

# PURCHASE ORDER CONDITIONS

## Provision of Off Site Repair Services



### 1. INTERPRETATION

The following terms apply to this Purchase Order:

- (a) Contractor means the entity undertaking the Repairs;
- (b) Date(s) for Delivery means the latest acceptable date(s) for the delivery of the Goods to the Delivery Point being the dates detailed in the REQ'D BY column detailed in the Purchase Order form to which these Purchase Order Conditions are attached.
- (c) Date of Delivery means the date the Goods are delivered to the Delivery Point.
- (d) Delivery Point has the meaning ascribed to it in the Purchase Order form to which these Purchase Order Conditions are attached.
- (e) Goods means the goods described in the Description & Part Number column of the Purchase Order form to which these Purchase Order Conditions are attached.
- (f) Incoterms<sup>®</sup> means the International Chamber of Commerce Publication No. 715E titled Incoterms<sup>®</sup> 2010.
- (g) Incoterms<sup>®</sup> Rule means a defined trading term rule contained in Incoterms<sup>®</sup> and specified on the Purchase Order.
- (h) 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
- (i) Parts means any consumables, components, materials or other items provided to MMO or incorporated into the Goods as part of the Repair.
- (j) Price means the price in the Total Price column detailed in the Purchase Order form to which these Purchase Order Conditions are attached.
- (k) 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 and any other documents specified in the Purchase Order form.
- (l) Repair Services or Repairs 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 which may include additional or replacement Parts to effect the Repair of the Goods.
- (m) Site means the Murrin Murrin Nickel Cobalt Plant.

### 2. CARRYING OUT THE REPAIR SERVICES

The Contractor must:

- (a) properly and diligently execute the Repair 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; and
- (b) perform the Repair Services in accordance with good engineering practice, to MMO's reasonable satisfaction and in accordance with the Purchase Order.

### 3. DELIVERY

- 3.1 The Contractor must deliver the Goods to the Delivery Point by the Date for Delivery or Dates for Delivery if more than one.

# PURCHASE ORDER CONDITIONS

## Provision of Off Site Repair Services



- 3.2** If it appears to the Contractor that all or any of the Goods will not be ready and available for delivery to MMO at the Delivery Point by the Date for Delivery of the relevant Goods, the Contractor will immediately notify MMO stating the anticipated delay, the reason for the delay and the Contractor's revised delivery time. On receipt of such notice (or in the absence of such notice, if the Goods are not delivered by the Date for Delivery):
- (a) MMO may agree to new Date for Delivery, or Dates for Delivery, by issuing a written notice to the Contractor; or
  - (b) if the delay has been caused by an act or omission of MMO, then MMO shall extend the Date for Delivery, having regard to the delay, and shall advise the Contractor of the revised Date for Delivery.
- 3.3** The address of the Delivery Point may only be varied by agreement in writing between the parties.
- 3.4** Goods will not be accepted by MMO unless accompanied by a delivery docket quoting the Purchase Order number, a description of the Goods and any certificates required.
- 3.5** The Contractor shall, at the time of delivery, obtain from MMO, or MMO's authorised agent, a written acknowledgement of delivery. Acknowledgement will normally be in the form of a signed delivery docket which shall state the Date of Delivery and time at which MMO, or MMO's authorised agent, takes delivery of the Goods.
- 3.6** Signed delivery dockets shall be evidence of delivery only and shall not mean acceptance of the Goods by MMO.
- 3.7** The Price is inclusive of any costs incurred by the Contractor in delivering the Goods to MMO at the Delivery Point.
- 3.8** 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 is available at: [www.minara.com.au](http://www.minara.com.au) or on request.
- 3.9** Incoterms<sup>®</sup>
- (a) Subject to clause 3.9(b), the Goods will be delivered in accordance with any Incoterms<sup>®</sup> Rules specified in the Purchase Order.
  - (b) Where the Purchase Order provides that the Goods are to be delivered in accordance with an Incoterms<sup>®</sup> Rule, the rules and definitions applicable to that term in Incoterms<sup>®</sup> will apply, except to the extent that they conflict with any other provisions of the Purchase Order.
- 4. INSPECTION AND AUDIT OF GOODS AND RECORDS**
- 4.1** MMO shall have the right of access to the Contractor's premises, and the Contractor will arrange access for MMO to any other premises where the Goods are being repaired, stored, manufactured or held, upon request, to inspect the Goods in the process of, or after manufacture or repair.
- 4.2** MMO may inspect the Goods within a reasonable time after their delivery to MMO. MMO reserves the right prior to acceptance of the Goods:
- (a) to sample and inspect the Goods for conformity with the Purchase Order;
  - (b) if the Goods are packaged, to open and inspect them as they are used;
  - (c) to require the Contractor to send all certificates of analysis, documents relating to the identity and quality of Goods to an authorised purchasing representative of MMO prior to arrival of the consignment at the Delivery Point; and

# PURCHASE ORDER CONDITIONS

## Provision of Off Site Repair Services



(d) to audit the quality system of the Contractor and inspect the Repair of the Goods at the Contractor's premises using recognised auditing procedures.

**4.3** No such inspection of the Goods by MMO in any way alters the Contractor's responsibility to comply with its obligations under the Purchase Order.

**4.4** When requested by MMO, the Contractor will issue to MMO regular reports on the progress of the Repair of the Goods.

**4.5** The Contractor will maintain proper records relating to the Purchase Order for a period that is consistent with good industry practice and will make these available for inspection by MMO.

