

# PURCHASE ORDER CONDITIONS

## Supply of Services



### 1. INTERPRETATION

The following terms apply to this Purchase Order:

- (a) Commencement Date means the issue date of the Purchase Order as detailed on the Purchase Order form to which these Purchase Order Conditions are attached.
- (b) Commissioner means the Australian Information and Privacy Commissioner.
- (c) Contractor means the entity providing the Services.
- (d) Date for Completion means the date(s) specified in the Due Date column detailed in the Purchase Order form to which these Purchase Order Conditions are attached.
- (e) Eligible Data Breach means an 'eligible data breach' as defined in the Privacy Act.
- (f) Goods means any goods to be delivered by the Contractor as described in the Description & Part Number columns of the Purchase Order form to which these Purchase Order Conditions are attached.
- (g) Hourly Rates means the rate structure, if specified, in Description column and / or the Unit Price column of this Purchase Order.
- (h) HS&E Requirements means the Contractors Health Safety and Environment Requirements which are available on request or may be downloaded at [www.minara.com.au/procurement](http://www.minara.com.au/procurement).
- (i) MMO means Murrin Murrin Operations Pty Ltd ABN 43 076 717 505 of Level 3, 30 The Esplanade, Perth, Western Australia.
- (j) Personal Information has the meaning given to that term by section 6 of the Privacy Act.
- (k) Price means the price in the Total Price column detailed in the Purchase Order form to which these Purchase Order Conditions are attached.
- (l) Privacy Act means the Privacy Act 1988 (Cth).
- (m) 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 Purchase Order, the data protection and information privacy laws of any other jurisdiction.
- (n) 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; the HS&E Requirements; the Glencore Supplier Standards referred to in clause 21; and any other documents specified in the Purchase Order form.
- (o) Services means the services or a combination of Goods and services described in the Description & Part Number columns of the Purchase Order form to which these Purchase Order Conditions are attached.
- (p) Site means the Murrin Murrin Nickel Cobalt Plant.
- (q) Term means the period from the Commencement Date to the Date/s for Completion

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### 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;
- (e) Comply with the HS&E Requirements which are available on request or may be downloaded at [www.minara.com.au/procurement](http://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; and
- (f) Comply with all applicable sanctions, anti-bribery and anti-corruption Laws.

### 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 12(b)); or
  - (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 Terrace Perth WA 6831 or emailed to [accounts.payable@glencore.com.au](mailto:accounts.payable@glencore.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.

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**3.8** 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 that invoice pursuant to clause 3.2.

#### **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**

**6.1** The Contractor must comply, at its own cost, with all applicable legislation, the HS&E Requirements 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.

**6.5** The Contractor will ensure that all of the Contractor's personnel are suitably qualified, skilled and experienced and, where required, have all necessary accreditations required under Law to perform their obligations under this Purchase Order. MMO, at its sole discretion, may reject any of the Contractor's personnel who are unqualified who must be demobilised at the Contractor's cost.

#### **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. PRIVACY**

**8.1** Subject to clause 8.3 the Contractor is bound by and must comply with applicable Privacy Law in connection with any action of, or practice engaged in, by the Contractor under this Purchase Order 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.

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**8.2** Without limiting the generality of clause 8.1, the Contractor must, where any Personal Information is provided by the Contractor 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.

**8.3** The Contractor 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 Contractor will notify the Commissioner or other persons of an Eligible Data Breach in accordance with MMO's reasonable directions. The Contractor will promptly provide all reasonable assistance requested by MMO to investigate a suspected Eligible Data Breach.

### **9. STANDARD OF SERVICES**

**9.1** 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.

**9.2** 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.

### **10. 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.

### **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** 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;

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- (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 Goods must be suitably packaged to conform, as a minimum, to the MMO Specification: Technical Specification For Packing And Documentation Instructions (Specification) which is available on request or may be downloaded at [www.minara.com.au/procurement](http://www.minara.com.au/procurement). Any documents referenced in this Specification are available upon request. The Contractor acknowledges that the requirements set out in this Specification, (including any referenced documents) which may be updated from time-to-time, are deemed to be incorporated into this Purchase Order;
- (f) The Goods do not infringe any patent, trademark, copyright or other intellectual property rights or interests of any third party;
- (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).
- (i) the Contractor shall not provide any asbestos or asbestos containing Goods to MMO. Should the Contractor attend Site then the Contractor shall ensure any of the Contractor's plant, equipment, personal protective equipment and tools do not contain, or have traces, of any asbestos.

