

SUPPLY TERMS AND CONDITIONS (SHORT FORM)

Supply Terms and Conditions (Short Form)

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

Agreement means these terms and conditions and the Purchase Order.

Company means Arafura Rare Earths Ltd (ABN 22 080 933 455).

Company Group means the Company, its related bodies corporate and each of the foregoing's directors, officers, agents and employees.

Company's Policies and Guidelines means the Company's policies and procedures provided to the Supplier from time to time, including the Code of Conduct available at [ARULTD](#).

Confidential Information means all commercial, technical and other information in any form in the possession or knowledge of the Company which is disclosed to the Supplier in relation to the Supply or pursuant to the Agreement at any time and any new information produced by or at the request of the Supplier in performing the Agreement, including any information of the above kind which is provided verbally.

Consequential Loss means any:

- (a) special or punitive damages;
- (b) loss of profits, opportunity, market, contract (other than loss of this Agreement), revenue, goodwill, bargain or anticipated savings; and
- (c) loss of use of property, loss of production, business interruption, wasted overheads,

whether arising in contract, tort (including negligence), under statute or otherwise, but does not include any third party claim.

Deliverables means all materials provided by the Supplier in the performance of the Agreement.

Due Date means the date specified in the Purchase Order.

Goods means any goods specified in the Purchase Order and includes all other things which are incidental to or can reasonably be inferred from such goods.

Price means the price for the Supply specified in the Purchase Order.

Purchase Order means the purchase order issued by the Company referencing these terms and conditions.

Health, Safety, Environment and Security Requirements means the Company's Health, Safety, Environment and Security Requirements as provided to the Supplier and amended from time to time at the discretion of the Company.

Services means any services specified in the Purchase Order and includes all other things which are incidental to, or can be reasonably inferred from such services.

Site means any locations controlled by the Company.

Statutory Requirements includes all applicable legislation, ordinances, regulations, by-laws, local laws, orders, and proclamations as amended from time to time.

Supplier means the entity specified in the Purchase Order.

Supplier Group means the Supplier, its related bodies corporate, its subcontractors of any tier and each of the foregoing's directors, officers, agents and employees.

Supply means the provision of all Goods and/or Services.

2 Performance

- (a) The Supplier represents and warrants that the Supply made under this Agreement will:
 - (i) comply with the requirements of this Agreement, the Company's Policies Procedures and Guidelines, the Statutory Requirements and all applicable Australian Standards or where there is no applicable Australian Standard then all applicable International Standards;
 - (ii) be fit for the purpose made known to the Supplier by the Company or, if none was made known to the Supplier the purpose for which goods and/or services of that kind are ordinarily used; and
 - (iii) be free from defects.
- (b) The Supplier must:
 - (i) complete the Supply by the Due Date;
 - (ii) comply with the reasonable directions of the Company; and
 - (iii) at its own cost, replace any defective Goods, reperform any defective Services or otherwise rectify any defects or omissions in the Supply.

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3 Goods

If the Supply includes Goods:

- (a) The Supplier warrants that the Goods are:
 - (i) of merchantable quality, new in every respect and in good order and condition; and
 - (ii) supplied free of any liens, charges and encumbrances.
- (b) Unless otherwise specified, the cost of all transport, insurance, packing and loading is included in the Price.
- (c) The Supplier must deliver the Goods to the location specified in the Purchase Order by the Due Date.
- (d) The Company may refuse to accept delivery of the Goods, or return them at the Supplier's cost, if the Goods do not comply with the Agreement.
- (e) The Company will acquire unencumbered title to any Goods on the earlier of delivery and payment of the portion of the Price applicable to the Goods.
- (f) Risk in the Goods will remain with the Supplier until delivery.

4 Services

If the Supply includes Services, the Supplier must perform the Services with the skill, care and diligence reasonably expected from a skilled and experienced professional contractor performing services of a similar nature to the Services.

