

Purchase Order Terms and Conditions

Ausdrill Pty Ltd

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1. PROVISION OF GOODS AND SERVICES

- (a) The Supplier will supply the Goods and Services referred to in the Purchase Order on the terms and conditions set out in:
- (i) these Purchase Order Terms and Conditions; and
 - (ii) the Purchase Order and any documents referred to therein,
 - (iii) (collectively, this Agreement). In the event of any conflict between these Purchase Order Terms and Conditions and the Purchase Order and documents referred to in the Purchase Order, the documents will take precedence in the order listed above.
- (b) The Supplier must, in providing the Goods and Services, use its best endeavors not to interfere with any of the Company's activities or the activities of any other person on the Company's sites or premises and ensure that (in connection with the provision of the Goods and Services) the Company's sites and premises are left secure, clean, orderly and fit for immediate use.
- (c) The Supplier must obtain and maintain (at their own expense) any authorisations, licence, permits or consents necessary for providing the Goods and Services.
- (d) The Supplier represents and warrants on a continuing basis that the Goods and Services will:
- (i) comply with any relevant legislation, standards and industry best practices;
 - (ii) conform to the description, data, drawings, plans, specifications, and performance or operation criteria (as applicable) contained or referred to in this Agreement, and any samples which have been provided by or on behalf of the Supplier;
 - (iii) be supplied with copies of all material safety data sheets for dangerous goods;
 - (iv) be free from any defect in design, workmanship and makeup;
 - (v) be provided with due care and skill and be of high quality and workmanship;
 - (vi) be provided by appropriately qualified, competent, skilled, experienced and professional personnel;
 - (vii) be fit for the purpose stated in or otherwise reasonably inferred from this Agreement; and
 - (viii) not infringe or contribute to the infringement of any intellectual property rights.
- (e) Unless this Agreement specifies otherwise, the Supplier must supply, at its own expense, all labour, plant, equipment, tools, appliances or other property and items the Supplier requires to fulfil its obligations under this Agreement.
- (f) Any plant, equipment, tools, appliances or other property and items that the Company provides to the Supplier are used at the Supplier's own risk and remain the property of the Company and must only be used for the purposes of fulfilling the Supplier's obligations under this Agreement.

2. INSPECTION AND ACCEPTANCE

- (a) If the Company or any of its Personnel signs a docket or other document required by the Supplier to acknowledge performance, acceptance or delivery of any Goods and Services, the Company will not thereby be taken to have accepted the Goods and Services as being in accordance with this Agreement (whether as to quality or quantity). This applies notwithstanding any terms and conditions appearing on any such docket or document.
- (b) If any Goods and Services delivered by the Supplier to the Company do not comply with the requirements of this
- (c) Agreement (including any warranty given under this Agreement) (a Defect) the Company may:
- (i) reject the relevant Goods by returning them to the Supplier;
 - (ii) reject the relevant Services by notifying the Supplier in writing; or
 - (iii) require the Supplier to repair, rectify or resupply the relevant Goods and Services at its cost (including the cost of transport).
- (d) The Supplier must refund, when requested, any payments made by the Company in respect of Defective Goods and Services which the Company rejects.

- (e) The Supplier must reimburse the Company for any expenses the Company incurs in returning or repairing Defective Goods and in rectifying Defective services.
- (f) If, at any time during a period of 12 months after delivery of the Goods or completion of the Services, the Company becomes aware of a Defect, and the Company notifies the Supplier of such Defect within that period, the Supplier must at its own cost immediately rectify the Defect so that the relevant Goods and Services comply with the requirements of this Agreement.

3. TITLE AND RISK

- (a) Risk in the Goods passes to the Company when the Goods are delivered to the Delivery Point.
- (b) Title in the Goods passes to the Company on the earlier of risk passing to the Company and payment of the Price.
- (c) The Supplier warrants that immediately prior to delivery of the Goods, it has complete ownership of the Goods free of any Security Interest and will provide the Goods to the Company on that basis and the Company will be entitled to clear, complete and quiet possession of the Goods.
- (d) The Supplier hereby waives any Security Interest it may have over the Goods which are delivered to the Company pursuant to this Agreement.

