

Pilbara Minerals Limited - Standard Terms and Conditions

1 Provision of goods or services

- (a) The term “**you**” means the Vendor named in the purchase order; “**we**,” “**us**” and “**the Company**” means Pilbara Minerals Limited; and “**Personnel**” means the employees, agents, contractors or subcontractors of a party (but our “Personnel” do not include your “Personnel”).
- (b) By providing the goods or services referred to in the purchase order, you (Vendor) agree to be bound by:
- (i) the purchase order;
 - (ii) these Standard Terms and Conditions; and
 - (iii) any special terms and conditions contained in or attached to the purchase order
- (collectively, this “**Agreement**”). In the event of any conflict between the purchase order, these Standard Terms and Conditions and any special terms and conditions, the documents will take precedence in the order listed above.
- (c) You and your Personnel must, in providing the goods or services, use your best endeavours not to interfere with any of our activities or the activities of any other person on our project sites or premises and ensure that our project sites and premises are left secure, clean, orderly and fit for immediate use.
- (d) You and your Personnel must obtain and maintain (at your own expense) any authorisations, licences, permits or consents necessary for providing the goods or services.
- (e) You and your Personnel represent and warrant on a continuing basis that:
- (i) the goods and services will (as applicable):
 - (A) comply with any relevant legislation, standards and industry best practices;
 - (B) conform to the description, data, drawings, plans, specifications, and performance or operation criteria (as applicable), any samples, and the Company’s requirements which have been provided to you;
 - (C) be supplied with copies of all material safety data sheets for dangerous goods;
 - (D) be free from any defect in design, provision, workmanship and makeup;
 - (E) be provided with due care and skill and be of high quality and workmanship;
 - (F) be provided by appropriately qualified, competent, skilled, experienced and professional personnel;
 - (G) be fit for the purpose intended by us and disclosed to you; and
 - (H) not infringe or contribute to the infringement of any intellectual property rights;
 - (ii) any goods will be properly and safely packed and delivered to, and any services will be provided at, the place and within the time period specified in the purchase order; and
 - (iii) any information supplied by you or your Personnel relating to this Agreement, or the goods or services is true and correct.
- (f) Unless the Agreement specifies otherwise, you must supply, at your own expense, all labour, plant, equipment, tools, appliances or other property and items you require to fulfil your obligations under the Agreement.
- (g) Any plant, equipment, tools, appliances or other property and items that we provide to you are used at your own risk and remain the property of Pilbara Minerals Limited and must only be used for the purposes of fulfilling your obligations under the Agreement.

2 Inspection and acceptance

- (a) We must have a reasonable time to inspect the goods after delivery. We may inspect or witness tests on the services or their results at any time. Any payment or acknowledgement of receipt by us before inspection or testing does not constitute acceptance of the goods or services.
- (b) If on inspection or testing we believe any goods or services to be defective, we may (as applicable):
- (i) reject any defective goods by returning them to you;
 - (ii) reject the defective services by notifying you in writing;
 - (iii) require you to repair, rectify or resupply the defective goods or services at your cost; or
 - (iv) have the defective goods or services repaired, rectified or resupplied by a third party at your cost.
- (c) You must refund to us, when requested, any payments made by us in respect of defective goods or services which we reject.
- (d) You must reimburse us for any expenses we incur in returning or repairing defective goods and in rectifying defective services.
- (e) If, at any time during a period of 12 months after delivery, we become aware of any defect, error, omission, discrepancy, inconsistency, or ambiguity (**Error**) in respect of any goods or services, and we notify you of such Error within this period, you must at your own cost immediately rectify any Error so that the relevant goods and services comply with the requirements of this Agreement.

3 Title and risk

- (a) Title to and risk in the goods does not pass to us until we take delivery of the goods and we inspect and accept the goods.
- (b) You warrant that you have complete ownership of the goods free of any liens, charges and encumbrances and will provide the goods to us on that basis and we will be entitled to clear, complete and quiet possession of the goods.
- (c) You hereby waive any liens, charges and encumbrances you may have over the goods which are delivered to us pursuant to this Agreement.

