

Hillgrove Resources Group

Terms and Conditions of Purchase

Definition

Where the context permits:

Agreement means the agreement between the Vendor and the Customer for the supply of Goods by the Vendor to the Customer and shall be constituted by the Purchase Order and these Terms and Conditions of Purchase.

Customer means Hillgrove Resources Limited ACN 004 297 116 (**Hillgrove**) or the relevant member of the group of companies which have as their ultimate parent Hillgrove (**Hillgrove Group**) identified on the Purchase Order.

Goods means the goods and services agreed to be supplied by the Vendor and purchased by the Customer pursuant to the Agreement.

GST has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

Insolvency Event means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the *Corporations Act 2001* (Cth)) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the *Corporations Act* to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the *Corporations Act*), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

Purchase Order means the Customer document entitled "Purchase order" setting out an order number, the Vendor's details and quotation number (if any), a full description of the Goods to be purchased, the Purchase Price, the delivery date, the delivery address and any other particular requirements of the Customer.

Purchase Price means the purchase price for the Goods specified in the Purchase Order, which, unless otherwise stated, is in Australian dollars and is inclusive of GST.

Vendor means the person from whom the Customer has agreed to purchase the Goods pursuant to the Agreement, as identified in the Purchase Order.

Quotations and Purchase Orders

- 1 Quotations from the Vendor are valid for a period of 30 days from the date of issue or otherwise specified in the quotation.
- 2 In order to purchase the Goods, the Customer must provide the Vendor with a Purchase Order.
- 3 A contract shall be formed by and upon the Vendor accepting in writing a Purchase Order from the Customer and each contract shall be governed solely by the Agreement to the exclusion of any terms of sale or supply of the Vendor.
- 4 The Customer will not be bound by any order for Goods unless it is issued on a Purchase Order and duly signed. The Customer may return at the Vendor's sole expense and risk any Goods delivered that are not covered by a Purchase Order, including any quantity of Goods greater than the quantity specified in the Purchase Order.
- 5 The Customer may vary a Purchase Order at any time. The Customer may at its option, at any time cancel or suspend the Purchase Order or any unfilled part of the Purchase Order. The Customer is not liable for any loss, damage, cost, expense of any kind arising in any way from cancellation or suspension. The liability of the Customer to the Vendor is limited to payment for Goods conforming to the terms applying to the sale and delivered to the Customer before cancellation or suspension.

Payment of Purchase Price

- 6 The Purchase Price is firm and, unless otherwise expressly stated, shall be inclusive of delivery and handling charges, packaging, freight, carriage and assembly costs, installation costs, insurance or any statutory, sales, excise, GST or other taxes, duties or imposts.
- 7 The Vendor must provide the Customer with a valid tax invoice for any Goods supplied by the Vendor to the Customer under the Agreement. The tax invoice must be addressed as shown on the Purchase Order and state the order number appearing on the corresponding Purchase Order relating to the Goods. Subject to compliance by the Vendor with the terms of the Agreement, the Customer must pay the Purchase Price in full within 30 days from the end of the month of receiving a valid tax invoice in accordance with this clause, or otherwise in accordance with the Customer's credit arrangement with the Vendor.

- 8 The Vendor acknowledges that the Customer is a member of the Hillgrove Group. The Vendor agrees that the Customer and/or any other Hillgrove Group company is entitled to exercise a right of set off to the extent the Vendor is indebted to the Customer or to any Hillgrove Group company against any monies due by the Customer or by any Hillgrove Group company to the Vendor under the Agreement or otherwise.

delivery, unloading or storage, having regard to the road and climatic conditions through which the Goods will pass; and

- (ii) Goods are packed and transported in accordance with any applicable regulations and industry codes and any reasonable safety or environmental requirement of the Customer.

GST on claims

- 9 (a) If the Vendor provides a payment for or any satisfaction of the Customer's claim or right to claim under or in connection with the Agreement (for example, for a breach of any warranty or for indemnity or for reimbursement of any expense) that gives rise to a liability for GST, the Vendor must pay, and indemnify the Customer on demand against the amount of that GST.
- (b) If the Customer has a claim under or in connection with the Agreement for a cost on which the Customer must pay an amount for GST, the claim is for the cost plus the amount for GST (except any amount for GST for which the Customer is entitled to an input tax credit).
- (c) If the Customer has a claim under or in connection with the Agreement whose amount depends on actual or estimated revenue or which is for a loss of revenue, revenue must be calculated without including any amount received or receivable as reimbursement for GST (whether that amount is separate or included as part of a larger amount).

