

# Lithium du Mali SA - General Conditions of Contract

## 1. DEFINITIONS AND INTERPRETATION

1.1 In these conditions:

**"Acceptance"** means acceptance of the Work by LMSA in accordance with clause 4.

**"Contract"** means the Purchase Order, the General Conditions and all documents included or incorporated by reference into the Purchase Order.

**"Contract Price"** means the sum payable to the Contractor under the Contract and as stated in the Purchase Order.

**"Contractor"** means the person, firm or company to whom the Purchase Order is addressed and includes the Contractor's successors and permitted assignees.

**"Contractor Certificate of Completion"** means the certificate to be issued by LMSA in accordance with clause 5.

**"Contractor's Documents"** has the meaning given to it in clause 11.1.

**"Defects"** means any defect in the Work or non-compliance with this Contract in respect of the Work, whether in design, materials, workmanship, quality or otherwise, and **"Defective"** shall be construed accordingly.

**"Defect Notice"** has the meaning given to it in clause 3.1.

**"Delivery Date"** means the date and/or time specified in the Purchase Order for the delivery or completion of the Work unless otherwise agreed in writing between LMSA and the Contractor.

**"Force Majeure Event"** means an event beyond a person's reasonable control which by the exercise of reasonable diligence could not have been prevented by that party and which could not have been specifically foreseen prior to entry into the Contract including but not limited to: act of God, including unusually severe weather that occurs at the affected location on average no more than once in every hundred year period, named cyclone, earthquake, explosion or natural disaster not caused or contributed to by the Contractor; pandemic or epidemic; any terrorism, insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot; or any industrial dispute, strike, lock-out, ban, limitation or other industrial disturbances of any kind (provided that, where the Supplier claims an entitlement arising from Force Majeure, these industrial disturbances are not the fault of or contributed to by the Supplier). A Force Majeure Event does not include: any inability (for any reason whatsoever) to pay or make payment; changed market conditions; financial distress; insufficient money to supply the Goods under the Contract; shortage of labour materials, equipment or other resources; or events involving a previous or existing condition at or prior to entry into the Contract.

**"General Conditions"** means these general conditions of contract.

**"Goods"** means all goods, raw materials, processed materials and/or fabricated products to be supplied or provided by the Contractor under the Contract and

forming a part of the Work.

**"Group"** means LMSA and its related bodies corporate (as defined in section 50 of the *Corporations Act 2001 (Cth)*).

**"Insolvency Event"** means the occurrence of any one or more of the following events in relation to the Contractor: it is insolvent as disclosed in its accounts or otherwise, states that it is insolvent, is presumed to be insolvent under an applicable or otherwise is, or states that it is, unable to pay all its debts as and when they become due and payable; any step is taken to appoint a receiver, a receiver and manager, a liquidator or a provisional liquidator or other like person to it or any of its assets, operations or business; an application is made to a court for an order, or an order is made, that it be wound up, declared bankrupt or that a provisional liquidator, receiver or receiver and manager be appointed, and that application is not withdrawn, struck out or dismissed within fifteen (15) Business Days of it being made; any step is taken to enter into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent; it proposes a winding-up, dissolution or reorganization, moratorium, deed of company arrangement or other administration involving one or more of its creditors; it is taken to have failed to comply with a statutory demand; in the case of a company, a notice is issued to deregister it and not withdrawn or dismissed within fifteen (15) Business Days; writ of execution is levied against it or a material part of its property which is not dismissed within fifteen (15) Business Days; any step is taken by a mortgagee to enter into possession of or dispose of the whole or any part of the other party's assets or business; it ceases to carry on business or threatens to do so; or anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the events set out in this definition.

**"LMSA"** means Lithium du Mali SA, a company incorporated under the laws of Mali with company number: MA.Bko.2020.B.3252 and having its registered office at Faladié SEMA, Rue 800, Porte 97 BPE 2070, Bamako, Mali and its subsidiary and affiliated companies.

**"Notice of Acceptance"** means the notice of acceptance of the Work to be issued by LMSA in accordance with clause 4.

**"Performance Tests"** has the meaning given to it in clause 2.1.

**"Plant"** means machinery, apparatus, materials, articles and things to be supplied or provided by the Contractor under the Purchase Order and forming a part of the Work.

**"Purchase Order"** means the purchase order issued by LMSA to the Contractor, to which shall be appended the General Conditions and all documents included or incorporated by reference into the Purchase Order.

