

# PURCHASE ORDER TERMS AND CONDITIONS



## 1. SUPPLY OF GOODS AND/OR SERVICES

- 1.1 The Contractor must supply the Goods and/or provide the Services to the Company in accordance with, and as specified in, this Purchase Order (which includes these Purchase Order Terms and Conditions).
- 1.2 Unless explicitly agreed between the parties otherwise, to the extent the Contractor's terms and conditions are supplied to the Company in respect of 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 prevail to the extent of any inconsistency with these Purchase Order Terms and Conditions.
- 1.4 The Contractor has read this Purchase Order and has made all necessary and independent inquiries in relation to all matters relevant to the entry into, and the performance of, the Contractor's obligations under this Purchase Order.
- 1.5 The Contractor must:
  - (a) ensure that it and the Contractor's Personnel comply with:
    - (i) all Laws, including Anti-corruption Laws and Data Privacy Laws;
    - (ii) the Contractor Health and Safety Requirements;
    - (iii) all applicable Site Standards and Procedures (having regard to the Contractor Health and Safety Requirements);
    - (iv) the South32 Sustainability and Business Conduct – Minimum Supplier Requirements;
    - (v) the Code; and
    - (vi) immediately, or within the period directed by the Company, all lawful directions and orders given by the Company's representative or any person authorised by Law or the applicable Site Standards and Procedures to give directions to the Contractor;
  - (b) ensure that the Contractor's Personnel entering the Site perform the Services or deliver the Goods in a safe manner and in a way that does not prejudice safe working practices, safety and care of property and continuity of work at the Site;
  - (c) deliver the Goods to the Delivery Point by the Delivery Date;
  - (d) perform the Services with due skill, care and diligence, and by the date specified in this Purchase Order;
  - (e) ensure that the Goods are suitably packed to avoid damage in transit or in storage and packages are marked with this Purchase Order number, item number, Delivery Point, contents, quantity, date and method of dispatch and weight;
  - (f) ensure that Goods and Services match all of the requirements in this Purchase Order, and are of the general quality which a professional contractor (supplying goods similar to the Goods and performing services similar to the Services) would reasonably infer from this Purchase Order; and

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- (g) ensure that the Company has the full benefit of any manufacturer's warranties that may apply to the Goods or Services, or both (and the Contractor must, if requested, pursue any manufacturer's warranties on the Company's behalf at the cost of the Contractor).
- 1.6 The Contractor acknowledges and agrees that this Purchase Order does not give the Contractor any commitment or right to:
- (a) be the only contractor supplying the Goods or performing the Services (or equivalent or similar goods or services to the Goods or Services);
  - (b) supply or perform any maximum or minimum quantity of Goods or Services; or
  - (c) stop the Company from freely contracting with another or other contractors for supplying the Goods or performing the Services.
- 1.7 The relationship of the parties in terms of this Purchase Order shall be that of independent contractors acting at "arms-length". No partnership or joint venture is hereby created between the Company and the Contractor. No party shall be entitled to bind the other except as contemplated in this Purchase Order.
- 1.8 Any South32 Supplied Plant and Equipment supplied by the Company and used by the Contractor during the course of supplying the Goods and rendering the Services remains the Company's property and the Contractor must:
- (a) not use it other than to fulfil the Contractor's obligations under this Purchase Order; and
  - (b) keep it in good condition, fair wear and tear excepted,
- and, to the extent used by the Contractor, is used at the Contractor's sole risk and liability.
- 2. UNSAFE CONDITIONS AND SUSPENSION OF PURCHASE ORDER**
- 2.1 If the Company is aware of an Unsafe condition of, or in relation to, the Goods or Services, the Company may direct the Contractor to remove or, to the extent reasonably possible, mitigate the effect of that Unsafe condition, and the Contractor must comply with that direction at its own cost immediately, or within the period directed by the Company.
- 2.2 The Company may suspend this Purchase Order in whole or in part in its absolute discretion at any time, without giving a reason, by giving a written notice to the Contractor.
- 2.3 The Contractor must promptly recommence the performance of the Contractor's obligations under this Purchase Order when directed.
- 2.4 Where the suspension in Clause 2.2 is not a result of any breach by the Contractor or the Contractor's Personnel, or an Unsafe act or condition:
- (a) the Company must reimburse the Contractor for the Contractor's reasonably incurred costs for the Purchase Order execution before receiving the suspension notice, provided that those costs are demonstrated, verified by the Company, and have been incurred as a direct consequence of the suspension; and
  - (b) any date specified in the Purchase Order (including the Services Completion Date and/or the Goods Delivery Date) shall be extended by the period of that suspension.
- 3. TITLE AND RISK**
- 3.1 The Contractor warrants that immediately prior to delivery of the Goods to the Delivery Point,

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it will have good title to the Goods, free from any liens, charges or other encumbrances.

