

PURCHASE ORDER CONDITIONS

Supply of Services



1. INTERPRETATION

The following terms apply to this Purchase Order:

- (a) Contractor means the entity providing the Services;
- (b) Hourly Rates means the rate structure, if specified, in Description & Part Number column or the Unit Price column of this Purchase Order
- (c) MMO means Murrin Murrin Operations Pty Ltd (ABN 43 076 717 505) of Level 4, 30 The Esplanade, Perth in the State of Western Australia acting as the agent for Murrin Murrin Holdings Pty Ltd ACN 073 405 562 and Glenmurrin Pty Ltd ACN 076 684 396 in respect of their participating interests in the Murrin Murrin Nickel Cobalt Joint Venture
- (d) Price means the price in the Total Price column detailed in the Purchase Order form to which these Purchase Order Conditions are attached.
- (e) Purchase Order means the agreement between MMO and the Contractor that consists of these Purchase Order Conditions; the Purchase Order form to which these Purchase Order Conditions are attached; MMO's Health, Safety & Environment Contractor's Requirements; and any other documents specified in the Purchase Order form.
- (f) Services means the services or a combination of goods and services described in the Description & Part Number column of the Purchase Order form to which these Purchase Order Conditions are attached.
- (g) Site means the Murrin Murrin Nickel Cobalt Plant
- (h) Term means the period from the Commencement Date to the Date/s for Completion
- (i) The terms Commencement Date and Date for Completion have the meaning ascribed to them in the Purchase Order form to which these Purchase Order Conditions are attached.

2. CARRYING OUT THE SERVICES

The Contractor must:

- (a) commence the Services by the Commencement Date and:
 - (i) where the Purchase Order specifies a Date for Completion, bring the Services to Completion by the Date for Completion; or
 - (ii) where the Purchase Order specifies a Term, perform the Services for the Term;
- (b) properly and diligently execute the Services with the degree of skill, care and competence expected of a skilled tradesman, technical or professional person experienced in performing the same or similar work;
- (c) perform the Services in accordance with good engineering practice, to MMO's reasonable satisfaction and in accordance with the Purchase Order;
- (d) carry out all directions from MMO; and
- (e) comply with the Health, Safety and Environment Contractor's Requirements.

3. PAYMENT BY MMO

3.1 Where the Purchase Order specifies a Price, the Price will be the Contractor's total entitlement for the provision of the Services. If the Purchase Order does not specify a Price (or only specifies an estimated Price), then the Contractor will be paid in accordance with the Hourly Rates set out in the Purchase Order.

3.2 The Contractor must provide to MMO a payment claim (in the form of a tax invoice) for payment of the Services in a form acceptable to MMO at the following times:

- (a) where the Purchase Order specifies a Date for Completion, within 7 days of the Date of Completion (as defined in clause 11(b)); or

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(b) where the Purchase Order specifies a Term, monthly (unless otherwise agreed between MMO and the Contractor).

- 3.3 All invoices provided by the Contractor to MMO must be marked to the attention of MMO accounts payable and sent to PO Box Z5523 St George's Tce Perth WA 6831 or emailed to accountspayable@minara.com.au.
- 3.4 Subject to any dispute in relation to the amount claimed, invoices will be paid within 10 days after the end of the month following the month in which the invoice is received.
- 3.5 If MMO disputes any amount purportedly owed by it to the Contractor under the Purchase Order, MMO must nevertheless pay the amount (if any), which is not disputed, and notify the Contractor of the amount in dispute and the reasons for disputing the amount. The Contractor must provide a credit invoice for the amount in dispute.
- 3.6 Without limiting any other right or remedy MMO may have under the Purchase Order, any debt owing by the Contractor to MMO, or any claim which MMO may have against the Contractor in connection with the Purchase Order, may be deducted from moneys otherwise payable to the Contractor under the Purchase Order.
- 3.7 Where the Services are to be provided for a Term or for a Price, the Contractor shall not provide Services beyond the expiration of the Term and will not be entitled to payment exceeding the Price without obtaining MMO's prior written approval.

