

## PURCHASE ORDER TERMS AND CONDITIONS

### 1. SUPPLY OF GOODS AND/OR SERVICES

- 1.1 In consideration of payment of the Price by the Company, the Contractor must supply to the Company the Goods and/or perform the Services in accordance with the Purchase Order (which includes these Purchase Order Terms and Conditions).
- 1.2 To the extent the Contractor's terms and conditions are supplied with the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order (even if any of representative of the Company signs those terms and conditions or annexes the terms and conditions to this Purchase Order).
- 1.3 Where this Purchase Order relates to Goods and/or Services the subject of a contract between the Contractor and the Company, the terms of that contract apply to the extent of any inconsistency with these Purchase Order Terms and Conditions.
- 1.4 The Contractor must, in supplying the Goods or performing the Services:
- (a) not interfere with the Company's activities or the activities of any other person at the Delivery Address;
  - (b) be aware of and comply with and ensure that the Contractor's employees, agents and contractors are aware of and comply with:
    - (i) all applicable Laws;
    - (ii) all Site Standards and Procedures, to the extent that they are applicable to the supply of the Goods or the performance of the Services by the Contractor; and
    - (iii) all lawful directions and orders given by the Company's representative or any person authorised by Law to give directions to the Contractor;
  - (c) ensure that the Contractor's employees, agents and contractors entering the Company's premises perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
    - (i) safe working practices;
    - (ii) safety and care of property; and
    - (iii) continuity of work;
  - (d) provide all such information and assistance as the Company reasonably requires in connection with any statutory or HSEC investigation in connection with the supply of the Goods or the performance of the Services;
  - (e) on request by the Company, provide to the Company and its employees, agents and consultants any information and assistance required to identify, evaluate, implement and report on any matter required by Law, including:
    - (i) producing written reports;
    - (ii) recommending efficiency opportunities;

- (iii) collecting data; and
- (iv) monitoring or metering,

in respect of any thing used, produced or created in connection with the performance of the Contractor's obligations under this Contract.

## **2. DELIVERY**

- 2.1 The Contractor must deliver the Goods to the Delivery Address by the Delivery Date.
- 2.2 The Contractor must ensure that the Goods are suitably packed to avoid damage in transit or in storage.
- 2.3 Packages must be marked with the Purchase Order number, item number, destination, contents, quality, date and method of dispatch and weight of each package.

## **3. TIME FOR PERFORMANCE**

The Contractor must perform the Services by the date specified in the Purchase Order.

## **4. TITLE AND RISK**

- 4.1 Title in the Goods passes to the Company upon payment of the Price.
- 4.2 Risk in the Goods passes to the Company when the Goods are delivered to the Delivery Address.

## **5. PRICE**

- 5.1 The Company must pay the Contractor the Price for the Goods and/or Services.
- 5.2 The Price is inclusive of all costs incurred by the Contractor in the supply of the Goods and/or performance of the Services including all charges for packing, insurance and delivery of the goods and the cost of any items used or supplied in the performance of the Services.
- 5.3 The Price is inclusive of all taxes and duties, except VAT.

## **6. VAT**

- 6.1 General

The Company will not be liable to pay the VAT to the Contractor and

Where by Law the Company is required to pay VAT directly to the Government of Indonesia, the VAT amount (currently at 10%) shall be deducted or set-off from any payment due to the Contractor. Payment to the Contractor after such deduction or set-off shall constitute good and full payment by the Company to the Contractor of an amount equal to the Fee.

- (a) The Contractor shall comply with the Indonesian taxation obligations and Australian taxation obligations wherever applicable under the prevailing Law of both countries.
- (b) The Contractor is subject to Indonesian tax laws and regulations, including Indonesian tax registration, maintenance of bookkeeping, payment of Indonesian taxes and filing Indonesian tax returns.
- (c) In the event that the Contractor is relieved from the requirements in clause 23.1(b), the Contractor must provide the Company with a written explanation and appropriate

documentation of the relief plus any other information the Company may reasonably request in respect of the relief.

