

# SUN METALS CORPORATION PTY LTD (SMC) PURCHASE AND SERVICE ORDER TERMS AND CONDITIONS

## 1. GENERAL

- a. **"Associates"** means in relation to a party, an employee, authorized agent, consultant, contractor, subcontractor, licensee or invitee of that party and any other person for whom that party is legally responsible.
- b. **"Authority"** means any government, Commonwealth, State or local authority, and any Minister, Department, office, commission, delegate, instrumentality, agency, authority, board or organ thereof whether statutory or otherwise, and any court.
- c. **"Business Day"** means a day other than a Saturday, Sunday or public holiday in the place where an act is to be performed, a notice is to be given or a payment is to be made.
- d. **"Completion Date"** means the completion date set out in the Order particulars
- e. **"Confidential Information"** means all information provided by a party that is not already in the public domain, legally in the possession of a party prior to the Order, required to be disclosed by Law, acquired from a third party who is entitled to disclose it or otherwise agreed by the parties in writing, not to be confidential.
- f. **"Consequential Loss"** means all indirect, economic or special loss or damages including but not limited to loss of contract, loss of profit, loss of production, loss of revenue, loss of savings, loss of use, or business interruption, howsoever caused, arising out of or in connection with the Order and whether or not foreseeable at the date of the Order irrespective of whether such loss is caused by the negligence or breach of duty, statutory or otherwise, or by any other tortious act or omission or breach of the Order by either party.
- g. **"Delivery Address"** means the place for delivery specified on the Order and 'site' has the same meaning.
- h. **"Goods"** means the goods set out in the Order.
- i. **"Health and Safety"** means health, safety, environment and community, and includes all applicable Laws, Industry Best Practice and Site Standards and Procedures.
- j. **"Industry Best Practice"** means the highest standards (including any relevant Australian, British, American or other international standard), practices, methods and procedures generally followed or approved by relevant industries and suppliers anywhere in the world (and no lower than the standards in Australia) for the work required under the Order and that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in comparable works, including without limitation in relation to environmental management and occupational health and safety.
- k. **"Law"** means:
  - i. Commonwealth, State and local government legislation including regulations, bylaws, orders, awards and proclamations;
  - ii. common law and equity;
  - iii. authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
  - iv. guidelines of authorities with which the Supplier is legally required to comply.
- l. **"Modern Slavery"** has the meaning given to it by the Modern Slavery Act.
- m. **"Modern Slavery Act"** means the *Modern Slavery Act 2018 (Cth)*.
- n. **"Order"** means the SMC purchase order or SMC service order as the case may be.
- o. **"Project IP"** means all intellectual property rights subsisting in the Goods and/or Services including any documents and any other things prepared or developed as part of the provision of the Goods and/or Services by the Supplier under or in connection with the Order.
- p. **"Purchase Order"** means the agreement between SMC and the Supplier which arises on acceptance of a written SMC purchase order and any documents attached or incorporated by reference together comprising the entire agreement for the Supply of the Goods and/or Services and includes these Terms.
- q. **"Price"** means the price for the Goods and/or Services as set out in the Order.
- r. **"Privacy Act"** means the Privacy Act 1988 (Cth) and any other relevant legislation with respect to the protection of personal or sensitive information.
- s. **"Related Body Corporate"** has the meaning given in the Corporations Act 2001 (Cth).
- t. **"Representative"** means the representative of each party, as identified on the Order, authorised to give and receive notices under the Order, and as updated by written notice from time to time.
- u. **"Service Order"** means the agreement between SMC and the Supplier which arises on acceptance of a written SMC service order and any documents attached or incorporated by reference together comprising the entire agreement for the Supply of the Goods and/or Services and includes these Terms.
- v. **"Services"** means the services set out in the Order.
- w. **"SMC"** means Sun Metals Corporation Pty Ltd ACN 074 241 982
- x. **"Site Standards and Procedures"** means SMC standards, procedures and policies relating to Health and Safety, quality, energy, operations and purchasing and such other standards, procedures and policies as notified by SMC, as amended from time to time, and any other guidelines, rules, requirements or site specific conditions which SMC makes available to the Supplier from time to time, and includes those set out at Schedule 1.
- y. **"Standards"** means relevant standards and codes specified in these Terms or the Order and where the Terms or the Order are silent as to the standards or code to apply, relevant standards or codes published by Standards Australia.
- z. **"Supplier"** means the party identified as such in the Order.
- aa. **"Supplier IP"** means all intellectual property rights created or developed by or on behalf of the Supplier prior to the date of the Order or other than in connection with the Order and which the Supplier makes available, contributes, or brings to or uses in connection with the Order.
- bb. **"Supply"** includes the supply, delivery and storage of the Goods and/or Services in accordance with the Order and all other matters which are necessary or incidental which the Supplier must provide or perform in order to comply with the Order.
- cc. **"Terms"** means these terms and conditions.
- dd. **"Warranty Period"** means the warranty period set out in the Order particulars
- ee. No modification of these Terms will be binding on SMC unless agreed to by SMC in writing.
- ff. These Terms replace all prior proposals and negotiations with the Supplier and the Order supersedes any prior documentation in relation to the Supply.
- gg. These Terms override any quotes, terms and conditions, invoices or other documentation exchanged between the parties whether or not such documentation expressly provide that they override these Terms and even if any representative of SMC signs them or annexes them to the Order.
- hh. The Supplier will not, without the prior written

