

GENERAL TERMS AND CONDITIONS FOR A PURCHASE ORDER

These are the General Terms and Conditions governing, and incorporated into, a Purchase Order. No other terms or conditions will apply to a Purchase Order unless they have been expressly agreed to in writing by Alcoa.

1. Definitions and Interpretation

1.1 Definitions

In the Contract unless otherwise indicated:

Additional Standards and Policies means additional standards and or policies that apply to the Supplier providing the Goods and Services under the Contract as set out in the Purchase Order.

Affected Goods and Services has the meaning given in clause 14.1.

Affected Party has the meaning given in clause 25.1(a)(i).

Alcoa is defined in the Contract Details.

Alcoa's Environmental, Health and Safety Standards means Alcoa's environmental, health and safety documents set out in the Contractors Manual as updated from time to time, other documents as provided to the Supplier from time to time and includes any other document referred to in those documents.

Alcoa's Equipment means any equipment that is not the Supplier's Equipment, which is provided at any time by Alcoa to the Supplier for providing the Goods and Services.

Alcoa Miscellaneous Shipping Advice means the Alcoa procedure for shipping items.

Alcoa's Policies means the policies and standards set out in Alcoa's Environmental Health and Safety Standards, Contractors Manual, Additional Standards and Policies, Alcoa Supplier Standards and any other Alcoa policies and standards applicable to the Goods and Services.

Alcoa Specific Goods means those Goods, identified as Alcoa Specific Goods in the Purchase Order, owned and held by the Supplier to be potentially supplied to Alcoa under the Contract, which either carry the Alcoa logo or are manufactured uniquely for Alcoa's needs, pursuant to a Purchase Order.

Alcoa Supplier Standards, as updated from time to time, which are available at:

http://www.alcoa.com/global/en/who-we-are/ethicscompliance/pdf/Supplier_Standards.pdf **Audit** has the meaning given in clause 34.2(a).

Business Day means a day other than a Saturday, Sunday or public holiday as applicable in the relevant State in which the Site is located.

Civil Liability Legislation means:

- (i) *Civil Liability Act 2002* (NSW) – Part 4;
- (ii) *Civil Liability Act 2002* (WA) – Part 1F;
- (iii) *Wrongs Act 1958* (Vic) – Part IVAA; and
- (iv) *Proportionate Liability Act 2005* (NT).

Claim includes any written action, suit, proceeding, application or demand of any kind. **Confidential Information** means any information or Documentation (regardless of its form):

- (i) that is by its nature confidential to the Discloser;

- (ii) that is designated by the Discloser as confidential; or
- (iii) the Recipient or its Personnel knows, or ought to know, is confidential to the Discloser, and includes:

- (A) any documents, drawings, sketches or designs, materials, samples or prototypes and software (including any source code); and
- (B) technical, commercial, and financial information disclosed or supplied by the Discloser to the Recipient.

Conflict of Interest has the meaning given in clause 31(a).

Contamination means the presence of a substance in, on or under water or land at a concentration above the concentration at which the substance is normally present in the same locality, being a concentration that presents, or has the potential to present, a risk of harm to human health or the Environment.

Contract has the meaning given to that term in clause 2.1.

Contract Details means the "Contract Details" at the start of this document and includes the Execution Page.

Contract Finish Date means the date the Contract completes, as set out in the Contract Details.

Contract IP means any Intellectual Property that is created as a result of the performance of the obligations under the Contract.

Contract Review means the review process under the Contract set out in the Purchase Order.

Contract Start Date means the date the Contract commences as set out in the Contract Details.

Contractors Manual means the Contractors Manual for the applicable Site, as required and as updated from time to time, available through the Safety Qualification process.

Default means a breach of any term or condition of the Contract.

Default Notice means a notice issued pursuant to clauses 23.1 or 24.1 in accordance with clause 33.

Delivery Date means the date for delivery of the Goods specified in a Purchase Order or as Alcoa may otherwise notify the Supplier in writing.

Delivery Point means the delivery point for the Goods specified in a Purchase Order or as Alcoa may otherwise notify the Supplier in writing.

Discloser means the Party giving information, and if the Discloser is Alcoa, includes any member of the Group.

Dispute has the meaning given in clause 19.1(a).

Dispute Notice has the meaning given in clause 19.1(a).

Dispute Resolution Process means the dispute resolution process in clause 19. **Documentation** includes contracts, scopes of work, plans, designs, patterns, drawings, calculations, engineering information, data, specifications, sketches, notes, samples, reports, maps, accounts, timesheets, invoices, software, source code, manuals and any other material specified in, or created as a result of the performance of the obligations under the Contract (and whether in tangible or electronic form).

Encumbrance includes a mortgage, charge, pledge, lien, hypothecation or title retention arrangement or an agreement to create any of them or to allow any of them to exist.

Environment means living things, their physical and social surroundings and interactions between all of these.

Environmental Harm means any serious or material harm,

damage or detriment to the Environment which is not Pollution or Contamination.

Excluded Loss means any redundancy costs, third party Liabilities, penalties, financing costs, costs of a capital nature, loss of revenue, loss of profit or any other loss which is indirect or remote, at the time of execution of the Contract or for any loss which is unforeseeable.

Existing IP means the Intellectual Property of a Party that:

- (i) is in existence at the date of signing the Contract; or
- (ii) comes into existence after the date of signing the Contract otherwise than in connection with the Contract, and is necessary for, or used in the performance of, that Party's obligations under the Contract. **Force Majeure Event** has the meaning given in clause 25.1(a).

General Terms and Conditions of Supply means these "General Terms and Conditions of Supply".

Goods means the goods set out in the Purchase Order.

Government Agency means any federal, state or local government or any ministry, department, court, commission, board, agency, institution or similar entity of that government.

Government Authorisations means all approvals, consents, authorisations, permits, clearances, licences, or other requirements that are required from any Government Agency for the Supplier to perform the Supplier's obligations under the Contract. **Governmental Notice** means any notice, direction, order, demand or other requirement to take any action or refrain from taking any action from any Government Agency, whether written, oral or otherwise. **Group** means:

- (i) any of Alcoa's Related Bodies Corporate;
- (ii) any subsidiary of Alcoa Corporation; and
- (iii) if applicable, any other entity as described in the Contract Details.

GST means Goods and Services Tax, as defined in *the A New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act), and includes:

- (i) an amount an entity is notionally liable to pay as Goods and Services Tax or an amount which is treated as Goods and Services Tax under the GST Act; and
- (ii) any replacement or subsequently introduced similar tax.

Hazardous Substance means any substance with potential to cause harm to persons, property or the Environment because of the chemical, physical and/or biological properties of the substance including, without limitation, asbestos and lead.

Insolvency Event means, in relation to a Party, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the *Corporations Act 2001* (Cth) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the *Corporations Act 2001* (Cth) to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the *Corporations Act 2001* (Cth)), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any

analogous event under the law of any applicable jurisdiction.

Intellectual Property means all present and future rights conferred by statute, common law, equity or otherwise by law, anywhere in the world in or in relation to copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions, patterns and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields whether or not registrable, registered or patentable and includes moral rights and all other intellectual property rights as defined by Article 2 of the World Intellectual Property Organisation Convention of July 1967.

Key Personnel means the specific individuals set out in the Purchase Order and any individual notified to Alcoa under clause 6.2.

Latent Defect means a deficiency in materials, workmanship or design not discovered by Alcoa on inspection of the Goods under clause 11.3 that causes a failure not due to normal wear and tear of the Goods.

Law means laws, acts, ordinances, rules, regulations, other delegated legislation, codes and the requirements and directions of any relevant Government Agency, in force from time to time.

Liabilities means damages, Claims, losses, liabilities, costs and expenses of any kind.

Non-Conformance has the meaning given in clause 11.2.

Notice Period has the meaning given in clause 22.1(a).

Out-of-Pocket Costs means only those costs incurred by the Supplier solely as a result of the Contract and that the Supplier was unable to otherwise recover or mitigate, and includes the Supplier's cost of removing the Supplier's Equipment from the Site.

Party means either Alcoa or the Supplier or both Parties as the context may require.

Performance Standards means the standards that apply to the Supplier's performance of its obligations set out in the Purchase Order.

Personal Information means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether or not the information or opinion is true or recorded in a material form or not.

