify the quantity of coal required, relevant quality characteristics (such as moisture content and NCV), and will also establish other key contract terms such as delivery dates and demurrage rates payable. These details are not typically negotiated – suppliers, including TerraCom, consider whether to accept the terms offered and then make bids based on pricing of the coal.
- TerraCom typically receives notice of tenders from Noble who acts as their exclusive marketing agent. These tenders are discussed either as they arise or on weekly calls between TerraCom and Noble's sales team.
- *Testing Event 1:* TerraCom's knowledge of its own product quality, drawn from on-site laboratory testing, informs its decision-making with respect to which tenders can be bid for.
- If TerraCom bids for a tender and is successful, Noble contracts with both the end customer and with TerraCom. The deal is structured such that legal ownership of coal first passes from TerraCom to Noble under a contract which specifies the quantity and quality of coal to be delivered.

²¹ Based on discussion with Mr Ransley on 9 September 2019; and document REX0001.

²² PwC document reference REX0001 (Ashurst Brief to PwC).

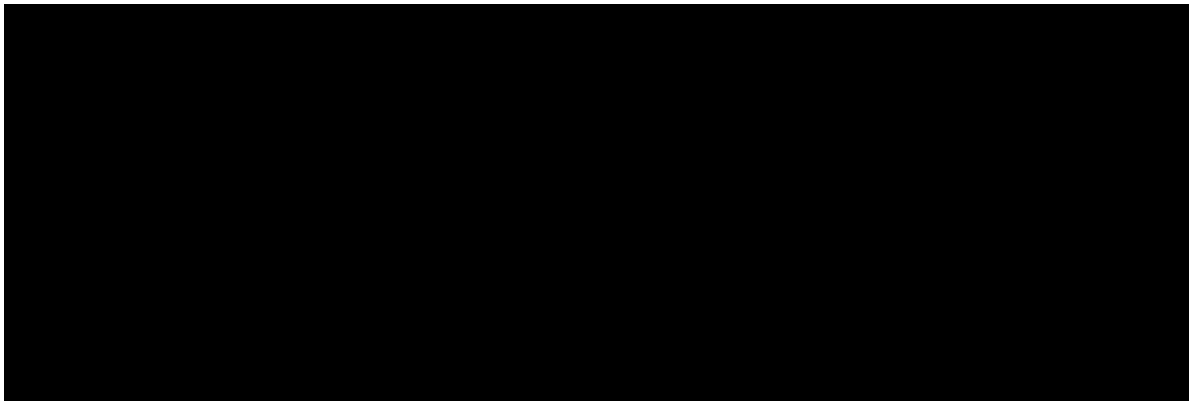
²³ PwC document reference REX0012 (Coal Sale and Marketing Agreement), dated 12 September 2016.

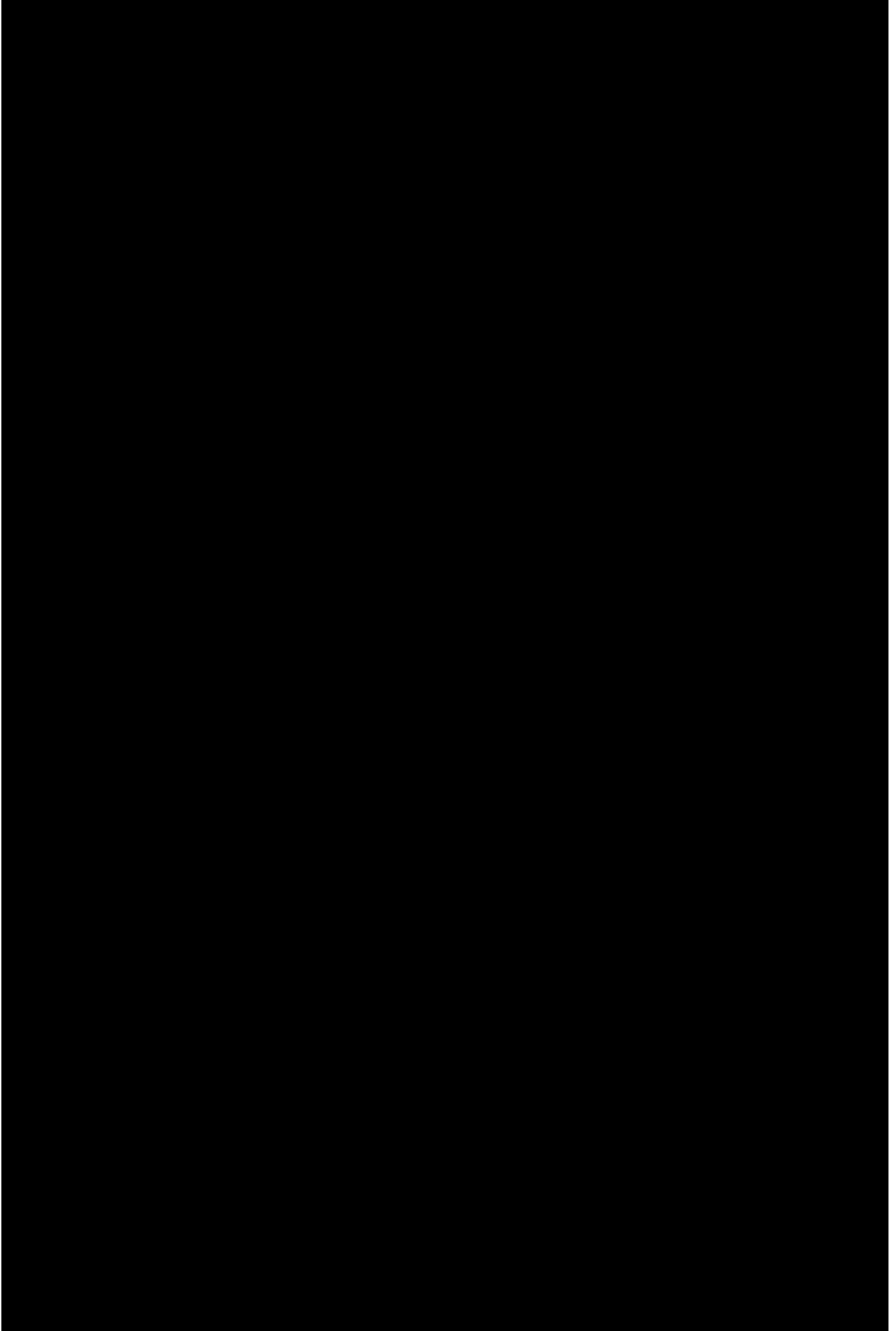
²⁴ As noted in REX0001 (Ashurst Brief to PwC) and TerraCom ASX Announcement 'Balance Restructuring Complete' dated 27 June 2017.