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consent of SMC, assign, novate, sub-contract, transfer or otherwise deal with the Order, either in whole or in part.

- ii. If the Supplier comprises two or more persons, each person is jointly and severally responsible for all and any obligations, liabilities and indemnities in favour of SMC.
- jj. The acceptance by the Supplier of SMC's written Order (evidenced by the Supplier's Representative signing the Order and returning the signed Order to SMC), or commencement of either the Supply or fabrication of the Goods and/or Services (whichever first occurs) will constitute unconditional acceptance of, and agreement with, the Order (including these Terms) between SMC and the Supplier.
- kk. If there is any discrepancy, inconsistency or ambiguity within or between the following documents (or parts of the following documents):
  - i. if the parties have entered into a separate written and executed contract for the Supply of the Goods and/or Services, the terms and conditions of that contract; and
  - ii. these Terms,
 then the discrepancy, inconsistency or ambiguity will be resolved by reading the documents in the order of precedence listed above.

## 2. SUPPLY

- a. In consideration of payment of the Price by SMC, the Supplier must perform the Supply:
  - i. in accordance with and by the dates set out in the Order;
  - ii. at the Price; and
  - iii. in accordance with these Terms.
- b. The Supplier must perform the Supply:
  - i. in accordance with Industry Best Practice;
  - ii. using appropriately qualified, trained, certified and supervised personnel; and
  - iii. in compliance with the Order (including these Terms), all applicable laws, industry practice and the reasonable directions of SMC.
- c. The Supplier must notify SMC immediately if it becomes aware of any delay or likely delay in delivering the Goods and/or Services by the delivery date under the Order. SMC may, without prejudice to any other rights it may have at law, extend the delivery date by a reasonable period, for any reason (including delay caused by SMC) in its sole discretion. The Supplier will be solely responsible for coordinating and paying excess storage, freight or other costs arising as a consequence of delays.

## 3. PACKAGING

- a. The Supplier will ensure that Goods are packaged as per the instructions in the Order. In the event that there are no instructions in the Order, the Supplier will meet the packaging standards as is customary in the industry so as to ensure adequate protection for the Goods and eliminate damage.
- b. Packages must be marked with the Order number, item number, destination, contents, quality, date and method of dispatch and weight of each package.
- c. All packaging materials shall become the property of SMC.

## 4. ACCEPTANCE

- a. Delivery of Goods will only occur when the Goods have been received and accepted by SMC notwithstanding any agreement to pay freight, express or other transportation charges or the passage of title by operation of law or otherwise and the cost of loss or damage in transit will be borne by the Supplier.
- b. Risk in the Goods will pass to SMC when SMC unconditionally accepts the Goods in accordance with these Terms. Title to and property in the

Goods immediately passes to SMC upon the earlier of payment of the Price or delivery of the Goods to the Delivery Address.

