



PURCHASE ORDER TERMS AND CONDITIONS

1. GENERAL

These Terms and Conditions apply to all supplies of Goods or Services by the Vendor to HBT, unless otherwise specifically agreed by HBT in writing. The Contract constitutes the entire agreement between the Vendor and HBT in relation to the supply of the Goods or Services. For any unfulfilled Purchase Order, HBT reserves the right to vary these Terms and Conditions on 30 days written notice to the Vendor.

2. PURCHASE ORDERS

- (a) A Purchase Order is a request for the Vendor to supply the Goods or Services stated in the Purchase Order to HBT. HBT reserves the right to vary or withdraw any Purchase Order at any time up until acceptance of the Purchase Order by the Vendor.
- (b) Unless HBT agrees clearly in writing to the contrary, a Purchase Order when accepted is accepted without variation by the Vendor. To the extent that subsequent terms are provided and agreed between the parties, these Purchase Order Terms and Conditions will take precedence over those subsequent terms unless HBT expressly agrees to the contrary.
- (c) All descriptive matter and specifications, drawings and particulars of weights and dimensions submitted by the Vendor in response to any Purchase Order, or material contained in the Vendor's catalogue, price lists or advertising matter, are intended by the Vendor to represent the Goods or Services and may be relied upon by HBT if it considers them relevant. HBT is not obliged to review any such documents for errors, omissions or inaccuracies.
- (d) The Vendor warrants that it does not rely upon any documents supplied by HBT in providing the Goods and Services and that any such documents are provided on a "for information only" basis.
- (e) To the extent of any discrepancies between the Purchase Order, this Contract or other documents supplied by either party, HBT may choose the appropriate interpretation and, failing that, the higher standard for the Vendor will apply.

3. THE CONTRACT

- (a) A Purchase Order must be placed by HBT in writing.
- (b) A Purchase Order placed by HBT constitutes an offer by HBT to purchase the Goods or Services described in the Purchase Order for the price set out in the Purchase Order on these Conditions. The Contract arises when the Vendor accepts the offer by:
 - i. sending HBT written acceptance of the Purchase Order;
 - ii. otherwise notifying HBT that the Purchase Order is accepted; or
 - iii. delivering the Goods or providing the Services.
- (c) the Vendor may at its absolute discretion accept or reject part or all of any Purchase Order made by HBT.
- (d) The Contract, when created, is wholly documented by (in descending order of precedence):
 - i. any specific terms agreed in writing by the parties;
 - ii. these Terms and Conditions;
 - iii. the Purchase Order;
 - iv. the credit terms applying to HBT (if applicable).

4. PRICES

- (a) Prices, unless otherwise stated in the Contract (or agreed by use of INCO-Terms), include all taxes, duties, tariffs, excises and the like and all such obligations are to be paid by the Vendor.
- (b) Unless otherwise specified, all prices are quoted and payable in Australian dollars.

- (c) The Vendor warrants that it has sufficient resources to execute the work necessary to supply the Goods and Services at the times required by HBT.
- (d) The Vendor warrants that it considers the price for the Goods and Services to be reasonable and the price contains all necessary allowances to provide the Goods and Services.

5. PAYMENT

- (a) Unless otherwise specified in the Contract, after receipt of an invoice from the Vendor which reflects the Contract HBT must make full payment for the Goods or Services within 60 days after Delivery of the Goods or provision of the Services.
- (b) If HBT fails to pay the price in accordance with the Contract, the Vendor may issue a notice demanding payment within 30 days of that notice. Upon expiry of the 30-day period stated in the notice, the Vendor may commence accruing interest on the overdue amount at the Default Interest Rate from that date until the date payment is received in full.
- (c) It is the responsibility of the Vendor to confirm relevant payment details with HBT, to avoid any risk of incorrect payment (e.g. due to cybercrime risk).
- (d) HBT may set off against any payment for the Goods or Services any claims it may have against the Vendor under this Contract or any other arrangement.
- (e) Payment in instalments (if instalments are agreed) is payment on account only. Payment does not constitute acceptance of the Goods or Services.
- (f) The Vendor must immediately provide HBT with a copy of any notice or document issued pursuant to any security of payment legislation which is provided by or received by the Vendor in connection with the provision of the Goods or Services.

