

# PO Terms

**Note:** If a purchase order references a contract, that purchase order will be subject to the referenced contract's terms and conditions. However, if the purchase order does not reference a contract, that purchase order will be subject to these terms and conditions.

## 1 Other terms

- 1.1 Except as provided by the PO Terms, no other terms and conditions apply in addition to or instead of the PO Terms, including any general terms and conditions on a quote or other Contractor's document.
- 1.2 No signature by any HanRoy's Personnel on any Contractor's document will be construed as a waiver or an admission that the Supply complies with the Order.

## 2 Supply

- 2.1 The Contractor must perform the Supply in accordance with:
  - (a) the requirements set out or referred to in the Order;
  - (b) any variation to the Supply;
  - (c) HanRoy's Representative's reasonable directions;
  - (d) Good Industry Practice; and
  - (e) HanRoy Policies.
- 2.2 Other than as expressly specified in the Order, the Contract Sum represents full and complete payment for all matters and things (including all taxes, levies, customs duties and tariffs) necessary to complete the Supply and is not subject to any adjustment, including for rise and fall.
- 2.3 Without limiting any warranty implied by law, the Contractor represents and warrants that:
  - (a) the Supply will be free from Defects and fit for the purposes which the goods and services constituting the Supply are ordinarily used; and
  - (b) it has sufficient commercial resources to discharge all its obligations under the Order.
- 2.4 Without limiting any warranty implied by law, the Contractor represents and warrants that its Personnel engaged to perform the Supply:
  - (a) are competent, appropriately qualified and experienced;
  - (b) possess the commercial and technical competence of a contractor exercising Good Industry Practice;
  - (c) will perform the Supply in a proper and workmanlike manner; and
  - (d) will perform the Supply with due care and skill and in a professional and diligent manner.
- 2.5 The Goods must be of merchantable quality and unless HanRoy specifies otherwise by written notice, must be new. The Contractor must ensure that Goods are appropriately packed to avoid damage in transit or storage.
- 2.6 The Contractor represents and warrants that at all relevant times:
  - (a) it is the legal and beneficial owner of the Goods, and no other person holds or is entitled to hold any interest in the Goods; and
  - (b) there are no encumbrances or liens over the Goods.

## 3 Inspection and Defects liability

- 3.1 HanRoy may with reasonable notice in writing direct the Contractor to procure entry to premises where Supply is being performed, for HanRoy to examine and test the Supply.
- 3.2 Without limiting **clause 3.1**, HanRoy may examine or test any Supply within a reasonable time after it is delivered or completed. No examination or test carried out by HanRoy will relieve the Contractor of any obligation under the Order.
- 3.3 If during the Term or Warranty Period, HanRoy believes any part or all of the Supply is Defective, HanRoy may by written notice direct the Contractor:
  - (a) to, at the Contractor's cost and within a reasonable time specified by HanRoy, investigate and report upon the Defect, such report identifying the nature and likely cause of the Defect and providing a remedial plan for rectification of the Defect;
  - (b) to, within a reasonable time specified by HanRoy:
    - (i) accept or reject the existence of the Defect;
    - (ii) remedy the Defect at the Contractor's expense, at times and in a manner causing as little inconvenience as possible to HanRoy;
  - (c) that HanRoy accepts the Supply despite the Defect, in which case HanRoy will assess an amount that represents the cost of HanRoy having the Defect remedied by others and that amount will be a debt due and payable by the Contractor to HanRoy.

## 4 Site, WHS, the Environment and Heritage

- 4.1 The Contractor will not have exclusive possession of the Site. Access to the Site shall only confer a right to such use and control as is necessary in HanRoy's opinion to enable the Contractor to carry out the Supply.
- 4.2 HanRoy is not required to provide access to the Site until HanRoy is satisfied (in its absolute discretion) that:
  - (a) the Contractor has effected the insurance policies required by **clause 7**; and
  - (b) the Contractor has satisfied HanRoy's other reasonable requirements.
- 4.3 Unless the Purchase Order or a written notice from HanRoy specifies otherwise, the Contractor is solely responsible for providing all resources, temporary works, plant, equipment and other items necessary for the Supply.
- 4.4 The Contractor must at all reasonable times give HanRoy access to the Supply on the Site, including to temporary works, plant and equipment.