**"Quality Control Plan"** has the meaning given to it in clause 9.6.

**"Retention Percentage"** means the percentage set out in the Purchase Order.

**"Sanctioned Person"** means:

- (a) a person or entity with whom United States persons or entities are restricted from doing business under the regulations of OFAC (including those persons and entities named on the OFAC Specially Designated and Blocked Persons List);
- (b) a person designated under any Australian, European Union, United Kingdom, Canada or any other applicable jurisdiction (including the jurisdiction of incorporation of the Supplier) or other applicable sanctions regime (including, without limitation, persons and entities named on HM Treasury's Consolidated List of Financial Sanctions Targets); and/or
- (c) a person placed on the World Bank blacklist (being the list of firms and individuals ineligible to be awarded a World Bank financed contract, published by the World Bank at [www.worldbank.org/debar](http://www.worldbank.org/debar)),

as any such list may be updated from time to time

**"Services"** means

- (a) the services to be performed, supplied or provided by the Contractor under the Purchase Order and forming a part of the Work.
- (b) the services to be performed or rendered by the Contractor, with or without the supply or provision of any Goods or Plant, under the Purchase Order and forming a part of the Work
- (c) those services ancillary or incidental to the supply of the Goods and/or Plant, including transportation, insurance, installation, commissioning, provision of technical assistance, training, security, maintenance and other such obligations to be performed, supplied or provided by the Contractor under the Purchase Order and forming a part of the Work

**"Site"** means any location where the Work is to be performed.

**"VAT"** has the meaning ascribed in the General Tax Code of Mali.

**"Work"** means all Plant, Goods and/or Services as detailed in the Purchase Order.

- 1.2 The headings in the General Conditions shall not be deemed to be part thereof or to be taken into consideration in the interpretation or construction thereof.
- 1.3 The Contract contains the entire agreement between the parties and supersedes any and all prior and contemporaneous written or oral agreements, proposals, negotiations, understandings, notices and representations relating to or connected to the subject matter of the Contract.
- 1.4 The General Conditions shall prevail over any terms and conditions provided by the Contractor notwithstanding any statement to the contrary in any document provided by the Contractor or included in the Contract.
- 1.5 Should there be any conflict between the documents comprising the Contract, the General Conditions shall take precedence over all other documents, the order of

priority of the remaining documents comprising the Contract shall be:

- (a) as stated in the Purchase Order; or
- (b) if no order is stated in the Purchase Order, the order of priority of the remaining documents comprising the Contract shall be specified by LMSA from time to time.

1.6 The provisions of the Contract that are intended to survive the termination, cancellation, completion or expiry of the Contract including without limitation, any provision limiting or releasing liability, indemnities, the license in clause 10 and the confidentiality requirements in clause 18 shall continue as valid and enforceable provisions notwithstanding any such termination, cancellation, completion and expiry of the Contract.

1.7 Unless expressly stated otherwise in writing by the relevant party, any failure to exercise or to delay in exercising a right or remedy under or in relation to the Contract shall not constitute a waiver of such right or remedy nor a waiver of any other right or remedy. No waiver of a breach or of a default under the Contract shall constitute a waiver of any other breach of or default under the Contract or affect the terms of the Contract. Any waiver by a party of any of its rights or remedies under or in relation to the Contract shall be received in writing by that party.

1.8 The parties acknowledge and agree that the terms of the Contract have been freely and fairly negotiated between them. Each party acknowledges that in executing the Contract they have relied solely on their judgment, belief, and knowledge and such advice as they may have received and they have not been influenced by any representations or statements made by any other party (save for any express representations made by the Contractor in his tender or in these conditions). No provision of the Contract is to be interpreted for or against any party because that party or its lawyer drafted such provision.

1.9 Where any number of days is prescribed in this Contract, it shall be reckoned exclusive of the first day and inclusive of the last day.

1.10 The words "include", "including", "for example", "such as" and other similar words or phrases shall be construed without limitation, so as not limit the meaning of the words to which any given example relates to that example or to examples of a similar kind.

## **2. TESTING**

2.1 The Work will be subject to such performance tests and/or Plant start-up as may be required by LMSA ("**Performance Tests**").

2.2 Where any Performance Test is to be carried out by the Contractor (or one of its subcontractors), the Contractor shall provide sufficient prior written notice to LMSA to enable LMSA or its representative to attend and witness such Performance Test.

## **3. REJECTION**

3.1 If, at any time before the Contractor achieves Acceptance under clause 4, LMSA decides that the whole or any part of the Work is Defective, then as soon as reasonably practicable LMSA shall:

- (a) give the Contractor notice in writing of LMSA's

decision specifying the particulars of the Defects ("**Defect Notice**"); and

- (b) following delivery of a Defect Notice, so far as may be necessary give the Contractor access to the Work.