Personnel means:

- (i) in relation to the Supplier, any of the Supplier's employees, Subcontractors, agents and representatives involved either directly or indirectly in providing the Goods and Services;
- (ii) in relation to Alcoa or a member of the Group, any of its officers, employees, agents or representatives; and
- (iii) in relation to a Subcontractor, any of its employees, agents or representatives involved either directly or indirectly in providing the Goods and Services under the Contract.

Pollution means any alteration of the Environment to its detriment or degradation which involves the release of any substance, the discharge of waste, an emission of noise, odour or electromagnetic radiation or the transmission of electromagnetic radiation.

Price means the amount payable for the Goods and Services under the Contract as specified in the Purchase Order.

Price Adjustment Mechanism means a mechanism for adjusting the Price during the Term, (if any) specified in the Purchase Order.

Privacy Policy means Alcoa's privacy policy (as updated from time to time) which is available at <http://www.alcoa.com/australia/en/general/privacy.asp>

Purchase Order means a commercial document which may be issued by Alcoa to the Supplier and as a minimum will specify type/description of the required Goods and Services, quantities, ship to address, due date and purchase order total.

Recipient means the Party to whom information is given and if the Recipient is Alcoa includes any member of the Group.

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth).

Remedial Work means any work to remediate land affected by Pollution, Contamination or Environmental Harm, including to:

- (i) remove, destroy or reduce;
- (ii) dispose of or disperse;
- (iii) contain or encapsulate;
- (iv) treat;
- (v) manage (including restrict or prohibit access to or use of the affected land); or (vi) abate or control, any Pollution, Contamination or Environmental Harm and to remove or minimise any risk or potential risk it presents to human health or the Environment.

Representative means a Party's authorised representative as set out in the Contract Details.

Safety Qualification means the assessment, induction and training that a Supplier is required to complete and sustain in order to be permitted to work on Alcoa's Site as specified by Alcoa.

Scope of Goods and Services means the scope of goods and services as specified in the Purchase Order and includes the Specifications.

Services means the services set out in the Purchase Order.

Service Payment Request means a request, submitted by the Supplier through the Alcoa Services Payment Request (SPR) system, for payment of Services provided in accordance with the Contract.

Site means the site or sites specified in the Purchase Order.

Specifications means Alcoa's requirements for either or both the Goods and Services specified in the Purchase Order.

Subcontractor means any third party person, persons or entity engaged or employed by the Supplier to perform any of the Supplier's obligations under the Contract.

Supplier is defined in the Contract Details.

Supplier Insurances has the meaning given in clause 18.2(a).

Supplier's Equipment means any equipment owned or leased by the Supplier, or any substituted equipment, which is provided at any time by the Supplier for the purposes of the Contract.

Suspension Notice has the meaning given in clause 16(a).

Taxes means any tax, levy, duty, charge, deduction or withholding, however it is described, that is imposed by Law or by a Government Agency, together with any related interest, penalty, fine or other charge.

Term has the meaning given in clause 21.

Termination Notice has the meaning given in clause 22.1(a).

TRACE Registered Code means the unique TRACE registered access code (TRAC) issued to the Supplier by TRACE, Inc.

Variation has the meaning given in clause 4(a).

1.2 Interpretation

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting the Contract, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) measurements of physical quantities shall be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960* (Cth); and
 - (iii) monetary amounts and payments is to amounts in Australian dollars unless otherwise expressly stated.
- (b) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (c) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (d) The words "pay from receipt", "Service Payment Request" and "manual invoice" have the same meaning as "invoice" for the purpose of invoicing.
- (e) Except for any specified date or schedule for the delivery of the Scope of Goods and Services, if the day on or by which a person must do something under the Contract is not a Business Day the person must do it immediately on the next Business Day.

2. The Contract

2.1 The Contract

The Parties agrees that the **Contract** consists of:

- (a) the Contract Details (excluding the "Summary of Goods and Services" which is provided for convenience only);
- (b) the General Terms and Conditions of Supply;
- (c) Alcoa's Policies;
- (d) the Purchase Orders; and
- (e) any other document which is attached to, or incorporated by reference in, the Contract.

2.2 Order of precedence

If there is an inconsistency between the Contract documents listed in clause 2.1, the document listed earlier prevails to the extent of the inconsistency.

2.3 Entire Agreement

- (a) The Contract contains the entire agreement between the Parties as to the subject matter of the Contract.
- (b) The Supplier's standard terms, wherever they may be contained, are not agreed and will not affect Alcoa's rights or the Supplier's obligations under the Contract.
- (c) The Supplier agrees that by entering into the Contract:

- (i) the Supplier does not, except to the extent expressly stated in the Contract, rely on any representation, warranty, condition or other conduct which Alcoa or any of Alcoa's Personnel or any Group member or its Personnel may have made; and
- (ii) the Supplier has read the Contract and has made all necessary and independent inquiries in relation to all matters relevant to the entry into, and the performance of the Supplier's obligations under, the Contract.

3. Scope of Goods and Services

- (a) The Supplier agrees to provide the Goods and Services to Alcoa during the Term in accordance with the Contract and the Purchase Order.
- (b) If Alcoa wants to purchase the Goods and Services from the Supplier, Alcoa will issue a Purchase Order to the Supplier prior to the Supplier providing the Goods and Services.
- (c) Unless specified otherwise in this Contract, the Purchase Order shall be the sole authorisation to commence work.

4. Variations

- (a) If, at any time during the Term, a Party wishes to vary any aspect of the Scope of Goods and Services (**Variation**), that Party may submit a written request for the Variation to the other Party's Representative.
- (b) Within 10 Business Days after receiving a written request, the other Party must notify the Party requesting the Variation whether it accepts or rejects the Variation.
- (c) A Variation is not valid or binding unless agreed in writing and signed by the Parties.
- (d) If the Parties do not agree in accordance with clause 4(c) or a Party does not respond to the Variation request, the Variation request will be deemed to have been rejected and both Parties must continue to perform their obligations under the Contract.

5. Supplier's representations, warranties and obligations

5.1 Supplier's power and authorisations

The Supplier represents and warrants that:

- (a) it has full legal capacity and power to enter into the Contract and provide the Goods and Services;
- (b) it shall maintain all Government Authorisations necessary to provide the Goods and Services.

5.2 Supplier's general obligations

- (a) The Supplier must provide the Goods and Services and do everything necessary, at its own cost, to meet the requirements of the Contract, which includes:
 - (i) providing (or causing to be provided) all services, supervision, testing, labour, Personnel, materials, supplies and equipment necessary to provide the Goods and Services in accordance with the Contract;
 - (ii) exercising the degree of diligence, skill, care and foresight normally exercised by a similarly qualified and competent supplier providing comparable goods and services;
 - (iii) providing the Goods and Services by the times set out in the Contract and, if the Contract does not set out a time, then in a timely manner;

- (iv) complying with Alcoa's reasonable directions and orders and attending and participating in meetings, including Contract Reviews with Alcoa as reasonably required;
 - (v) providing any information (in writing if required) in relation to any aspect of the Goods and Services to Alcoa as reasonably required;
 - (vi) coordinating all means, methods, techniques, sequences, procedures and controls in connection with providing the Goods and Services;
 - (vii) maintaining competitive pricing during the Term for the Goods and Services whose Price Alcoa may periodically benchmark during the Term;
 - (viii) meeting the Performance Standards specified in the Purchase Order; and
 - (ix) not delaying or disrupting Alcoa's activities or those of any of Alcoa's suppliers or contractors or their employees, agents or representatives (whether employed or engaged by Alcoa or not) on the Site.
- (b) The Supplier must do everything necessary, at its own cost, to keep Alcoa's Equipment in good working condition.
 - (c) The Supplier is responsible for all loss of and damage to any of Alcoa's Equipment while it is in the Supplier's possession or control except to the extent to which the loss or damage is due to normal wear and tear.
 - (d) The Supplier must not remove Alcoa Equipment from any Site unless the Supplier submits an Alcoa Miscellaneous Shipping Advice to Alcoa and the Alcoa Representative provides its approval in writing.

5.3 Supplier's obligations with respect to the Services

Without limiting any other obligation that the Supplier may have under the Contract or at Law, in providing the Services, the Supplier must ensure:

- (a) the Services comply with the Contract and otherwise comply with the Purchase Order;
- (b) the Services (and any Goods or materials provided as part of the Services) are fit for the purpose required by Alcoa and if no purpose is stated, for the purpose which can be reasonably inferred; and
- (c) it performs any tasks, functions or responsibilities not specifically described in the Scope of Goods and Services which are necessary or incidental to the proper provision of the Services (and these are deemed to be included in the Services).