**11.3** 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.

**11.4** 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.

**11.5** 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.

## 12. 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



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- (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.

### 13. INSURANCE

#### 13.1 Policies of Insurance

The Contractor must throughout the Term take out and maintain with reputable insurers on terms and conditions consistent with prudent risk management practice and at its own expense at least the following insurance policies in relation to risks, liabilities or occurrences arising or which may arise out of the performance, purported performance or non-performance of or in connection with the Purchase Order:

- (a) a comprehensive public and products liability policy to cover sums which the Contractor may become liable to pay as compensation consequent upon death of, or bodily injury (including disease or illness) to, a person and loss of, or damage to, property, happening anywhere in Australia arising out of or in connection with this Purchase Order. The limit of liability provided by this policy must not be less than \$20 million per single occurrence in respect of public liability and not less than \$20 million in aggregate per annum in respect of product liability, and such policy must include a waiver of subrogation clause under which the underwriter of the policy agrees to waive all rights of subrogation it has or may have against MMO, its directors, its related bodies corporate, as defined in the Corporations Act 2001(Cth), or its employees (both past and present). The policy must not exclude:
  - (i) claims for damages made by a worker (as defined by the applicable worker's compensation legislation ) against MMO unless MMO is the worker's employer (pursuant to a contract of services);
  - (ii) claims for recoveries of any payments made under the provisions of any compulsory worker's compensation legislation, but only where the claim is being made against MMO when MMO is not the employer (pursuant to a contract of services) of the worker in respect of whom the worker's compensation was paid and in respect of which the recovery is being sought;
  - (iii) claims arising from accidental or sudden pollution
- (b) worker's compensation (including occupational disease where required by Law) insurance in respect of all claims and liabilities arising, whether at common law or under statute relating to workers compensation or employer's liability, from any accident or injury to any person employed by the Contractor in connection with this Purchase Order. The Contractor must ensure its employees are insured under a worker's compensation scheme where the employees meet the definition of a worker for the application of worker's compensation insurance as defined by each states' (or countries') workers' compensation acts. in the absence of any applicable workers' compensation act, the Contractor must purchase employer's liability insurance with an adequate limit of liability. the Contractor must ensure that all subcontractors are similarly insured in respect of their employees. The insurance must, where permitted by law:
  - (i) note MMO as principal for both Act and Common Law benefits;

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- (ii) not contain any term, condition or exclusion to the effect that or which operates so that the insurer is only liable to indemnify MMO against its liability to the employee if the Contractor also has some liability to pay damages to the employee at common law;
  - (iii) not contain any term, condition or exclusion to the effect which operates so that the insurer's liability to indemnify MMO is limited to the total amount that the Contractor is liable to pay or has paid the employee by way of damages at common law;
  - (iv) contain a clause under which the underwriter of the policy agrees to waive all rights of subrogation it has or may have against MMO, its directors, its related bodies corporate, as defined in the Corporations Act 2001(Cth), or its employees (both past and present);
  - (v) 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 Services include or are related to the provision of professional advice or services, professional indemnity insurance to cover the Contractor's liability in respect of 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 the Contractor's employees, agents, contractors and subcontractors to use motor vehicles, a comprehensive motor vehicle insurance which must cover liabilities in respect of injury to, or death of, a person or loss, damage or destruction to 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) contain a clause under which the underwriter of the policy agrees to waive all rights of subrogation it has or may have against MMO, its directors, its related bodies corporate, as defined in the Corporations Act 2001(Cth), or its employees (both past and present)
  - (iii) cover any person who drives, uses or is in charge of the insured motor vehicle with the Contractor's express or implied consent or who at the time was within the insured motor vehicle as a passenger with the consent of the Contractor.
- (e) where the Contractor is supplying Goods, insurance for the Goods up to the time they are delivered and installed (if required) for an amount not less than their replacement value.
- (f) other insurances required by Law or reasonably required by MMO or which a reasonable and prudent person would consider to be appropriate in supplying the Goods and/or providing the Services.