- c. All Goods will be subject to SMC's inspection and approval. If any Goods are rejected by SMC, those Goods will be held, subject to the Supplier's instructions, at the Supplier's risk and at the Supplier's expense and, may be returned by SMC to the Supplier, or as otherwise instructed by the Supplier, at the Supplier's expense.
- d. SMC reserves the right to reject any Goods (or any aspect of them) which are damaged, deficient, faulty, inadequate or incomplete or which do not conform to the quality, conditions or type specified in the Order.
- e. Acceptance by SMC of all or any part of the Supply supplied under the Order which is not in accordance with the terms of the Order will not bind SMC to accept future deliveries.
- f. Acceptance by SMC of all or any part of the Supply will not be deemed to be a waiver of SMC's right either to cancel or return all or any part of the Goods because of failure to conform to the Order by reason of any defects or breach of warranty, or be deemed to be a waiver of SMC's right to make any claim for damages incurred by SMC. These rights will be in addition to any other remedies provided by Law.
- g. The Supplier agrees to promptly repair, replace and reinstall any defective part or unit at no cost to SMC, (including without limitation labour, material, freight and delivery charges), as appropriate.
- h. The Supplier agrees to promptly rectify any non-conformance, defect or omission in the Services at no cost to SMC. If the Supplier fails to remedy the non-conformance, defect or omission without delay, SMC may arrange for the non-conformance, defect or omission to be rectified by others at the expense of the Supplier. SMC's rights in this clause are without prejudice to any other rights and remedies that SMC may have.

## 5. SUPPLIER'S WARRANTY

- a. The Supplier warrants that the:
  - i. Goods will be of merchantable quality and, unless otherwise specified in the Order, new;
  - ii. Goods and/or Services will be fit for the purpose for which Goods and/or Services of the same kind are commonly supplied or bought and for any other purpose SMC specifies;
  - iii. Goods and/or Services conform to the specifications, applicable standards and performance capacity represented by the Supplier or specified in the Order;
  - iv. Services will be performed and completed in accordance with the *Work Health and Safety Act 2011 (QLD)*, the *Work Health and Safety Regulation 2011 (QLD)* and all other applicable safety laws, SMC's environmental requirements and all applicable environmental laws.
  - v. Goods will be free from encumbrances, liens and reservations of title.
  - vi. Services will be performed using new materials, plant and equipment and proper and tradesman like workmanship in accordance with Industry Best Practice.
  - vii. Goods and/or Services are performed, designed and constructed (as the case may be) in accordance with all relevant Australian Standards.
- b. The Supplier warrants that the Goods, including but not limited to all component parts, are free from defects.
- c. In respect of any Goods repaired, replaced or reinstalled under clause 4.g, the Supplier

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warrants that the Goods will be free from defects for a period of one (1) year from the date that the Goods are repaired, replaced or reinstalled.

- d. The obligations under this clause 5 survive termination of the Order.

## 6. LIQUIDATED DAMAGES

- a. If the Supplier does not complete the Supply by the Completion Date, the Supplier will be indebted to SMC for the liquidated damages set out in the Order particulars for every day after the Completion Date to and including the earliest of:
- the date the Contractor completes the Supply or
  - termination of the Order by SMC.
- b. The Supplier and SMC agree that the rate of liquidated damages set out in the Order particulars is an agreed genuine pre-estimate of SMC's loss if the Supply is not completed by the Completion Date.
- c. If an EOT is directed by SMC after the Supplier has paid liquidated damages, SMC must repay to the Supplier any liquidated damages paid or deducted in respect of the period to and including the new Completion Date.

