



OLYMPIC DAM PURCHASE ORDER TERMS AND CONDITIONS

Applicable from 23 March 2009

Interpretation – definitions are at the end of these 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 this Purchase Order.
- 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 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 this Purchase Order.
- 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 Purchase Order.

- 1.5 The Company may specify in this Purchase Order an estimate of the quantity or volume of Goods and Services the Contractor may be required to deliver or perform.
- 1.6 If the Company specifies an estimate of the quantity or volume of Goods and Services the Contractor may be required to deliver or perform, this does not amount to an undertaking, representation or guarantee that the Company will purchase any minimum or the estimated volume or quantity of Goods and Services.
- 1.7 If the Contractor delivers more Goods than the quantity specified in this Purchase Order, the Company may return any excess quantities to the Contractor at the Contractor's sole risk and expense.
- 1.8 If the Contractor performs more Services than the quantity specified in this Purchase Order, the Company is not liable to pay for the additional quantity.

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 this 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 this Purchase Order.

4. CANCELLATION OF PURCHASE ORDER

The Company may cancel this Purchase Order for any reason on the giving of written notice, but:

- (a) the Company must pay for any part of the Goods delivered or Services performed prior to the cancellation;
- (b) if the Contractor has shipped any Goods before the cancellation but the Goods have not been delivered to the Delivery Address at the time of cancellation; the Company must either:
 - (i) subject to clause 9, accept those Goods when delivered, and pay the Price for them; or
 - (ii) return the Goods to the Contractor at the Company's expense;
- (c) if the Contractor has not shipped the Goods at the time of cancellation, on receiving the written notice of cancellation the Contractor must stop manufacture of the Goods in accordance with and to the extent specified in the notice, and do everything possible to mitigate any costs incurred in relation to the Goods; and
- (d) if clause 4.1(b)(ii) or 4.1(c) applies:
 - (i) to the extent that the Goods were manufactured or fabricated in accordance with any specification prepared by the Contractor for the Company, the Company must reimburse the Contractor in respect of any expenditure reasonably incurred by the Contractor prior to the date of the cancellation which is directly attributable to the placing of the Purchase Order and which the Contractor is not able to recoup in some other way; and
 - (ii) the Contractor is not entitled to the Price of those Goods or Services, or to any compensation for that cancellation other than as specified in clause 4.1(a).

5. TITLE AND RISK

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

6. PRICE

- 6.1 The Company must pay the Contractor the Price for the Goods and/or Services.
- 6.2 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.
- 6.3 The Price is inclusive of all taxes and duties, except GST.

7. GST

- 7.1 If GST is imposed on any supply made by the Contractor under or in connection with this Purchase Order, the Contractor may recover from the Company, in addition to the Price, an amount equal to the GST payable in respect of that supply.
- 7.2 The Contractor must first provide the Company with a valid tax invoice before the Company will pay the GST amount to the Contractor.

8. INVOICING

- 8.1 Upon delivery of the Goods and/or completion of the Services, the Contractor must provide to the Company:
 - (a) where the Contractor has entered into an RCTI Agreement with the Company, a Contractor Reference Document; or
 - (b) a valid tax invoice,which must include the information set out in clause 8.3.
- 8.2 The Company will, as soon as practicable after approval of the Contractor Reference Document by the Company, generate a Recipient Created Tax Invoice.
- 8.3 A Contractor Reference Document and 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 this Purchase Order and, where relevant, 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 Contractor Reference Document or 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 this Purchase Order;
 - (e) the amount of any applicable GST;
 - (f) Company operation and Site; and
 - (g) Company contact name.
- 8.4 If the Company requests, the Contractor must provide the Company with all relevant records to calculate and verify the amount set out in any Contractor Reference Document or any Invoice.
- 8.5 The Company is not obliged to approve a Contractor Reference Document or any invoice submitted in accordance with clause 7.1(b), and may withhold approval and/or money due to the Contractor under this Purchase Order if the Goods or Services (or any part of them) are Defective.
- 8.6 Subject to clause 8.5, the Company will pay all Recipient Created Tax Invoices and all invoices that comply with clause 8.3 within 30 days of their generation or receipt (as the case may be), except where the Company disputes the Contractor Reference Document or 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.