4. PRICE, INVOICING AND PAYMENT

- (a) In this clause 4, terms or expressions which have a defined meaning in the GST Act have the same meaning given in the GST Act. The GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- (b) Subject to the Supplier's performance of its obligations under this Agreement, the Company must pay the Supplier the Price in accordance with this Agreement.
- (c) The Price is inclusive of all duties and taxes (except GST) and costs incurred by the Supplier and its Personnel in providing the Goods and Services including all charges for packaging, packing, insurance, delivery and unloading of the Goods and the cost of any items used or supplied in conjunction with the Services. The Price is fixed and will not be subject to variation for rise and fall, exchange rate variations or any other variation.
- (d) The Supplier must submit tax invoices to the Company no earlier than (as applicable):
 - (i) upon delivery and acceptance of the Goods as set out in clause 2, unless the Company has agreed to make a partial or full upfront payment in which case the invoice should reflect the amount agreed to be paid upfront;
 - (ii) on completion of the Services, unless this Agreement states that progress payments are to be made; and
 - (iii) where this Agreement specifies that progress payments will be made for the provision of Services, at the times and for the amounts stated in this Agreement.
- (e) The tax invoice must contain or have attached to it the following information:
 - (i) the agreement number or Purchase Order number;
 - (ii) a brief description of the Goods and Services supplied;
 - (iii) the Price relating to the Goods and/or Services, broken down to reflect the Price components in this Agreement;
 - (iv) any further information stipulated in the GST Act or any other applicable tax legislation, or by the Company, so that the Company will receive the benefit of any tax credit or refund in relation to the supply of the Goods and/or Services; and
 - (v) such other accurate verification documentation as may be requested by the Company.
- (f) Subject to the Supplier complying with this clause 4, the Company will pay all invoices rendered to the Company by the Supplier for Goods and Services provided in accordance with the terms of this Agreement within 45 days from the end of the month of receipt of that invoice.
- (g) If the Company disputes any amount claimed by the Supplier to be due and payable, the Company will pay the undisputed part of the invoice (if any) and withhold the balance pending resolution of the dispute. If the resolution of the dispute determines that the Company must pay an amount to the Supplier, the Company will pay that amount upon resolution of the dispute.

- (h) Where a Price is calculated on a 'cost plus', 'schedule of rates' or 'per day' basis, the Company may audit the Supplier's records in connection with the provision of the Goods and Services to determine if the Price has been correctly calculated at any time within 12 months after submission of the relevant tax invoice. The Supplier must provide all access to the Supplier's records as is reasonably required by the Company for the purposes of such an audit.
- (i) If any supply made under this Agreement is or becomes subject to GST, the party to whom the supply is made must pay to the party making the supply, in addition to any consideration payable, an amount on account of GST. If any party is required to reimburse or indemnify the other party for a cost, expense or liability (Cost) incurred by the other party, the amount of that Cost for the purpose of this Agreement is the amount of the Cost incurred less the amount of any credit or refund of GST which the party incurring the Cost is entitled to claim.
- (j) If the Company is entitled to an exemption or concession concerning any tax or import duty or import tariff with respect to the Goods and Services, the Supplier must apply for that concession or exemption and as far as possible promptly pass on to us the benefit of that concession or exemption.
- (k) The Company may withhold, retain or set off from any payment due to the Supplier under this Agreement any or all monies due, or becoming due, to the Company by the Supplier in connection with this Agreement or otherwise.
- (l) All payments by the Company will be on account only and will not be an admission that the Goods and Services comply with this Agreement.
- (m) Unless otherwise agreed, any money payable to the Supplier is to be paid in Australian Dollars.