5 Payment

- (a) The Company will pay the Supplier the Price in consideration of the Supply.
- (b) The Supplier must invoice the Company on a monthly basis within 7 days of the end of each calendar month for the Supply made in the previous month.
- (c) The Company will notify the Supplier in writing of any required documentation or disputed amounts and will pay the undisputed portions of any invoice within 30 days after the Company accepts the Supplier's invoice.
- (d) Without prejudice to any other rights, the Company may deduct from any amounts which may be, or become, payable to the Supplier, any money which is or may become payable from the Supplier to the Company.

- (e) Unless otherwise specified, the amounts detailed in this Agreement do not include any amount for GST.
- (f) The recovery of any GST is subject to the Supplier providing a valid Tax Invoice in a form acceptable to the Company and containing all information stipulated in any applicable GST legislation and in order that the Company will receive the benefit of any Input Tax Credit.
- (g) In this clause, unless the context indicates otherwise, words or expressions which are defined in the *A New Tax System (Goods and Goods Tax) Act 1999* (Cth) have the same meaning in this clause.

6 Delay

- (a) The Supplier must:
 - (i) give the Company immediate notice of any delay to the Supply; and
 - (ii) take all reasonable steps to minimise the effect of any delay.
- (b) The Company will extend the Due Date for any delay caused by the Company (including any Variation).

7 Intellectual property rights

- (a) The Supplier grants to the Company a non-exclusive, irrevocable, worldwide, royalty-free and fully paid up licence (capable of being sublicensed) to use the Goods and/or Services and copy, modify, adapt and transmit the Deliverables to the extent required in order for the Company to have the full benefit of the Deliverables and the Supply.
- (b) The Supplier warrants that it will not, in the performance of the Supply, infringe any patent, registered design, trademark, copyright or other protected right.

8 Site

To the extent that any of the Supplier Group accesses the Site, the Supplier must:

- (a) take all measures necessary to protect the health, safety and welfare of all personnel;
- (b) comply, and ensure all members of the Supplier Group comply with the:
 - (i) Company's directions in relation to the Site, health, safety, environment or security;

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- (ii) Health, Safety, Environment and Security Requirements; and
- (iii) Statutory Requirements;
- (c) cooperate and make reasonable efforts to minimise interference with others on Site; and
- (d) cooperate with the Company to enable the Company to comply with its obligations under any Statutory Requirements applicable or relevant to the Supply.

9 Insurance

The Supplier must, at its own expense, procure and maintain, with reputable insurers and on policy forms reasonably acceptable to Company:

- (a) workers compensation insurances in accordance with the Statutory Requirement; and
- (b) goods in transit insurance covering loss, destruction of or damage to the Goods during transit.

10 Variations

- (a) The Company may direct the Supplier to do one or more of the following:
 - (i) increase or decrease the quantity of the Supply; (including for the purposes of procuring the omitted Supply from an alternative supplier);
 - (ii) change the dimensions, character, location, quality or performance requirements, of the Supply; or
 - (iii) perform additional scope,
 (a **Variation**).
- (b) No Variation will be valid unless it is approved in writing by the Company before it is executed.
- (c) Valuation of Variations under this clause 10 shall be determined:
 - (i) by agreement between the parties; or
 - (ii) if the parties fail to reach an agreement, by the Company acting reasonably and having regard to the rates and prices in the Agreement and the cost to the Supplier of performing the Variation,
 and the Price will be adjusted accordingly.

