

In this document ("Terms and Conditions of Purchase"):

**Delivery Address** means the place for delivery specified on the Purchase Order.

**Delivery Date** means the date for delivery of the Goods specified on the Purchase Order.

**Goods** means the machinery, plant, equipment, apparatus, materials, articles, erection works, services and things of all kinds to be supplied, delivered or performed by the Supplier in accordance with the Purchase Order.

**Law** means:

(a) Commonwealth, State and local government legislation including regulations, by-laws, orders, awards and proclamations;

(b) common law and equity;

(c) Authority requirements and consents, certificates, licenses, permits and approvals (including conditions in respect of those consents, certificates, licenses, permits and approvals); and

(d) guidelines of Authorities with which the Supplier is legally required to comply.

**Purchase Order** means the order marked Purchase Order with a unique identifying number specifying the Goods to be provided by the Supplier to BME.

**BME Standards and Procedures** means all guidelines, rules, requirements or Site-specific conditions which BME makes available to the Supplier from time to time.

**Supplier** means the entity (including an individual, firm or corporate entity) so named in the Purchase Order.

**"BME"** means Bed Rock Hire Pty Ltd (ABN 48 149 878 428) trading as Bedrock Mining Equipment

## 1. SUPPLY OF GOODS

- a. These Terms and Conditions of Purchase and the Purchase Order shall constitute a binding Contract between the Supplier and BME.
- b. In consideration of payment of the Price by the BME, the Supplier must supply to BME the Goods in accordance with the Purchase Order.
- c. To the extent the Supplier's terms and conditions are supplied with the Goods or Services (including as printed on orders or order confirmations, consignment notes, delivery dockets, credit applications or other documents), those terms and conditions will be of no legal effect and will not constitute part of the Purchase Order. The Contract terms apply to the exclusion of any preceding, subsequent or other terms and conditions unless stated on the Purchase Order. For the avoidance of doubt, if other terms are proposed then these terms are deemed to be reoffered to and accepted by the Supplier on delivering the Goods.
- d. BME reserves the right at any time in relation to the Goods to revise the Purchase Order to correct any errors or omissions therein or to make any changes including in respect of specifications, quantity or delivery.
- e. The Supplier must, in supplying the Goods:
  - i. not interfere with BME's activities or the activities of any other person at the Delivery Address;
  - ii. be aware of and comply with and ensure that the Supplier's employees, agents and subcontractors are aware of and comply with:
    1. all applicable Laws;
    2. all BME Standards and Procedures, to the extent that they are applicable to the supply of the Goods, and
    3. all lawful directions and orders given by BME's representative or any person authorised by Law to give directions to the Supplier;
  - iii. ensure that the Supplier's employees, agents and subcontractors entering BME's premises 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:
    1. safe working practices;
    2. safety and care of property; and
    3. continuity of work;

- iv. provide such information and assistance as the BME reasonably requires including in any statutory investigation in connection with the supply of Goods.

## 2. DELIVERY

- a. The Supplier must deliver the Goods Free in Store (FIS) to the Delivery Address nominated in the Purchase Order by the Delivery Date.
- b. The Supplier shall be deemed to have delivered the Goods only where it obtains a signed delivery docket that references the Purchase Order number, item number and a detailed description of the Goods from an authorized officer of BME.
- c. The Supplier must ensure that the Goods are suitably packed to avoid damage in transit or in storage and all packages must be marked with the Purchase Order number, item number, destination, contents, quality, date and method of dispatch and weight of each package.
- d. The Supplier shall collect at the Supplier's cost any or all Goods not accepted by BME or not in conformity with the Purchase Order or Contract.

## 3. TIME

- a. When a Delivery Date is stated on the Purchase Order then that time is made of the essence and must be met in strict accordance with the terms of the Contract.
- b. If the Goods are not supplied by the time specified in the Purchase Order then BME may, without prejudice to any other rights and remedies, rescind the Contract unless the delay is caused by factors outside the reasonable control of the Supplier, as solely determined by BME.
- c. BME shall not be liable to the Supplier in respect of any cost, expense, loss or damage whatsoever incurred or suffered by the Supplier as a direct or indirect result of the rescission of the Contract.

## 4. TITLE AND RISK

- a. Title to and property in the Goods shall pass to BME upon payment of the Price or delivery of the Goods whichever occurs earlier.
- b. Risk in the Goods passes to BME when the Goods are delivered to the Delivery Address and accepted by BME as free of defects.

