



MATILDA MINERALS LIMITED

ABN 31 103 651 538

Standard Terms & Conditions

GENERAL

Purchase Orders, when duly signed and bearing a Purchase Order number, is the only form, which will be recognised by Matilda Minerals Ltd ("the Buyer") as authority for charging goods and/or services to its account and supersedes all previous communications and negotiations. This Purchase order constitutes the entire agreement applicable to the goods and/or services the subject of this Purchase Order and may not be modified except by agreement in writing with the Buyer.

The Purchase Order constitutes an acceptance of the Seller's offer to provide the goods and/or services upon the terms set out in this Purchase Order ("the Contract").

In the event the Seller's quotation, acknowledgment, confirmation, invoice or other form states terms additional or different from those set out in this Purchase Order, the Purchase Order will be deemed a notification of objection to such additional and/or different terms and rejection thereof.

Failure by the Buyer to insist upon strict performance of any term or conditions hereof shall not be deemed to be a waiver of any of the Buyer's rights and remedies hereunder nor of any rights arising out of any subsequent breach or default of the Seller. Acceptance of goods and/or services supplied shall not imply agreement to the alteration of the agreed specification thereof in any respect or a waiver of any rights arising out of any prior or subsequent breach or default.

Time shall be of the essence of the Contract in all things.

SITE WORK INSURANCE

INDEMNITY

The Contractor/Supplier shall be solely liable for and shall indemnify and hold harmless the Company and its employees, officers and agents against any liability, loss, damage, claim, suit, action, expense or proceedings of whatsoever nature and whensoever made or instituted relating to or arising as a result of any action taken or omitted by or any other default or negligence of the Contractor/Supplier or any other party with whom the Contractor/Supplier has contracted to provide the Services under this Contract including without limitation, whether arising:

- (a) Under any statute or common law in respect of personal injury (which expression shall include illness) or death of:
 - (i) any and all persons employed by it in the execution of the Services and any activity directly or indirectly associated therewith, or
 - (ii) any and all persons whatsoever other than those referred to in sub-paragraph (a) (i) above, or
 - (b) In respect of loss or injury or damage to any and all property real or personal whatsoever, or
 - (c) As a result of patent infringement pertaining to the Services and/or any goods supplied on or in connection therewith, or
 - (d) As a result of or by reason of the failure of the Services or the Contractor/Supplier to conform or fulfil any conditions referred to in this Contract. Such indemnity shall be in addition to any other remedies provided by law or equity to the Company.
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INSURANCE

INSURANCE TO BE EFFECTED BY CONTRACTOR/SUPPLIER

Without limiting the generality of the Clause above the Contractor/Supplier shall take out and maintain the following insurance for the duration of this Contract and any extension of it:

- (a) Workers Compensation and any other insurance required by any applicable law and Employers Liability/Common Law insurance with a limit of liability of not less than \$50,000,000 (or such other amount as the Company agrees to in writing) per event, in respect of any person employed or engaged by the Contractor/Supplier or deemed to be so employed. Such insurance shall contain a Principal's Indemnity extension for both Statutory Liability and Common Law Liability in favour of the Company and their respective officers and employees, and shall further contain a waiver of subrogation in favour of the Company and their respective officers and employees;
- (b) Public and Products Liability insurance covering the Contractor's/Suppliers Services supplied under this Contract with a limit of not less than \$10,000,000 (or such other amount as the Company agrees to in writing) for any one occurrence;
- (c) Motor Vehicle Liability insurance (including "gap" coverage for claims in respect of personal injury or death not covered nor able to be covered by insurance referred to in Subclause above in respect of all mechanically propelled vehicles used by the Contractor/Supplier in connection with the performance of the Services under this Contract for an amount of not less than \$20,000,000 (or such other amount as the Company agrees to in writing) for any one occurrence;
- (d) Motor Vehicle Third Party Liability insurance as required by law in the relevant States or Territories in which the Services supplied by the Contractor/Supplier under this Contract are carried out;
- (e) Insurance against loss or damage to the Contractor's/Suppliers property used in conjunction with the Services provided under this Contract. This includes items which are hired leased or otherwise acquired by the Contractor; and
- (f) Any additional insurance by law.