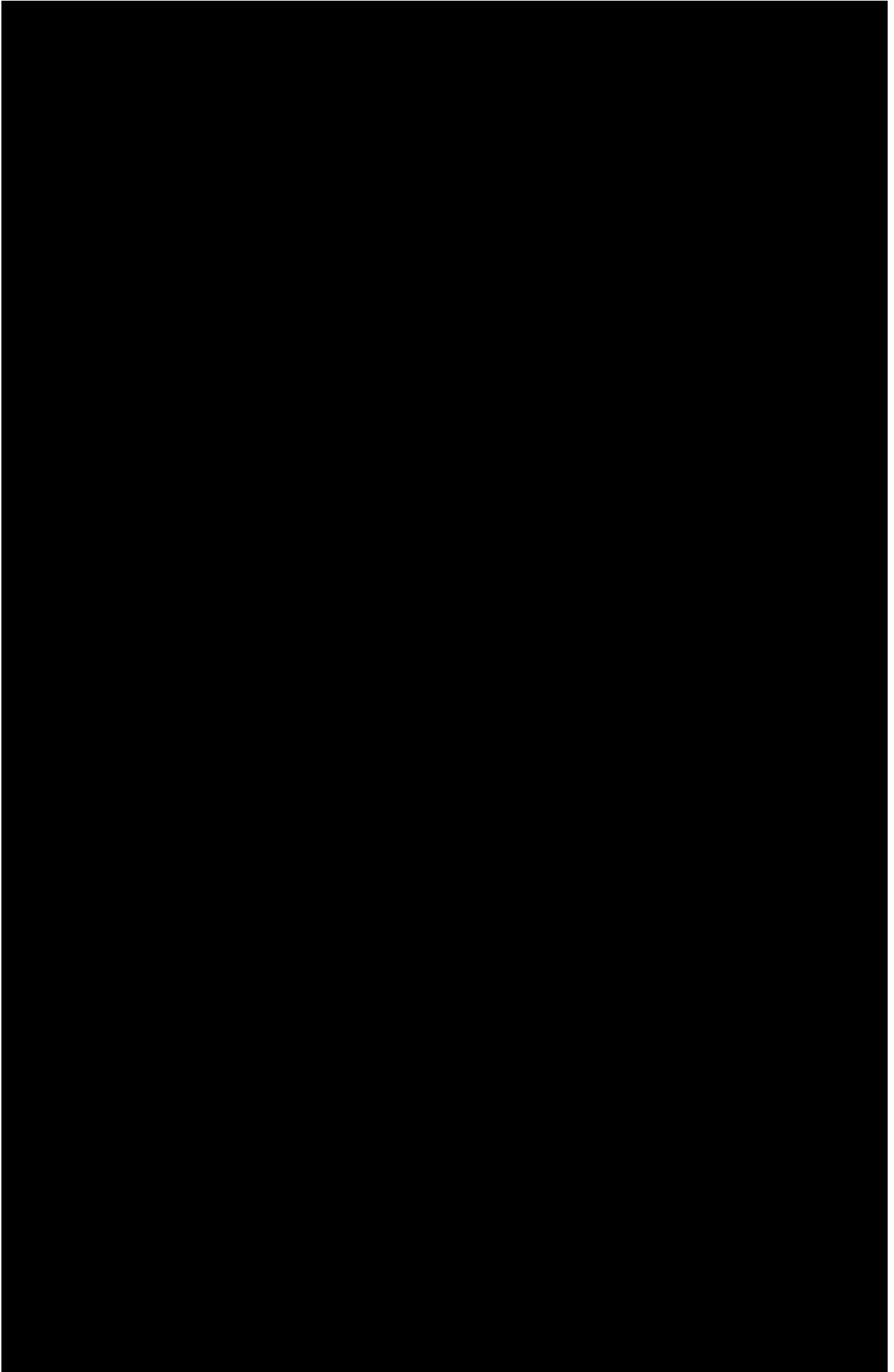
²⁵ PwC document reference REX0005.