8.7 The Company may reduce any payment due to the Contractor under this Purchase Order 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.

9. QUALITY

- 9.1 The Goods and/or Services must match the description referred to in this Purchase Order.
- 9.2 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.
- 9.3 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.
- 9.4 The Goods must be of merchantable quality and, unless otherwise specified in this Purchase Order, must be new.

10. WARRANTY PERIOD

10.1 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.

10.2 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.

11. LIABILITY AND INDEMNITY

11.1 The Contractor agrees to indemnify, and keep indemnified, the Company from and against all claims, proceedings, expenses, costs (including legal costs on a solicitor and own client basis), damages, losses and other liabilities of any kind arising directly or indirectly from any breach of any warranty or any of the other terms and conditions of this Purchase Order by the Contractor, except to the extent of liability which is caused by a wilful or negligent act or omission of the Company.

11.2 To the extent permitted by Law, the Contractor agrees to indemnify and keep indemnified each employee of the Company from and against all losses, damages, costs (including legal costs on a full indemnity basis), charges, expenses, fines, penalties and liabilities arising out of or in connection with any breach of a term of this Purchase Order by the Contractor or any wilfully wrongful or negligent act or omission of the Contractor where:

- (a) the act, omission or breach by the Contractor relates to a matter of safety; and
- (b) the employee has acted in good faith in relation to the subject matter of any claim for indemnity under this clause 22.2.

11.3 The Company holds the indemnity set out in clause 11.2 on trust for each of its employees.

11.4 Neither Party will be liable to the other Party in any circumstances for any indirect, special or consequential loss or damage, including but not limited to loss of revenue, loss of production, loss of product, loss of contract or loss of profit howsoever arising and whether in an action in contract, tort (including without limitation, negligence), in equity, product liability, under statute, or on any other basis.

12. INTELLECTUAL PROPERTY

12.1 The Company acknowledges that the Contractor remains the owner of all Background IP.

12.2 The Contractor gives to the Company a non-exclusive, transferable, royalty free licence to use all Background IP to the extent necessary to enable the Company to exercise rights in the Project IP.

- 12.3 The Contractor acknowledges and agrees that all Project IP shall be vested in the Company and shall be the Company's property as and when created and the Contractor hereby assigns all rights, title and interest in and to the Project IP to the Company (including but not limited to the Project IP created prior to or after the date of this Purchase Order).
- 12.4 The Company gives the Contractor a non-exclusive, non-transferable, revocable licence to reproduce and use the Project IP as necessary for the purpose of completing this Purchase Order. The Company has the right to revoke this licence at any time by notice in writing to the Contractor.
- 12.5 The Contractor must not disclose, reproduce or otherwise deal with the Project IP, or allow any other person to do the same, for any purpose other than to complete this Purchase Order.
- 12.6 The Contractor warrants that:
- (a) it owns the Intellectual Property Rights in the Background IP and that the use of the Background IP does not and will not infringe any rights of third parties (including, without limitation, any Intellectual Property Rights)
 - (b) the supply of Goods and/or provision of Services does not and will not infringe the rights (including, but not limited to, Intellectual Property Rights) of any third party;
 - (c) it will, at no further cost to the Company, procure all licences and consents to use any Intellectual Property Rights of a third party which are necessary to provide the Services;
 - (d) the Project IP does not and will not infringe any rights of third parties (including without limitation any Intellectual Property Rights); and
 - (e) it has the right to assign all Project IP to the Company in accordance with clause 11.3.
- 12.7 The Contractor agrees that any sub-contract it enters into in relation to this Purchase Order will contain a condition that the sub-contractor agrees to assign to the Company all Intellectual Property Rights in any Project IP created by it for the purposes of this Purchase Order.
- 12.8 The Contractor agrees to notify the Company as soon as it becomes aware of any suspected, threatened or actual infringement of any Intellectual Property Rights in the Project IP and to provide all reasonable assistance in defending against such infringement.
- 12.9 The Contractor agrees to provide all reasonable assistance the Company may request to protect the Intellectual Property Rights in the Project IP.
- 12.10 The rights and obligations under this clause 11 continue after the End Date.
- 13. CONFIDENTIAL INFORMATION AND PUBLICITY**
- 13.1 The Contractor must not advertise or issue any information, publication, document or article (including photographs or film) for publication or media releases or other publicity relating to the Goods and Services, this Purchase Order or the Company's Confidential Information without the prior written approval of the Company.
- 13.2 The Contractor must refer to the Company any enquiries from the media concerning the Goods and Services, this Purchase Order or the Company's Confidential Information.
- 13.3 The Contractor must not, and must ensure that the Contractor's personnel do not, without the prior written approval of the Company:
- (a) use Confidential Information other than as necessary for the performance of this Purchase Order; or
 - (b) subject to clause 13.4, disclose Confidential Information.
- 13.4 Subject to clause 13.6, the Contractor's obligation not to disclose Confidential Information without the Company's prior written approval does not apply to disclosures to the extent they are:
- (a) required by law, including disclosure to any stock exchange or authority;
 - (b) made to its legal advisers; or
 - (c) required to enable the Contractor to perform its obligations or to make or defend any claim under this Purchase Order.
- 13.5 Even if the Contractor is entitled to disclose Confidential Information without the prior written approval of the Company, the Contractor must:
- (a) otherwise keep the Confidential Information confidential; and
 - (b) ensure as far as possible that any person to whom the Confidential Information is disclosed keeps the Confidential Information confidential in accordance with this clause 12.

