

**1 Agreement to Sell Goods and/or Services**

The Supplier agrees to sell and Molycop agrees to buy the Goods and/or the Supplier agrees to perform the Services which Molycop agrees to accept, on and subject to these terms and conditions.

**2 Delivery, Acceptance and Title - Goods**

- 2.1 The Supplier must deliver the Goods to the Delivery Point by the Delivery Means on the Delivery Date (or earlier with Molycop's prior written consent).
- 2.2 Each delivery must be accompanied by delivery dockets marked with the Order number, product description and the quantity of Goods.
- 2.3 Title to and risk in the Goods will pass from the Supplier to Molycop on Delivery of the Goods.
- 2.4 Molycop accepts the Goods if:
  - (a) Molycop advises the Supplier in writing that the Goods have been accepted (but signing for delivery does not constitute acceptance);
  - (b) Molycop has not rejected the Goods within 7 days of Delivery of the Goods (provided that Molycop may only reject the Goods if any of the Warranties relating to the Goods are untrue or have been breached or the Goods do not comply with these terms and conditions); or
  - (c) Molycop uses the Goods in a manner that materially changes their condition.
- 2.5 Molycop's acceptance of the Goods will not preclude or prejudice any rights, powers or remedies Molycop may have as a result of a breach of any of the Warranties or any other provision of these terms and conditions.

**3 Performance of Services**

- 3.1 The Supplier must perform all Services in accordance with an Order and these terms and conditions by the Completion Date referable to them.
- 3.2 Molycop may in writing instruct the Supplier to vary the scope (but not the general nature) of the Services. The Supplier must comply with that instruction subject only to agreeing a reasonable variation to the Purchase Price referable to the Services prior to commencing any work associated with the variation.

**4 Purchase Price and Invoicing**

- 4.1 The Purchase Price includes:
  - (a) for Goods, all freight costs up to the Delivery Point, transit insurance and all other charges payable in connection with the sale of the Goods; and
  - (b) for Services, all costs and expenses associated with the provision of the Services, and all taxes (except GST), duties, imposts and levies payable under the laws of any relevant jurisdiction.
- 4.2 The Supplier may only issue tax invoices for Goods after Delivery of those Goods and for Services after completion of those Services (in all cases in accordance with the Order) and must only send one copy of each tax invoice to Molycop. All such tax invoices must be issued to the contact person nominated by Molycop in the Order (or as otherwise notified by Molycop) and include at least the Order number, description of the Goods and/or Services, the quantity of Goods and date of Delivery of the Goods or performance of the Services and be dated the date the invoice is sent to Molycop.
- 4.3 Unless specified otherwise in an Order, Molycop must pay the Purchase Price by cheque or electronic funds transfer to the Supplier within 62 days after the end of the month in which the Supplier's invoice issued in accordance with clause 4.2 is received by Molycop or, in the case of Goods, the month in which Molycop accepts the Goods under clause 2.3.
- 4.4 Molycop is not obliged to pay GST in respect of Goods and/or Services unless a valid tax invoice has been issued.

**5 Supplier Obligations - Goods.**

- The Supplier must:
- 5.1 properly carry out all testing and quality assurance procedures, and provide to Molycop all test certificates, required by the Order or as otherwise requested by Molycop;
  - 5.2 properly pack and protect the Goods to prevent damage during transit and upon Delivery;
  - 5.3 ensure that all packaging and protective coatings are safe and will not in any way affect the condition of the Goods;
  - 5.4 ensure that all packaging, labelling and transport of the Goods complies with all laws of any relevant jurisdiction, and where applicable, with relevant Australian and other recognized standards;
  - 5.5 ensure that the Goods (and each sub-package of the Goods) are clearly addressed to the Delivery Point and that each sub-package is marked with the product description and quantity of the Goods contained in it;
  - 5.6 enclose one copy of the packing list within each package of the Goods;
  - 5.7 clearly state whether any Goods contain asbestos or other hazardous substances and, prior to delivery of any such goods, provide Material Safety Data Sheets in respect of such goods in the form required by Molycop from time to time; and
  - 5.8 on reasonable notice provide and procure for Molycop (and its representatives) full access to all premises and locations to allow Molycop to inspect the Goods at any time prior to their Delivery.