5.4 Supplier obligations with respect to the Goods

- (a) Without limiting any other obligation that the Supplier may have under the Contract or at Law, in providing the Goods, the Supplier must ensure:
 - (i) the Goods comply with the Contract, conform to any samples supplied to the Supplier and are otherwise fit for the purpose for which the Goods are commonly used;
 - (ii) the Goods are new when delivered to Alcoa (unless otherwise specified);
 - (iii) the Goods are of acceptable quality and are free from any defects including in design;

- (iv) it has good and marketable title to the Goods, and the Goods are free from all Encumbrances;
 - (v) it can deliver the Goods and on delivery, no third party will have a beneficial interest in the Goods; and
 - (vi) it can provide to Alcoa all manufacturer's, importer's and any third party warranties in respect of the Goods.
- (b) If the Supplier cannot provide the manufacturer's, importer's and any third party warranties to Alcoa, the Supplier must hold them on trust for Alcoa's benefit and take all reasonable action required by Alcoa to enforce those warranties.
- (c) The Supplier must take all reasonable action required by Alcoa to enforce the manufacturer's, importer's and third party's warranties, or assist Alcoa to enforce those warranties, during the period of the warranties obtained by the Supplier for the benefit of Alcoa.

6. Supplier's Personnel, Subcontractors and Equipment

6.1 Personnel

- (a) The Supplier must deploy Personnel to provide the Goods and Services who:
- (i) are suitably qualified and experienced to perform the duties allocated to them, and understand the Supplier's obligations under the Contract; and
 - (ii) have been assessed by the Supplier as possessing all competencies relevant to the duties they are expected to perform.
- (b) The Supplier must ensure that all Personnel engaged in providing the Goods and Services act diligently, ethically and honestly and do not act in a manner which disrupts or adversely affects Alcoa's business reputation, interests or goodwill.

6.2 Key Personnel

- (a) If any Key Personnel are nominated in the Purchase Order the Services must be primarily provided by them.
- (b) The Supplier must immediately notify Alcoa if any Key Personnel are unable to provide the Services and the Supplier must promptly provide suitably qualified Personnel of equivalent or better experience and expertise to replace the Key Personnel who are unable to provide the Services for approval by Alcoa.

6.3 Subcontractors

- (a) The Supplier must not subcontract any part of the Contract without Alcoa's prior written consent and in giving written consent, Alcoa may in its absolute discretion impose any terms and conditions as it considers appropriate.
- (b) The Supplier remains fully responsible to Alcoa for supplying the Goods and providing the Services even though the Supplier may have subcontracted the performance of any part of the Contract and the Supplier's subcontracts must be subject to the terms and conditions of the Contract (to the extent they apply).
- (c) A breach or failure to perform any subcontract does not excuse the Supplier from performance of the Contract in accordance with its terms nor will it affect the liability of the Supplier under the Contract.

6.4 Payment to Supplier's Personnel and Subcontractors

- (a) The Supplier must comply with all relevant Laws in relation to its Personnel including the payment of Tax, workers' compensation, superannuation and amounts under industrial relations Laws, awards or agreements.

- (b) The Supplier must comply with all reasonable requests from Alcoa to verify its compliance with clause 6.4(a).

6.5 Supplier's Equipment Alcoa will keep any Supplier's Equipment in Alcoa's possession or control in good working condition and Alcoa will be responsible for the loss of or damage to any Supplier's Equipment while in Alcoa's possession or control, except to the extent to which the loss or damage is due to normal wear and tear or the negligence of the Supplier or its Personnel.

6.6 Rights to exclude people

- (a) Except with Alcoa's prior consent, the Supplier must not allow any person to enter the Site other than Alcoa's Personnel or the Supplier's Personnel.
- (b) Alcoa may (and may direct the Supplier to) remove any of the Supplier's Personnel from, or refuse any of the Supplier's Personnel entry to, the Site for any reason including a person who, in Alcoa's opinion:
 - (i) is unqualified, incompetent or negligent in the performance of work in relation to providing the Goods and Services;
 - (ii) has engaged, or is likely to engage, in activities which are contrary or detrimental to the interests of Alcoa; or
 - (iii) has not complied, or is likely to not comply, with Alcoa's Policies.
- (c) Any exercise of Alcoa's rights under clause 6.6(b) is not a repudiation of the Contract and the Supplier must promptly provide a suitable replacement for the person removed from, or refused entry to, the Site.

7. Time for performance

- (a) Time is of the essence in the Supplier's performance of the Contract.
- (b) In addition to Alcoa's other rights under the Contract and Law, if the Supplier fails to perform any obligation by the time specified in the Contract, Alcoa has the right to require the Supplier, at the Supplier's cost, to do whatever is necessary to expedite providing the Goods and Services including using premium freight as necessary.

8. Delivery, title and risk

- (a) The Supplier must deliver the Goods in accordance with the Purchase Order in one shipment (or as otherwise agreed in writing) to the Delivery Point by the Delivery Date using the freight and delivery standard specified in the Purchase Order.
- (b) Title to the Goods passes to Alcoa on the earlier of:
 - (i) when the Goods are delivered to and accepted by Alcoa, at the relevant Delivery Point in accordance with the Contract; or
 - (ii) on payment for the Goods.
- (c) Risk in the Goods remains with the Supplier until delivery to and acceptance by Alcoa in accordance with the Contract.

9. Delivery dockets

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- (a) The Supplier must ensure that each delivery is accompanied by a consignment note and a delivery docket conspicuously attached to the Goods in a weatherproof document holder and securely fastened to the outside of the package (or to the Goods if packing is not required).
- (b) The delivery docket must state;
- (i) the Purchase Order number, the Purchase Order line number and Alcoa stock number (if applicable);
 - (ii) the Supplier's name;
 - (iii) the quantity, unit of measure and description of the Goods delivered as per the applicable Purchase Order;
 - (iv) the Delivery Point;
 - (v) Alcoa's destination Site name; and (vi) the Delivery Date.
- (c) The consignment note must state:
- (i) the Purchase Order number;
 - (ii) the Supplier's name;
 - (iii) the accompanied delivery docket number;
 - (iv) the number of packages;
 - (v) any dangerous goods requirements or specifications for transportation and storage purposes according to the version of the Australian Code for the Transportation of Dangerous Goods by Road and Rail in place at the time of shipping;
 - (vi) weights and dimensions of the package (or the Goods if packing is not required)
- (d) Unless otherwise agreed with Alcoa the Supplier must raise the consignment note via the online portal provided by the Alcoa nominated freight carrier. A printed copy of the online generated consignment note must be provided to the Alcoa nominated freight carrier's representative upon delivery of the package (or Goods if packing is not required).

10. Labelling and Packaging

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- (a) The Supplier must label, pack and package all Goods:
- (i) in accordance with the requirements of all relevant Laws;
 - (ii) in accordance with any shelf life or preservation requirements;
 - (iii) in accordance with Alcoa's requirements; and
 - (iv) to avoid damage during transit, delivery, loading or unloading, having regard to the means of transport and climatic conditions through which the Goods will pass during transport.
- (b) In relation to packing and packaging, the Supplier must ensure that:
- (i) all packaging materials are environmentally friendly and polystyrene foam and plastic beads are not used;
 - (ii) any timber used in shipments from countries outside of Australia is kiln dried or fumigated in accordance with Australian Quarantine Inspection Service requirements;
 - (iii) straw, soil and animal products are not present in any packaging material or shipping container;
 - (iv) an original packing declaration for FCL shipping containers and original fumigation certificates are supplied to Alcoa's shipping agent;
 - (v) dangerous goods are documented and shipped according to the version of the Australian Code for

the Transportation of Dangerous Goods by Road and Rail in place at the time of shipping;

- (vi) packages exceeding 16kg are suitable for either:
 - (A) handling by cranes and have approved lifting lugs fitted and slinging points or load centre indicated on the package; or
 - (B) fork lift handling and are palletised;
- (vii) pallets are hardwood, 1160mm x 1160mm, double entry, flush sided, SWL 2000kg or as specified in the Purchase Order;
- (viii) hire pallets are offered on a one for one exchange basis; and
- (ix) palletised items are secure on the pallets and items likely to roll or fall (including cylindrical items) are strapped to the pallets (secured to the bearers, not the boards) to ensure complete security and no chance of fall of the items.

