

1. DEFINITIONS

- a. **Purchaser:** The party who issues the Purchase Order.
- b. **Supplier:** Vanguard Mining Pty Ltd as Trustee for Vanguard Trust Trading as Vanguard Mining.
- c. **Sub-suppliers:** Suppliers or subcontractors of materials, equipment, and services to the Supplier in connection with the Goods to be supplied hereunder.
- d. **Purchase Order:** The Purchase Order and all documents including these Terms and Conditions incorporated by reference therein.
- e. **Goods:** The machinery, plant equipment, apparatus, materials, or services of all kinds to be supplied in accordance with the Purchase Order.
- f. **Purchase Price:** The price of all Goods and/or Work to be supplied in accordance with the Purchase Order which shall include all costs and charges to the Delivery Point but shall exclude (unless otherwise stated) any taxes or duties.
- g. **Delivery Date:** The next business day following the duration stipulated in the Vanguard Mining Quotation or Proposal document for the delivery of the Goods to the nominated Delivery Point from the date of Vanguard Mining order acceptance.
- h. **Delivery Point:** The place stipulated in the Vanguard Mining Quotation or Proposal document for delivery of the Goods (the legal point of sale).
- i. **Site:** The designated place at which the Goods will be used.
- j. **Work:** Any and all work to be performed on the Owner's premises in connection with the supply, installation and/or commissioning of the Goods.

2. CONTRACT

These Terms and Conditions shall form the entire agreement between Purchaser and Supplier and supersedes all previous communications and negotiations. No terms stated by the Purchaser in writing the Purchase Order or in the performance of the Purchase Order shall be binding upon the Supplier unless accepted in writing by the Supplier.

3. APPLICABLE LAW

Purchaser and Supplier accept and agree to submit to the exclusive jurisdiction of the courts of the State of Western Australia as the proper law of the Contract.

The Supplier shall conform with the provisions of all laws (federal, state, or municipal) in any way affecting or applicable to the execution of the Purchase Order.

The Purchaser shall obtain all permits, licences and give all notice required to be given and shall pay all fees, deposits, and taxes in connection therewith.

4. PRECEDENCE OF DOCUMENTS

If the Purchaser or Supplier discovers any inconsistency between the documents comprising the Purchase Order, the Supplier shall immediately notify the Purchaser. In the case of any such inconsistency, the order of precedence of documents shall be:

- i. Purchase Order
- ii. Special Conditions of Purchase
- iii. Suppliers Proposal
- iv. Specifications, drawings, datasheets etc.

5. INTELLECTUAL PROPERTY

The Supplier shall retain all intellectual property rights to all documents, data, designs, drawings, equipment, processes, and everything else supplied. The Purchaser and their duly authorized agents, sub-agents and employees may use the documents, data, designs, equipment, processes, and everything else only for the purposes of maintaining and operating the equipment supplied by the Supplier under this Purchase Order.

6. LIQUIDATION

If the Purchaser, before completion of the Purchase Order becomes insolvent, applies for a voluntary liquidation order, compounds or compromises with its creditors, should be sequestered, is placed under judicial management, or has a Court Order made against it providing for any periodic payment to its creditors, then the Supplier may by written notice to the Purchaser, cancel the Purchase Order without prejudice to the Supplier's rights to claim damages and any other sums due to the Supplier from the Purchaser.

7. SUSPENSION

- a. Purchaser may at any time by written notice to the Supplier suspend further performance of the Purchase Order. Such notice shall specify the date and the estimated duration of the suspension. Such suspensions shall not exceed more than one hundred and eighty (180) calendar days.
- b. Upon receiving any such notice of suspension, the Supplier shall promptly suspend further performance of the Purchase Order to the extent specified, and during the period of such suspension shall properly care for and protect all work in progress and materials, supplies and equipment Supplier has on hand for performance of the Purchase Order. Supplier is entitled to claim for any storage costs associated with the suspension of the Purchase Order. Purchaser may at any time withdraw the suspension by written notice to Supplier specifying the effective date and scope of withdrawal, and Supplier shall resume diligent performance of the Purchase Order, or portion thereof, for which the suspension is withdrawn. If the suspension exceeds a period of thirty (30) days the Supplier shall be entitled to submit an invoice for all Goods supplied and Work performed up to and including the date of suspension.
- c. If Supplier believes that any such suspension or withdrawal of suspension justifies a variation to the Purchase Price for actual increased costs to the Supplier, Supplier shall promptly submit a written claim (including supporting documentation demonstrating increased costs to the Supplier) for such variation to the Purchase Price.