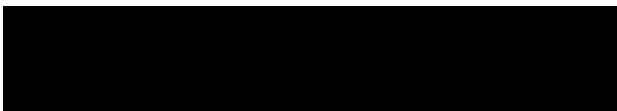
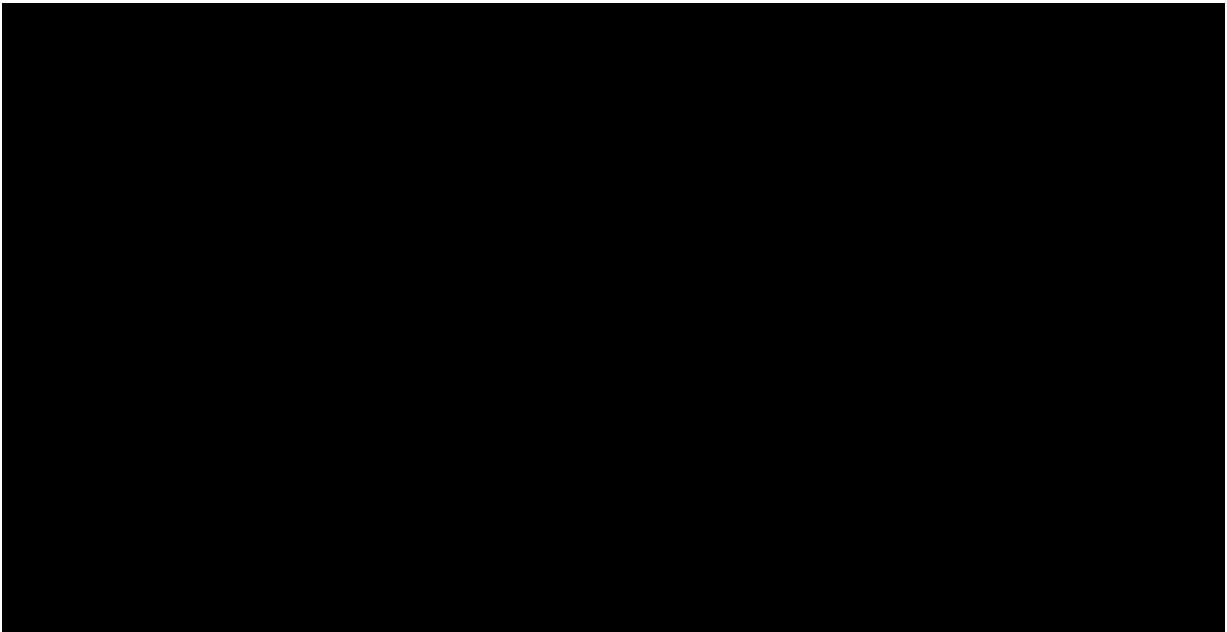
3.1.4 Shipping and demurrage

- *Testing Event 2:* Prior to loading onto a train at the mine site, coal quality is tested by third party service provider ACIRL Quality Testing Services Pty Ltd (ALS). Based on this testing, further processing may be carried out to render the coal suitable for the customer specification.
- Coal is transported via train by a third party logistics provider from TerraCom's mine site to a loading port, where it remains until the arrival of the nominated vessel.
- *Testing Event 3:* ALS take a further preliminary sample of the coal for testing on its arrival at port (the 'inbound sample'). During the time the coal spends at the port waiting to be loaded, its measured quality characteristics may change (for example, by being sprayed with water or by virtue of being exposed to the atmosphere for an extended period).
- *Testing Event 4:* Prior to loading onto the nominated vessel, coal quality is tested again by ALS (the 'outbound sample'). On the basis of this sample a Certificate of Analysis is issued by ALS to TerraCom which includes statements about various quality measures (including NCV). Adjustments to the coal price are made on the basis of the actual quality delivered via a mechanism set out in the Coal Supply Agreement. On some occasions at this point an 'umpire sample' may be taken which is retained in sealed containers if required for later testing.
- The coal is then loaded onto the nominated vessel, at which point legal ownership transfers to the purchaser (such as Noble) under the Coal Supply Agreement.
- The vessel transports the coal to the customer's nominated port. If the ship deviates from its scheduled arrival, loading or departure times then demurrage (a standardised rate of liquidated damages) may be payable to the customer by the seller (such as Noble) under the terms of the Coal Supply Agreement.
- *Testing Event 5:* When the coal is unloaded at the receiving port, the customer may also conduct their own testing in order to assure that the quality of the coal delivered meets the specification agreed. If the customer's testing demonstrates that the coal supplied is below an agreed threshold for acceptance, the customer may choose to reject the shipment.