4. PLANS

If Services are to be provided at the Site, the Contractor shall, within 7 days of any request by MMO, provide to MMO for MMO's approval:

- (a) an environmental management plan;
- (b) a quality assurance plan; and
- (c) a health and safety plan,

which shall include the requirements set out in the Requirements for Plans, and such other plans as MMO may require from time to time.

5. VARIATIONS TO THE SERVICES

- 5.1 MMO may at any time vary the Services by giving notice in writing to the Contractor.
- 5.2 If MMO varies the Services, then the parties will endeavour to agree on any adjustment to the Price or other fee payable under the Purchase Order. If both parties do not agree to the cost of the variation within 7 days then clause 5.3 will apply.
- 5.3 If the parties cannot agree on the cost of the variation, MMO will make a valuation. The valuation will be based on the Hourly Rates, or if no Hourly Rates are specified, on reasonable rates.

6. COMPLIANCE WITH STATUTORY REQUIREMENTS

- 6.1 The Contractor must comply, at its own cost, with all applicable legislation, the Contractors' Requirements Manual and statutory requirements of any authority having jurisdiction over the Services. Where applicable, the Services will comply with the Building Code of Australia.
- 6.2 The Contractor warrants that it has the approval of any relevant authority or professional body to carry out the Services (including without limitation any required licence or accreditation).
- 6.3 The Contractor will be responsible for all occupational safety and health and industrial relations issues.
- 6.4 Where the Services are carried out on the Site, the Contractor shall comply with all directions of the registered manager under the Mines Safety & Inspection Act 1994.

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7. CONFIDENTIAL INFORMATION

The Contractor must not, at any time, without the consent of MMO, divulge to any person any information concerning the Purchase Order or the operations, dealings, transactions, contracts or commercial affairs of MMO.

8. STANDARD OF SERVICES

- 8.1** If at any time the Services, or any materials or goods used by the Contractor in connection with the Services, are not in accordance with the Purchase Order, MMO may direct the Contractor to replace, correct, remove or vary it at no cost to MMO. If the Contractor fails to comply with the direction to MMO's satisfaction, MMO may engage others to carry out the work, the cost of which shall be a debt due from the Contractor to MMO.
- 8.2** Alternatively, MMO may accept the work, materials or goods and MMO's estimate of the amount of any loss suffered by MMO shall be a debt due from the Contractor to MMO.

9. DESIGN

The Contractor must ensure that any design, program or plan prepared by it will:

- (a) be fit for its intended purpose;
- (b) be efficient and economical to use;
- (c) meet any statutory requirements and the requirements of the Purchase Order; and
- (d) not infringe any industrial or intellectual property rights.

10. WARRANTIES

- 10.1** The Contractor must obtain all product warranties and other warranties required by the Purchase Order. The warranties must be obtained in MMO's name, validly assigned to MMO or, if this is not possible, held by the Contractor on behalf of MMO and enforced by the Contractor to ensure that MMO obtains the benefit of warranties.
- 10.2** Should the Contractor supply goods as part of this Purchase Order the Contractor warrants to MMO in respect of the goods that:
- (a) If the goods are found to be defective for any reason within the warranty period specified in the Purchase Order (or if no such period is specified the warranty period will be two years from the Date of Completion) (the "Warranty Period"), MMO will be entitled to return the defective goods to the Contractor and at the Contractor's expense, the Contractor will (at MMO's option) either replace or repair the goods or reimburse to MMO the cost of replacing or repairing the goods.
 - (b) the Contractor is aware of the purpose for which MMO is acquiring the goods, and that the goods will be, and will remain, for the Warranty Period, suitable and fit for that purpose, of good and merchantable quality and free from all defects or fault;
 - (c) the goods will conform throughout the Warranty Period in all respects with drawings, specifications, and samples provided by the Contractor to MMO and will comply with the functional and performance criteria set out in the Purchase Order and relevant Australian standards and codes;
 - (d) MMO will have the full benefit of any manufacturer's warranties that apply to the goods or any part of the goods (or any of their component parts);
 - (e) the Goods must be suitably packaged by the Contractor to avoid any damage occurring to the Goods prior to risk in the Goods passing to MMO. The packaging of the goods must as a minimum conform to the MMO Specification: Technical Specification For Packing And Documentation Instructions numbered 00-30TS-007, as updated from time to time, copies of which are available at: www.minara.com.au or on request.
 - (f) the goods do not infringe any patent, trademark, copyright or other intellectual property rights or interests of any third party; and

