

# **Commercial Terms and Conditions of Purchase**

Mineral Technologies Pty Ltd

ABN: 52 105 309 260

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## 1. Supply and Performance

1.1 The Supplier must:

- supply and Deliver the Goods to Downer at the Place of Delivery or Place of Pick-up (as applicable) by the Delivery Date; and
- perform and complete the Services by the Date for Performance,

for the Price.

1.2 The Supplier is taken to have carefully examined all documents and other information furnished by Downer relating to the supply of the Goods and performance of the Services, and to have fully satisfied itself of all conditions, risks, contingencies and other circumstances which might affect the supply of the Goods and the performance of the Services, including conditions at the Place of Delivery or Place of Pick-up (as applicable), and to have made due allowance for these in the Price.

1.3 All Goods supplied, and Services performed, by the Supplier to Downer are supplied under these Purchase Order Terms and Conditions unless a separate written contract is entered into by Downer and Supplier which expressly excludes these Purchase Order Terms and Conditions.

1.4 These Purchase Order Terms and Conditions (together with the Purchase Order) constitute the entire agreement between the Supplier and Downer with respect to the supply of the Goods and performance of the Services. All other terms and conditions (including terms and conditions provided or referenced by the Supplier, whether or not received or acknowledged by Downer) will be void and unenforceable and will not in any way affect the application or operation of these Purchase Order Terms and Conditions.

## 2. Warranties

2.1 The Supplier represents and warrants that when the Goods are delivered to Downer, and on completion Services, that the Goods and Services will:

- be of merchantable quality, new in every respect and in good order and condition;
- comply in all respects with the Purchase Order, including any specifications or other requirements included with the Purchase Order;
- be fit for the purpose made known to the Supplier by Downer or, if none was made known to the Supplier, be fit for the purpose:
  - for which goods or services of that kind are ordinarily used; and
  - which should reasonably have been inferred by the Supplier having regard to the nature of the Goods, the Services, the Purchase Order and any communications with Downer;
- comply with all applicable Australian Standards or where there is no applicable Australian Standard then all applicable International Standards;
- comply with the provisions of any law or legislation applicable to them;
- be free from defects for:
  - a minimum of 2 years from the date the Goods are put into service or the Services are completed; or
  - the period specified in the Purchase Order,



whichever is longer.

2.2 The warranties in clause 2.1 are in addition to any warranties which are or may be implied under any legislation applicable to the Goods and Services that has not been expressly excluded in this Purchase Order.

## **3. Price**

3.1 The Price is fixed and will not be subject to adjustment for rise and fall, exchange rate variations or any changes in general or market specific economic conditions.

3.2 Except as expressly provided in the Purchase Order, the Price includes all taxes, duties, levies and fees (including GST) which are payable in relation to the supply and delivery of the Goods and performance of the Services. The Supplier must pay such taxes, duties, levies and fees.

3.3 The Price will not be varied for any reason except where expressly agreed in writing, signed by an authorised representative of Downer.

3.4 Upon Delivery of the Goods, and in respect of the Services at the times set out in the Purchase Order, the Supplier must invoice Downer for the Goods and Services. The Supplier must not invoice Downer for Goods which have not been delivered or Services not performed. If GST is payable and included in the Price, the invoice must be in the form of a valid tax invoice. All invoices must be itemised and be in a form which clearly indicates any GST component already paid by the Supplier for which Downer is entitled to claim an input credit.

3.5 Downer will pay the Supplier the Price for the Goods which are delivered, and Services which are performed, at the date of the invoice provided under clause 3.4 within 45 days after the end of the month in which an invoice for those Goods or Services is received at the invoicing address included on the Purchase Order.

3.6 Downer may make payment by credit card, cheque, bank cheque, transfer or cash payment or in any manner otherwise agreed in writing by the parties.

3.7 Payment is not evidence of the value of the Goods or Services, or an admission of liability or that the Goods or Services are satisfactory but is a payment on account only.

## **4. Variation**

4.1 Downer may direct the Supplier by a notice in writing to perform a Variation.

4.2 Within 10 business days of Downer issuing a notice under clause 4.1, the Supplier must advise Downer how much the Variation will cost and the timeframe for it to be performed.

4.3 If Downer accepts the terms of the Variation proposed by the Supplier in accordance with clause 4.2, the Supplier must proceed with the Variation.



