

RIO TINTO

RIO TINTO LONDON LIMITED Purchase Order – Terms and Conditions

Formation and Interpretation

1. (1) For the purposes of these terms and conditions (“**Conditions**”), references to the “**Supplier**” or “**Seller**” shall mean the supplier or seller identified on the face of the relevant purchase order issued by Rio Tinto London Limited (“**PO**”). No terms or conditions submitted by either party that are in addition to, different from or inconsistent with these Conditions, including any variation of these Conditions, are effective unless and until so agreed to in writing by duly authorised representatives of both parties.
- (2) Acceptance of the PO is expressly limited to these Conditions (including attachments to the PO) and such Conditions shall override and take the place of any other terms or conditions in any document or other communication used by the Seller in concluding the contract with the Buyer. If any contract includes any INCOTERMS or similar terms, these Conditions shall prevail should there be any inconsistency.
- (3) Any provision herein which is invalid or unenforceable shall in no way affect the validity or enforceability of the remaining provisions. Any such provision shall be deemed to be severed to the extent necessary for that purpose subject to such consequential modification as may be necessary.
- (4) The headings used herein are for convenience only and shall not affect construction. References to “**Liabilities**” in relation to a matter means, subject to the context, all liabilities, losses (including economic and consequential losses), damages, costs, expenses (including without limitation VAT and legal fees and expenses on a full indemnity basis), actions, claims, proceedings and demands whatsoever incurred by a person arising directly or indirectly out of or in connection with that matter. References herein to statutes are to those statutes as from time to time amended, re-enacted and replaced and to any subordinate legislation from time to time force thereunder. References to “subsidiary” and “holding company” are as defined in the Companies Act 1985 and a “group member” of the Seller or Buyer means its subsidiary or holding company or a subsidiary of its holding company and “control” is as defined in Section 840 of the Income and Corporation Taxes Act 1988.

Price

2. (1) Unless otherwise expressly agreed in writing by the Buyer, contracts are entered into on the basis that the price stipulated in the PO is a fixed price and is not subject to alteration for any reason whatsoever.
- (2) The prices specified in the PO are exclusive of any value added tax (“VAT”), goods and services tax (“GST”), sales, use or consumption tax or similar government tax payable on the supply of the Goods and/or Services (collectively, “Indirect Transaction Taxes”). If Seller is required by applicable laws to collect and pay Indirect Transaction Taxes to relevant government agency, Buyer shall remit payment to Seller of applicable Indirect Transaction Taxes at the percentage rate required by applicable laws in the jurisdiction where the supply takes place, provided Seller has first provided to Buyer an invoice for Indirect Transaction Taxes that complies with applicable laws. Buyer reserves the right to withhold payment of Indirect Transaction Taxes if it has provided a valid tax exemption certificate to Seller. If the PO requires Seller to provide Services, and if Seller is a foreign corporation or company (i.e. having its principal place of business outside of the United Kingdom) or a non-resident alien individual, then, unless Seller provides Buyer with valid documentation (received prior to payment for Services) showing that an exemption applies where the Services are performed: (a) Buyer reserves the right to withhold payment of amounts required to satisfy tax withholding obligations under applicable laws on account of the Services; and (b) Buyer will use reasonable endeavours to furnish Seller receipts, proof of payment or other relevant documentation for any withholding taxes so paid. Unless specified otherwise on the face of the PO or in any attachments thereto, the prices are inclusive of, and Seller shall be solely responsible for and pay, all costs of delivering the Goods to the delivery point specified on the face of the PO, including, without limitation, all shipping and freight costs and all duties, fees, tariffs or similar analogous taxes on imports or exports of the Goods (“Customs Duties”). Seller will take all reasonable steps to minimise Customs Duties costs.

Payment

3. Unless the Buyer otherwise expressly agrees in writing, the Buyer will pay for all undisputed amounts due in respect of the goods and/or services specified in the PO (the “**Goods**” and “**Services**”) within one calendar month from the end of the month in which delivery is made, subject to receipt by the Buyer of a

valid Indirect Transaction Taxes invoice for the Goods and/or Services before the end of the month in which delivery is made. If there is any delay in receipt of such an invoice, the Buyer will pay for the Goods and/or Services within one calendar month after receipt of the invoice. Such delay will not prejudice the Buyer's entitlement to any early payment discount or other benefit that may be agreed. Payment of an invoice is not evidence or an admission that the Goods and/or Services meet the requirements of the PO.