- 4.5 The Contractor must ensure that the temporary works, plant and equipment the Contractor brings onto the Site are used and maintained in accordance with Good Industry Practice.
- 4.6 Unless the Purchase Order or a written notice from HanRoy specifies otherwise, the Contractor is responsible for the care of any HanRoy-supplied items (including accommodation, flights and fuel) until the earlier of the end of the Term or the date the Contractor returns them to HanRoy. The Contractor must make good any loss or damage caused by the Contractor or its Personnel to any HanRoy-supplied item.
- 4.7 If HanRoy gives a written notice to the Contractor directing it to remove from the Site a member of the Contractor's Personnel, the Contractor must promptly comply with the notice and provide a replacement acceptable to HanRoy. HanRoy is not liable to the Contractor for any Loss or Claim arising from the removal of the Contractor's Personnel.
- 4.8 In respect of the Site, the Contractor must not do, or fail to do, anything that is likely to affect a right or interest HanRoy or the Site owner may have in:
  - (a) any mining tenement granted or applied for under the *Mining Act 1978* (WA);
  - (b) any agreement relating to Heritage; and
  - (c) any government agreement within the meaning of the *Government Agreements Act 1979* (WA).
- 4.9 The Contractor is responsible for the health and safety of all its Personnel and any person attending any workplace under the Contractor's control, including on the Site.
- 4.10 While on the Site, the Contractor must, and must ensure its Personnel:
  - (a) do all things reasonably necessary to eliminate (or if elimination is not possible, to the extent possible, control and minimise) all risks relating to WHS, the Environment, and Heritage;
  - (b) without limiting **clause 2.1(e)**, comply with HanRoy Policies as they relate to WHS, the Environment, Heritage and the Site; and
  - (c) without limiting **clause 2.1(c)**, promptly obey the Statutory Manager's directions relating to health and safety, and HanRoy may at any time require the Contractor to demonstrate its compliance with this **clause 4.10**.
- 4.11 If a Notifiable Incident occurs, the Contractor must as soon as practicable after the incident:
  - (a) inform HanRoy and if applicable, the Statutory Manager; and
  - (b) unless directed otherwise, take all reasonable steps to remedy the effects of the Notifiable Incident.
- 4.12 The Contractor acknowledges that soil, gravel, rock, or other materials occurring naturally at the Site may contain traces of asbestiform and other fibrous minerals (**Hazardous Materials**). Without limiting any health and safety obligation under the Order, the Contractor must, and must ensure its Personnel, before disturbing the ground or any naturally occurring materials (including samples provided to the Contractor), establish and implement safe work procedures to eliminate, to the extent possible, all health and safety risks arising from Hazardous Materials.
- 4.13 The Contractor indemnifies HanRoy from and against all any Loss or Claims arising out of or in connection with a failure by the Contractor or its Personnel to take the precautions set out in **clause 4.12**.
- 4.14 The Contractor is responsible for all employee relations matters arising in connection with its Personnel and must comply with, and must ensure its Personnel comply with, all laws relating to employee relations.

## 5 IP Rights

- 5.1 Each party remains the owner of its Background IP. Nothing in the Order prevents, limits or restricts each party's subsequent use or exploitation of its own Background IP.
- 5.2 In carrying out the Supply the Contractor:
  - (a) warrants and represents that:
    - (i) the Contractor will not infringe; and
    - (ii) the Supply, and the use of the Supply will not infringe, the IP Rights of any person;
  - (b) hereby agrees that all Contract IP will become HanRoy's property as and when created, and the Contractor hereby assigns to HanRoy all rights, title and interest in and to the Contract IP;
  - (c) grants to HanRoy a perpetual, irrevocable, royalty-free, world-wide licence to use the Contractor's Background IP to the extent required to use, reproduce, deal with, maintain, remedy Defects in, modify and develop the Supply, including by engaging third parties; and
  - (d) must take all steps reasonably necessary to give effect to the requirements of this **clause 5.2**.
- 5.3 The Contractor must not do anything which could reasonably compromise HanRoy's Information Security and must promptly notify HanRoy upon becoming aware of any compromise to HanRoy's Information Security.