6. TITLE AND RISK

- (a) Unless the Contract specifies terms to the contrary (such as in INCO-Terms):
 - i. Risk in the Goods passes to HBT once the Goods have been delivered to HBT and have been offloaded at HBT's premises.
 - ii. To the maximum extent permitted by law, the Vendor will be responsible for compliance with the *Heavy Vehicle National Law Act 2012* (Qld) and any regulations made pursuant to that Act, as well as legislation applying that Act in every jurisdiction in which the Goods will be transported.
 - iii. Legal and equitable title to the Goods passes to HBT upon the earlier of receipt by HBT or completion of manufacture of the Goods by the Vendor.
- (b) HBT may install or affix the Goods to other products (so that they become an Accession to those other products) or use or permit the Goods to be manufactured, processed, assembled, comingled or otherwise dealt with (so that they become Processed Goods) in the ordinary course of its normal business, once the Goods have been delivered.

7. DELIVERY

- (a) The Vendor will deliver and offload the Goods to HBT's address specified in the Purchase Order, or as otherwise advised by HBT.
- (b) The Vendor will deliver the Goods by the Contract's delivery date (if not stated by HBT then advised by the Vendor prior to HBT placing the Purchase Order). The Vendor acknowledges that HBT is relying on the delivery date for the Goods being met.

- (c) The Vendor will inform HBT as soon as possible if the Goods or Services are delayed. If requested by HBT, the Vendor will compensate HBT for its losses associated with any such delay.
- (d) HBT may return any Goods to the Vendor which do not match the description provided by HBT and the Vendor and the Vendor will immediately refund any payment to HBT for the returned Goods (including any delivery cost paid by HBT).
- (e) If the Contract provides that the Goods are subject to tests and/or inspection, such tests or inspection must be undertaken prior to delivery to HBT and will be final.
- (f) HBT will notify the Vendor of any site conditions relevant to delivery and the Vendor must take this into account in its price for the Goods and Services such that the price reflects these conditions.
- (g) The Vendor is responsible for ensuring compliance with WHS laws in providing the Goods and Services and indemnifies HBT against any loss or damage to property, and any injury or death of a person, arising from or connected with provision of the Goods and Services.
- (h) To the extent the Services involve labour hire services (and notwithstanding anything else in this Contract):
 - i. the Vendor confirms that the labour supplied by it will have the necessary skills and qualifications to perform the Services;
 - ii. the Vendor will remain entirely responsible for any labour and employment requirements, including employee entitlements, taxation, WHS compliance and insurance, for the labour supplied to HBT (including the Vendor being the Principal Contractor to the extent relevant for any WHS obligations);
 - iii. the Vendor indemnifies HBT for any losses to HBT arising from any negligence, misconduct or other issues arising from or connected with any of the Vendor's labour supplied to HBT;
 - iv. the Contract does not create any form of employment or independent contractor relationship between HBT and any labour supplied by the Vendor; and
 - v. HBT will arrange or provide the site induction(s) for the site at which the work will be performed.
- (i) HBT will be responsible for WHS compliance at the location for delivery. The Vendor will comply with all reasonable site safety and security requirements notified by or on behalf of HBT.
- (j) If directed by HBT to remove packaging on delivery, the Vendor will be responsible for:
 - i. disposal of any packing materials, packaging and rubbish associated with the Goods and;
 - ii. compliance with any environmental laws associated with the Goods or Services.
- (k) The Vendor will ensure the Goods are appropriately packaged, loaded and tied-down to prevent any damage during transportation and to withstand periods of storage.
- (l) The Vendor will keep HBT promptly informed about all matters relevant to provision of the Goods and Services, including delivery and any delays to delivery.
- (m) The Vendor will clearly mark any Goods with HBT's details (or any other such details as required by HBT).