- (b) The Vendor must pay any increase in freight charges arising from the Vendor's failure to follow any transport instruction in the Agreement or to properly describe the Goods being transported.

- (c) Packages and loose pieces must be clearly marked as shown on the Purchase Order and must include gross weight. The Vendor must label all packages in accordance with requirements of all relevant laws.

Dangerous goods

- 12 All Goods which are dangerous or hazardous must be clearly marked with or accompanied by all information required by any relevant legislation and must be accompanied by the appropriate manifest and emergency procedure guide.

Defective Goods and refunds

- 13 All Goods ordered are subject to final inspection and approval by the Customer. In the event the Goods (or any part) fail (in the Customer's absolute opinion) to conform with the Vendor's obligations, then the Customer may reject the Goods. The Vendor shall thereupon refund the Purchase Price forthwith together with an amount to cover the Customer's inspection, handling, transportation and other reasonable charges or expenses.
- 14 Where the Customer rejects the Goods which are already installed, the Vendor shall immediately upon written direction, remove the defective Goods, replace same and make good any damage to other property occasioned in such removal to the satisfaction of and at no cost to the Customer.
- 15 Acceptance of or payment for all or part of the Goods shall not be deemed to be a waiver on the part of the Customer of its contractual, statutory or other rights in respect of the Goods.

Warranties

- 10 In addition to the Customer's statutory and other rights, the Vendor represents and warrants to the Customer that the Goods:
- (a) will be fit for their disclosed purpose;
- (b) will comply with the requirements of all relevant standards in Australia, and with any other contractual obligations of the Customer to a third party (as disclosed to the Vendor by the Customer);
- (c) will conform with all specifications, drawings, samples or other description furnished by the Customer to the Vendor; and
- (d) will be free from any defects in design, manufacturing, materials and workmanship.

Delivery

- 16 The delivery of the Goods must be made in accordance with the Agreement and, in particular, within any time and/or method and to such place as the Customer may nominate on the Purchase Order.
- 17 The Vendor must clearly mark all delivery documents with the order number set out on the Purchase Order and ensure those documents accompany the Goods to the place of delivery.

Packaging and labelling

- 11 (a) The Vendor must ensure that, and is liable for any loss or damage caused if it does not ensure that:
- (i) Goods are suitably packed to avoid damage during loading, transit,

- 18 If the Vendor is late in delivering any of the Goods then the Customer shall be entitled to return the Goods to the Vendor at the Vendor's sole expense and risk.
- 19 Delivery shall not be regarded as having been completed until the Goods are fully installed (if applicable), tested and commissioned and the Customer has given its final acceptance. Signed delivery dockets shall not mean acceptance by the Customer of Goods delivered but only the number of packages or cartons delivered.

Title and risk

- 20 The Goods remain at the Vendor's risk until they are delivered to the Customer in accordance with the Agreement. The Vendor must insure the Goods for full replacement value up until delivery. Title to the Goods passes to the Customer on delivery.
- 21 The Vendor expressly waives any and all liens of any kind or nature to which the Vendor may otherwise be entitled, whether statutory or otherwise.

Installation

- 22 The Vendor must provide all work and materials necessary to install and commission the Goods (if and when required). All work carried out by the Vendor will be completed in a proper and workmanlike manner and the Vendor will exercise all due care and skill.

Insurance

- 23 The Vendor must maintain in full force adequate insurance including public liability, workers compensation and product liability insurance on terms and for amounts which are reasonable in the circumstances. The Customer may from time to time as reasonable require production of certificates of currency to ensure that the Vendor has complied and continues to comply with this clause.
- 24 The Customer is not liable for any injury, damage or loss sustained by the Vendor or any of its employees, agents or contractors, in relation to the supply, delivery and installation of the Goods.

Indemnity

- 25 The Vendor indemnifies the Customer against any loss, damage, liability or claim, whether arising under contract, at common law, in equity or under any statute, which the Customer suffers or incurs arising out of or in connection with:
 - (a) any breach by the Vendor of the Agreement; and
 - (b) any claim by any third party against the Customer in relation to the supply, delivery, installation, sale or use of the Goods.