## 6 Compliance and reporting

- 6.1 The Contractor must provide reasonable assistance to HanRoy to enable it to comply with any law applying to HanRoy, the Order, or the Supply.
- 6.2 From time to time, HanRoy may request the Contractor to provide a written report detailing such information about the Supply as HanRoy reasonably requires, and the Contractor must provide the report within 10 Business Days of the request.

## 7 Insurance

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- 7.1 The Contractor must at its own cost, procure and maintain insurance policies in the forms and amounts stated in this **clause 7.1**, from an Approved Financial Institution:
- (a) public and product liability insurance of \$20,000,000 for any one claim and unlimited in the aggregate;
  - (b) (if the Supply involves plant, equipment or supplies) insurance of the plant, equipment and supplies to be used to perform the Supply, for a sum equalling the full replacement value of the plant, equipment and supplies;
  - (c) (if the Supply involves professional or consultancy services) professional indemnity insurance for \$5,000,000 for any one claim and in the aggregate;
  - (d) workers' compensation insurance as required by law;
  - (e) compulsory motor vehicle third party insurance as required by law;
  - (f) (if the Supply involves the use of a motor vehicle) comprehensive motor vehicle and third party liability insurance in the amount of \$10,000,000; and
  - (g) (if the Supply involves transit of goods by sea) marine cargo insurance for the amount not less than the replacement value of those goods, ensuring those goods are insured against all risks up until the date the Goods are delivered and accepted by HanRoy.
- 7.2 The Contractor must:
- (a) provide certificates of currency for the insurance policies within 5 Business Days of HanRoy's request; and
  - (b) maintain the insurance policies for the Term, except professional indemnity insurance, which must be maintained for seven years after the end of the Term.
- 8 Suspension**  
HanRoy may suspend all or part of the performance of the Supply at any time for any period by reasonable notice in writing to the Contractor. The Contractor must comply with such notice and must recommence performance of the Supply when directed to by HanRoy.
- 9 Termination**
- 9.1 HanRoy may terminate the Order at any time by giving at least 5 Business Days' notice to the Contractor. If HanRoy terminates the Order under this clause then, subject to **clause 11.8**, the Contractor will be entitled to payment for:
- (a) Supply carried out in accordance with the Order prior to the date of termination;
  - (b) the cost of materials reasonably ordered for the Supply for which the Contractor is legally bound to pay, provided that title in those materials vests in HanRoy upon payment; and
- the Contractor must take all reasonable steps possible to mitigate the costs referred to in **clauses 9.1(a)** and **9.1(b)**.
- 10 Variations**
- 10.1 HanRoy may during the Term, vary the Supply and no such variation invalidates the Order. Additionally, HanRoy has the right to have a third party carry out any decreased or omitted part of the Supply. The Contractor must not commence (or cease to perform) a variation until it receives a written notice to do so from HanRoy. The Contractor must comply with the notice.
- 10.2 HanRoy may during the Term, give the Contractor written notice of a proposed variation to the Supply. The Contractor must within 5 Business Days of receiving such notice, give a written notice to HanRoy:
- (a) offering to perform the proposed variation and detailing its effects on the Delivery Date and Contract Sum; or
  - (b) stating it will not perform the proposed variation and providing reasons.
- 10.3 Within 10 Business Days of receiving the notice under **clause 10.2(a)**, HanRoy will give a written notice to the Contractor stating that HanRoy:
- (a) accepts the Contractor's offer, in which case the Contractor must execute the Supply in accordance with the notice and HanRoy will accordingly revise the Delivery Date and Contract Sum;
  - (b) requires amendment to the Contractor's offer, in which case the Contractor must provide a revised offer within 5 Business Days and this **clause 10.3** will reapply; or
  - (c) does not accept the Contractor's offer, in which case HanRoy may direct the Contractor to increase the Supply, to be assessed by HanRoy in accordance with **clause 10.4**, or have the additional Supply carried out by a third party.
- 10.4 HanRoy will adjust the Contract Sum for all variations having regard to pricing in the Purchase Order to the extent it prescribes rates and prices, or if there are no applicable rates or prices in the Purchase Order, or to the extent the Purchase Order does not specify applicable rates or prices, reasonable rates or prices.
- 10.5 The Contractor has no right to make a Claim against HanRoy arising out of any direction HanRoy gives to the Contractor, unless HanRoy's Representative, approves the direction as a variation in accordance with the Order.
