

## GENERAL TERMS AND CONDITIONS FOR A PURCHASE ORDER

These are the General Terms and Conditions governing, and incorporated into, a Purchase Order. No other terms or conditions will apply to a Purchase Order unless they have been expressly agreed to in writing by Alcoa.

### 1. INTERPRETATION

#### 1.1 Definitions

The following definitions apply in the Contract.

**Alcoa** means the Alcoa entity specified in the Purchase Order, being whichever of Alcoa of Australia Ltd ACN 004 879 298, Alcoa Australia Rolled Products Pty Ltd ACN 069 853 229 or Alcoa Portland Aluminium Pty Ltd ACN 006 306 752.

**Alcoa Environmental, Health and Safety Standards** means:

- (a) all of Alcoa's environment, health or safety guidelines, standards, policies, regulations, manuals, procedures or other references identified in Schedule 1;
- (b) any other document referred to by the guidelines, standards, policies, regulations, manuals, procedures or other references identified in Schedule 1; and
- (c) any new, replaced, amended or revised guidelines, standards, policies, regulations, manuals, procedures or other references notified by Alcoa to the Supplier.

**Alcoa Equipment** means any equipment that is not Supplier Equipment that is owned or leased by Alcoa, or any substituted equipment, which is provided at any time by Alcoa to the Supplier for the purposes of performing the Supplier's obligations under the Contract.

**Alcoa's Representative** means the person from Alcoa's procurement department specified in the Purchase Order or a person Alcoa may otherwise advise the Supplier in writing is its representative, and includes any person authorised in writing by Alcoa's Representative to perform any of its powers, duties, discretions or authorities.

**Alcoa Specific Goods** means Goods owned and held by the Supplier to be potentially supplied to Alcoa under the Contract, which either carry the Alcoa logo or are manufactured for Alcoa's unique needs, pursuant to a Purchase Order.

**Business Day** means a day other than a Saturday, Sunday or public holiday at the Site.

**Claim** includes any action, suit, proceeding, application or demand of any kind.

**Commencement Date** means the date that the Contract commences as specified in the Purchase Order or if it is not specified means the date that the Contract is formed.

**Completion Date** means the date that the Contract completes as specified in the Purchase Order or if it is not specified means the date that the Supplier has performed all of its obligations under the Contract.

**Confidential Information** means any information (in whatever form) or Documentation of a confidential nature (or which the Recipient or its Personnel ought reasonably expect to be confidential) that relates to the business, affairs or activities of the Discloser.

**Contamination** means the presence of a substance in, on or under water or land at a concentration above the concentration at which the substance is normally present in the same locality, being a concentration that presents, or has the potential to present, a risk of harm to human health or the Environment.

**Contract** means the contract formed by the Supplier's acceptance of the Purchase Order and includes these General Terms and Conditions.

**Contract IP** means any Intellectual Property that is created as a result of the performance of the obligations under the Contract.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Default** means a breach of any term or condition of the Contract.

**Delivery Point** means the delivery point for the Goods specified in the Purchase Order or if it is not specified means the delivery point that Alcoa provides prior notice of to the Supplier.

**Discloser** means the Party giving information, and if the Discloser is Alcoa, includes any member of the Group.

**Documentation** includes contracts, plans, designs, patterns, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, invoices, software, source code, manuals and any other material specified in, or created as a result of the performance of the obligations under, the Contract (and whether embodied in tangible or electronic form).

**Due Date** means the date on which performance is due by the Supplier as specified in the Purchase Order or if it is not specified means the due date that Alcoa provides prior notice of to the Supplier.

**Encumbrance** includes a mortgage, charge, pledge, lien, hypothecation or title retention arrangement or an agreement to create any of them or to allow any of them to exist.

**Environment** means living things, their physical and social surroundings and interactions between all of these.

**Environmental Harm** means any serious or material harm, damage or detriment to the Environment which is not Pollution or Contamination.

**Extended Price** means:

- (a) in relation to Goods, the Unit Price for the Goods multiplied by the Quantity; and
- (b) in relation to Services, the Unit Price for the Services multiplied by the quantity,

as set out under the heading "Extended Price" in the Purchase Order.

**Existing IP** means the Intellectual Property of a Party that:

- (a) is in existence at the date of formation of the Contract; or
- (b) comes into existence after the date of formation of the Contract otherwise than in connection with the Contract,

and is necessary for, or used in the performance of, that Party's obligations under the Contract.

**Force Majeure Event** means any occurrence or omission after the Commencement Date as a direct or indirect result of which the Party relying on it is prevented from performing any of its obligations under the Contract, that is beyond the reasonable control of that Party and is not the direct or indirect result of the failure of that Party to perform any of its obligations under the Contract and includes act of war (whether declared or not) or terrorism, civil commotion or riot, act of God, natural disaster, industrial action or labour disturbance, action or inaction by a Government Agency, or a failure of a supplier, public utility or common carrier.

**General Terms and Conditions** means these general terms and conditions.

**Goods** means the goods specified in the Purchase Order (if any).

**Government Agency** means any federal, state or local government or any ministry, department, court, commission, board, agency, institution or similar entity of that government.

**Government Authorisations** means all approvals, consents, authorisations, permits, clearances, licences, or other requirements that are required from any Government Agency for the Supplier to perform its obligations under the Contract.

**Governmental Notice** means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from any Government Agency, whether written, oral or otherwise.

**Group** means:

- (a) any related body corporate of Alcoa;
- (b) any unincorporated joint venture in which Alcoa or any related body corporate of Alcoa

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has a participating interest of not less than 50%; and

- (c) if applicable, any other entity as described in the Purchase Order.

**GST** means Goods and Services Tax, as defined in the GST Act, and includes:

- (a) an amount an entity is notionally liable to pay as Goods and Services Tax or an amount which is treated as Goods and Services Tax under the GST Act; and
- (b) any replacement or subsequently introduced similar tax.

**GST Act** means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**Hazardous Substance** means any substance with potential to cause harm to persons, property or the Environment because of the chemical, physical and/or biological properties of the substance.

**Insolvency Event** means, for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the Corporations Act) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the Corporations Act), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event under the law of any applicable jurisdiction.

**Intellectual Property** means all present and future rights conferred by statute, common law, equity or otherwise by law, anywhere in the world in or in relation to copyright, trade marks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, patterns and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable and includes moral rights and all other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967.

**Latent Defect** means a deficiency or failure to conform concerning the Goods, including in materials, workmanship or design, which deficiency or failure is not discovered by Alcoa on inspection of the Goods under clause 5.1 and is not due to normal wear and tear.

**Law** means the law in force in the place where the Goods are to be delivered or the Services are to be performed (as the case may be) under the Contract, including common or customary law, equity, judgment, legislation, orders, regulations, statutes, by-laws, ordinances or other legislative or regulatory measures and includes any amendment, modification or re-enactment of them.

**Liabilities** means damages, Claims, losses, liabilities, costs and expenses of any kind.

**Party** means either Alcoa, the Supplier or both of them as the context may require.

**Personnel** means:

- (a) in relation to the Supplier, any of its employees, Subcontractors, agents and representatives involved either directly or indirectly in the supply of the Goods or the provision of the Services under the Contract;
- (b) in relation to Alcoa or a member of the Group, any of its officers, employees, agents or representatives; and
- (c) in relation to a Subcontractor, any of its employees, agents or representatives involved either directly or indirectly in the supply of the Goods or the provision of the Services under the Contract.

**Pollution** means any alteration of the Environment to its detriment or degradation which involves the release of any substance, the discharge of waste, an emission of noise, odour or electromagnetic radiation or the transmission of electromagnetic radiation.

**Price** means the total price payable for the Goods (if any) and the Services (if any) specified in the Purchase Order.

**Purchase Order** means a purchase order issued to the Supplier by Alcoa requesting the supply of Goods and/or the provision of Services.

**Quantity** means the number of units of Goods (if any) and the number of units of the Services (if any) (measured by time or some other measure) as specified under the heading "Quantity" in the Purchase Order.