11. Non-conformance

11.1 Right to test and inspect Goods

- (a) Alcoa or its designated agent may, during ordinary business hours and on reasonable notice, inspect and test the Goods and all work on the Goods while in any stage of engineering, manufacture or installation, including at the Supplier's premises.

11.2 Non-Conformance of Goods or Services

- (a) Without limiting any other right Alcoa may have under the Contract or at Law, if in Alcoa's reasonable opinion, the Goods or Services do not comply with the requirements of this Contract (**Non-Conformance**) Alcoa may, at its option, give notice to the Supplier requiring the Supplier to promptly:
- (i) rectify the Non-Conformance;
 - (ii) replace the Goods or re-perform the Services the subject of the Non-Conformance; or
 - (iii) provide a full refund, and take back any Goods, relating to the Non-Conformance.

- (b) The Supplier must comply with a notice given by Alcoa for Non-Conformance at no additional cost to Alcoa.

- (c) Alcoa may issue a Non-Conformance notice after the expiry or termination of this Contract provided that Alcoa uses reasonable endeavours to avoid undue delay.

11.3 Latent Defects

- (a) The Supplier's obligations under this clause 11.3 apply during the Term and for the period after the Term specified in the Purchase Order.
- (b) Alcoa will immediately notify the Supplier of any Latent Defect it discovers.
- (c) The Supplier must immediately notify Alcoa of any Latent Defect it discovers or becomes aware of.
- (d) If a Latent Defect is discovered, the Supplier must at its own cost repair, modify or replace the Goods, or provide Alcoa a full refund, at Alcoa's election.

12. Price

12.1 Price

- (a) The Price that Alcoa will pay the Supplier for the Goods and Services is set out in the Purchase Order.
- (b) The Price is fixed unless the Purchase Order contains a Price Adjustment Mechanism.

12.2 Price is Supplier's sole remuneration

- (a) Except as expressly provided in the Contract, the Price is the Supplier's sole remuneration for providing the Goods and Services and performing the Contract.
- (b) Unless specified in the Purchase Order, all additional expenses must be agreed in writing prior to the expense being incurred, and must be charged at cost.

12.3 Taxes

- (a) The Price is inclusive of all Taxes (excluding GST) imposed or levied in Australia or overseas in connection with providing the Goods and Services. Subject to clause 12.3(b), all Taxes must be borne by the Supplier, including all Australian import duties and charges payable on the Goods or components and materials imported by it into Australia for use in manufacturing the Goods, and all antidumping, countervailing and other special duties.
- (b) If at any time an applicable Law obliges Alcoa to make a deduction or withholding in respect of Taxes from a payment to the Supplier, Alcoa will make the deduction or withholding and Alcoa is not required to pay the Supplier any amount to compensate for amounts deducted or withheld.
- (c) The Supplier must use best endeavours to:
 - (i) import Goods free of import, customs and excise duties imposed by a Government Agency in relation to the importation of Goods to Australia (**Duties**); and
 - (ii) obtain the benefit of any free trade agreement to which Australia is a party.
- (d) On written request from Alcoa, the Supplier must provide to Alcoa any information (in writing if required) in relation to any aspect of the Goods to allow Alcoa to make an application for a refund, rebate, concession, exemption or reduction in Duties payable on the Goods.

13. Payment

13.1 Provision of invoice

- (a) Alcoa will pay the Supplier the Price for the Goods and Services provided under the Contract when:
 - (i) the Supplier provides Alcoa with a correctly rendered invoice as set out in 13.2(b); or
 - (ii) the Supplier complies with any recipient created tax invoice arrangement agreed with Alcoa.
- (b) The Supplier represents and warrants that its invoices are an accurate and true reflection of the Goods and Services delivered, including actual materials, equipment and hours worked.
- (c) Subject to this clause 13.1, the Supplier must submit invoices within 60 days of the Goods being delivered or Services being provided or monthly for ongoing Services or as otherwise specified in the Purchase Order.

13.2 Invoice requirements

- (a) The Supplier must electronically submit invoices to Alcoa's nominated system unless otherwise specified in Purchase Order.
- (b) The Supplier's invoice, must specify:
 - (i) the Supplier's company name and Australian Business Number;

- (ii) the unique Purchase Order number;
- (iii) the date the relevant Goods and Services were provided;
- (iv) a description of the Goods and Services provided (as applicable);
- (v) the amount due to the Supplier and the basis of the Supplier's calculation, including:
 - (A) the amount payable exclusive of GST;
 - (B) the amount of GST payable; and
 - (C) the total amount payable inclusive of GST;

13.3 Payment of invoice

- (a) Subject to the Supplier's invoice complying with clause 13.1 and clause 13.2, Alcoa will pay the Supplier on the fourth day of the third month from the end of the month when the Supplier's invoice is received.
- (b) Where the Purchase Order provides for payment for the Goods and Services to be in more than one instalment, the Supplier must provide Alcoa with a separate invoice for each instalment.

13.4 Supplier's warranty for payments to Personnel

- (a) By submitting an invoice under this Contract, the Supplier represents and warrants that all of the Supplier's Personnel who have at any time been engaged by the Supplier (or if applicable one of the Supplier's Subcontractors) have been paid all monies due and payable to them for work related to the Contract.
- (b) Alcoa may require the Supplier to provide reasonable evidence that it has complied with the representation and warranty given under clause 13.4(a).

13.5 Alcoa may set off

- (a) If Alcoa believes the Supplier is in Default or owes any amount to Alcoa under the Contract or any other agreement, Alcoa may (but is not obliged to) do one or more of the following on notice to the Supplier:
 - (i) withhold payments that Alcoa or any Group member otherwise owes to the Supplier until the Supplier rectifies the Default; or
 - (ii) set off any amount that Alcoa or any Group member owes or may owe the Supplier against any amount owing to the Supplier.
- (b) This clause 13.5 overrides any other document or agreement to the contrary.

14. GST

14.1 Supplier can Charge GST

If the Supplier is liable for GST in connection with the Goods and Services provided under the Contract (**Affected Goods and Services**), the Supplier may add GST to the agreed value of all Affected Goods and Services.

14.2 Consideration exclusive of GST

All forms of consideration referred to in the Contract are exclusive of GST unless expressly stated otherwise.

14.3 Input Tax Credits

Where the consideration to be paid to the Supplier under the Contract is determined by reference to any costs and expenses incurred by the Supplier, when calculating these costs and expenses the Supplier must deduct any Input Tax Credit, as defined by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST legislation**), it can claim in respect of GST paid on these costs and expenses.

14.4 Payment arrangements and invoicing

- (a) Any invoice for the Affected Goods and Services supplied under the Contract must be a tax invoice which is consistent with the requirements of the GST legislation and represents the sole notification of an obligation to make a payment.
- (b) Any debit or credit note for the Affected Goods and Services supplied under the Contract will be an adjustment note (or tax invoice where applicable) consistent with the requirements of the GST legislation and represents the sole notification of the credit or debit in question.

15. Laws, Environment, Health and Safety

15.1 Compliance with Laws, Policies and Standards

The Supplier and its Personnel must at all times comply with:

- (a) all applicable Laws, including industrial awards, data privacy Laws, agreements and Government Authorisations;
- (b) Alcoa's Policies (to the extent they apply to the Goods and Services); and
- (c) each Governmental Notice issued in any way relating to the Supplier's performance of the Contract, whether the Governmental Notice is served on Alcoa or the Supplier.

15.2 Entry onto the Site

If the Supplier enters the Site, the Supplier and the Supplier's Personnel must:

- (a) complete Alcoa's safety induction and visitors' site orientation programs before commencing work at the Site;
- (b) comply with Alcoa's Site rules and directions; and
- (c) hold and maintain a current Safety Qualification;
- (d) do not interfere with any of the activities of Alcoa or any other person at the Site;
- (e) remove all rubbish and other debris from the Site and leave the Site secure, clean, orderly and fit for any use specified by Alcoa, failing which a debt is due to Alcoa from the Supplier for any costs Alcoa incurs to ensure the Site is secure, clean, orderly and fit for the use specified by Alcoa; and
- (f) keep any tools, equipment, material or other products brought onto the Site secure from theft or damage.

