

QIT MADAGASCAR MINERALS CONDITIONS OF PURCHASE ORDER

PREAMBLE

The conditions of this order are designed to protect QIT Madagascar Minerals' (QMM's) interest. QMM want to ensure that the whole process, from Purchase to Payment, is as efficient as possible for both parties. These conditions are aimed at ensuring ease of understanding the order, delivery, goods receipt, invoicing and, payment requirements.

All orders placed by QMM shall be subject to these conditions save as may be modified by the order. The supply of goods by the Supplier to QMM shall be governed by the terms and conditions of this agreement which shall apply to the exclusion of the Suppliers terms and conditions of sale/supply. If these terms are not acceptable, the related order should not be accepted and services or goods should not be supplied before getting written acceptances of changes.

DEFINITIONS

Seller means QMM to whom the order is addressed for the supply of the goods or services. For the purpose of this order, Seller and Supplier are synonymous.

Goods means the goods or the services specified in this order, and any attachments to the order.

Purchase Price means the price stated in the order

Delivery Date means the date by which the Goods will be delivered to the delivery point, or to the Mine, as specified on this order.

QMM means QIT Madagascar Minerals Limited.

Freight Forwarder means the appointed company that will receive goods on behalf of QMM for transport to Madagascar

Procurement Manager means the Procurement Manager of QMM Limited or Rio Tinto Procurement Service Delivery Manager and their delegates.

CONDITIONS

1. **Offer and Acceptance** – This order is an offer to buy the Goods described in the order. The acceptance of this order, whether actual or implied, constitutes the acceptance of the offer and of all related conditions. It would be an advantage and benefit if a formal receipt and acceptance of order could be communicated directly to the relevant Buyer indicated on the order (preferably by e-mail or secondly by Fax.)
2. **Non-acceptance of Order** – Should the Seller not accept this order, they shall return it to QMM within seven days of receipt with a written explanation for its rejection.
3. **Inspection and audit** – QMM shall be entitled, at such frequency as it may determine, to send a person authorised by it (the authorised representative) to the Supplier's works at any stage of manufacture or production for the purpose of inspecting the goods and/or monitoring the services. The Supplier shall afford the authorised representative access to the work in progress and all facilities and information relating thereto for the purpose of such inspection. QMM reserves the right to reject goods at any stage of manufacture which are found to be in any way defective or not in conformity with the terms of the order.

The Supplier shall keep proper accounting and administrative records relating to its dealings with QMM. QMM shall have the right, at its cost, to have its auditors make an examination and audit of the records of the Supplier during the term of the agreement and for a period of two years thereafter, provided that such audit(s) shall be conducted during normal business hours at a time and place mutually agreeable to the parties.

QIT MADAGASCAR MINERALS CONDITIONS OF PURCHASE ORDER

4. **Specifications** – Goods delivered to QMM shall be in accordance with the specifications given with this order and with generally accepted standards. Should QMM consider that any of the Goods delivered are not in accordance with these specifications or standards, QMM shall be entitled to cancel this order, or part of it, and to receive compensation from the Seller for all expenses incurred. Any variation from the specifications or standards laid down in this order shall be authorised in a revised Purchase Order before being applicable.
5. **Patents and Copyright** – Should any Goods sold to QMM be covered by any patent or copyright, the Seller will compensate QMM for any loss incurred and damage sustained by QMM from any resulting claim or legal action arising from the use or sale of the Goods.
6. **Patterns, Drawings and Dies** – Where applicable, a charge for patterns, drawings and dies may be accepted by QMM on the understanding that the patterns and dies remain the property of QMM and are used only for QMM's requirements. Should QMM wish to remove the patterns, drawings and dies from the Seller's safekeeping, they must be handed over to QMM's nominee in sound and usable condition.
7. **Packing** – The Seller shall compensate QMM for any loss or deterioration of the goods whilst in transit from the Seller's to QMM's premises, or place of delivery as per INCO terms, due to the packing being inadequate or inappropriate to the method of transport. Goods must be individually identified, and each consignment must be accompanied by a detailed waybill giving gross weight of containers. All packages, cases, cartons and containers and packaging material shall be deemed to have been included in the purchase price and shall become QMM's property upon delivery. The Supplier shall be responsible for packing and marking goods in such manner as will eliminate loss or damage in transit. Goods must be suitably packed for export.
8. **Delivery** – Delivery to QMM is deemed to take place when the Goods are received at the QMM Central Stores or as per relevant INCO Terms. Goods delivered to site must not be delivered directly to Requestors sections, workshops or offices (**NB. There may be specific exceptions to this condition such as delivery of bulk commodities etc. but special arrangements will have been made prior to order.**) The Purchase Order Number and QIT Madagascar Minerals SA must be indicated on the label required on every package. A detailed, itemized packing list referencing the Purchase Order Number, Purchase Order Line Number, Supplier Invoice Number, item description and weight must be provided upon delivery.