- 3.2 Unless otherwise agreed in writing between the parties, title to the Goods will pass from the Contractor to the Company on the earlier of delivery to the Delivery Point or when the Company pays for those Goods, unless the Company rejects the Goods because of a Defect.
- 3.3 The Company bears all risk in the Goods when the Company takes delivery of those Goods at the Delivery Point, provided however that the Contractor will be responsible for acts and omissions of it and the Contractor's Personnel.

## **4. INVOICING AND PAYMENT**

- 4.1 Subject to the Contractor's compliance with this Purchase Order, the Company must pay the Contractor the Price for the Goods and/or Services.
- 4.2 The Price is inclusive of:
- (a) all charges for packaging, packing, insurance and delivery of the Goods in accordance with this Purchase Order;
  - (b) the cost of any miscellaneous services of a kind which are commonly provided with the Goods and any miscellaneous items of a kind which are commonly used or supplied in the performance of (and in conjunction with) the Services;
  - (c) the Contractor's compliance with its obligations under this Purchase Order; and
  - (d) all Taxes.
- 4.3 Unless otherwise agreed, on delivery of the Goods and completion of the Services in accordance with this Purchase Order, the Contractor must provide to the Company an Invoice in respect of the Goods and/or Services.
- 4.4 All Invoices must be sent to the email address specified in this Purchase Order, or by using an electronic invoicing system if directed to by the Company.
- 4.5 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 the contract number;
  - (b) a detailed description of the delivered Goods or performed Services, including the date of delivery and/or period of Services and the relevant quantity of the Goods and/or Services;
  - (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 or per unit pricing (if any) on this Purchase Order, including the amount of any applicable Consumption Tax; and
  - (e) Company operation, Site and Company contact name.
- 4.6 The Company must pay all Invoices that comply with Clause 4.5 and these Purchase Order Terms and Conditions, within 30 calendar days of receipt of the Invoice from the Contractor. If the Company disputes the Invoice, the Company may withhold payment of the disputed part of the relevant Invoice pending resolution of the dispute.
- 4.7 The Company may set-off or deduct from any payments due to the Contractor under this

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Purchase Order, any amount which the Contractor must pay the Company under this Purchase Order.

## **5. CONSUMPTION TAX AND TAXES**

- 5.1 Unless this Purchase Order expressly provides otherwise, the Price is inclusive of all Taxes but excludes any Consumption Tax that might be applicable.
- 5.2 The Contractor must pay all Taxes arising out of or in connection with this Purchase Order or the Goods or Services.

## **6. WITHHOLDING TAX**

- 6.1 If a party (**payer**) is required by any applicable Law to make a deduction or withholding from a payment to the other party (**payee**) for or on account of any Taxes, the payer is entitled to make that deduction or withholding unless the payee provides the payer with valid documentation (received prior to the date when the payment is to be made) showing to the satisfaction of the payer that an exemption applies. If the payer is required by Law to deduct or withhold, then the payer must use its best endeavours to furnish the payee with all receipts, proof of payment and other relevant documentation for all deductions and withholding Taxes so paid to the relevant government authority. For the avoidance of doubt, the payer will not be liable to pay any amount to the payee on account of an amount deducted or withheld in accordance with this Clause.
- 6.2 Where a payment is made without a deduction or withholding for or on account of Taxes and such a deduction or withholding was required by any applicable Law, the payee must reimburse the payer for, or otherwise pay to the payer, the amount that should have been withheld or deducted within 10 Business Days of receiving an official receipt (or certified copy) or other documentation evidencing the amount that was required to have been withheld or deducted.