**6 Supplier Obligations - Services**

- 6.1 The Supplier must:
  - (a) perform the Services:
  - (i) at the Services Location;
  - (ii) in a competent, proper and workmanlike manner in accordance with good industry practice;
  - (iii) exercising a high standard of skill, diligence, knowledge, judgement and care;
  - (iv) in a manner that is safe to both people and the environment assessed against the higher of industry best practice and legislative requirements;

- (v) (except as expressly provided in the Scope of Services) using its best endeavors so as not to interfere with any activities of any other person at any Molycop premises or the Services Location; and
  - (vi) so as to minimize delays in the performance of the Services;
  - (b) supply and maintain, at its own cost, everything the Supplier requires in order to provide the Services in accordance with the Order including all personnel, goods, materials and authorizations;
  - (c) where the Supplier provides the Services through its employees, agents or permitted sub-contractors, ensure that such personnel are suitably qualified and competent;
  - (d) ensure that all equipment used by the Supplier in performing the Services is maintained in a reasonable condition and complies with and is used in accordance with all relevant laws, regulations and other governmental requirements; and
  - (e) pay all of the Supplier's employees and sub-contractors on time.
- 6.2 The Supplier must notify Molycop on completion of the Services.

**7 Supplier Obligations - General**

- 7.1 The Supplier must, in relation to the performance of the Services and the supply of Goods:
  - (a) provide Molycop with all reasonably requested information;
  - (b) comply with all Molycop safety, health and environmental policies made available to the Supplier from time to time;
  - (c) comply with all applicable laws, regulations and other governmental requirements;
  - (d) comply with (and ensure that all of the Supplier's officers, employees, agents and contractors comply with) all reasonable directions and requirements of Molycop (including all site conditions made available by Molycop) while the Supplier or any such people are on Molycop premises;
  - (e) remedy any environmental damage or degradation resulting from the Supplier's actions or omissions;
  - (f) take reasonable care to protect against damage or loss to all property on the Services Location or other Molycop premises and comply with Molycop's reasonable requirements relating to the protection of such property;
  - (g) maintain and make available to Molycop sufficient records to enable Molycop to verify all invoices; and
  - (h) ensure that the Warranties are and remain true and correct at all times.
- 7.2 The Supplier is responsible for all acts or omissions of the Supplier's officers, employees, agents and contractors in relation to the provision of the Services and supply of the Goods.

**8 Warranties and Remedies**

- 8.1 The Supplier warrants that:
  - (a) the Supplier is the legal and beneficial owner of the Goods and has the right to sell the Goods to Molycop free from all mortgages, charges, encumbrances, liens and other third party rights and claims;
  - (b) the delivery of the Goods and performance of the Services complies with all applicable laws, regulations and other governmental requirements;
  - (c) the Goods are new, free from defects, of merchantable quality and fit for the purposes for which the Goods would ordinarily be used and any other purposes notified by Molycop to the Supplier;
  - (d) the Goods conform with any specifications provided by Molycop and the Services comply with Molycop's specified requirements; and
  - (e) the Services are fit for the purposes for which they would ordinarily be required and any other purposes notified by Molycop to the Supplier and will achieve any results specified in the Order.
- 8.2 If within 12 months of the later of the Delivery Date or date of the Order, the Supplier breaches any Warranties or Molycop rejects any Goods under clause 2.4(a) then at Molycop's discretion and upon demand from Molycop the Supplier must (as applicable) at the Supplier's cost and expense:
  - (a) repair or modify the Goods to Molycop's reasonable satisfaction;
  - (b) replace the Goods;
  - (c) re-perform part or all of the Services; and/or
  - (d) refund any amount paid by Molycop to the Supplier in relation to the Goods and/or Services.