15.3 Hazardous Substances, Pollution, Contamination and Environmental Harm

- (a) The Supplier must not, without Alcoa's prior written consent, cause or allow any Hazardous Substances to be brought onto, produced on, transported to or from, treated, stored or disposed of on the Site. The Supplier must provide all information (including safety data sheets) requested by Alcoa, and Alcoa's consent may be subject to conditions.
- (b) The Supplier must not cause or allow Pollution, Contamination or Environmental Harm to occur in, on or under the Site or surrounding land.

15.4 Notices

- (a) The Supplier must notify Alcoa immediately on the Supplier or its Personnel becoming aware of:
 - (i) any discharge, release or threatened release of a Hazardous Substance on or from the Site or surrounding land;
 - (ii) the existence of, or potential for, Pollution, Contamination or Environmental Harm that affects the Site or surrounding land;
 - (iii) any complaint made against the Supplier or its Personnel to any Government Agency;
 - (iv) any proceedings relating to an alleged failure by the Supplier or its Personnel to comply with a Law or Government Authorisation in relation to the performance by the Supplier of its obligations under the Contract; or
 - (v) any Governmental Notice being served on the Supplier or its Personnel.

15.5 Remediation

- (a) If the Supplier or its Personnel cause, allow or contribute to:
 - (i) any release or threatened release of Hazardous Substances; or
 - (ii) the Site or the surrounding land becoming affected or potentially affected by Pollution, Contamination or Environmental Harm, the Supplier must, at its own cost and as soon as practicable, perform Remedial Work to Alcoa's satisfaction, and in accordance with Alcoa's directions, to prevent, mitigate and rectify any resulting damage or potential damage to it was caused or contributed to by the Supplier or its Personnel.
- (b) Alcoa reserves the right to determine the method and means of Remedial Work performed by the Supplier under this clause 15.5.
- (c) If the Supplier fails to perform the Remedial Work required by this clause 15.5, Alcoa may do those things required by this clause 15.5 (including engaging a third party to do those things) at the Supplier's expense, and the Supplier indemnifies Alcoa in accordance with clause 15.8.

15.6 Disclosure

- (a) Except where required by Law, the Supplier and its Personnel must not disclose information concerning the environmental condition of the Site or surrounding land to any person, including any Government Agency, without Alcoa's prior written consent.
- (b) Where disclosure of information concerning the environmental condition of the Site or surrounding land is required by Law, the Supplier and its Personnel must notify Alcoa before disclosing the information.

15.7 Environmental Release

The Supplier releases Alcoa from all Liabilities arising from or connected with (directly or indirectly) the presence of any Pollution, Contamination or Environmental Harm in, on or under the Site and surrounding land at any time during or after the Term of the Contract, to the extent that the Pollution, Contamination or Environmental Harm was caused or contributed to by the Supplier or its Personnel.

15.8 Environmental Indemnity

Without limiting clause 17, the Supplier indemnifies Alcoa in respect of all Liabilities and any judgment, order, obligation or duty for which Alcoa is or may become liable, including Claims by third parties, in respect of or arising from (directly or indirectly):

- (a) Default by the Supplier or its Personnel under this clause 15; and
- (b) to the extent caused or contributed to by the Supplier or its Personnel, any Pollution, Contamination or Environmental Harm in, on or under the Site or surrounding land during or after the Term of the Contract.

16. Suspension

- (a) Alcoa may, at any time and at its absolute discretion, suspend all or any part of the provision of the Goods and Services by giving written notice (**Suspension Notice**) to the Supplier:
 - (i) because of an act or omission of the Supplier or its Personnel in connection with compliance with Alcoa's Policies, Government Authorisations or Laws;
 - (ii) because of the Default of the Supplier or its Personnel;
 - (iii) for the protection or safety of any person or property; or
 - (iv) to comply with a Governmental Notice.
- (b) The Suspension Notice must specify the part of the Goods and Services to be suspended and the effective date of the suspension.
- (c) The Supplier must:
 - (i) cease all activity on the suspended part of the Goods and Services on the effective date of suspension;
 - (ii) do all things possible to reduce any cost or expense arising out of or in connection with the suspension; and
 - (iii) continue to provide any unsuspended part of the Goods and Services.
- (d) When the reason for the suspension no longer exists, Alcoa will by written notice direct the Supplier to recommence performing the Services and the Supplier must comply with the direction.
- (e) The Supplier will bear the cost of the suspension and is not entitled to recover any costs, expenses or other amounts from Alcoa arising out of or in connection with the suspended part of the Goods and Services during the period of suspension.

17. Indemnity

17.1 Acknowledgment

The Supplier acknowledges that, if it enters the Site, it does so at its own risk. The Supplier must ensure that its Personnel are also aware that they enter the Site at their own risk.

17.2 Indemnity

Subject to clause 17.3, the Supplier will release and indemnify (and will keep indemnified) Alcoa and Alcoa's Personnel (**Indemnified Parties**) from and against all Liabilities that any Indemnified Party suffers, sustains or incurs, arising from any one or more of:

- (a) any act or omission by the Supplier or its Personnel arising out of or in any way related to the Contract, including:
 - (i) the loss of or damage to any real or personal property; and
 - (ii) death or injury to an Indemnified Party or any other person;
- (b) breach of Contract;
- (c) a Claim by another person that Alcoa's exercise of its rights or the Supplier's performance of its obligations under the Contract infringes that person's Intellectual Property; and
- (d) any penalty imposed for breach of any applicable Law in connection with providing the Goods and Services.

17.3 Exclusions

The Supplier's liability under this clause 17 is reduced proportionately but only to the extent that the Supplier establishes that the liability was directly caused by Alcoa's negligence.

17.4 Indemnity held for benefit

Every exemption, limitation, defence, immunity, indemnity or other benefit contained in the Contract or otherwise to which Alcoa or a member of the Group is entitled will be held by Alcoa for the benefit of, and will extend to protect, each of Alcoa's and each Group member's Personnel.

17.5 Indemnity continuing

Each indemnity in the Contract is a continuing obligation separate and independent from the Supplier's other obligations and survives termination of the Contract.

17.6 No requirement for expense before enforcing indemnity right

It is not necessary for Alcoa, a Group member, or their respective Personnel to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

18. Insurance

18.1 General insurance

- (a) Subject to the terms and conditions of the Contract, Alcoa will maintain reasonable insurance policies protecting its employees and property.
- (b) The Supplier acknowledges and agrees that Alcoa's insurance policies referred to in clause 18.1(a) will not cover the Supplier or any of its Personnel or any of their property.
- (c) The Supplier and its Subcontractors are responsible for effecting and maintaining insurance in respect of all the Supplier's and the Subcontractor's employees and property.

18.2 Supplier Insurances

- (a) The Supplier must at its own expense effect and maintain throughout the Term and any additional period specified in the Contract the insurances set out in clauses 18.4 to 18.7 (**Supplier Insurances**).
- (b) The Supplier Insurances are primary to, and without right of contribution from, any insurance or self-insurance Alcoa may have.
- (c) The Supplier must, on Alcoa's request, provide to Alcoa evidence of the Supplier Insurances including certification of coverage and currency.

- (d) To the extent that the Supplier maintains insurance coverage in excess of the requirements of the Supplier Insurances, Alcoa is entitled to the benefit of those excess coverages.
- (e) The Supplier is responsible for the payment of any excess, deductible or self-insured retention (**Excess**) relating to the Supplier Insurance. To the extent Alcoa has to pay any Excess, Alcoa may recover that amount as a debt due to Alcoa from the Supplier.

18.3 Subcontractors' insurance

The Supplier must ensure that its Subcontractors have the benefit of, or effect and maintain insurances similar to, the Supplier Insurances.

18.4 Worker's compensation insurance Worker's compensation and employers' liability insurance in accordance with the laws of the relevant State or Territory together with insurance in respect of any common law liability of an employer to an employee which, where permitted by Law:

- (a) is endorsed to insure Alcoa and its Personnel as principal in respect of any liability incurred by Alcoa and its Personnel to the Supplier's employees arising out of the performance of the Contract; and
- (b) contain a clause under which the insurer agrees to waive all rights of subrogation it has or may have against Alcoa, the Group and Alcoa's and the Group's Personnel.