SUB-CONTRACTOR INSURANCE

The Contractor/Supplier shall ensure that all Sub-contractors are protected by similar insurances as referred to above.

PROVISIONS OF POLICIES

Except for Workers Compensation, Employers Liability and Statutory Motor Vehicle Third Party Liability insurances, the Contractor/Supplier shall ensure that all insurances to be taken out pursuant to Clauses above and such other insurances which the Contractor considers necessary shall:

- (a) name the Company and their respective officers and employees as principals;
- (b) Provide that the insurance cover shall not be materially changed or cancelled without thirty (30) days Prior notice in writing to the Contractor/Supplier to do so. Should such notice be given the Contractor/Supplier shall immediately advise the Company before continuing with the performance of the Services under this Contract.

Before proceeding with the execution of the Services under this Contract and at such other times as the Company may require, the Contractor/Supplier shall provide to the Company evidence of the existence and coverage of insurances required under Clause above. To

such extent as the Company may require, including proof that premiums have been periodically paid.

SELLERS WARRANTY

- (a) The Seller acknowledges that it has been informed or is aware of the particular purpose for which goods and/or services to be supplied pursuant to the Contract are required and warrants that such goods and/or services will where applicable be equal to sample and suitable for their intended purpose and will in all cases be free of all defects in design workmanship and materials. If such goods and/or services are not in the opinion of the Buyer equal to sample or defective in design or quality or are unfit for the particular use for which such goods and/or services were ordered, then the Buyer, without prejudice to any other rights or remedies which it may have, at its option may return the whole of the goods or the defective parts thereof and seek restitution, terminate the Contract in so far as it relates to goods and/or services to be supplied subsequent to such termination and sue for damages incurred as a direct result of or consequent upon any breach of the Seller's warranty, or by notice in writing, direct the Seller to remedy the deficiency or defect within a specified time and in default of compliance with such notice the Buyer may cause such deficiency or defect to be remedied by another party and may in each case recover from the Seller all costs, losses and damages incurred as a result of, or consequent upon, any breach of Seller's warranty.
 - (b) The Seller warrants that the supply of goods and/or services pursuant to the Contract and the Processes used by the Seller in the manufacture, production or supply of goods and/or services and the use by the Buyer will not infringe any patent granted, pending or applied for, and the Seller undertakes to defend at its expense and to hold harmless the Buyer from all actions, suits, claims, demands, costs and expenses of any kind whatsoever for or on account of any infringement or alleged infringement of any patent of the Commonwealth of Australia or elsewhere, which infringement, but for such supply would not have occurred.
 - (c) Workmanship and materials used by the Seller and goods supplied pursuant to the Contract shall be in strict accordance with drawings, specifications and samples. If required by the Buyer, the Seller shall furnish for approval by the Buyer all samples and all relevant drawings as required by the Buyer.
 - (d) The Buyer or its representatives shall have full and free access to the shops, factories or other places of business of the Seller, sub-contractors to and suppliers of the Seller, at all reasonable times and without the need to give Prior notice, in order that it may inform itself as to the general conditions and progress of the work covered by the Contract and to witness any tests which may be required under the Contract. No inspection pursuant hereto shall be deemed to be an acceptance of the conditions then prevailing, nor detract from the Buyer's right to reject goods and/or services not in accordance with the Contract.
 - (e) The Buyer may demand that any work covered up, be uncovered for the purpose of inspection. Should subsequent inspection reveal workmanship and/or materials that do not meet the specifications, then the cost of uncovering the work and remedying the fault and restoring the work to its former condition shall be borne by the Seller. Should inspection show that the uncovered work meets the specification, then the cost of uncovering the work and restoring it to its former condition shall be borne by the Buyer.
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INDEMNITY