All prices include free delivery to the delivery point stated in the order form.

Proof of Delivery as specified on the order, should be via a **Delivery Note, Goods Receipt Advice**, duly signed by an authorised representative of QMM Central Stores or an authorised representative of the Freight Forwarder of QMM (*Invoices should not be used as a proof of delivery*).

The following example shows required information on the Delivery Note.

Standard information requested on Invoice								
Suppliers del note #				xxxxxxx				
QMM purchase order				xxxxxxx				
PO Line or Item Number (e.g. 10, 20...)	Item Description	QMM Material number	QTY	Unit	Price per Unit	Total delivered line price	Total PO QTY	Outstanding PO QTY of this line
SIGNATURE _____								
This information is requested for each line item of each relevant purchase order								

QIT MADAGASCAR MINERALS CONDITIONS OF PURCHASE ORDER

9. **Change of Ownership** – Goods are deemed to become the property of QMM at the time of delivery to QMM or as per INCO Terms of related Order. Goods remain at the sole risk of the Seller until full delivery has taken place as per INCO Terms of related Order.
10. **Incidents Arising During Delivery** – The Seller will compensate QMM for any loss incurred by QMM arising from any accident, injury or damage to persons or property caused by the Seller during the delivery, inspection or installation of the goods by the Seller as per INCO Terms of related Order.
11. **Late Delivery** – Should delivery of the goods not be made by the dates specified in the order or if QMM is of the opinion that the Supplier will be unable to make timeous delivery, whether in whole or in part, QMM shall be entitled to either
- (a) Cancel the order either in whole or to the extent of such default and to return to the Seller all deliveries made and to receive compensation from the Seller for all expenses incurred by QMM as a result of the Seller's failure to deliver Goods on the Delivery Date or. Such cancellation shall be without prejudice and in addition to any other rights and remedies available to QMM. Should QMM cancel the order either in whole or in part it shall be entitled to purchase the goods or the balance thereof, as the case may be, from an alternative source and in such event shall be entitled to recover from the Supplier any additional costs incurred by it as a result thereof.
 - (b) To charge the Seller a penalty of 1% of the value of the Goods outstanding at the Delivery Date, for every week or part of a week that delivery is late, unless the penalty is varied elsewhere in this order.

However, if they are satisfied that every reasonable effort has been made by the Seller to deliver the Goods on time, and that the cause of the delay is beyond the control of the Seller, the Procurement Manager may grant an extension of the delivery period or waive the penalty.

Time is the essence of the order.

All carriers charged with transportation of the goods shall be deemed to be the Supplier's agent to the point of delivery stated in the order.

12. **Defective Goods** – All goods and services supplied shall conform to the specification embodied in the order and in the absence thereof shall be the best of their respective kind and shall be suitable for the purpose for which they are intended. Should any Goods sold and delivered to QMM be defective in any respect, the Seller undertakes to replace those Goods as soon as possible after being requested by QMM to do so. The Seller will compensate QMM for any direct loss incurred as a result of the defect. If any goods or services are found at any time to be:
- (a) defective in quantity, material, workmanship or design (where design is the responsibility of the Supplier); or
 - (b) damaged because of unsatisfactory packaging; or
 - (c) not in conformity with the requirements of the order as to description, formula, specification or any special instructions contained in the order; or
 - (d) not in conformity with any approved samples; or
 - (e) not in conformity with the normal standards of quality for such goods or services or;
 - (f) defective or deficient in any other way;

then notwithstanding acceptance of delivery of, or payment for, such goods or services by QMM, QMM shall have the right in addition and without prejudice to any other rights and remedies available to it either to reject and return the goods or reject the services at the Supplier's expense and to recover the purchase price paid for the goods or services or to rectify the rejected goods or services and recover the cost thereof from the Supplier.

