

# GLENCORE TECHNOLOGY

## General Terms and Conditions of Purchase

### INTERPRETATION

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

**Agreement** means this agreement between Glencore and You which incorporates the Purchase Order 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 actually provided to Glencore by You in accordance with the Delivery Terms.

**Defects Liability Period** is a period of 12 months from the Date of Supply or such other period so agreed by the parties in the Purchase Order.

**Delivery Date** means the date specified in a Purchase Order by which You are required to supply the Agreed Supply to Glencore in accordance with the Delivery Terms.

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

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

**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. A Force Majeure Event shall not include any of the following: economic hardship; changes in market conditions, non-performance or delay by subcontractors or strikes or other similar labour actions (unless a nationwide or regional strike).

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

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.

**Payment Terms** means the terms for payment of the Fee as set out in the Purchase Order or if none are specified in the Purchase Order then the Payment Terms shall be 30 days end of month upon receipt of invoice.

**Purchase Order** means the document described as a Purchase Order which is issued to You by Glencore and sets out the basis on which Glencore will purchase the Agreed Supply from 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 Glencore's business or to the Agreed Supply which is provided, directly or indirectly, by Glencore to You.

**You** or **Your** means the supplier of the Agreed Supply, being the party to whom a Purchase Order is addressed.

### GENERAL TERMS

#### 1. Supply

- 1.1. By accepting the Purchase Order, You agree that You shall provide the Agreed Supply to Glencore 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 at any time or otherwise reference.
- 1.2. If You are unable to, or do not wish to, completely comply with every aspect of a Purchase Order, you should immediately reject the Purchase Order by notifying Glencore's Representative nominated in such Purchase Order.
- 1.3. If You provide the Agreed Supply as required by a Purchase Order, You are deemed to have accepted the Purchase Order in accordance with clause 1.1.

#### 2. Fee and payment

- 2.1. In consideration of the provision of the Agreed Supply, Glencore agrees to pay You the Fee in accordance with the Payment Terms.

- 2.2. The Fee is net (i.e. exclusive) of all taxes and charges payable, and any amount required to be withheld, by Glencore under any relevant law in force which remain Glencore's responsibility.
- 2.3. The Fee is also net of any goods and services tax or similar charge. If such charge is payable on the Fee by You, Glencore shall also pay to You an amount equivalent to that charge within 28 days of You providing Glencore with a correct tax invoice (or similar documentation) for the relevant supply.

### **3. Delivery**

- 3.1. You are required to supply the Agreed Supply on the Delivery Date.
- 3.2. You must ensure that any goods that form part of the Agreed Supply are suitably packed to avoid damage in transit or storage.
- 3.3. If any part of the Agreed Supply provided by You:
  - (a) does not conform with the requirements of the Purchase Order; or
  - (b) is defective, unsatisfactory, unfit for the required purpose or otherwise unacceptable,Glencore may reject that part of the Agreed Supply or all of it.
- 3.4. If Glencore rejects a part or all of the Agreed Supply and:
  - (a) that part of the Agreed Supply is not rectified or replaced; or
  - (b) a written agreement for rectification or replacement is not reached,within 14 days of rejection by Glencore, Glencore may return any rejected goods to You at Your cost and You agree to reimburse Glencore's costs incurred in association with the return as well as the Fee already paid.
- 3.5. Time is of the essence for the delivery of the Agreed Supply to Glencore in accordance with the terms of the Purchase Order and this Agreement.
- 3.6. If You become aware of anything which may prevent You from providing the Agreement Supply by the Delivery Date, You shall notify Glencore in writing however, unless notified pursuant to clause 13, You are not relieved of Your obligation to provide the Agreed Supply by the Delivery Date.

### **4. Variation**

- 4.1. Glencore may at any time, vary a Purchase Order by issuing a Change Order.

- 4.2. If such variation causes an increase or decrease in the Fee (excluding loss of profits) or a change to the Delivery Date, You must notify Glencore's Representative nominated on such Change Order within 5 business days of receipt of the Change Order.
- 4.3. If a notice is given by You pursuant to clause 4.2, You must not commence supply of any part of the Change Order until a reasonable adjustment to the Fee or the Delivery Date has been agreed in writing between You and Glencore.
- 4.4. If agreement can not be reached pursuant to clause 4.3, either party may rely on clause 14 to resolve the matter.

