

Cement Australia Pty Ltd (ABN 75 104 053 474)  Geocycle SBF Pty Ltd (ABN 85 072 838 209)  Cement Australia Holdings Pty Ltd (ABN 99 001 085 561)  The Cornwall Coal Company Pty Ltd (ABN 48 009 485 518) (hereafter referred to as "CA")

**1. PURCHASE ORDER AND DELIVERY**

- 1.1 These terms and conditions ("Contract") apply where there is no express contract between CA and the Supplier for the supply of goods and/or services ("Products") to CA. Where there is an express contract it will apply to the exclusion of this Contract.
- 1.2 This Contract constitutes the entire agreement between the parties in respect of its subject matter and supersedes:
  - (a) All prior agreements, representations, warranties, promises, statements, negotiations and letters in respect of its subject matter; and
  - (b) Any proposed terms of supply issued by the Seller to CA in connection with the goods and/or services, either before or after the date of this Contract.
- 1.3 Subject to clause 1.4, the Supplier agrees to supply and CA agrees to accept the supply of Products as set out in the Purchase Order.
- 1.4 If the Purchase Order does not specify a quantity or value of Products to be purchased by CA, then CA will not be bound to purchase any specific or minimum quantity or value of Products. The Supplier must only invoice CA for the quantity of Products actually supplied to CA in response to a request from CA.
- 1.5 CA may withdraw the Purchase Order at any time prior to its acceptance by the Supplier.
- 1.6 The Supplier accepts a Purchase Order as soon as the first of the following occurs:
  - (a) The Supplier tells CA that it accepts the Purchase Order; or
  - (b) The Supplier delivers the Products the subject of the Purchase Order.
- 1.7 A Purchase Order which has been accepted by the Supplier can only be varied by mutual agreement or terminated by CA providing reasonable notice and making reasonable payment to the Supplier for all work performed prior to the date of termination.
- 1.8 The Supplier must deliver the Products to the delivery location specified in the Purchase Order on the delivery date (or earlier with CA's prior written consent).
- 1.9 If the Supplier cannot deliver the Products by the stipulated delivery date, CA may elect, at its reasonable discretion, to place the Products on back order for delivery on a later delivery date or cancel the Purchase Order and receive a full refund of any amounts paid to the Supplier.
- 1.10 Each delivery must be accompanied by:
  - (a) Delivery dockets marked with the Purchase Order number, a description of the Products, the quantity of Products, the Supplier's details including name, address, telephone number and facsimile number, the address of the delivery point and any other address to which the Products are to be supplied or charged, and the dispatch date and the dispatch number;
  - (b) A copy of the packing list; and
  - (c) Any other document that is required to be provided under any law or pursuant to a reasonable direction by CA, including any laws relating to work, health and safety requirements.
- 1.11 CA may reject any Products if CA (acting reasonably) considers any of the warranties made by the Supplier in this Contract are untrue or have been breached, or if the delivered Products do not conform with the Purchase Order. CA's acceptance of the Products will not waive, limit or prejudice any rights, powers or remedies CA may have as a result of a breach of any of the warranties, or any law.

**2. SAFETY HEALTH AND ENVIRONMENT (SHE)**

- 2.1 Where the Product refers to services being provided by the Supplier, then the following shall apply:
  - (a) The Supplier must comply with and ensure that its workers comply with WHS and Environmental Legislation, Codes of Practice and Australian Standards; and
  - (b) The Supplier shall complete the services under the CA SHE Management System unless otherwise stated. Any Supplier documentation required to be used on Sites must be reviewed by CA prior to the provision of the services.
- 2.2 Without limiting clause 2.1 above, the Supplier warrants that they will:
  - (a) Ensure that any worker of the Supplier who performs services:
    - (i) Is inducted by CA and any applicable authorities (e.g. rail, port);
    - (ii) Wears the personal protective equipment (PPE) appropriate