**Recipient** means the Party to whom information is given.

**Recipient Created Tax Invoice** means an agreement between the Supplier and Alcoa whereby Alcoa will issue an invoice to the Supplier.

**Remedial Work** means any work to remediate land affected by Pollution, Contamination or Environmental Harm, including to:

- (a) remove, destroy or reduce;
- (b) dispose of or disperse;
- (c) contain or encapsulate;
- (d) treat;
- (e) manage (including restrict or prohibit access to or use of the affected land); or
- (f) abate or control,

any Pollution, Contamination or Environmental Harm and to remove or minimise any risk or potential risk it presents to human health or the Environment.

**Remediation Date** means the earlier of:

- (a) the Completion Date; or
- (b) 60 days after the date the Contract is terminated.

**Scope of Work** means the scope of work as specified in the Purchase Order (if any) and includes the Specifications (if any).

**Service Rates** means the rates (if any) payable to the Supplier (per units of time or other measure) for the provision of the Services as specified in the Purchase Order.

**Services** means the services to be provided under the Contract as described in the Scope of Work.

**Site** means the site or sites (if any) specified in the Purchase Order and if it is not specified means the site where the Goods are to be delivered or the Services are to be performed (as the case may be) under the Contract.

**Specifications** means the specifications for either or both the Goods and Services (if any) specified in the Purchase Order forming part of the Scope of Work.

**Subcontractor** means any person engaged or employed by the Supplier to perform any of its obligations under the Contract.

**Supplier** means the person or entity specified as the supplier in the Purchase Order.

**Supplier Equipment** means any equipment owned or leased by the Supplier, or any substituted equipment, which is provided at any time by the Supplier to Alcoa for the purposes of the Contract.

**Supplier's Representative** means the person specified in the Purchase Order or a person the Supplier may otherwise advise Alcoa in writing is its representative, and includes any person authorised by the Supplier's Representative to perform any of its powers, duties, discretions or authorities.

**Taxes** means any income tax, capital gains tax, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, withholding tax, goods and services tax, consumption tax, value added tax, municipal rates, stamp duties and other charges, levies and impositions, assessed or charged, or assessable or chargeable by or payable to any governmental taxation

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- or excise authority and includes any additional tax, interest, penalty, charge, fee or other amount imposed or made on or in relation to a failure to file a relevant return or to pay the relevant tax.
- Term** means the term of the Contract commencing on the Commencement Date and ending on the earlier of:
- the date the Contract is terminated; and
  - the date the Contract expires in accordance with the Completion Date.
- Unit Price** means:
- in relation to Goods, the price payable per unit of Goods (if any); and
  - in relation to Services, the Service Rates (if any) payable for the provision of the Services, as specified under the heading "Unit Price" in the Purchase Order.
- 1.2 **Rules for interpreting the Contract**  
Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting the Contract, except where the context makes it clear that a rule is not intended to apply.
- A reference to:
    - legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
    - a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
    - a clause or Schedule is to a clause or Schedule of the Contract;
    - a party to the Contract or to any other document or agreement includes its successors, permitted substitutes or assigns;
    - anything (including a right, obligation or concept) includes each part of it;
    - measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth);
    - a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
    - monetary amounts and payments is to amounts in Australian dollars unless otherwise expressly stated.
  - A singular word includes the plural, and vice versa.
  - A word which suggests one gender includes the other genders.
  - If a word is defined, another part of speech has a corresponding meaning.
  - If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
  - The word "**agreement**" includes an undertaking or other binding arrangement or understanding, whether or not in writing.
  - The words "**subsidiary**", "**holding company**" and "**related body corporate**" have the same meanings as in the Corporations Act.
- 1.3 **Business Days**  
If the day on or by which a person must do something under the Contract is not a Business Day the person must do it on or before the next Business Day.
2. **CONTRACT AND ORDER OF PRECEDENCE**  
The Parties acknowledge and agree that the following are incorporated into, and form part of, the Contract and to the extent there is any inconsistency between any provisions forming part of the Contract the descending order of precedence is:
- the Purchase Order;
  - the General Terms and Conditions;
  - Alcoa Environmental, Health and Safety Standards; and
  - any other document the Parties expressly agree forms part of the Contract.
3. **SUPPLY OF GOODS AND PROVISION OF SERVICES**
- 3.1 **Goods**  
The Supplier agrees to supply the Goods to Alcoa.
- 3.2 **Services**
- The Supplier agrees to provide the Services to Alcoa.
  - Any tasks, functions or responsibilities not specifically described in the Scope of Work as part of the Services which are necessary or incidental to the proper provision of the Services are deemed to be included in the Scope of Work as if specifically described in the Contract.
  - Time is of the essence in the Supplier's performance of the Contract and the Supplier's failure to perform any of its obligations under the Contract on or before the time specified in the Contract gives Alcoa the right, in addition to any other right, to cause the Supplier to do whatever is necessary to expedite the provision of the Services at the Supplier's expense.
  - The Supplier must furnish, undertake or provide (or cause to be furnished, undertaken or provided) all services, supervision, testing, labour, Personnel, materials, supplies and equipment necessary to provide the Services in accordance with the Contract.
  - Except as otherwise expressly provided in the Contract, the Supplier is responsible for all means, methods, techniques, sequences, procedures and controls in connection with the provision of the Services.
- 3.3 **Responsibilities and Obligations of the Supplier**  
The Supplier must:
- supply the Goods and provide the Services to meet the requirements of the Contract;
  - comply with the Alcoa Environmental, Health and Safety Standards in supplying the Goods and the Services;
  - comply with any reasonable and lawful direction of Alcoa relating to the supply of the Goods and the Services;
  - provide the Goods and the Services by the time set out in the Contract, and if no time is specified, in a timely manner;
  - attend and participate in meetings with Alcoa and Alcoa Personnel as reasonably required by Alcoa;
  - provide information and report to Alcoa, in writing if required, in relation to any aspect of the Goods and Services as reasonably required by Alcoa;
  - produce evidence to Alcoa of accreditation, registration, licensing or any Government Authorisations, as required by Alcoa; and
  - ensure that any Alcoa Equipment within the Supplier's possession or control is kept in good working condition and the Supplier is responsible for all loss of and damage to any Alcoa Equipment while in the Supplier's possession or control, except to the extent to which the loss or damage is due to normal wear and tear or the negligence of Alcoa or its Personnel.

