



Purchase Order Terms and Conditions

Supply of Goods and/or Services

1 General

- 1.1 These terms and conditions (**Terms & Conditions**) and the related purchase order (**Purchase Order**) constitute the whole of the contract (**Contract**) for the supply by the person, firm or corporation that the Purchase Order is addressed to (**the Supplier**) and NQM Gold 2 Pty Ltd or its related body corporate issuing the Purchase Order (**the Buyer**) of the goods and/or services described in the Purchase Order (**the Goods and Services**).
- 1.2 The delivery of Goods or the commencement of performance of any Services by the Supplier will constitute acceptance by the Supplier of the Contract.
- 1.3 No other terms will apply whether or not they are contained in any order acknowledgment, invoice or other document dated before or after the date of the Purchase Order, unless those terms are expressly agreed to in writing by the Buyer.
- 1.4 If the Purchase Order contains any terms (**Special Conditions**) which are inconsistent with these Terms & Conditions, then the Special Conditions will prevail to the extent of the inconsistency.
- 1.5 Time will be of the essence of the Contract and the Supplier must comply strictly with the date indicated on the Purchase Order for delivery of the Goods and/or performance of the Services.

2 Prices, payment, GST

- 2.1 The Buyer will pay the Supplier for Goods and Services in accordance with the prices set out in the Purchase Order. Prices are in Australian dollars (unless stated otherwise) and exclude GST but include all other costs incurred by the Supplier in relation to the Goods, including but not limited to the cost of delivery, cartage and freight, testing, certification, packaging, handling, storage, insurance, taxes, tariffs, duty and excise.
- 2.2 If GST is payable in relation to a taxable supply, the amount payable for that taxable supply will be the amount specified in the Purchase Order plus GST. The Supplier must provide the Buyer with a valid tax invoice for the taxable supply before the payment is due and the Buyer will

only be required to pay the Supplier for the GST component if it is provided with a valid tax invoice.

- 2.3 The Buyer will (subject to the Goods and/or Services having been satisfactorily received, or completed and accepted by the Buyer) pay the amount properly invoiced by the Supplier (except to the extent that the invoice is in dispute) within thirty days of the end of the month in which the invoice has been received. Failure by the Buyer to pay the amount payable at the time due shall not be grounds to invalidate or terminate the Contract nor entitle the Supplier to the payment of any interest charge.
- 2.4 The Buyer may deduct from such amount as may be due and payable by the Buyer pursuant to this Contract, any amounts payable by the Supplier to the Buyer.

3 Assignment and subcontracting

- 3.1 The Supplier must not, without the prior written consent of the Buyer, assign or subcontract any portion of the Contract or make any contract with any person for the execution of any portion of the work except for the supply of raw materials and minor items. No subcontract is to contain any terms which are inconsistent with this Contract.

4 Indemnity

- 4.1 The Supplier will be liable for and will indemnify and keep indemnified and hold harmless the Buyer and its directors, officers, employees, agents and contractors against all liability, loss, damage, claim, suit, action, demand, expense or proceedings in respect of:

- (a) injury to (including illness or disability), or death of any persons; and
- (b) loss or destruction of or damage to or loss of use of any property,

caused or contributed to by the Supplier or its directors, officers, employees, agents or contractors (**Supplier Personnel**) or by any breach of this Contract by the Supplier (including breach of warranty), except to the extent that it has been caused or contributed to by the willful default or unlawful or negligent act or omission of the Buyer.

4.2 This clause 4 will not limit any rights which the Buyer or Supplier may have at common law or under any legislation.

5 Insurance

5.1 Where the Supplier is required to perform any Services on the Buyer's premises or where the Supplier will be present on the Buyer's premises the Supplier will at its own expense procure and maintain the following insurances:

- (a) workers' compensation insurance including common law to cover employees of the Supplier which complies with the laws for the time being in force in the State where the Goods and/or Services are supplied. This policy must be endorsed (except where precluded by law) to contain a principal's indemnity extension, indemnifying the Buyer against any liability which it may incur to such employees, arising by virtue of applicable worker's compensation legislation and common law;
- (b) insurance which is compulsory under the laws for the time being in force in the State where the Goods and/ or Services are supplied governing the use of registered motor vehicles;
- (c) comprehensive and third party insurance covering all mechanically-propelled vehicles owned, operated or controlled by the Supplier required to be licensed in the State where the Goods and/or Services are supplied, for an amount of at least ten million dollars (\$10,000,000) in respect of any one accident or series of accidents arising out of one event. This policy is to be endorsed to contain a principal's indemnity extension and to extend to include bodily injury gap cover in respect of registered motor vehicles;
- (d) public and products liability insurance for an amount of at least ten million dollars (\$10,000,000) to cover the Supplier's legal liability in respect of occurrences resulting in:
 - (i) death of or bodily injury (including illness) to any third party; or
 - (ii) damage to property not belonging to nor held in trust by nor in the care, custody or control of the Supplier,

arising out of or in the course of or caused by the supply of the Goods and/or Services under the Contract. This policy is to be endorsed to:-

- (A) contain a principal's indemnity extension;
- (B) extend to cover worker to worker injury liability risks;
- (C) extend to cover goods in the care, custody and control of the Supplier for an amount not less than the market value of all plant and equipment supplied by the Buyer; and

(D) extend to include liability arising out of the use of unregistered motor vehicles;

(E) mobile equipment, constructional plant and equipment, tools, employee's effects, workshops and their contents, and all other property for which the Supplier is responsible or which the Supplier brings to the Buyer's premises for the purpose of supplying the Goods and/or Services, for an amount of not less than market value (unless otherwise insured to the satisfaction of Buyer in writing). This policy is to be endorsed to contain a principal's indemnity extension and to extend to include bodily injury gap cover in respect of registered motor vehicles;

(F) any other insurance, which is required by law for the time being in force in the State where the Goods and/or Services are to be supplied.

5.2 Where the Supplier is required to carry out design work or provide advice the Supplier will procure and effect at its own expense professional indemnity insurance for an amount of at least five million dollars (\$5,000,000).

5.3 The Supplier must ensure that every subcontractor engaged by it maintains insurance in the same manner as the Supplier.

5.4 Before commencing to supply the Goods and/or Services the Supplier must lodge with the Buyer certificates of currency to evidence the existence of the policies required to be arranged by the Supplier and its subcontractors.

5.5 The insurances arranged by the Supplier and its subcontractors will be subject to approval by the Buyer as to the adequacy and terms of insurance protection required and their continued existence and the Supplier must provide all such documentation, information and assistance as may be required by the Buyer in this regard.

5.6 The Supplier will be solely responsible for ensuring that any insurance to be arranged by the Supplier (and its subcontractors) is effected and maintained current. Approval by the Buyer of the adequacy in terms of insurance protection and sighting by the Buyer of certificates of currency or copies of policies will not constitute a representation by the Buyer, that the insurance is adequate and cannot be raised or pleaded in bar to any action against the Supplier for default in performing in any of the requirements under this clause 5.

5.7 The Supplier must comply with the terms of the insurances arranged by it and must pay all excesses or deductibles.

5.8 The Supplier must immediately advise the Buyer of any change or cancellation of the

insurance referred to in clauses 5.1 or 5.2 and ensure that any subcontractor has a similar obligation in relation to its insurances.

- 5.9 The effecting of insurance as required under this clause will not limit the obligations or responsibilities of the Supplier under the Contract, at common law or by statute. If the Supplier fails to effect or to keep in force any of the insurances required by this Contract, the Buyer may, but will not be obliged to, effect and keep in force any such insurance and pay such premiums as may be necessary for that purpose and may recover as a debt due from the Supplier the amount so paid, or the Buyer may set off that amount from payments due to the Supplier under the Contract.
- 5.10 The Supplier must notify the Buyer, as soon as possible in writing and in any case not later than ten [10] days after the event, of all accidents or claims which arise out of or in any way connected with this Contract. In the event of a serious accident the advice must be immediate in person or by telephone to be followed as soon as possible in writing.
- 5.11 The obligations of the Supplier to effect insurance under this clause 5 are independent of the provisions of clause 4. If any insurance effected by the Supplier confers on the Buyer an indemnity or other benefit which is more extensive than the indemnity detailed in clause 4, then the Buyer will be entitled to that benefit or indemnity.