## 5. General Delivery Obligations

- 5.1 The Supplier must at its own cost package, mark and label the Goods before Delivery to Downer in accordance with any specification for packaging, marking or labelling or otherwise in a manner reasonably expected of the Supplier having regard to the nature of the Goods. Unless otherwise agreed in writing by Downer the Supplier is responsible for the safe disposal of any packaging waste.
- 5.2 Downer, acting reasonably, may refuse to accept Delivery at any time if the Goods do not comply with this Purchase Order.
- 5.3 The Supplier is to provide detailed delivery dockets with every Delivery. The Supplier acknowledges that failure to comply with the delivery docket requirements may delay or preclude acceptance and payment for the Goods.

## 6. Extensions to Time for Delivery and Performance of the Services

- 6.1 If the Supplier reasonably believes that the Goods or Services (or part thereof) will not be delivered by the Delivery Date, or performed and completed by the Date for Completion, the Supplier must give Downer immediate notice of that fact.
- 6.2 If the Supplier gives notice under clause 6.1, Downer may, acting reasonably (and without limiting its rights at law):
  - a. extend the time for Delivery of the Goods or the Date for Completion, by notifying the Supplier of a later Delivery Date or Date for Completion (but is not required to do so for the benefit of the Supplier);
  - b. refuse to take Delivery of the Goods; or
  - c. cancel the relevant Purchase Order(s) without liability to Downer.
- 6.3 Downer may, at any time, and for any reason whatsoever, by notice in writing to the Supplier extend the time for completion of Delivery of the Goods or the Date for Completion (but is not required to do so for the benefit of the Supplier).
- 6.4 The Supplier must take all reasonable steps necessary to minimise the effect of any delay on the supply of Goods and performance of the Services.

## 7. Supply of Goods by Supplier

- 7.1 If the Supplier is responsible for Delivery to the Place of Delivery (Supplier Delivery):
  - a. the Supplier must deliver the Goods to the Place of Delivery by the Delivery Date and during the Delivery Hours; and
  - b. the cost of delivery of the Goods to the Place of Delivery (including all transport costs and reasonably insurance cover and all packing, loading and unloading) is included in the Price for the Goods.



- 7.2 If the Supplier is responsible for making the Goods available for collection at the Place of Pick-up (Downer Pick-up), the Supplier must make the Goods available for Downer (or its nominated agent) to collect at the Place of Pick-up by the Delivery Date.
- 7.3 If the Goods are not delivered to the Place of Delivery, or not made available for collection at Place of Pick-up, by the Delivery Date (as the case may be), the Supplier will be in breach of this Purchase Order and:
  - a. the Supplier must pay, as a debt immediately due and payable, liquidated damages at the rates specified in the Purchase Orders, from the Delivery Date to the date of Delivery of the Goods;
  - b. where liquidated damages are not specified in the Purchase Order or are unenforceable for any reason, the Supplier will be liable to Downer for all loss, cost, expense and damage suffered by Downer arising out of or in connection with such breach; and
  - c. Downer may, without prejudice to its other rights, terminate the whole or part of the relevant Purchase Order(s).
- 7.4 The Supplier must comply with all safety requirements of Downer relating to the Supplier's conduct at the Place of Delivery and otherwise comply with all laws and regulations relating to health, safety and the environment.

## **8. Performance of Services**

- 8.1 If the Services are not performed and completed by the Date for Completion, the Supplier will be in breach of this Purchase Order and:
  - a. the Supplier must pay, as a debt immediately due and payable, liquidated damages at the rates specified in the Purchase Order, from the Date for Completion to the date that the Services are performed and completed; and
  - b. where liquidated damages are not specified in the Purchase Order or are unenforceable for any reason, the Supplier will be liable to Downer for all loss, cost, expense and damage suffered by Downer arising out of or in connection with such breach;
  - c. Downer may, without prejudice to its other rights, terminate the whole or part of the relevant Purchase Order(s).

## **9. Risk and Title**

- 9.1 The Supplier warrants that it has unencumbered ownership of, and title to, the Goods and any goods comprised in the Services, and the Goods and any goods comprised in the Services are free of any liens, charges and encumbrances.
- 9.2 Unencumbered title and risk in the Goods and any goods comprised in the Services will pass to Downer on Delivery of the Goods or performance of the Services.