### 13.2 MMO as Principal

The Contractor must ensure that all policies of insurance listed in clauses 13.1(a), 13.1(e) and 13.1(f) required to be taken out by the Contractor include MMO as a named insured or otherwise insures MMO as principal to the extent the loss, damage, and/or liability arises directly or indirectly from the performance, purported performance or non-performance of or in connection with the Purchase Order.

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### 13.3 Severability and Cross Liability

The policies noted in 13.1(a), 13.1(e) and 13.1(f) must include a severability and cross liability clause which has the effect that neither the inclusion of more than one insured under a policy nor any act, omission, breach or default by an insured shall in any way affect the rights of any other insured, it being intended that the policy should be construed as if a separate contract of insurance had been entered into by each insured; but not so as to increase the insurer's limit of liability and with respect to loss, damage and/or liability arising directly or indirectly from the performance, purported performance or non-performance of or in connection of the Purchase Order .

### 13.4 Notification of MMO

The Contractor shall:

- (a) notify MMO immediately of any cancellation or replacement or expiry of a relevant insurance policy and of any change to the policy which affects MMO's interests;
- (b) as soon as practicable, inform MMO in writing of any occurrence that may give rise to a claim against MMO, its directors, its related bodies corporate, as defined in the Corporations Act 2001(Cth), or its employees (both past and present) under an insurance policy which is required to be taken out under this clause 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; and
- (c) provide whatever notices are required by the relevant parties to the insurers under the insurances required under this clause.

### 13.5 Certificates of Currency

- (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. The acceptance, by MMO, of any certificate of currency, which does not meet the requirements of this clause 13, shall not be considered or construed as a waiver by MMO of the Contractor's obligations under this clause 13.

### 13.6 Maintenance of Policies of Insurance

- (a) MMO has the right to take out and maintain any policy of insurance required by this clause if the Contractor fails to do so and MMO reserves the right to treat the failure to take out and maintain any policy of insurance required by this clause as a default under this Purchase Order and refuse the Contractor and its personnel access to all or any part of any premises occupied or controlled by MMO that the Contractor and its personnel have cause to access in the performance of the Purchase Order until the required insurance policies are in place.
- (b) The Contractor agrees to reimburse MMO for any expenses, including any excess or deductible, MMO incurs in taking out and maintaining any policy of insurance under this clause and MMO may, in its sole discretion, deduct such expenses incurred by MMO from any amounts due by MMO to the Contractor.
- (c) 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 this clause may be vitiated, rendered void or voidable.



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- (d) The Contractor's obligation to effect and maintain the insurance policies set out in this clause 13 is independent of and in no way limits the Contractor's liability under clause 16 (Liability and Indemnities) and shall not be taken into account when construing clause 16 (Liability and Indemnities)
- (e) The Contractor must ensure that its sub-contractors have the benefit of or effect and maintain insurance policies to the same effect and on the same terms as the contractor insurance policies.

### 13.7 Payment of Excess

The Contractor is liable to pay any excess, deductible or self-insured retention ("excess") under any of its insurance policies and will indemnify MMO, its directors, its related bodies corporate, as defined in the Corporations Act 2001(Cth), or its employees (both past and present) against any such excess. This indemnity is independent of, and not subject to any limitations attaching to, any other indemnity imposed on the Contractor under the Purchase Order.

### 14. TERMINATION

**14.1** 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.

**14.2** 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.

### 15. CIVIL LIABILITY ACT

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

### 16. 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:
    - (A) the Goods and/or Services; and/or
    - (B) 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;

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- (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 and/or performance of the Services 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, the Services or the results of the Services, anything the Contractor does in supplying MMO with the Goods and/or the Services, or MMO's use of the Goods or the results of the Services infringes or allegedly infringes the intellectual property rights of any person.
- (c) The Contractor is not liable under clause 16(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 referred to in clause 13) 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 referred to in clause 13 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:
- (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.

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### **17. 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.

### **18. SUBCONTRACTING**

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

### **19. INTELLECTUAL PROPERTY**

#### **19.1 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.

#### **19.2 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.

#### **19.3 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.

#### **19.4 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.

#### **19.5 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.

# PURCHASE ORDER CONDITIONS

## Supply of Services



### 20. E-MARKETPLACE

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.

