

# GLENCORE TECHNOLOGY

## General Terms and Conditions of Supply

### INTERPRETATION

**Agreed Supply** means the goods and/or services described in the Order Confirmation provided to You by Glencore.

**Agreement** means this agreement between Glencore and You which incorporates the Order Confirmation and any documentation referred to therein.

**Confidential Information** means all non-public or proprietary information exchanged between the parties relating to the business or technology of Glencore but does not include information:

- (a) which is in, or becomes part of, the public domain other than through a breach of confidence;
- (b) which You can prove was already known to You at the time of disclosure by Glencore (unless such knowledge arose from a breach of confidence); or
- (c) which You acquire from a source other than Glencore where such source was entitled to disclose it.

**Date of Supply** means the date on which the Agreed Supply is provided to you by Glencore in accordance with the Delivery Terms.

**Defects Liability Period** is a period of 12 months from the Date of Supply.

**Delivery Terms** means the terms of delivery of the Agreed Supply as set out in the applicable Order Confirmation.

**Expected Date of Despatch** means the date, subject to clause 3.2, by which Glencore expects the goods (which form part of the Agreed Supply) to be despatched to You as specified in an applicable Order Confirmation.

**Fee** means the total price for the Agreed Supply specified in the Order Confirmation.

**Force Majeure Event** means an exceptional event or circumstance which is outside the reasonable control of the affected party, which was not reasonably foreseeable, which could not have been prevented or avoided by that party taking all reasonable steps and which cannot be substantially attributed to that party.

**Glencore** means the Glencore entity specified in the Order Confirmation.

A party is **Insolvent** if it has been declared insolvent under any law applicable to it or is otherwise unable to pay its debts when they fall due.

**Intellectual Property** means all intellectual property rights in the Technical and Commercial Information including current and future registered and unregistered rights in respect of copyright, designs, trademarks, know-how, patents and invention any all other intellectual property as defined in article 2 of the convention establishing the World Intellectual Property Organisation 1967.

**Order Confirmation** means the document described as an Order Confirmation which is issued to You by Glencore and sets out the basis on which Glencore will provide You with the Agreed Supply.

**Payment Terms** means the terms for payment of the Fee as set out in the Order Confirmation.

**Project Plant** means Your plant at which the Agreed Supply is to be used by You.

**Related Corporation** has the meaning given to it by section 50 of the Corporations Act 2001 (Cth).

**Representative** means an employee, agent, officer, director, advisor, consultant, contractor or subcontractor of that party.

**Technical and Commercial Information** means designs, plans, specifications, flowsheets, operating instructions, computer software, know-how and other information of a technical or commercial nature (including Intellectual Property) relating to the Agreed Supply.

**You** or **Your** means the purchaser of the Agreed Supply, being the party to whom an Order Confirmation is addressed.

### GENERAL TERMS

#### 1. Supply

- 1.1. Glencore shall provide You with the Agreed Supply in accordance with the terms and conditions of this Agreement to the exclusion of any of Your terms and conditions (written or verbal) which You may provide to Glencore or otherwise reference.

#### 2. Fee and payment

- 2.1. In consideration of the provision of the Agreed Supply, You agree to pay Glencore the Fee.
- 2.2. You agree to pay the Fee in accordance with the Payment Terms.
- 2.3. The Fee is net (i.e. exclusive) of all taxes and charges payable, and any amount required to be withheld, by You under any relevant law in force which remain Your responsibility.

- 2.4. The Fee is also net of any goods and services tax or similar charge. If such charge is payable on the Fee by Glencore, You must also pay to Glencore an amount equivalent to that charge within 28 days of Glencore providing You with a correct tax invoice (or similar documentation) for the relevant supply.

### **3. Delivery**

- 3.1. Glencore shall use its best reasonable endeavours to despatch the Agreed Supply by the Expected Date of Despatch.
- 3.2. If Glencore becomes aware of anything which will probably prevent it from despatching the Agreed Supply to You by the Expected Date of Despatch, Glencore shall notify You in writing, stating a new Expected Date of Despatch.

### **4. Variation**

- 4.1. Glencore will make reasonable efforts to comply with any request from You for variation of the Agreed Supply.
- 4.2. Glencore may reject such request or accept it subject to a corresponding change in the Fee or Expected Date of Despatch.

### **5. Risk and title**

- 5.1. Risk in any goods that are part of the Agreed Supply shall pass from Glencore to You on the Date of Supply.
- 5.2. Title in any goods that are part of the Agreed Supply shall pass from Glencore to You upon full payment of the Fee for such goods.