8. VENDOR DELAYS

- (a) If the Vendor is delayed in delivering the Goods or providing Services, the Vendor agrees to pay HBT its reasonable costs associated with any such delay. This will be a debt immediately due and payable from the Vendor to HBT.
- (b) In the event of a delay, the Vendor will work proactively with HBT to re-schedule the delivery of the Goods or Services for HBT as soon as possible or at a time otherwise notified by HBT as acceptable.
- (c) If the commencement or progress of the Contract or delivery of the Goods or Services is delayed due to an event associated with HBT's site or a force majeure event (in accordance with clause 17), the Vendor will not be liable to HBT for any such delay. For the avoidance of doubt, to the extent the Vendor is delayed for concurrent reasons including a reason in this subclause (c), the Vendor will

remain responsible for HBT's reasonable costs in accordance with subclause (a).

- (d) The Vendor acknowledges that the Goods or Services may form part of a larger product or service delivered by HBT and that it is reasonably foreseeable that HBT may incur additional costs or losses associated with its own performance as a consequence of any Vendor-responsible delay.

9. WORKING DOCUMENTS AND TOOLING

- (a) If HBT provides Working Documents or Tooling to the Vendor as part of or to facilitate the provision of the Goods and Services, the Vendor accepts the Working Documents and Tooling and will assess for itself that they are accurate, complete and fit for the purposes of the Contract and the end use conditions; and
- (b) HBT warrants that use of the Working Documents and Tooling by the Vendor for the purposes of the Contract will not infringe any third party's intellectual property rights.
- (c) Whilst HBT's Working Documents and Tooling are in the Vendor's possession, the risk of loss or damage to them is at the Vendor's risk and the Vendor must insure their full value against all risks (and will produce evidence of such insurance upon being requested to do so by HBT). The Vendor will use reasonable endeavours to avoid any loss or damage to HBT's Working Documents and Tooling.
- (d) The Vendor must deliver all HBT's Working Documents and Tooling back to HBT without charge after completion of the supply of the Goods and Services.

10. WARRANTY AND LIMITATION OF LIABILITY

- (a) The Consumer Guarantees will apply to this Contract and the warranties in this Contract will be read accordingly and nothing in the Contract will be construed as excluding, restricting or modifying any applicable Consumer Guarantee.
- (b) The Vendor warrants that:
 - i. the Goods and Services will match the description provided by HBT in the Purchase Order and stated by the Vendor. To the extent that these descriptions conflict, HBT's description will prevail;
 - ii. the Goods and Services will comply with the relevant Australian Standards or International Standards and all requirements under Australian law, including all laws applicable to the mining sector for which the Goods and Services are being procured;
 - iii. the Goods will be new, of high-quality materials and manufacture;
 - iv. the Goods and Services will be executed in a proper workmanlike manner, using plant and equipment and material that is suitable for its intended purpose;
 - v. the Goods and Services will be free from defects;
 - vi. to the extent any design work is involved in providing the Goods and Services, that design is fit for its intended purpose, free from design errors or defects and compliant with the requirements of the Purchase Order and this Contract;
 - vii. the Goods and Services will be fit for the purpose for which HBT has issued the Purchase Order;
 - viii. to the extent the Vendor has the benefit of third-party warranties in relation to all or any part of the Goods or Services, it will provide the benefit of this warranty to HBT; and
 - ix. it has entered into the Purchase Order and this Contract without relying on any representation by HBT other than the representations set out in this Contract and the Purchase Order.
- (c) The Vendor will compensate HBT for any losses associated with any breaches of warranty under the Contract.

11. WARRANTY AGAINST DEFECTS

- (a) The Vendor warrants that Goods supplied by it, including wear parts and consumables, and the Services provided by it will be fit for any purpose expressly stated by HBT or that

would reasonably be known to and inferred by a supplier of the Goods and Services.

- (b) The Vendor warrants that the Goods supplied by it, including wear parts and consumables, and the Services provided by it will be free from defects and will remain so for a period of twenty-four months or the length of any relevant design life, whichever is longer.
- (c) For the avoidance of doubt, the term "defects" in this Contract means any Goods or Services which are not supplied in accordance with the Contract or are otherwise defective in any way.
- (d) The Vendor will remedy a defect covered under this warranty by, at HBT's election, repairing, replacing or providing a refund for the Goods and Services. Any rectified defect will incur a new responsibility under subclause (a).
- (e) The Vendor will be responsible for the expense of HBT returning the Goods to the Vendor. If the Goods are found to not be defective, this expense may be charged by the Vendor to HBT.
- (f) The Vendor acknowledges that the Goods or Services may form part of a larger product or service delivered by HBT and that it is reasonably foreseeable that HBT may incur additional costs or losses associated with its own performance as a result of any Vendor-responsible defect.