- (a) In addition to any insurance which the Seller is by law obliged to effect, the Seller shall procure and maintain at its own expense with a company approved by the Buyer (in the joint names of the Buyer and the Seller for the respective rights and interest where appropriate), such policies of insurance which the Buyer may reasonably require, having regard to the nature of goods and services to be supplied hereunder.
- (b) If the Seller, its servant or agent enters upon any purpose relevant hereto for any reason whatsoever, it shall do so at its own risk.
- (c) In the event:
 - 1. Of the personal injury to, death or loss or damage to the property of, any person or persons (including the Buyer and the Seller and the servants, agents, invitees and licensees of either or both) arising directly or indirectly from:
 - (i) The negligent act or omission of the Seller, its servants, agents, suppliers or sub-contractors or an of them in the performance of the Contract;
 - (ii) The breach by the Seller of any one or more of the warranties herein relating to the supply of goods and/or services under the Contract;
 - (iii) Any conjunction or combination of sub-paragraphs (i) and (ii) of this sub-clause (1); or
 - 2. of the Buyer becoming the subject of action, suit, claim or demand pursuant to sub-clause (a) hereof and being thereby rendered liable to make any payment whatsoever (including costs and other expenses reasonably incurred in defending or opposing such action, suit, claim or demand);

the Seller shall indemnify and save harmless the Buyer from and against all such losses, liabilities, claims, demands, suits, actions, legal or administrative proceedings, damages, penalties, fines, costs and expenses of whatsoever kind or character, , except where such injury, death, loss or damage is caused by the sole negligence of the Buyer.

 - (d) The Buyer will not be liable to the Seller under any circumstances for anticipatory damages or for indirect or consequential loss or damages, including without limitation loss or damage resulting from any delays or loss of use or loss of production, or profit or revenue or loss of contract or like items of loss or damage.

PRICE

- (a) Unless any statement or formulae submitted by the Seller are specifically approved by the Buyer, the contract Price is fixed and shall include packaging, boxing and delivery charges.
 - (b) The Buyer may deduct from such amount as may be due and payable by the Buyer pursuant hereto any amounts payable by the Seller to the Buyer on any account whatsoever.
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DELIVERY

- (a) All articles delivered shall be packaged as specified and where packaging is not specified but custom in the trade so requires, be properly packaged in accordance therewith and shall be subject to inspection and acceptance by the Buyer at the final destination. Costs incurred in returning a rejected article to the Seller shall be borne by the Seller.
- (b) All risk whatsoever in respect of goods to be delivered pursuant hereto shall be assumed and borne by the Seller until the goods have been actually delivered to and accepted by the Buyer or its agent at the nominated delivery point.
- (c) The Buyer shall have the right to designate a mode, route, time and place of delivery and to nominate a carrier or delivery agent. If the Seller delivers the goods other than as may be specified by the Buyer the Seller shall pay and bear any cost thereby incurred additional to the cost of delivery as so specified.

TERMINATION

- (a) The Buyer may forthwith terminate this Contract by notice in writing if the Seller is in default of any term or condition hereof.
 - (b) If judgment is entered against the Seller or if the Seller commits an act of bankruptcy, or makes or endeavours to make any scheme of arrangement with creditors, or an administrator is appointed, or if a Receiver is appointed or an order or resolution for the winding up of the Seller (whether voluntary or otherwise) be made, the Buyer may without prejudice to any other rights or remedies hereunder terminate the Contract forthwith by notice in writing to the Seller.
 - (c) If the goods to be supplied under this Contract are of standard stock of the Seller, the Buyer at its option may terminate the Contract upon written notice to the Seller, so far as it relates to any unshipped portion of the goods without further obligation hereunder, except payment (subject to the other terms hereof) for the goods shipped prior to termination.
 - (d) If the Contract requires goods to be manufactured or fabricated to the specification of the Buyer, or services to be supplied, then, at any time prior to completion of the work to be performed in fulfilment of the Contract, the Buyer may at its option terminate the Contract upon written notice to the seller and upon receipt of such notice, the Seller shall stop all work hereunder, except as may be otherwise directed by the Buyer. Upon termination under this sub-paragraph, the Buyer shall pay to the Seller an amount equal to
 - i. The completed pro-rata amount of the Contract Price plus
 - ii. Five percent (5%) of the amount calculated in (a). The pro-rata completion shall be mutually agreed by both parties and shall reflect the amount of work completed or committed at the date of termination provided that at the time of termination of the Contract the Seller is not in breach of any of these terms and conditions.
 - (e) Upon termination of the Contract, the property in any materials appropriated to the manufacture or fabrication of goods and any uncompleted goods shall vest in the Buyer, who shall be entitled to immediate possession thereof.
 - (f) Notwithstanding anything contained in this paragraph, the Seller shall not be entitled to any anticipatory damages for termination of the Contract.
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DESIGN DATA

The following clauses shall apply in all cases where the nature of the goods to be supplied hereunder is such as to make them applicable.