## **7. TERMINATING THIS PURCHASE ORDER**

- 7.1 The Company may terminate this Purchase Order in whole or in part in its absolute discretion at any time, without giving a reason, by giving 5 Business Days' written notice to the Contractor.
- 7.2 If the Company considers that the Contractor has committed a breach of an obligation under this Purchase Order, the Company may give the Contractor:
  - (a) if the breach is capable of being remedied, a written notice specifying the breach and the date (as reasonably determined by the Company) by which the Contractor must remedy the breach, to the extent that the breach is capable of being remedied; or
  - (b) if the breach is incapable of being remedied, a written notice terminating this Purchase Order in whole with immediate effect.
- 7.3 If the Contractor fails to comply with the Company's notice under Clause 7.2(a), the Company may:
  - (a) terminate this Purchase Order in whole upon 5 Business Days' further written notice to the Contractor; or
  - (b) take any action to remedy the breach or overcome its effects and the Contractor must reimburse the Company for its costs in doing so.
- 7.4 If the Company fails to make a payment due under this Purchase Order, the Contractor may give the Company a notice to remedy the breach within a period of not less than 20 Business

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Days (or any other period agreed in writing by the parties) after service of the notice. If the Company fails to comply with the Contractor's notice, the Contractor may terminate this Purchase Order in whole upon 5 Business Days' further written notice to the Company.

- 7.5 A party may terminate this Purchase Order with immediate effect by giving written notice to the other party if an Insolvency Event occurs in relation to the other party.
- 7.6 If notice of termination is given by the Company under Clause 7.1, the Contractor may, within 20 Business Days after the date of termination, send the Company a written claim which is the Contractor's sole and exclusive remedy arising out of or in connection with such termination.
- 7.7 A claim must only include (to the extent not already paid for by the Company):
- (a) the Price for any part of the Goods delivered or Services performed prior to the termination;
  - (b) the reasonably incurred and verified costs of materials ordered prior to termination as an input for the Goods, provided that title to the materials passes to the Company upon payment;
  - (c) the reasonable and verified third party costs the Contractor incurred prior to termination in the expectation of providing the Goods or performing the Services (excluding holding or break costs associated with Contractor plant and equipment used in the supply of Goods and performance of the Services or redundancy payments); and
  - (d) any amount expressly and specifically allocated for demobilisation under this Purchase Order (if any).
- 7.8 A written claim under Clause 7.7 must not include any amount for unperformed work or Consequential Loss.

## 8. CONFIDENTIAL INFORMATION

- 8.1 The Contractor must, and must ensure that the Contractor's Personnel, keep all Confidential Information confidential and may only:
- (a) use Confidential Information for the purpose of performing its obligations under this Purchase Order; and
  - (b) disclose Confidential Information:
    - (i) on a confidential basis consistent with this Clause 8, to those Contractor's Personnel who need that Confidential Information for the purpose referred to in Clause 8.1(a); or
    - (ii) to the extent required by Law or by the rules of any stock exchange.

8.2 The rights and obligations under this Clause 8 continue after the termination of this Purchase Order.

## 9. INTELLECTUAL PROPERTY

- 9.1 The Contractor hereby assigns, and must procure that the Contractor's Related Body Corporates and the Contractor's Personnel assign, to the Company all Project IP, taking effect upon the later of the creation of that Project IP and the date of this Purchase Order.
- 9.2 In the event that the assignment in Clause 9.1 above is held to be ineffective, the Contractor

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must, if required by the Company, do all further things and execute all further documents necessary to assign all Project IP to the Company.

- 9.3 The Company grants the Contractor a non-exclusive, royalty-free, revocable, non-transferable licence to use the Project IP and, to the extent the Company is entitled to do so, any of the Company's other Intellectual Property which is made available by the Company to the Contractor solely to the extent required to perform the Contractor's obligations under this Purchase Order.
- 9.4 The Contractor grants the Company a non-exclusive, perpetual, royalty-free, irrevocable, transferrable licence (with the right to assign and sub-license) to use the Background IP in connection with the use of the Project IP and otherwise to enjoy the full benefit of the Goods and/or Services (including the use of the Goods and Services).
- 9.5 The Contractor must indemnify and keep indemnified the Company from and against all Losses arising from or in connection with any claim for infringement or breach of any intellectual property rights relating to any Project IP or any Background IP.
- 9.6 In the context of a licence granted under this Clause 9, a reference to 'use' in the context of a licence granted under this Clause 9 is a reference to 'use, disclose, copy, adapt, communicate, modify, exercise, test, install, operate, maintain, manage, support and repair' within the scope of the licence which is granted. Any such use by the Contractor is also subject to Clause 9.