- 13.6 Before making any disclosure pursuant to clause 13.4, the Contractor must:
- (a) give the Company details of the reasons for the disclosure and a copy of the information the Contractor proposes to disclose; and
 - (b) provide the Company with all assistance and co-operation which the Company considers necessary to prevent or limit that disclosure including by making such amendments (if any) as requested by the Company to the terms of the disclosure.
- 13.7 The Contractor must, within seven days after a written direction by the Company's Representative to do so, return or destroy all Confidential Information in the Contractor's possession, custody or control.
- 13.8 The rights and obligations under this clause 12 continue after the End Date.
- 14. INSURANCE**
- 14.1 The Contractor must take out and maintain during the period of this Agreement:
- (a) insurance for the Goods up to the time they are delivered and installed (if required) for an amount not less than their replacement value;
 - (b) a comprehensive public and products liability policy to cover all sums which the Contractor may become legally liable to pay as compensation consequent upon:
 - (i) death of, or bodily injury (including disease or illness) to, any person; and
 - (ii) loss of, or damage to, property,
 happening anywhere in Australia arising out of or in connection with this Agreement. The limit of liability provided by this policy for each and every event must be not less than \$10 million, and such policy must include a cross liability clause;
 - (c) insurance in respect of all claims and liabilities arising, whether at common law or under statute relating to workers compensation or employer's liability, from any accident or injury to any person employed by the Contractor in connection with the Goods or Services and the Contractor must ensure that all sub-contractors are similarly insured in respect of their employees. This insurance must be in compliance with the laws of the relevant jurisdiction in which the Services are to be carried out;
 - (d) a policy of insurance against any and all liability, loss of and damage to any plant, equipment, tools, appliances or other property owned, rented or hired by the Contractor and used in relation to this Agreement;
 - (e) professional indemnity insurance with a limit of liability of not less than \$5 million for each and every occurrence or such other amount as specified in the Order in respect of the performance of Services in connection with this Agreement;
 - (f) comprehensive motor vehicle third party liability insurance for any vehicle owned or used by the Contractor. The limit of liability under the third party property section of the policy must be not less than \$5 million for each and every occurrence; and
 - (g) other insurances required by law or reasonably required by the Company.
- 14.2 The Contractor must ensure that all policies of insurance required to be taken out by it under this Agreement (other than the insurance noted in clause 14.1(c)) include the Company as a named co-insured.
- 14.3 Unless agreed otherwise by the Company, any sub-contract must require the sub-contractor to effect and maintain adequate insurance including workers compensation, public liability, and motor vehicle third party liability insurance. The Contractor must not permit any sub-contractor to enter upon the Site or continue to provide any Goods or Services, unless it remains insured.
- 14.4 The Contractor must notify the Company immediately of any cancellation of a relevant insurance policy and of any change to the policy which affects the Company's interests.
- 14.5 If any event occurs which may give rise to a claim involving the Company under any policy of insurance to be taken out by the Contractor under this clause then the Contractor must:
- (a) notify the Company within 14 days of that event; and
 - (b) ensure that the Company is kept fully informed of any subsequent actions and developments concerning the relevant claim.
- 14.6 At the Company's request, the Contractor must produce evidence that it is maintaining the insurances required by this clause.
- 14.7 The Contractor's obligations to insure under this clause are material obligations of this Agreement. Without limiting the Company's rights at law in equity or otherwise under this Agreement, any failure by the Contractor to comply with a provision of this clause entitles the Company to terminate this Agreement and to have the right to set off