- (a) Within thirty days from the date of this Purchase Order unless otherwise agreed, the Seller shall submit to the Buyer, in duplicate, drawings and other data sheets showing dimensions and details of foundations, mountings, supports, external connections, wiring diagrams and any such other information or data as the Buyer may request or require to enable plant design to proceed without undue delay.
- (b) At least fourteen days prior to the delivery of the goods, the Seller shall issue to the Buyer four sets of instruction manuals covering the complete installation, operation and maintenance of the goods to be supplied.
- (c) If a Purchase Order is forwarded to the Buyer without reference therein to a spares list and the Purchase Order is accepted, the Seller shall within thirty days of acceptance of the Purchase Order or sooner if called for, provide the Buyer with a complete list of spares which shall show the current availability and price of each item and the Seller's recommendation to the Buyer on the quantity of each required.

DRAWINGS AND BILLS OF MATERIAL

- (a) The Seller must maintain in strict confidence all information provided by the Buyer to the Seller and such information is to be used solely for the purposes for which they were supplied or prepared under this Contract. The Seller shall be responsible for the design and the preparation of all design, arrangement and detail drawings where specified or where the nature of the goods and/or services to be supplied hereunder is such as to make such drawings necessary, whether specified or not. The Seller shall submit to the Buyer as required by the Buyer, all relevant drawings in the following manner.
 - (a) Two copies of the drawings shall be submitted to and approved by the Buyer before the Seller shall commence manufacture of the goods, or supply of the services in accordance with those drawings. The Seller shall provide copies of design calculations to the Buyer if so requested.
 - (b) The Buyer's approval or otherwise of the Seller's drawings will be signified by the return to the Seller of one copy suitably endorsed. Following the return to the Seller of approved or qualified approved drawings, the Seller shall commence manufacture and/or supply of the goods and/or services in accordance with such drawings.
 - (c) The Seller shall when so requested by the Buyer submit certified drawings to the Buyer so as to enable other design work of the Buyer to proceed.
 - (d) The Buyer's approval of the drawings shall in no way relieve the Seller of the responsibility for the correctness of the drawings or for errors in the manufacture of supply in compliance with those drawings. Such approval is given as approval in principle only and is not to be construed as meaning approval of the Seller's design in detail.
 - (e) The Seller shall prepare Bills of Material if so requested by the Buyer. The Bills of Materials shall be submitted to the Buyer at least fourteen days prior to dispatch of the goods from the Seller's works and/or the supply of services.
 - (f) Prior to dispatch of materials from the Seller's works, the Seller shall supply the Buyer two copies of all drawings prepared for the purpose of the Contract in electronic form useable by the Buyer and in such other form as the Buyer reasonably requires.
 - (g) Upon completion or sooner termination of this Contract, the Seller shall deliver up to the Buyer all drawings and specifications prepared (whether by the Buyer or Seller, or the agent of either of them) in connection therewith or as a preliminary thereto.

DEFECTS LIABILITY PERIOD

- (a) For Supply and Install Contracts and unless otherwise agreed, the defects liability period for equipment of a mechanical nature, or having mechanical components shall be six months dating from the time of completion of installation. The defects liability period for equipment of an electrical nature and the electrical components of
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mechanical items shall be twelve months dating from the time of completion of installation.

- (b) For Supply Only Contracts and unless otherwise agreed, the defects liability period for equipment of a mechanical nature, or having mechanical components shall be six months dating from the time of completion of installation by others or twelve months from the date of completion of delivery, whichever is the lesser. The defects liability period for equipment of an electrical nature and the electrical components of mechanical items shall be twelve months dating from the time of completion of installation by others or eighteen months from the date of completion of delivery, whichever is the lesser.