12. INDEMNITY

The Vendor indemnifies and holds HBT harmless against any liability, cost or loss (including legal costs on a solicitor-client basis and consequential loss) incurred by HBT arising from the Vendor's breach of the Contract and from any claim against HBT by any third party, including any customers of HBT, in connection with the Goods or Services. It is not necessary for HBT to incur expense, make a payment or contest any costs or expenses before enforcing a right of indemnity conferred by this Contract. Any indemnified amount pursuant to this Contract is reduced to the extent that HBT recovers funds from a third party towards its loss and to the extent HBT caused or contributed to its own loss.

13. INSURANCE

Except where the Contract (including any agreed INCO-Terms) expressly provides otherwise, all insurance cover in respect of the Goods until they are delivered to the premises of HBT in accordance with clause 7 (including transit / marine insurance) and in respect of the Services must be arranged by the Vendor. The Vendor must provide evidence of the necessary insurances to HBT upon HBT's request.

14. INTELLECTUAL PROPERTY

The Vendor grants HBT a perpetual, irrevocable, worldwide, royalty-free licence to use, adapt and modify any copyright, patent rights, design rights and all other intellectual property rights in respect of or contained within the Goods or Services, any component part of the Goods or Services, or in any Working Documents or Tooling which have been developed for or on behalf of HBT. The Vendor warrants that use of any documents or materials supplied by it will not infringe any third party intellectual property rights. All intellectual property rights in HBT provided material remains the property of HBT unless expressly stated to the contrary by HBT. Unless authorised in writing by HBT, neither the Vendor nor any third party is authorised to reproduce, adapt or use in any manner whether in part or in whole, any HBT materials provided under the Contract. The Vendor indemnifies HBT for any breaches of this clause.

15. DEFAULT AND TERMINATION

- (a) The Vendor will be in Default if:
 - i. provision of the Goods or Services is not performed by the Vendor by the due dates;
 - ii. it breaches any other term of the Contract and such breach is not remedied within 14 days of receiving notice from the Vendor requiring it to do so;
 - iii. it experiences an Act of Insolvency;
 - iv. any representation or warranty made by it in or in connection with the Contract, or any information provided by it to the Vendor in or in connection with the Contract, is incorrect, or is misleading or

deceptive (whether by omission or otherwise) in any material respect; or

- v. HBT, in its absolute discretion, forms the reasonable opinion that there has been a material adverse change in the business assets or financial condition of the Vendor or market conditions affecting the Vendor.
- (b) If the Vendor is in Default, HBT may (without prejudice to any other rights or remedies it may have) by giving written notice to the Vendor:
 - i. suspend performance with all associated costs being the Vendor's responsibility;
 - ii. immediately terminate the Contract;
 - iii. take all necessary steps to obtain access to the Goods or Services, including by entering the Vendor's premises to seize or otherwise obtain the Goods or Services;
 - iv. refuse to accept any Goods or Services provided by the Vendor; and
 - v. refuse to make any payments for the Goods or Services.
 - (c) Other than as prescribed in this Contract, the Vendor will not cancel or terminate the Contract after it is formed.
 - (d) HBT has the right to terminate the Contract for its convenience at any time. In the event of termination for convenience, HBT must pay the Vendor a reasonable amount reflecting the costs associated with the Vendor's actual work performed in providing the Goods or Services up to the date of termination.
 - (e) HBT has the right to register any security interest on the Personal Property Securities Register and the Vendor will take all necessary steps to assist HBT to perfect its interest in the Goods as requested by HBT.

16. NOTICES

Any notice under or in connection with the Contract will be deemed to be sufficiently given by one party if delivered to the other party ("the recipient") (a) personally or (b) by forwarding it to the recipient by mail addressed to the recipient's usual or last known address or (c) by leaving it at such address or (d) by sending it electronically to the email address(es) by which the party communicated at the time of accepting the Purchase Order (or to any substitute email address(es) notified by a party). All notices sent by mail will be deemed to have been delivered to the recipient on the second business day following the date of posting of that notice, except that for email notification this will be deemed to have been delivered at the time the email becomes capable of being retrieved by the addressee's email system. For the avoidance of doubt, any claims under this Contract must be notified in accordance with this clause.