6 Compliance with laws, site conditions and safety

- 6.1 In the performance of the Services or where Supplier Personnel will be present on the Buyer's premises:
- (a) the Supplier and the Supplier Personnel must comply with all applicable laws and with the requirements of any public authority or agency, including, without limitation, those relating to safety, occupational health, drug and alcohol, environmental protection and regulations of procedures in connection with mines, machinery, electricity and construction works, and all regulations and orders made thereunder, together with all rules and procedures issued by the Buyer from time to time and with all reasonable directions by the Buyer. The Supplier agrees to indemnify and hold the Buyer harmless from any liability or penalty which might be imposed by reason of a breach by the Supplier or the Supplier Personnel of any such law or requirement;
- (b) the Buyer will have access at all times to any equipment furnished or used by the Supplier and immediately upon notice from the Buyer, the Supplier will fix to the satisfaction of the Buyer any equipment that the Buyer considers to be unsafe, defective or unhygienic;
- (c) Supplier will use only personnel that are skilled and competent and hold all necessary licenses

and qualifications. If the Buyer requires it, then the Supplier's personnel must be approved by the Buyer. The Supplier must promptly comply with any direction by the Buyer's representative for the removal of any Supplier Personnel who are unsuitable or who breach any law or any of the Buyer's rules or procedures.

- 6.2 The Supplier represents that it holds all necessary permits, licenses or approvals and will provide copies of these to the Buyer prior to commencement of supply. The Supplier also represents that it has had opportunity and has carefully examined the work to be done and considered the site of the work and has appropriate expertise to perform the Contract.
- 6.3 If any Goods to be supplied by the Supplier will emit noise, dust, vibration, radiation or gas, have a high surface temperature or otherwise affect the environment or pose occupational health risks, the Supplier will, prior to installing such Goods, provide full details of such emissions, effects or risks including Material Safety Data Sheets if applicable.
- 6.4 The Supplier must ensure that equivalent provisions to this clause 6 are included in every subcontract entered into by the Supplier.

7 Risk, title and inspection

- 7.1 Subject to clause 7.3, title to and property in the Goods passes to the Buyer on payment of the price or delivery of the Goods to the place noted in the Purchase Order (whichever occurs first). The Supplier warrants that full, clear and unrestricted title will be given to the Buyer clear of any encumbrances.
- 7.2 Risk in the Goods remains with the Supplier until delivery.
- 7.3 All Goods will be accepted by the Buyer subject to inspection by the Buyer within a reasonable time after delivery and to the Buyer being satisfied with the Goods.

8 Packaging and documentation

- 8.1 Goods must be adequately and safely packaged by the Supplier according to the requirements (if any) detailed in the Purchase Order. If there are no such requirements detailed, Goods must be packed in a manner that is consistent with all applicable laws and with good industry practice. Goods contained in packages must be adequately protected from damage which may be caused during the normal course of rough road transport and also to prevent entry of dust and moisture.

Any product supplied by the Supplier which contains asbestos, ceramic fibre or fibre glass (in any concentration above zero) must be packaged in high strength plastic sealed to ensure dust tightness. Where asbestos is present the package must be labelled in accordance with the *Code of Practice for the Management and Control of Asbestos in Workplaces [NOHSC:2018(2005)]* published

by Safe Work Australia, National Occupational Health and Safety Commission.

- 8.2 The Buyer has the right to designate a mode, route, time and place of delivery and to nominate a carrier or delivery agent, other than as may be specified in the Purchase Order, but the Buyer will pay any cost incurred additional to the cost of delivery as specified in the Purchase Order.
- 8.3 The Supplier will:
- (a) submit one copy of each invoice or credit note in relation to each Purchase Order. Each tax invoice is to relate to only one order and is to show prices for each order line item; and
 - (b) mark the number of the Purchase Order and the relevant destination of the Goods on the Goods, and on all shipping notices, bills of lading, tax invoices, packing slips, cart notes and other documents.
- 8.4 All tax invoices must clearly show the Purchase Order number.