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- (g) all relevant consumer safety standards relating to the goods have been complied with.
- (h) should any safety improvement(s) be made to the goods, or other items, supplied by the Contractor as part of this Purchase Order, then the Contractor shall provide notice to MMO detailing:
 - (i) the safety improvement(s) made to the goods or other items;
 - (ii) the reason(s) that the improvement(s) were required; and
 - (iii) the indicative cost of implementing the improvement(s).

This notification by the Contractor must be made to MMO within 14 days of the Contractor becoming aware of the safety improvements. This warranty shall survive any termination or expiration of this Agreement.

10.3 The above warranties apply and continue to apply regardless of whether the goods comply or do not comply (as the case may be) with the Purchase Order and even though MMO may examine or may have had the opportunity to inspect or test the goods or part of the goods and irrespective of whether or not the examination reveals or ought to have revealed the existence of defects.

10.4 The above provisions do not in any way restrict or diminish any other rights or remedies that MMO may have in respect of the goods and are in addition to any other warranties or conditions whether express or implied or whether granted by statute or otherwise.

11. COMPLETION

Where this Purchase Order specifies a Date for Completion:

- (a) "Completion" shall mean:
 - (i) the Services are, in MMO's opinion, completed without defects, in accordance with this Purchase Order;
 - (ii) there is no legal or other impediment to prevent the Services being used for their intended purpose;
 - (iii) the Contractor has provided to MMO all documents and other information required to be provided by the Purchase Order or reasonably requested by MMO;
- (b) when the Contractor considers the Services have reached Completion, it shall notify MMO. MMO will assess whether Completion has been achieved and either:
 - (i) certify the date on which Completion was achieved ("Date of Completion"); or
 - (ii) advise the Contractor of what further work is required to achieve Completion; and
- (c) if the Contractor is delayed in reaching Completion by the Date for Completion by any act of MMO or MMO's agents, the Contractor shall notify MMO in writing of such delay within 7 days of the delay commencing. Subject to the Contractor providing notice within such period, MMO will make an assessment of the extent (if any) to which the Date for Completion has been affected and make a reasonable adjustment to the Date for Completion.

12. INSURANCE

12.1 Insurances

The Contractor must throughout the Term at its own expense, procure and maintain the following insurances with reputable insurers and on policy terms reasonably acceptable to MMO:

- (a) A public and product liability policy which shall:
 - (i) cover the Contractor's liability to MMO and to third parties for loss or damage to property and the death of or injury to any person (other than persons employed by the Contractor);

