

1. Definitions

In these Terms and Conditions:

Agreement means the Purchase Order, these Terms and Conditions, and any other documents specified in the Purchase Order;

Claim means any claim, action, suit, demand, proceeding, notice, litigation, investigation, or judgment whether based in contract, tort, under statute or otherwise;

Company means Talison Lithium Pty Ltd, or its related corporation named in the Purchase Order, and its successors and permitted assigns;

Defects means any part of the Goods or Services that do not conform with clause 7(a);

Defects Liability Period is defined in clause 7(a)(iv);

Delivery Date means the date for delivery of the Goods or performance of the Services stated in the Purchase Order;

Delivery Point means the delivery point stated in the Purchase Order;

Dispute means any dispute or difference between the Supplier and the Company under this Agreement or in connection with the subject matter of this Agreement;

Employee Claims means any claim in respect of any death, injury or occupational disease of any person employed or engaged by the Supplier which arises out of, or is caused by, the supply or non-supply of the Goods and any performance or non-performance of Services by the Supplier;

Force Majeure Event is defined in clause 17(e);

Goods means the goods described in the Purchase Order and all goods, materials, supplies, equipment or other things to be supplied as part of the Services to be provided by the Supplier to the Company pursuant to this Agreement;

GST is defined in clause 19(e);

Intellectual Property means any patent, registered design, trademark or name, proprietary systems or information, copyright or other right which is protected or registered, or capable of protection or registration;

Price means the amount specified in the Purchase Order for the provision of Goods and/or Services;

Purchase Order means the purchase order issued by the Company to the Supplier in respect of the supply and delivery of the Goods and/or Services;

Services means the services described in the Purchase Order and the work to be performed by the Supplier as specified in this Agreement and includes the supply, hire, or provision of any Goods and any and all other work, additions, substitutions and variations required by the Company as specified in any subsequent Purchase Order;

Site means the Company's premises or other place (if any) designated in the Purchase Order;

Specification means the specification of the Goods and/or Services set out in the Purchase Order;

Supplier means the supplier named in the Purchase Order;

Terms and Conditions means the terms and conditions set out in this document; and

Third Party Claim means any Claim in respect of:

- (a) loss or destruction of, or injury or damage to, or loss of use of any real or personal property;
- (b) any personal injury to or death of any person, arising out of, or caused by, the supply or non-supply of the Goods and any performance or non-performance of Services by the Supplier.

2. Terms and Conditions

- (a) Subject to clause 2(b), these Terms and Conditions apply to the purchase of Goods and/or Services by the Company to the exclusion of all other terms and conditions, including any terms and conditions which the Supplier purports to apply or which are endorsed on any correspondence or documents issued by the Supplier irrespective of their date of communication to the Company.
- (b) The terms and conditions of any separately negotiated written contract between the parties in respect of the Goods and

Services which is properly executed by the Company will supersede these Terms and Conditions.

- (c) To the extent of any inconsistency between these Terms and Conditions and the Purchase Order, the Purchase Order will prevail.

3. Supply of Goods and/or Services

- (a) The Supplier must supply the Goods and Services to the Company in accordance with this Agreement.
- (b) The Supplier must make the necessary arrangements for obtaining access, approvals, equipment and facilities necessary for the supply of the Goods and performance of the Services.

4. Delivery

- (a) The Supplier must deliver the Goods to the Delivery Point, and perform the Services, by the Delivery Date(s) unless the Supplier is otherwise notified in writing by the Company. The Supplier must immediately acknowledge receipt of such notice. The Supplier must strictly comply with any direction given to it by the Company in relation to the manner of performance of the Services or delivery of the Goods to the Delivery Point.
- (b) Should it become apparent to the Supplier that the Delivery Date(s) for the performance of the Services will not be met, the Supplier must immediately notify the Company when performance will occur. If complete performance does not occur on the Delivery Date(s), then unless the Company has agreed in writing to vary the date for delivery, the Company has the right to terminate the Agreement without prejudice to its rights of action for breach of contract against the Supplier.