9 Disputes

- 9.1 If a dispute or difference arises between the Supplier and the Buyer in respect of any fact, matter or thing arising out of, or in any way in connection with the Goods and/or Services or the Contract, the dispute must be determined in accordance with the procedure in this clause 9.
- 9.2 Where a dispute or difference arises, either party may give a notice to the other party specifying:
- (a) the dispute or difference;
 - (b) particulars of the party's reasons for being dissatisfied; and
 - (c) the position that the party believes is correct.
- 9.3 If a notice of dispute is given under this clause 9, then the dispute or difference is to be referred to senior representatives of the parties, who must meet and undertake genuine and good faith negotiations with a view to resolving the dispute or difference within fourteen [14] days of the date of the notice of dispute.
- 9.4 If the representatives cannot resolve or agree upon a procedure to resolve the dispute or difference within the time specified in clause 9.3, the dispute or difference will be referred to arbitration by written notice from either party to the other.
- 9.5 Arbitration pursuant to clause 9.4 will be conducted in accordance with the Rules of Arbitration of the Institute of Arbitrators and Mediators Australia (**the Rules**) current at the time of the reference to arbitration and as otherwise set out in this clause. However, nothing in this clause is intended to modify or vary the rights of appeal contained in section 38 of the *Commercial Arbitration Act 1985 (WA)* or section 38 of the *Commercial Arbitration Act 1990 (Qld)*, as the case may be, in accordance

with the laws of the State in which the Goods and/or Services are principally to be delivered.

- 9.6 One arbitrator shall be appointed by agreement between the parties or, if agreement is not reached within fourteen [14] days of the arbitration notice, in accordance with the Rules.
- 9.7 The seat of the arbitration shall be Perth or Brisbane and all hearings shall be heard in Perth or Brisbane), as the case may be, in the State in which the Goods and/or Services are principally to be delivered unless otherwise agreed by the parties.
- 9.8 Except as otherwise provided in the Contract, despite the existence of a dispute or difference between the parties:
- (a) the Supplier must continue to supply the Goods and/or Services; and
 - (b) the parties must otherwise comply with their obligations under the Contract.
- 9.9 Nothing in this clause 9 will prejudice the right of a party to seek urgent injunctive, interlocutory or declaratory relief.

10 Termination

- 10.1 The Buyer may, for its own convenience, and without to the Supplier, terminate this Contract and:
- (a) in relation to Services, the Supplier is only entitled to reasonable reimbursement of its costs for the Services actually performed up until termination. On termination, the Supplier is not entitled to payment for any unperformed Services or for anticipated revenues or lost profits; and
 - (b) in relation to Goods:
 - (i) if the Goods to be supplied under this Contract are of standard stock of the Supplier, the Supplier is only entitled to payment for the Goods shipped prior to termination; or
 - (ii) if the Contract requires Goods to be manufactured or fabricated to the specification of the Buyer, the Supplier shall stop work under this Contract, except as may be otherwise directed by the Buyer and the Buyer will pay to the Supplier an amount equal to:
 - (A) the pro rata amount of the contract price which is equivalent to the proportion of the Goods that has been completed by the Supplier; plus
 - (B) five percent (5%) of the amount calculated in clause 10.1(b)(ii)(A).
- 10.2 Either party may terminate this Contract (without prejudice to any other rights) immediately by notice in writing to the other party if:
- (a) that other party is in breach of a material term of this Contract and has failed to remedy that

breach within seven [7] days of written notice specifying the breach and requiring its remedy; or

- (b) that other party commits an act of bankruptcy or insolvency or makes or endeavours to make any scheme of arrangement with its creditors, or if any order appointing a receiver, receiver and manager or administrator or for the winding up of that other party (whether voluntary or otherwise) is made in any court of competent jurisdiction.
- 10.3 Upon termination of the Contract, the property in any materials appropriated to the manufacture or fabrication of Goods shall vest in the Buyer, who shall be entitled to immediate possession thereof.
- 10.4 Upon termination of the Agreement under this clause 10, the Supplier will have no further rights or claims against the Buyer other than as set out in this clause 10, however termination will be without prejudice to any rights which either party may have against the other arising out of or connected with this Contract prior to the date of termination.