## 10. Acceptance or Rejection of Goods

- 10.1 Downer is not obliged to accept early Delivery of the Goods. If Downer does not accept early Delivery of the Goods, the Supplier must, at its cost, hold the Goods in store until the Delivery Date. Downer is not obliged to accept any Goods in excess of the quantity specified in this Purchase Order.
- 10.2 If Downer or any of its representatives signs a delivery docket or other document required by the Supplier to acknowledge delivery, Downer will not be taken to have accepted the Goods as being in accordance with this Purchase Order (whether as to quality or quantity). This applies notwithstanding any terms and conditions appearing on any such acknowledgment of delivery.
- 10.3 The Supplier must deliver all applicable material safety data sheets (MSDS) and Operation and Maintenance Documents with the Goods.

## 11. Defective Goods and Services

- 11.1 If the Goods or Services are or become defective in any way, Downer may (without limiting Downer's rights under the Purchase Order (or otherwise at law)), by notice to the Supplier, require the Supplier to replace or repair the Defective Goods or Defective Services, or re-perform the Defective Services, at the Supplier's cost and within a reasonable period (including if necessary uninstalling or removing the Defective Goods).
- 11.2 If the defects are not rectified under clause 11.1 to Downer's reasonable standards, or made within a reasonable time, then Downer may, by notice to the Supplier:
  - a. replace or repair the Defective Goods or Defective Services, or re-perform the Defective Services, or engage a third party to replace or repair the Defective Goods or Defective Services, or re-perform the Defective Services, and in either case, the reasonably incurred costs of doing so will be a debt immediately due and payable by the Supplier to Downer;
  - b. uninstall or remove the Defective Goods or engage a third party to uninstall or remove the Defective Goods and in either case, the reasonably incurred costs of doing so will be a debt immediately due and payable by the Supplier to Downer; or
  - c. reject and/or return the Defective Goods and will be entitled to a full refund of any amounts paid for the Defective Goods.

## 12. Insurance and Indemnity

- 12.1 Unless Downer expressly agrees otherwise in writing, the Supplier must procure and maintain the following Insurances:
  - a. **Marine transit insurance**, covering all insurable risks of physical loss or damage to the Goods, and/or merchandise or any other property in which Downer has an insurable interest occurring at any time while in transit or in storage in the ordinary course of transit up to the agreed Place of Delivery or Place of Pick-up (as applicable);
  - b. **Public and products liability insurance** written on an occurrence basis with a limit of indemnity of not less than \$20,000,000 for each and every occurrence and, in the case of product liability, no less than \$20,000,000 in the aggregate during any 12 month period of



insurance which covers the liability of the Supplier in respect of bodily injury to any third party, third party property damage and advertising liability.

- c. **Motor vehicle insurance**, covering all mechanically propelled vehicles that are registered, or capable of being registered, for road use and are at any time used in connection with the Purchase Order;
- d. **Workers compensation insurance** as required by law in each of the States or territories the Goods or services are being provided.

12.2 The Supplier indemnifies Downer from and against any liability in respect of:

- a. loss, destruction or damage to or of any real or personal property;
- b. personal injury, illness, sickness or death; and
- c. any claim for infringement or alleged infringement of intellectual property rights or confidentiality by the Supplier.

12.3 However, the Supplier's liability to indemnify Downer under clause 12.2 is reduced proportionally to the extent that the act or omission of Downer, its employees or agents, caused or contributed to the action, liability, costs, damages or expenses.

## 13. Confidentiality

Without the prior written consent of Downer, the Purchase Order must be treated as confidential and must not be disclosed to any person, unless required by law, or be used for advertisement, display or publication.

## 14. Drawings and Tools

14.1 All tools, patterns, materials, drawings, specifications and other data provided by Downer in connection with the Purchase Order:

- a. remain the property of Downer (except that the Supplier is responsible for making good any damage done to them while they are in the possession of the Supplier);
- b. must be used solely for the purpose of the Purchase Order;
- c. must not be passed to or divulged to any third party except with the express consent of Downer in writing; and
- d. must be returned by the Supplier to Downer on completion of this Purchase Order.



## 15. Intellectual Property Rights

- 15.1 The Supplier warrants that it has all Intellectual Property Rights necessary to supply the Goods and perform the Services in accordance with the Agreement and indemnifies Downer against any Loss suffered or incurred by Downer as a consequence of any claim by a third party that it has a right to any property or Intellectual Property Right in the Goods or the Services.
- 15.2 The Supplier grants Downer a perpetual, non-transferable, royalty-free licence of any Intellectual Property Rights required in order to use, consume or sell the Goods or Services in the manner reasonably intended by Downer at the Date of the Purchase Order.