5. Payment and Price

- (a) The Supplier must submit to the Company on the Delivery Date, in the case of Goods, or within 7 days of the end of each calendar month, in the case of Services, an invoice setting out the Purchase Order number and amount owing by the Company.
- (b) Invoices submitted by the Supplier must be supported by such records and other documents as are reasonable to substantiate the amounts claimed by the Supplier.
- (c) The Company will make payment within 30 days of the end of the month of the invoice.
- (d) The Company reserves the right to withhold payment until all Goods have been tested and accepted by the Company or where there is any Claim by the Company against the Supplier.
- (e) If the Company bona fide believes that there is a Dispute as to the amount of an invoice, the Company will not be required to pay the amount in Dispute until the Dispute is resolved.
- (f) The Company is not obliged to pay for any Services not delivered or performed in accordance with this Agreement or make payment against any invoice or claim for payment which does not show the Purchase Order number, nor for goods or services not shown in the Purchase Order.
- (g) Unless stated otherwise in the Purchase Order, the prices shown in the Purchase Order are in Australian currency, firm and not subject to adjustment, and exclusive of GST.

6. Title and risk

- (a) The Supplier warrants that it has good title to the Goods and that the Goods are free from any encumbrances, liens or any third party claims whatsoever.
- (b) Title to all Goods passes to the Company on delivery or, where payment is made by the Company before delivery, at the time of payment.
- (c) Transfer of the title will not affect the rights of the Company as stated in the Agreement.
- (d) Risk in the Goods will be with the Supplier until the delivery of the Goods and acceptance by the Company at the Delivery Point.

7. Warranty

- (a) Without limiting any other warranty or obligation under the Agreement, the Supplier warrants as follows in relation to the Goods and Services and each part of the Goods and Services:
 - (i) the Services must be performed and any Goods must be manufactured to the standard of care, skill and diligence that would normally be expected of a reputable and competent organisation providing goods and services similar to the Goods or Services;

- (ii) the Services will be performed by the person(s) specified to perform the Services in the Purchase Order (if any);
 - (iii) the Goods are of merchantable quality, fit for the purpose intended and free of defects in materials, workmanship and design;
 - (iv) other than in respect of used Goods, there will be no defect or failure or malfunction of the Goods and Services (except to the extent attributable to wrongful use or failure to maintain) during a period of 12 months from the Delivery Date(s) (**Defects Liability Period**);
 - (v) the Goods and Services will comply with the Specification and all applicable Australian standards and laws;
 - (vi) the Goods will be new unless specified otherwise in the Purchase Order;
 - (vii) the Goods will be appropriately packaged to protect against damage during handling, transit and storage; and
 - (viii) the sale or use of the Goods or Services will not infringe or contribute to the infringement of any Intellectual Property rights.
- (b) The Company is not liable to pay the Supplier for any Goods or Services that contain Defects until the Defects have been adequately remedied.
- (c) At the option of the Company, and at no cost to the Company, the Supplier will at its own cost and expense, as soon as reasonably practicable upon receipt of notice that Goods or Services contain Defects, either re perform, replace or repair and make good the Goods or Services or part thereof found to be defective.
- (d) With respect of any remedial work of Defects performed by the Supplier under this clause 7, the Defects Liability Period will be extended for a period of 12 months from the date the remedial work is completed.
- (e) The Company's right to require remedial work of Defects is in addition to and not in lieu of any other remedies it may have at law or in equity.
- (f) The Supplier must ensure any warranty offered by the manufacturer of the Goods or part of them is enforceable by the Company.

8. Intellectual Property rights

- (a) The Company will retain sole ownership of all Intellectual Property rights in all documents, materials and inventions which are generated, created or acquired (excluding use under licence from a third party) by the Supplier or the Supplier's personnel directly in connection with the performance of the Services under this Agreement (**Relevant Intellectual Property Rights**) for its own use and benefit in any manner it sees fit without any further fee payable to or consent required from the Supplier.
- (b) The Supplier will assign or transfer and will procure that the Supplier's personnel assign or transfer all Relevant Intellectual Property Rights to the Company and sign all such documents and do all things necessary in order to give effect to this clause 8.
- (c) Each party will continue to retain sole ownership of all Intellectual Property rights owned by that party before the provision of the Goods or Services commenced, or any Intellectual Property Rights acquired or developed by that party independently of the performance of this Agreement but used in the performance of this Agreement (**Background Intellectual Property**).
- (d) Each party grants to the other party a perpetual, non-exclusive royalty-free licence to utilise its Background Intellectual Property to the extent reasonably necessary to perform this Agreement and for the Company to obtain the benefit of the Goods and Services.