11 Inspection of work and records

- 11.1 The Buyer may demand that any work covered up be uncovered for the purpose of inspection. If inspection reveals workmanship and/or materials that are not satisfactory to the Buyer, then the cost of uncovering the work and remedying the fault and restoring the work to its former condition will be borne by the Supplier. If inspection shows that the uncovered work is satisfactory, then the cost will be borne by the Buyer.
- 11.2 The Buyer or its representatives shall have full and free access to the shops, factories or other places of business of the Supplier and its subcontractors at all reasonable times and with reasonable prior notice, in order that it may inform itself as to the general conditions and progress of the work covered by the Contract and to witness any tests which may be required under the Contract. No inspection by the Buyer shall be deemed to be an acceptance of the conditions then prevailing nor detract from the Buyer's right to reject Goods and/or Services not in accordance with this Contract.
- 11.3 When requested by the Buyer, the Supplier will issue to the Buyer regular reports on the progress of the work.
- 11.4 The Supplier will maintain proper records relating to the Contract for a period that is consistent with good industry practice and will make these available for inspection by the Buyer where reasonably required by the Buyer.

12 Delays and extensions of time

- 12.1 If the Supplier fails to deliver and/or install the Goods or supply the Services as the case may be by the agreed dates, the Supplier shall be liable to pay to the Buyer such amount as shall

properly compensate the Buyer for any loss or damage incurred or suffered by the Buyer as a direct result or consequent upon such failure on the part of the Supplier.

- 12.2 The Buyer may (in its absolute discretion), upon the request of the Supplier, grant an extension of time for performance of the Contract for delays caused by events outside the control of the Supplier.

13 Design, data, drawings and bills of material

- 13.1 The Supplier will submit to the Buyer drawings, design calculations, data sheets, wiring diagrams, spares lists, bills of material, code certificates, manufacturing reports, installation operation and maintenance manuals and any such other information or data (as applicable) as the Buyer may reasonably request or require.
- 13.2 The Buyer's approval or otherwise of the Supplier's drawings will be signified by the return to the Supplier of one copy suitably endorsed. If the Buyer does not approve or only gives qualified approval to such drawings, the Supplier will submit amended drawings to the Buyer.
- 13.3 Subject to clause 13.4, where the Buyer has approved drawings in accordance with this clause 13, the Supplier must manufacture or supply Goods in accordance with the drawings approved by the Buyer.
- 13.4 The Buyer's approval of the drawings will in no way relieve the Supplier of the responsibility for the correctness of the drawings or for errors in the manufacture or supply in compliance with those drawings. Such approval is given as approval in principle only and is not to be construed as meaning approval of the Supplier's design in detail.

14 Confidentiality

- 14.1 The parties must keep confidential all information of a confidential or commercially sensitive nature acquired as a result of this Contract. The Supplier shall not advertise, publish or release unless required by law information or statements to the media or the public concerning the Contract or the operations of the Buyer, without the prior written agreement of the Buyer.

15 Warranties

- 15.1 The Supplier warrants that:
 - (a) in the case of Goods:
 - (i) they must match the description in the Purchase Order;
 - (ii) they are new, of merchantable quality and free from defect or fault;
 - (iii) they must be fit for their intended purpose;

