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# QUEENSLAND ALUMINA LIMITED

## (ACN 009 725 044)

### STANDARD CONDITIONS FOR PURCHASE ORDERS

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These standard conditions are the Standard Conditions for Purchase Orders referred to in Queensland Alumina Limited Purchase Orders.

#### 1. Definitions

In these standard conditions:

**“the Contract”** means the contract formed upon the Seller’s acceptance of the Purchaser’s offer to purchase Merchandise contained in the Purchase Order, the entire terms of which Contract are constituted by these Standard Conditions for Purchase Orders in conjunction with the Purchase Order.

**“Merchandise”** means all goods, chattels, plant, equipment, machinery and services included in a Purchase Order.

**“Purchase Order”** means an order for Merchandise in the Purchaser’s standard form used to order Merchandise given to the Seller in writing or by electronic data transmission and may include:

- (a) A description of the merchandise required;
- (b) The required quantity of that merchandise;
- (c) The terms of trade for transfer of title and risk
- (d) The time and date for delivery;
- (e) The delivery place
- (f) The price of the Merchandise

A Purchase Order may also include directions as to the mode of delivery of the Merchandise.

**“Purchaser” means Queensland Alumina Limited (ACN 009 725 044) of Parsons Point, Gladstone. Qld. 4680.**

**“Seller”** means the person, firm or corporation referred to in a Purchase Order from whom Merchandise is being purchased pursuant to that Purchase Order.

In these Standard Conditions, and in any Contract, the parties acknowledge and agree that business may be undertaken by the electronic exchange of information and the provision of these Standard Conditions and any Contract shall be read and construed to give effect thereto.

#### 2. Contract

- (a) A Purchase Order constitutes an offer by the Purchaser to purchase the Merchandise upon the terms and conditions contained in the Purchase Order, and these Standard Conditions for Purchase Orders.
- (b) The Seller is deemed to have accepted the Purchaser’s offer where the Seller fails to contact the Purchaser within a period of five (5) days after receipt of the Purchase Order.
- (c) The Purchase Order together with these Standard Conditions for Purchase Orders, constitute the entire terms of the Contract. If there are any discrepancies or ambiguities between provisions in the different documents constituting the Contract the order of precedence to resolve the inconsistency or ambiguity shall be as follows:-

- (i) Purchase Order;
- (ii) These Standard Conditions for Purchase Orders.

- (d) No terms or conditions stated by the Seller in accepting or acknowledging the Purchase Order, previous communications or negotiations shall be binding upon the Purchaser or form part of the Contract unless such terms and conditions are specifically accepted in writing by the Purchaser.

#### 3. No assignment

The Seller shall not assign or sub-contract any part of the Contract without the Purchaser’s prior written consent.

#### 4. No Waiver

Any waiver of a particular breach of any express or implied provision of the Contract shall not constitute a waiver of any other breach of such provision or of any other express or implied provision.

#### 5. Inspection of Merchandise during manufacture

The Seller agrees that the Purchaser or its authorised agent shall have the right to:

- (a) inspect all Merchandise at any stage during the engineering, manufacture or installation of such Merchandise. The Seller shall make this a condition of any subcontracted work; and
- (b) reject any work performed or being performed in relation to the engineering, manufacture or installation of the Merchandise, which does not conform to the terms of the Contract, whereupon the work rejected, shall be redone at no additional cost to the Purchaser. Any such inspection or a failure to make such inspection shall not relieve the Seller of any obligations contained in the Contract.

#### 6. Engineering Data

The Seller shall furnish all engineering and other data inclusive of certificates to the Purchaser in accordance with the terms set out in the Purchase Order and within the times mentioned in those documents.

#### 7. Payments

Payments in respect of Merchandise supplied to the Purchaser will be made by the Purchaser in accordance with the terms of the Purchase Order. The Purchaser may effect payments, at its election, by electronic funds transfer.

#### 8. GST

- (a) In this clause the expressions “GST”, “Supply”, “tax invoice”, “recipient” and “taxable supply” have the meanings given to those expressions in the A New Tax System (Goods and Services Tax) Act 1999.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided in accordance with the Contract are exclusive of GST.

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- (c) If GST is made on any supply made pursuant to the Contract, the recipient of the taxable supply must pay to the Seller an additional amount equal to the GST payable on the taxable supply. Payment of the additional amount will be made at the same time as payment for the taxable supply is required to be made.
- (d) If a GST inclusive price is charged, the Seller must provide the recipient of the supply a valid tax invoice at or before the time for payment.