## 10. DEFECTS

- 10.1 If, during the Defect Correction Period, the Company finds any Defects in the Goods or Services (other than a Defect caused by the negligence of the Company), the Company may:
- (a) reject the Goods with the Defect and return them to the Contractor, in which case the Contractor must replace the Goods free of charge and reimburse the Company for any expenses incurred;
  - (b) reject the Services with the Defect, in which case the Contractor must re-perform the Services free of charge; or
  - (c) make good or engage another contractor to make good the Defect; in which case the Contractor must reimburse the Company for any expenses incurred, and all reasonable costs and expenses incurred by the Company in connection with making good a Defect are a debt due and payable by the Contractor to the Company.
- 10.2 If the Contractor does not replace the Goods pursuant to Clause 10.1(a) or re-perform the Services pursuant to Clause 10.1(b) and:
- (a) the Company has already paid the Contractor for the Goods or Services with the Defect, the Contractor must repay the Company the Price for those Goods or Services; or
  - (b) the Company has not already paid the Contractor for the Goods or Services with the Defect, the Company is not liable to pay the Contractor for those Goods or Services.
- 10.3 The acceptance of any Goods or Services with a Defect by the Company will not bind the Company to accept any other Goods or Services with a Defect and does not affect any of the Company's other rights under this Purchase Order or at Law.
- 10.4 Where the Contractor has made good any Defect under this Clause 10, those Goods or

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Services will be subject to the same Defect Correction Period as the original Goods or Services, from the date the Contractor made good the Defect.

## 11. EXCLUSION OF LIABILITY

11.1 Subject to Clause 11.2, neither party will be liable to the other party for any Consequential Loss arising out of or in connection with this Purchase Order.

11.2 Nothing in Clause 11.1 excludes or limits a party's liability to the other party arising from:

- (a) death or personal injury of any person, damage to the property of a third party or infringement or breach of third-party Intellectual Property Rights or breach of any Anti-corruption Laws; or
- (b) any wilful misconduct by it (including, in the case of the Contractor, by any of the Contractor's Personnel).

## 12. ANTI-CORRUPTION

12.1 The Contractor represents, warrants and undertakes that:

- (a) neither the Contractor nor the Contractor's Personnel, directly or indirectly, has given or will give a Bribe to a Government Official or any person, in order to obtain this Purchase Order or while this Purchase Order is effective;
- (b) it, and the Contractor's personnel, will comply with Anti-Corruption Laws
- (c) save for any ownership interest in respect of shares on a recognised stock exchange, no officer, director, employee or shareholder of the Contractor is, or currently expects to become, a Government Official in a position to take or influence official action for or against the Company during the term of this Purchase Order;
- (d) it will notify the Company promptly, and in any event within 5 Business Days, upon becoming aware that any of its officers, directors, employees or shareholders becomes, or expects to become, a Government Official in a position to take or influence official action for or against the Company;
- (e) if the Contractor is to act, or may act, on the Company's behalf (either directly or via a third party) in dealing with Government Officials in supplying any Goods and/or Services under this Purchase Order, the Contractor must:
  - (i) obtain prior written permission from the Company to do so; and
  - (ii) perform appropriate anti-corruption due diligence on any such third party, keep records of the same and take reasonable measures to ensure such third party complies with Clauses 1.5(a)(i), 12.1(a), 12.1(b), 12.1(c) and 12.1(d); and
- (f) it will notify the Company promptly upon becoming aware of any actual, suspected or imminent breach of Clause 1.5(a)(i), 12.1(a), 12.1(b), 12.1(c), 12.1(d) or 12.1(e) by the Contractor or the Contractor's Personnel.

12.2 Without limiting any other rights of the Company at law or under this Purchase Order, if the Company reasonably suspects that the Contractor is in breach of or has breached Clause 1.5(a)(i), 12.1(a), 12.1(b), 12.1(c), 12.1(d), 12.1(e) or Clause 13.1(a), or the Company knows or reasonably suspects that such a breach is imminent, then:

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- (a) the Company may cancel this Purchase Order by notice to the Contractor with immediate effect; and
- (b) at the Company's discretion, the Company can terminate and/or cancel any claims for payment by the Contractor in relation to this Purchase Order.

## **13. BOOKS AND RECORDS**

13.1 The Contractor agrees that it will:

- (a) keep and maintain accurate and reasonably detailed books and financial records of expenses and receipts in connection with its performance under, and payments made or received in connection with, this Purchase Order; and
- (b) upon request, promptly but no later than 7 calendar days after such request, provide all such information (including Company Data, accounting books and financial records), assistance and co-operation as the Company requires to audit, investigate or report on any matter in connection with, or related to the Contractor's performance under, this Purchase Order, excluding any information which is confidential or proprietary to the Contractor or any third party.