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- 3.4 **Supplier Equipment**  
Alcoa must ensure that any Supplier Equipment within Alcoa's possession or control is kept in good working condition and Alcoa is responsible for all loss of and damage to any Supplier Equipment while in Alcoa's possession or control, except to the extent to which the loss or damage is due to normal wear and tear or the negligence of the Supplier or its Personnel.
- 3.5 **Delivery of Goods**
- (a) Unless Alcoa otherwise agrees, the Supplier must deliver the Goods in the Quantity in one shipment to the Delivery Point by the Due Date.
- (b) The Goods delivered to each Delivery Point must be delivered in good condition and without damage caused by delivery.
- (c) Time is of the essence in the Supplier's performance of the Contract and the Supplier's failure to perform any of its obligations under the Contract on or before the time specified in the Contract gives Alcoa the right, in addition to any other right, to cause the Supplier to do whatever is necessary to expedite the supply of the Goods at the Supplier's expense, including the payment of premium freight charges.
- 3.6 **Title to and risk in the Goods**  
Risk in, and title to, the Goods pass to Alcoa:
- (a) when the Goods are delivered to Alcoa at the relevant Delivery Point in accordance with the Contract; or
- (b) where Goods are held by the Supplier at the Site, when the Goods are issued to, or obtained by, Alcoa from the relevant location at the Site.
- 3.7 **Freight and Delivery Point**  
The Supplier must deliver Goods purchased under the Contract in accordance with the freight terms specified in the Purchase Order (if any).
- 3.8 **Delivery dockets**
- (a) The Supplier must ensure that each delivery is accompanied by a delivery docket conspicuously attached to the Goods in a weatherproof document holder and securely fastened to the outside of the package (or to the Goods if packing is not required).
- (b) The delivery docket must:
- (i) state the unique Purchase Order number;
- (ii) Purchase Order line number and Alcoa stock number (if applicable);
- (iii) state the Supplier's name;
- (iv) state the quantity, unit of measure and description of the Goods delivered as per the Purchase Order;
- (v) state the Delivery Point;
- (vi) state Alcoa's destination site name; and
- (vii) state the time and Due Date.
- 3.9 **Labelling and Packaging**
- (a) The Supplier must label, pack and package all Goods:
- (i) in accordance with the requirements of all relevant Laws;
- (ii) in accordance with any shelf life or preservation requirements;
- (iii) in accordance with Alcoa's requirements; and
- (iv) to avoid damage during transit, delivery, loading or unloading, having regard to the means of transport and climatic conditions through which the Goods will pass during transport.
- (b) In relation to packing and packaging, the Supplier must ensure that:
- (i) all packaging materials are environmentally friendly and polystyrene foam and plastic beads are not used;
- (ii) any timber used in shipments from countries outside of Australia is kiln dried or fumigated in accordance with Australian Quarantine Inspection Service requirements;
- (iii) straw, soil and animal products are not present in any packaging material or shipping container;
- (iv) an original packing declaration for FCL shipping containers and original fumigation certificates are supplied to Alcoa's shipping agent;
- (v) dangerous goods are documented and shipped according to the provisions of the Australian Code for the Transport of Dangerous Goods by Road and Rail (7th Edition, 2007);
- (vi) packages exceeding 16kg are suitable for either:  
handling by cranes and have approved lifting lugs fitted and slinging points or load centre indicated on the package; or  
fork lift handling and are palletised; pallets are hardwood, 1160mm x 1160mm, double entry, flush sided, SWL 2000kg;
- (viii) hire pallets are offered on a one for one exchange basis; and
- (ix) palletised items are secure on the pallets and items likely to roll or fall (including cylindrical items) are strapped to the pallets (secured to the bearers, not the boards) to ensure complete security and no chance of fall of the items.
4. **SUPPLIER'S REPRESENTATIONS AND WARRANTIES**
- 4.1 **Manufacturer's and other warranties for Goods**
- (a) The Supplier must if applicable provide all usual manufacturer's, importer's and any applicable third party warranties in respect of the Goods.
- (b) If the Supplier does not provide any warranties under clause 4.1(a), the Supplier must if applicable obtain for the benefit of Alcoa all usual manufacturer's, importer's and any applicable third party warranties in respect of the Goods.
- (c) During the period of the warranties obtained by the Supplier for the benefit of Alcoa referred to in clause 4.1(b), the Supplier must take all reasonable action required by Alcoa to enforce those warranties, or assist Alcoa to enforce those warranties.
- 4.2 **Further representations and warranties as to Goods**  
In addition to the warranties provided under clause 4.1, the Supplier represents and warrants that:
- (a) the Goods:
- (i) are new (unless otherwise specified);
- (ii) correspond with the description in the Purchase Order ;
- (iii) conform to the Specifications and any samples supplied or are fit for the purpose for which the Goods are commonly used;

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- (iv) are free from defects in materials, workmanship and design;
- (v) are of a merchantable quality; and
- (vi) are free and clear of all Encumbrances;
- (b) in relation to the supply of the Goods, the work will be done in a competent manner;
- (c) it is legally entitled to use any of the Supplier's Existing IP used by it in connection with the supply of the Goods;
- (d) the manufacture, sale or use of the Goods does not and will not infringe the Intellectual Property of any third party;
- (e) the Supplier has good and marketable title to the Goods;
- (f) in relation to the Goods, the Supplier and the Supplier's Personnel are in possession of, or will be able to obtain, all requisite Government Authorisations, at the Supplier's own cost;
- (g) upon delivery, no third party will have a beneficial interest in the Goods; and
- (h) the Supplier is able to deliver the Goods and comply with all of its obligations under the Contract.
- 4.3 **Representations and warranties as to Services**  
The Supplier represents and warrants that:
- (a) if any materials are provided as part of the Services, it will use only materials fit for the purpose required by Alcoa;
- (b) the Services will be fit for the purpose required by Alcoa or if no purpose is stated, for the purpose which can be reasonably inferred;
- (c) it is legally entitled to use any of the Supplier's Existing IP used by it in connection with the provision of the Services;
- (d) the provision of the Services, any materials provided as part of the Services, all Contract IP, any product of the Services and Alcoa's use of those things do not and will not infringe the Intellectual Property of any third party;
- (e) the Supplier and its Personnel will at all times be suitably qualified and experienced to provide the Services and will exercise due skill, care and diligence in the execution and completion of the Services; and
- (f) the Supplier will perform its obligations under the Contract so that the Services will comply with all the requirements of the Contract and all Laws and Government Authorisations.
- 4.4 **No exclusion of other warranties**  
The Contract does not exclude or in any way limit other warranties provided by Law.
- 4.5 **Representations and warranties as to capacity**  
The Supplier represents and warrants that:
- (a) **(power)** it has full legal capacity and power to enter into the Contract and carry out the transactions that the Contract contemplates; and
- (b) **(authorisations)** it holds each authorisation that is necessary or desirable to:
- (i) supply the Goods and provide the Services under the Contract, including any Government Authorisations required under any applicable Law; or
- (ii) enable it to properly execute the Contract and to carry out the transactions that the Contract contemplates,
- and it is complying with any conditions to which any of these authorisations is subject.
- 4.6 **Repetition of representations and warranties**  
The representations and warranties in this clause 4 are taken to be repeated on each day the Goods are supplied and the Services provided (as appropriate), on the basis of the facts and circumstances as at that date.
- 4.7 **Survival**  
Each of the representations and warranties in this clause 4 remain in full force and effect despite the expiry or termination for any reason of the Contract.
5. **NON-CONFORMANCE**
- 5.1 **Right to test, inspect and reject Goods**
- (a) The Supplier agrees that Alcoa or its designated agent has the right, during ordinary business hours and upon reasonable notice, to inspect and test the Goods and all work on the Goods while in any stage of engineering, manufacture or installation, including at the Supplier's premises.
- (b) Unless otherwise agreed to by Alcoa or its designated agent, all laboratory tests must be made in a laboratory approved by Alcoa and all tests must be made in accordance with the current applicable standard methods of Standards Australia (where available) or ASTM International governing the materials tested.
- (c) Alcoa's or its designated agent's inspection or testing does not relieve the Supplier of any obligations under the Contract.
- (d) If in Alcoa's reasonable opinion the Goods:
- (i) are defective;
- (ii) fail to conform to the Specifications; or
- (iii) fail to comply with a warranty given by the Supplier in relation to them under the Contract,
- (Goods Non-Conformance)** Alcoa may, at its option, give notice to the Supplier requiring the Supplier to:
- (iv) make good the Goods Non-Conformance within a period agreed by the Parties at no additional cost to Alcoa;
- (v) replace the Goods the subject of the Goods Non-Conformance within a period agreed by the Parties at no additional cost to Alcoa; or
- (vi) take back the Goods the subject of the Goods Non-Conformance at no additional cost to Alcoa and immediately refund or credit (whichever is applicable) to Alcoa the Price for the Goods as a debt due to Alcoa,
- even if Alcoa has paid for the Goods, or title in the Goods has passed to Alcoa.
- (e) If clause 5.1(d)(v) or (vi) applies, risk in, and title to, the Goods revert to the Supplier when the Goods are replaced or taken back (as applicable).
- (f) The liability of the Supplier under this clause 5.1 is limited to three times the total amount paid, and invoiced but not yet paid, by Alcoa under the Contract prior to the date on which a notice is given under clause 5.1(d).
- 5.2 **Latent Defects**
- (a) This clause 5.2 applies during the Term and for a period of 12 months after expiry of the Term.
- (b) Alcoa will immediately notify the Supplier of any Latent Defect it discovers.
- (c) The Supplier must immediately notify Alcoa of any Latent Defect it discovers or becomes aware of.
- (d) If a Latent Defect is discovered the Supplier must at its own cost repair, modify or replace the Goods even if Alcoa has paid for the Goods or title in the Goods has passed to Alcoa.
- (e) The liability of the Supplier under this clause 5.2 is limited to three times the total amount paid, and invoiced but not yet paid, by