## 7. HEALTH, SAFETY AND ENVIRONMENT

The Supplier must, in supplying the Goods and/or Services:

- not interfere with SMC's activities or the activities of any other person at the Delivery Address;
- be aware of and comply with and ensure that the Supplier's employees, agents and sub-suppliers are aware of and comply with:
  - all applicable Laws;
  - all applicable Site Standards and Procedures; and
  - all lawful directions and orders given by SMC or any person authorised by Law to give directions to the Supplier;
- ensure that the Supplier's employees, agents and sub-suppliers entering the Delivery Address or any other premises of SMC perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
  - safe working practices;
  - safety and care of property; and
  - continuity of work;
- provide all such information and assistance as SMC reasonably requires in connection with any statutory or Health and Safety investigation in connection with the supply of the Goods and/or Services;
- on request by SMC, provide to SMC and its employees, agents and consultants any information and assistance required to identify, evaluate, implement and report on any matter required by Law, including:
  - producing written reports;
  - recommending efficiency opportunities;
  - collecting data; and
  - monitoring or metering;in respect of anything used, produced or created in connection with the performance of the Supplier's obligations under the Order;
- leave the site in a clean and tidy state to the satisfaction of SMC;
- comply with and ensure that all of the Supplier's employees, agents and sub-suppliers comply with, all Health and Safety requirements, including inductions, as instructed by SMC either verbally, in written instructions or in documents provided to the Supplier or on signboards; and
- ensure that all the Supplier's employees, agents or sub-contractors complete any induction required by SMC to supply the Goods and/or Services. All inductions for personnel are to be undertaken at the Supplier's cost and within the timeframes required by SMC.

SMC may direct the Supplier to remove from the site any of the Supplier's employees, agents or sub-

contractors who SMC reasonably considers:

- has breached any applicable Law, or failed to comply with the Site Standards and Procedures;
- has otherwise failed to comply with the requirements of this clause 7; or
- is a risk to the safety of any person, property or the environment at the site, or in its performance and/or completion of the Order.

## 8. EXTENSIONS OF TIME (EOT)

- The Supplier may apply to SMC for an extension to the Completion Date if it will be delayed in completing the Supply by the Completion Date due to a breach or default by SMC.
- The Supplier must submit a detailed written claim to SMC for an extension to the Completion Date within 14 days of when the Supplier should reasonably have become aware of the delay event occurring.
- Within 28 days after receiving a valid claim for an EOT, SMC shall give a written direction evidencing the EOT granted, if any. A delay or failure by SMC to grant an EOT will not cause the Completion Date to be set at large.
- Notwithstanding that the Supplier is not entitled to or has not claimed an EOT, SMC may at any time and from time to time issue an EOT. The SMC need not exercise this power for the benefit of the Supplier.

## 9. TIME

- The Supplier must complete the Supply by the Completion Date stated in the Order Particulars.

## 10. SECURITY

- The Supplier must provide to SMC the security set out in the Order Particulars. If the security to be provided is a bank guarantee, it must be:
  - unconditional;
  - in a form and from a bank acceptable to SMC; and
  - provided upon the entry into the Order.
- SMC may, at any time, convert into money any security that does not consist of money, and use any security. The Supplier must not take any steps to restrain the conversion or use of any security.
- On completion of the Work, 50% of any security then held will be returned to the Supplier. SMC must release and return the balance of the security to the Supplier within 14 days of the end of the Warranty Period

## 11. PAYMENT TERMS

- SMC must pay the Supplier the Price for the Supply.
- The Price is unless otherwise specified in these Terms or the Order, inclusive of all costs incurred by the Supplier in performing the Supply (including labour and transportation costs) and all new, existing or increased federal, state, territory or regulatory charges or duties (other than GST).
- Payment for the Supply will be made 30 days, from the end of the month ("Supply Month") that the Goods are received by SMC in accordance with the Order provided that a valid tax invoice (quoting SMC's Order number) in respect of that Supply is received by SMC prior to the end of the Supply Month.
- Payment for the Supply does not imply acceptance of the Supply by SMC and will not in any way affect SMC's rights under the Order.
- SMC may withhold payment where the Supplier fails to provide any information required by the Order.
- If SMC disputes the amount of a valid tax invoice, SMC must pay the undisputed amount in accordance with clause 11.c of these Terms.
- SMC may reduce any payment due to the Supplier under the Order by any amount which

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the Supplier must pay SMC, including costs, charges, damages and expenses and any debts owed by the Supplier to SMC on any account whatsoever and any amounts owed to SMC by the Supplier under any other agreement between the parties. This does not limit SMC's right to recover those amounts in other ways.