(d) The Contractor is and remains liable for payment of any Taxes due and payable by the Contractor. If any Tax is imposed, the Contractor must pay the full amount to the relevant authority and indemnifies the Company against any failure to do so. If any exemptions, reductions, allowances, credits, rebates, adjustments or other privileges in relation to Taxes may be available directly or indirectly to the Contractor or the Company, the Contractor must adjust any payments due to reflect any such savings or refunds (including interest awarded) to the maximum allowable extent, and assist the Company in obtaining any such benefits.

(e) The Company may deduct from the whole or part of payments due to the Contractor any Taxes, or other payments that the Company is required to withhold or deduct by any taxing authority.

(f) Where the Company is liable to any Tax or impost in the nature of VAT or goods and services tax in respect of any indemnity payment made by the Contractor to the Company under this Contract, the Contractor will, in addition to any other payment required by this Contract, pay the Company on demand a grossed up amount to include the goods and services or VAT imposed in respect of the indemnity payment. The grossed up amount will be calculated by multiplying the indemnity payment amount by a factor of one (1) increased by the prevailing percentage rate of goods and services or VAT imposed on taxable supplies.

## 6.2 Indonesian Withholding tax (WHT) and VAT

(a) Where the Company is required by Indonesian Law to withhold or deduct from any payment due to the Contractor under or in respect of this Contract any amount with respect to or which relates to any Tax, levy or duty, the Contractor authorises such withholding or deduction, and payment made to the appropriate Government agency of the withheld or deducted amount shall constitute good and full payment by the Company to the Contractor of an amount equal to the amount of such payment made.

(b) The Company must advise the Contractor if the Company is in doubt whether or not it will be required by Indonesian Law to withhold or deduct from, and or at what rate of withholding tax applicable on, any payment due to the Contractor any amount with respect to or which relates to any Tax, levy or duty.

(c) Upon receipt of the Company's advice referred to in clause 6.22(b), the Contractor must:

(i) submit to the Company for agreement an application for a written clarification to the authorised officer of Directorate General of Tax (DGT); and

(ii) once the Company has agreed to the application, process the application for a written clarification to the authorised officer of the DGT in accordance with the common practice.

(d) The Company and the Contractor shall be bound by the written clarification from the authorised officer of DGT.

(e) Where an application for written clarification is requested pursuant to clause 6.2(c)(ii) and the DGT has not responded within 30 days or the Contractor has not submitted the written application within the required time, the Company may withhold, deduct, retain or set-off the payment from any payment due to the Contractor in accordance with the Company's own interpretation of the Law with respect to withholding tax.

- (f) The Contractor:
- (i) must register for value-added tax (VAT) (as a Pengusaha Kena Pajak) if required by Indonesian Law to do so;
  - (ii) must not include any paid VAT as part of the Fee; and
  - (iii) must issue and forward a standard VAT invoice to the Company in accordance with the prevailing VAT Law and regulations.
- (g) The Company, pursuant to the applicable VAT Law, will pay the VAT at its discretion or as required by the applicable VAT Law to either the Contractor or the Indonesian Government.
- (h) Where, the Contractor does not issue a VAT invoice, or does not issue a VAT invoice in accordance with the VAT Law:
- (i) the Company will not be liable to pay the VAT to the Contractor; and
  - (ii) where by Law the Company is required to pay VAT directly to the Government of Indonesia, the VAT amount (currently at 10%) shall be deducted or set-off from any payment due to the Contractor. Payment to the Contractor after such deduction or set-off shall constitute good and full payment by the Company to the Contractor of an amount equal to the Fee.

### 6.3 Reimbursable expenses

- (a) Where the Contractor procures goods or services for and on behalf of the Company, the Contractor must ensure that any purchase orders, invoices, VAT invoices and related documents issued by the suppliers of such goods or services state the name of the Company and/or the Company's Indonesian Tax Identity Number (NPWP).
- (b) For such reimbursable expenses, the Contractor may request payment from the Company by way of debit notes attached with the above mentioned corresponding documents from the suppliers. The Contractor will not charge VAT to the Company other than those VAT which were already charged by the supplier(s).
- (c) The Company shall make payment of the reimbursable expenses to the Contractor without deducting withholding tax.