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- Alcoa under the Contract prior to the earlier of the date the Latent Defect is:
- (i) discovered by Alcoa; and
  - (ii) notified to Alcoa under clause 5.2(c).
- 5.3 **Non-Conformance of Services**
- (a) Without limiting Alcoa's rights under clause 17.2 or otherwise, if in Alcoa's reasonable opinion the Services fail to conform to the Scope of Work (**Services Non-Conformance**), Alcoa may do one or more of the following:
    - (i) by written notice direct the Supplier to rectify the Services Non-Conformance in a manner, and within a period, acceptable to Alcoa; or
    - (ii) notify the Supplier that Alcoa accepts the Services as provided; or
    - (iii) if the Supplier does not comply with a direction under clause 5.3(a)(i), engage others to rectify the Services Non-Conformance.
  - (b) The Supplier is liable for all costs of rectifying the Services Non-Conformance under clause 5.3(a)(iii) as a debt due to Alcoa.
6. **SUBCONTRACTORS AND PERSONNEL**
- 6.1 **Subcontractors**
- (a) The Supplier must not subcontract the supply of any of the Goods to be supplied, or the performance of any of the Services to be provided, under the Contract without the prior written approval of Alcoa.
  - (b) In giving written approval Alcoa may, in its absolute discretion, impose any terms and conditions as it considers appropriate.
  - (c) The Supplier remains fully responsible to Alcoa for supplying the Goods and providing the Services even though the Supplier may have subcontracted the performance of any part of the Contract and subcontracts must be subject to the terms and conditions of the Contract (to the extent they apply).
  - (d) A breach or failure to perform any subcontract does not excuse the Supplier from performance of the Contract in accordance with its terms nor will it affect the liability of the Supplier under the Contract.
- 6.2 **Personnel to be properly qualified**
- The Supplier must only engage or employ Personnel to provide the Services who:
- (a) are suitably qualified and experienced to perform the duties allocated to them;
  - (b) hold all necessary Government Authorisations in accordance with the requirements of the Law and as set out in the Contract; and
  - (c) have been assessed by the Supplier as possessing all competencies relevant to the duties they are expected to perform.
- 6.3 **Payment in respect of Supplier's Personnel**
- The Supplier must:
- (a) meet all payment obligations to its Personnel and must pay all Taxes, levies or charges applicable with respect to the engagement of, or payments to, its Personnel;
  - (b) fully comply with all relevant Laws in relation to its Personnel including the payment of any amounts which may be payable under or in relation to any relevant Tax, workers' compensation legislation, Laws in relation to superannuation obligations and industrial relations legislation including industrial awards and agreements relating to its Personnel; and
  - (c) comply with all reasonable requests from Alcoa for verification of compliance with clauses 6.3(a) and 6.3(b).
7. **ALCOA SPECIFIC GOODS**
- (a) At the expiry of the Contract, if Alcoa is satisfied the Supplier has throughout the Term held Alcoa Specific Goods to a minimum and has exercised all reasonable efforts to minimise the level of stock in the last 3 months of the Term, Alcoa will purchase any Alcoa Specific Goods remaining in the Supplier's possession at the date of expiry, at the Price payable under the Contract immediately prior to the date of expiry.
  - (b) If Alcoa terminates the Contract under clause 15 as a consequence of a Force Majeure Event affecting Alcoa, Alcoa will purchase 50% of any Alcoa Specific Goods remaining in the Supplier's possession at the date of termination, at the Price payable under the Contract immediately prior to the date of termination.
  - (c) Alcoa has no obligation to purchase any Alcoa Specific Goods other than in accordance with clauses 7(a), 7(b) and 16.4.
8. **PRICE**
- (a) The Goods and Services are supplied by the Supplier to Alcoa for the Price.
  - (b) The Price is not subject to adjustment during the Term other than as set out in the Purchase Order or as agreed to in writing between Alcoa and the Supplier.
  - (c) Subject to clause 10, the Price is inclusive of all Taxes (excluding GST).
  - (d) Alcoa is not liable for any Liabilities incurred by the Supplier in performing its obligations under the Contract, except as expressly provided in the Contract.
  - (e) Except as expressly provided in the Contract, the Price will be the Supplier's sole remuneration for the supply of the Goods, the provision of the Services and the performance of the Supplier's obligations under the Contract.
9. **PAYMENT**
- 9.1 **Payment on provision of invoice**
- (a) Alcoa will pay the Supplier the Price for Goods supplied and the Services provided in accordance with the Contract.
  - (b) After delivery of the Goods and the provision of the Services (as applicable), unless Alcoa and the Supplier enter into a Recipient Created Tax Invoice arrangement, the Supplier will provide Alcoa with an invoice electronically or in paper form, as agreed by the Parties, or failing agreement, as nominated by Alcoa.
  - (c) The invoice must specify:
    - (i) the unique Purchase Order number;
    - (ii) the Supplier's Australian Business Number;
    - (iii) the amount due to the Supplier and the basis of its calculation, including: the amount payable exclusive of GST; the amount of GST payable; and the total amount payable inclusive of GST;
    - (iv) a description of the Goods supplied and the Services provided (as applicable);
    - (v) the Supplier's address for payment; and
    - (vi) the date the Services have been performed
  - (d) Payment of the Price by Alcoa will be made as specified in the Purchase Order.
  - (e) Where the Purchase Order provides for payment for the Goods and Services to be in more than one instalment, the Supplier must