3.4 Statements made by TerraCom regarding the quality of coal

3.4.1 Concerns raised by the former employee

In Concern 3,³⁶ the former employee states that “a significant number of shipment qualities were altered to both increase the invoice price and avoid shipment rejection to South Korean government owned companies.” The concern raised in this area has several aspects which are detailed in correspondence between the former employee and Ashurst³⁷, namely:

- a) That the Net Calorific Value of coal supplied by TerraCom has been fraudulently overstated on Commercial Invoices and Certificates of Analysis³⁸ and that this was carried out by the company responsible for the production of certificates (PwC were advised this company is ALS);
- b) That Mr McCarthy was aware of the practice, and instructed the former employee to continue it, suggesting that the former employee might have their employment terminated if they did not do so; and
- c) That Noble, and a South Korean sub-agent employed by Noble, were aware of the practice and had paid bribes to individuals at TerraCom’s ultimate customers to ensure no action was taken.

Concerns raised by the former employee, if verified, would indicate quality testing controls at two key points (as detailed in Section 3.1.4 – at the loading port and on customer receipt) have been intentionally circumvented.

3.4.2 Overstatement of Net Calorific Value on Commercial Invoices and Certificates of Analysis

As noted in Section 3.1 PwC were advised that testing of coal quality at various stages in the process is a key control – particularly those tests performed immediately prior to ship loading, and upon receipt of the coal by the end customer. PwC were advised that ALS carry out tests of TerraCom coal in Australia in labs located at the loading port. It is these tests (Testing Event 4 in 3.1 above) which are the basis for the Certificate of Analysis documents, which in turn are a key input into pricing calculations for coal invoices.

The Certificate of Analysis states the NCV of the coal tested. PwC were advised³⁹ that this value can vary over time as coal is transported from mine site to the customer, and that the value stated on the Certificate of Analysis is as at the time of testing at the point the coal is loaded onto the vessel. In documents provided by the former employee for two examples⁴⁰ there are Shipping Analysis Reports. These documents are on ALS letterhead and detail the same set of coal quality measures as the Certificate of Analysis. The Shipping Analysis Reports are marked “Preliminary” and are dated, in each case, the same day as the Certificates of Analysis.

Example 1: s 47G (1)(a)

In the first example⁴¹ provided by the former employee, the NCV recorded on the Shipping Analysis Report is s 47G (1)(a), while the NCV recorded on the Certificate of Analysis (and the Commercial Invoice) is higher, at s 47G (1)(a).

The former employee has drawn attention, with annotations, to the difference in NCV. The documents from the former employee include a contract Addendum⁴² agreed between Noble and the ultimate customer s 47G (1)(a). This states that the “Limit of Range” for coal to be supplied under the agreement in respect of NCV is s 47G (1)(a). This level is higher than the level reported in the Shipping Analysis Report but lower than that reported on

³⁶ The text here is summarised from REX0001 (Ashurst Brief to PwC) paragraph 2.6, except quoted passages which are reproduced verbatim.

³⁷ As set out in Ashurst’s ‘Project Rex - Brief to PwC’ (PwC document reference REX0001) and in ‘Extract of Further Communication from Individual’ (PwC document reference REX0006).

³⁸ As indicated by annotations on the document packs (PwC document references REX0003 and REX0004).

³⁹ In PwC discussion with Mr McCarthy on 11 September 2019.

⁴⁰ PwC document references REX0003 and REX0004.

⁴¹ PwC document reference REX0003.

⁴² PwC document reference REX0003, pages 9 – 11.

the Certificate of Analysis. The former employee has stated that this difference is due to the fraudulent alteration of the Certificate of Analysis by ALS at TerraCom's request.

Example 2: s 47G (1)(a)

In the second example⁴³ provided by the former employee, the NCV recorded on the Shipping Analysis Report is s 47G (1)(a) while the NCV recorded on the Certificate of Analysis (and the Commercial Invoice) is higher, at s 47G (1)(a).

The former employee has drawn attention, with annotations, to the difference in NCV. The documents from the former employee include a Standard Coal Trading Agreement⁴⁴ between TerraCom (seller) and s 47G (1)(a). This agreement states that the "Rejection" level for coal to be supplied under the agreement in respect of NCV is s 47G (1)(a). This level is higher than the level reported in the Shipping Analysis Report but lower than that reported on the Certificate of Analysis. The former employee has stated that this difference is due to the fraudulent alteration of the Certificate of Analysis by ALS at TerraCom's request.

Other transactions reviewed

PwC sought to identify whether the differences highlighted by the former employee in the examples above were present with respect to other shipments. TerraCom have stated that 'Shipping Analysis Reports' similar to those referenced by the former employee are not held on file alongside other shipment related documents, and therefore the only likely source of such documents is email correspondence.

PwC reviewed more than 4,500 items of email correspondence and documents, identified using targeted search terms. The correspondence reviewed contained references to at least 38 shipments, but Shipping Analysis Reports were identified for only 14 of these. As such, further analysis was limited to these 14 shipments. PwC have not determined whether these shipments are representative of all shipments during the period.