18.5 Public liability and product liability insurance

- (a) Public liability and product liability insurance with insured limits of at least \$20,000,000 in respect of each and every claim for personal injury, death, loss and damage to property, and accidents involving equipment, plant and unregistered vehicles used, or to be used, arising out of or in connection with the provision of the Goods and Services.
- (b) The insurance referred to in clause 18.5(a) must be endorsed to:
 - (i) insure Alcoa and its Personnel as additional insured for their respective rights, interests and liabilities arising out of the performance of the Contract;
 - (ii) contain a cross liability clause stating that the policy applies as if a separate policy was issued to each insured;
 - (iii) contain a clause stating that a breach of any term of the policy by one insured will not disentitle other insureds to coverage; and
 - (iv) contain a clause under which the insurer agrees to waive all rights of subrogation it has or may have against Alcoa, the Group and Alcoa's and the Group's Personnel.

18.6 Motor vehicle insurance

- (a) If the performance of the Contract requires the Supplier or its Personnel to use motor vehicles registered for use on public roads, motor vehicle insurance is required covering liability in respect of:
 - (i) property damage of at least \$10,000,000 in respect of each and every claim; and
 - (ii) death or personal injury to any person arising out of the use of those vehicles, but only to the extent that cover is not provided in respect of that liability under any fund or insurance required by Law, including but not limited to any statutory policy relating to motor vehicles and any worker's compensation legislation.
- (b) The insurance referred to in clause 18.6(a) must be endorsed to:

- (i) insure Alcoa and its Personnel as additional insured for their respective rights, interests and liabilities arising out of the performance of the Contract;
- (ii) contain a cross liability clause stating that the policy applies as if a separate policy was issued to each insured;
- (iii) contain a clause stating that a breach of any term of the policy by one insured will not disentitle other insureds to coverage; and
- (iv) contain a clause under which the insurer agrees to waive all rights of subrogation it has or may have against Alcoa, the Group and Alcoa's and the Group's Personnel.

18.7 Professional indemnity insurance

If the performance of the Contract includes or relates to the provision of professional advice or services, professional indemnity insurance is required of at least \$10,000,000 in respect of each and every claim as a result of any act or omission of the Supplier in the course of performing the Contract and until not less than 6 years after the earlier of:

- (a) the termination of the Contract;
- (b) the expiry of the Contract; and
- (c) the completion of the Supplier's obligations under the Contract.

19. Dispute resolution

19.1 Dispute resolution

- (a) If a dispute or difference of opinion (**Dispute**) arises under or in connection with the Contract, a Party may give to the other Party a written notice specifying the Dispute (**Dispute Notice**) and requiring its resolution.
- (b) If no Dispute Resolution Process is otherwise specified in the Contract, and the Parties cannot resolve the Dispute within 30 days of a Dispute Notice being issued, the Dispute must be referred to a senior management representative of each Party to resolve the Dispute by negotiation.

19.2 Performance of obligations

Irrespective of any Dispute, the Parties must continue to perform all of their obligations under the Contract, unless the Parties otherwise agree.

20. Claims

20.1 Claims

- (a) The Supplier must make any Claim relating to this Contract in writing within the earlier of:
 - (i) 120 days after the delivery of the Goods and the provision of the Services to which the Claim relates; and
 - (ii) 120 days after the Contract Finish Date.
- (b) If the Supplier does not make a Claim within the period set out in clause 20.1(a), the Supplier releases Alcoa from all such Claims and Alcoa's liability with respect to the amount claimed is deemed to be extinguished.

20.2 Discharging Claims

The Supplier is liable to Alcoa for any amount that Alcoa pays or incurs in discharging a Claim by the Supplier's Personnel (including all reasonable costs and legal fees) as a debt due to Alcoa from the Supplier.

21. Term

21.1 Contract Term

This Contract starts on the Contract Start Date and ends on the Contract Finish Date (the **Term**), unless it is terminated early.

21.2 Expiry of Term

If Alcoa issues a Purchase Order to the Supplier prior to the end of the Term, the Term in relation to that Purchase Order automatically extends until such time as the Parties have fulfilled their respective obligations under that Purchase Order unless otherwise specified in this Contract.

22. No fault termination

22.1 Termination notice

- (a) Alcoa may, at any time and for any reason, terminate the Contract or any part of it, by giving the Supplier at least 30 days' notice (**Notice Period**) of Alcoa's intention to do so (**Termination Notice**).
- (b) The Contract will terminate under this clause 22 on the day immediately after the Notice Period.

22.2 Obligations on receipt of Termination Notice

On receipt of a Termination Notice, the Supplier must:

- (i) immediately take all possible action to mitigate any Liabilities incurred by it as a result of the termination; and
- (ii) take any other action reasonably required by Alcoa in relation to the termination.

22.3 Supplier compensation

- (a) After termination of the Contract under clause 22.1:
 - (i) Alcoa will pay the Supplier for all Goods and Services properly provided to Alcoa as at the date of termination, less any payments previously made by Alcoa in respect of those Goods and Services;
 - (ii) if Alcoa is satisfied the Supplier has throughout the Term kept Alcoa Specific Goods to a minimum and has exercised all reasonable efforts to minimise the level of stock in the last 3 months of the Term and was unable to recover or reuse or repurpose the stock, Alcoa will purchase that remaining quantity of Alcoa Specific Goods as specified in the Purchase Order at the expiry of Term, at the Price specified in the Purchase Order. If no Alcoa Specific Goods are specified in the Purchase Order, then Alcoa has no obligation to purchase any Goods at the expiry of Term other than in accordance with this clause 22.3; and
 - (iii) Alcoa will pay the Supplier's reasonable Out-of-Pocket Costs.
- (b) If Alcoa terminates the Contract under this clause 22:
 - (i) the payments outlined in clause 22.3(a) are the only Liabilities that the Supplier may recover from Alcoa; and
 - (ii) the Supplier cannot recover from Alcoa any other loss or damage (whether foreseeable or in the contemplation of the Parties or not), including any Excluded Loss.

23. Termination for Supplier's Default

23.1 Termination notice

- (a) Alcoa may give the Supplier a Default Notice if Alcoa believes that the Supplier is in Default. The Default Notice will specify the Default and state Alcoa's intention to exercise its rights under this clause 23.
- (b) Subject to clause 23.1(c), if the Default is not capable of remedy, or if the Supplier fails to remedy the Default in a proper manner within 20 Business Days after Alcoa issues the Default Notice, then Alcoa may exercise the following rights:
 - (i) elect by written notice to the Supplier to wholly or partly suspend any payment under the Contract until the Default has been remedied; or
 - (ii) by notice to the Supplier, terminate the Contract.
- (c) To the extent permitted by Law, Alcoa may terminate the Contract immediately by giving the Supplier a written notice if the Supplier:
 - (i) commits Defaults of a similar nature on three or more occasions during the Term; or
 - (ii) becomes subject to an Insolvency Event.

24. Termination for Alcoa's Default

24.1 Termination notice

- (a) The Supplier may give Alcoa a Default Notice if the Supplier believes that Alcoa is in Default. The Default Notice must specify the Default and state the Supplier's intention to exercise its rights under this clause 24.
- (b) Alcoa must remedy the Default within 20 Business Days after Alcoa receives the notice set out in clause 24.1(a). If Alcoa does not remedy the Default within this time, then the Supplier may terminate the Contract by notice to Alcoa.
- (c) To the extent permitted by Law, the Supplier may terminate the Contract immediately by notice to Alcoa if Alcoa becomes subject to an Insolvency Event.

24.2 Consequences of termination for Alcoa's Default

- (a) If the Supplier terminates the Contract under this clause 24, Alcoa will pay the Supplier:
 - (i) for all Goods and Services properly provided to Alcoa as at the date of termination, less any payments previously made by Alcoa in respect of those Goods and Services; and
 - (ii) the Supplier's reasonable Out-of-Pocket Costs.
- (b) If the Supplier terminates the Contract in accordance with this clause 24:
 - (i) the payments outlined in clause 24.2(a) are the only Liabilities that the Supplier may recover from Alcoa; and
 - (ii) the Supplier cannot recover from Alcoa any other loss or damage (whether foreseeable or in the contemplation of the Parties or not), including any Excluded Loss.