against any sum payable to the Contractor all costs and expenses the Company incurs in taking out and maintaining a policy of insurance which the Contractor has failed to take out as required under this clause.

15. DEFINITIONS

Background IP means the Contractor's Intellectual Property which:

- (a) is in existence before the date of this Purchase Order; or
- (b) which comes into existence after the date of this Purchase Order other than in connection with this Purchase Order.

Company means BHP Billiton Olympic Dam Corporation Pty Ltd.

Confidential Information means this Purchase Order and any information that concerns the business, operations, finances, plans or customers of the Company (or the Company's Related Entities) and is disclosed to or acquired by the Contractor and which:

- (a) is by its nature confidential;
- (b) is designated by the Company as confidential; or
- (c) the Contractor knows or ought to know is confidential,

but does not include information which:

- (d) is or becomes public knowledge other than by a breach of this Contract;
- (e) is in the possession of the Contractor without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Contractor; or
- (f) has been independently developed or acquired by the Contractor.

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

Contractor Reference Document means a delivery document, dispatch note, time sheet, claim form or such other document which evidences the delivery of Goods or performance of Services.

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

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

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

End Date means the earlier of:

- (a) the date specified as such in this Purchase Order; and
- (b) the date this Purchase Order expires.

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

GST has the meaning given to that term under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

HSEC means health, safety, environment and community.

Intellectual Property Rights includes without limitation the protected rights attaching to inventions, patents, registered designs, trade marks, copyright, circuit layouts and confidential information.

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.

Moral Rights has the meaning given in the *Copyright Act 1968* (Cth).

Plant and Equipment means plant, equipment, tools, appliances or other property and items the Contractor requires to fulfil the Contractor's obligations under this Purchase Order.

Price means the price or the rates for supply of Goods and performance of the Services (as the case may be) set out in this Purchase Order which is exclusive of GST, but is inclusive of all other costs and charges.

Project IP means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with the performance of this Purchase Order (including all Intellectual Property Rights developed by the Contractor in supplying the Goods and/or providing the Services and any Intellectual Property Rights in the Technical Materials provided by the Company to the Contractor).

Purchase Order means this 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, and incorporating these terms and conditions.

RCTI Agreement means an agreement in the form provided by the Company and entered into between the Contractor and the Company or a related entity of the Company pursuant to which the parties have agreed that the Company will issue Recipient Created Tax Invoices in respect of all Goods and Services provided by the Contractor.

Recipient Created Tax Invoice has the meaning prescribed in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Related Entity means any related body corporate as defined in the Corporations Act and a Related Entity of the Company includes:

- (a) BHP Billiton Plc;
- (b) BHP Billiton Ltd;
- (c) any body corporate controlled by BHP Billiton Plc or BHP Billiton Ltd;
- (d) any body corporate controlled by BHP Billiton Plc and BHP Billiton Limited taking into account the aggregate percentage interests of their respective direct or indirect shareholdings in that body corporate; or
- (e) any body corporate controlling or controlled by the bodies corporate referred to in paragraphs (a) to (d) above.

For the purposes of paragraphs (c) to (e) above, one body corporate controls another when at the relevant time it owns either directly or indirectly not less than 50% of the shares entitled to vote at general meetings of that other body corporate.

Services means the services, if any, described on this Purchase Order (including any part of the specified services and the results of the specified services).

Site means those premises owned or operated by the Company as specified in the Purchase Order, including but not limited to any accommodation made available to the Contractor, sub-contractor any of their personnel.

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 Standards;
- (d) the Olympic Dam Site Specific Information and Conditions; and

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

Technical Materials includes plans, designs, drawings, engineering information, data, specifications, reports, accounts and any other material specified in this Purchase Order.

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 Services are performed.