- for the services being provided;
  - (iii) Is competent to perform the services safely and has all legally required licenses and qualifications for such services;
  - (iv) Is provided with such information, training and supervision by the Supplier as is necessary to ensure that they perform the services safely;
  - (v) Complies with any CA Site rules and requirements or SHE related directions;
  - (vi) Does all things necessary to prevent harm, damage or nuisance to the environment, plant and equipment or infrastructure; and
  - (vii) Does not do anything which may place CA in breach of applicable WHS and Environmental laws and legal requirements (including, without limitation, statutory environmental duties and obligations imposed by environmental permits, consents, licenses or approvals) held by the Supplier or CA.
  - (b) Ensure that all plant, equipment and substances used in the provision of the services:
    - (i) Are as far as reasonably practicable, safe and without risk to health and safety or the environment;
    - (ii) In relation to plant, are registered, tested, operated and maintained in accordance with manufacturer, supplier and legislative requirements; and
    - (iii) In relation to substances, are compliant with all material safety data sheets (SDS), a copy of which must be maintained on Site by the Supplier.
  - (c) Ensure that prior to commencing each task, the Supplier provides CA with a draft risk assessment or a Safety Work Method Statement ("SWMS" for any high risk construction work) in relation to that task for review and then any amendments, prior to work continuing, and:
    - (i) Ensure that each risk assessment and SWMS and any revisions are read and understood by all relevant workers prior to the task commencing or continuing;
    - (ii) Acknowledge and agree that by reviewing a risk assessment or SWMS, CA does not warrant or represent that the risk assessment or SWMS is complete or accurate and that the Supplier must satisfy itself through its own investigations that the risk assessment or SWMS is appropriate for the relevant task.
  - (d) At its own cost, co-operate and comply with any SHE investigations or audits conducted by CA or its nominee and/or any inspector appointed under the WHS and Environmental Legislation.
- 2.3 If CA, in its reasonable discretion, determines that the Supplier is in breach of any of its obligations under this clause 2, CA may
- (a) Remove the Supplier's workers from Site, or
  - (b) Immediately suspend the provision of Products and the Supplier will have no claim for costs or an extension of time arising out of or in connection with any suspension under this clause.

**3. RISK, TITLE AND INSURANCE**

- 3.1 Risk in the Products will pass from the Supplier to CA on delivery of the Products.
- 3.2 Title in the Products passes to CA upon the earlier of delivery of the Products or payment being made to the Supplier for the Products. The Supplier must not claim or register any interest (including any security interest) in the Products.
- 3.3 The Supplier must have and maintain with a reputable insurer:
  - (a) A public and product liability insurance policy for at least \$20 million for any one event in respect of public liability and in the aggregate during any 12 month period in respect of products liability;
  - (b) A workers' compensation insurance policy and where applicable an employer liability insurance policy; and
  - (c) A professional indemnity insurance policy covering its acts and omissions of \$20 million (where applicable).

**4. PURCHASE PRICE AND INVOICING**

- 4.1 CA will pay the purchase price set out in the Purchase Order ("Price") for the Products. The Price will be in line with any agreed pricing between CA and the Supplier.