17. FORCE MAJEURE

HBT will not be liable for any failure to perform its obligations under the Contract to the extent and for so long as its performance is affected arising from circumstances outside its reasonable control (including failure of an end-customer to HBT), provided that it gives notice to the Vendor of the event and expected delay, and uses reasonable endeavours to promptly resume performance upon cessation of the event.

18. SEVERANCE

If a provision of the Contract would, but for this clause, be unenforceable:

- (a) the provision must be read down to the extent necessary to avoid that result; and
- (b) if the provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of the Contract

19. COSTS

- (a) Except to the extent stated elsewhere in this Contract, to the greatest extent permissible by law, HBT will not be liable for any costs or losses to the Vendor, including any taxes, tariffs, charges, stamp duty, fines, legal expenses and negotiation costs. The Vendor indemnifies HBT against any incidence of such costs or losses on the Vendor.

- (b) To the extent that GST is stated to be exclusive in the price, the price payable by HBT will be increased by 10% to include GST.
- (c) To the extent that tariffs become applicable and affect the supply of Goods or Services, these do not adjust the price payable by HBT.

20. ASSIGNMENT AND SUBCONTRACTING

- (a) HBT may assign its rights or novate its rights and obligations under the Contract (in whole or in part) to any person without the consent of the Vendor. In the event of a novation, the Vendor may, if it has reasonable grounds to believe that the novatee will not comply with the Contract, by written notice given within 30 days of receiving notice of the novation terminate any Purchase Order which has not been completed and which was accepted prior to the novation, provided that the Vendor is not in default under that Purchase Order.
- (b) The Vendor must not assign or otherwise transfer its rights under the Contract without prior written notice to and consent from HBT, such consent to not be unreasonably withheld.
- (c) The Vendor must not subcontract the works under this Contract without prior written notice to and consent from HBT, such consent to not be unreasonably withheld.

21. WAIVER

HBT may only waive a right under the Contract by providing express written notice to the Vendor. A waiver is limited to the specific instance to which it relates and the specific purpose for which it is given.

22. VARIATIONS

Any variations to the Contract and consequential amendments to the price must be approved in writing by HBT. HBT is not obliged to accept any variation pricing provided by the Vendor and may seek alternative suppliers for any such variation. The Vendor must provide reasonable rates and prices for any variation requested by HBT. For the avoidance of doubt, a variation may increase or decrease the scope of any existing Purchase Order.

23. CONFIDENTIALITY

- (a) The Vendor and HBT agree that the Contract and any other information furnished by HBT to the Vendor pursuant to the Contract is and remains confidential between the parties and the parties must not disclose the same, or permit or cause the same to be disclosed, either directly or indirectly, to any third party unless:
 - i. prior approval in writing has been obtained from the other party;
 - ii. disclosure is required by law or;
 - iii. the information is in the public domain prior to the disclosure by the party.
- (b) In this clause the expression "any third party" does not include the financial or legal advisers of a party or a related body corporate of a party.

24. JOINT LIABILITY AND PROPORTIONATE LIABILITY

- (a) HBT's liability will be limited to the specific HBT Entity stated in the Contract and will not extend to any other HBT Entity.
- (b) If the Vendor comprises more than one person, then each person is liable jointly and severally for the obligations of the Vendor under the Contract.
- (c) To the extent permissible at law, the parties agree that the operation of any proportionate liability legislation is excluded.

25. MISCELLANEOUS AND INTERPRETATION

- (a) Subject to subclause (b), this Contract is governed by the laws of New South Wales, Australia. The parties exclude the application to the Contract of the United Nations Convention on the International Sale of Goods and the *Sale of Goods (Vienna Convention) Act 1986* (NSW).
- (b) If:
 - i. the HBT Entity for this Contract is HBT Qld Pty Ltd, then subject to subclause (ii), this Contract is governed by the laws of Queensland, Australia.