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- provide Alcoa with a separate invoice for each instalment.
- (f) Before Alcoa makes any payment to the Supplier, the Supplier is required to represent and warrant that all of the Supplier's Personnel who have at any time been engaged by the Supplier (or if applicable a Subcontractor of the Supplier) have been paid all monies payable to them for work related to the Contract.
- (g) Alcoa may withhold payment to the Supplier until the Supplier makes the representation and warranty under clause 9.1(f).
- 9.2 **Claims**
- (a) The Supplier must make any Claim in relation to the Contract within the earlier of:
- (i) 6 months after the delivery of the Goods and provision of the Services (as applicable) to which the Claim relates; and
- (ii) 6 months after the Term, after which the Supplier acknowledges and agrees that Alcoa's liability for that Claim is extinguished.
- (b) This clause 9.2 survives the expiry or termination of the Contract.
- 9.3 **Discharging Claims**
- (a) The Supplier is liable to Alcoa for any reasonable amount that Alcoa pays in discharging a Claim by a Subcontractor or supplier to the Supplier (including all reasonable costs and legal fees) as a debt due to Alcoa from the Supplier.
- (b) This clause 9.3 survives the expiry or termination of the Contract.
10. **GST**
- 10.1 **Supplier can Charge GST**  
To the extent that the Supplier is liable for GST in connection with the Goods supplied and Services provided under the Contract (**Affected Goods and Services**), the Supplier may add GST to the agreed value of all Affected Goods and Services.
- 10.2 **Reference or Quotation of Money or Consideration**  
All sums of money or other consideration referred to or quoted in the Contract are exclusive of GST.
- 10.3 **Input Tax Credits**  
Where the consideration to be paid to the Supplier pursuant to the Contract is determined by reference to any costs and expenses incurred by the Supplier, when calculating these costs and expenses the Supplier must deduct any Input Tax Credit, as defined by the GST legislation, it can claim in respect of GST paid on these costs and expenses.
- 10.4 **Payment Arrangements and Invoicing**
- (a) Any invoice for the Affected Goods and Services supplied under the Contract shall be a tax invoice which is consistent with the requirements of the GST legislation and represents the sole notification of an obligation to make a payment.
- (b) Any debit or credit note for the Affected Goods and Services supplied under the Contract shall be an adjustment note (or tax invoice where applicable) consistent with the requirements of the GST legislation and represents the sole notification of the credit or debit in question.
11. **ENVIRONMENTAL, HEALTH AND SAFETY**
- 11.1 **Compliance with Laws, Authorisations etc**
- (a) When performing its obligations under the Contract, the Supplier must at all times comply with and ensure that the Supplier's Personnel comply with:
- (i) all applicable Laws, including industrial awards and agreements;
- (ii) all Alcoa Environmental, Health and Safety Standards (to the extent the Supplier or its Personnel are on a Site); and
- (iii) all Government Authorisations.
- (b) The Supplier must, at its own cost, comply with each Governmental Notice issued in respect of, arising from or relating to the performance by the Supplier of its obligations under the Contract, whether the Governmental Notice is served on Alcoa or the Supplier.
- 11.2 **Entry onto the Site**  
If the Supplier enters the Site, the Supplier must ensure that the Supplier and its Personnel:
- (a) complete Alcoa's safety induction and visitors' site orientation programs before commencing work at the Site;
- (b) comply with all directions and orders given by Alcoa's Representative;
- (c) do not interfere with any of the activities of Alcoa or any other person at the Site;
- (d) ensure that all rubbish and other debris is removed from the Site and that the Site is left secure, clean, orderly and fit for any use specified by Alcoa, failing which a debt is due to Alcoa from the Supplier for any costs Alcoa incurs to ensure the Site is secure, clean, orderly and fit for the use specified by Alcoa; and
- (e) ensure that any tools, equipment, material or other products brought onto the Site are kept secure from theft or damage and comply with any relevant Law, manufacturer or owner specifications or standards, Alcoa Environmental, Health and Safety Standards and Government Authorisations.
- 11.3 **Hazardous Substances**
- (a) The Supplier and its Personnel must not, without the prior written consent of Alcoa, cause or allow any Hazardous Substances to be brought onto, produced on, transported to or from, treated, stored or disposed of on the Site.
- (b) Before bringing any Hazardous Substance onto the Site the Supplier must provide Alcoa with material safety data sheets on each of the Hazardous Substances regarding the potential effects on the Environment and risks to human health of that substance.
- (c) The Supplier must promptly notify Alcoa of any discharge, release or threatened release of a Hazardous Substance on or from the Site or surrounding land that the Supplier or its Personnel become aware of.
- 11.4 **Pollution, Contamination and Environmental Harm**
- (a) The Supplier and its Personnel must not cause or allow Pollution, Contamination or Environmental Harm to occur in, on or under the Site or surrounding land.
- (b) The Supplier must notify Alcoa immediately upon the Supplier or its Personnel becoming aware of:
- (i) the existence of Pollution, Contamination or Environmental Harm affecting the Site or surrounding land;
- (ii) the potential for Pollution, Contamination or Environmental Harm to affect the Site or surrounding land;
- (iii) any complaint made against the Supplier or its Personnel to any Government Agency;
- (iv) any proceedings commenced against the Supplier or its Personnel, relating to an alleged failure by the Supplier or its Personnel to comply with a Law or Government Authorisation in

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- relation to the performance by the Supplier of its obligations under the Contract; or
- (v) any Governmental Notice being served on the Supplier or its Personnel.
- 11.5 **Remediation**
- (a) If the Supplier or its Personnel cause, allow or contribute to any release or threatened release of Hazardous Substances, the Supplier must, at its own cost and as soon as practicable, perform Remedial Work to Alcoa's satisfaction to prevent, mitigate and rectify any damage or potential damage resulting from the release or threatened release to the extent that the release or threatened release was caused or contributed to by the Supplier or its Personnel.
- (b) If the Supplier or its Personnel cause, allow or contribute to the Site or the surrounding land becoming affected or potentially affected by Pollution, Contamination or Environmental Harm the Supplier must, at its own cost and as soon as practicable but not later than the Remediation Date, perform Remedial Work to Alcoa's satisfaction to prevent, mitigate and rectify any resulting damage or potential damage to the Site or the surrounding land to the extent that the Pollution, Contamination or Environmental Harm was caused or contributed to by the Supplier or its Personnel.
- (c) Alcoa reserves the right to determine the method and means of Remedial Work performed by the Supplier under this clause 11.5.
- (d) If the Supplier fails to perform the Remedial Work required by this clause 11.5, Alcoa may do those things required by this clause 11.5 (including engaging a third party to do those things) at the Supplier's expense, and the Supplier indemnifies Alcoa in accordance with clause 11.8.
- (e) This clause 11.5 survives the expiry or termination of the Contract.
- 11.6 **Disclosure**
- (a) Except where required by Law, the Supplier and its Personnel must not disclose information concerning the environmental condition of the Site or surrounding land to any person, including any Government Agency, without Alcoa's prior consent.
- (b) Where disclosure of information concerning the environmental condition of the Site or surrounding land is required by Law, the Supplier and its Personnel must notify Alcoa before disclosing the information.
- 11.7 **Environmental Release**
- The Supplier releases Alcoa from all Liabilities arising from or connected with (directly or indirectly) the presence of any Pollution, Contamination or Environmental Harm in, on or under the Site and surrounding land at any time during or after the Term of the Contract, to the extent that the Pollution, Contamination or Environmental Harm was caused or contributed to by the Supplier or its Personnel.
- 11.8 **Environmental Indemnity**
- Without limiting clause 13 the Supplier indemnifies Alcoa in respect of all Liabilities and any judgment, order, obligation or duty for which Alcoa is or may become liable, including Claims by third parties, in respect of or arising from (directly or indirectly):
- (a) Default by the Supplier or its Personnel under this clause 11; and
- (b) to the extent caused or contributed to by the Supplier or its Personnel, any Pollution, Contamination or Environmental Harm in, on or under the Site or surrounding land during or after the Term of the Contract.
12. **RIGHTS TO EXCLUDE PEOPLE**
- (a) Except with the prior written consent of Alcoa, the Supplier must not allow any person other than Alcoa's Personnel or the Supplier's Personnel to enter the Site.
- (b) Alcoa may (and may instruct the Supplier to) remove from, or refuse entry to, the Site any person including a person who is:
- (i) incompetent or negligent in the performance of work in relation to the supply of the Goods;
- (ii) engaged in activities which are contrary or detrimental to the interests of Alcoa; or
- (iii) not complying with any Alcoa Environmental, Health and Safety Standards.
- (c) Any exercise of Alcoa's rights under clause 12(b) is not a repudiation of the Contract and the Supplier must promptly provide a suitable replacement for a person removed from, or refused entry to, the Site.
13. **INDEMNITY**
- 13.1 **Acknowledgment**
- The Supplier acknowledges that, if it enters the Site, it does so at the Supplier's own risk. The Supplier must ensure that its Personnel are also aware that they enter the Site at their own risk.
- 13.2 **Indemnity**
- Subject to clause 13.3, the Supplier will indemnify (and will keep indemnified) Alcoa and its Personnel (**Indemnified Parties**) from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any one or more of:
- (a) any act or omission by the Supplier or its Personnel arising out of or in any way related to the Contract, including:
- (i) the loss of or damage to any real or personal property; and
- (ii) death or injury to an Indemnified Party and any other person;
- (b) a breach of the Contract
- (c) a claim by another person that Alcoa's exercise of its rights or the Supplier's performance of its obligations under the Contract infringes that person's Intellectual Property; and
- (d) any penalty imposed for breach of any applicable Law in connection with the supply of the Goods and the provision of the Services.
- 13.3 **Exclusions**
- The Supplier's liability under this clause 13 is reduced proportionately but only to the extent that the supplier establishes that the liability was directly caused by Alcoa's negligence.
- 13.4 **Indemnity held for benefit of Alcoa and Group Personnel**
- Every exemption, limitation, defence, immunity, indemnity or other benefit contained in the Contract or otherwise to which Alcoa or a member of the Group is entitled will be held by Alcoa for the benefit of, and will extend to protect, each of Alcoa's and each Group member's Personnel.
- 13.5 **Indemnity continuing**
- Each indemnity in the Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Contract.
- 13.6 **No requirement for expense before enforcing indemnity right**
- It is not necessary for Alcoa, a member of the Group, or their respective Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