Confidentiality and proprietary information

- 26 The Vendor must maintain the confidentiality of all, and must obtain the Customer's prior written consent before disclosing to any third party any, documents and information concerning the supply of the Goods to the Customer.
- 27 The Vendor warrants that it is the owner of or, where appropriate, is the registered user of all intellectual property rights in relation to the Goods, and warrants that the sale or use of any Goods by the Customer will not infringe the intellectual property rights of any third party in any country.
- 28 The Customer shall at all times retain title to the copyright or any other intellectual property rights in any plans, designs, sketches, drawings, blue prints, patterns, models, tools, dyes, moulds, special appliances, materials and patents and in any other document or material furnished by the Customer (whether furnished by the Customer in connection with the Agreement or produced by the Vendor for the purposes of the Agreement) ("Customer IP"). During the term of the Agreement the Customer IP shall be deemed to be held by the Vendor on consignment or as a bailee only and at the Vendor's sole risk.
- 29 The Vendor must use the Customer IP for the supply, delivery and installation of the Goods and for no other purpose.
- 30 This Agreement shall not be construed as being an express or implied assignment or licence of any of the Customer IP or the rights therein. The Vendor shall not be entitled to any lien, charge or other form of security interest whatsoever in respect of the Customer IP.
- 31 The Vendor shall not disclose Customer IP except with the prior written consent of the Customer.
- 32 The Vendor shall return all Customer IP and other property of the Customer upon demand by the Customer and the Vendor shall not under any circumstances whatsoever make any unauthorised copies of any information provided to the Vendor by the Customer, including the Customer IP.

Default

- 33 If the Vendor:
 - (a) is in breach of any provision of the Agreement and such breach is not rectified within seven (7) days of receipt of notice from the Customer to rectify such breach; or
 - (b) is affected by an Insolvency Event,then, the Customer may, without prejudice to any other rights or remedies it may have hereunder, terminate the Agreement, take possession of any premises, materials, tools and appliances and finish any work by whatever means it may deem expedient, at the Vendor's sole expense.

34 The Customer and the Vendor agree that the rights granted to the Customer under clause 33 may constitute a security interest for the purposes of the *Personal Property Security Act 2009* (Cth), and accordingly the Vendor must:

- (a) not, by act or omission, do or allow to be done anything that may adversely affect that security interest; and
- (b) do anything reasonably necessary for the purposes of ensuring the security interest is enforceable, perfected and otherwise effective and to enable the Customer to exercise rights in connection with the security interest.

Miscellaneous

35 The Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties.

36 The fact that the Customer fails to do, or delays in doing, something it is entitled to do under the Agreement, does not amount to a waiver of its right to do it. Any waiver must be agreed in writing by the Customer.

37 The Vendor must not make any claim for royalties or other additional compensation against the Customer, any Hillgrove Group company or any third party by reason of the use to which the Customer or any Hillgrove Group company puts the Goods.

38 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from these Terms and Conditions of Purchase, but the rest of the Agreement is not affected.

39 The Customer shall not be liable for any failure to fulfil or any delay in fulfilling any obligation arising from the Agreement if the failure or delay has been caused directly or indirectly by any act of God, war or other civil commotion, strikes, lockouts, stoppages and restraints of labour, breakdown of machinery, inability to obtain raw materials or fuel, fire or explosion, any government action or any other cause beyond the

reasonable control of the Customer and not a consequence of the Customer's negligence.

40 Any notice to be given to a party under the Agreement must be in writing, signed and sent by mail or facsimile to the address of that party shown on the Purchase Order. Notice is deemed to have been given three (3) days after posting (if sent by mail) or at the time of receipt (if sent by facsimile).

41 The Agreement is governed by and must be interpreted in accordance with the laws of the State of South Australia. The parties unconditionally submit to the non-exclusive jurisdiction of the courts of that State and any court that may hear appeals from any of those courts for any proceedings in relation to the Agreement and waive any right they might have to claim that those courts are an inconvenient forum.

42 A party must not start arbitration or court proceedings in respect of a dispute in relation to the Agreement without first notifying the other party of the dispute in reasonable detail and immediately thereafter for seven (7) days using its best endeavours to attempt to resolve the dispute. Nothing in this clause prevents a party from seeking urgent injunctive or interlocutory relief.

43 The Agreement contains the entire agreement between the parties about the supply of the Goods. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by the Agreement and has no further effect.

44 Where there is more than one Vendor then the liability of each shall be joint and several.

45 The rights and remedies provided in the Agreement will not affect any other rights or remedies available to the Customer.

46 The Customer may assign, novate or otherwise deal with its rights and obligations under the Agreement without the consent of the Vendor. The Vendor must not assign, novate, sub-contract or otherwise deal with its rights and obligations under the Agreement without the prior written consent of the Customer.

47 The United Nations Convention on Contracts for the International Sale of Goods 1980 does not apply to the Agreement.