9. Compliance with applicable laws

- (a) The Supplier must comply with and ensure its personnel comply with all applicable laws and relevant standards published by the Standards Association of Australia that relate in any way to the supply of the Goods or performance of Services under this Agreement.
- (b) The Supplier must defend, indemnify and keep indemnified the Company from and against all claims arising out of the Supplier's failure to comply with all applicable laws whilst performing this Agreement.

- (c) The operation of the Sale of Goods (Vienna Convention) Act 1986 (WA) is expressly excluded from any agreement entered into under this Agreement.

10. Environmental Protection, Health and Safety

- (a) The Supplier must strictly comply with, and ensure that all its personnel strictly comply with all applicable laws in relation to the protection of the environment and whilst on Site, all environmental protection procedures notified to the Supplier by the Company from time to time.
- (b) The Supplier must strictly comply with, and ensure that its personnel strictly comply with, all applicable laws in relation to health and safety and whilst on Site, the Supplier must comply with, and ensure that its personnel comply with, the Company's health and safety conditions notified to the Supplier by the Company from time to time and any directions given to them whilst on Site.

11. Insurance

Supplier must insure the Goods for their replacement value until delivery of the Goods to the Delivery Point. If Supplier is required to be on Site in connection with the performance of the Services, Supplier must take out such insurances as the Company reasonably requires.

12. Confidentiality

The Supplier must keep all information relating to the Company, the Services, the Agreement and the operations of the Company strictly confidential.

13. Representatives

The Company and the Supplier must each appoint a person to act as its representative. Unless already identified on the Purchase Order, the parties must give written notice to each other of the name of the person so appointed. The person will have authority to act on their behalf for all purposes in connection with this Agreement.

14. Indemnity

The Supplier will be liable for, and will indemnify the Company and its personnel against all liabilities arising out of or in connection with:

- (a) any Third Party Claims;
- (b) the performance of Services under this Agreement;
- (c) the presence of the Supplier or any of its personnel on or about any Company premises; or
- (d) any Employee Claims.

15. Consequential Loss Limitation

Notwithstanding anything in this Agreement to the contrary, neither the Company nor the Supplier will be liable to each other for any consequential loss or damages of any nature whatsoever whether based on contract, warranty, tort (including negligence) or otherwise including (but not limited to) those arising out of delay, loss of product, loss of production, business interruption, loss of revenue or loss of profits howsoever arising and the Company and the Supplier agree that such loss or damages will not be claimed as direct loss or damage.

16. Disputes

If there is any Dispute between the parties concerning or arising out of this Agreement, the parties must as a condition precedent to the commencement of any proceedings, meet to attempt to resolve the Dispute. If the parties fail to agree within 30 days after first meeting, either party may commence legal proceedings to resolve the Dispute.

17. Force Majeure

- (a) If a Force Majeure Event occurs:
 - (i) the party affected by the Force Majeure Event will submit a notice to the other party as soon as practicable of the Force Majeure Event and the extent to which that party is unable to comply with its obligations;
 - (ii) the obligations of a party under this Agreement will be suspended to the extent that it is wholly or partially precluded from complying with its obligations under this Agreement by the Force Majeure Event;
 - (iii) the affected party will use all reasonable diligence and endeavours to seek remedy, avoid or overcome the Force Majeure Event as quickly as practicable and otherwise seek to minimise any delays which may result from the Force Majeure Event;