Title, Quality and Rejection

4. (1) The Seller warrants that:
- (a) The Seller has good title to the Goods and the right to transfer such title free of any charge, lien or other encumbrance.
 - (b) All Goods ordered shall:
 - correspond strictly with the description and specification provided by the Seller and approved by the Buyer;
 - be in every respect fit for any purpose for which the Buyer has expressly or by implication made known that it requires the same;
 - be safe, free from defect and in compliance with all relevant requirements of any statutes or regulations applicable in the UK to such goods at the date of delivery or supply including, without limitation, all statutory and other rules and regulations relating to health, safety and security.The Seller's obligations shall be in no way affected by whether or not the Goods are specified under a patent or trade name, or the Buyer has examined the Goods or the defect would have been apparent had it done so.
 - (c) The Seller shall on demand identify to the Buyer the name and address of any person other than the Seller who actually or apparently produced the Goods or imported them into the EU or the United Kingdom or previously supplied them.
 - (d) The Services (if any) will conform to any specifications and/or standards provided by the Seller and approved by the Buyer, comply with applicable law and be performed expeditiously with reasonable care and skill.
- (2) The Buyer may (without prejudice to its other rights) reject or refuse to accept any Goods which prove defective or otherwise than in accordance with these Conditions within six months after delivery.
- (3) If the Buyer is entitled to reject or refuse to accept any Goods and/or Services:
- (a) it shall not be bound to return Goods to the Seller but, if it decides to do so, they shall be returned at the Seller's risk and expense; and
 - (b) the Seller shall, at the Buyer's option and without prejudice to its other remedies, repair or replace the Goods, reimburse the Buyer in full for the cost of repair carried out by it or any third party at its direction, or refund the full purchase price; and
 - (c) it may require the Services to be re-performed to the Buyer's satisfaction.
- (4) The Buyer's rights under these Conditions are in addition to the statutory terms implied by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982.

Delivery

5. (1) The Seller shall deliver all Goods and/or Services, carriage paid (where applicable), to the place of delivery stipulated by the Buyer.
- (2) The time stipulated for delivery of the Goods and/or Services shall be of the essence of each contract. Should the Seller fail to deliver the Goods and/or Services by such time the Buyer (without prejudice to its other remedies) may:-
- (a) cancel that part of the PO which is undelivered at such time; and
 - (b) require the Seller to indemnify it against any Liabilities in relation to such failure.
- (3) The Buyer may return to the Seller at the Seller's risk and expense any Goods delivered in excess of the quantity stipulated by the Buyer.

Inspection

6. The Buyer may at any time inspect the Goods and/or Services (where applicable) but no such inspection shall relieve the Seller of its obligations.

Property and Risk

7. The property in the Goods shall pass to the Buyer on payment of the invoiced price for the Goods or on delivery, whichever first occurs. The Goods shall remain at the Seller's risk until the property in the Goods passes to the Buyer. If the Buyer rejects any Goods, the property and risk therein shall remain with or thereupon revert to the Seller.

Sub-Contracting

8. The Seller may not assign, mortgage, charge, sub-let or otherwise dispose of any PO with the Buyer or any rights thereunder in whole or in part.

Third Parties Excluded

9. No person who is not a party to the contract shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the PO.

Intellectual Property Rights

10. (1) The Seller shall indemnify the Buyer and its associated companies, and its and their officers, employees and agents, against all Liabilities in relation to any alleged or actual infringement of any patent, registered design, copyright, trade mark or other intellectual property right, foreign or domestic, resulting from the use or resale of the Goods and/or Services.
- (2) Title and copyright in all drawings and designs of the Goods and/or Services or any part thereof and in all specifications and data relating thereto provided to the Seller by the Buyer or prepared or made by the Seller, its employees, agents or sub-contractors for the purpose of fulfilling this contract shall vest in and belong to the Buyer absolutely and shall be delivered to the Buyer forthwith upon request.
- (3) The Seller hereby agrees that in circumstances where drawings and designs referred to in this Condition are prepared by it or by persons employed, commissioned or otherwise engaged by the Seller for the purposes of fulfilling this PO then it will without charge and forthwith upon request execute an assignment of copyright and/or design or procure that such an assignment is obtained from the author of the drawing or design as the case may be in favour of the Buyer.

Confidentiality

11. In the course of performing the PO, the Seller and/or Buyer may obtain certain information, oral or written (in whatever form), of a confidential nature (or which reasonably ought to be known as confidential) of the other party in relation to the business, operations, affairs or activities of the disclosing party and/or its affiliates ("**Confidential Information**"). The parties agree, unless required by a lawful court order, subpoena, or similar legal request, not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than implementing the PO. Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its personnel in violation of the terms of this contract. If the receiving party is required to disclose the disclosing party's Confidential Information by a lawful court order, subpoena, or similar legal request, the receiving party shall (where legally permissible to do so) promptly notify the disclosing party in writing of such requirement so that the disclosing party may seek an appropriate protective order. Each party acknowledges that failure to comply with this paragraph may irreparably harm the business of the other party, and that a breach of one party's obligations under this paragraph shall entitle the other party to seek immediate injunctive relief, in addition to any other remedies that it may have.