QIT MADAGASCAR MINERALS CONDITIONS OF PURCHASE ORDER

13. **Standard of Services** – If services are being provided, the Supplier shall:
- (a) supply the services with all proper care and diligence and in accordance with the highest recognised standards applicable to such services;
 - (b) ensure that its employees will have the qualifications, experience and skills required for the performance of the services;
 - (c) ensure its employees are sober, not under the influence of mind altering drugs, are well presented and courteous;
 - (d) perform the services in such a manner so as not to disrupt or interfere with the normal business operations of QMM and which will not constitute a nuisance to any person; and
 - (e) comply with all of QMM's standard health, safety, security, fire, environmental and other ancillary standards, policies and regulations as amended from time to time.

14. **Warranty** – The Supplier warrants and represents that all goods purchased in terms of the order shall be free from patent or latent defects and that such goods shall be satisfactory in every respect for the purpose for which they are intended.

The Supplier shall fully disclose all hazards, potential and actual, that may be associated in any way whatsoever with the goods including in particular hazards associated with the direct or indirect use of and exposure to storage and disposal thereof. Where the goods are potentially hazardous the Supplier shall:

- (a) furnish full details as to the safe transport, storage, handling, use and disposal of the goods;
- (b) furnish full details of the recommended treatment for persons who may be harmed or injured through use of or contact with the goods;
- (c) label all goods and packages containing the goods in such a way that persons who handle them or are exposed to them are clearly warned as to the hazards and the safety precautions which shall be observed in relation thereto.
- (d) In the case of all chemicals supplied shall be accompanied by a Material Safety Data Sheet.

Should the Supplier fail fully to comply with the provisions of (a) (b), (c) and (d) above then the Supplier shall and does hereby indemnify QMM and the Associate Companies and holds them harmless against all loss or damage which may be sustained by them including all claims, demands, proceedings, legal costs, charges and expenses which they may incur or sustain.

15. **Goods not Covered by an Order** – QMM is not responsible for Goods delivered, which are not covered by an official Purchase Order. If there is an oversupply of items identified on an order, these items will not be received and will be set aside. It is the Seller's responsibility to arrange all logistical and commercial requirements for their return.

QIT MADAGASCAR MINERALS CONDITIONS OF PURCHASE ORDER

16. **Invoicing**

- (a) The Seller shall issue an original legal tax invoice that will be delivered with the goods to the Freight Forwarder
- (b) On generation of the invoice the Seller shall send a electronically scanned copy of the original tax invoice to the buyer whose name will be on the Purchase Order invoiced against.
- (c) Delivery of goods can not be accepted if the requirements of QMM and the requirements of Madagascar customs are not met.
- (d) The Madagascar customs requirements for information on Commercial invoices are as follows:
 - 1- Exact name and address of seller
 - 2- Exact name and address of buyer and also his commercial registration (QIT = 2301016) number in Madagascar
 - 3- Chronological Invoice number and invoice date
 - 4- Clear goods descriptions for each item
 - 5- HS tariff code (Madagascar import tariff code) for each item
 - 6- Mark - reference - origin of goods
 - 7- Packing style
 - 8- Detailed quantity - Unit price with a legal currency - total price of good sold out
 - 9- Total amount of the invoice (numeral and letter)
 - 10- Incoterms
 - 11- Payment mode
 - 12- Sellers signature

The following example shows required information on the Invoice.

Standard information requested on Invoice								
Please insert company letterhead								
FOR CUSTOMS PURPOSES ONLY								
Address:				TEL:				
				FAX:				
Comp Reg #:				E-MAIL:				
Invoice to:			Invoice Number :					
QIT Madagascar Minerals						PO #:		
LOT II J169, Ivandry, Villa 3 H						Invoice date:		
Antananarivo , 101						Payment terms:		
Madagascar						Incoterm:		FCA
QIT: 2301016						Country of origin:		South Africa
Purchase Order	Material			HS		Price per		
Line Item Number	Number	Qty	Unit	Code	Description	Unit	% Disc	Total
IN WORDS: ONLY							TOTAL	R 0.00
Packing Style:								
Currency:								
SIGNATURE _____								

It is solely the responsibility of the seller to submit original invoices directly to the address indicated above – If third parties are used or copies of invoices are used, this could lead to delays in processing payments.