8. CANCELLATION

- a. The Purchaser may at its option cancel any unshipped Goods. Upon receipt of notice of cancellation, the Supplier shall cease manufacture, supply or work in accordance with and to the extent specified in the notice and shall immediately do everything possible to mitigate any cost incurred consequent upon such cancellation. Provided that the Supplier is not in default the Purchaser shall pay to the Supplier the cost incurred by the Supplier in connection with this order prior to the date of cancellation plus ten percent (10%) of the foregoing cost in lieu of profit, provided however that the total cancellation payment plus previous payments shall not exceed the Purchase Price.
- b. The Supplier's cost shall be as agreed in writing with the Purchaser prior to submission of any claim for such cost, and the claim shall be supported by documentation copies of relevant timesheets, cancelled materials purchase orders etc in substantiation of the claim.
- c. In the event that an agreement cannot be reached with the Purchaser, the Supplier's cost shall be as assessed and agreed by an independent party which shall be mutually agreed by the Purchaser and Supplier.
- d. Upon payment of the agreed Supplier's cost plus ten percent (10%), title to and property in any material or incomplete merchandise shall pass to Purchaser and following such payment the Purchaser shall be entitled to take delivery of the material or incomplete merchandise.

9. WARRANTY

- a. The Supplier warrants that the Goods supplied under this Purchase Order shall be new, shall be in accordance with the specifications and drawings and shall perform in respect to requirements of the Purchase Order.
- b. The Supplier shall warrant to the Purchaser all Goods supplied against faulty design, workmanship and materials and be free from defects for a period of twelve (12) months after commissioning and/or the placement of such Goods into service by the Purchaser or eighteen (18) months after delivery of the Goods to the Purchaser's nominated Delivery Point, whichever occurs first.

- c. By mutual agreement, the Supplier shall replace and/or rectify at its own expense (including but not limited to replacement goods, material, transport and workshop labour) all defects or deficiencies arising in the Goods during the warranty period and these replacements and/or rectifications shall themselves be subject to the foregoing obligations for a period of twelve (12) months from the date of delivery or re-installation whichever is appropriate.

Note: All site labour and costs associated with the removal and re-installation of the goods, shall be worn by the Purchaser.

- d. The Purchaser shall notify the Supplier of any defects or deficiencies occurring during the warranty period and the Supplier shall rectify such defects or deficiencies and/or replace defective Goods without delay. The Supplier must advise the Purchaser of the rectification works schedule within seven (7) days of the date of such notification or as mutually agreed.

10. PACKING, MARKING AND SHIPPING

- a. The Goods shall be suitably packed, protected, marked, and shipped.
- b. Hazardous materials must be packaged, documented, and marked in compliance with all applicable regulations.
- c. Goods to be sent in containerised shipments shall be in robust, moisture resistant packaging and suitable to permit on-top loading within the container.

11. DELIVERY

- a. All charges for packing including boxes, crates, cartons, materials, and labour are included in the Purchase Price and all such packing materials shall become the property of the Purchaser.
- b. The risk in the Goods remains with the Supplier until the Goods are properly delivered to the Purchaser at the nominated Delivery Point.
- c. The Supplier warrants that it has and will deliver to the Purchaser, full and clear title to all Goods furnished by the Supplier when the full Purchase Price and any subsequent variations have been received by the Supplier in full.
- d. Supplier shall advise the Purchaser of its intention to deliver three (3) working days before despatching the Goods.
- e. The property in any Goods supplied by the Supplier shall pass to the Purchaser upon full payment therefor by or on behalf of the Purchaser.

12. INDEMNITY

- a. In addition to any insurance which the Supplier is by law obliged to effect, the Supplier shall procure and maintain at its own expense such policies of insurance which the Purchaser may reasonably require, having regard to the nature of goods and/or services to be supplied hereunder.
- b. The either party indemnifies the other party against:
 - i. Loss or damage to the property of any person or persons (including the Purchaser and the Supplier and the servants, agents, invitees, and licensees of either or both);
 - ii. Third party claims; and

- iii. Claims in respect of personal injury or death or loss of any other property or damage to the property of any person or persons (including the Purchaser and the Supplier and the servants, agents, invitees, and licensees of either or both), arising out of or as a consequence of,
 - iv. The act or omission of either party, their servants, agents, suppliers, or subcontractors or any of them in the performance of the Purchase Order; or
 - v. The breach by either party of any one or more of the warranties herein relating to the supply of goods and or services pursuant hereto; or
 - vi. Any conjunction or combination of paragraphs (i) and (ii) of this clause 15b.