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14. **INSURANCE**
- (a) Alcoa will maintain insurance policies protecting the employees and property of Alcoa as it deems necessary.
  - (b) The Supplier and its Subcontractors are at risk in respect of all of the Supplier's or the Subcontractor's employees and property.
  - (c) Unless otherwise agreed with Alcoa in writing, the Supplier must effect and maintain throughout the Term at its own expense at least the following insurance coverages (**Supplier Insurances**):
    - (i) worker's compensation insurance in accordance with the laws of the State or Territory in which the work is being done together with insurance in respect of any common law liability of an employer to an employee;
    - (ii) public liability and product liability insurance with insured limits in respect of bodily injury and property damage of at least \$10,000,000 in respect of each and every claim that:
      - is endorsed to insure Alcoa as principal; and
      - provides cover in respect of accidents involving unregistered vehicles used, or to be used, for the purposes of performing the Contract; and
    - (iii) in respect of vehicles registered for use on public roads, liability coverage in respect of property damage of at least \$10,000,000 in respect of each and every claim.
  - (d) Each of the Supplier Insurances must be primary in that the insurer waives any rights it may have to seek contribution from any other insurer of Alcoa.
  - (e) The Supplier must ensure that its Subcontractors have the benefit of, or effect and maintain insurances similar to, the Supplier Insurances.
  - (f) To the extent that the Supplier and its Subcontractors maintain insurance coverage in excess of the requirements of clause 14(c), Alcoa is entitled to the benefit of those excess coverages.
  - (g) The Supplier must provide Alcoa with evidence of the insurance required under this clause 14, including certification of its currency and coverage, on request by Alcoa.
  - (h) This clause 14 survives the expiry or earlier termination of the Contract.
15. **FORCE MAJEURE**
- 15.1 **Notice of Force Majeure Event**  
If a Party (the **Affected Party**) is prevented from, or delayed in, performing the Contract by a Force Majeure Event:
- (a) the Affected Party must give the other Party written notice of that fact within 10 Business Days after the start of the Force Majeure Event; and
  - (b) the obligations of the Parties under the Contract, other than an obligation to pay moneys outstanding prior to the occurrence of the Force Majeure Event, are suspended to the extent to which they are affected by the Force Majeure Event as long as the Force Majeure Event continues.
- 15.2 **Mitigation of event**  
The Affected Party must use its best endeavours to remove, or relieve any effects of, any Force Majeure Event and to minimise the delay in the performance of the Affected Party's obligations under the Contract caused by a Force Majeure Event. However, this does not require a Party to settle any industrial dispute in any way it does not want to.
- 15.3 **Cessation of Force Majeure Event**  
When the Affected Party's obligations are no longer affected by the Force Majeure Event:
- (a) the Affected Party must recommence performance of all its obligations under the Contract as soon as practicable; and
- 15.4 **Termination for Force Majeure Event**
- (a) Either Party may terminate the Contract by giving written notice to the other Party if a Force Majeure Event continues for a period of 3 months after a written notice is given under clause 15.1 in respect of that Force Majeure Event.
  - (b) If the Contract is terminated under clause 15.4(a), then:
    - (i) the termination is without limitation on any other rights or remedies available to the Parties under the Contract or at Law;
    - (ii) the termination, however caused, is without prejudice to any rights or Liabilities of the Parties accruing to the date of termination;
    - (iii) each Party must immediately return (or, at the request of the other Party, destroy) any Confidential Information belonging to the other Party;
    - (iv) the Supplier must return to Alcoa any items (including Alcoa Equipment) provided to the Supplier by Alcoa during the Term; and
    - (v) Alcoa must return to the Supplier any Supplier Equipment.
16. **NO FAULT TERMINATION**
- 16.1 **Termination Notice**
- (a) Alcoa may, at any time and for any reason, terminate the Contract or any part of it by giving the Supplier not less than 30 days' notice (**Notice Period**) of its intention to do so (**Termination Notice**).
  - (b) The Contract terminates under this clause 16 on the day immediately after the Notice Period.
- 16.2 **Obligations upon receipt of Termination Notice**  
Upon receipt of a Termination Notice, the Supplier must:
- (a) immediately take all possible action to mitigate any Liabilities incurred by it as a result of the termination; and
  - (b) take any other action reasonably required by Alcoa in relation to the termination.
- 16.3 **Obligations upon termination**  
On the date of termination of the Contract under this clause 16:
- (a) the Supplier must:
    - (i) immediately cease the supply of the Goods and the provision of the Services;
    - (ii) return to Alcoa any items (including Alcoa Equipment) provided to the Supplier by Alcoa during the Term;
    - (iii) offer Alcoa first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Contract, to be purchased by Alcoa at its depreciated value or such other value as agreed by the Parties; and
    - (iv) take any other action reasonably required by Alcoa in relation to the termination of the Contract;

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- (b) each Party must immediately return (or, at the request of the other Party, destroy) any Confidential Information belonging to the other Party; and
- (c) Alcoa must return to the Supplier any Supplier Equipment.
- 16.4 **Supplier compensation**
- (a) After termination of the Contract by Alcoa under this clause 16, Alcoa will pay the Supplier:
- (i) for all Goods properly supplied and Services properly provided to Alcoa as at the date of termination, less any payments previously made by Alcoa in respect of those Goods and Services;
- (ii) for all partially completed work on, and all, Alcoa Specific Goods; and
- (iii) its reasonable out-of-pocket costs and expenses that it has incurred solely as a result of the Contract and that it was unable to otherwise recover or mitigate including (if applicable) as a result of removing the Supplier's equipment from the Site.
- (b) The payments outlined in clause 16.4(a) are the only Liabilities recoverable from Alcoa by the Supplier if the Contract is terminated by Alcoa in accordance with this clause 16.
17. **TERMINATION FOR DEFAULT BY SUPPLIER**
- 17.1 **Termination for default by Supplier**
- (a) If the Supplier is in Default, then Alcoa may serve on the Supplier a written notice specifying the Default and stating the intention of Alcoa to exercise its rights under this clause 17 (**Supplier Default Notice**).
- (b) If the Default is not capable of remedy, or if the Supplier fails to remedy the Default in a proper manner within 20 Business Days after the Supplier Default Notice is served, then Alcoa may exercise the following rights:
- (i) elect by written notice to the Supplier to wholly or partly suspend payment for any Goods supplied and Services provided but not yet paid for under the Contract until the Default has been remedied; or
- (ii) by written notice to the Supplier, terminate the Contract.
- (c) If the Supplier becomes subject to an Insolvency Event:
- (i) Alcoa may terminate the Contract immediately by written notice; and
- (ii) the Parties acknowledge and agree that this constitutes a breach of the Contract which entitles Alcoa to claim damages.
- 17.2 **Consequences of termination**
- (a) If the Contract is terminated under this clause 17, the Supplier must:
- (i) return to Alcoa any items (including Alcoa Equipment) provided to the Supplier by Alcoa during the Term;
- (ii) offer Alcoa first right of refusal to purchase any of the Supplier's equipment used for the purposes of the Contract, to be purchased by Alcoa at its depreciated value or such other value as agreed by the Parties; and
- (iii) take any other action reasonably required by Alcoa in relation to the termination of the Contract.
- (b) If the Contract is terminated under this clause 17, then:
- (i) the termination is without prejudice to any rights or Liabilities of the Parties accruing to the date of termination;
- (ii) each Party must immediately return (or, at the request of the other Party, destroy) any Confidential Information belonging to the other Party; and
- (iii) Alcoa must return to the Supplier any Supplier Equipment.
- (c) This clause 17 does not prejudice any other rights or remedies available to the Parties under the Contract or at Law.
18. **TERMINATION FOR DEFAULT BY ALCOA**
- 18.1 **Termination for default by Alcoa**
- (a) If Alcoa is in Default, then the Supplier may serve on Alcoa a written notice specifying the Default and stating the intention of the Supplier to exercise its rights under this clause 18 (**Alcoa Default Notice**).
- (b) If Alcoa fails to remedy the Default in a proper manner within 20 Business Days after the Alcoa Default Notice is served, then the Supplier may by written notice to Alcoa terminate the Contract.
- (c) The Supplier may terminate the Contract immediately by written notice if Alcoa becomes subject to an Insolvency Event.
- 18.2 **Consequences of termination**
- (a) If the Contract is terminated by the Supplier under this clause 18, Alcoa will pay the Supplier:
- (i) for all Goods properly supplied and Services properly provided to Alcoa as at the date of termination, less any payments previously made by Alcoa in respect of those Goods and Services; and
- (ii) its reasonable out-of-pocket costs and expenses that it has incurred solely as a result of the Contract and that it was unable to otherwise recover or mitigate, including (if applicable) as a result of removing the Supplier's equipment from the Site.
- (b) The payments outlined in clause 18.2(a) are the only Liabilities recoverable from Alcoa by the Supplier if the Contract is terminated by the Supplier in accordance with this clause 18.
- (c) If the Contract is terminated under this clause 18, then:
- (i) each Party must immediately return (or, at the request of the other Party, destroy) any Confidential Information belonging to the other Party;
- (ii) the Supplier must return to Alcoa any items (including Alcoa Equipment) provided to the Supplier by Alcoa during the Term; and
- (iii) Alcoa must return to the Supplier any Supplier Equipment.
19. **TERMINATION ASSISTANCE**
- 19.1 **Survival**
- This clause 19 survives the termination of the Contract.
- 19.2 **Parties to Assist**
- If the whole or part of the Contract is terminated for any reason under clauses 15, 16, 17 or 18, each Party must provide all reasonable termination assistance to the other Party to facilitate:
- (a) the orderly transfer of the functions and operations provided under the Contract to