4 Price, invoicing and payment

- (a) In this clause 4, terms or expressions which have a defined meaning in the GST Act have the same meaning given in the GST Act. The GST Act means *A New Tax System (Goods and Services Tax) Act 1999*.
- (b) The price is inclusive of all duties and taxes (except GST) and costs incurred by you or your Personnel in providing the goods or services including all charges for packaging, packing, insurance and delivery of the goods and the cost of any items used or supplied in conjunction with the services.
- (c) You must submit tax invoices to us no earlier than (as applicable):
- (i) upon delivery and acceptance of the goods as set out in clause 2, unless we have agreed to make a partial or full upfront payment in which case the invoice should reflect the amount agreed to be paid upfront;
 - (ii) on completion of the services, unless the purchase order states that progress payments are to be made; and
 - (iii) where the purchase order specifies that progress payments will be made for the provision of services, at the end of each month for services provided in that month.
- (d) The tax invoice must be in a form acceptable to the Company and must contain the following information:
- (i) the agreement number or purchase order number;

- (ii) a brief description of the goods or services supplied;
 - (iii) any further information stipulated in the GST Act or any other applicable tax legislation, or by the Company, so that the Company will receive the benefit of any tax credit or refund in relation to the supply of the goods and/or services; and
 - (iv) such other accurate verification documentation as may be requested by the Company.
- (e) Subject to you complying with this clause 4, we will pay all invoices rendered to us by you under this clause 4 **within 30 days from the end of the month of receipt of that invoice**, except where we dispute the invoice.
- (f) If the Company disputes any amount claimed by you to be due and payable, the Company will pay the undisputed part of the invoice (if any) and withhold the balance pending resolution of the dispute. If the resolution of the dispute determines that we are to pay an amount to you, we will pay that amount upon resolution of the dispute.
- (g) Where a price is calculated on a 'cost plus', 'schedule or rates' or 'per day' basis, we may audit your records to determine if the price has been correctly calculated at any time within 12 months after submission of the relevant tax invoice.
- (h) If any supply made under this Agreement is or becomes subject to GST, the party to whom the supply is made must pay to the party making the supply in addition to any consideration payable an additional amount on account of GST. If any party is required to reimburse or indemnify the other party for a cost, expense or liability (**Cost**) incurred by the other party, the amount of that Cost for the purpose of this Agreement is the amount of the Cost incurred less the amount of any credit or refund of GST to which the party incurring the Cost is entitled to claim.
- (i) If we are entitled to an exemption or concession concerning any tax or import duty or import tariff with respect to the goods or services, you must apply for that concession or exemption and as far as possible promptly pass on to us the benefit of that concession or exemption.
- (j) No interest will be payable by us in respect of any invoice rendered to us by you under this clause 4 which remains due and payable and unpaid.
- (k) We may withhold, retain or set off from any payment due to you under this Agreement any or all monies due, or becoming due, to us by you and any amounts we deem necessary to protect us against any costs, charges, expenses or damages for which you may be liable to us in connection with this Agreement or otherwise.
- (l) Unless otherwise agreed, any money payable to you is to be paid in Australian Dollars.

5 Insurance

- (a) You and your Personnel must take out and maintain (at no cost to us) the following insurance policies:
- (i) public and products liability insurance with a minimum cover of \$20 million per claim and unlimited as to the number of claims;
 - (ii) workers compensation insurance with a minimum cover of \$30 million and unlimited as to the number of claims;
 - (iii) insurance which covers the goods for not less than the replacement value of the goods, which insurance must be maintained until the goods are accepted by us and title is transferred to us;
 - (iv) if the provision of the goods and services requires you or your Personnel to:
 - (A) provide or use plant and equipment – plant and equipment insurance;

- (B) transport goods to or from our project sites or premises – goods in transit insurance;
 - (C) use motor vehicles – motor vehicle insurance with a minimum cover of \$50 million per claim and unlimited as to the number of claims; or
 - (D) provide directly or indirectly professional services – professional indemnity insurance with a minimum cover of \$20 million per claim and unlimited as to the number of claims;
- (v) to the extent not covered by other insurance policies that you are required to take out and maintain under this Agreement, insurance which covers all third party claims with a minimum cover of \$10 million and unlimited as to the number of claims; and
- (vi) any other insurances required by law.
- (b) Each insurance policy which you are required under this Agreement to take out and maintain must:
- (i) include the company as an additional insured;
 - (ii) include a cross liability endorsement that:
 - (A) all agreements and endorsements except limits of liability must operate in the same manner as if there were a separate policy of insurance covering each party insured; and
 - (B) a failure by any insured party to observe and fulfil the terms and conditions of the policy must not prejudice the rights of any other insured party;
 - (iii) provide a waiver by the insurer of all rights of subrogation, action or relief against any of the insured parties; and
 - (iv) otherwise be on terms and conditions and in the amounts which are acceptable to us (acting reasonably).
- (c) Before commencing the provision of goods or services you must provide us certificates of currency for any insurances required to be held by your or your Personnel under this Agreement. All costs incurred by us as a consequence of you or your Personnel not maintaining such insurances will be a debt due from you to us.