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- (ii) provide insurance cover for an amount of:
 - A. not less than \$10,000,000 per single occurrence in respect of public liability;
 - B. not less than \$10,000,000 in aggregate per annum in respect of product liability;
 - (iii) not exclude worker to worker injury liability risks;
 - (iv) Extend to cover liability for damage to property in the Contractor's care, custody or control
 - (v) be extended to include MMO as principal in respect of their liability arising out of or in connection with this Purchase Order; with cross liability and waiver of subrogation clauses and
 - (vi) include a clause that provides that a breach of a term or condition of the insurance policy by an insured will not adversely affect the cover provided to another insured under the policy.
- (b) Workers' compensation (including occupational disease where required by Law) and employer's indemnity insurance which complies with the relevant laws covering all claims and liabilities under any statute and at common law (where applicable) up to \$50 million for the death of or injury to persons employed by the Contractor or any person where the Contractor is deemed to be that person's employer. and which shall, unless prohibited by Law, be endorsed to:
- (i) include a principal's indemnity extension for statute benefits and common law to insure MMO for any liability it may incur in respect of injury to any worker employed by the Contractor, arising by virtue of any applicable statute or at common law;
 - (ii) be endorsed to waive all rights of subrogation against MMO in respect of this indemnity
 - (iii) provide cover in respect of each and every claim for an amount not less than the minimum statutory requirements and \$50 million for common law any one event
- (c) If the Supply includes or is related to the provision of professional advice or services, professional indemnity insurance to cover the Contractor's liability in respect of any acts, errors or omissions in the professional advice or services provided by the Contractor pursuant to this Purchase Order. Such policy shall have a limit of liability not less than \$5,000,000.
- (d) If the performance of the Services requires the Contractor or Contractor Personnel to use motor vehicles, a comprehensive motor vehicle insurance which must cover all liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property caused in connection with such motor vehicles and which must, unless prohibited by Law:
- (i) extend to cover any bodily injury not insurable under Statutory insurance in respect of registered motor vehicles; and
 - (ii) extended to include MMO as principal in respect of their liability arising out of or in the course of this Purchase Order
 - (iii) be endorsed to include a clause that provides that a breach of a term or condition of insurance policies by an insured will not adversely affect the cover provided to another insured under the policy.

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12.2 Proof of Insurance

- (a) The Contractor shall, upon written notice by MMO, produce for inspection by MMO, certificates of currency for each insurance that the Contractor is required to take out under this Purchase Order.
- (b) If the Contractor, having received a written notice by MMO under clause 12.2 for production and inspection of the certificates of currency of insurance, fails to produce the certificates requested, such failure shall be treated as a substantial default by the Contractor and, amongst other things, MMO may in addition to any right it has under clause 13.1 of this Purchase Order or at law, refuse access to the Site for the Contractor, its subcontractors, services, agents or employees.

12.3 Sub-Contractors

The Contractor must ensure that its subcontractors procure and maintain the contracts of insurance mentioned in clause 12.2

12.4 Notices of Cancellation

The Contractor shall promptly give written notice to MMO of any cancellation or expiry of any policy effected under clause 12.2

12.5 Notice of potential claims

- (a) The Contractor shall, as soon as practicable, inform MMO in writing of any occurrence that may give rise to a claim under an insurance policy which is required to be taken out under clause 12.2 and arises from the performance of or the terms of this Purchase Order and shall keep MMO informed of subsequent developments concerning the claim or potential claim. Upon the Contractor becoming aware of a claim or potential claim, it must provide, and continue to provide, all information, documents and records relating to that claim or potential claim to MMO. This obligation includes granting to MMO free and unrestricted access to any site the subject of a claim or potential claim so that MMO may make and conduct its own investigations. The Contractor shall ensure that its subcontractors in respect of their operations similarly inform MMO.
- (b) The Contractor shall provide whatever notices are required by the relevant parties to the insurers under the insurances required under clause 12.2.

12.6 Premiums

The Contractor must pay all premiums in respect of the policies referred to in clause 12.2.

12.7 General

- (a) Whenever a claim is made under any of the policies of insurance referred to in clause 12.2 the Contractor is liable for and must promptly pay any applicable excess or deductible.
- (b) The Contractor must not knowingly do or omit to do, or permit or suffer to be done, any act or omission whereby any of the insurances referred to in clause 12.2 may be vitiated, rendered void or voidable.

12.8 MMO to effect Contractor insurance

In addition to any right that MMO may have under clause 12.2(b), clause 13.1, at Law or in equity, if the Contractor fails to take out any policy of insurance that it is required to under the terms of this Purchase Order, other than Workers Compensation, MMO may, at its absolute discretion, effect the insurance which the Contractor has failed to effect and the cost of effecting such insurance shall be a debt due and owing by the Contractor to MMO. MMO shall advise the Contractor of its intention to effect such insurance before it does so and allow the Contractor a reasonable time to effect the required insurance itself.