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- another supplier or to Alcoa, as the case may be; and
- (b) the orderly exit from the Site by the Supplier.
20. **CONTRACT ESCALATION**  
Any issue or dispute relating to the Contract must first be referred to Alcoa's Representative and the Supplier's Representative who must in good faith endeavour to resolve the issue or dispute.
21. **INTELLECTUAL PROPERTY**
- (a) The Parties acknowledge and agree that each Party remains the owner of its Existing IP and that nothing in the Contract prevents, limits or restricts each Party's subsequent use or exploitation of its own Existing IP.
- (b) The Supplier agrees that all Contract IP will be vested in Alcoa and will be Alcoa's property as and when created and the Supplier assigns all rights, title and interest in the Contract IP to Alcoa.
- (c) The Supplier must do all things necessary and must ensure that its Personnel do all things necessary to comply with clause 21(b). Pending the assignment of all rights, title and interest in the Contract IP to Alcoa, the Supplier holds the Contract IP on trust for Alcoa.
- (d) Alcoa grants the Supplier a non-exclusive, non-transferable, royalty free, revocable licence to use the Contract IP and Alcoa's Existing IP for the sole purpose of performing its obligations under the Contract.
- (e) The Supplier grants to Alcoa a world-wide, non-exclusive, transferable, royalty free, perpetual, irrevocable licence to use the Supplier's Existing IP in relation to the Documentation, the Goods, the Services, any product of the Services and any other thing that the Contract contemplates being done, including the right to sub-licence.
- (f) This clause 21 survives the expiry or termination of the Contract.
22. **DOCUMENTATION**
- (a) All Documentation produced under, or for the purpose of performing the obligations under, the Contract will be the property of Alcoa.
- (b) The Supplier will hold all Documentation on behalf of Alcoa, and upon demand, must provide Alcoa with the original of any Documentation unless that Documentation is necessary for the performance of its obligations under the Contract, in which case the Supplier must provide Alcoa with a copy of the Documentation.
- (c) At the expiry or termination of the Contract, the Supplier must provide all Documentation to Alcoa.
- (d) Alcoa has the right to use and reproduce any Documentation as it sees fit.
- (e) This clause 22 survives the expiry or termination of the Contract.
23. **CONFIDENTIALITY AND PUBLICATION**
- 23.1 **Confidentiality**
- (a) The Recipient undertakes and agrees:
- (i) to hold in strict confidence all Confidential Information;
- (ii) not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of the Contract; and
- (iii) except and solely to the extent necessary for the performance of the Contract, not to make use of the Confidential Information (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from the Confidential Information), unless the Recipient has obtained the prior written consent of the Discloser to do so (which consent may be withheld by the Discloser in its discretion or given on such terms as it sees fit).
- (b) Clause 23.1(a) does not apply to:
- (i) information after it becomes generally available to the public other than as a result of the breach of this clause 23; or
- (ii) the disclosure of information in order to comply with any applicable Law or legally binding order of any court, Government Agency or recognised stock exchange, provided that prior to such disclosure the Recipient gives notice to the Discloser with full particulars of the proposed disclosure.
- (c) If the Recipient discloses the Confidential Information to its Personnel in accordance with clause 23.1(a)(ii) or with the consent of the Discloser, it must at its own expense ensure at all times that the person to whom the Confidential Information is disclosed does not disclose the information except in accordance with this clause 23.
- (d) A breach of any of the conditions contained in a consent granted pursuant to clause 23.1(a) is deemed to be a breach of the Contract.
- (e) The obligations in this clause 23.1 are in addition to and do not diminish the obligations of the Recipient in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.
- (f) If requested by the Discloser, whether prior to or after the expiry or earlier termination of the Contract, the Recipient must promptly:
- (i) deliver to the Discloser all Confidential Information in the custody, possession or control of the Recipient or any of its Personnel; or
- (ii) destroy and certify in writing to the Discloser the destruction of all Confidential Information in the custody, possession or control of the Recipient or any of its Personnel.
- (g) Any Group member may use Confidential Information provided by the Supplier to Alcoa for the purposes of procurement by Alcoa and Group members of similar goods to the Goods and services to the Services from the Supplier or a third party.
- (h) Where the Discloser is a Group member, for the purposes of obtaining consent, the Supplier may deal with Alcoa as if it were the Group member.
- (i) This clause 23.1 survives the expiry or termination of the Contract.
- 23.2 **Publication**
- (a) Except as required by any applicable Law, no Party may make any public announcements or disclosures in relation to the Contract without the prior written consent of the other Party.
- (b) Both Parties must agree on:
- (i) the wording of any media release; and
- (ii) the form and publication of any media release.