6 Liability and indemnities

- (a) You and your Personnel enter our project sites and premises at your and their own risk.
- (b) You are liable for and must indemnify us and keep us indemnified from and against any liability and any loss or damage of any kind whatsoever arising out of or in connection with any act, omission or breach of this Agreement by you or your Personnel.
- (c) You will indemnify us against all claims in regard to wages that may become due and payable to your employees and the employees of your subcontractors and all claims of your subcontractors and contractors of goods, labour or services provided in connection with the performance of the Agreement.
- (d) Neither party is liable to the other party for any loss of use, loss of revenue, loss of profit, loss of product or production, business interruption, loss of business opportunity, loss of savings, loss of use of capital or loss of goodwill arising out of or in connection with this Agreement.
- (e) Part 1F of the *Civil Liability Act 2002 (WA)* is excluded from operation with respect to any dispute, claim, action or matter under or in connection with this Agreement.
- (f) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement;

- (g) It is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement;
- (h) The making of a claim by a party under an indemnity contained in this Agreement in respect of a particular event does not preclude that party from subsequently making further claims under that indemnity in respect of any further loss arising out of the same event for which it has not previously been indemnified.

7 Assignment and subcontracting

- (a) You may not assign all or any part of your rights or transfer your obligations under this Agreement without our prior written consent.
- (b) We may assign all or any part of our rights or transfer our obligations under this Agreement without your prior written consent.
- (c) You must not subcontract all or any part of your obligations under this Agreement without our prior written consent.

8 Suspension and termination

- (a) To the extent permitted by law, we may at any time and for any reason, suspend performance of your obligations under this Agreement by giving you notice. When you receive a notice of suspension from us, you must suspend performance of the relevant obligations until such time as we direct you to resume performance of those obligations by notice in writing.
- (b) In this clause 8, "**Force Majeure Event**" means an event or circumstance that directly or indirectly prevents or delays a party ("**Affected Party**") performing one or more of its obligations ("**Affected Obligations**") under this Agreement, where that event or circumstance is beyond the reasonable control and without the fault or negligence of the Affected Party and which by the exercise of reasonable diligence the Affected Party was unable to prevent (excluding any shortage of labour or materials).
- (c) If a Force Majeure Event occurs:
 - (i) the Affected Party must as soon as practicable notify the Other Party of the Force Majeure Event, the effect of the Force Majeure Event on the Affected Obligations, the estimated period of delay to the Affected Obligations, and steps to minimise any delay, loss or damage caused by the Force Majeure Event; and
 - (ii) the Affected Obligations are suspended, to the extent to which they are affected by the Force Majeure Event, for the duration of the Force Majeure Event; and
 - (iii) the Affected Party must use all reasonable endeavours to remove, overcome or minimise the effects of the Force Majeure Event,

and, if the Affected Obligations have or will be suspended for a period of more than 60 consecutive days, either party may elect to terminate this Agreement by notice in writing to the other party.

- (d) You must use your best efforts to mitigate any costs and expenses incurred as a consequence of a suspension of your obligations under this Agreement.
- (e) Where the suspension of your obligations by us under this clause 8 is a direct result of, and solely caused by, the acts or omissions of us or our Personnel, we will reimburse you within a reasonable time of receipt by us of a detailed breakdown of your claim for the extra costs necessarily and reasonably incurred by you as a direct consequence of the suspension.
- (f) We may immediately terminate this Agreement by notice in writing to you if:
 - (i) you become insolvent, bankrupt or are convicted of a criminal offence;

- (ii) you or your Personnel breach any obligation under this Agreement which is unable to be remedied or, if it is able to be remedied, is not remedied within 14 days of us giving you notice to do so; or
- (iii) in our reasonable opinion, you or your Personnel have engaged in any unsafe work practices.

- (g) Nothing in this Agreement or at law, entitles you to terminate or suspend performance of your obligations under this Agreement unless we have breached a material obligation which is unable to be remedied or, if it is able to be remedied, is not remedied within 14 days of you giving us notice to do so and monetary damages would not be an appropriate remedy for such breach.
- (h) To the extent permitted by law, we may terminate this Agreement at any time and in our sole discretion by giving you 7 days prior notice, in which case we must reimburse you for all work in progress or goods or services completed and expenses incurred up to the date of the notice of termination which cannot be reversed or mitigated by you applying best efforts.
- (i) Unless expressly stated otherwise, termination of this Agreement for any reason does not affect the rights or obligations of a party which have accrued prior to termination.