5. TIME

- (a) The Supplier must perform the Services:
 - (i) if there is a Term, for the Term; or
 - (ii) if there is no Term, until completion of the Services (and in any event, so that the Services are completed by the Delivery Date).
- (b) The Supplier must deliver the Goods to the Delivery Point by the Delivery Date.
- (c) The Company is not obliged to accept early performance of the Services or delivery of the Goods prior to the Delivery Date unless agreed in writing.
- (d) The Supplier must notify the Company immediately upon the Supplier becoming aware or having reasonable grounds to believe that it will not be able to:
 - (i) deliver the Goods to the Delivery Point by the Delivery Date; or
 - (ii) complete the Services by the Delivery Date.
- (e) The Delivery Date and/or Term will be extended where the Supplier is delayed in the performance of the Services or delivery of the Goods by an act, omission or default of the Company (or its agents or employees). The period of an extension to the Delivery Date and/or Term will be determined by the Company, acting reasonably.

6. INSURANCE

- (a) The Supplier must take out and maintain, and must ensure that its subcontractors take out and maintain, the following insurance policies:
 - (i) public and products liability insurance with a minimum cover of \$20 million in relation to any one occurrence and unlimited as to the number of claims (in the aggregate with respect to products liability);
 - (ii) workers compensation insurance covering liability arising out of death of or injury to persons employed (or deemed to be employed) by the Supplier in connection with the Supplier's performance of its obligations under this Agreement (including statutory and common law liability). The workers compensation insurance policy must:
 - A. comply with all statutory requirements including providing compulsory statutory workers compensation benefits;

- B. provide common law liability to a limit of not less than \$50 million in relation to any one occurrence and unlimited as to the number of occurrences;
 - C. include a principal's indemnity extension for both statutory benefits and common law, in favour of the Company; and
 - D. include a waiver of subrogation in favour of the Company;
- (iii) insurance which covers the Goods for not less than the replacement value of the Goods, which insurance must be maintained until the Goods are accepted by the Company and title is transferred to the Company;
- (iv) if the provision of the Goods and Services requires the Supplier to:
- A. provide or use plant and equipment – plant and equipment insurance for an amount not less than the market value of such plant and equipment;
 - B. transport Goods – goods in transit insurance for the full replacement value of such Goods;
 - C. use motor vehicles or other road registered plant on the Company's sites or premises– liability
 - D. insurance with a minimum cover of \$20 million per claim and unlimited as to the number of claims; or
 - E. provide directly or indirectly professional services – professional indemnity insurance with a minimum cover of \$5 million per claim and in the aggregate for all claims arising from the same event; and
- (v) any other insurances required by law.
- (b) The insurance policies the Supplier is required to take out and maintain in accordance with clauses 6(a)(i) and 6(a)(iv)(C) must include an extension to indemnify the Company as principal for legal liability arising out of or in connection with the Supplier's performance of its obligations under this Agreement.
- (c) The insurance policies required to be maintained under this clause 6 must be maintained until the Goods and Services have been supplied, except in the case of professional indemnity insurance which must be maintained for a further period of 7 years.
- (d) Before commencing the provision of Goods and Services (and at any other time upon request by the Company), the Supplier must provide the Company certificates of currency for any insurances required to be held by the Supplier under this Agreement. All costs incurred by the Company as a consequence of the Supplier not maintaining such insurances will be a debt due from the Supplier to the Company.
- (e) The Supplier shall ensure that each of its subcontractors involved in the supply of the Goods and Services maintains insurance in the same manner and to the same extent as the Supplier and shall procure that its subcontractors' insurances are extended to protect the Company in the same manner as provided in this clause 6 with respect to Supplier's insurances.

7. LIABILITY AND INDEMNITIES

- (a) The Supplier and its Personnel enter the Company's sites and premises at the Supplier's own risk.
- (b) The Supplier is liable for and must indemnify the Company and keep it indemnified from and against any liability and any loss or damage of any kind whatsoever arising out of or in connection with any negligent act, negligent omission or breach of this Agreement by the Supplier, except to the extent that the liability, loss or damage is caused by the gross negligence of the Company.
- (c) The Supplier will indemnify the Company against all claims in regard to wages or other employment-related benefits that may become due and payable to the Supplier's employees and the employees of its subcontractors and all claims of its subcontractors and contractors of goods, labour or services provided in connection with the performance of this Agreement.
- (d) Notwithstanding any other provision of this Agreement and to the full extent permitted by law, the Company is not liable for any loss of use, loss of revenue, loss of profit, loss of product or production, business interruption, loss of business opportunity, loss of savings, loss of use of capital or loss of goodwill arising out of or in connection with this Agreement.

