

PURCHASE ORDER CONDITIONS

Supply of Goods



1. INTERPRETATION

The following terms apply to this Purchase Order:

- (a) Commissioner means the Australian Information and Privacy Commissioner.
- (b) Contractor means the entity providing the Goods;
- (c) 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.
- (d) Eligible Data Breach means an 'eligible data breach' as defined in the Privacy Act.
- (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[®] means the International Chamber of Commerce Publication No. 715E titled Incoterms[®] 2010.
- (g) Incoterms[®] Rule means a defined trading term rule contained in Incoterms[®] and specified on the Purchase Order.
- (h) MMO means Murrin Murrin Operations Pty Ltd ABN 43 076 717 505 of Level 3, 30 The Esplanade, Perth, Western Australia acting as agent for Murrin Murrin Holdings Pty Ltd ABN 83 073 405 562 ("MMH") and Glenmurrin Pty Ltd ABN 50 076 684 396 ("Glenmurrin") in respect of each of their participating interests in the Murrin Murrin Nickel Cobalt Project.
- (i) Personal Information has the meaning given to that term by section 6 of the Privacy Act.
- (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) Privacy Act means the Privacy Act 1988 (Cth).
- (l) Privacy Law" means:
 - (i) the Privacy Act;
 - (ii) the Australian Privacy Principles established under the Privacy Act;
 - (iii) any guidelines, public interest determinations or other advices relating to Personal Information issued by the Office of the Australian Information Commissioner or the Commissioner;
 - (iv) any other requirement under Australian law, industry code or policy relating to the handling of Personal Information; and
 - (v) to the extent applicable to this Agreement, the data protection and information privacy laws of any other jurisdiction.
- (m) Purchase Order (PO) means this 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 specified documents.
- (n) The term Delivery Point has the meaning ascribed to it in the Purchase Order form to which these Purchase Order Conditions are attached.

2. DELIVERY

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

2.2 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):

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- (a) MMO may purchase alternative goods from another source, in which case MMO will not be responsible to the Contractor for the cost for the Goods and may claim from the Contractor the amount of any additional costs MMO incurs as a result;
- (b) MMO may agree to new Date for Delivery, or dates for delivery, by issuing a written notice to the Contractor; or
- (c) 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.

2.3 The address of the Delivery Point may only be varied by agreement in writing between the parties.

2.4 Goods will not be accepted by MMO unless accompanied by a delivery docket quoting the Purchase Order number, part number/specification, a description of the Goods and any certificates required.

2.5 The Contractor shall, at the time of delivery, obtain from MMO, or MMO's authorised agent, or the carrier who will procure delivery on behalf of MMO, a written acknowledgement of delivery. Acknowledgement will normally be in the form of a signed delivery docket which shall state the date ("**Date of Delivery**") and time at which MMO, or MMO's authorised agent, takes delivery of the Goods.

2.6 Signed delivery dockets shall be evidence of delivery only and shall not mean acceptance of the Goods by MMO.

2.7 The Price is inclusive of any costs incurred by the Contractor in delivering the Goods to MMO at the Delivery Point.

2.8 The Contractor must pack Goods, as a minimum, in accordance with the MMO Specification: Technical Specification For Packing And Documentation Instructions (Packing Specification) which is available on request or may be downloaded at www.minara.com.au/procurement. Any documents referenced in this Packing Specification are available upon request. The Contractor acknowledges that the requirements set out in this Packing Specification, (including any referenced documents) which may be updated from time-to-time, are deemed to be incorporated into this Purchase Order.

2.9 Incoterms[®]

- (a) Subject to clause 2.9(b), the Goods will be delivered in accordance with any Incoterms[®] Rules specified in the Purchase Order.
- (b) Where the Purchase Order provides that the Goods are to be delivered in accordance with an Incoterms[®] Rule, the rules and definitions applicable to that term in Incoterms[®] will apply, except to the extent that they conflict with any other provisions of the Purchase Order.

2.10 Any failure to comply with this clause 2 may result in the Goods being rejected and returned at the Contractor's expense.

3. STANDARD OF GOODS

The Goods must:

- (a) Be fit for the purpose for which the Goods are intended to be used;
- (b) Comply with the requirements of the Purchase Order; and
- (c) Comply with all relevant laws and Australian Standards.

4. INSPECTION AND AUDIT OF GOODS AND RECORDS

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- 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 stored or manufactured or held, upon request, to inspect the Goods in the process of, or after manufacture.
- 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
 - (d) To audit the quality system of the Contractor and inspect the production 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 supply 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 AND REJECTION**
- 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 9.
- 5.2** If upon inspection MMO discovers the Goods are not in accordance with the Purchase Order, then MMO may direct the Contractor to remove the Goods or any part and replace them with Goods that are in accordance with the Purchase Order. In the event that the Contractor fails to comply with such a direction within the time specified by MMO, then MMO may have the work of removal and replacement carried out by other persons and the cost of doing so shall be a debt due from the Contractor to MMO.
- 6. CARE OF THE GOODS**
- Subject to any applicable Incoterms[®] Rules and the terms of the Purchase Order, the Contractor shall be responsible for the care of the Goods up to the time of delivery of the Goods to MMO as evidenced by written acknowledgement under clause 2.5. Upon such delivery, risk in the Goods will pass to MMO.
- 7. WARRANTIES**
- 7.1** In addition to MMO's rights under clause 5.2 to reject the Goods, 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 Delivery) (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.
- 7.2** The Contractor warrants to MMO in respect of the Goods that:

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- (a) The Contractor is aware of the purpose for which MMO is acquiring the Goods, and that the Goods will be, at the Date of Delivery, 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;
- (b) The Goods will conform at the Date of Delivery and 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;
- (c) 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);
- (d) The Goods do not infringe any patent, trademark, copyright or other intellectual property rights or interests of any third party;
- (e) All relevant consumer safety standards relating to the Goods have been complied with.
- (f) 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 Purchase Order; and

- (g) The Contractor complies with all applicable anti-bribery and anti-corruption Laws.

7.3 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.

7.4 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.

8. LIABILITY AND INDEMNITIES

- (a) The Contractor acknowledges that if the Contractor enters MMO's premises, the Contractor does so at its own risk. The Contractor must ensure that its employees, agents, contractors and subcontractors are also aware that they enter MMO's premises at their own risk.
- (b) To the extent permitted by Law, the Contractor is liable for and must indemnify MMO and keep MMO indemnified from and against any liability and/or any loss or damage of any kind whatsoever, arising directly or indirectly from:
 - (i) any breach of any warranty or any of the terms and conditions of this Purchase Order by the Contractor;
 - (ii) the illness, injury or death of any of the Contractor's employees, agents, contractors and/or subcontractors arising out of the performance, purported performance or non-performance of or in connection with this Purchase Order;
 - (iii) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:

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- A. the Goods; and/or
- B. if the Contractor enters MMO's premises, the entry onto, and the activities undertaken on and in, MMO's premises by the Contractor and/or the Contractor's employees, agents, contractors and/or subcontractors;
- (iv) any criminal act, fraud, negligence or wilful act or omission by the Contractor and/or any of the Contractor's employees, agents, contractors and/or subcontractors arising out of the performance, purported performance or non-performance of or in connection with this Purchase Order;
- (v) any claim made against MMO by any of the Contractor's employees, agents, contractors and/or subcontractors in respect of any relevant legislation concerning income tax, workers compensation, annual leave, long service leave, superannuation or any applicable award, determination or Purchase Order of a competent industrial tribunal;
- (vi) any penalty imposed for breach of an applicable law in connection with the supply of the Goods by the Contractor;
- (vii) loss or damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the Contractor and used in connection with this Purchase Order; and
- (viii) any claim that the Goods, or anything the Contractor does in supplying MMO with the Goods, or MMO's use of the Goods infringes or allegedly infringes the intellectual property rights of any person.
- (c) The Contractor is not liable under clause 8(b) to the extent that the losses and/or liabilities were caused or contributed to by a negligent act or omission of or wilful misconduct by MMO or any negligent act or omission of or wilful misconduct by any person in respect of which MMO is vicariously liable.
- (d) Every indemnity, exemption, limitation, defence, immunity or other benefit (including any benefit arising from the insurances) contained in this Purchase Order to which MMO is entitled is held by MMO for the benefit of, and extends to protect, each of MMO's directors, employees (past and present), agents, contractors and subcontractors (excluding the Contractor, the Contractor's directors, employees (past and present), agents, contractors and subcontractors) and MMO's related bodies corporate, as defined in the Corporations Act 2001(Cth) and their employees (past and present), agents, contractors and subcontractors (excluding the Contractor, the Contractor's employees (past and present), agents, contractors and subcontractors).
- (e) Each indemnity in this Purchase Order is a continuing obligation separate and independent from the Contractor's other obligations and not in any way limited by the Contractor's, the Contractor's employees', agents', contractors' and subcontractors' entitlement to be indemnified under any one or more of the Contractor's insurance policies and survives termination of this Purchase Order.
- (f) It is not necessary for MMO to incur expense or make payment before enforcing a right of indemnity conferred by this Purchase Order.
- (g) Notwithstanding anything to the contrary in this Purchase Order, whether express or implied, and notwithstanding any breach of contract, negligence or other breach of duty on the part of MMO or the Contractor or any person or persons for whom they may be responsible, MMO and the Contractor shall not be liable to each other in respect of any loss or liability:

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- (i) for loss of use of property which has not been physically lost, damaged or destroyed; or
- (ii) for business interruption, loss of actual or anticipated revenue, income or profits however arising,

unless caused by wilful default or an act or omission done with reckless disregard for the consequences.

9. PAYMENT

9.1 MMO shall, subject to the Contractor complying with its obligations under the Purchase Order, pay to the Contractor the Price in accordance with this clause 9.

9.2 The Contractor must render a tax invoice to MMO for the Goods delivered to MMO within 7 days of delivery of the Goods to MMO. Each invoice must detail:

- (a) The description and quantity of goods delivered to MMO;
- (b) The Price and appropriate GST;
- (c) The Purchase Order number issued by MMO in respect of the Goods.

9.3 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 accounts.payable@glencore.com.au.