- (e) When provision is made for payment of an invoice within a specified period, the effective date from which the period is calculated, is that on which the Goods and all necessary supporting documents are received by QMM or it's Freight Forwarder. The date of the Seller's invoice is not relevant to the date of payment.

QIT MADAGASCAR MINERALS CONDITIONS OF PURCHASE ORDER

17. **Compliance with Conditions** – QMM is entitled to insist on compliance with these conditions despite any previous custom or practise.
18. **Conflict of Conditions** – Should there be any conflict between the conditions of this order and any conditions stipulated by the Seller, the conditions of this order shall prevail, unless the Seller's conditions have been accepted in writing by the Procurement Manager. In the event of any conflict between the conditions of this order and the conditions of a separate but related contract signed by both parties, then the conditions of the separate contract shall prevail.
19. **Gifts** – The Seller undertakes not to offer or give gifts or entertainment to any employee of QMM which could influence, or be construed as being intended to influence, that employee in the performance of his duties. Any areas of doubt should be cleared with the Procurement Manager.
20. **Conflict of Interest** – The Seller undertakes to declare in writing any conflicts of interest associated with their performance of this work or delivery of goods. This includes, but is not limited to, relationships with employees that may be able to influence awarding of work and any factor that would prevent the Seller from providing appropriate attention to the fulfilment of this Order.
21. **Compliance with Rio Tinto Business Practices** – The Seller is expected to be familiar with Rio Tinto Business Practices and to ensure compliance with them at all times. Any concerns about non-compliance should be raised in writing with the Procurement Manager. The Rio Tinto Business Practices are titled "**The way we work**" and "**The way we buy**" and available at www.riotinto.com or from the Procurement department.
22. **Publicity** – No information relating to this order may be released for publication without QMM's prior consent. If the Seller wishes to release information relating to this order in written or other media forms, a copy of the item in the appropriate format shall be forwarded (together with details of where it will be published or released) to the Procurement Manager for written approval. This restriction also applies to any orders or contracts placed by the Seller on third parties as a result of this order.
23. **Laws Applicable** – This contract shall be governed by the laws in force in the Republic of Madagascar. Any legal action relating to this order shall be instituted in the Court of Antananarivio notwithstanding that the amount of any claim otherwise exceeds the jurisdiction of such court if the instituting party so wish.
24. **Cession and Assignment** – The Supplier shall not cede, assign or otherwise make over the order or any part thereof or share any interest therein or sub-let or entrust the performance of anything to be done thereunder to any other person without the prior written consent of QMM which may be refused without any reasons being given therefore. Such consent shall not relieve the Contractor of any of its obligations and it shall be responsible to QMM for the acts and omissions of its subcontractors as if they had been acts and omissions of the Contractor.
25. **TAXES; FREIGHT COSTS AND CUSTOMS DUTIES** – 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 Products and/or Services (collectively, "Indirect Transaction Taxes"). If Supplier is required by applicable laws to collect and pay Indirect Transaction Taxes to relevant government agency, Buyer shall remit payment to Supplier of applicable Indirect Transaction Taxes at the percentage rate required by applicable laws in the jurisdiction where the supply takes place, provided Supplier has first provided to Buyer an invoice for Indirect Transaction Taxes Invoice 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 Supplier. If the PO requires Supplier to provide Services, and if Supplier is a foreign corporation or company (i.e. having its principal place of business outside of the country identified in Buyer's address on the face of the PO) or a non-resident alien individual, then, unless Supplier 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

**QIT MADAGASCAR MINERALS
CONDITIONS OF PURCHASE ORDER**

applicable laws on account of the Services; and (b) Buyer will use commercially reasonable best efforts to furnish Supplier 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 Supplier shall be solely responsible for and pay, all costs of delivering the Products 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 Products ("Customs Duties"). Supplier will take all reasonable steps to minimize Customs Duties costs.