Data Protection

12. Each Party agrees to comply with their obligations under the Data Protection Act 1998 ("the DPA") in respect of Personal Data (as that term is defined in the DPA) obtained by or disclosed to them pursuant to the PO. In particular the Seller agrees only to process the Buyer's Personal Data for the purposes of this PO.

Damage and Insurance

13. (1) If any claim relating to the Goods and/or Services is made against the Buyer by any person in respect of death, injury, sickness, loss or damage or if the Buyer suffers loss or damage, the Seller will provide all assistance required by the Buyer for the purpose of dealing with the same and the Seller shall indemnify the Buyer against the same and all Liabilities of the Buyer in relation thereto.
- (2) Without limiting the Seller's obligations or liabilities hereunder, the Seller shall, at its sole expense, purchase and maintain the following insurance:
- (a) commercial general liability insurance covering all liabilities for personal injury and property damage arising from the services/goods, with limits of liability of £1,000,000 for each and every claim;
 - (b) workers' compensation and employers' liability insurance;
 - (c) if the Seller will use or provide for use motor vehicles in providing the goods and/or performing the services, motor vehicle insurance covering all liabilities for personal injury and property damage arising from the use of such vehicles, with limits of liability of £1,000,000 for each and every claim; and
 - (d) if the Seller will provide professional advice or services, professional liability insurance, with limits of liability of £1,000,000 for each and every claim.

- (3) The Seller shall on request provide to the Buyer or its designee certificates of insurance and endorsements as evidence of the insurance required under these Conditions.

Events of Default, Termination and Repossession

14. (1) Without prejudice to any rights or remedies which the Buyer may have, the Buyer may terminate the PO without liability to the Seller on giving notice if:-
- (a) The Seller or any other Seller's group member breaches any PO with the Buyer or any Buyer's group member;
 - (b) any steps are taken with a view to the Seller or any other Seller's group member or any of their respective asset becoming subject to any form of winding up, administration, receivership, scheme or arrangement, voluntary arrangement, administration receivership, the rights of a mortgagee in possession, insolvency proceedings, arrangements with creditors generally, enforcement of security or legal process or repossession;
 - (c) the Buyer certifies to the Seller, or the Buyer has reasonable grounds for believing that the Seller or any other Seller's group member is insolvent or that the Buyer's right to receive payment, or its interest in the Goods, is in jeopardy;
 - (d) the Seller comes under the control directly or indirectly of any person who does not control the Seller at the date the contract subject to these Conditions is entered into;
 - (e) where the Seller is an individual or partnership, he or any partner dies or any steps are taken to make a bankruptcy order against him or any partner; or
 - (f) outside England and Wales, anything corresponding to any of the above occurs.
- (2) The Buyer may also by written notice to the Seller terminate the PO for convenience in whole or in part as to all or any portion of the Goods not delivered or Services not performed, subject to an equitable adjustment as agreed by the parties in good faith.

Force Majeure

16. The Buyer shall have the right, without liability, to cancel or delay or to reduce the quantities to be supplied under any PO for Goods and/or Services which have not then been delivered in whole or in part if the activities of the Buyer for which the Goods and/or Services were ordered are stopped or interfered with through any circumstances beyond the Buyer's reasonable control (an event of "Force Majeure") including (but not limited to) any Act of God, war, riot, civil commotion, revolution, blockade, embargo, strike, lock-out, sit-in, industrial or trade dispute, fire, explosion, flood, adverse weather, disease, accident to or breakdown of plant or machinery, or shortage of any material, labour, transport, electricity or other supply or any form of Government intervention.

Forbearance

17. The Buyer's rights shall not be prejudiced or restricted by any concession, indulgence or forbearance extended to the Seller and no waiver by the Buyer in respect of any breach shall operate as a waiver in respect of any other or subsequent breach.

Notices

18. Any notice to be given under or pursuant to these Conditions shall be in writing and may be sent by hand or by post or by registered post or by the recorded delivery service or transmitted by telex or facsimile or other means of telecommunication resulting in the receipt of a written communication in a permanent form and such notice shall be addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving the notice. Notices shall be deemed effectively given on the day when in the ordinary course of the means of transmission it would first be received by the addressee in normal business hours.

Law

19. (1) These Conditions shall be governed by and construed in accordance with the laws of England and Wales and the Seller irrevocably submits to the exclusive jurisdiction of the English courts for all purposes in connection herewith.
- (2) Neither the Uniform Laws on International Sales nor the Convention on Contracts for the International Sale of Goods shall apply.