9.4 Subject to clauses 9.5 and 9.6, all invoices received pursuant to clause 9.1 will be paid within 10 days after the end of the month following the month in which the invoice is received.

9.5 Payments by MMO under the Purchase Order shall be made by direct electronic deposit to a bank account advised by the Contractor.

9.6 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.

9.7 MMO will not be obliged to pay for the Goods until the Goods have been accepted in accordance with clause 5.

9.8 MMO may deduct from monies otherwise due to the Contractor any:

- (a) Debt or other monies due from the Contractor; or
- (b) Claim to money which MMO may have against the Contractor whether for damages or otherwise relating to the Goods.

9.9 Unless specifically agreed otherwise, MMO shall not be obliged to pay an invoice which the Contractor submitted more than 90 days after the date for submitting an invoice pursuant to clause 9.2.

10. TRANSFER OF TITLE

Title in the Goods will pass from the Contractor to MMO free of any encumbrances upon acceptance of the Goods by MMO pursuant to clause 5.1.

11. 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.

12. PRIVACY

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- 12.1** Subject to clause 12.3 the Supplier is bound by and must comply with applicable Privacy Law in connection with any action of, or practice engaged in, by the Supplier under this Agreement in the same way and to the same extent that MMO would be bound if the action had been that of MMO or the practice had been engaged in by MMO. Each party must otherwise comply with any applicable Privacy Law. Each party must use best endeavours to ensure any persons for whom the party is responsible comply with this obligation.
- 12.2** Without limiting the generality of clause 12.1, the Supplier must, where any Personal Information is provided by the Supplier to MMO, obtain the consent of the individual to whom the Personal Information relates to the disclosure of that Personal Information to MMO and to MMO using that Personal Information in accordance with its privacy policy.
- 12.3** The Supplier will not notify an Eligible Data Breach to the Commissioner or other persons without MMO's written consent where the Eligible Data Breach may also be considered to be an Eligible Data Breach of MMO. Where MMO does not grant that consent, MMO will be responsible for making any notification of an Eligible Data Breach as required by Law (and for clarity MMO will decide whether or not it has an obligation to notify). Where MMO requires, the Supplier will notify the Commissioner or other persons of an Eligible Data Breach in accordance with MMO's reasonable directions. The Supplier will promptly provide all reasonable assistance requested by MMO to investigate a suspected Eligible Data Breach.
- 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 at any time, in its absolute discretion, terminate this Purchase Order in whole or in part by giving the Contractor 30 days written notice to that effect.
- 13.3** If the Goods are not required to be manufactured or fabricated by the Contractor specifically for MMO, MMO will have no obligation to pay for the Goods which have not been delivered to MMO at the time of termination of this Purchase Order.
- 13.4** Subject to clause 13.5, if the Contractor is required to manufacture or fabricate Goods specifically for MMO, upon termination of the Purchase Order, prior to the Date for Delivery, the Contractor must immediately stop all work in respect of the Goods and MMO must pay to the Contractor on demand the reasonable costs incurred by the Contractor in respect of those Goods the Contractor was required to manufacture or fabricate up until the time it is required to stop all work. The Contractor will not be entitled to any other costs, expenses, loss or damage, excluding for loss of profit.
- 13.5** If the Goods are not delivered to MMO by the Date for Delivery, and in the event of Termination of the Purchase Order by MMO, MMO will have no obligation to pay for the Goods, nor any costs incurred by the Contractor in respect of those Goods the Contractor was required to manufacture or fabricate up until the date of termination.
- 14. CIVIL LIABILITY ACT**
Part 1F of the *Civil Liability Act* 2002 (WA) is hereby excluded from application to this Purchase Order.
- 15. INTELLECTUAL PROPERTY**
The Contractor grants to MMO an irrevocable royalty - free licence to use, and amend, any drawings, documents and technical information in any form provided or created by the Contractor in connection with this Contract.
- 16. ASBESTOS**
The Contractor shall not provide any asbestos or asbestos containing Goods to MMO.
- 17. E-MARKETPLACE**

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Should MMO request that the Contractor transact with MMO via an electronic marketplace (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.

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. GLENCORE CORPORATE STANDARDS AND POLICIES

The Contractor must comply with the Glencore Corporate standards and policies which are available on request or may be downloaded at: <http://www.minara.com.au/procurement/glencore>.

The Contractor acknowledges that the requirements set out in these standards and policies, which may be updated from time-to-time, are deemed to be incorporated into this Purchase Order.

20. MMO'S HEALTH SAFETY AND ENVIRONMENT REQUIREMENTS

Should the Contractor and/or the Contractor's employees, agents, contractors and/or subcontractors the enter onto, and / or undertake any activities on or in, the Site or any other MMO premises then the Contractor must comply with the Contractors Health Safety and Environment Requirements (HS&E Requirements) which are available on request or may be downloaded at www.minara.com.au/procurement. Any documents referenced in the HS&E Requirements are available upon request. The Contractor acknowledges that the obligations set out in the HS&E Requirements, (including any referenced documents) which may be updated from time-to-time without prior notice, are deemed to be incorporated into this Purchase Order.