- (e) Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement.

8. ASSIGNMENT AND SUBCONTRACTING

- (a) The Supplier may not assign all or any part of its rights or transfer its obligations under this Agreement without the Company's prior written consent.
- (b) The Company may assign all or any part of its rights or transfer its obligations under this Agreement without the Supplier's prior written consent.
- (c) The Supplier must not subcontract all or any part of its obligations under this Agreement without the Company's prior written consent, which consent must not be unreasonably withheld.
- (d) No subcontract, delegation or other similar arrangement (whether with or without the consent of the Company) in any way relieves the Supplier from full responsibility for the supply of the Goods and Services and the performance of its obligations in accordance with this Agreement.

9. SUPPLIER'S PERSONNEL

The Supplier must ensure that its Personnel comply with this Agreement as if they were parties to it and the Supplier is liable for any acts, omissions and breaches of this Agreement by its Personnel as if those acts, omissions or breaches were those of the Supplier.

10. SUSPENSION AND TERMINATION

- (a) To the extent permitted by law, the Company may at any time and for any reason, suspend performance of this Agreement by giving the Supplier notice. If the Supplier receives a notice of suspension from the Company, the Supplier must immediately suspend performance of the relevant obligations until such time as the Company directs the Supplier to resume performance of those obligations by notice in writing. The Supplier will be entitled to payment of any additional direct costs which are unavoidably incurred as evidenced by supporting documents as a result of the suspension, provided that the suspension was not necessary because of an act, default or omission of the Supplier.
- (b) The Company may immediately terminate this Agreement by notice in writing to the Supplier if:
- (i) the Supplier becomes insolvent, bankrupt or is convicted of a criminal offence;
 - (ii) the Supplier breaches any obligation under this Agreement which is unable to be remedied or, if it is able to be remedied, is not remedied within 14 days of the Company giving the Supplier notice to do so; or
 - (iii) in the Company's reasonable opinion, the Supplier or its Personnel have engaged in any unsafe work practices in connection with this Agreement.
- (c) The Supplier may terminate this Agreement if:
- (i) the Company does not pay the Supplier any undisputed money due and owing to it under this Agreement; and
 - (ii) the Company does not pay that money within a further period of 20 Business Days after the Supplier serves written notice on the Company requiring payment.
- (d) If this Agreement is terminated under clause 10(b) or 10(c), the respective rights and liabilities of the parties will be the same as they would be at common law if the defaulting party had wrongfully repudiated this Agreement and the other party elected to treat this Agreement as at an end and recover damages.
- (e) Unless expressly stated otherwise, termination of this Agreement for any reason does not affect the rights or obligations of a party which have accrued prior to termination.

11. INTELLECTUAL PROPERTY

- (a) The Supplier hereby grants to the Company a non-exclusive, irrevocable, perpetual, royalty free licence to use, modify, adapt or sublicense any intellectual property in the Goods, Services or documentation provided by the Supplier under this Agreement.

- (b) The Supplier must do all things necessary to give full effect to the rights and obligations contained in this clause 11.
- (c) The Supplier warrants that provision of the Goods and Services will not infringe the intellectual property rights of any third party and that it has all intellectual property consents, licences and rights necessary to perform its obligations under this Agreement.

12. CONFIDENTIALITY

- (a) Except to the extent necessary to comply with its obligations under this Agreement, the Supplier must not disclose to any person any information (including the existence of or terms of this Agreement) owned or relating to the Company, its business or its Personnel or customers without the written consent of the Company except to the extent required by law or the rules of any securities exchange.
- (b) The Supplier must not advertise or issue any information, publication, document or article for publication or media releases or other publicity relating to this Agreement, or the Company's business without the prior written approval of the Company.
- (c) The obligations in this clause 12 survive termination of this Agreement.