- 11 Payment**
- 11.1 In consideration of the Contractor performing the Supply and claiming payment in accordance with the Order, HanRoy will pay the Contractor the Contract Sum as adjusted in accordance with the Order.
- 11.2 The Contractor must give HanRoy an Invoice:
- (a) promptly after the Supply has been delivered or completed and accepted by HanRoy; or
  - (b) where Services continue for more than one month, on the last Friday of each month, (as applicable).
- 11.3 Each Invoice must:
- (a) provide sufficient information about the Order (including the Purchase Order number) to enable HanRoy to verify the amount claimed;
  - (b) detail the Supply performed, including:
    - (i) the date Goods were delivered, or the period of Services performed (or both), along with relevant quantities;
    - (ii) the amount of the Contract Sum being claimed and how that amount relates to the Supply performed;
    - (iii) any GST component paid by the Contractor for which HanRoy may claim an input credit; and
    - (iv) any other information HanRoy reasonably requires.
- 11.4 HanRoy will pay the Contractor in instalments as the Contractor progressively completes the Supply. Each payment will be based on the value of the Supply completed by the Contractor and which HanRoy has title to or the benefit of.
- 11.5 HanRoy will pay the amount it reasonably determines is due to be paid within 20 Business Days of the date HanRoy received the Invoice.
- 11.6 If HanRoy proposes to pay an amount that is more or less than the amount claimed, HanRoy will within 15 Business Days of the date it received the Invoice, issue a payment schedule setting out the amount HanRoy determines is payable and the reasons for the difference. The Contractor must, within two Business Days of receiving the payment schedule, provide an adjustment notice or revised Invoice reflecting the adjusted amount.
- 11.7 Payments are not approval or evidence of the value of the Supply or an admission that the Supply complies with the Order.
- 11.8 To the extent not prohibited by law, HanRoy may withhold payment in relation to any part of an Invoice where the Supply referred to in that Invoice has not in HanRoy's reasonable opinion, been performed in accordance with the Order. HanRoy may deduct from money due to the Contractor any money due, or likely to become due, from the Contractor to HanRoy under the Order, or otherwise than in connection with the Order.
- 12 Taxes and duties**
- 12.1 The Contractor must have an ABN.
- 12.2 Any amount referred to in the Order that is relevant to determining a payment to be made, excludes GST. HanRoy is not required to pay any GST component under the Order until it receives an Invoice from the Contractor in respect of the taxable supply.
- 12.3 If GST is imposed on a supply made under the Order, the consideration provided for that supply is increased by the rate at which GST is imposed. The additional consideration is subject to the supplier providing the recipient with an Invoice, payable at the same time and in the same manner as the consideration to which it relates.
- 12.4 If a party refunds to another party any amount on which GST was paid, that party must also refund the GST amount paid in respect of that amount.
- 13 Time**
- 13.1 The Contractor must proceed with the Supply with due diligence, expedition and without delay, and must ensure it completes the Supply by the Delivery Date. Upon becoming aware of anything which is likely to delay the Supply, the Contractor must notify HanRoy's Representative as soon as possible.
- 13.2 If the delay the subject of the notice given under **clause 13.1** was caused by HanRoy or its Personnel, HanRoy will extend the Delivery Date by a reasonable period.
- 13.3 Despite the Contractor not claiming or not being entitled to an extension to the Delivery Date, HanRoy may in its absolute discretion, grant the Contractor an extension to the Delivery Date.
- 14 Risk and title**
- 14.1 Risk in Goods passes to HanRoy when they are delivered and accepted by HanRoy. Title in Goods passes to HanRoy on the earlier of risk passing under this **clause 14.1** and payment of the Contract Sum (or the relevant portion thereof).
- 15 Modern Slavery and anti-corruption**
- 15.1 The Contractor represents and warrants that to its knowledge, at the date of the Order, no Modern Slavery exists within (and that it will take all reasonable steps to prevent any Modern Slavery arising within) its organisation and supply chain. The Contractor must notify HanRoy promptly upon becoming aware of any Modern Slavery in its organisation or supply chain.
- 15.2 The Contractor must not (and must ensure its Personnel do not) give or offer to give to any person any bribe, gift, gratuity, or other thing of value which could reasonably be construed as a corrupt practice in connection with the Order.
- 16 Confidentiality and publicity**
- 16.1 Each party:
- (a) must keep confidential, and not use or disclose, any Confidential Information of the other party, except as permitted by the Order;