## **14. HUMAN RIGHTS COMPLIANCE**

14.1 The Contractor (including the Contractor's Personnel) must:

- (a) not engage in any conduct which is inconsistent with recognised international human rights, including as outlined in the United Nations' Guiding Principles on Business and Human Rights, and the Voluntary Principles on Security and Human Rights (and in the event of any ambiguity, discrepancy or inconsistency in or between these documents, the highest standard applies);
- (b) not engage in Modern Slavery; and
- (c) ensure that it has reasonable policies and/or reasonable processes in place (including but not limited to regular risk assessment, monitoring processes, grievance and redress mechanisms) to comply with Clauses 14.1 and 14.2 in any of its operations and supply chains.

14.2 Upon entering into this Purchase Order, and at any time during the term of this Purchase Order when requested to do so in writing by the Company, the Contractor must:

- (a) co-operate with any due diligence process being conducted by the Company (or any third-party contractor appointed by the Company) of the Contractor's operations and/or supply chains; and
- (b) provide any information reasonably requested by the Company for this purpose.

14.3 The Contractor must notify the Company promptly, and in any event no later than 4 calendar days, upon becoming aware of any actual, suspected or imminent breach of clauses 14.1 or 14.2.

## **15. SOUTH32 SUSTAINABILITY AND BUSINESS CONDUCT – MINIMUM SUPPLIER REQUIREMENTS**

15.1 The Contractor acknowledges that it has access to a copy of, has read and will comply with, the Code, the South32 Sustainability and Business Conduct – Minimum Supplier Requirements

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and Privacy Policy as applicable from time to time, and that it will ensure all Contractor's Personnel have read, understood and will follow, the same.

- 15.2 The Contractor must, and must ensure that all Contractor's Personnel, are aware of and comply with Site Standards and Procedures as applicable at the date of execution of this Purchase Order.

## 16. PRIVACY AND DATA SECURITY

16.1 The Contractor must, in relation to all Company Personal Information:

- (a) only Process such Company Personal Information in a manner consistent with the Privacy Policy and in accordance with instructions from the Company;
- (b) provide any assistance reasonably requested by the Company to enable the Company to comply with all applicable Data Privacy Laws or to respond to requests or complaints from relevant data subjects; and
- (c) not store, transfer or disclose any Company Personal Information outside the jurisdiction in which it was originally generated or collected by the Contractor, except with the Company's express prior consent. If reasonably required by the Company to support any storage, transfer or disclosure of Company Personal Information in a different jurisdiction, the Contractor will enter into a data processing agreement in a form provided by the Company (where relevant based on standard provisions approved under applicable Data Privacy Laws).

16.2 Where the Contractor:

- (a) has custody or control over any of the Protected Data; or
- (b) is required to access, transmit or store the Protected Data,

on or via the Contractor's information systems or equipment, the Contractor must:

- (c) put in place and maintain appropriate technical and organisational measures to secure the Protected Data in its possession or under its control in order to prevent accidental, unauthorised or unlawful access, loss, destruction, misuse, interference, modification, disclosure or damage to or of the Protected Data;
- (d) to give effect to the subclause above, the Contractor shall take all reasonable measures to identify risk (internal and external) to safeguard the Protected Data in its possession or under its control and to regularly verify and update these safeguards against risk(s) identified;
- (e) ensure that its physical and technical security systems only permit properly authorised and trained Contractor's Personnel to access the Protected Data;
- (f) no less than once per calendar year provide appropriate training to the Contractor's Personnel with respect to the correct handling of the Protected Data so as to minimise the risk of Data Breaches;
- (g) comply with all security requirements, policies, procedures or directions as specified in this Purchase Order or notified by the Company in writing from time to time;
- (h) if requested by the Company, provide regular security assurance reports to the

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Company, which will include such information as is reasonably required for the Company to assess the performance of the Contractor's obligations in relation to the security of the Protected Data;