**9 Insurance**

- 9.1 Without limiting the Supplier's liability under the Order, the Supplier must obtain and maintain, from solvent and reputable insurers, the following insurance policies:
  - (a) public and products liability insurance in the amount of \$20 million for any one loss or occurrence which insurance indemnifies Molycop for all indirect, special and consequential loss (from the date of the Order until the time when the Supplier has complied with all of its obligations under the Order);
  - (b) where Services are being provided, professional liability insurance in the amount of \$5 million for any one loss or occurrence (from the date of the Order and for a period of 6 years after the Supplier has complied with all of its obligations under the Order); and
  - (c) where Goods are to be delivered to Molycop's premises, third party motor vehicle insurance in the amount of A\$10 million for any one loss or occurrence (from the date of the Order until the time when the Supplier has complied with all of its obligations under the Order).

**10 Intellectual Property**

- 10.1 If the Supplier is the manufacturer of the Goods and the Goods are required to be manufactured or fabricated to Molycop's specifications or special requirements (and are not goods of the type ordinarily manufactured by the Supplier) Molycop will be entitled to all intellectual property rights of any kind that arise as a result of, or in the course of, the design of the Goods.
- 10.2 The Supplier warrants that the supply of the Services and Goods to Molycop and use of the Goods by Molycop does not infringe the intellectual property rights of any person and Molycop will not have to pay any license fee, royalty or other amount to any person in connection with the Services or Goods.

**11 Cancellation and Suspension**

- 11.1 Molycop may cancel an Order by written notice given to the Supplier if the Supplier breaches any provision of the Order and such breach is incapable of remedy, or such breach is capable of remedy and the Supplier fails to remedy the breach within 14 days of receiving a notice from Molycop requiring it to do so.
- 11.2 In addition to its rights under clause 11.1, Molycop may at its option and without cause:
  - (a) in relation to Goods, at any time up to 14 days prior to the Delivery Date cancel all or any part of an Order by notice in writing to the Supplier; and
  - (b) in relation to Services, cancel all or any part of the Order or suspend the performance of the Services (or any part of them) for up to 6 months,
  - (c) by notice in writing to the Supplier,
  - (d) and upon such cancellation or suspension Molycop has no obligations except for those set out in clause 11.3 and 11.4.
- 11.3 For the purposes of Clause 11.2:
  - (a) in the case of a cancelled Order for Goods:
    - (i) if the Goods are goods ordinarily supplied by the Supplier, Molycop will be under no obligation whatsoever to pay any money to the Supplier;
    - (ii) if the Goods have been manufactured or fabricated to Molycop's specifications or special requirements (and are not goods ordinarily supplied by the Supplier), then upon receipt of the notice of cancellation under clause 11.2 the Supplier must:
      - (1) immediately cease manufacture or fabrication of the Goods (unless otherwise instructed by written notice from Molycop at or after the time of receipt of the notice of cancellation); and
      - (2) do everything possible to mitigate any cost incurred by the Supplier upon such cancellation; and
      - (iii) where the Goods are of the type referred to in clause 11.3(a)(i), Molycop must pay to the Supplier, in full and final satisfaction of all of the Supplier's rights against Molycop, the reasonable actual direct costs incurred by Supplier in connection with the manufacture or fabrication of the Goods prior to the effective date of cancellation less any mitigated costs and resale proceeds;
    - (b) in the case of a cancelled Order for Services, Molycop will pay the Supplier a fair and reasonable amount calculated by Molycop for the Services performed up to receipt of the notice of cancellation, taking into account the actual direct costs reasonably incurred by the Supplier to that time and reasonable demobilization costs.

For the avoidance of doubt, Molycop's only liability in relation to the cancellation of any Order is under this clause and Molycop is not liable to the Supplier for any indirect or consequential costs (including loss of profits or opportunity costs).

- 11.4 Title to any Goods (and any raw materials and unfinished Goods) in respect of which Molycop makes any payment under clause 11.3(a)(ii)(2) passes to Molycop on the making of that payment.