### **6. Defects liability**

- 6.1. The Defects Liability Period shall commence on the Date of Supply.
- 6.2. During the Defects Liability Period, You may notify Glencore in writing of a defect in the Agreed Supply and may require Glencore to rectify such defect, or replace the Agreed Supply (at Glencore's discretion) within a reasonable time.
- 6.3. If rectification is not complete within such reasonable time, You may have the rectification carried out by others, at Glencore's expense, without prejudice to Your other rights.
- 6.4. Glencore's liability under this clause is limited to the amount of the Fee for the Agreed Supply in respect of which the defect has been notified.

### **7. Technical and Commercial Information**

- 7.1. No title, right or interest in the Technical and Commercial Information (including the Intellectual Property) shall pass to You under this Agreement.
- 7.2. You shall ensure that all documents, drawings and other materials issued in connection with the Agreed Supply, and which contain any part of Glencore's Technical and Commercial Information, are marked with a clear note informing the reader that the document, drawing or material contains information that is proprietary to Glencore.

### **8. Confidential Information**

- 8.1. You undertake to keep Glencore's Confidential Information secret and to preserve the confidential nature of that information.
- 8.2. You may only disclose Glencore's Confidential Information:
- (a) to Your Representatives who require it for the purposes of this Agreement or the operation of the Project Plant;
  - (b) with the prior written consent of Glencore; or
  - (c) if You are required to do so by law or by a corporate regulator.
- 8.3. Any person receiving Confidential Information from You must be made aware of its confidential nature and the restrictions on its disclosure set out in clause 8.2.
- 8.4. You shall be liable for any loss suffered by Glencore as a result of a breach of this clause by a person or party to whom You disclosed Confidential Information pursuant to clause 8.2(a).

### **9. Warranties**

- 9.1. Both parties warrant that they are validly existing under the applicable law and have the power and authority to enter into and perform their obligations under this Agreement.

#### Glencore warranties

- 9.2. Any Intellectual Property in any materials, design, documents or methods of working provided by Glencore to You under this Agreement is either licensed to or the property of Glencore.
- 9.3. Glencore has evaluated all aspects of the Agreed Supply and has the expertise and capability (including availability of resources) to provide the Agreed Supply in accordance with this Agreement.

9.4. Any goods and/or services provided as part of the Agreed Supply will be complete, will have been prepared with reasonable care and will be fit for the purposes for which they are required.

9.5. Unless expressly stated in this Agreement, no other performance guarantee is given or may be implied against Glencore in relation to the Agreed Supply.

#### Your warranties and acknowledgements

9.6. You represent and warrant that you have, before signing this Agreement, satisfied Yourself about all matters relevant to your rights and obligations under this Agreement and, if necessary, have sought legal advice.

9.7. You acknowledge that You have entered into this Agreement as a consequence of Your own studies and not in reliance on any representation made by Glencore or any Related Corporation, or on their behalf. You agree that you have satisfied yourself as to the technical and commercial feasibility of the use of the Agreed Supply in the Project Plant.

#### **10. Liability and indemnity**

10.1. You indemnify Glencore and its Related Corporations against all loss, damage and expense (including legal cost) incurred by Glencore, its Related Corporations and their Representatives in relation to:

- (a) any death/injury to persons or loss/damage to property caused by any negligent act or omission by You or Your Representatives as a result of Your use of the Agreed Supply, the Technical and Commercial Information or the construction/operation of the Project Plant; and
- (b) any breach of this Agreement by You.

10.2. The indemnities in this Agreement are continuing obligations which shall continue after this Agreement ends.

10.3. Any amount claimed by Glencore under this indemnity shall be reduced proportionally to the extent that any loss, damage or expense is directly caused or contributed to by the negligence of Glencore, its Related Corporations or their Representatives.

10.4. Glencore shall not be liable to You in respect of any consequential or indirect loss or damage (including loss of profits) arising out of any default or negligence of Glencore in connection with this Agreement.

10.5. Subject to clause 6.4 and to the extent that a liability cannot be excluded, Glencore's aggregate liability under this Agreement is limited to 10% of the Fee.

#### **11. Assignment**

11.1. Subject to clause 11.2, You may not assign, transfer or novate any right or obligation under this Agreement to a third party without the written consent of Glencore (not to be unreasonably withheld, provided that You indemnify Glencore against any failure by the third party to perform such obligations).