- (i) on cancellation or expiry of this Purchase Order for whatever reason, or upon written request at any time, cease and ensure that the Contractor's Personnel cease to use or process the Protected Data and return and/or procure the return of any and all Protected Data in their possession or control to the Company; and
  - (j) upon the Company's request, provide the Company with all reasonable detail and written confirmation of the Contractor's compliance with this Clause 16.
- 16.3 The Contractor must ensure that it does not, by any act or omission, adversely affect or alter the operation, functionality and technical environment of any information systems or equipment used to process Protected Data, or the Company's ability to access, modify or use any Protected Data, without the prior written consent of the Company.
- 16.4 The Contractor agrees not to modify any of the Company Personal Information or Protected Data under its control or possession, merge it with other data, commercially exploit or engage in any other practice or activity that may in any manner adversely affect the integrity, security or confidentiality thereof, other than specifically permitted herein or as directed by the Company in writing.
- 16.5 If the Contractor becomes aware of any actual or suspected:
- (a) Misuse, interference or loss or unauthorised access, modification or disclosure of Protected Data by any person;
  - (b) breach of the Contractor's obligations in relation to Protected Data; or
  - (c) event that results in an actual or potential adverse effect on any information systems or equipment used to Process Protected Data, or the Company's ability to access, modify or use any Protected Data,
- (in each case a **Data Breach**), the Contractor must (at its own cost):
- (e) promptly (and in any event within 24 hours) report the Data Breach to the Company;
  - (f) mitigate, to the extent practicable, any harmful effect of the Data Breach;
  - (g) provide the Company with all information relevant to the Data Breach reasonably available to the Contractor;
  - (h) provide any assistance reasonably requested by the Company for the purposes of investigating, mitigating the impact of or otherwise responding to the Data Breach, including by cooperating with the Company for the purposes of the Company notifying those affected by the Data Breach or any relevant regulator;
  - (i) unless otherwise required by Law, not notify any third party of the effect of the Data Breach on the Protected Data or on the Company without the Company's express prior consent. Where the Contractor must by Law notify a third party, the Contractor must, to the extent possible, consult with the Company and allow the Company to review and approve any notice before it is issued;
  - (j) preserve and protect any affected Protected Data (including as necessary reverting to

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any backup or alternative site or take other action to recover the Protected Data); and

- (k) promptly restore any lost or corrupt Protected Data using best practice data restoration techniques.

16.6 The Contractor must ensure that all subcontracts and other supply chain arrangements, which may allow access to Protected Data, include protections for the Protected Data that are consistent with this Clause 16.

## 17. TRADE CONTROL LAWS COMPLIANCE

17.1 The Contractor:

- (a) must, in performing this Purchase Order, comply with Trade Control Laws;
- (b) must not source and provide to the Company any Goods or Services, or any component thereof, from any person, entity or country, which is the target of Trade Control Laws; and
- (c) represents and warrants that it is not a Sanctioned Party, and will not during the course of this Purchase Order take any actions that cause it to become a Sanctioned Party. If the Contractor becomes a Sanctioned Party, it must notify the Company as soon as possible.

## 18. GOVERNING LAW

This Purchase Order and any dispute arising out of or in connection with it (including non-contractual disputes) is governed by the laws of the jurisdiction where the Company is incorporated and the courts of that jurisdiction have non-exclusive jurisdiction to settle any dispute that arises out of or in connection with this Purchase Order.

## 19. AMENDMENTS AND WAIVER

This Purchase Order may only be amended, or its provisions waived, in writing by the parties.

## 20. LANGUAGE

If by Law the parties are required to translate this Purchase Order into a language other than English, then to the extent permitted by Law, the English language text of this Purchase Order will prevail over any inconsistencies or difference of interpretation with any other language. In the event of any such inconsistency or difference, the parties must amend the text in any other language to remove the inconsistency or difference.

## 21. ENTIRE AGREEMENT

This Purchase Order (including representations, warranties, promises, statements and documents provided by the Contractor as part of the Company's vendor pre-qualification and/or business partner pre-clearance process (as applicable) constitutes the entire agreement between the parties in respect of its subject matter and supersedes all other prior agreements, quotation requests, understandings, representations, warranties, promises, statements, negotiations, letters and documents in respect of its subject matter (if any) made or given prior to the date of this Purchase Order.

## 22. DEFINITIONS

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In this Purchase Order (unless the context otherwise requires):

**Anti-corruption Laws** means any anti-bribery and anti-corruption Laws that are applicable to either party or this Purchase Order.

**Applicable Trade Control Laws** means any Trade Control Laws applicable to either party or this Purchase Order.

**Background IP** means all intellectual property of the Contractor (or licensed to the Contractor by a third party) which is in existence before the issue of this Purchase Order, but excludes Project IP.