**12 Miscellaneous**

- 12.1 The Order comprises the whole contract between the parties about its subject matter and the only terms implied are those implied by mandatory operation of law. The Order prevails over any prior contract or obligation between the parties about its subject matter and over any terms and conditions put forward by the Supplier at any time.
- 12.2 No rule of construction applies to the disadvantage of a party because that party put forward the Order or any portion of it.
- 12.3 The Order is governed by the laws of the jurisdiction of the State or Territory of Molycop's address specified in the Order. The courts of that jurisdiction (and the courts exercising appellate jurisdiction over them) have jurisdiction in connection with the Order. The parties submit to the jurisdiction of those courts.
- 12.4 No changes or variations to the Order is effective unless confirmed in writing by Molycop.
- 12.5 Except as set out in an Order, the Supplier must not permit or allow any person to exercise any of the Supplier's rights or perform any of the Supplier's obligations under the Order without the prior written consent of Molycop (which consent must not be unreasonably withheld).
- 12.6 If any person is appointed by the Supplier to perform any of the Supplier's obligations under the Order (which appointment must be in accordance with clause 12.5), whether by sub-contract or otherwise, the Supplier is liable to Molycop for all of the acts and omissions of such person.

**13 Compliance**

- 13.1 Supplier acknowledges that bribery and corruption are strictly prohibited under the Applicable Laws. Supplier warrants to Molycop that it will comply with, and will ensure that its employees, contractors and other agents comply with, all of the provisions of the Applicable Laws in connection with the conduct of Supplier and its business. Molycop may, without limiting any of its rights arising under an Order or otherwise and without any liability to Supplier or any of Supplier's affiliates, immediately terminate the Order if Molycop is satisfied, in its sole discretion that Supplier or any of its affiliates has failed to comply with an Applicable Law or this clause 13. For the purposes of this clause, "Applicable Laws" means any law applicable to Molycop, Supplier or the activities described in the Order that relates to the prohibition of bribery or corruption including, but not limited to, the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act 2010, the Canadian Criminal Code and the Canadian Corruption of Foreign Public Officials Act.
- 13.2 Supplier further warrants that neither Supplier nor any of its directors or officers is, nor to the knowledge of Supplier, are any of its employees, contractors or agents or any other person acting on behalf of the foregoing:
  - (a) listed on, or owned or controlled directly or indirectly, by any persons identified on, the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets

Control of the United States Department of the Treasury ("OFAC"), or owned or controlled directly or indirectly by any person for the benefit of any country or territory, person or entity with respect to which United States persons are prohibited from doing business under any law, regulation or executive order administered pursuant to the OFAC regulations or which are otherwise subject to any United States sanctions administered by OFAC, or subject to any similar sanctions or measures imposed by the United Nations, the European Union or the United Kingdom ("Sanctions") or any similar list maintained by the United Nations, the European Union or the United Kingdom;

- (b) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions; or
- (c) has in the past directly or indirectly supported or facilitated any person, government, entity or project subject to Sanctions, and this warranty continues to apply for the term of this Contract. Molycop may, without limiting any of its rights arising under the Order or otherwise and without any liability to Supplier or any of Supplier's affiliates, immediately terminate the Order if Supplier is in breach of this warranty at any time.

#### 14. Definitions

In the Order:

**"Completion Date"** means the date for completion of the Services specified in the Order;

**"Delivery"** or **"Delivered"** means delivery or delivered to the Delivery Point by the Delivery Means;

**"Delivery Date"** means the date for delivery specified in the Order or, if not so specified, the last day of the applicable lead time period,

**"Delivery Means"** means instructions for delivery specified in the Order;

**"Delivery Point"** means the unloading point specified in the Order;

**"Goods"** are specified in the Order, or if not so specified means the goods referred to in the Order or any goods that may be supplied in the course of performing the Services;

**"Molycop"** means the Molycop entity specified in the Order (or, where a business name is specified, the Molycop entity that carries on business under that entity is party to the Order, includes all or any of them as appropriate;

**"Order"** means these terms and conditions and the purchase order to which these terms and conditions are attached or referred to in, together with any scope of services;

**"Purchase Price"** means the amount specified in or calculated in accordance with the Order;

**"Scope of Services"** and any special conditions attached to these terms and conditions or referred to in that order form;

**"Services"** are specified in the Order, or if not so specified means the services referred to in the Order;

**"Services Location"** means the location for performance of the Services;

**"Supplier"** means the supplier of the Goods and provider of the Services; and

**"Warranties"** means the warranties provided by the Supplier to Molycop under these terms and conditions together with any warranties implied by law.