3.2 Upon receipt of the Defect Notice, the Contractor shall, at its own expense and with all speed, make good the Defects specified in the Defect Notice.

3.3 LMSA may, at its option, specify in the Defect Notice a date (other than the Delivery Date) by which the relevant Defects are to be made good. If no such date is specified in the Defect Notice, then the relevant Defects are to be made good by the Delivery Date.

3.4 If the Contractor fails to make good the Defects by the date specified by LMSA in the Defect Notice, LMSA may, in its sole discretion, do all things necessary on the Contractor's behalf to make good the Defects specified in the Defect Notice and all costs and expenses incurred by LMSA are recoverable from the Contractor as a debt due and payable to LMSA.

#### **4. ACCEPTANCE OF WORK**

4.1 The Contractor shall carry out and complete the Work in order to achieve Acceptance by the Delivery Date. If no Delivery Date is specified in the Purchase Order the Contractor shall carry out and complete the Work so as to achieve Acceptance within a reasonable time period.

4.2 Acceptance shall be achieved under the Contract where the Work:

- (a) has been completed by the Delivery Date in accordance with the Purchase Order; and
- (b) has passed the Performance Tests (if applicable).

4.3 The Contractor shall furnish such programs of manufacture, delivery and/or site works as LMSA may reasonably require for the delivery of the Work. The Contractor shall give notice to LMSA as soon as practicable if such programs are, or are likely to be, delayed together with a proposal specifying how the delays will be recovered and the steps to be taken to have the Work completed by the Delivery Date.

4.4 When the conditions for Acceptance set out in clause 4.2 have been met, the Contractor may apply in writing to LMSA for a notice evidencing Acceptance (**Notice of Acceptance**). Within fourteen (14) days after receipt of an application requesting a Notice of Acceptance, LMSA may inspect the Work and shall either:

- (a) reject the application requesting a Notice of Acceptance, setting out those Defects and/or incomplete elements of the Work to be rectified in order to meet the conditions for Acceptance; or
- (b) issue a Notice of Acceptance stating the date on which Acceptance was achieved for the purposes of the Contract.

4.5 LMSA reserves the right to waive inspection upon giving written notice to the Contractor. Such waiver shall not relieve the Contractor of its obligations under the Contract.

4.6 Should LMSA reject the Contractor's application requesting a Notice of Acceptance, the Contractor shall promptly rectify those Defects and/or incomplete elements of the Work specified by LMSA under clause

4.4(a), at the Contractor's sole risk and expense.

4.7 The Contractor hereby acknowledges that time is of the essence and should Acceptance not be achieved by the Delivery Date (subject to any extension of time that LMSA may grant in accordance with clause 12 or clause 17 or on receipt of a written request for such extension from the Contractor), LMSA may, upon 7 days' prior written notice:

- (a) require the Contractor to cease conduct of the Work and deliver to LMSA in an uncompleted state, the Work and/or any part thereof including all raw materials and parts connected therewith, in order to enable LMSA to complete the Work;
- (b) require the Contractor to continue its conduct of the Work in a reduced scope or amended format;
- (c) do all things necessary on the Contractor's behalf to complete any outstanding Work including procuring the performance of the Work or any part of the Work from alternative or additional contractors and suppliers;
- (d) where the Work or any portion of the Work is being conducted on the Contractor's premises, enter upon those premises and, if required use the Contractor's cranes and/or other plant and equipment on the Contractor's premises, free of charge, in order to complete any outstanding Work or take delivery of any complete or incomplete Plant or Goods (including any raw materials and/or parts);
- (e) where the Work or any portion of the Work is being conducted at the Site, use the Contractor's cranes and/or other plant and equipment at the Site in order to complete any outstanding Work; and/or
- (f) terminate the Contract and in which case LMSA shall not be under any obligation to make further payments of the Contract Price and/or compensation and may reclaim from the Contractor any payments made on account.

4.8 The Contractor shall be liable to LMSA for all costs and expenses incurred by LMSA in taking any of the measures set out in clauses 4.7(a), 4.7(b), 4.7(c), 4.7(d) and 4.7(e) to complete the Work including obtaining any unsupplied Goods or Plant. In addition, the Contract Price shall be reduced commensurate with the relevant unfulfilled obligations and, any dispute in regard to such reduction, shall be determined by LMSA acting reasonably; and/or

All costs and expenses incurred by LMSA are recoverable from the Contractor as a debt due and payable to LMSA.