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24. **AUDIT OF AND OTHER ACCESS TO SUPPLIER'S RECORDS**
- (a) The Supplier must permit Alcoa or its designated agent from time to time during ordinary business hours and upon reasonable notice, to inspect and verify all records maintained or amounts claimed by the Supplier for the purposes of the Contract.
- (b) The Supplier must, if necessary, allow Alcoa or its designated agent to conduct an audit of the Supplier's compliance with any Alcoa Environmental Health and Safety Standards.
- (c) The Supplier and the Supplier's Personnel must give all reasonable assistance to any person authorised to undertake an audit or inspection under this clause 24.
- (d) Any information provided to Alcoa or the designated agent under this clause 24 will be treated as Confidential Information.
25. **DELAY AND DISRUPTION**  
The Supplier and its Personnel must not delay or disrupt the work or activities of Alcoa or any other suppliers or contractors or their employees, agents or representatives (whether employed or engaged by Alcoa or not) on the Site during the Term.
26. **VARIATIONS**
- (a) If at any time during the Term a Party wishes to vary any aspect of the Goods or Services (**Variation**), that Party may submit a written request for the Variation to the other Party.
- (b) Within 10 Business Days after receiving a written request, the other Party must notify the Party requesting the Variation whether it accepts or rejects the Variation.
- (c) A Variation is not effective unless agreed in writing and signed by the Parties.
- (d) If the Parties do not agree in accordance with clause 26(c), both Parties must continue to perform their obligations under the Contract.
27. **AMENDMENT AND ASSIGNMENT**
- 27.1 **Amendment**  
The Contract can only be varied, amended, supplemented, replaced or novated in writing and signed by the Parties.
- 27.2 **Assignment**  
A Party cannot assign the Contract or any right to receive payment under the Contract without the prior written consent of the other Party.
28. **CONFLICT OF INTEREST**
- (a) The Supplier and its Personnel must not:
- (i) hold any office;
- (ii) possess any property;
- (iii) engage in any business, trade or calling; or
- (iv) have any obligations by virtue of any contract, whereby, directly or indirectly, duties or interests are created in conflict with, or might appear to be created in conflict with, the Supplier's duties and interests under the Contract (**Conflict**).
- (b) The Supplier must inform Alcoa of any matter which may give rise to a Conflict at any time during the Term.
29. **NOTICES**
- (a) Alcoa's Representative and the Supplier's Representative may represent Alcoa and the Supplier respectively, for the purposes of the Contract.
- (b) Each of Alcoa's Representative and the Supplier's Representative is capable of giving and receiving any notices required to be given or received for the purposes of the Contract and doing all things necessary to be done by a Party under the Contract.
- (c) A notice, consent or other communication under the Contract is only effective if it refers to the unique Purchase Order number and is in writing, signed and either left at the addressee's address or sent to the addressee by mail, fax or e-mail.
- (d) A notice, consent or other communication that complies with this clause is regarded as given and received:
- (i) if sent by mail, 3 Business Days after it is posted;
- (ii) if sent by fax, when the addressee actually receives it in full and in legible form; and
- (iii) if sent by e-mail, when the sender receives confirmation on its server that the message has been transmitted.
- (e) A Party's postal address, email address and fax number are those set out in the Purchase Order, or as last notified by the Party.
30. **GENERAL**
- 30.1 **Governing law**
- (a) The Contract and its interpretation is governed by the Law in force in the place where the Goods are to be delivered or the Services are to be performed (as the case may be) under the Contract.
- (b) Alcoa and the Supplier irrevocably and unconditionally submit to the jurisdiction of the courts having jurisdiction in that place.
- (c) Alcoa and the Supplier expressly exclude application to any legislation, treaty or agreement which applies the United Nations Convention on Contracts for the International Sale of Goods.
- 30.2 **Civil Liability Exclusion**
- (a) NSW and WA  
If the law of NSW or WA is the law applicable to this Contract, the parties agree that:
- (i) the Civil Liability Legislation does not apply to this Contract or to any rights or liabilities arising out of the performance of, or in any way connected with, this Contract;
- (ii) the Civil Liability Legislation does not apply to any liability or claim made in relation to, arising out of, or in any way connected with this Contract; and
- (iii) to the extent that the Contract makes reference to, whether express or implied, the parties' rights, obligations and liabilities with respect to any matter to which the Civil Liability Legislation applies, the operation of the Civil Liability Legislation is excluded.
- (b) Victoria  
If the law of Victoria is the law applicable to this Contract, the parties agree that:
- (i) to the extent that this Contract makes reference to, whether express or implied, the parties' rights, obligations and liabilities with respect to any matter to which the Wrongs Act 1958 (Vic) Part X applies, in reliance on section 46 of that Act, the operation of that Act is excluded; and
- (ii) to the extent that there is any inconsistency between the terms of this Contract and Part X of the Wrongs Act 1958 (Vic), the terms of this Contract prevail.
- 30.3 **Relationship of Parties**
- (a) The relationship between the Parties is one of independent contractors and the Supplier must not represent itself, and must ensure that

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- its Personnel do not represent themselves, as being agents, servants, employees or representatives of Alcoa.
- (b) Nothing in the Contract is or will be taken as constituting the relationship of partners or joint venturers between the Parties or otherwise sharing risks or rewards or constituting a Party the agent, servant, employee or representative of the other Party.
- 30.4 **No Reliance By Supplier**  
The Supplier acknowledges and agrees that:
- (a) in entering into the Contract, the Supplier does not, except to the extent expressly stated in the Contract, rely on any representation, warranty, condition or other conduct which may have been made by Alcoa, any Group member, or any person purporting to act on behalf of Alcoa or any other Group member; and
- (b) the Supplier has read the Contract and has made all necessary and independent inquiries in relation to all matters relevant to the entry into, and the performance of its obligations under, the Contract.
- 30.5 **Non exclusivity**  
The Supplier acknowledges that nothing in the Contract will be construed as limiting Alcoa's right to purchase goods and services the same as or similar to the Goods and Services from a third party at any time in any circumstances.
- 30.6 **Set off**
- (a) If the Supplier is in Default, Alcoa may do one or more of the following upon notice to the Supplier:
- (i) withhold payments otherwise due to the Supplier until the Default is rectified by the Supplier; or
- (ii) set off any amount that is or may become owing to the Supplier by Alcoa against any amount owing to Alcoa by the Supplier.
- (b) This clause 30.66 overrides any other document or agreement to the contrary.
- (c) This clause 30.66 survives the expiry or termination of the Contract.
- 30.7 **Waiver of rights**  
Subject to the express terms of the Contract, a right may only be waived in writing, signed by the Party giving the waiver, and:
- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.
- 30.8 **Liability for expenses**
- (a) Each Party must bear its own costs arising out of the negotiation, preparation and signing of the Contract.
- (b) Subject to clause 10, all Taxes imposed or levied in Australia or overseas in connection with the supply of the Goods or the provision of the Services must be borne by the Supplier, including all Australian import duties and charges payable on the Goods or components and materials imported by it into Australia for use in manufacturing the Goods, and all anti-dumping, countervailing and other special duties.
- (c) If at any time an applicable Law obliges Alcoa to make a deduction or withholding in respect of Taxes from a payment to the Supplier under the Contract, Alcoa will make the deduction or withholding and Alcoa is not required to pay the Supplier any amount to compensate for amounts deducted or withheld.
- 30.9 **Severability**
- (a) If the whole or any part of a provision of the Contract is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of the Contract has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of the Contract or is contrary to public policy.
- (b) Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable Law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.
- 30.10 **Entire agreement**
- (a) The Contract constitutes the entire agreement between Alcoa and the Supplier in relation to its subject matter. Alcoa and the Supplier agree that there are no extraneous agreements, representations or undertakings either express or implied affecting the Contract.
- (b) The Parties acknowledge and agree that no other terms or conditions will apply to a Purchase Order (including any of the Supplier's standard terms and terms printed on or contained within any invoice, delivery document or other business document of the Supplier) unless they have been expressly agreed to in writing by Alcoa. To avoid doubt, any other terms and conditions will not operate to effect the rights and obligations of the Parties or modify, amend or vary the Contract unless, and to the extent that, they have been expressly agreed to in writing by Alcoa.

# SCHEDULE 1

## Standards

**Alcoa Environmental, Health and Safety Standards**  
(see clause 1.1)

Site	Applicable Standard
<b>Western Australia</b>	ENGINF081 Contractor Environment, Health and Safety Process Guide WAEINF015 Contractors Manual for all WA Locations ENGINF082 WA Contractor Environmental, Health & Safety Management Plan
<b>Portland</b>	Eastern Australia Contractor Environmental, Health & Safety Management Plan Portland Aluminium Site Regulations
<b>Point Henry</b>	Eastern Australia Contractor Environmental, Health & Safety Management Plan Point Henry Works Site Safety Requirements
<b>Anglesea</b>	Eastern Australia Contractor Environmental, Health & Safety Management Plan Anglesea Power Station Site Regulations Anglesea Power Station, Asbestos Management Program
<b>Yennora</b>	Eastern Australia Contractor Environmental, Health & Safety Management Plan Yennora Site Access Procedure Yennora Site Requirements for the Management of Safety & the Environment