- h. Any money payable to the Supplier is in Australian dollars (AUD) unless otherwise specified in the Order.

## 12. GOODS AND SERVICE TAX (GST)

- a. The terms "GST", "GST law" and other terms used in this clause 12 have the meanings given to them by the *A New Tax System (Goods and Services Tax) Act 1999* (as amended from time to time) or any replacement or other relevant legislation and regulations, and includes any other legislation enacted to validate, recapture or recoup tax collected as GST.
- b. Unless otherwise stated, all consideration or other amount payable by SMC to the Supplier howsoever described in the Order does not include GST.
- c. If a Supply under the Order is subject to GST, SMC must pay to the Supplier an additional amount equal to the amount of the Price multiplied by the prevailing GST rate.
- d. The additional amount under clause 12.c is payable at the same time as the Price for the Supply is payable or to be provided. However, the additional amount need not be paid until the Supplier provides a Tax Invoice to SMC.
- e. If the amount of GST payable in accordance with clause 12.c is found to differ from the amount paid in relation to a Supply then:
- if the amount of GST paid is more than is required under the GST Law the Supplier shall refund the excess amount to SMC; or
  - if the amount of GST paid is less than is required under the GST Law, SMC shall pay the Supplier the difference.

For the purposes of calculating further variations under this clause 12.e, any additional amount referred to in clause 12.c is taken to be amended by the amount of any earlier variation made under this clause 12.e.

- f. If either SMC or Supplier is entitled to be reimbursed or indemnified under the Order, the amount to be reimbursed or indemnified by either party is to be the GST exclusive amount. For the avoidance of doubt, the amount of any reimbursement does not include any amount attributable to GST for which either SMC or the Supplier is entitled to an Input Tax Credit.
- g. If a party to the Order is a member of a GST group, references to GST which the party must pay, and to input tax credits to which the party is entitled, include GST which the representative member of the GST group must pay and input tax credits to which the representative member is entitled.

## 13. OTHER TAXES

- a. Unless otherwise specified in these Terms or the Order, the Supplier agrees to pay and discharge all taxes, duties and other imposts on the Supply and to indemnify SMC against any liability for such taxes, duties and imposts. SMC retains the right to withhold monies due to the Supplier in respect of any unpaid taxes, duties or other imposts where payment of these by SMC is required by law.
- b. The Supplier will, if SMC requests, provide all information and documentation necessary for SMC to make, or assess the Supplier's entitlement to make, an application or certification for a drawback, refund, rebate, remission or other reduction of customs duties or excise duties.
- c. The Supplier must make any application or certification requested by SMC in a form satisfactory to SMC, and where successful, the Supplier must pass on to SMC the full economic

benefit of the exemption, reduction, concession, drawback, refund, rebate or remission by way in reduction in price.

## 14. TERMINATION AND SUSPENSION

- a. SMC may, at its option, terminate or suspend all or part of the Order at any time for any reason by giving written notice to the Supplier. SMC is not required to inform the Supplier of SMC's reason. The suspension or termination will take effect from the time stated in the notice.
- b. In the event of a suspension of an Order, as soon as SMC becomes aware that the reason for the suspension no longer exists, SMC shall direct the Supplier to recommence the suspended part of the Order as soon as is reasonably practicable.
- c. If the Supplier commits a breach of or fails to comply with any of these Terms or (if an individual) becomes bankrupt or makes an arrangement or composition with its creditors or (if a company) goes into liquidation, provisional liquidation or administration or has a receiver appointed to any of its assets, SMC may terminate the Order with immediate effect.
- d. On termination or suspension of an Order:
- the accrued rights and remedies of each party are not affected;
  - the Supplier must stop working on any incomplete or undelivered Goods and cease to provide any Services;
  - if requested by SMC, deliver the SMC all completed Goods which, for the avoidance of doubt must conform to the quality, conditions or type specified in the Order and these Terms; and
  - the Supplier's sole and exclusive right in respect of the termination or suspension is limited to the payment of the Price for any Supply which has been completed in accordance with the Order and delivered to SMC.