## 7. INVOICING

- 7.1 Upon delivery of the Goods and/or completion of the Services, the Contractor must provide to the Company a valid tax invoice which must include the information set out in clause 7.2.
- 7.2 Any invoice must include the following details:
- (a) a reference to this Purchase Order and the relevant Contract (if any) including the line item numbers on the Purchase Order and the Contract number;
  - (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services in respect of which the invoice relates and the relevant quantity;
  - (c) an individual reference number for the Company to quote with remittance of payment;

- (d) the Price relating to the Goods and/or Services, broken down to reflect the same Price components on the Purchase Order;
- (e) the amount of any applicable VAT;
- (f) Company operation and Site; and
- (g) Company contact name.

7.3 If the Company requests, the Contractor must provide the Company with all relevant records to calculate and verify the amount set out in any Invoice.

7.4 The Company will pay all invoices that comply with clause 7.2 within 30 days of their generation or receipt (as the case may be), except where the Company disputes the invoice, in which case:

- (a) the Company may withhold payment pending resolution of the dispute; and
- (b) if the resolution of the dispute determines that the Company must pay an amount to the Contractor, the Company must pay that amount upon resolution of that dispute.

7.5 The Company may reduce any payment due to the Contractor under this Contract by any amount which the Contractor must pay the Company, including costs, charges, damages and expenses and any debts owed by the Contractor to the Company on any account whatsoever. This does not limit the Company's right to recover those amounts in other ways.

## **8. QUALITY**

8.1 The Goods and/or Services must match the description referred to in the Purchase Order.

8.2 If the Contractor gave the Company a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the sample or demonstration given.

8.3 The Goods and/or Services must be fit for the purpose for which goods and/or services of the same kind are commonly supplied or bought and for any other purpose the Company specifies.

8.4 The Goods must be of merchantable quality and, unless otherwise specified in the Purchase Order, must be new.

## **9. WARRANTY PERIOD**

9.1 If, during the Warranty Period, any of the Goods or Services are found to be Defective, the Company may:

- (a) return the Defective Goods to the Contractor;
- (b) reject the Defective Services ;
- (c) repair or make good the Defective Goods; or
- (d) re-perform or make good the Defective Services.

9.2 The Contractor must:

- (a) repair or replace the Defective Goods;

- (b) re-perform or make good the Defective Services; or
- (c) reimburse the Company for any expenses incurred in repairing, reperforming or making good (as the case may be) any Defective Goods or Services,

at the Contractor's cost, if requested to do so by the Company.

## 10. DEFINITIONS

**Company** means the BHP Billiton entity named in the Purchaser Order.

**Contractor** means the party identified as such in the Purchase Order.

**Defective** means Goods and/or Services (or any aspect of them) which are not in accordance with the Purchase Order or which are damaged, deficient, faulty, inadequate or incomplete.

**Delivery Address** means the place for delivery specified on the Purchase Order.

**Delivery Date** means the delivery date specified on the Purchase Order.

**Goods** means the goods, if any, described on the Purchase Order.

**VAT** has the meaning Value Added Tax.

**HSEC** means health, safety, environment and community.

**Law** means:

- (a) Commonwealth, State and local government legislation including regulations, by-laws, orders, awards and proclamations;
- (b) common law and equity;
- (c) Authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
- (d) guidelines of Authorities with which the Contractor is legally required to comply.

**Purchase Order** means the purchase order for Goods and/or Services issued by the Company to the Contractor from time to time containing, amongst other things, a description of the Goods and/or Services.

**Price** means the price set out in the Purchase Order which is exclusive of VAT, but is inclusive of all other costs and charges.

**Services** means the services, if any, described on the Purchase Order.

**Site Standards and Procedures** means:

- (a) BHP Billiton Sustainability Policy and Management Standards;
- (b) BHP Billiton Guide to Business Conduct;
- (c) BHP Billiton Fatal Risk Control Protocols, and

any other guidelines, rules, requirements or Site specific conditions which the Company makes available to the Contractor from time to time.

**Warranty Period** means the period of 24 months commencing on the date of delivery of the Goods and/or 12 months from the date on which the Service is performed.