#### **9. Insurance**

Unless the Contract provides otherwise, the Seller shall arrange and maintain with a reputable insurance company:

- (a) Merchandise insurance for their replacement value against loss of damage, including loss or damage in transit to the Purchaser's address for delivery,
- (b) A broad form public liability policy of insurance to the value of at least \$10 million in respect of each claim.

The Seller will provide a copy of certificates of currency for all insurance policies when requested by the Purchaser.

#### **10. Warranties**

The Seller warrants that:

- (a) the Merchandise:
- (i) will conform to its description and any applicable specifications;
- (ii) shall be of good and merchantable quality and will not contain asbestos of any type;
- (iii) shall be fit for the purpose for which it is sold;
- (iv) shall, wherever applicable, be protected against corrosion and mechanical damage;
- (v) is free and clear of all liens and encumbrances and that the Seller has a good and marketable title to the Merchandise.
- (b) the sale to or use of the Merchandise by the Purchaser will not infringe or contribute to the infringement of any patents, trademarks, copyright, design rights or circuit layout rights in either Australia or elsewhere.
- (c) the Seller has established and maintained a certified quality assurance system.

These warranties are in addition to and not to the exclusion of any warranty otherwise implied by law. The Seller shall indemnify the Purchaser from and against any loss or damage of whatever nature (including attorney's fees and other costs of defending an action) arising from breach of these warranties.

#### **11. Property in Merchandise**

- (a) Where any part payment for the Merchandise is made by the Purchaser, the title to and property in the Merchandise (whether partly completed or completed) and any materials and parts to be used in its manufacture and then on hand shall pass to the Purchaser and the same shall be appropriately marked, as the property of the Purchaser.
- (b) Nothing contained in clause 11(a) affects the Purchaser's right to subsequently accept or reject the Merchandise in accordance with the Contract.
- (c) Unless the Contract provides otherwise the Merchandise shall remain at the risk of the Seller until the Merchandise is delivered to the Purchaser at its address for delivery and has been accepted by the Purchaser.

#### **12. Reproduction Rights**

Seller grants to Purchaser the right to reproduce, have reproduced, manufacture and have manufactured all plans, drawings, specifications, documents, parts and equipment prepared or supplied by the Seller in the performance of this Contract. The Seller warrants it is capable of granting the rights provided in this clause and that all documents, parts and equipment referred to in this clause do not infringe the rights of any third party.

#### **13. Transportation**

- (a) All Merchandise shall be packed, marked and transported as specified in the Purchase Order, but if not specified, then in a proper and suitable manner and in all cases in accordance with the National Transport Commission regulations.
- (b) The Seller shall be liable for any difference in freight charges arising from its failure to follow any transport instruction in the Purchase Order or to properly describe the Merchandise transported.
- (c) The Purchaser and Seller shall assist each other in obtaining documents and other information desirable for the prosecution of any claims against carriers.

#### **14. Delivery**

- (a) Unless the Contract provides otherwise the Seller shall deliver the Merchandise to the Purchaser at the address for delivery set out in the Purchase Order.
- (b) If for any reason the Seller is unable to deliver the Merchandise to the Purchaser on or before the date for delivery specified in the Purchase Order, the Seller shall immediately upon becoming aware that it will not be able to so deliver the merchandise, notify the Purchaser of that fact, and advise the Purchaser of when delivery of the Merchandise will be effected.
- (c) If the Purchaser has not received delivery of the Merchandise from the Seller within 14 days after the delivery date specified in the Purchase Order or any extended date for delivery which the Purchaser has allowed in writing, the Purchaser shall be entitled to forthwith terminate the Purchase Order and shall be entitled to recover from the Seller any loss or damage occasioned by the Seller's failure to deliver the Merchandise as required.

#### **15. Delivery Note**

- (a) The Seller shall include a delivery note with each consignment of Merchandise to the Purchaser.
- (b) Each delivery note shall be in writing and shall state in respect of the Merchandise supplied:
- (i) Purchase Order Number;
- (ii) Purchaser's Catalogue Number (found on the Purchase Order);
- (iii) Purchaser's Issue Unit (found on the Purchase Order);
- (iv) Short description of Merchandise delivered.

#### **16. Site Inspections**

- (a) All Merchandise received by the Purchaser is received subject to the Purchaser's inspection within a reasonable time after arrival at the Purchaser's address for delivery. If upon inspection any Merchandise is found to be unsatisfactory, defective, of inferior quality or workmanship or fails to meet the specifications or any other requirements of the Contract, the Purchaser may return such Merchandise to the Seller at the Seller's expense or may make such

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Merchandise available for collection by the Seller at the Purchaser's address for delivery. The Purchaser is not liable to pay to the Seller any sum on account of or in relation to such defective Merchandise.