Where Shipping Analysis Reports have been identified, PwC compared the NCV stated on the Shipping Analysis Report to the NCV on Certificates of Analysis and Commercial Invoices issued to TerraCom's customers. Of the 14 shipments for which this comparison could be made, there are 12 which show inconsistencies between these documents.

In each case, PwC identified a Shipping Analysis Report in which the stated NCV is lower than the NCV ultimately invoiced. In 9 of these 12 cases, there is more than one Shipping Analysis Report, with an earlier report showing a lower value. The higher NCV in the later report is the level invoiced. The table below summarises these 12 shipments.

Shipment name	NCV recorded on earlier Shipping Analysis Report	NCV recorded on later Shipping Analysis Report	NCV on which invoice is based
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s 47G (1)(a)

⁴³ PwC document reference REX0004.

⁴⁴ PwC document reference REX0004, pages 7 – 10.

There are two shipments (s 47G (1)(a)) for which no NCV inconsistencies were identified - all Shipping Analysis Reports located in email correspondence equate to the Commercial Invoices issued.

Further communication from the former employee

Ashurst provided⁴⁵ PwC with an extract from communications with the former employee which referred to nine shipments that the former employee stated, “both Noble and TerraCom Limited have defrauded”. Included in the communication was a table of the shipment names with statements regarding “Actual CV (NAR)” and “Fraudulently reported CV (NAR)”. The former employee did not supply documentation in support of their statements; however, four of the nine shipments (see Note 3 to the table below) were reviewed by PwC based on documents obtained from TerraCom and from the email review.

Documentation relating to the five remaining shipments was not obtained and were therefore not available for further analysis.

Correspondence between TerraCom and ALS

The following email correspondence relating to the testing of TerraCom coal by superintending company ALS was identified through searches of email data:

- An email chain⁴⁶ in July 2018 in which Ms Miller (ALS), writing to Mr Garmeister (TerraCom), states “If they ask for Umpire – this will be interesting as your coal at s 47G (1)(a) and the ash reported does not give that NCV [...] Fingers crossed no umpire sample is requested”. Mr Garmeister replies “The reality is that the only one that can ask for some umpire is Noble and they are fully aware of the ins and outs of this one.”
- In an email in July 2018 regarding the s 47G (1)(a), Ms Miller states “I have been going thru the moisture and ash checks and have had CV checked at Mackay and Newcastle and these are the best results I can get for this cargo [...] Give me a call please when you are free”. The Shipping Analysis Report attached to this email states an NCV of s 47G (1)(a) – a further report sent by Ms Miller less than two hours later states an NCV s 47G (1)(a).
- Several other emails from ALS to TerraCom, which attach Shipping Analysis Reports, refer to potential phone contact with Ms Miller. In each example identified, the NCV later invoiced is higher than that stated in the attached Shipping Analysis Report:
 - An email⁴⁷ regarding the s 47G (1)(a) in May 2018 states “Please call Kerie on her Mobile if you wish to discuss.”
 - An email⁴⁸ regarding the s 47G (1)(a) in July 2018 states “Please ring me to discuss the results for this vessel”.
 - An email⁴⁹ regarding the s 47G (1)(a) in May 2019 states “Please call Kerie if you wish to discuss.”
- An email⁵⁰ in September 2019 from Ms Rebekah Norman (Ms Norman, ALS) to Mr McCarthy states “Please find attached Re-Prep results for the s 47G (1)(a) [...] Kerie will send you a text.” The reply from Mr McCarthy states “No need for Kerie to contact me, please issue CoA as presented”. No inconsistency was identified for this vessel.

Mr McCarthy and Mr Boom advised they were unaware whether the potential phone contact referenced in the instances above took place.

3.4.3 Quantifying the potential impact of differences identified

The sales contracts for the shipments listed in the table above include a formula for adjustment to the coal price based on the NCV certified for the shipment. This adjustment is based on a ‘guaranteed level’ for NCV, and the price may be adjusted to reflect the NCV being higher or lower than this guaranteed level.

⁴⁵ By email on 24 October 2019

⁴⁶ Document reference TER.001 051.0070

⁴⁷ Document reference TER.001 045.0565

⁴⁸ Document reference TER.001 047.8369

⁴⁹ Document reference TER.001 045.4565

⁵⁰ Document reference TER.001 005.2918

Where inconsistencies in NCV were identified between documents, PwC have calculated the coal price based on formulae in the relevant contracts for:

- (A) The NCV indicated on the Commercial Invoice issued to TerraCom's customer, in order to validate the calculation method used; and
- (B) The lower NCV identified on Shipping Analysis Reports, in order to evaluate the impact of the inconsistencies on invoice value.

In each case, recalculation (A) of the invoice price produced a value which equalled the amounts invoiced by TerraCom⁵¹. The recalculations are summarised in the table below:

Shipment name	NCV on which invoice is based	(A) Invoice price	NCV recorded on earlier SAR	(B) Recalculated price based on SAR	Difference (A – B)	Notes
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s 47G (1)(a)

3.4.4 Key finding – concern 3(a)

The concerns raised by the former employee referred to a pattern of inconsistencies in NCV between internal Shipping Analysis Reports and the Commercial Invoices issued to customers, which the former employee attributed to fraud by TerraCom. PwC have identified similar inconsistencies, in TerraCom's favour, in relation to 10 further shipments. Communications between TerraCom and testing provider ALS regarding these shipments were identified; however, the underlying reason for these inconsistencies could not be determined from the correspondence reviewed or through discussions with TerraCom. Ashurst invited Mr Garmeister (who is no longer employed by TerraCom) to participate in a meeting with PwC, which he declined. Further consideration could be given to inviting a representative from ALS who is responsible for testing TerraCom coal.