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- (b) must promptly notify the other party upon becoming aware of any loss or unauthorised use, access or disclosure of the other party's Confidential Information;
- (c) may only use the other party's Confidential Information to perform its obligations and exercise its rights under the Order; and
- (d) may disclose Confidential Information to its personnel who have a specific need to access that information but only to the extent required to perform its obligations and exercise its rights under the Order.
- 16.2 The obligations in **clause 16.1** do not apply to:
- (a) a disclosure to professional advisers under a duty of confidence or to a government agency relating to an approval required under the Order;
- (b) a disclosure made with the other party's prior written consent;
- (c) a disclosure required by law, stock exchange rules or a court order; and
- (d) information that is, at the relevant time, in the public domain other than by a breach of confidence.
- 16.3 The Contractor must not make any public announcement relating to the Order without HanRoy's prior written approval.
- 16.4 Unless the Purchase Order or a notice from HanRoy specifies otherwise, all information (regardless of its form) HanRoy makes available to the Contractor:
- (a) is and always remains HanRoy's property; and
- (b) must be returned or destroyed within 10 Business Days of the earlier of a request by HanRoy or the end of the Term.
- 17 Dispute resolution**
- 17.1 Any difference or dispute arising in relation to the Order (**Dispute**) must be determined in accordance with this **clause 17** provided that nothing in **clause 17** will prevent a party commencing proceedings for urgent declaratory or injunctive relief.
- 17.2 If a party alleges a Dispute has arisen it must give notice of that fact to the other party (**Dispute Notice**). Within 10 Business Days of the Dispute Notice, HanRoy's Representative and a senior representative of the Contractor must meet and, confidentially and in good faith, attempt to resolve the Dispute. If the Dispute is not resolved within 10 Business Days of the last date for the meeting of representatives under this clause, the matter will be and is hereby referred to arbitration.
- 17.3 The seat of the arbitration will be Perth, Western Australia and the arbitration will take place in Perth before a single arbitrator. The arbitrator will be nominated by ACICA, upon the application of either party. The arbitration will be conducted in accordance with:
- (a) the ACICA Arbitration Rules (as amended from time to time); or
- (b) if one or more parties are nationals of and habitually resident in, incorporated in, or where the central management and control is exercised in, different countries as between the parties, then the UNCITRAL Arbitration Rules will apply, and the appointing authority will be ACICA.
- 17.4 To the extent permitted by law, the parties agree that:
- (a) the powers conferred and restrictions imposed on a court by Part 1F of the *Civil Liability Act 2002 (WA)* are not conferred or imposed on the arbitrators appointed under **clause 17**; and
- (b) any such arbitrators shall have no power to make an order or award in respect of a Dispute by applying or considering the provisions of Part 1F of the *Civil Liability Act 2002 (WA)*.
- 18 Assignment and subcontracting**
- 18.1 HanRoy may, at any time, assign or otherwise deal with its interests under the Order:
- (a) to any related entity (as defined under the *Corporations Act 2001 (Cth)*) at any time by notice to the Contractor; and
- (b) to any third party, with the Contractor's prior written consent (such consent not to be unreasonably withheld, delayed or conditioned).
- 18.2 The Contractor must not assign or deal with its interests under the Order without HanRoy's prior written consent (such consent not to be unreasonably withheld, but which may be subject to conditions).
- 18.3 Subject to **clause 18.4**, the Contractor may subcontract any part of the Supply but not the whole of the Supply.
- 18.4 HanRoy may by notice direct that a particular part of the Supply is not subcontracted without HanRoy's prior written consent (such consent not to be unreasonably withheld, but which may be subject to conditions).
- 19 Indemnities and limitations**
- 19.1 Subject to **clause 19.2**, the Contractor must in connection with the Order or the Supply, indemnify HanRoy and its Personnel (together, **those Indemnified**) from and against any Loss and Claims, however caused, brought against, suffered or incurred by those Indemnified arising out of or in connection with, in each instance:
- (a) injury to, or death or disease of, any person;
- (b) damage to, or loss or destruction of, any property;
- (c) harm caused to any Heritage or the Environment;
- (d) liability to or Claim by a third party; and