## 16. Modern Slavery

- 16.1 In this clause, 'Secondary Subcontractor' means any of the Supplier's consultants, contractors, suppliers, service providers and any other person engaged by or on behalf of the Supplier in connection with this agreement.
- 16.2 The Supplier must take (and must ensure that each of its Secondary Subcontractors take) all reasonable steps to ensure that no modern slavery, human trafficking, servitude, forced labour, bonded labour, child labour, slavery or forced marriage or deceptive recruiting for labour or services (**Modern Slavery**) is present in the Supplier's, or its Secondary Subcontractors', supply chains, or in any part of their businesses.
- 16.3 The Supplier warrants that neither it nor any of its officers, employees or Secondary Subcontractors has been convicted of, or has been or is, the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any form of Modern Slavery.
- 16.4 The Supplier must implement a system (to a standard that is consistent with good industry practices) to assess, monitor, evaluate and remediate the risks of Modern Slavery in its, and its Secondary Subcontractors', supply chains and in any part of their businesses
- 16.5 The Supplier must promptly notify Downer as soon as it becomes aware of any actual or suspected Modern Slavery in its or any of its Secondary Subcontractors' supply chain which is connected to this Agreement (**Suspected Slavery**).
- 16.6 The Supplier must maintain records evidencing its compliance with this clause, and on request from Downer (from time to time), provide all assistance and information reasonably necessary for Downer to prepare a modern slavery statement and otherwise comply with its obligations at law, including giving Downer access to the Supplier's records.



## 17. Termination

17.1 Downer may suspend all or part of the supply of the Goods or performance of the Services at any time for any period of time by giving notice to the Supplier. The Supplier must comply with the notice and recommence supply when notified by Downer. The Price will be adjusted by Downer to include the reasonable costs actually incurred by the Subcontractor directly as a result of the suspension, except where the suspension is occasioned by an act or omission of the Subcontractor.

17.2 Downer may terminate the Purchase Order immediately by notice in writing to the Supplier if the Supplier:

- commits a material breach of the Purchase Order and does not remedy the breach within 10 business days of being required to do so by Downer (or any longer period as the parties may agree in writing); or
- commits an Insolvent Event; or
- Subcontractor is in breach of clause 16.1, or a Suspected Slavery occurs.

17.3 Downer may terminate the Purchase Order at any time and for any reason by giving notice in writing to the Supplier. Subject to any rights Downer may have of set off or deduction, upon termination Downer's only obligation will be to pay the Supplier for Goods which have been Delivered, and Services which have been performed, in accordance with the Purchase Order prior to the date of termination, plus the reasonable costs actually incurred by the Subcontractor directly as a result of the termination.

17.4 If Downer terminates this Agreement under clause 17.2, Downer's rights will not affect any other rights available to Downer. Downer is not required to make any further payment to the Subcontractor, and the rights and liabilities of the Parties shall be the same as they would be at common law if the Subcontractor had wrongfully repudiated this Agreement and Downer had elected to treat this Agreement as at an end and recover damages.

## 18. Miscellaneous

18.1 In this Agreement:

- headings are for convenience only and do not affect the interpretation of this Agreement;
- “includes” means includes without limitation;
- a reference to a gender includes any gender;
- a reference to “\$” is to be construed as a reference to Australian currency;
- a reference to a party to this Agreement includes that party's successors and permitted assigns;
- a reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it;
- no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.



18.2 No waiver by Downer of a breach of the Purchase Order by the Supplier constitutes a waiver for any subsequent or continuing breach by the Supplier.

18.3 The Purchase Order is governed by the law of the State or Territory in which Delivery is to be made, or the Services are to be performed, as specified in the Purchase Order. Each party irrevocably submits to the non-exclusive jurisdiction of the courts this jurisdiction and any courts which have jurisdiction to hear appeals from any of those courts. A party must not object to the jurisdiction of a court merely because the forum is inconvenient.

18.4 The United Nations Convention on Contracts for the International Sale of Goods is excluded and does not apply to the Purchase Order.