- (b) Payment for Merchandise prior to inspection shall not be construed to be an acceptance of unsatisfactory or defective Merchandise.
- (c) Upon return of any unsatisfactory or defective Merchandise, the Seller shall reimburse the Purchaser for:
  - (i) any amounts (if any) already paid by the Purchaser on account of the purchase price of the returned Merchandise;
  - (ii) any cost incurred by Purchaser in connection with the delivery or return of such Merchandise to the Seller.

#### 17. Termination for default

If the Seller breaches any of the terms of this Contract, including the Seller's warranties, the Purchaser may, at its option and without prejudice to any of its other rights at law or otherwise terminate the Contract. Any Merchandise, the subject of a Purchase Order, which at the time of termination had not yet been delivered to the Purchaser at its address for delivery, will be cancelled and the Seller shall not be entitled to any compensation in respect of such cancellation.

#### 18. Termination

Notwithstanding that the Seller is not in breach as provided by clause 17 hereof, the Purchaser may at its option, terminate the Contract for any Merchandise which has not yet been delivered to the Purchaser at its address for delivery, but in such case the following provisions shall apply:

- (a) Where the Contract is for the purchase of any Merchandise not manufactured or fabricated to the Purchaser's specifications, or specifications prepared by the Seller for the Purchaser (standard stock Merchandise), the Purchaser shall be obliged to pay for Merchandise which has left the Seller's premises for the purpose of delivery to the Purchaser prior to the termination, unless such Merchandise is rejected by the Purchaser in accordance with the terms of the Contract.
- (b) Where the Contract relates to Merchandise manufactured or fabricated to the Purchaser's specifications or specifications prepared by the Seller for the Purchaser, upon receipt of written notice of termination, the Seller shall cease manufacture and supply of work in accordance with and to the extent specified in the notice and shall immediately do everything possible to mitigate any cost incurred by the Seller consequent upon such termination. In these circumstances the Purchaser shall pay to the Seller:
  - (i) any expenditure reasonably incurred by the Seller prior to the date of the written notice of the termination which is directly attributable to the placing of the order by the Purchaser and which has not been otherwise recouped by the Seller;
  - (ii) six percent (6%) of the expenditure in (i) above in lieu of profit,

provided however, that the total cancellation payment plus previous payments shall not exceed the total price payable under the Contract in respect of the Merchandise. Upon such payments, title to and property in any material or incomplete Merchandise shall pass to the Purchaser.

#### 19 Installations or Fitting

Where the Seller provides work in connection with the installation or fitting of the Merchandise, or where the Purchase Order require either specifically or by implication the presence of the Seller or his servants or agents on the Purchaser's premises, the parties acknowledge and agree that:

- (a) The Purchaser relies on the Seller's skill and the Seller warrants that all work shall be performed in a proper and workmanlike manner.
- (b) If any of the work or materials is found to be defective or not in compliance with the Contract, and the Seller on request of the Purchaser fails to remedy such defect or default to the satisfaction of the Purchaser, the same may be remedied by the Purchaser at the cost of the Seller.
- (c) The Seller shall supply all labour, tools, equipment and materials necessary to complete the work. The Seller shall comply with all legislation and the purchaser's site rules which are available on request) when accessing the Purchaser's premises.
- (d) The Seller shall use its best endeavours not to impede or interfere with other work in progress on the Purchaser's premises.
- (e) The Purchaser shall not be liable for any loss, damage or injury of or to the Seller, its servants, agents, employees, independent contractors or any other person howsoever arising, except where such loss, damage or injury occurs as a result of the wilful act or neglect of the Purchaser or its employees.
- (f) The Seller shall be liable for and indemnify the Purchaser against any loss, damage, claims or liability arising directly or indirectly out of the performance of the work or presence on the Purchaser's premises including claims against the Purchaser whether alleging negligence on the part of the Purchaser or otherwise.
- (g) The Seller shall at its own expense obtain all requisite licences and permits and comply with all laws and regulations in connection with the work or installation of the Merchandise.
- (h) The Seller, its servants, agents and sub-contractors shall comply with the safety regulations of the Purchaser and with the reasonable directions and orders of the Purchaser or its manager, foreman and authorised officers.
- (i) The Seller shall not sub-contract or assign the work or any part thereof without the Purchaser's written consent.
- (j) The Seller performs all work as an independent contractor and not as an agent or employee of the Purchaser.

#### 20. Time

Time is of the essence of the Contract.

#### 21. Applicable Law

The Contract shall be governed by and construed in accordance with the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the Courts of that State in respect of any dispute arising out of or in relation to the Contract.