

# Purchase Order Terms and Conditions

## Supply of Services



### 1. DEFINITIONS

In this Contract, unless the context otherwise requires:

**Liabilities** means damages, claims, losses, liabilities, costs and expenses of any kind; and

**Services** means the work to be performed by the Contractor under this Contract as described in the Purchase Order.

### 2. CONTRACT

#### 2.1 Formation

This Contract is formed when a Purchase Order has been issued to the Contractor in acceptance of a written quotation, tender, or offer to supply from the Contractor.

#### 2.2 Contract documents

This Contract consists of the following documents:

- (a) Purchase Order;
- (b) these Purchase Order terms and conditions; and
- (c) any other attachments to the Purchase Order.

#### 2.3 Precedence

If there is any conflict or inconsistency between the documents constituting this Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause 2.2.

### 3. SERVICES

#### 3.1 Standard of Services

The Contractor must:

- (a) perform the Services with the skill, care and diligence reasonably expected from a qualified, competent and experienced provider of services of a similar type and complexity as the Services;
- (b) ensure that its personnel are appropriately trained and experienced;
- (c) ensure that the Services and any goods supplied are fit for the purpose reasonably inferred from the Purchase Order; and
- (d) comply with the Evolution Mining Supplier Code of Conduct available on the Evolution Mining website.

#### 3.2 Records

- (a) The Contractor must maintain accurate records of the Services, including any plans, specifications and other details, dates and hours of work, personnel, materials used and any additional work required.
- (b) The Principal may inspect the records maintained under this clause 3.2 at any time upon reasonable notice.

### 4. COOPERATION AND RESPONSIBILITIES FOR THE SITE

#### 4.1 Cooperation

The Contractor must cooperate with and not unreasonably interfere with work by other contractors and the Principal's personnel.

#### 4.2 Responsibility for the site

Without limiting any other obligation of the Contractor under this Contract, the Contractor shall:

- (a) in respect of the site generally, use its best endeavours to protect all persons, vehicles and property at or in the vicinity of the site; and
- (b) when or where any direct damage or injury is caused to public or private property by or on account of any act, omission or misconduct on the part of the Contractor or its personnel in the execution of the Services, such property shall be restored by the Contractor at its expense.

### 5. RISK MANAGEMENT

The Contractor must have in place and comply with robust risk assessment and risk management systems and plans to address all the hazards and risks of the safety, health or environmental issues that are likely to be relevant to the Services. All risk assessments and Safe Work Instructions and Procedures must be in a format acceptable to the Principal.

### 6. COMPLIANCE WITH LAWS

#### 6.1 Permits and authorisations

At all times during the term, the Contractor and all relevant Contractor personnel must hold such permits, licences, authorisations and accreditations as may be required for the Contractor to perform its obligations under this Contract in compliance with all relevant laws.

#### 6.2 Services to comply

In performing its obligations under this Contract, the Contractor must comply at all times with:

- (a) the conditions of any permits, licences, authorisations and accreditations held by the Contractor in accordance with clause 6.1;
- (b) all laws applicable to the Services or to the Principal in respect of its operations, including modern slavery and anti-bribery and money laundering legislation;
- (c) the Principal's site policies and rules, including induction and PPE requirements; and
- (d) any Australian Standards applicable to the Services.

### 7. DIRECTIONS IN RESPECT OF SERVICES

The Principal may give reasonable directions to the Contractor to provide the Services in a particular manner, at a particular time, or to suspend all or part of the Services. The Contractor must do everything possible to minimise any cost or expense consequent upon any suspension. The Contractor must make all reasonable efforts to comply with any such direction provided that the Contractor will be fairly compensated if it incurs significant additional cost or delay as a consequence.

### 8. SUBCONTRACTORS

- (a) The Contractor must not engage any subcontractor to perform any part of the Services without the Principal's prior approval (which may be conditional).

- (a) The Contractor must not engage any subcontractor to perform any part of the Services without the Principal's prior approval (which may be conditional).
- (b) Approval by the Principal of any subcontractor and/or of any subcontract does not release the Contractor from any of its obligations under this Contract.

#### **9. REMOVAL OF PERSONNEL FROM SITE**

The Principal's representative may direct the Contractor to remove from the site any person employed in connection with the Services who, in the reasonable opinion of the Principal's representative, breaches the Employee Code of Conduct published on the Evolution Mining website, is guilty of misconduct, is incompetent or negligent or who works in an unsafe manner.

#### **10. CONTRACTOR'S EQUIPMENT**

##### **10.1 Plant and equipment supplied by Contractor**

The Contractor must supply all plant and equipment and other incidental items and materials required for the performance of the Services.

##### **10.2 Inspection and compliance with laws**

All of the Contractor's equipment must comply with the requirements of this Contract, the requirements of all relevant laws, the policies and requirements of the Principal, applicable codes of practice and standards, and be properly licensed. The Principal requires Contractor's equipment brought to site to undergo an inspection and may reject any item of the Contractor's equipment which it considers unsuitable for the purpose for which the Contractor proposes to use it.

##### **10.3 Contractor's responsibilities in relation to Contractor's equipment**

The Contractor must ensure that the Contractor's equipment is suitable for the Services and maintained to a high standard to ensure safe operation and to avoid unnecessary disruption to the Services.

#### **11. INVOICING AND PAYMENT**

##### **11.1 Schedule of rates**

The rates specified by the Contractor shall be the sole consideration payable to the Contractor under this Contract, and are deemed to include all risks, liabilities and obligations expressed or implied in this Contract or incurred in the course of performing the Services.