PAYMENT

- (a) The terms of payment for goods and/or services supplied hereunder are as follows:
- (b) For goods and/or services of any description where the total value thereof is less than \$10,000 payment in full.
- (c) Subject to sub-clause (a) of this clause for goods of a mechanical or electrical nature, or having mechanical or electrical components – an initial payment of 95% of the value of goods delivered or installed, with a final payment of 5% of the Contract Price to be paid after expiry of the Defects Liability Period.
- (d) Subject to sub-clause (a) of this clause for fabricated items of steelwork – an initial payment of 90% of the Contract Price after completion of delivery, with the balance of 10% to be paid within one month after erection or for Supply Only Contract within four months of the delivery being completed, whichever is the sooner.
- (e) For goods and/or services other than those described in paragraphs (a), (b) and (c) hereof, an initial payment of 95% of the total value thereof upon delivery and a final payment of 5% of the Contract Price to be paid within three months thereafter.
- (f) Progress claims (where the same shall have been negotiated and agreed to by the Buyer Prior to issue of the Purchase Order) in respect of work done Prior to delivery or in respect of partial deliveries if required, shall be claimed by the Seller on forms specifically supplied by the Buyer for the purpose.
- (g) Unless otherwise specified above amounts payable by the Buyer hereunder shall be made at the end of the month next following the month in which the Seller's invoice is delivered to the Buyer.

PROGRESS REPORTS

When requested by the Buyer, the Seller shall issue to the Buyer a regular report on the progress of the work. The Seller shall submit such reports at such regular intervals not exceeding two weeks, in such manner and containing such details as the Buyer may reasonably require.

MARKING INSTRUCTIONS

All items to be supplied under the Contract shall be clearly identified by having a marking thereon, or by label attached thereto, showing the item or mark number corresponding to the Bill of Materials, the drawing number, the order number and any other markings which may be specified elsewhere as a requirement. Items which, on delivery to the Buyer or the Buyer's agent, are found to be incorrectly and inadequately marked may be rejected.

COSTS OF DELAY

If the Seller fails to deliver and/or install the goods or supply the services as the case may be by the agreed date the Seller shall be liable to pay to the Buyer such amount as shall properly compensate the Buyer for any loss or damage incurred or suffered by the Buyer as a direct result or consequent upon such failure on the part of the Seller.

If the Seller is delayed or becomes aware of the likelihood of delay in the performance of the Contract by circumstances which could not reasonably have been foreseen at the date of this Contract and are beyond the Seller's control, the Seller as soon as possible after becoming aware of such circumstances shall notify the Buyer in writing and furnish reasonably full particulars thereof. The

Buyer may upon the request of the Seller but in the absolute discretion of the Buyer extend the time for performance of the Contract by the Seller or may terminate the Contract.

COMMISSIONING

The Seller may render the warranty as set out in sub-clause P3(a) hereof contingent upon the Seller's witnessing or supervising the installation and commissioning of the goods by the Buyer Provided that the Seller advised the Buyer in writing of this requirement prior to the delivery of this Purchase Order to the Seller and the Seller shall either allow in the price for the costs involved or shall set out the Seller's term and conditions relating to the supply of an installation and commissioning specialist.

SUB-CONTRACTS AND ASSIGNMENTS

The Seller shall not, without Prior written consent of the Buyer assign or sub-let the Contractor all or any portion of the Contract or make any contract with any person for the execution of any portion of the work except the supply of raw materials and minor items. Unpriced copies of all sub-orders and sub-contracts which may be placed with the Buyer's approval shall be forwarded to the Buyer and shall show the place of work, delivery time and specified requirements under such sub-orders or sub-contracts.

COMPLIANCE WITH ACTS, REGULATIONS AND RULES

Throughout the execution of the work, the Seller shall comply with the requirements of all Acts of Parliament and all regulations, by laws and order made thereunder and in particular, but without limiting the generality of the foregoing, the Seller shall comply with the relevant provisions of those Acts of Parliament governing safety, health and regulation of Procedures in or in connection with mines, machinery, electricity and construction works, and all regulations and orders made thereunder. The Seller shall furnish the Buyer with two copies of all correspondence, letters of approval of design, test certificates and any other documentation arising out of the Seller's compliance with the above Acts.