- (e) a breach by the Contractor of **clause 5.2** (IP Rights) or **clause 16.1** (Confidentiality).
- 19.2 The Contractor's liability to indemnify those Indemnified under **clause 19.1** will be proportionately reduced to the extent the Loss or Claim was caused by HanRoy's acts or omissions.
- 19.3 Subject to **clause 19.4**, each party will have no liability to the other party arising under or in connection with the Order (howsoever arising, including negligence) for Consequential Loss.
- 19.4 The exclusion of liability described in **clause 19.3** does not extend to liability for Consequential Loss in respect of:
- (a) liability that is (or would be but for **clause 19.3**) covered by an insurance policy required by **clause 7.1**; or
- (b) Wilful Misconduct.
- 19.5 Subject to **clause 19.6**, to the maximum extent permitted by law, each party's maximum aggregate liability to the other party under or in connection with the Order and the Supply, whether in contract, in tort (including negligence), in equity, under statute or otherwise, is limited to 100% of the Contract Sum.
- 19.6 **Clause 19.5** does not apply to or limit any liability in respect of:
- (a) injury to, or illness or death of, any person;
- (b) damage to, or loss or destruction of, any property;
- (c) harm caused to any Heritage or the Environment;
- (d) any Defect in the Supply;
- (e) a breach of any law by the Contractor;
- (f) the subject of an indemnity in the Order;
- (g) for liability to the extent the Contractor is or may be indemnified for the liability under an insurance policy required by **clause 7.1**, or would have been indemnified but for a failure by the Contractor to comply with the Order or its obligations under that insurance policy; or
- (h) Wilful Misconduct.
- 20 General**
- 20.1 The Order is governed by the laws in force in Western Australia. Subject to **clause 17**, each party irrevocably submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in Western Australia, and any court that may hear appeals from any of those courts, and waives any right to object to any proceedings being brought in those courts.
- 20.2 No waiver by HanRoy of a breach of the Order by the Contractor constitutes a waiver for any subsequent or continuing breach by the Contractor.
- 20.3 If any term or condition of the Order is held to be invalid or otherwise unenforceable, that provision may be severed from the Order and the remainder of the Order will continue to be effective and valid notwithstanding such severance.
- 20.4 Except as expressly specified otherwise in the Order, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under the Order.
- 20.5 The PO Terms may only be varied by written agreement by the parties.
- 20.6 The Contractor has not relied on any representation, promise or other inducement or statement made or given or alleged to be made or given by HanRoy to the Contractor before the Commencement Date.
- 20.7 A party's right to terminate the Order in accordance with the Order is in addition to its rights to terminate the Order under any law.
- 20.8 The Order supersedes all other communications and negotiations (whether oral or written) between the parties in relation to the Supply and constitutes the entire agreement between the parties in respect of the Supply.
- 21 Definitions**
- 21.1 The following definitions apply to the PO Terms:
- ACICA** means the Australian Centre for International Commercial Arbitration Limited (ACN 006 404 664).
- Approved Financial Institution** means a major Australian bank or financial or insurance institution with a Standard & Poor's (Australia) Pty Ltd long-term credit rating of at least A (or equivalent rating with another recognised international rating agency that is approved, or exempt, by the Australian Prudential Regulation Authority).
- Background IP** means IP Rights owned by a party prior to the commencement of the Order.
- Business Day** means a day other than a Saturday, Sunday or public holiday in Perth, Western Australia.
- Claim** means any claim, demand, action or proceeding of any nature whatsoever, and including a claim for an adjustment to the Delivery Date or Contract Sum.
- Commencement Date** means the date on which HanRoy issues the Purchase Order to the Contractor.
- Confidential Information** means the fact the parties have entered into the Order, the terms of the Order, the details of the Supply, and all information regardless of its form:
- (a) which is disclosed directly or indirectly by a party to the other party;
- (b) which is treated or designated as confidential by the disclosing party or the receiving party knows, or ought to know is confidential; and
- (c) includes information of a commercial, operational, marketing, business, technical or financial nature relating to the affairs of the disclosing party.
- Consequential Loss** means any loss, damage, cost or expense not arising naturally according to the usual course of things, loss of