## 5. PRICE

- a. Unless otherwise stated on the Purchase Order the price is in Australian dollars and is inclusive of all costs incurred by the Supplier in the supply of the Goods including but not limited to all costs and charges for packing, insurance, delivery, taxes (other than GST), duties of the goods and any other costs associated with the design, manufacture, delivery and supply of the Goods.
- b. The Price is not subject to change unless the express written consent of such a change has been issued to the Supplier from BME.

## 6. GST

- a. Unless otherwise stated any amounts payable under this Contract are calculated or expressed exclusive of GST.
- b. If GST is or becomes payable to the Australian Taxation Office by either party in relation to a supply under this contract, the recipient of that supply must pay to the party making that supply an amount equal to the GST.
- c. The recipient is not obliged to pay any GST to the supplier unless a valid tax invoice has been issued.
- d. Any party that becomes aware of the occurrence of any adjustment event in connection with this contract must notify the other party as soon as possible the parties must then take whatever steps are necessary and make whatever adjustments are required to ensure that any additional GST, or refund of GST, or refund of GST, on that supply is paid no later than 20 Business Days after the parties first become aware of the adjustment event.
- e. For the purposes of this clause 6, terms which are defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) have the meaning given to them in the Act

## 7. PAYMENT

- a. Upon delivery of the Goods the Supplier will provide to BME a valid tax invoice within 7 calendar days.
- b. Any invoice must include the following details:
  - i. a reference to the Purchase Order number;
  - ii. the line item numbers on the Purchase Order and a detailed description of the delivered Goods including the date of delivery in respect of which the invoice relates and the relevant quantity in respect of each line item;

- iii. an individual reference number for BME to quote with remittance of payment;
  - iv. the price relating to the Goods and/or Services, broken down to reflect the same line item prices on the Purchase Order;
  - v. the amount of any applicable GST; and
  - vi. the BME contact name.
- c. If the BME requests, the Supplier must provide BME with all relevant records to calculate and verify the amount set out in any Invoice.
- d. BME will pay all invoices that comply with the Contract within 60 days from the end of the month of receipt of the invoice (as the case may be), except where BME disputes the invoice, in which case:
- i. BME may withhold payment pending resolution of the dispute; and
  - ii. if the resolution of the dispute determines that BME must pay an amount to the Supplier, BME must pay that amount within 30 days from resolution of that dispute.
- e. Without limiting BME's rights under any other provision of the Contract, BME may deduct or set-off against any monies which may be or thereafter become payable by BME to the Supplier including:
- i. any debt due from the Supplier to BME; and
  - ii. any claim which BME may have against the Supplier under or by virtue of any provision of the Contract or otherwise at law or in equity.

#### **8. INSURANCE**

- a. The Supplier must at its own cost insure the Goods for any loss or damage until acceptance of the Goods by BME.
- b. The Supplier warrants it has and will maintain:
  - i. Public and Products Liability insurance policy for at least \$20 million for any one occurrence;
  - ii. Workers Compensation insurance or equivalent;
  - iii. Professional Indemnity Policy for at least \$10 million for any one occurrence;
  - iv. Transit insurance for the value of the Goods per shipment; and
  - v. Other such insurances as required by BME.
- c. BME shall be noted as an interested party on the policies of insurance of the Supplier.
- d. The Supplier must provide copies of insurance policies' certificates of currency immediately following any request from BME.

#### **9. FORCE MAJEURE**

- a. Neither party shall be liable to the other in performing the obligations in the Contract caused by any occurrence beyond its reasonable control including fire, national strike, national industrial disturbance, riot, war, act of God, government order or regulation provided that the affected party gives written notice to the other party within seven calendar days of the occurrence.

#### **10. INDEMNITY**

- a. The Supplier indemnifies and shall keep BME indemnified;
  - i. from and against all actions, claims, loss, damage, expense or liability expense of any kind incurred by BME, or damage of any kind suffered by BME; or
  - ii. personal injury to any person or loss of or damage to any property,

arising out of or by reason of anything done or not done by the Supplier in respect of the supply of the Goods.

