



## **BILLITON ALUMINIUM SA LIMITED (“Bayside”) TERMS AND CONDITIONS FOR A PURCHASE ORDER**

### **1. APPOINTMENT OF SUPPLIER**

Bayside appoints the supplier on a non-exclusive basis, to supply it with the goods and/or services.

### **2. PURCHASE ORDER**

Each purchase order for the goods/services ("purchase order") is placed as a call-off against any anticipated volume or value of goods/services which Bayside has indicated to the supplier that it may require over a period of time. Each purchase order constitutes a separate sale and is subject to the terms and conditions contained herein, despite anything to the contrary contained in the purchase order. **The supplier must not supply the goods/services unless it has received a valid purchase order issued by Bayside.**

### **3. SUPPLIER'S OBLIGATIONS AND WARRANTIES**

- 3.1. The supplier must, at its cost and risk:
  - 3.1.1. timeously supply the goods/services contained in the purchase order;
  - 3.1.2. ensure that the goods/services strictly comply with the requirements set out in the purchase order;
  - 3.1.3. **immediately upon receipt of a notice from Bayside and at Bayside's option, repair or replace any goods, or re-execute any services specified by Bayside which are found to be defective within a period of 12 months from the date upon which they are delivered to Bayside and any warranties or guarantees in respect of any repaired or replaced goods or re-executed services must be extended for a further period of 12 months from the date of completion of such repair, replacement or re-execution;**
  - 3.1.4. ensure that all guarantees and warranties given to the supplier by parties who supply inputs to the supplier in respect of the goods/services are transferred to Bayside;
  - 3.1.5. comply with, and ensure that the supplier's employees, agents, suppliers and their employees ("the supplier's personnel") comply with all lawful instructions whether written or oral, given by Bayside;
  - 3.1.6. ensure that, at all times, the supplier and the supplier's personnel comply with Bayside's written policies, as amended from time to time, on health, safety, security and environmental issues ("HSEC conditions").
- 3.2. The supplier is liable to Bayside for any costs, damages or losses incurred or suffered by Bayside as a result of any defects in the goods or services supplied and/or breach of these terms and conditions.
- 3.3. The supplier warrants that it is an independent contractor. The supplier indemnifies Bayside against any tax, interest and penalties and any legal or other costs which Bayside may incur because, despite this warranty, Bayside is obliged, but has failed to deduct employee's tax from any amounts paid to the supplier.

- 3.4. The supplier waives any lien or right of retention it may have over the goods or any equipment, tools or other articles owned or supplied by Bayside.

#### **4. PRICE**

Provided that the supplier complies with the terms of this agreement, Bayside must pay the supplier the price set out in the purchase order for the supply of the goods/services ("the price").

#### **5. CONDITIONS OF PAYMENT**

- 5.1. Each month, the supplier must provide Bayside with an original tax invoice and statement for each purchase order received from Bayside during that month which must include Bayside's purchase order number.
- 5.2. If at any time in Bayside's opinion, the supplier does not fulfil any of its obligations ("disputed obligation"), Bayside may withhold payment of that part of the price which relates to the disputed obligation until the situation has been remedied. The supplier must provide Bayside with a new invoice for the undisputed part of the price which Bayside must pay. If, after the situation has been remedied, Bayside is required to pay the disputed payment, the supplier must provide Bayside with an invoice for such disputed payment which Bayside must pay.
- 5.3. Bayside is entitled to set-off any amounts, claims or losses which it has suffered from any monies which is either due or owing to the supplier by Bayside.

#### **6. INSURANCE**

The supplier must take out any insurance and for what ever amounts that may be required by Bayside including but not limited to general liability insurance, third party insurance, professional indemnity insurance, and goods in transit insurance, defective workmanship insurance, and all risk property insurance.

#### **7. OWNERSHIP AND RISK**

- 7.1. If goods are being supplied, the risk in and to the goods will pass to Bayside on written acceptance thereof by Bayside and ownership in the goods will pass to Bayside on delivery.
- 7.2. If services are being supplied, ownership and risk in the services will pass to Bayside on written acknowledgment by Bayside that the services have been rendered in full and to Bayside's satisfaction.

#### **8. LIMITATION OF LIABILITY**

Neither party nor its officers, employees, agents or assigns will be liable to the other party under this agreement for indirect, special or consequential damages including but not limited to loss of profits, loss of time, loss of revenue, loss of goodwill or any business interruption of any kind suffered by that party and arising out of or in connection with this agreement, except if such damages are suffered as a result of any wilful and unlawful or negligent act or omission of that party and/or result in personal injury or death.