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business, loss of goodwill or damage to reputation, loss of revenue, loss of profit or the opportunity to earn profit.

**Contract IP** means the IP Rights in subject matter developed by the Contractor in the performance of the Supply or coming into existence as a result of the Supply, or otherwise under the Order, but excluding Background IP.

**Contract Sum** means the amount specified in the Purchase Order, as adjusted in accordance with the Order.

**Contractor** means the party to the Order that is not HanRoy.

**Defect** means:

- (a) a defect, fault, omission, non-compliance, or deficiency in the Supply;
- (b) any part of the Supply which does not accord with the Order; and
- (c) any physical damage directly caused by a Defect.

**Delivery Date** means the date for the completion of the Supply specified in the Purchase Order, as adjusted in accordance with the Order.

**Environment** has the meaning in the *Environmental Protection Act 1986* (WA).

**Good Industry Practice** means the exercise of that degree of skill, diligence, prudence, and foresight that would reasonably be expected from an experienced and reputable contractor exercising high skill and standards, in conditions comparable to those applying to the Supply.

**Goods** means the goods described or referred to in the Purchase Order.

**GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**HanRoy** means HanRoy Iron Ore Projects Pty Ltd (ACN 661 341 975).

**HanRoy Policies** means the policies, standards, specifications, plans and procedures set out or referred to in the Purchase Order, available on HanRoy's website, or which HanRoy makes available to the Contractor, and as amended from time to time.

**HanRoy's Representative** means HanRoy's representative for the Order as specified in the Purchase Order or as nominated by notice from HanRoy from time to time.

**Heritage** means:

- (a) an object, whether natural or artificial, which is or has been of sacred, ritual, or ceremonial significance to persons of Aboriginal descent, or which is or was used for, or made or adapted for use for, any purpose connected with the traditional cultural life of Aboriginal people past or present, and includes a significant Aboriginal Object as defined in the Aboriginal and Torres Strait Islanders Heritage Protection Act 1984 (Cth) (**ATSHP Act**); and
- (b) land or waters which are of cultural, social, or spiritual significance to Aboriginal persons traditionally responsible for that land or water, including any Aboriginal Site as defined in the *Aboriginal Heritage Act 1972* (WA) (**AHA Act**), any significant Aboriginal area as defined in the ATSHP Act, and any Aboriginal cultural material as defined in the AHA Act.

**Invoice** means a valid invoice under the GST Act.

**Information Security** means the preservation of the confidentiality, integrity, and availability of HanRoy's information assets.

**IP Rights** means all intellectual and industrial property rights, including trademarks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, and other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation dated 14 July 1967 (as amended from time to time), including any application or right to apply for registration of any of these rights.