### **5. ACCEPTANCE**

**5.1** MMO will have accepted the Goods when:

(a) MMO has had a reasonable opportunity to examine the Goods after delivery. Unless otherwise agreed by MMO, a reasonable opportunity will be a period of not less than 7 days; and

(b) MMO indicates to the Contractor that it has accepted the Goods, or when MMO pays for the Goods in full in accordance with clause 6.

### **6. PAYMENT BY MMO**

**6.1** Where the Purchase Order specifies a Price, the Price will be the Contractor's total entitlement for the provision of the Repair Services.

**6.2** The Contractor must provide to MMO a payment claim (in the form of a tax invoice) for payment of the Repair Services in a form acceptable to MMO within 7 days of delivery of the Goods to MMO. Each invoice must detail:

(a) the description the Repair Service;

(b) the Price and appropriate GST;

(c) the Purchase Order number issued by MMO in respect of the Goods.

**6.3** 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](mailto:accountspayable@minara.com.au).

**6.4** 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.

**6.5** 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.

**6.6** 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.

### **7. VARIATIONS TO THE REPAIR SERVICES**

**7.1** MMO may at any time vary the Repair Services by giving notice in writing to the Contractor.

**7.2** If MMO varies the Repair Services, then the parties will agree on any adjustment to the Price or other fee payable under the Purchase Order.

### **8. COMPLIANCE WITH STATUTORY REQUIREMENTS**

**8.1** The Contractor must comply, at its own cost, with all applicable legislation and statutory requirements of any authority having jurisdiction over the Repair Services. Where applicable, the Repair Services will comply with the Building Code of Australia.

# PURCHASE ORDER CONDITIONS

## Provision of Off Site Repair Services



**8.2** The Contractor warrants that it has the approval of any relevant authority or professional body to carry out the Repair Services (including without limitation any required licence or accreditation).

**8.3** The Contractor will be responsible for all occupational safety and health and industrial relations issues in connection with the Repair Services.

### **9. 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.

### **10. STANDARD OF REPAIR SERVICES**

**10.1** If at any time the Repair Services, or any Parts used by the Contractor in connection with the Repair Services, are not in accordance with the Purchase Order, MMO may direct the Contractor to replace, correct, remove or vary them 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.

**10.2** 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.

### **11. WARRANTIES**

**11.1** 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.

**11.2** In respect of the Repair Services and Parts provided to MMO by the Contractor under the Purchase Order the Contractor warrants to MMO that:

- (a) If the Parts and/or Repair Services 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 twelve months from the Date of Completion) (the "Warranty Period"), MMO will be entitled to return the defective Parts and/or Goods which are the subject of the defective Repair Service to the Contractor and at the Contractor's expense, the Contractor will (at MMO's option) either replace or repair the Parts, re-perform the defective Repair Services or reimburse to MMO the cost of effecting this rectification.
- (b) the Contractor is aware of the purpose for which MMO utilises the Goods, and that after the Repair Services and/or Parts are provided, 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 and any Parts incorporated or provided to MMO as part of the Repair Service 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 Parts incorporated or provided to MMO as part of the Repair Service;
- (e) the Parts incorporated or provided to MMO as part of the Repair Service do not infringe any patent, trademark, copyright or other intellectual property rights or interests of any third party;
- (f) all relevant consumer safety standards relating to the Parts incorporated or provided to MMO as part of the Repair Service have been complied with; and

# PURCHASE ORDER CONDITIONS

## Provision of Off Site Repair Services



- (g) should any safety improvement(s) be made to the Parts or 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 Parts or 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.

**11.3** The above warranties apply and continue to apply regardless of whether the Parts or 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 Parts or Goods and irrespective of whether or not the examination reveals or ought to have revealed the existence of defects.

**11.4** The above provisions do not in any way restrict or diminish any other rights or remedies that MMO may have in respect of the Repair Service, Parts or Goods and are in addition to any other warranties or conditions whether express or implied or whether granted by statute or otherwise.

### **12. TERMINATION**

**12.1** 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.

**12.2** 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.

### **13. CIVIL LIABILITY ACT**

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

### **14. 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

### **15. 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 Repair Services for a period of 12 months after the Date of Completion.

### **16. SUBCONTRACTING**

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

### **17. INTELLECTUAL PROPERTY**

#### **17.1 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 and any Know-how which is enhanced by the Contractor as a result of the Contractors' performance of the Repair Services.

#### **17.2 MMO's Intellectual Property and Know-how**

# PURCHASE ORDER CONDITIONS

## Provision of Off Site Repair Services



The Intellectual Property and Know-how enhanced, procured, developed, discovered or generated by MMO during the course of the Contractor's performance of the Repair Services become, and at all times remain, the property of and for the exclusive use of MMO.

### **17.3 No publications**

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

### **17.4 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.

### **17.5 Use of Know-how and Intellectual Property**

MMO has the right to use 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 Repair Services.

### **18. 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

### **19. ASBESTOS**

The Contractor shall not provide any asbestos or asbestos containing Goods and/or Parts to MMO.

### **20. QUADREM**

Should MMO request that the Contractor transact with MMO via Quadrem International Limited's electronic marketplace "Quadrem e-Marketplace", the Contractor agrees to adopt this method of transacting and acknowledges that it will do so in accordance with the method and timing specified by MMO, at the current rates contained in the Purchase Order, without any other compensation, amendment to the terms of the Purchase Order or additional cost to MMO.