11 Termination

- (a) At any time for any reason the Company may terminate by written notice the Agreement (including to procure the Supply or any part of it from a third party).
- (b) The Company may, without prejudice to any other rights or remedies it may have, by written notice served on the Supplier terminate its obligations under this Agreement if:
 - (i) the Supplier is in breach of the terms of the Agreement and the breach has not been remedied within 21 days of a written notice served by the Company on the Supplier specifying the breach and requiring the breach to be remedied;
 - (ii) the Supply will be delayed beyond the Due Date; or
 - (iii) subject to law, the Supplier is involved in any insolvency proceedings or equivalent processes.
- (c) Upon receipt of a notice of termination under this clause 11, the Supplier must immediately:
 - (i) cease to perform the Supply in accordance with the notice; and
 - (ii) comply with any directions by the Company including, and to the extent directed, to use its best endeavours to mitigate any loss or expense.
- (d) Subject to the Company's rights under or in connection with the Agreement, including the rights to withhold or set-off payment and recovery of damages, if the Agreement is terminated by the Company pursuant to this clause 11 the Company will pay the Supplier:
 - (i) the outstanding and unpaid portion of the Price earned by the Supplier up to the date of termination; and
 - (ii) for termination under clause 11(a) only, the Supplier's reasonable and direct costs:
 - (A) of complying with any directions given by the Company upon, or subsequent to, termination; or
 - (B) incurred in anticipation of performing the remainder of the Supply that are not included above and provided the Supplier takes all reasonable steps to mitigate these costs.
- (e) Save for as provided under clause 11(d), if the Agreement is terminated by either party for any reason,

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the Company will not be liable to the Supplier for any cost, loss, expense or damage incurred as a consequence of, or in connection with the Agreement, the performance of the Supply or termination.

12 Confidentiality

- (a) The Supplier must ensure that all Confidential Information is kept confidential and the Supplier must not disclose directly or indirectly any Confidential Information to a third party without the prior written approval of the Company.
- (b) Clause 12(a) will not apply to Confidential Information which:
 - (i) was in the Supplier's possession prior to the date of the Agreement, (unless it was information that was provided directly or indirectly by the Company or which is the subject of a confidential obligation between the Supplier and the Company);
 - (ii) is in the public domain; or
 - (iii) is required to be disclosed by order of the Court or under the requirements of any applicable law.

13 Liability and indemnity

- (a) The Supplier indemnifies the Company Group against all illness, injury or death of any person, or any loss or destruction of or damage to any property caused or contributed to by any negligence, breach of this Agreement or breach of statutory duty by the Supplier.
- (b) The indemnity in clause 13(a) will be reduced proportionately to the extent that illness, injury, death, loss or destruction or claim is contributed to by the negligence or breach of the Agreement by a member of the Company Group.
- (c) The Supplier's total aggregate liability to the Company under this Agreement will be limited to the 100% of the Price.
- (d) Neither party will be liable to the other for Consequential Loss.
- (e) This clause 13 shall not apply to limit the liability of the Supplier:
 - (i) for personal injury or death or loss of or damage to third party property;
 - (ii) for fraud; or
 - (iii) for breach of clause 7 or 12.

14 General

- (a) The Agreement will be governed by and construed with reference to the laws in force in Western Australia.
- (b) The provisions of Part 1F of the *Civil Liability Act 2002* (WA) are excluded.
- (c) All notices and other communications to be given under this Agreement shall be given to the address in the Purchase Order.
- (d) No exclusive relationship exists between the Company and the Supplier.
- (e) The Supplier must not assign its rights, interests, obligations or liabilities under all or part of the Agreement without the prior approval of the Company.
- (f) Any dispute arising out of or in connection with the Agreement, shall first be attempted to be resolved between the parties within 30 days of the disputing party giving written notice of the dispute to the other party. If the dispute is not resolved within that period, either party may commence litigation.
- (g) The Agreement constitutes the entire agreement between the Company and the Supplier relating to the Supply.
- (h) If any part of this Agreement is, or becomes, void or unenforceable, that part is, or will be, severed so that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.
- (i) A failure to exercise or delay in exercising any right, power or privilege by any party will not operate as a waiver of that right, power or privilege. A single or partial exercise of any right, power or privilege will not preclude any other or further exercise of that right, power or privilege, or the exercise of any right, power or privilege.
- (j) Nothing in this Agreement is intended to create a relationship of partnership, agency, employment or joint venture between the parties.
- (k) In the interpretation of this Agreement, no rule of construction applies to the disadvantage of one party on the basis that it put forward the Agreement or any part of it.

Clauses 1, 7, 11, 12, 13 and 14 survive termination or expiry of this Agreement as do any other clauses that are by their nature intended to survive.