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

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

### **6. Defects liability**

- 6.1. The Defects Liability Period shall commence on the Date of Supply.
- 6.2. During the Defects Liability Period, Glencore may notify You in writing of a defect in the Agreed Supply and may require You to rectify such defect, or replace the Agreed Supply within a reasonable time.
- 6.3. If rectification is not complete within such reasonable time, Glencore may have the rectification carried out by others, at Your expense, without prejudice to Glencore's other rights.
- 6.4. The obligations set out in this clause are in addition to the obligations described in clause 3.4.

### **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;
  - (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.

### Your warranties and acknowledgements

- 9.3. 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.
- 9.4. You have evaluated all aspects of the Agreed Supply and have the expertise and capability (including availability of resources) to provide the Agreed Supply in accordance with this Agreement.
- 9.5. 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.

## 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 in connection with the provision of the Agreed Supply; 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.

## 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 and cancellation

- 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. 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.
- 12.3. Glencore may at any time, by written notice, cancel that part of a Purchase Order which is yet to be delivered by You. Upon receipt of a notice You must cease manufacture or provision of the Agreed Supply and mitigate Your costs. Glencore shall pay You any unrecoverable costs reasonably incurred by You prior to cancellation which are directly attributable to the placing of the Purchase Order. Upon such payment, title in all complete and incomplete goods or services that would have formed part of the Agreed Supply shall pass to Glencore.

### 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 Purchase Order.
- 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. Vessel Nomination

- 16.1. You warrant and represent that you will not nominate any vessel in the performance of your obligations under this Agreement that is, or will become during the performance of this Agreement, in violation of US sanctions, European Union sanctions, Swiss sanctions or any other applicable sanctions (hereinafter, "Sanctions") or which would put Glencore in breach, or under designation risk, of Sanctions.
- 16.2. Glencore will have the right to reject any nomination which (a) violates any Sanctions, (b) would or could, in Glencore's reasonable opinion, put Glencore in breach, or under designation risk, of any Sanctions, or (c) otherwise involves a vessel that is the subject of any Sanctions (including, but not limited to, vessels that are the subject of Sanctions due to ownership or country of registration, or that appear on any Sanctions list), by serving a rejection notice on you detailing the grounds for the rejection. Service of such notice shall not constitute a breach of this Agreement and Glencore shall not be liable to you for any losses, claims, costs, expenses, damages or liabilities arising in connection with any such rejection. If Glencore rejects a nomination on these grounds it shall be entitled, at its sole discretion, to (i) require you to promptly nominate a suitable substitute vessel; or (ii) terminate this Agreement.
- 16.3. To the full extent permitted by applicable law, you shall indemnify Glencore against any and all costs, expenses, losses and liabilities it incurs as a result of you nominating a vessel in breach of this clause.

## 17. Supplier Standards

- 17.1. You must comply with the Glencore Supplier Standards available at <https://www.glencore.com/suppliers>, as amended from time to time (the "Glencore Supplier Standards"), the terms of which are incorporated into the Agreement.
- 17.2. Your obligations under this clause include but are not limited to:
  - (a) instituting and maintaining policies and procedures designed to ensure that the Supplier complies and that each of its subsidiaries, authorised representatives and subcontractors complies, with the Glencore Supplier Standards; and
  - (b) carrying out your business in accordance with the Glencore Supplier Standards.
- 17.3. Glencore reserves the right at reasonable times and upon reasonable notice to monitor, review and/or audit your compliance with this clause.
- 17.4. You must and must procure that your subsidiaries, employees, authorised representatives and subcontractors co-operate with, and provide any information and assistance reasonably requested by, Glencore in connection with any monitoring, review and/or audit that Glencore may at its discretion undertake.

## 18. General

- 18.1. The governing law of this Agreement will be the law of the location of Glencore's registered office.
- 18.2. If a party does not exercise a right or remedy fully or at a given time, the party may still exercise it later.
- 18.3. 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.
- 18.4. 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.
- 18.5. The rights and remedies provided in this Agreement are in addition to other rights and remedies given by law independently of this Agreement.
- 18.6. The parties agree to pay their own costs with respect to the preparation and execution of this Agreement.
- 18.7. A party may not make a public announcement relating to this Agreement without the approval of the other party.
- 18.8. 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.
- 18.9. You will comply with Glencore's policies including Glencore's 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> ).
- 18.10. You must comply with all anti-money laundering, anti-bribery and anti-corruption laws, statutes, regulations and codes, including but not limited to all local, supra-national and extra-territorial laws and sanctions