The total invoiced value of the 12 shipments for which inconsistencies have been identified is s 47G (1)(a). Recalculation of these invoice values based on earlier Shipping Analysis Reports gives a total value of s 47G (1)(a). Therefore, the changes in NCV between the earlier Shipping Analysis Reports and the later certified NCV levels give rise to an increase in invoice value of \$1,151,409 over the 12 shipments.

⁵¹ With respect to one ship – the s 47G (1)(a) – there was a difference of s 47G (1)(a) between the actual invoice value and PwC's recalculated value. This appears to be due to rounding of the final invoice amount for this shipment only.

Four shipments totalling **s 47G (1)(a)** would have been liable for rejection by the customer under their contract terms had they been certified at the lower NCV levels shown on Shipping Analysis Reports. Any potential losses for shipment rejection have not been quantified – PwC were advised that if a shipment was rejected by the intended customer, TerraCom would have had other options to dispose of the coal product and recover some of the lost sale value.

3.4.5 Mr McCarthy's awareness of, and instructions relating to, the purported overstatement

PwC's scope in relation to this concern has been limited to the review of email communications – as noted above PwC did not have access to the former employee to obtain further details of the conversations which they state took place. These conversations reportedly took place verbally, and PwC have not been made aware of any documentation or other evidence (either from the former employee or TerraCom) to substantiate the concerns.

Review of email communications between Mr McCarthy, Mr Boom and relevant third parties, such as ALS, using targeted search terms did not identify any indications that Mr McCarthy was responsible for any potential misstatement of coal quality. Correspondence with respect to coal testing and related practices reviewed was primarily between the former employee (and Mr Garmeister prior) and ALS and did not typically involve Mr McCarthy.

3.4.6 The use of a sub-agent by Noble to pay bribes to conceal the purported overstatement

As noted in Section 3.1.4 (Testing Event 5) PwC were advised that the testing of coal on receipt by TerraCom's ultimate customers would result in any potential misstatement with respect to quality (however it may occur) to be detected and action potentially taken by the customer. The former employee stated that this control was in some instances circumvented *"because the company's sales agent employed a sub-agent in South Korea who paid bribes to customers not to take action"*⁵². The former employee further stated that *"TerraCom was aware that the sub-agent was employed by our agent."*⁵³ The former employee did not provide documents in support of these statements.

PwC were advised that:

- TerraCom does not use any agents or intermediaries (other than Noble as its marketing agent) in dealing with any of its customers, and does not have any contact with any such agents if they are employed by Noble.⁵⁴
- TerraCom does not have any relationship or contact with the ultimate customers for coal sold through Noble.⁵⁵

3.4.7 Key finding – concern 3(b)

The former employee did not provide documents to support the concern raised and no further information was identified during work performed to support the concern.

3.4.8 Key finding – concern 3(c)

The former employee did not provide documents to support the concern raised and no further information was identified during work performed to date to support the concern. Some correspondence⁵⁶ between TerraCom staff refers to the use of sub-agents in South Korea by Noble, however the correspondence reviewed did not provide indication or awareness of any bribery and / or corruption on the part of such sub-agents.

⁵² Stated in REX0006 (Extract of Further Communication from Individual).

⁵³ Stated in REX0006 (Extract of Further Communication from Individual).

⁵⁴ Stated in discussion with Mr Ransley on 9 September 2019 and with Mr McCarthy on 11 September 2019.

⁵⁵ Stated in discussion with Mr Ransley on 9 September 2019 and with Mr McCarthy on 11 September 2019.

⁵⁶ Document reference TER.001.044.2051: In an email chain in March 2018 between Tony Garmeister and Michael Avery (TerraCom), Tony Garmeister states *"We already pay a commission to Noble which covers them for all costs to market and sell the coal. We will not finance their extra sub-agents as well."*

Appendices

Contents

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Appendix 2: Overview of available NCV data