25. Force Majeure

25.1 Force Majeure Event

- (a) In this clause, a **Force Majeure Event** means an event, circumstance or omission after the Contract Start Date which:
 - (i) is beyond the reasonable control of the Party affected by that event, circumstance or omission (**Affected Party**);
 - (ii) causes or results in the Affected Party:
 - (A) being prevented from performing its obligations under the Contract; or

- (B) where the Affected Party is Alcoa, Alcoa being prevented from operating the Site at nameplate or normal production capacity;
- (iii) could not have been prevented, overcome or remedied by the Affected Party exercising a standard of care and diligence consistent with that of a skilled and experienced person under similar circumstances and conditions,

which might (if it satisfies the requirements of paragraphs (a)(i), (a)(ii) and (a)(iii)) include an act of war (whether declared or not), terrorism, civil commotion or riot, acts of God, natural disasters, industrial action or labour disturbance, action or inaction by a Government Agency, or a failure of a public utility or common carrier.

- (b) The following events or circumstances do not constitute a Force Majeure Event:
 - (i) lack of funds, financial hardship, inability to make a profit; or
 - (ii) loss of customers or loss of market share.

25.2 Notice of Force Majeure Event

- (a) If the Affected Party is prevented from, or delayed in, performing the Contract by a Force Majeure Event, the Affected Party must give the other Party written notice of that fact within 10 Business Days after the start of the Force Majeure Event.
- (b) Within 5 days of the Affected Party giving notice of the Force Majeure Event to the other Party, the Affected Party will notify the other Party of its good faith best estimate of the period that the Force Majeure Event is expected to affect the performance of its obligations and the level at which it will be able to provide or take the Goods and Services over that period.

25.3 Consequences of Force Majeure Event

- (a) The obligations of the Parties under the Contract, other than an obligation to pay moneys outstanding prior to the occurrence of the Force Majeure Event, are suspended to the extent to which they are affected by the Force Majeure Event as long as the Force Majeure Event continues.
- (b) The other Party is entitled to rely on the notification from the Affected Party, and to make alternative arrangements for the sale or purchase of the Goods and Services that the Affected Party is not able to provide or take according to the terms of the notification.
- (c) The Affected Party must use reasonable endeavours to minimise the effect of the Force Majeure Event, provided that the Affected Party will not be required to settle any industrial action or labour disturbance except in such manner as it in its own judgment considers acceptable, or to incur any costs of a commercially unreasonable or extraordinary nature.

25.4 Cessation of Force Majeure Event When the Affected Party's obligations are no longer affected by the Force Majeure Event, the Affected Party must notify the other Party and recommence performance of all its obligations under the Contract as soon as practicable.

25.5 Termination for Force Majeure Event

- (a) Either Party may terminate the Contract by giving written notice to the other Party if a Force Majeure Event continues for a period of 3 months after a written notice is given under clause 25.2 in respect of that Force Majeure Event.
- (b) If the Contract is terminated under this clause 25.5:
 - (i) the termination is without limitation on any other rights or remedies available to the Parties under the Contract or at Law; and

- (ii) the termination, howsoever caused, is without prejudice to any rights or Liabilities of the Parties accruing to the date of termination.

26. Action on expiry or termination

At expiry or termination of the whole or part of this Contract (including under clauses 22, 23, 24 and 25):

- (a) each Party must provide all reasonable assistance to the other Party to facilitate:
 - (i) the orderly transfer of the functions and operations provided under the Contract to another supplier or to Alcoa, as the case may be; and
 - (ii) the orderly exit from the Site by the Supplier;
 - (b) the Supplier must:
 - (i) subject to clause 26(c), immediately cease providing the Goods and Services (including under any Purchase Order that has been issued but has not yet been completed) on the termination date;
 - (ii) return to Alcoa any Alcoa Equipment or other items issued to the Supplier by Alcoa during the Term; and
 - (iii) provide all Documentation to Alcoa together with a report detailing the Goods and Services supplied up to and including the end of the Notice Period;
- (c) unless the termination is due to Alcoa's Default or insolvency, the Supplier must also:
 - (i) take any other action reasonably required by Alcoa in relation to the termination of the Contract;
 - (ii) offer Alcoa the first right of refusal to purchase any of the Supplier's Equipment at no more than its depreciated value;
- (d) Alcoa must return to the Supplier any Supplier's Equipment; and
- (e) each Party must immediately return any Confidential Information or Personal Information belonging to the other Party and, on request of the other Party, take reasonable steps to delete Confidential Information (to the extent this is reasonably practicable).

27. Intellectual Property

- (a) The Supplier warrants that:
 - (i) the Supplier is legally entitled to use the Supplier's Existing IP in connection with providing the Goods and Services;
 - (ii) Alcoa's use of the Supplier's Existing IP will not infringe the Intellectual Property of any third party; and
 - (iii) the Supplier will not, nor cause Alcoa to, infringe the Intellectual Property of any third party.
- (b) The Parties acknowledge and agree that each Party remains the owner of its Existing IP and that nothing in the Contract prevents, limits or restricts each Party's subsequent use or exploitation of its own Existing IP.
- (c) The Supplier agrees that all Contract IP will be vested in Alcoa and will be Alcoa's property as and

when created and the Supplier assigns all rights, title and interest in the Contract IP to Alcoa.

- (d) The Supplier must do all things necessary and must ensure that the Supplier's Personnel do all things necessary to comply with clause 27(c). Pending the assignment of all rights, title and interest in the Contract IP to Alcoa, the Supplier holds the Contract IP on trust for Alcoa.
- (e) Alcoa grants the Supplier a non-exclusive, nontransferable, royalty free, revocable licence to use the Contract IP and Alcoa's Existing IP for the sole purpose of performing the Supplier's obligations under the Contract.
- (f) The Supplier grants to Alcoa and Group a world-wide, non-exclusive, transferable, royalty free, perpetual, irrevocable licence to use the Supplier's Existing IP in relation to the Documentation, the Goods, the Services, any product of the Services and any other thing that the Contract contemplates being done, including the right to sub-licence.

28. Documentation

- (a) All Documentation produced under, or for the purpose of performing the obligations under, the Contract including any updates, changes or amendments, will be Alcoa's property.
- (b) The Supplier will hold and preserve all Documentation on Alcoa's behalf, and on demand, must provide Alcoa with the original of any Documentation unless that Documentation is necessary for the performance of the Supplier's obligations under the Contract, in which case the Supplier must provide Alcoa with a copy of the Documentation.
- (c) It is the responsibility of the Supplier to update the relevant designs, patterns and drawings for all changes/amendments throughout the Term.

29. Confidentiality and publication

29.1 Confidentiality

The Recipient undertakes and agrees:

- (a) to hold in strict confidence all Confidential Information;
- (b) not to disclose or permit or cause the Confidential Information to be disclosed to any person other than any of its Personnel who require the Confidential Information for the purposes of the Contract;
- (c) to use Confidential Information for the sole purpose of performing the Supplier's obligations under the Contract.

29.2 Disclosure and obligations

- (a) Clause 29.1 does not apply to:
 - (i) information after it becomes generally available to the public other than as a result of the breach of this clause 29;
 - (ii) the disclosure of information in order to comply with any applicable Law or legally binding order of any court, Government Agency or recognised stock exchange, provided that prior to such disclosure the Recipient gives notice to the Discloser with full particulars of the proposed disclosure; or
 - (iii) the disclosure of information where the Recipient has provided the Discloser's prior written consent (which may be withheld in its absolute discretion and subject to conditions).
- (b) If the Recipient discloses the Confidential Information to its Personnel in accordance with clause 29.1(b) or with

the consent of the Discloser, it must at its own expense ensure at all times that the person to whom the Confidential Information is disclosed does not disclose the information except in accordance with this clause 29.

- (c) The obligations in this clause 29 are in addition to and do not diminish the obligations of the Recipient in respect of secret and confidential information at common law or under any statute or trade or professional custom or use.
- (d) A breach of any of the conditions contained in a consent granted pursuant to clause 29.2(b) is deemed to be a breach of the Contract.

29.3 Return of Confidential Information

If requested by the Discloser, whether prior to or after the expiry or earlier termination of the Contract, the Recipient must promptly:

- (a) deliver to the Discloser all Confidential Information in the custody, possession or control of the Recipient or any of its Personnel; or
- (b) to the extent reasonably practicable, destroy and certify in writing to the Discloser the steps taken to destroy all Confidential Information in the custody, possession or control of the Recipient or any of its Personnel.