## 15. INSURANCE

- a. The Supplier will effect and maintain the following insurances:
- Marine Transit and Property Damage insurance covering physical loss, damage or destruction of the Goods supplied for their full replacement value;
  - Public and Products Liability insurance for a limit of indemnity of not less than \$20 Million for any one occurrence and in the aggregate with respect to Products Liability;
  - Professional Indemnity insurance for a limit of indemnity of not less than \$5 Million for any one occurrence;
  - Workers Compensation insurance and any other insurance required by any applicable law as may be required, in respect of any person employed or engaged by the Supplier who goes on to any SMC site; and
  - Motor Vehicle Third Party Property Damage insurance for limit of indemnity of not less than \$20 Million in respect of any registered motor vehicle, if the Supplier goes on to any SMC site.
- b. The Supplier will at any time requested by SMC provide certificates of currency for each of the above insurances.
- c. The obligations under this clause 15 survive termination of the Order.

## 16. INDEMNITY

- a. The Supplier indemnifies and holds SMC harmless from all claims, demands, proceedings, liability, loss, damage or expense (including legal costs on an indemnity basis) for any breach or violation of intellectual property rights including patents, patents pending, trademarks, trade names, copyright and

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- know how relating to the Goods and/or Services. This indemnity will be in addition to any other remedies provided by Law.
- b. The Supplier indemnifies and holds SMC harmless from all claims, demands proceedings, liability, loss, damage and expense (including legal costs on an indemnity basis) sustained by SMC arising out of or in connection with:
    - i. the Goods and/or the Services;
    - ii. the Supply;
    - iii. a breach of the Order by the Supplier or its employees, officers, agents or sub-contractors; and
    - iv. any act or omission by the Supplier or its employees, officers, agents or sub-contractors arising out of or in relation to the performance (or failure in performance) of the Order, including without limitation in connection with any illness, death or injury to any person, damage to any property, or any clean-up costs, directly or indirectly caused or contributed to by the Supplier, except to the extent that any such loss is caused by SMC's wilful misconduct or negligence.
  - c. SMC holds the benefit of clause 16.a and 12.b for itself and on trust for SMC's employees, officer's agents, contractors, and subcontractors (but not the Supplier) and each of SMC's Related Body Corporates and their employees, officers, agents, contractors and subcontractors.
  - d. Each indemnity in the Order is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Order.
  - e. It is not necessary to incur an expense or make a payment before enforcing a right of indemnity under the Order.
  - f. The obligations under this clause 16 survive termination of the Order.

## 17. CONSEQUENTIAL LOSS

- a. Despite any other provision in these Terms, neither party is liable for any Consequential Loss suffered by the other party.

## 18. ANTI-BRIBERY & ANTI-CORRUPTION

The Supplier:

- a. must at all times comply with any SMC Anti-Bribery and Anti-Corruption Policy and all applicable laws, statutes, regulations and codes relating to anti-bribery and improper payments, including but not limited to the *Commonwealth Criminal Code 1995 (Cth)* ("**Relevant Requirements**");
- b. must not give or receive or offer or promise to give or receive any benefit or advantage which breaches a Relevant Requirement;
- c. must promptly report to SMC any request or demand for undue financial or other advantage of any kind received by the Supplier in connection with the Order which will or may be in breach of any Relevant Requirement; and
- d. is responsible for, the observance and performance of the Relevant Requirements by all persons performing the Supply in connection with the Order on behalf of the Supplier or under its supervision or control, including any third parties engaged by the Supplier.

## 19. MODERN SLAVERY

- a. In performing its obligations, the Supplier shall:
  - i. comply with the *Modern Slavery Act 2018 (Cth)* (in addition to all other applicable Laws); and
  - ii. take reasonable steps to ensure that there is no Modern Slavery in the supply chains or any part of the business of the Supplier or any of its

Associates.