**Bribe** means any offer of, provision of, or request for, any monetary or other thing of value to influence a Government Official or any other person to act improperly in performing his/her duties. This includes the giving of a facilitation payment (which is a payment or gift, even if small) given to a Government Official to induce him/her to perform a routine and non-discretionary service.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday at the Site, and does not include 27, 28, 29, 30 or 31 December.

**Code** means South32's Code of Business Conduct accessible on the 'Suppliers' section of South32's website, as updated from time to time.

**Company** means the entity named as such in this Purchase Order.

**Company Data** means all data, information, text, drawings or other materials embodied in any electronic or tangible medium and which are supplied or made available by or on behalf of the Company to the Contractor under this Purchase Order (including the Company's Confidential Information).

**Company Personal Information** means all Personal Information provided or made available by or on behalf of the Company or that is otherwise generated or collected by the Contractor under or in connection with the performance of this Purchase Order. All Company Personal Information will be treated as Company's Confidential Information.

**Confidential Information** means:

- (a) the terms of this Purchase Order;
- (b) any information that concerns the business, operations, finances, plans, customers or other affairs of the Company (or the Company's related entities);
- (c) any information made available to, or acquired by, the Contractor at any time in connection with this Purchase Order (including Project IP and other intellectual property of the Company); and
- (d) any information that is derived from any information referred to in any of subparagraphs (a) to (c) above,

but does not include information which:

- (e) is or becomes public knowledge (other than by a breach of this Purchase Order);
- (f) has been independently developed by the Contractor and is not subject to any restriction with respect to its disclosure or use; or
- (g) has been independently acquired by the Contractor from a source which was not

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subject to a duty of confidentiality with respect to that information and is not subject to any restriction with respect to its disclosure or use.

**Consequential Loss** means any special, exemplary or punitive damages (if applicable under the Governing Law), indirect damages, loss of production, loss of revenue, loss of profit or anticipated profit, loss of business reputation, business interruptions of any nature, loss of opportunities, loss of anticipated savings or wasted overheads.

**Consumption Tax** means value-added tax, sales added tax, sales tax, goods and services tax or any tax analogous thereto that is applicable to the supply of the Goods or performance of the Services by the Contractor but excludes any statutory late payment interest or penalties.

**Contractor** means the party or parties named as such in this Purchase Order.

**Contractor's Personnel** means the Contractor's directors, officers, employees, agents, invitees, subcontractors (of any tier under the Contractor) and Related Bodies Corporate, and any director, officer, employee, agent or invitee of any agent, invitee, subcontractor (of any tier under the Contractor) or Related Body Corporate of the Contractor.

**Contractor Health and Safety Requirements** mean the terms and conditions accessible on the 'Suppliers' section of South32's website, as updated from time to time.

**Data Breach** has the meaning in Clause 16.5.

**Data Privacy Laws** means all Laws now or in future relating to data protection, privacy and information security that apply to either the Company or the Contractor in connection with this Purchase Order.

**Defect** means any aspect of the Goods or Services not in accordance with this Purchase Order, or any damage, deficiency, fault or inadequacy in design, performance, workmanship, quality or makeup of the Goods or Services.

**Defect Correction Period** means the period of 24 months from the date of delivery of the Goods and/or 12 months from the date on which a Service is last performed.

**Delivery Date** means the delivery date specified as such in this Purchase Order.

**Delivery Point** means the place for delivery of the Goods specified on this Purchase Order.

**Goods** means the goods, if any, specified as such in this Purchase Order (including any part of the goods specified).

**Government Official** includes:

- (a) an officer, employee or agent of a government or public international organisation or any department or agency thereof or any government-owned or controlled entity (including state owned or controlled enterprises);
- (b) a political party or party official, or political office candidate;
- (c) persons acting on behalf of such government or public international organization, or any agency, department, or instrumentality thereof, as well as leaders of indigenous and tribal peoples or native title organisations and/or royal families; and
- (d) in some cases, close relatives of any of the above.

**Insolvency Event** means a party is unable to pay its debts as and when they fall due and payable.

# PURCHASE ORDER TERMS AND CONDITIONS



**Intellectual Property Rights** means all copyright and analogous rights (including moral rights), all rights in relation to inventions (including patent rights), registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields. These rights include:

- (a) all rights in all applications to register these rights; and
- (b) all renewals and extensions of these rights.