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13. TERMINATION

13.1 If the Contractor breaches the Purchase Order and fails to remedy such breach after receiving 7 days written notice from MMO to do so MMO may terminate the Purchase Order.

13.2 MMO may terminate this Purchase Order without reason at any time by giving 7 days notice in writing to the Contractor (and MMO will only be liable to the Contractor for the payment of any amounts payable under this Purchase Order to the date of termination). The Contractor will not be entitled to any other costs, expenses, loss or damage, including loss of profit.

14. CIVIL LIABILITY ACT

Part 1F of the Civil Liability Act 2002 (WA) is hereby excluded from application to this Purchase Order.

15. INDEMNITY

To the extent permitted by law the Contractor will be liable for and must indemnify and keep indemnified MMO against all actions, claims, damages, costs, loss or liability arising directly or indirectly out of or in connection with any breach, performance or non-performance by the Contractor

16. DEFECTS LIABILITY PERIOD

The Contractor must promptly upon receipt of an instruction from MMO rectify at its own cost any defect, error or omission in or to the Services for a period of 12 months after the Date of Completion.

17. SUBCONTRACTING

The Contractor will not subcontract any of the Services without MMO's prior written consent.

18. INTELLECTUAL PROPERTY

18.1 Contractor's Know-how

The Contractor retains ownership and exclusive rights of use to all of the Know-how which it has prior to this Purchase Order with the exception of any Know-how which is enhanced by the Contractor as a result of the Contractors' performance of the Services.

18.2 MMO's Intellectual Property and Know-how

- (a) The Intellectual Property and Know-how enhanced, procured, developed, discovered or generated by the Contractor, MMO or the Parties jointly during the course of the Contractor's performance of the Services become, and at all times remain, the property of and for the exclusive use of MMO.
- (b) The Contractor assigns to MMO all rights to ownership in any Intellectual Property and Know-how enhanced, procured, developed, discovered or generated by the Contractor during the course of the Contractor's performance of the Services.
- (c) The Contractor will do all acts, matters and things including executing all documents, as may be necessary or reasonable to obtain protection for any Intellectual Property enhanced, procured, developed, discovered or generated by the Contractor as a result of the Contractor's performance of the Services.

18.3 No publications

The Contractor may not publish either alone or in conjunction with others, articles, photographs or other illustrations relating to the Services or any Know-how or Intellectual Property enhanced, procured, developed, discovered or generated in the course of the Contractor's performance of the Services, without first obtaining the written consent of MMO.

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18.4 No licence of Intellectual Property or know-how

The Contractor is not licensed to use, nor shall MMO be obliged to deliver to the Contractor in any form electronic or otherwise MMO's Intellectual Property or Know-how or the Intellectual Property and Know-how enhanced, procured, developed, discovered or generated by a Party of the Parties jointly other than for use in the performance of the Services.

18.5 Use of Know-how and Intellectual Property

MMO has the exclusive ownership in and right to use and develop the Intellectual Property and Know-how enhanced, procured, developed, discovered or generated by a Party or the Parties jointly as a result of the Contractor's performance of the Services. The Contractor may not use the Intellectual Property or Know-how enhanced, procured, development, discovered or generated by a Party or the Parties jointly as a result of the Contractor's performance of the Services in any way except in the provision of the Services without the prior written consent of MMO.

19. MMO AS AGENT

For the purposes of this Purchase Order, MMO is acting as agent of each of Murrin Murrin Holdings Pty Limited (ABN 83 073 405 562) and Glenmurrin Pty Ltd (ABN 50 076 684 396) in respect of each of their representative interests (currently being 60% and 40% respectively) in a joint venture between them, and they are severally liable only, in their respective interests, for the performance by MMO of its obligations under this Purchase Order