#### **9. NON-SOLICITATION OF EMPLOYEES**

Neither party may, without the prior written consent of the other party, for the duration that the supplier is supplying the goods/services and for a period of 3 years thereafter, directly or indirectly solicit for employment, employ or engage the services of any person who is in the employ of either party during the course of this agreement.

## **10. INTELLECTUAL PROPERTY RIGHTS**

All designs, drawings, developments trade marks, patents and any other documents or information which Bayside regards as its intellectual property will vest in Bayside. Any new design or intellectual property arising out of the supply of the goods or services by the supplier will become the intellectual property of Bayside.

## **11. FORCE MAJEURE**

- 11.1. If either party should, despite all reasonable efforts, be prevented or hindered directly or indirectly by circumstances beyond its control (hereinafter referred to as "force majeure") from performing all or any of its obligations in terms of the purchase order, the party so affected (the "affected party") will be relieved of performance of its obligations hereunder during the period that such circumstances and the consequences thereof continue, but only to the extent so prevented or hindered, and will not be liable for any delay or failure in the performance of any of its obligations hereunder or loss or damage whether general, special, or consequential which the other party (the "unaffected party") may suffer due to or resulting from such delay or failure, provided always that notice must be given by the affected party to the unaffected party at the earliest possible opportunity by fax, telephone or email of the occurrence of the event constituting force majeure, together with details thereof and an estimate of the period of time for which it will endure.
- 11.2. The term "force majeure" includes strike, labour dispute, lock-out, fire, explosion, flood, riot, war, accident, act of God, embargo, legislation, regulation or directive having the force of law, shortage of or a breakdown in transportation facilities, civil commotion, unrest or disturbance, compliance with any order or instruction of any port, transportation, local or other authority, non-availability, rationing, reduction or shortage of electricity, coal, fuel or raw material, failure of a party's supplier to supply, total or partial closure of Bayside's plant, breakdown or reasonable malfunction of plant or, without any limitation, any other cause beyond the control of the affected party, whether similar or dissimilar to the causes listed above.
- 11.3. The affected party must use all reasonable endeavours to terminate the circumstances giving rise to the force majeure, and upon termination of the event giving rise thereto, must immediately give notice thereof by fax, telephone or email to the unaffected party.
- 11.4. If performance is suspended in accordance with this clause for a period of 30 consecutive days or more, either party may immediately by notice in writing to the other party terminate this agreement.

## **12. TERMINATION**

- 12.1. Bayside may for any reason whatsoever immediately terminate the purchase order without notice and without giving reason therefor.
- 12.2. In the event of such immediate termination, the supplier must immediately return any property belonging to Bayside and leave Bayside's premises.
- 12.3. In the event of such termination, Bayside may terminate any other open purchase orders or commitments which may be in existence either between the supplier and Bayside or any other subsidiary or holding company of either Bayside or any entity which is owned by BHP Billiton or in which BHP Billiton has an interest.

## **13. NOTICES AND ADDRESSES FOR SERVICE**

- 13.1. Unless otherwise specified any notice or communication in terms of this agreement must be in writing to be effective and must be sent by hand, email or fax to the business or commercial manager of Bayside.

- 13.2. Any written notice or communication, which has actually been received by a party, will be regarded as sufficient notice even if it has not been sent in the manner or to the address/fax number provided for above.

#### **14. MISCELLANEOUS LEGAL PROVISIONS**

- 14.1. This is the whole agreement between the parties regarding the subject matter hereof and no representations or warranties, other than those recorded herein, are binding on the parties. The terms of the supplier's tender, delivery note, order acceptance forms and/or invoices or any other documentation are not applicable to these terms and conditions and are of no force and effect. These terms and conditions will take precedence over any terms and conditions contained in Bayside's purchase order.
- 14.2. No agreement varying, adding to, deleting from or cancelling this agreement and no waiver of any right under this agreement is effective unless it is in writing and signed by or on behalf of the parties.
- 14.3. This agreement will be construed and interpreted in accordance with the law of the Republic of South Africa and the parties consent to the jurisdiction of the High Court of South Africa.
- 14.4. No relaxation by a party of any of its rights in terms of this agreement at any time will prejudice or be a waiver of that party's rights (unless it is a signed written waiver), and it is entitled to exercise such rights thereafter as if such relaxation had not taken place.
- 14.5. If any of the terms of this agreement are found to be invalid, unlawful or unenforceable, such terms will be severable from the remaining provisions, which will remain in full force and effect. If any invalid term is capable of amendment to render it valid, the parties agree to negotiate in good faith and amend the term to remove the invalidity.