**Loss** means any loss, cost, expense, damage, fine, or penalty or liability of any kind.

**Modern Slavery** has the meaning given in the *Modern Slavery Act 2018* (Cth).

**Notifiable Incident** has the meaning given in the *Work Health and Safety Act 2020* (WA).

**Order** means the contract between HanRoy and the Contractor, constituted by the Purchase Order and the PO Terms.

**Personnel** means in respect of a person, that person's directors, officers, employees, consultants, agents, contractors and subcontractors.

**PO Terms** means these terms and conditions.

**Purchase Order** means the purchase order form issued by HanRoy to the Contractor and any document sent with, attached to, or referred to by that purchase order form.

**Services** means the services described or referred to in the Purchase Order.

**Site** means the place HanRoy makes available to the Contractor for the performance of the Supply.

**Special Conditions** means the terms and conditions set out in the Purchase Order and marked "Special Conditions".

**Statutory Manager** means the person appointed as the manager, site senior executive, exploration manager, or equivalent supervisory role, responsible for work health and safety, mine safety, or mine management at the Site.

**Supply** means supply of the Goods or performance of the Services, or both, as applicable.

**Term** means the later of:

- (a) the period of 12 months starting on the Commencement Date; or
- (b) the date the Contractor completes the Supply.

**Warranty Period** means the period specified in the Purchase Order or if no warranty period is specified, a period of 12 months starting from the date on which HanRoy accepted the Supply.

**WHS** means work health and safety.

**Wilful Misconduct** means any:

- (a) fraud, fraudulent concealment, or dishonesty;
- (b) act or omission which was intended to cause, or was in reckless disregard to or wanton indifference to, the possible harmful consequences of that act or omission;
- (c) breach of contract made by a party where it knew it was a breach;
- (d) breach of **clause 16.1** (Confidentiality); and
- (e) illegal or malicious act or omission.

## 22 Interpretation

22.1 The parties acknowledge and agree that the PO Terms must be read as if they were amended by the Special Conditions.

22.2 In the event of an inconsistency or discrepancy between documents constituting the Order, HanRoy will direct the Contractor as to the interpretation to be followed to resolve the inconsistency or discrepancy.

22.3 In the Order:

- (a) the singular includes the plural, and the plural includes the singular;
- (b) other parts of speech and grammatical forms of a word or phrase defined in the Order have a corresponding meaning;
- (c) unless otherwise stated, a reference to:
  - (i) time is to local time in Western Australia;
  - (ii) "\$" or "dollars" refers to Australian currency;
  - (iii) a clause or a party is a reference to a clause of, and a party to, the Order;
  - (iv) legislation includes all delegated legislation under it and amendments, consolidations, replacements, or re-enactments of the legislation;
  - (v) a document includes all amendments or supplements to, or replacements or novations of, that document; and
  - (vi) a party includes that party's successors and assignees;
- (d) where a party includes more than one person, the Order binds all such persons jointly and each of them severally and each is jointly and severally entitled to the benefits and rights conferred by the Order;
- (e) specifying anything after the words "includes", "including" or "for example" or any similar expression does not limit what else is included unless there is express wording to the contrary;
- (f) no provision of the PO Terms will be construed adversely to a party because that party prepared the PO Terms or that provision;
- (g) where the day on which anything is to be done is not a Business Day, that thing must be done on or by the next Business Day; and
- (h) a term that is defined in the GST Act has the same meaning in the Order.

## 23 Notices

(a) All notices, demands, consents, approvals or communications and other documents in connection with the Order must be:

- (i) in writing and signed by a person duly authorised by the sender;
- (ii) directed through Aconex; and
- (iii) directed to the person specified by the Order or by HanRoy's Representative in writing from time to time.

(b) Despite any other provision of the Order, and to the extent not prohibited by law, a notice is not valid for any purpose under the Order unless it complies with this **clause 23**.

(c) For the purposes of this Order, **Aconex** means HanRoy's electronic communication system called Aconex.

## 24 Survival

24.1 **Clauses 4.13, 7, 16, 17, 19, 20.1, 20.2, 20.7, 20.8, 20.6,** and **23** and any other obligations which are expressed to (or by their nature) survive termination of the Order, will survive termination of the Order and will continue in full force and effect.