Appendix 3: Schedule of shipments analysed

Appendix 4: Quantification calculation summary

Appendix 1: Listings of documents requested and received

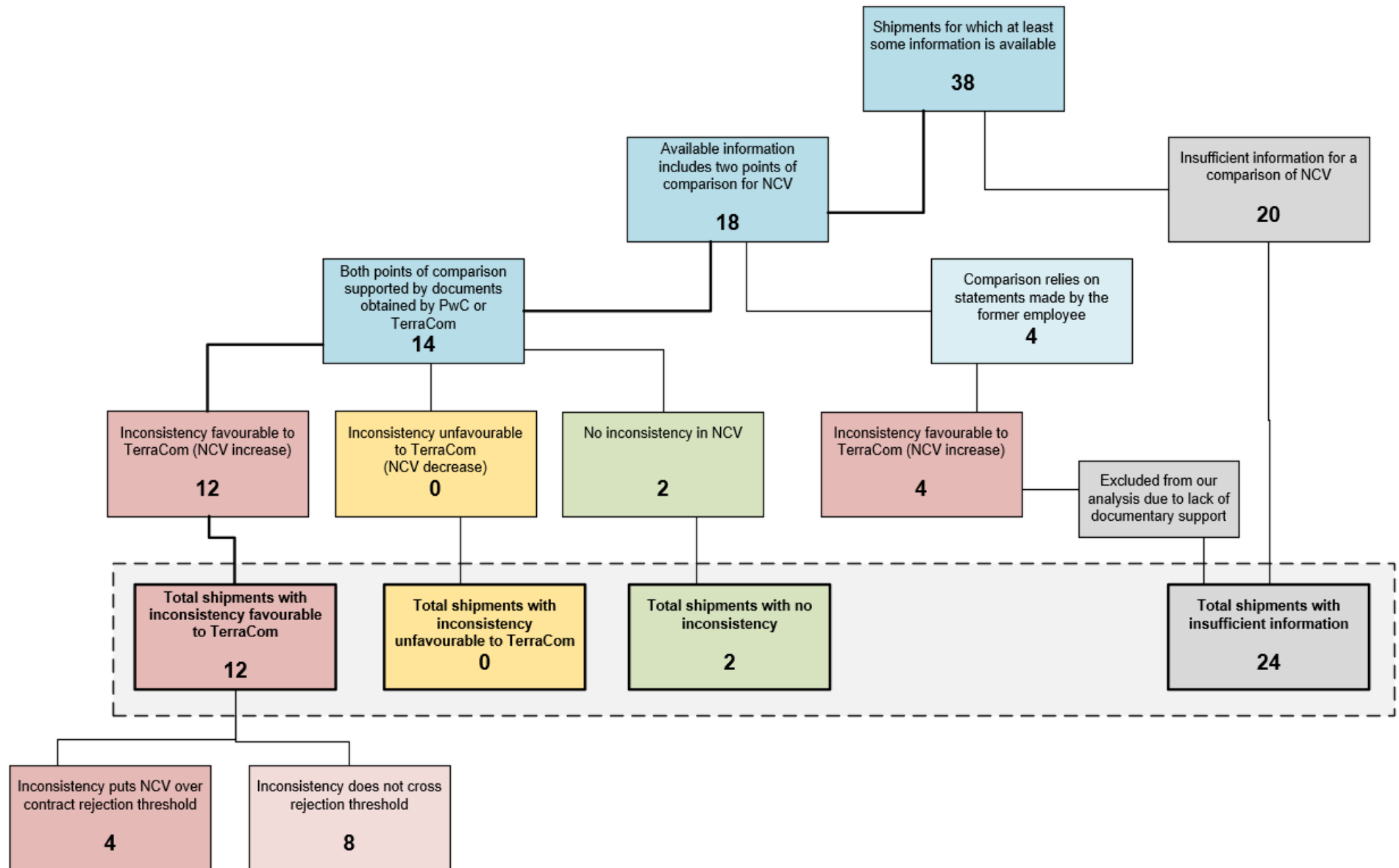
Appendix 1.1: Documents requested

Ref	Description	Documents provided
R001	The general form contract with Noble (referred to in Ashurst's memorandum to PwC at 2.2(a)).	REX0008 REX0009 REX013
R002	Two examples of sales contracts relating to sales made through Noble, including supporting documents (such as coal certificate, invoice(s), shipping manifests if relevant etc.)	REX0007.1 REX0007.2 REX0010.1 REX0010.2
R003	The marketing agreement with Noble (with reference to exclusivity arrangements) if different from item (1).	REX0011
R004	The general form contract with s 47G (1)(a) or an example of a sales contract, if no general form contract exists).	REX0013
R005	Two examples of invoices for demurrage (incurred on sales made via Noble), dated prior to June 2019 (i.e. before the period where TransCoal was engaged to provide logistics support). Please also include any supporting documentation provided by Noble, or prepared by TerraCom, in the process of agreeing the demurrage payable.	REX0014.1 REX0014.2 REX0015.1 REX0015.2 REX0015.3 REX0016.1 REX0016.2
R006	Two examples of invoices for demurrage (incurred on sales made via Noble), dated in July - September 2019 (i.e. during the period where TransCoal was engaged to provide logistics support). Please also include any supporting documentation provided by Noble or TransCoal, in the process of agreeing the demurrage payable.	REX0017 REX0018 REX0019 REX0020 REX0021 REX0022
R007	Contract or other document(s) which cover the contractual arrangements between TerraCom and ALS with respect to coal testing.	REX0028
R008	Contract or other document(s) which cover the contractual arrangements between TerraCom and TransCoal with respect to the logistics support provided by TransCoal.	REX0029 REX0030
R009	The complete shipping files, to the extent held by TerraCom, for the two transactions already provided as examples by TerraCom (invoices BA0085 and BA0076). In particular we are seeking the "Shipping analysis report" documents for these transactions (similar to the documents which appear in the document packs provided by the former employee).	Documents not provided to date
R010	The Invoices, Certificates of Analysis and Shipping Analysis Report for the transaction(s) referred to in point 6 of the further communication from the former employee, namely those relating to s 47G (1)(a) or around 8th August 2019.	REX0023 REX0024 REX0025 REX0026 REX0027 REX0033 REX0034
R011	Two examples of coal invoices (and associated certificates of origin) for coal shipments where coal from Blair Athol was blended with coal from another supplier.	REX0031 REX0032 REX0035
R012	Document packs, to the extent not already provided, consisting of invoices and certificates for the following ships: s 47G (1)(a) s 47G (1)(a)	Various