9 Site services

- (a) Subject to the compliance by you with the terms of the Agreement, we will give you access to our project sites as and when reasonably required to enable you to supply the goods or services.
- (b) You acknowledge and agree with us that:
 - (i) the Company remains in possession of our project sites at all times; and
 - (ii) the Company retains overriding control of our project sites and all persons within the project sites.
- (c) Where the supply of Services requires you to enter our project site, you and your personnel must comply with our site rules and safety management plan, which are incorporated by reference into this Agreement.
- (d) While at our project sites and/or premises, you and your Personnel must comply with all of our rules, procedures, requirements and directions (as notified by us or our Personnel), including in respect of safety.
- (e) Copies of our site rules and safety management plan are available upon request and you are responsible for the distribution of the site rules and safety management plan to your Personnel.
- (f) We may amend our site rules at any time. You must comply with such amendments from the time that notice of the amendments are provided to you.
- (g) You will be responsible for providing your Personnel with all necessary safety equipment and clothing at no cost to us, unless otherwise agreed. All Personnel are required to wear appropriate safety protection in accordance with our site rules and safety management plan.
- (h) You will work co-operatively with other contractors at our project sites and will use all reasonable endeavours to avoid any conflict between your activities and the activities of other contractors.
- (i) If you incur delays or additional costs through interference by other contractors or personnel, you may inform us and we will take the reasonable steps that we consider appropriate (in our discretion) to minimise such interference, but you will not be entitled to claim such additional costs from us.

10 Intellectual property

- (a) All intellectual property rights, including without limitation all know-how, trade secrets, patents and copyright resulting from the provision of services vest in us immediately on creation.

- (b) We have a non-exclusive, royalty free licence to use, modify, adapt or sublicense any intellectual property owned by you or your Personnel to the extent necessary for us to exercise our rights or perform our obligations under this Agreement.
- (c) You must do all things necessary to give full effect to the rights and obligations contained in this clause 10.
- (d) You warrant that provision of the goods and services will not infringe the intellectual property rights of any third party and that you have all intellectual property consents, licences and rights necessary to perform your obligations under this Agreement.

11 Confidentiality

- (a) You and your Personnel must not (except to the extent necessary to comply with your obligations under this Agreement) disclose to any person any information (including the terms of this Agreement) owned or relating to us or our business or our Personnel or customers.
- (b) Nothing in this Agreement prohibits disclosure of information which is in the public domain otherwise than as a result of a breach of this clause 11, is received from a third party provided that it was not acquired by that third party as a result of a breach of this Agreement or is required to be disclosed by law or any governmental body, authority or agency having authority.
- (c) The obligations in this clause 11 survive termination of this Agreement.

12 Dispute resolution

- (a) In the event of any dispute, controversy or claim between the parties ("**Dispute**"), either party may deliver to the other party a written notice ("**Dispute Notice**") which sets out the matters that are the subject of the Dispute.
- (b) During the period of 30 days after delivery of the Dispute Notice (or such longer period agreed in writing by the parties), each of the parties must undertake genuine and good faith negotiations to attempt to resolve the Dispute.
- (c) No party may commence any legal proceedings in relation to a Dispute unless the party has complied with any obligation on it under this clause 12 or the proceedings are commenced for the purpose of seeking interlocutory relief.

13 General

- (a) You must ensure that your Personnel comply with this Agreement as if they were parties to it and you are liable for any acts, omissions and breaches of this Agreement by your Personnel.
- (b) In performing this Agreement, you and your Personnel must comply with all applicable laws and the terms of any applicable licences or permits.
- (c) This Agreement is the entire agreement between the parties about its subject matter and replaces all previous agreements, understandings, representations and warranties about that subject matter. Any terms and conditions contained in or relating to any other documents, including any of your documents, in respect of the goods or services are expressly excluded.
- (d) Unless expressly stated otherwise, where a right or remedy is conferred on us under this Agreement, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on us under this Agreement or according to law.
- (e) This Agreement is governed by the laws of Western Australia. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Western Australia. Any provision of this Agreement which is void or unenforceable is to be read down or severed to the extent it is possible to do so without affecting the validity or enforceability of this Agreement.

- (f) Each party will bear its own costs in relation to the negotiation, preparation and execution of this agreement and any further documentation required.
- (g) No variation of this Agreement is effective unless made in writing and signed by each party. Any variation will only be applicable to the specific purchase order and will not apply to past or future purchase orders nor oblige us to agree to such a variation for any other purchase orders.
- (h) No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. A single or partial waiver or exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or any other right or remedy.
- (i) The invalidity or enforceability of one or more of the provisions of this Agreement will not invalidate, or render unenforceable, the remaining provisions of this Agreement.
- (j) Nothing in this Agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the parties. At all times while performing your obligations under this Agreement, you are an independent contractor and not an employee or agent of Pilbara Minerals Limited.