- (iv) workmanship and materials used by the Supplier, and Goods supplied pursuant to the Contract, will be in strict accordance with drawings, specifications, samples and relevant Australian standards and codes and will be suitable for the purpose expressed or implied in this Contract;
 - (v) the Buyer will have the full benefit of any manufacturer's warranties; and
 - (vi) the Goods and their use by the Buyer will not infringe any patent, trade mark, copyright, industrial design or other industrial property right and the Supplier agrees to indemnify the Buyer against all costs and liabilities resulting from any infringement or alleged infringement;
- (b) in the case of Services:
- (i) they must match the description in the Purchase Order;
 - (ii) they will be provided to standards of skill and care normally exercised by qualified and experienced professional or tradespersons in the performance of similar services; and
 - (iii) if the Supplier provided the Buyer with a demonstration before the Purchase Order was fulfilled, the Services must correspond in quality with that result.
- 15.2 These obligations shall survive the term or termination of the Contract for a period of 2 years and shall be enforceable at any time in law or equity.
- 15.3 Any part of the Goods and/or Services, which, in the reasonable opinion of the Buyer, are not in accordance with the requirements of the Contract, must promptly be re-supplied or remedied to the Buyer's reasonable satisfaction and at no additional cost to the Buyer. If the Supplier fails to make good the defective Goods and/or Services within the period stipulated by the Buyer, the Buyer may itself make good the defective Goods and/or Services at the Supplier's cost.

16 Defects liability period

- 16.1 For supply and install contracts the defects liability period will be twelve [12] months dating from the time of completion of installation unless otherwise agreed in writing.
- 16.2 For supply only contracts the defects liability period will be six [6] months dating from the time of completion of installation by others or twelve [12] months from the date of completion of delivery, whichever is the lesser, unless otherwise agreed in writing.
- 16.3 As soon as reasonably practicable after being given written notice by the Buyer during the defects liability period, that the Buyer considers (acting reasonably) that there are any defects or omissions in any of the Goods and/or Services, the Supplier will rectify such defects

or omissions at its own cost. If the Supplier fails to make good the defective Goods and/or Services within the period stipulated by the Buyer, the Buyer may itself make good the defective Goods and/or Services at the Supplier's cost.

17 Quantity

- 17.1 If the quantity of Goods delivered is greater than that specified in the Purchaser Order, the Buyer may return to the Supplier, or demand that the Supplier collect from the Buyer any excess quantities at the Supplier's sole risk and expense. Such excess Goods must be collected as soon as possible after receiving the Buyer's demand.

18 Changes

- 18.1 The Buyer may at any time by a written order make reasonable changes in the Contract. If such changes increase or decrease the cost of the work to the Supplier an equitable adjustment in the contract price will be made.
- 18.2 Any claim for adjustment under this clause 18 must be asserted within ten [10] days from the date the change was ordered.

19 Liens

- 19.1 The Supplier agrees that no lien will be filed by anyone against the Buyer or its property for Goods or labour or both furnished under the Contract, and that before final payment is made by the Buyer, the Supplier will, if required by the Buyer, furnish a complete release satisfactory to the Buyer, signed by all persons furnishing Goods or labour, waiving the right to file any lien.

20 Taxes

- 20.1 The Supplier will pay all taxes of every kind applicable to the performance of the Contract and will reimburse the Buyer if the Buyer pays any such taxes except as otherwise provided in relation to GST.

21 Independent contractor

- 21.1 The Supplier will be an independent contractor and shall not be considered an employee, partner or agent of the Buyer for any purpose whatsoever.

22 Severance

- 22.1 If any term of this Contract is deemed to be unlawful or unenforceable that term will be severed from this Contract and all other terms will remain in force.

23 Waiver

- 23.1 Failure by the Buyer to insist on strict performance of any term or condition (including compliance with specifications detailed in the Purchase Order) will not be deemed to be a waiver of any of the Buyer's rights and remedies under the Contract nor of any rights arising out of any breach or default of the Supplier.

24 Governing law

- 24.1 The Contract is governed by an construed in accordance with the laws of the State in which the Goods and/or Services are principally to be

delivered and the parties submit to the non-exclusive jurisdiction of the courts of that State.

25 No limitation

- 25.1 Nothing in this Contract limits the Buyer's rights under any law, including (without limiting the generality of the foregoing) under the *Competition and Consumer Act 2010* (Cth), [*Sale of Goods Act 1895* (WA) or *Fair Trading Act 2010* (WA) or *Sale of Goods Act 1896* (Qld) or *Fair Trading Act 1989* (Qld)], as the case may be, in accordance with the laws of the State in which the Goods and/or Services are principally to be delivered.