**Invoice** means a tax invoice submitted by the Contractor in accordance with Clause 3.3 for payment of all or a relevant portion (as applicable) of the Price for Goods delivered or Services performed by the Contractor in accordance with this Purchase Order.

**Laws** means:

- (a) legislation as well as regulations, by-laws, orders, awards and proclamations;
- (b) common law and equity (if applicable); and
- (c) authority requirements, guidelines, consents, certificates, licences, permits and approvals (including their conditions) with which a party is legally required to comply or obtain.

**Loss** includes any claim, proceeding, loss, damage, cost (including legal costs on a full indemnity basis), charge, expense, fine, penalty and other liability.

**Modern Slavery** means any activity, practice or conduct that would constitute an offence in relation to slavery, forced labour, child labour, forced marriage, involuntary servitude, debt bondage, human trafficking or other slavery-like exploitation under anti-slavery and human trafficking laws, statutes, codes and international conventions from time to time in force.

**Personal Information** means any information (including an opinion) about an identified or identifiable natural person and includes all categories of data listed in the Privacy Policy.

**Price** means the price or rates specified as such in this Purchase Order.

**Privacy Policy** means the South32 or Company privacy policy, as set out on the South32 or Company website, as updated from time to time.

**Process or Processing** means any operation or set of operations which is performed upon Personal Information whether or not by automatic means, including collecting, recording, organizing, adapting or altering, retrieving, consulting, using, disclosing, making available, aligning, combining, blocking, erasing and destroying such Personal Information.

**Project IP** means all intellectual property (present or future), together with all associated Intellectual Property Rights created, discovered or coming into existence as a result or, for the purpose of, or in connection with the performance of this Purchase Order (including all intellectual property developed by the Contractor or any of the Contractor's Personnel in performing this Purchase Order).

**Protected Data** means the Company Personal Information and the Company Data.

**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.

# PURCHASE ORDER TERMS AND CONDITIONS



**Related Body Corporate** means in relation to an entity, means a body corporate which is a controlling company, a controlled company, or a controlled company of a controlling company, of that entity and in respect of an entity within the South32 Limited group of companies includes:

- (a) any body corporate controlled by South32 Limited taking into account the aggregate percentage interests of their respective direct or indirect shareholdings in that body corporate; or
- (b) any body corporate controlling or controlled by the bodies corporate referred to in (a) above.

For the purposes of this definition, one body corporate controls another when at the relevant time it owns either directly or indirectly or is otherwise in a position to cast, or control the casting of, not less than 50% of the shares entitled to vote at general meetings of that other body corporate, or it controls the composition of a majority of the board of that other body corporate, and “controlled” and “controlling” will be construed accordingly

**Sanctioned Party** means:

- (a) any person or entity that is designated for export controls or sanctions restrictions under any Applicable Trade Controls Laws, including, but not limited to, any applicable designation under the United States List of Specially Designated Nations and Blocked Persons, the Sectoral Sanctions Identification List, the US Bureau of Industry and Security Entity List, the United Kingdom Consolidated list, the EU Consolidated List and Australia’s Consolidated List; and/or
- (b) any entity 50% or more owned, or controlled, directly or indirectly, by one or more of the foregoing persons or entities.

**Services** means the services, if any, specified as such in this Purchase Order (including any part of the specified services and any ancillary services).

**Site** means the place described as such in this Purchase Order as the place for the use or storage of the Goods by the Company or for the performance of the Services.

**Site Standards and Procedures** means all the Company’s standards, policies and procedures that are of general application at the Site in relation to matters concerning safety, health, the environment, industrial relations, technology and personal conduct.

**South32 Sustainability and Business Conduct – Minimum Supplier Requirements** means South32 Sustainability and Business Conduct Supplier Requirements accessible on the ‘Suppliers’ section of South32’s website, as updated from time to time.

**Tax** or **Taxes** means any and all taxes, fees, levies, duties, imposts, tariffs and charges imposed or assessed in respect of this Purchase Order by any government authority and any interest, penalties and additions but does not include Consumption Tax.

**Trade Control Laws** means any economic sanctions, export control, customs or import laws, or other regulations, orders, directives, designations, licences or decisions applicable to either party or this Purchase Order and relating to the trade or transfer of goods, technology, software and/or services which are imposed, administered or enforced from time to time, including but not limited to those established by Australia, the United States, the United Kingdom, Singapore, the European Union (EU), EU Member States or the United Nations.

**Unsafe** includes unacceptable actual or potential hazards and incidents relating to safety, health or the environment.