13. DISPUTE RESOLUTION

- (a) Subject to clause 13(b), any dispute arising in relation to this Agreement (Dispute) must be determined in accordance with this clause 13.
- (b) Clause 13(a) does not prevent either party from applying to the Supreme Court of Western Australia for urgent injunctive relief in relation to this Agreement.
- (c) If a party alleges a Dispute has arisen it must give notice of that fact to the other party (Dispute Notice).
- (d) Within ten Business Days of service of a Dispute Notice, the Company's representative and a senior representative of the Supplier must meet and, confidentially and in good faith, attempt to resolve the Dispute. If the Dispute is not resolved within ten Business Days of the last date for the meeting of delegates under this clause, the matter will be and is hereby referred to confidential arbitration.
- (e) The seat of the arbitration will be Perth, Western Australia and the arbitration is to take place in Perth before one arbitrator. The arbitrator will be nominated by the President of the Resolution Institute, Australia upon the application of either party. The arbitration will be conducted in accordance with the Resolution Institute Arbitration Rules (as amended by the Resolution Institute from time to time).
- (f) To the extent permitted by law, the parties agree that:
 - (i) the powers conferred and restrictions imposed on a court by Part 1F of the Civil Liability Act 2002 (WA) are not conferred or imposed on an arbitrator appointed under this clause 13; and
 - (ii) an arbitrator appointed under this clause 13 will have no power to make an order or award in respect of a Dispute by applying or considering the provisions of Part 1F of the Civil Liability Act 2002 (WA) (or any equivalent statutory provisions in any other state or territory) which might, in the absence of this clause 13, have applied to any Dispute referred to arbitration.

14. GENERAL

- (a) In performing this Agreement, the Supplier must comply with:
 - (i) all applicable laws and the terms of any applicable licences or permits; and
 - (ii) the Policies, in so far as they are applicable to the delivery of the Goods and Services.
- (b) This Agreement:
 - (i) subject to paragraphs (ii) and (iii), supersedes all other communications and negotiations (whether oral or written) between the Supplier and the Company and any written terms of the Supplier, in relation to the Goods and Services and constitutes the entire agreement between the Supplier and the Company in respect of those Goods and Services;
 - (ii) is to be read subject to any written and signed notice of award or contract between the parties in relation to the Goods and Services and the terms of any such written and signed notice of award or contract will apply to the exclusion of the terms of this Agreement; and
 - (iii) will be superseded by any subsequent written and signed notice or award or contract between the parties that relates to the Goods and Services, where the parties have agreed that the award or contract will apply retrospectively to any such Goods and Services.

- (c) Unless expressly stated otherwise, where a right or remedy is conferred on the Company under this Agreement, that right or remedy is in addition to, and not in substitution of, any other right or remedy conferred on the Company under this Agreement or according to law.
- (d) This Agreement is governed by the laws of Western Australia.
- (e) Where this Agreement allows the Company a discretion as to whether to do or not do any act, matter or thing of any kind, or confers on the Company a power or determination or right of opinion, approval, consent or the like, that discretion, power or right is absolute, unless this Agreement expressly states otherwise, and the Company is not obliged to give its reasons.
- (f) Each party will bear its own costs in relation to:
 - (i) the negotiation, preparation and execution of this Agreement and any further documentation required; and
 - (ii) the performance of its obligations under this Agreement, except where otherwise expressly stated in this Agreement.
- (g) No variation of this Agreement is effective unless made in writing and signed by each party. Any variation will only be applicable to the specific Purchase Order and will not apply to past or future Purchase Orders nor oblige the Company to agree to such a variation for any other Purchase Orders.
- (h) No waiver of a right or remedy under this Agreement is effective unless it is in writing and signed by the party granting it. A single or partial waiver or exercise of a right or remedy under this Agreement does not prevent a further exercise of that or of any other right or remedy. Failure to exercise or delay in exercising a right or remedy under this Agreement does not operate as a waiver or prevent further exercise of that or any other right or remedy.
- (i) Any provision of this Agreement which is void or unenforceable is to be read down or severed to the extent it is possible to do so without affecting the validity or enforceability of this Agreement. The invalidity or enforceability of one or more of the provisions of this Agreement will not invalidate, or render unenforceable, the remaining provisions of this Agreement.
- (j) Nothing in this Agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the parties. The Supplier is an independent contractor and not an employee or agent of the Company.