- (iv) the affected party will promptly on the cessation of the Force Majeure Event notify the other party of the cessation and recommence performance of its obligations under this Agreement; and
 - (v) if the affected party is the Supplier, an amendment to the Delivery Date shall be the Supplier's sole remedy for any delays caused by the Force Majeure Event. The Supplier is not entitled to any increases in Price, damages, expenses or costs in relation to the effect of the Force Majeure Event.
- (b) The parties acknowledge that in the event of an occurrence of a Force Majeure Event affecting the Supplier, the Company will be entitled to have the Goods supplied and Services performed by a person other than the Supplier during the period of the occurrence of the Force Majeure Event.
- (c) Either party may terminate this Agreement by giving written Notice to the other party if a Force Majeure Event continues for a period of six (6) months after a written notice is given under clause 17(a)(i) in respect of that Force Majeure Event.
- (d) If this Agreement is terminated pursuant to clause 17(c):
- (i) the Company (without prejudice to any other rights or remedies it has) must pay the Supplier in accordance with clause 5, after receipt of an invoice, of the portion of the Price due to the Supplier for the Goods delivered and Services performed in the relevant period up to the date of termination; and
 - (ii) the Supplier is not entitled to any other Claim.
- (e) In this clause 17, "**Force Majeure Event**" means any occurrence or event which delays or prevents a party performing its obligations under this Agreement which are beyond the reasonable control on the part of the party affected and which, by the exercise of reasonable diligence, proper precautions and reasonable foresight, the affected party is unable to reasonably prevent or provide against provided that an inability by a party to pay any money due under this Agreement cannot of itself constitute a Force Majeure Event.

18. Termination

- (a) If the Supplier:
- (i) becomes insolvent or commits an act of bankruptcy;
 - (ii) fails to perform the Services by the Delivery Date(s);
 - (iii) is in breach of any of these Terms and Conditions;
 - (iv) has neglected or omitted to carry out any directions of the Company in respect of the Agreement; or
 - (v) has intimated that it is unwilling or unable to complete its obligations under the Agreement,

the Company may terminate the Agreement without prejudice to its rights to recover damages or any other rights and make such other arrangements as the Company may consider necessary. Any additional expenditure incurred by Company in connection therewith will be a debt due from the Supplier to the Company and payable on demand.

- (b) The Company may terminate the Agreement at its absolute discretion without assigning any reason for the termination and under such circumstances the Company will pay the Supplier for any Goods and Services performed prior to the date of termination. The Company's liability to Supplier must under no circumstances exceed the amount for the Goods and Services otherwise payable under this Agreement.
- (c) The Company must pay the Supplier all costs reasonably incurred by the Supplier up to the time of termination, where it terminates under clause 18(b). The Supplier must provide all necessary supporting and substantiating documentation to evidence the costs incurred. Any Services so paid for, whether completed or not, will become the property of the Company.

19. GST

- (a) The rates and prices under this Agreement do not include any amount for GST.
- (b) If a supply under this Agreement is subject to GST, the recipient must pay to the supplier an additional amount equal to the amount of the consideration multiplied by the rate at which GST is imposed in respect of the supply.
- (c) The additional amount is payable at the same time as the consideration for the supply is payable or is to be provided. However, the additional amount need not be paid until the supplier gives the recipient a tax invoice.

- (d) If a party is entitled to be reimbursed or indemnified under the Agreement, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an input tax credit.
- (e) The terms "consideration", "GST", "input tax credit", "recipient", "supply" and "tax invoice" used in this clause 19 have the same meaning as in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

20. Notices

A notice served under this Agreement will be deemed to have been properly served if sent in writing to the address of the recipient as specified in the Purchase Order or otherwise notified by the recipient by prepaid mail, personally delivered, facsimile (or e-mail).

21. Set off

Without prejudice to any other rights, the Company may deduct from any amounts which may be, or become, payable to the Supplier, any money which may be or become payable from the Supplier to the Company including, without limitation, amounts which are stated in this Agreement to be debts due and payable by the Supplier to the Company.

22. Independent contractor

The relationship between the Company and Supplier is that of principal and independent contractor.

23. Assignment

The Supplier may not assign the whole or any part of this Agreement without the prior approval of the Company.

24. Subcontracting

- (a) The Supplier must not engage any subcontractor to supply the Goods or perform the Services without the prior written consent of the Company.
- (b) The Supplier will ensure that any subcontractor it engages in connection with this Agreement complies with all of the terms and conditions of this Agreement.
- (c) The engagement of a subcontractor does not relieve the Supplier from any of its obligations under this Agreement.
- (d) The Supplier will indemnify and keep indemnified the Company against any loss or damage suffered by the Company arising out of the performance, purported performance or non-performance by any of its subcontractors.
- (e) The subcontractor's performance, including the subcontractor's acts and omissions shall be deemed to be the performance, act and omission of the Supplier.

25. Governing Law and jurisdiction

This Agreement is governed by the laws of the State of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.