- b. The Supplier represents and warrants that:
  - i. it conducts its business in a manner that is consistent with the principles of the Modern Slavery Act; and
  - ii. neither the Supplier, nor any of its officers or associates or any other persons associated with the Supplier:
    - A. has been convicted of any offence involving Modern Slavery; and
    - B. having made reasonable enquiries, to the best of its knowledge has been or is the subject of any investigation, inquiry or enforcement proceedings by any Authority regarding any offence or alleged offence of or in connection with Modern Slavery.
- c. The Supplier shall implement due diligence procedures for itself and its Associates to ensure that there is no Modern Slavery in its supply chains.
- d. The Supplier shall deliver to SMC, upon request by SMC, a statement prepared in accordance with section 16(1) of the Modern Slavery Act, including the steps it has taken to ensure that Modern Slavery is not taking place in any of its supply chains or in any part of its business.
- e. For the purposes of this clause, any reference to obligations imposed upon a 'reporting entity' in section 16 of the Modern Slavery Act shall be taken to mean obligations imposed upon the Supplier, to the extent that those obligations apply to the Supplier.
- f. The Supplier shall notify SMC as soon as it becomes aware of any actual or suspected Modern Slavery, which has a connection with the Order.

## 20. CONFIDENTIAL INFORMATION AND INTELLECTUAL PROPERTY

- a. If the Supplier has access to any of SMC's Confidential Information, the Supplier must:
  - i. keep the Confidential Information confidential; and
  - ii. not disclose it to any person without the prior written consent of SMC.
- b. The Supplier warrants that they will not infringe any third party intellectual property rights in performing its obligations under the Order.
- c. All Project IP vests in SMC upon creation. If such Project IP vests in the Supplier, the Supplier hereby unconditionally assigns (and must procure that any other third party involved in the creation of that Project IP unconditionally assign) such right, title and interest in that Project IP to SMC and its Related Bodies Corporate.
- d. The Supplier grants to SMC and its Related Body Corporates a non-exclusive, assignable, irrevocable, royalty-free, perpetual, worldwide licence (including the right to sub-licence) to use, copy, sub-licence and exercise all rights in the Supplier IP for any purpose in connection with the use, operation, repair, maintenance or otherwise in respect of the Goods.
- e. The obligations under this clause 20 survive termination of the Order.

## 21. VARIATIONS

- a. The Supplier must not vary the Supply unless directed by SMC. SMC may direct the Supplier to vary the Supply in any way and at any time up to the completion of the Supply, and the Supplier must comply with each such variation direction. SMC may direct variations to omit parts of the Order and have that work performed by other suppliers.
- b. SMC will price each variation on:
  - i. the rates or prices specified in the Order if SMC

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- considers them applicable to the variation: and
- ii. if (i) does not apply, reasonable rates or prices.
- iii. This price will be added or deducted from the Order amount.

## 22. OTHER

- a. Each party agrees to comply with its obligations under the Privacy Act in respect of any personal information obtained by or disclosed to it under or in relation to the Order. The Supplier must only deal with personal information received from SMC for the purposes of supplying the Goods and/or Services.
- b. The parties' relationship is one of principal and independent contractor, and not of employer and employee, principal and agent, partnership nor joint venture and no contractual relations will arise between any of the Supplier's employees, agents or subcontractors and SMC as a result of the Supplier's and SMC's relationship, and the Supplier does not have the right or authority to act on behalf of or bind SMC unless the Supplier has expressly authorised SMC in writing.
- c. Where any provision of the Order is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions of the Order.
- d. The rights and remedies set out in the Order are cumulative, and do not in any way limit any other right or remedy which may exist (whether in contract, tort (including negligence), equity, statute or otherwise).
- e. A notice given under the Order must be in writing addressed to the Representative identified in the Order.
- f. The Order and these Terms will be governed by the laws of Queensland and the parties agree to submit to the non-exclusive jurisdiction of the courts of Queensland.

# **SUN METALS CORPORATION PTY LTD (SMC) PURCHASE AND SERVICE ORDER TERMS AND CONDITIONS**

## **Schedule 1 - Site Standards and Procedures**

The link below "Conditions Applying to Work Conducted at SMC" shall apply to all work conducted under the Purchase Order or Service Order, as the case may be.

[Conditions Applying to Work Conducted at SMC](#)