Appendix 1.2: Documents received

Ref	Description	Information request ref.
REX0001	Brief to PwC - Memorandum	N/A
REX0002	Brief to PwC - Annexure 1 (Extract of communications)	N/A
REX0003	Brief to PwC - Annexure 2 (Noble document bundle)	N/A
REX0004	Brief to PwC - Annexure 3 (s 47G (1)(a) document bundle)	N/A
REX0005	Sampling flowchart image	N/A
REX0006	Brief to PwC - Extract of further communication from individual	N/A
REX0007.1	Email attaching documents for coal transaction (s 47G (1)(a))	R002
REX0007.2	Commercial invoice and document pack (s 47G (1)(a))	R002
REX0008	Example coal supply agreement and addenda	R001
REX0009	Example coal supply agreement and addenda	R001
REX0010.1	Email attaching documents for coal transaction (s 47G (1)(a))	R002
REX0010.2	Commercial invoice and document pack (s 47G (1)(a))	R002
REX0011	Amendment agreement between TerraCom and Noble	R003
REX0012	Coal Sale and Marketing Agreement between TerraCom and Noble	R003
REX0013	Standard Coal Trading Agreement Transaction Summary - TerraCom and (s 47G (1)(a))	R004
REX0014.1	Example of email correspondence regarding demurrage / lay time calculation	R005
REX0014.2	Lay time calculation document on QML Services header	R005
REX0015.1	Example of email correspondence regarding demurrage / lay time calculation	R005
REX0015.2	Lay time calculation document on Noble header	R005
REX0015.3	Supporting document for lay time calculation	R005
REX0016.1	Example of email correspondence regarding demurrage / lay time calculation	R005
REX0016.2	Lay time calculation document on QML Services header	R005
REX0017	Example of email correspondence regarding demurrage / lay time calculation	R006
REX0018	Example of email correspondence regarding demurrage / lay time calculation	R006
REX0019	Example of email correspondence regarding demurrage / lay time calculation	R006
REX0020	Example of email approval of demurrage / lay time calculation	R006
REX0021	Example of email correspondence regarding demurrage / lay time calculation	R006
REX0022	Example of email approval of demurrage / lay time calculation	R006
REX0023	Correspondence regarding demurrage calculation for MV (s 47G (1)(a))	R010
REX0024	Correspondence regarding demurrage calculation for MV (s 47G (1)(a))	R010
REX0025	Correspondence regarding demurrage calculation for MV (s 47G (1)(a))	R010
REX0026	Correspondence indicating approval regarding demurrage calculation for MV (s 47G (1)(a))	R010
REX0027	Correspondence indicating agreement regarding demurrage calculation for MV (s 47G (1)(a))	R010
REX0028	Email detailing relationship between TerraCom and ALS / ACIRL Quality Testing Services Pty Ltd	R007
REX0029	Proposal regarding scope of logistics support to be provided to TerraCom by TransCoal	R008
REX0030	Correspondence regarding scope of logistics support to be provided to TerraCom by TransCoal	R008
REX0031	Example of invoice and certificate of analysis (s 47G (1)(a))	R011
REX0032	Example of invoice and certificate of analysis (s 47G (1)(a))	R011
REX0033	Credit note adjustment in respect of (s 47G (1)(a))	R010
REX0034	Example of invoice and certificate of analysis (s 47G (1)(a))	R010
REX0035	Example of invoice and certificate of analysis (s 47G (1)(a))	R011
Various	Supporting documents (invoices and certificates) in respect of the following ships (s 47G (1)(a)) (s 47G (1)(a))	R012

Appendix 2: Overview of available NCV data



Appendix 3: Schedule of shipments

Ship name	Sales contract		Earlier Shipping Analysis Report			Later Shipping Analysis Report			Commercial invoice			Differences	
	Guaranteed NCV	Rejection NCV	Document reference	Report date	Reported NCV	Document reference	Report date	Reported NCV	Invoice number	Invoice date	Invoiced NCV	NCV difference	NCV % difference
S 47G (1)(a)													

Appendix 4: Quantification calculation summary

Shipment name	Rejection or minimum level per contract	NCV on Shipping Analysis Report (SAR)	NCV on invoice	Rejection threshold crossed	Invoiced amount	Recalculation of invoice amount	Invoiced amount vs recalculation	Recalculation based on NCV from SAR	Invoice value where rejection threshold crossed	Invoice actual vs calculation based on SAR	Notes
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S 47G (1)(a)