The parties exclude the application to the Contract of the United Nations Convention on the International Sale of Goods and the *Sale of Goods (Vienna Convention) Act 1986* (Qld).

- ii. the Contract states that the HBT procurement of Goods or Services is for use in a project in a particular State or Territory, this Contract is governed by the laws of that State or Territory. The parties exclude the application to the Contract of the United Nations Convention on the International Sale of Goods and the relevant enabling legislation in the relevant State or Territory;
- (c) If the Vendor is:
 - i. an Australian company (with an ABN or ACN), the parties submit to the non-exclusive jurisdiction of the Courts of the State or Territory that is the governing law; or
 - ii. a foreign company outside of Australia, then any dispute, controversy or claim arising out of, relating to or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved by arbitration in accordance with the ACICA Arbitration Rules. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English. The number of arbitrators shall be one.
- (d) Each party will comply with all legal requirements applicable to it in relation to the Contract and to the governing law jurisdiction (including all privacy laws, any applicable requirements of the *Modern Slavery Act 2018* (Cth) and including reporting requirements necessary to facilitate the other party's compliance, any environmental laws, and any emissions reporting requirements). The Vendor agrees to abide by HBT's Modern Slavery Policy as published on HBT's website. Unless stated otherwise in this Contract, compliance with any legal requirements related to the Goods or Services or supply will be the responsibility of the Vendor.
- (e) In these Terms and Conditions unless the contrary intention appears, the words below have the following meaning:
 - i. "Accession" means any Goods which are installed in or affixed to other goods;
 - ii. "ACL" means the Australian Consumer Law which is contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth);
 - iii. "Act of Insolvency" means becoming subject to external administration within the meaning of Chapter 5 of the Corporations Act 2001 (Cth), a party having an application for bankruptcy filed against it, or a party entering into a composition or arrangement with its creditors generally, as well as any facts or matters which are indicative that a party may shortly become subject to those steps;
 - iv. "Consumer" means a consumer (as that term is defined in the ACL) in respect of the particular supply of Goods and Services;
 - v. "Consumer Guarantees" means the guarantees relating to the supply of goods and services to consumers provided by Division 1 of Part 3-2 of the ACL;
 - vi. "Contract" means the contract under which the Goods or Services are supplied, as set out in clause 3;
 - vii. "Default" is defined in clause 15(a);
 - viii. "Default Interest Rate" means 1.5% per annum, calculated monthly;
 - ix. "Goods" means goods, components of goods, products and materials supplied by the Vendor under the Contract (including any such items supplied in connection with the Services) and includes any required certification, datasheets, maintenance instructions, written warranty documents and other documentation required for the proper use of the Goods;

- x. "HBT" means the relevant HBT Entity seeking the supply as stated in the Purchase Order;
 - xi. HBT Entity means HBT Australia Pty Ltd or any of its subsidiaries, whichever is the applicable supplier of the Goods, and unless inconsistent with the context includes its employees, agents, contractors, sub-contractors and consultants;
 - xii. "Processed Goods" means Goods which after their delivery become part of a product or mass by being manufactured, processed, assembled, commingled or otherwise dealt with in such a way that their identity is lost in the product or mass;
 - xiii. "Purchase Order" means the purchase order issued by HBT to the Vendor and which incorporates these terms;
 - xiv. "Services" means any labour performed or services supplied by the Vendor under the Contract, whether alone or in conjunction with the supply of Goods including estimating, detailing, design, redesign, prefabrication, repair, modification and manufacture services;
 - xv. "Terms and Conditions" means the PO Terms and Conditions as varied from time to time;
 - xvi. "Tooling" includes all tooling, dies, moulds or patterns, gauges and other similar equipment;
 - xvii. "Vendor" means the entity providing the Goods or Services and unless inconsistent with the context includes its employees, agents, contractors, sub-contractors and consultants and (to the extent relevant) related parties;
 - xviii. "Working Documents" includes (structural, construction or otherwise) drawings, designs, specifications, plans, descriptions, prototypes and samples relating to the Goods, their manufacture or, where relevant, the location at which the Goods will be used or installed;
- (f) words indicating the singular include the plural and vice versa;
- (g) the word "including" and all similar derivatives means "including but not limited to".