29.4 Use of Confidential Information

- (a) Any Group member may use Confidential Information that the Supplier provided to Alcoa.
- (b) Where the Discloser is a Group member, for the purposes of obtaining consent, the Supplier may deal with Alcoa as if it were the Group member.

29.5 Publication

- (a) Except as required by any applicable Law, no Party may make any public announcements or disclosures in relation to the Contract without the prior written consent of the other Party.
- (b) Both Parties must agree on the wording and form of any media release and the forum for publication.

30. Privacy

- (a) The Supplier agrees and will ensure that its Personnel are aware that Alcoa may use and disclose information about the Supplier and each of them in accordance with Alcoa's Privacy Policy.
- (b) The Supplier must only use Alcoa's Personal Information (as that term is defined in the *Privacy Act 1988* (Cth)) for the purpose of complying with the Supplier's obligations under the Contract and always in accordance with the *Privacy Act 1988* (Cth).

31. Conflict of interest

- (a) The Supplier and its Personnel must not:
 - (i) hold any office;
 - (ii) possess any property;
 - (iii) engage in any activity; or
 - (iv) have any obligations by virtue of any contract, whereby, directly or indirectly, duties or interests are created in conflict with, or might appear to be created in conflict with, the Supplier's duties and interests under the Contract (**Conflict of Interest**).
- (b) The Supplier must immediately inform Alcoa of any matter which may give rise to a Conflict of Interest.

32. Trade compliance

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- (a) The Supplier must comply with:
- (i) the Laws of all countries, including export and other foreign trade controls under the laws of the United States of America, that relate to the sale and transfer of commodities, software or technical data to other countries and parties; and
 - (ii) any anti-corruption law of a country which applies to Alcoa or the Supplier including the *United States Foreign Corrupt Practices Act* and the *UK Bribery Act 2010*.
- (b) The Supplier must, at its own cost:
- (i) obtain and maintain, for the Term, a TRACE Registered Code; and
 - (ii) provide to Alcoa any information that Alcoa requests in connection with the Supplier's TRACE Registered Code.
- (c) The Supplier agrees to:
- (i) cooperate with Alcoa in conducting any due diligence in accordance with the Rule;
 - (ii) comply with reasonable requests for information in order to facilitate compliance with the Rule and any other similar law, rule or regulation currently in place or adopted in the future; and
 - (iii) maintain records related to the Rule.

33. Notices

-
- (a) Alcoa's Representative and the Supplier's Representative as set out in the Contract Details (and updated from time to time) represent Alcoa and the Supplier respectively for the purposes of the Contract and are duly authorised to represent each Party and do all things necessary to be done by each Party under the Contract.
- (b) Subject to clause 33(d), a notice, consent or other communication under the Contract is only effective if it refers to the unique contract number for the Contract and where relevant the applicable Purchase Order number and is in writing, signed and either given by hand, left at the addressee's address or sent to the addressee by mail or email.
- (c) A notice or consent that complies with clause 33(b) is regarded as given and received:
- (i) if by hand, when it is given personally to the addressee;
 - (ii) if delivered, when it has been left at the addressee's address:
 - (A) by 5:00 pm (local time in the place of receipt) on a Business Day – on that day; or
 - (B) after 5:00 pm (local time in the place of receipt) on a Business Day, or on a day that is not a Business Day – on the next Business Day;
 - (iii) if sent by mail, 10 Business Days after it is posted; and
 - (iv) if sent by e-mail, when the sender receives confirmation on its server that the message has been transmitted.
- (d) A Party's postal address and email address are specified in the Contract Details, or as last notified in writing by the Party.

34. General

34.1 Governing law

- (a) The Contract is governed by the laws of the State of Western Australia.

- (b) The Parties submit to the non-exclusive jurisdiction of the courts of the State of Western Australia, and any court that may hear appeals from any of those courts, for any proceedings in connection with this Contract.
- (c) The Parties expressly exclude application to any legislation, treaty or agreement which applies the United Nations Convention on Contracts for the International Sale of Goods.

34.2 Audit rights

- (a) The Supplier permits Alcoa or Alcoa's designated agent during the Term to access premises and relevant systems, inspect, verify and copy all records and Documentation maintained by the Supplier (or the Supplier's professional representatives) for the purpose of verifying the Supplier's compliance with the Contract (**Audit**).
- (b) On completion of any Audit:
- (i) where there is a non-Price finding, the Parties will formally agree on a timeline to remedy the noncompliance; and
 - (ii) where there is a Price finding, if the total amount paid by Alcoa exceeds the amount due to the Supplier as shown by the verification and inspection, then an amount equal to the excess must, at Alcoa's option:
 - (A) be deducted from amounts due or becoming due to the Supplier; or
 - (B) be repaid by the Supplier to Alcoa within seven days of a demand for payment being made by Alcoa.
- (c) The Supplier must give all reasonable assistance to any person authorised to undertake an Audit or inspection under this clause 34.2.
- (d) Any information provided to Alcoa or the designated agent under this clause 34.2 will be treated as Confidential Information.

34.3 Amendment

The Contract may only be varied, amended, supplemented, replaced or novated in writing by a document executed by the Parties.

34.4 Assignment

A Party cannot assign the Contract or any right to receive payment under the Contract without the prior written consent of the other Party.

34.5 Civil liability

In determining the rights, obligations and liabilities of the Parties in any Claim arising under the Contract or in relation to the subject matter of the Contract:

- (a) the operation of any Civil Liability Legislation which would otherwise be applicable is expressly excluded to the maximum extent permitted by Law; and
- (b) the indemnity provisions of this Contract will apply notwithstanding any provision in any applicable Civil Liability Legislation, to the maximum extent permitted by Law.

34.6 Relationship of Parties

- (a) The relationship between the Parties is one of independent contractors and the Supplier must not represent itself, and must ensure that its Personnel do not represent themselves, as being agents, servants, employees or representatives of Alcoa.
- (b) The Contract does not create a partnership, joint venture, agency, employment, trust or other relationship between the Parties or any of their respective employees. A Party must not take or omit

to take any action that may create any inference that it is an agent of the other Party, or that it has any authority to create any obligation, express or implied, in the name or on behalf of the other Party. **34.7 No exclusivity and no minimum purchase** Alcoa is not required to purchase the Goods and Services exclusively from the Supplier and nothing in the Contract will be construed as:

- (a) limiting Alcoa's right to purchase goods and services the same as or similar to the Goods and Services from a third party at any time in any circumstances; and
- (b) obliging Alcoa to request or purchase any minimum level of Goods and Services from the Supplier.

34.8 Waiver of rights

No waiver by either Party of any breach or failure to comply with the terms of the Contract will be construed as, or constitute, a continuing waiver of such provision or a waiver of any other breach of, or failure to comply with, any other provision of the Contract. No modification or waiver of any provision of the Contract will be effective unless in writing signed by both the Supplier and Alcoa.

34.9 Costs

Each Party must bear its own costs arising out of the negotiation, preparation and signing of the Contract and the Supplier must pay the cost of any stamp duty which may be payable in any relevant jurisdiction on or in connection with the Contract.

34.10 Severability

- (a) If the whole or any part of a provision of the Contract is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of the Contract has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of the Contract or is contrary to public policy.
- (b) Where a provision is prohibited or unenforceable, the Parties must negotiate in good faith to replace the invalid provision by a provision which is in accordance with the applicable Law and which must be as close as possible to the Parties' original intent and appropriate consequential amendments (if any) will be made to the Contract.

34.11 Counterparts

The Contract may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. In the event that any signature is delivered by e-mail delivery of a secure format data file, such signature will create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such a secure format data file signature page were an original thereof.

34.12 B2B System

The Supplier agrees that it will use, at its cost, Alcoa's "business to business" framework for the transmission of Key Documentation, including order and invoice management (**B2B System**). For the purpose of this clause, **Key Documentation** means Purchase Orders, order confirmations, advanced shipping notices (**ASN**), change orders, invoices and other similar documentation which form a part of this Agreement.

34.13 Ongoing obligations Each of the Supplier's warranties, representations and obligations under the Contract are ongoing.

34.14 No exclusion of other warranties

The Contract does not exclude or in any way limit other warranties provided by Law.

34.15 Survival

Clauses 5, 11, 13.5, 15, 17, 18, 22, 23, 24, 26, 27, 28, 29 and 30 survive the termination or expiry of this Contract