15. MODERN SLAVERY AND WHISTLEBLOWING

- (a) Supplier acknowledges that the Company is committed to respecting and supporting human rights nationally and internationally and is subject to the Modern Slavery Act 2018 (Cth) and other similar legislation.
- (b) Supplier warrants it will:
 - (i) comply with all applicable laws, statutes, and regulations in force from time-to-time supporting human rights, including without limitation the Modern Slavery Act 2018 (Cth); and
 - (ii) take all reasonable steps to ensure that no breach of human rights occurs in the provision of services, either directly by the Company or by any person used by the Company in connection with the services.
 - (iii) Supplier agrees to provide reasonable assistance to the Company in support of its compliance with the Modern Slavery Act 2018 (Cth) and other similar legislation including without limitation by:
- (c) promptly providing the Company with such information as the Company may reasonably request to demonstrate supplier meeting of the warranties in clause (15b) above; and promptly notifying the Company of any breach or suspected breach of human rights connected to either (ii) the Supplier provision of or the Company receipt of services.
- (d) Clause (15) survives termination or expiry of this agreement and shall continue for 18 months after termination or expiry of this agreement.
- (e) The Company's Whistleblower Policy encourages anyone or any organisation to report breaches or instances of alleged misconduct by or connected to the Company. Reports can be made anonymously.

16. INTERPRETATION

- (a) In this Agreement:
- Agreement has the meaning given in clause 1(a).
 - Business Day means any day other than a Saturday, Sunday or public holiday in Perth, Western Australia.
 - Company means Ausdrill Pty Ltd ABN 58 103 661 374.
 - Defect has the meaning given in clause 2(b).
 - Delivery Date means the date referenced as "Required By" in the Purchase Order, as extended by the Company under clause 5(e).
 - Delivery Point means the Company's site or premises specified in the Purchase Order or otherwise agreed between the parties.
 - Goods means the goods described or referred to in the Purchase Order, if any.
 - Personnel means the employees, agents, contractors or subcontractors of a party (but the Company's "Personnel" do not include the Supplier or the Supplier's "Personnel").
 - Policies means all policies and procedures of the Company notified by the Company to the Supplier from time to time, as updated by the Company from time to time.
 - PPSA means the *Personal Property Securities Act 2009* (Cth).
 - Price means the price set out in the Purchase Order
 - Purchase Order means a purchase order issued by the Company for the Goods and Services.
 - Security Interests means a mortgage, caveat, charge, lien, pledge, security, interest, title retention arrangement, preferential right, trust arrangement, encumbrance, contractual right of set off, any security arrangement in favor of any person or any security arrangement which is deemed to be a security interest for the purposes of the PPSA.
 - Services includes all services described or referred to in the Purchase Order, if any, and all other things which can reasonably be inferred from the description of the Services in this Agreement.
 - Supplier means the person named as the supplier in the Purchase Order.
 - Term means any period of time described in the Purchase Order or otherwise agreed between the parties during which the Goods and Services must be delivered.
- (b) In this Agreement, unless the context requires otherwise:
- (i) the singular includes the plural and vice versa;
- (ii) headings are for reference only and do not affect the interpretation of this Agreement;
 - (iii) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (iv) "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
 - (v) a reference to any legislation includes a reference to any proclamation, order, amendments or modification made under that legislation;
 - (vi) where two or more persons are named as the Supplier, then the obligations on their part will bind them jointly and severally;
 - (vii) "include", "includes" and "including" means "includes without limitation";
 - (viii) no rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or benefits from it;
 - (ix) a reference to:
 - A. a party includes that party's legal personal representatives, successors, assigns;
 - B. time is to local time in Perth, Western Australia;
 - C. "\$" or "dollars" is a reference to Australian currency unless otherwise agreed; and
 - D. a clause is a reference to a clause of this Agreement;
 - (x) if the date on or by which any payment must be made or notice given under this Agreement is not a Business Day, it must be made or given on or by the next Business Day;
 - (xi) where time is calculated by reference to a day or event, that day or the day of that event is excluded; and
 - (xii) a notice or other communication means a notice or communication in writing in the English language, addressed to the email, postal or premises address of the recipient party.