### 21. GLENCORE SUPPLIER STANDARDS

The Contractor must comply with the Glencore Supplier Standards which are available on request or may be downloaded at:

<https://www.glencore.com/suppliers>

The Contractor acknowledges that the requirements set out in the Glencore Supplier Standards, which may be updated from time-to-time, are deemed to be incorporated into this Purchase Order.

MMO reserves the right to monitor and/or audit the Contractor's adherence to the Glencore Supplier Standards.

Where required, the Contractor agrees to update their existing policies and procedures or implement new policies and procedures to meet the requirements of the Glencore Supplier Standards.

The Contractor shall co-operate with, and provide any information and assistance requested by MMO, acting reasonably, in connection with any monitoring and / or audit conducted by the MMO under this clause.

### 22. SANCTIONS

The Contractor represents, warrants and undertakes to MMO that:

- (a) neither it nor any of its subsidiaries ("Company") or directors, senior executives or officers, or to the knowledge of the Company, any person on whose behalf the Company is acting in connection with this Purchase Order, is an individual or entity ("Person") that is, or is 50% or more owned or controlled by, a Person (or Persons) that is the subject of any economic or financial sanctions or trade embargoes administered or enforced by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") the U.S. Departments of State or Commerce, the United Nations Security Council ("UNSC"), the European Union ("EU"), Switzerland or other applicable sanctions authority (collectively, "Sanctions") or based, organized or resident in a country or territory that is the subject of comprehensive (ie, country-wide or territory-wide) Sanctions (including, as of the date of this Purchase Order, Crimea, Cuba, Iran, North Korea and Syria) (a "Sanctioned Country") (collectively, a "Sanctioned Person");
- (b) no Sanctioned Person has any beneficial or other property interest in this Purchase Order nor will have any participation in or derive any other financial or economic benefit from this Purchase Order;
- (c) it will not use, or make available, any materials, products or payments (as applicable) provided by MMO in terms of this Purchase Order to fund or facilitate any activities or business of, with or related to any Sanctioned Country or Sanctioned Person, or in any manner that would result in a violation of Sanctions; and
- (d) The Contractor represents and warrants that the Goods have not originated or come from or through any Sanctioned Country and shall procure that the Goods will not in future come from or through any Sanctioned Country.

# PURCHASE ORDER CONDITIONS

## Supply of Services



If MMO is of the reasonable opinion that the Contractor has breached this clause, MMO may (without incurring any liability of any nature to Contractor whatsoever) terminate or suspend all or any part of this Purchase Order with immediate effect by notice to the Contractor or take any other action it deems necessary in order for MMO to comply with applicable sanctions. The Contractor shall be liable for any and all costs, liabilities and expenses whatsoever incurred by MMO due to MMO exercising its rights under this clause. Any exercise by MMO of its right under this clause shall be without prejudice to any other rights or remedies of MMO pursuant to this Purchase Order.

### **23. ROAD TRANSPORT – SAFETY AND OPERATIONAL COMPLIANCE**

#### **23.1 Transport Operational Compliance**

- (a) The Contractor must and must ensure that its subcontractors have a transport safety management system in place to eliminate or minimise the potential for fatalities, injuries and/or environmental damage arising from the transportation of people, Goods or materials to, from or for or on behalf of MMO on public or other offsite roads irrespective of when legal risk or title in the Goods or materials passes to MMO.
- (b) The Contractor's transport safety management system referred to above must, at a minimum, comply with the public or other offsite roads transport requirements set out in Clause 12.8 of the HS&E Requirements.

#### **23.2 Chain of Responsibility Legislation**

In addition to any other obligations contained in this Purchase Order, the Contractor warrants that it is familiar with and has the capability and resources to comply with all road safety legislation applicable to the transportation of people, Goods or materials to, from or for or on behalf of MMO on public or other offsite roads and will comply with all road safety legislation and regulations, including but not limited to the:

- (a) Heavy Vehicle National Law;
- (b) Road Traffic (Administration) Act 2008 (WA); and
- (c) Road Traffic (Vehicles) Act 2012 (WA).