18.5 If any provision or part of any provision, of the Purchase Order is invalid or otherwise unenforceable that provision or that part of the provision will be severed from the Purchase Order and the remainder of the Purchase Order will continue to be effective and valid notwithstanding such severance.

18.6 The Supplier must not, without the prior written approval of Downer (which must not be unreasonably withheld), assign, or deal with its interest under the Purchase Order to a third party. Any such approval will not relieve the Supplier of its obligations under this Purchase Order.

## 19. Definitions

In these terms and conditions unless the context otherwise requires:

<b>Australian Standards</b>	means any Australian Standard (as amended or replaced) issued by Standards Australia applying directly or indirectly to the Goods or the Services;
<b>Date for Completion</b>	means date specified in the Purchase Order as the date by which the Supplier must perform and complete the Services;
<b>Defective Goods or Defective Services</b>	means Goods or Services which are not in conformity with the Purchase Order or are otherwise defective in design, performance, workmanship or makeup;
<b>Delivery</b>	means the physical receipt of possession and control of the Goods from the Supplier by Downer, or an agent nominated by Downer (whether by way of Supplier Delivery or Downer Pick-Up), in satisfaction of the Supplier's obligations under the Purchase Order, and Deliver and Delivered have corresponding meanings;
<b>Delivery Date</b>	means the date specified in the Purchase Order as the date by which the Supplier must deliver the Goods to the Delivery Place (for Supplier Delivery) or make the Goods available for pick-up by Downer (for Downer Pick-Up) (as applicable);
<b>Downer</b>	means the party identified as such in the Purchase Order;
<b>Downer Pick-up</b>	means that Downer or its nominated agent is responsible for taking Delivery of the Goods from the Supplier as specified in the Purchase Order;
<b>Goods</b>	means the goods described in the Purchase Order and includes all manuals, spare parts and operating instructions needed by the Downer for the proper use of the Goods and identified in the Purchase Order and any services incidental to the supply of the goods, and



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all other things which can reasonably be inferred from the description of the Goods in the Purchase Order;

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<b>Insolvent Event</b>	means any one of the following circumstances where the Supplier:
	<ol style="list-style-type: none"> <li>a. (a) is (or states that it is) an insolvent under administration or insolvent (each defined under the Corporations Act 2001 (Cth));</li> <li>b. (b) is in liquidation, provisional liquidation, under administration or wound up or has had a controller appointed to its property;</li> <li>c. (c) is subject to any arrangement, assignment, moratorium or composition, protected from creditors under statute or dissolved;</li> <li>d. (d) has an application or order has been made, resolution passed, proposal put forward, or any other action is taken which is preparatory to or could result in any of (a), (b) or (c) above;</li> <li>e. (e) is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act 2001 (Cth); or</li> <li>f. (f) something having a substantially similar effect to (a) to (e) happens under the law of any jurisdiction in relation to the Supplier which Downer reasonably believes may prejudice the Supplier's ability to supply Goods, perform the Services, or to pass title in Goods to Downer;</li> </ol>
<b>Intellectual Property Rights</b>	means all present and future rights conferred by statute, common law or equity in or in relation to copyright, trade marks, designs, patents, inventions and other results of intellectual activity in any field whether or not registrable, registered or patentable;
<b>Place of Delivery</b>	means the place specified by Downer in the Purchase Order;
<b>Place of Pick-up</b>	means the place specified by Downer in the Purchase Order;
<b>Price</b>	means the rates or measures contained in the Purchase Order;
<b>Purchase Order</b>	means the written notice from Downer to the Supplier specifying the Goods and identified by a unique identifier;
<b>Services</b>	means the services described in the Purchase Order and any goods and services incidental to the performance of the services, and all other things which can reasonably be inferred from the description of the Services in the Purchase Order;
<b>Supplier</b>	means the party identified as such in the Purchase Order;
<b>Supplier Delivery</b>	means that the Supplier is responsible for Delivery of the Goods to Downer at the Place of Delivery as specified in the Details;
<b>Variation</b>	means: <ol style="list-style-type: none"> <li>a. (a) the inclusion of other goods as Goods to be supplied, or other services as Services to be performed, by the Supplier under the Purchase Order;</li> <li>b. (b) a change in the character or quality of the Goods to be supplied or Services to be performed under the Purchase Order; or</li> <li>c. (c) an increase or decrease in the quantity or volume of Goods to be supplied or Services to be performed under the Purchase Order</li> </ol>

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