- 4.2 The Supplier must reference this Purchase Order number on its invoice. Failure to do this may result in extra time required to resolve and may cause payment delays. CA will not be liable for any interest or other costs where it is late in paying an invoice because of the Supplier's failure to comply with this clause.
- 4.3 CA will pay the Price to the Supplier no later than sixty-three (63) days after the end of month of date of the tax invoice unless otherwise agreed by CA, acting reasonably, in writing or stipulated in the relevant Purchase Order.
- 5. GST**
- 5.1 If GST is payable by the Supplier on a supply of Products to CA, then, to the extent that the consideration is expressed as an amount of money (the monetary consideration) for that supply and is not stated to include an amount in respect of GST, the Supplier may increase the monetary consideration by the applicable amount of GST and CA must pay that increased amount at the same time and to the same extent as any part of the monetary consideration that is payable to the Supplier in respect of the supply.
- 5.2 If an amount paid to the Supplier on account of GST under this clause is greater than the GST actually payable by the Supplier, and CA is liable to pay an amount of GST to the Commissioner on account of over claimed input tax credits, the Supplier indemnifies CA to the extent of input tax credits over claimed.
- 5.3 CA is not obliged to pay any GST to the Supplier unless a valid tax invoice has been issued.
- 5.4 Words defined in A New Tax System (Goods and Services Tax) Act 1999 ("GST Law") have the same meaning in clauses concerning GST.
- 5.5 If a person is a member of a GST group, references to GST for which the person is liable and to input tax credits to which the person is entitled include GST for which the representative member of the GST group is liable and input tax credits to which the representative member is entitled.
- 5.6 References to GST extend to any notional liability of any person for GST and to any amount which is treated as GST under the GST Law, and references to an input tax credit extend to any notional input tax credit to which any person is entitled.
- 6. WARRANTIES, INSURANCES AND REMEDIES**
- 6.1 The Supplier warrants as at the date of acceptance of the Purchase Order and again at delivery that:
- (a) The Supplier is the legal and beneficial owner of the Products and has the right to sell the Products to CA free from all mortgages, charges, encumbrances, liens and other third party rights and claims;
  - (b) The Products are new, free from defects or contamination, of merchantable quality and fit for the purposes for which the Products would ordinarily be used;
  - (c) The Products conform with the Supplier's specifications and any particular specifications agreed in writing between CA and the Supplier;
  - (d) The Products conform with any description and any sample provided to CA by or on behalf of the Supplier;
  - (e) The sale of the Products to CA will not infringe any law and the Supplier will comply with all applicable laws and regulations when providing the Products to CA including:
    - (i) Chain of Responsibility requirements under the Road Transport Reform (Compliance and Enforcement) Bill as amended from time to time;
    - (ii) Heavy Vehicle Laws including licensing and operation of heavy vehicles; mass, dimension and load restraint requirements; driving hours, speed and traffic requirements and vehicle standards and maintenance;
    - (iii) Privacy legislation including effective measures to safeguard any personal information;
  - (f) The Supplier has all licences (including labour hire licences) required by law to sell and deliver the Products to CA;
  - (g) The Supplier has read and agrees to comply with CA's Supplier Code of Conduct, available on CA's website; and
  - (h) The Products and the use or operation of the Products for the purpose for which the Products would ordinarily be used and any purpose agreed between CA and the Supplier will not infringe the intellectual property rights of any person.
- 6.2 If the Supplier breaches any warranties in respect of any Products or CA rejects any Products under clause 1.11 then, at CA's reasonable discretion and upon demand from CA, the Supplier must at the Supplier's cost and expense and within a reasonable time:
- (a) Repair or modify those Products to CA's reasonable satisfaction; or
  - (b) Replace those Products; or
  - (c) Refund any amount paid by CA to the Supplier in relation to those Products.
- 6.3 Nothing in clause 6.2 limits CA's other rights, powers or remedies against the Supplier, including recovering any loss or damage suffered as a result of any wilful or negligent act or omission of the Supplier.
- 6.4 CA will be responsible for unloading the Products unless the Products (including packaging) weigh more than 1 tonne or are shipped on pallets exceeding the Australian Standard pallet size or unless otherwise stipulated in the relevant Purchase Order.
- 7. CONFIDENTIALITY**
- 7.1 A Party must keep confidential the terms of the Purchase Order, any negotiations and information relating to the Purchase Order and any other information passing between the Parties (together, "Information"), unless the Information is in the public domain (other than by reason of a breach of this clause). However, a party may disclose Information to an officer, employee, agent or representative, Related Body Corporate (as that term is defined in the Corporations Act 2001), professional adviser, insurer or financier, provided in each case that the recipient has a need to know the Information. A party may also disclose Information where required by law, by order of a court or under the rules of a securities exchange on which the party or its ultimate holding company is listed.
- 7.2 If a Party becomes aware of a data breach involving the other Party's Information then they must immediately contact the other Party and provide all information relevant to that data breach and any potential or actual impact on the other Party.
- 8. FORCE MAJEURE**
- 8.1 Neither Party is liable for the failure to perform their obligations under this Contract to the extent and for so long as their performance is prevented or delayed because of an act of God (including lightning, storm, flood, fire, earthquake, explosion, cyclone, tidal wave, landslide, or adverse weather conditions), an act of public enemy, war, sabotage, blockage, revolution, riot, insurrection or civil commotion, or disruption to the supply of power, gas or water, provided in each case the event is not caused by and must be beyond the control of the Party whose performance is adversely affected by the event.
- 9. INDEMNITIES AND EXCLUSION OF CERTAIN LOSSES**
- 9.1 The Supplier will indemnify CA and its respective officers, employees and agents for all claims, costs or losses in respect of personal injury or death, or loss of or damage to any property arising out of or as a consequence of this Contract.
- 9.2 The indemnity in clause 9.1 shall be reduced proportionally to the extent that the act or omission of CA or its officers, employees or agents contributed to the claims, costs or losses.
- 9.3 The indemnities and assumptions of liability contained in this clause and elsewhere in this Contract will continue in full force and effect notwithstanding termination of this Contract whether by effluxion of time or otherwise.
- 10. ASSIGNMENT AND SUB-CONTRACTING**
- 10.1 The Supplier will not sub-contract the whole or any part of this Contract without prior written consent of CA which will not be unreasonably withheld.
- 10.2 If such consent is granted by CA, it shall not relieve the Supplier from any liability or obligations under this Contract and the Supplier shall be responsible for the acts, omissions, defaults or negligence of any sub-contractor, its agents or workman as fully as if they were the acts, omissions, defaults or negligence of the Supplier.
- 11. GENERAL**
- 11.1 If a provision of this Contract would, but for this clause, be unenforceable the provision must be read down to the extent necessary to avoid that result or, if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of this Contract.
- 11.2 No rule of construction applies to the disadvantage of a party because that party put forward this Contract or any portion of it.
- 11.3 A reference to a law includes any act, regulation, statute, by-law, ordinance or proclamation whether Federal, State or Local.
- 11.4 No party may disclose information of the kind referred to in s.275(1) of the Personal Property Securities Act 2009 (PPSA) (except where required by s.275(7) of the PPSA). The parties agree not to authorise the disclosure of such information. Nothing in sections 120, 126, 128 or Division 6 of Part 4.3 of the PPSA applies to this Contract or any security under this Contract.
- 11.5 The law of this Contract is the law in the State or Territory in which the Goods are delivered. The parties irrevocably and unconditionally submit themselves to the exclusive jurisdiction of the courts of that location.