##### **11.2 Invoice**

The Contractor will provide the Principal with a monthly tax invoice for the Services performed during the relevant calendar month, setting out particulars of the Services provided and calculations by which the invoice was calculated.

##### **11.3 Payment**

The Principal will pay the Contractor within thirty days of receipt of invoice.

##### **11.4 Disputed amounts**

If the Principal disputes the whole or any portion of the amount claimed in an invoice submitted by the Contractor, the Principal shall pay that portion of the amount stated in the invoice which is not in dispute and the Principal shall notify the Contractor in writing of the reasons for disputing the invoice.

##### **11.5 Effect of payment**

The making of any payment to the Contractor shall not be taken or construed as proof or admission of the Services or any part thereof having been performed to

the satisfaction of the Principal but shall be taken to be payment on account.

#### **11.6 Taxes**

Except as otherwise provided in this Contract, the Contractor shall pay any and all taxes, duties, excises, assessments and other government charges in connection with the performance of the Services.

#### **12. INSURANCE**

##### **12.1 Required insurance**

The Contractor must, at its own cost, obtain and maintain the following insurances for the term:

- (a) Public liability insurance for not less than \$30,000,000;
- (b) Worker's compensation insurance;
- (c) Comprehensive motor vehicle insurance covering all mechanically propelled vehicles used at any time in connection with the Services for not less than \$20,000,000; and
- (d) Compulsory third party motor vehicle insurance; and
- (e) If indicated in the Purchase Order, professional indemnity insurance for an amount of \$5,000,000, with six years' runoff cover.

##### **12.2 Evidence of Insurance**

The Contractor shall before commencing the Services lodge with the Principal certificates of currency to evidence the existence of the policies required to be arranged by the Contractor and its subcontractors in respect of such insurance, and shall provide updated certificates of currency during the term.

#### **13. INDEMNITIES**

##### **13.1 Indemnity**

Subject to clause 13.2, the Contractor will indemnify (and will keep indemnified) the Principal and its personnel (**Indemnified Parties**) from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any one or more of the following:

- (a) the breach by the Contractor or its personnel of any term or condition of this Contract;
- (b) any negligent act or omission or wilful misconduct by the Contractor or its personnel arising out of the performance of the Contract; or
- (c) any claim made against the Principal by any of the Contractor's personnel in respect of relevant legislation concerning income tax, workers' compensation, annual leave, long service leave, superannuation or any applicable award, determination or agreement of a competent industrial tribunal.

##### **13.2 Exclusions**

The Contractor will not be liable under clause 13.1 to the extent that the Liability was directly caused by the Principal's negligence or wilful misconduct.

#### **14. TERMINATION FOR CONVENIENCE**

Either party may terminate this Contract at any time for any reason whatsoever by providing notice in writing to the other party.

#### **15. CONSEQUENCES OF TERMINATION**

##### **15.1 Accrued rights**

Termination of this Contract does not affect any accrued rights or remedies of either party.

## 15.2 Consequences

- (a) The Contractor is not entitled to any compensation or damages on termination of this Contract.
- (b) On termination of this Contract, the Contractor must hand over to the Principal all goods or materials used or produced by the Contractor, and any keys and property of the Principal in the Contractor's possession, custody or control.

## 15.3 Continuing clauses

Clauses 1, 13, 16, 17, 19, 21 and this clause 15 will continue to apply after termination of this Contract for any reason.

## 16. EXCLUSION OF CONSEQUENTIAL LOSS

Notwithstanding anything in this Contract (express or implied), in no circumstances whatsoever (including negligence) is a party entitled to recover from the other party any damages for business interruption or loss of actual or anticipated production, revenue, income or profits or any indirect, consequential, contingent or penal damages whatsoever arising out of, or in respect of, this Contract, with the exception of damages recovered under a policy of insurance held by the other party, for which that party's liability shall be limited to the amount recovered under such insurance policy.

Each party releases the other party from, and indemnifies them and shall keep them indemnified from, any such liability.

## 17. INTELLECTUAL PROPERTY

All intellectual property created by the Contractor exclusively for and during the provision of the Services shall be the sole property of the Principal.

## 18. CONFIDENTIALITY

Each party (**Recipient**) must keep confidential and may not use or disclose, except where required by legislation, any confidential information held by the other party and obtained by the Recipient during the performance of or in relation to the Services save in relation to the Services.

## 19. DISPUTE RESOLUTION

The parties acknowledge their expectation that any dispute, difference or claim arising out of or relating to this Contract will be settled by discussion and negotiation between the parties' representatives or senior management.

## 20. LOCAL COMMUNITIES

The Contractor acknowledges that the Principal seeks to share economic benefits with indigenous and local communities through business and employment relationships, and in performing this Contract the Contractor will seek to encourage opportunities to benefit indigenous people and local communities.

## 21. GENERAL

- (a) Time is of the essence in this Contract, and the Contractor must comply strictly with the date indicated on the Purchase Order for performance of the Services.
- (b) This Contract comprises the entire agreement of the parties and supersedes all prior **agreements**, negotiations and understandings between the parties, whether oral or written.
- (c) The Contractor must not assign, charge or encumber this Contract or any part thereof or any benefit, moneys, or interest under this Contract without the Principal's prior written consent.

- (d) The relationship between the Principal and the Contractor is a relationship of principal and independent contractor and nothing contained in this Contract shall be construed so as to create a relationship of employment, agency or partnership between the Principal and the Contractor, or between the Principal and any of the Contractor's personnel.
- (e) This Contract is governed by and construed in accordance with the laws of the state where the relevant site is located and each party submits unconditionally to the non-exclusive jurisdiction of the courts of that state.
- (f) The parties agree to act in good faith and cooperate fully with each other in all dealings under this Contract.