13. PAYMENT

- a. Prices are fixed and exclusive of any Value Added Tax (VAT), Goods and Services Tax (GST) or Withholding Tax (WHT). All packaging, handling, crating, freight, insurance, and other delivery charges are at the Supplier's expense and cost.
- b. Amounts payable by the Purchaser shall be paid, without any deductions and free of charge, within 30 days in which the Supplier's tax invoice (as required by any Goods and Services Tax legislation) is received by the Purchaser.
- c. Supplier shall be entitled to charge pro rata interest for delayed payments at a rate of the then applicable cash rate published from time to time by the Reserve Bank of Australia, calculated from the due date to the date of payment.
- d. The Supplier shall submit one copy only of each invoice or credit note in respect of the Purchase Order and show itemised prices.

14. FORCE MAJEURE

- a. No liability shall attach to a party which is unable to perform its obligations under this Purchase Order due to an event of Force Majeure.
- b. If either party is unable, wholly or in part, by reason of Force Majeure to carry out any obligation under the Purchase Order, it shall promptly give notice to the other party specifying the event of Force Majeure and the likely duration of its inability to perform. Thereupon that obligation shall be suspended so long as the event of Force Majeure continues.
- c. If the circumstance of Force Majeure exceeds 30 days per event, then either Party may give notice to the other to cancel the Purchase Order.
- d. Each party shall bear its own costs as a result of the Force Majeure.

15. LIMITATION OF LIABILITY

- a. Neither party will be liable to the other party for any consequential, indirect, or punitive loss, damage, cost, or expense whatsoever (including, without limitation, loss of profits).
- b. Suppliers aggregate maximum liability for any and all costs, losses, and damages of any sort and for whatever reason, resulting from or in any circumstance connected with the Purchase Order or the use or delivery of the Goods, whether based on warranty, contract, strict liability, tort (including negligence) or any theory of law whatsoever and howsoever the same may arise, including claims, costs, liabilities, and damages shall not exceed 5% of the Purchase Price.

16. DISPUTE RESOLUTION

The parties shall in good faith take all possible action to resolve by amicable settlement any potential dispute under the Purchase Order.

If within fifteen (15) Days after a party gives notice to the other party of a potential dispute the Parties are not able to resolve the dispute, then the parties shall enter arbitration in accordance

with the Guidelines and Rules of the Australian Commercial Dispute Centre with three (3) arbitrators appointed in accordance with said rules.

The language of the arbitration proceeding shall be in English.

17. SUPPLIER'S WORK AT SITE

The following conditions apply where Supplier provides Work in connection with the supply, installation or fitting of the Goods by the Supplier or his servants or agents at the Site.

- a. All Work at the Site shall be performed in a proper and workmanlike manner.
- b. Without limiting any other rights of the Purchaser or the responsibility of the Supplier, if the Purchaser discovers in any part of the Work, any Goods or workmanship of an inferior quality, or different from that described in the Purchase Order, the Purchaser may by notice require the Supplier to remove the Goods, replace remedy or rectify that part of the Work within such reasonable time as the Purchaser may specify and if the Supplier fails to comply with the notice within the time specified then the Purchaser shall be at liberty to employ other persons to remove the Goods, replace remedy or rectify that part of the Work and all expenses, loss, claims or damage incurred shall be borne by the Supplier.
- c. The Supplier shall supply all labour, tools, equipment, and materials necessary to complete the Work.
- d. The Supplier shall use its best endeavours not to impede or interfere with other work in progress on the Site.
- e. The Supplier enters the Site at its own risk and shall also be liable for and indemnify the Purchaser and/or the Engineer against any loss, damage, claims, or liability arising directly or indirectly out of the performance of the Work or presence on the Site by the Supplier.
- f. The Supplier shall at its own expense provide and maintain the following insurances whilst at the Site:
 - i. Public Liability insurance of not less than US\$5,000,000.
 - ii. Workers Compensation insurance as required by law.
 - iii. Motor Vehicle Third Party insurance of not less than US\$2,000,000.
- g. The Supplier shall at its own expense obtain all requisite licences and permits to comply with all laws in connection with the Work carried out at the Site.
- h. The Supplier shall at its own expense comply with all site allowances and/or agreements which may be applicable to the Site and payable to its servants, agents, and Sub-suppliers.
- i. The Supplier, its servants, agents, and Sub-suppliers shall comply with the rules and regulations of the Site and with the safety regulations of the Purchaser and with the reasonable directions and orders of the Purchaser.
- j. The Supplier has full responsibility for selection and recruitment of labour, as necessary to complete the Work however Purchaser shall have the right to veto the use of any employee of the Supplier.
- k. The Supplier performs all Work as an independent contractor and not as an agent or employee of the Purchaser.