11.2. Either party may, with notice to the other party, assign or subcontract its rights or obligations under this Agreement to a third party if that party is a Related Corporation of the assigning party.

#### **12. Termination**

12.1. Either party may terminate this Agreement immediately by written notice if:

- (a) the other party commits a material breach of an obligation under this Agreement and such breach is incapable of remedy;
- (b) the other party commits a material breach of an obligation under this Agreement and has not taken all reasonable steps to rectify that breach within the reasonable time period specified by the non-defaulting party in a notice of breach (such period to be not less than seven (7) days);
- (c) the other party is declared Insolvent; or
- (d) it is expressly entitled to do so under a clause of this Agreement.

12.2. Upon termination, You shall:

- (a) pay to Glencore all amounts payable under this Agreement as at the date of termination; and
- (b) promptly return to Glencore all copies of material which contain Technical and Commercial Information or certify to Glencore that such material has been destroyed.

12.3. Termination shall not relieve the parties of any obligation arising under this Agreement prior to the date of termination and shall not relieve You of the confidentiality obligations referred to in this Agreement.

### 13. Force Majeure

- 13.1. Despite any other provision in this Agreement, no party shall be liable to the other for any delay or inability to perform an obligation under this Agreement if such delay is due to a Force Majeure Event which has been notified to the other party in writing.
- 13.2. A party affected by a Force Majeure Event must:
- (a) take all reasonable steps to avoid or limit the effects of the Force Majeure Event on the performance of its obligations; and
  - (b) promptly recommence performing its obligations as soon as reasonably possible.
- 13.3. Either party may terminate this Agreement under clause 12.1(d) if performance is disrupted by a Force Majeure Event for a period greater than three (3) months.

### 14. Dispute Resolution

- 14.1. If a dispute arises in connection with this Agreement, either party may provide the other with a notice of the dispute. Within 14 days of such notice, the parties must meet to resolve the dispute or agree on a method for doing so.
- 14.2. If the dispute is not resolved within 28 days of the notice of dispute, the dispute must be referred to arbitration.
- 14.3. Arbitration shall be conducted in the city of Glencore's registered office before a single arbitrator in accordance with the UNCITRAL rules as at present in force and in English. The arbitral decision shall be final and binding.
- 14.4. Despite the existence of a dispute the parties, subject to clause 12 and 14.5 shall continue to perform their obligations under this Agreement.
- 14.5. Nothing in this clause prevents a party from seeking injunctive or urgent declaratory relief.

### 15. Notices

- 15.1. All communications in connection with this Agreement must be in English and addressed to the relevant party in accordance with the details set out in the Order Confirmation.
- 15.2. All communications take effect from the time of receipt. They will be deemed to be received:
- (a) if sent by post, either three days (domestic) or seven days (international) after posting;
  - (b) if sent by fax, at the time shown in the transmission report as the time the whole fax was sent;
  - (c) if sent by email, at the time shown as the time that the email was sent.

### 16. General

- 16.1. The governing law of this Agreement will be the law of the location of Glencore's registered office.
- 16.2. If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.
- 16.3. This Agreement constitutes the entire agreement between the parties and supersedes all prior communications, negotiations, arrangements and agreements whether oral or written, with respect to the subject matter of this Agreement.
- 16.4. Nothing in this Agreement will be taken to constitute either party as an employee, agent, partner or joint venturer of the other. Neither party is authorised to incur any obligation on behalf of the other party.
- 16.5. The rights and remedies provided in this Agreement are in addition to other rights and remedies given by law independently of this Agreement.
- 16.6. This Agreement and all rights granted under it are for the benefit of all members of the Glencore group in order that they may exercise and enforce all rights granted pursuant to this Agreement jointly and severally.
- 16.7. The parties agree to pay their own costs with respect to the preparation and execution of this Agreement.
- 16.8. A party may not make a public announcement relating to this Agreement without the approval of the other party.
- 16.9. If a provision of this Agreement is unenforceable in a jurisdiction, that provision may be severed for the purposes of that jurisdiction without affecting the enforceability of the other provisions of this Agreement provided that such severance does not materially alter the nature of the Agreement or the commercial position of one of the parties.
- 16.10. You will comply with our policies including our Values statement, Code of Conduct, our global policy on bribery, fraud and corruption and any updates thereof (these codes and policies are available online at: <http://www.glencore.com/who-we-are/governance> ).
- You must comply with all anti-money laundering, anti-bribery and anti-corruption laws, statues, regulations and codes, including but not limited to all local, supra-national and extra-territorial laws and sanctions.