#### **11. WARRANTY**

- a. The Supplier warrants the Goods for a minimum of 24 months from the date of acceptance of the Goods by BME and that the Goods;
  - i. match the description referred to in the Purchase Order;
  - ii. if the Supplier gave the BME a sample of the Goods, are of the same nature and quality as the sample given;
  - iii. if the Supplier gave BME information contained in catalogues, price lists, photographs, brochures or advertising are accurate and correct and that information given by the Supplier to BME is not misleading in any way;
  - iv. are fit for the purpose for which they are intended;
  - v. are new and of merchantable quality;
  - vi. are free of any omissions, defects or failures arising from faulty design, materials or workmanship or any other failures which render them unsuitable for BME's requirements;
  - vii. will operate reliably under all conditions;
  - viii. are free of all liens, charges and duties; and
  - ix. do not violate any copyright, patent or other intellectual property rights.

- b. The Supplier extends equivalent warranty as is provided to BME, to the customer of BME for the Goods supplied in the Purchase Order.
- c. Pursuant to clause a) and b) the Supplier shall be liable for any resulting costs and expenses incurred directly or indirectly by BME or the Supplier and must at the request of BME:
  - i. refund the price;
  - ii. replace, repair or modify the Goods;
  - iii. resupply Goods which in the opinion of BME are not in accordance with the Contract.
- d. BME may in its sole direction arrange the repair, replacement, modification or resupply of the Goods referred to in clause c) by either a third party or itself, whereby all resulting costs and expenses shall be borne by the Supplier.

#### **12. CONFIDENTIALITY**

- a. The Supplier shall keep confidential any information including but not limited to the contract, specifications, drawings, plans, designs and manuals and shall only disclose them as required by law and the extent necessary to enable those employees or agents to meet the requirements of the Contract.

#### **13. TERMINATION**

- a. BME may, in addition to any other rights, terminate the Contract by written notice to the Supplier where:
  - i. the Supplier breaches a term of the Contract;
  - ii. the Supplier becomes bankrupt, insolvent, goes into liquidation or has an administrator appointed; or
  - iii. the Supplier is unable or unwilling to comply with its obligations under the Contract with due diligence or in a competent manner in the sole opinion of BME.
- b. Termination pursuant to this clause shall be without prejudice to the rights of either party.
- c. BME shall not be liable to the Supplier for any loss (including loss of profit, loss of opportunity) whether direct, indirect, consequential, economic or otherwise, suffered by the Supplier and arising out of or in connection with termination of the Contract pursuant to this clause.

#### **14. COMPLAINTS AND DISPUTES**

- a. Any complaint or dispute arising out of or in any way connected to the Contract which is not resolved by the parties within 7 days shall be escalated to the parties' senior executives for resolution within 14 days after the later occurring of the complaint or dispute arising or a written notice comprising the complaint or dispute. Should resolution not be achieved within 30 days after the service of the written notice of a party then the matter shall be referred to the Institute of Arbitrators and Mediators Australia for expert determination in accordance with expert Determination rules.

#### **15. ASSIGNMENT AND SUBCONTRACTING**

- a. The Supplier must not assign or subcontract any of its rights or obligations without the prior written consent of BME.
- b. The Supplier is responsible as agent for the acts and omissions of its contractors and their subcontractors.
- c. Part 4 of the Civil Liability Act 2002 (NSW) and Chapter 2, Part 2 of the Civil Liability Act 2003 (QLD) are excluded.

#### **16. GOVERNING LAW**

- a. The Contract is governed by the laws of the state or territory in which the Goods are delivered.

#### **17. MISCELLANEOUS**

- a. All notices and communications must be in writing and oral communications and notices are ineffective unless confirmed in writing within 48 hours.
- b. Any part of this Contract which is invalid or unenforceable is to be read down or severed.
- c. No failure or delay on the part of BME in exercising any right, power or remedy will operate as a waiver.
- d. A waiver or breach of the Contract shall not be taken to be a waiver in respect of any other breach.
- e. All warranties, conditions, undertakings, covenants and other provisions implied by law relating to the Goods or their supply and delivery form part of the Contract and these Conditions do not exclude, restrict or modify the application to the Contract or any provision of the Competition and Consumer Act 2010 or equivalent legislation.
- f. BME may conduct audits and inspections to ensure the Supplier's compliance with the Contract, including to validate the Supplier's costs and charges. The Supplier must provide on demand from BME all records required by BME to conduct such audit in a form acceptable to BME.