4.9 In addition to the remedies detailed in clause 4.7 in the event that the Contractor fails to achieve Acceptance by the Delivery Date, the Contractor shall indemnify and hold harmless LMSA in respect of any losses suffered by the Group as a result of the relevant failure (including, without limitation, the costs of procuring alternative performance and all costs arising from any delays and additional costs payable to other contractors and suppliers).

#### **5. WARRANTY FOR WORK**

5.1 The Contractor shall as soon as reasonably practicable repair or replace any item and/or part of the Work which is outstanding or Defective or which becomes

Defective during the period of twelve (12) months from date of Acceptance by LMSA, but only where such Defects occur:

- (a) under proper usage and are due to faulty performance or design (other than a performance or design specified by LMSA for which the Contractor has expressly disclaimed responsibility in writing);
- (b) due to the Contractor's erroneous instructions as to use or use of data;
- (c) due to the Contractor's inadequate or faulty materials or workmanship; or
- (d) due to any breach of the Contract and/or the Contractor's warranties, express or implied.

5.2 Where the Contractor repairs or replaces any Defect they may be subject to such further Performance Tests as LMSA may specify. Repairs and replacements shall themselves be subject to an 'evergreen' period of twelve (12) months from the date of such repair, replacement, re-installation or passing of Performance Tests (if any), whichever is appropriate in the opinion of LMSA after repair or replacement.

5.3 In the event that the Contractor cannot rectify the relevant Defect within a reasonable time specified by LMSA to effect repair or replacement in accordance with clauses 5.1 and 5.2, LMSA may, in its sole discretion, do all things necessary on the Contractor's behalf to carry out the repair or replacement and all costs and expenses incurred by LMSA are recoverable from the Contractor as a debt due and payable to LMSA. Such action shall not relieve the Contractor of its continuing obligations under this Contract.

5.4 When the last of the period referred to in clause 5.1 has expired or, if applicable, the last 'evergreen' period pursuant to clause 5.2 has expired, and the Contractor has rectified all Defects and outstanding items and has otherwise satisfied all its obligations under this clause 5, then LMSA shall issue a Contractor Certificate of Completion.

## **6. PROGRESS AND INSPECTION**

6.1 LMSA's representatives shall have the right to progress and inspect the Work at all reasonable times and to reject any part thereof that does not comply with the terms of this Contract. Any inspection, checking, approval and acceptance given on behalf of LMSA shall not relieve the Contractor from any obligation under this Contract.

6.2 Issue by LMSA of an Acceptance Certificate or any other documents signifying acceptance of the Work in respect of quality, workmanship and/or completeness shall not relieve the Contractor of its obligations under this Contract, should it be found at a later date that the relevant Work are not in accordance with this Contract.

## **7. DISCREPANCIES**

7.1 If there is an ambiguity or discrepancy between or within those documents forming the Contract (including the Purchase Order and these General Conditions), the Contractor shall immediately notify LMSA.

7.2 A Contractor will not have the right to rely on the presence of such ambiguity or discrepancy as a defense to any claim brought by LMSA in relation to the Contract if the Contractor failed to inform LMSA of the ambiguity

or discrepancy in accordance with clause 7.1.

7.3 Following being informed by the Contractor of an ambiguity or discrepancy, LMSA shall decide how the ambiguity or discrepancy shall be dealt with and shall notify the Contractor accordingly.

## **8. TERMS OF PAYMENT**

8.1 In consideration of the proper performance of the Work as stated in the Purchase Order and in these General Conditions, the Contractor shall be paid the Contract Price by LMSA. Save as provided for under clause 17 or as otherwise stated in the Purchase Order the Contract Price should be considered a fixed lump sum price.

8.2 The Contract Price shall include all fees, duties, VAT and all other applicable taxes, imports, withholdings or other impositions of any kind which may arise out of or relate to the delivery of the Work.

8.3 Unless otherwise stated in the Purchase Order, payment of the Contract Price (or any interim payments where applicable) will be made on or before the 25<sup>th</sup> day of each month if the Contractor's invoice is received by LMSA on or before the 25<sup>th</sup> day of the preceding month.

8.4 The Contractor shall only be permitted to submit an invoice for the Work done following issue of the Notice of Acceptance in accordance with clause 4 save where interim payments are specified in the Purchase Order in which case invoices may be submitted at such earlier time specified in the Purchase Order.

8.5 All invoices must be accompanied by signed delivery notes and relevant release certificates, due substantiation of the amounts claimed and shall also comply with any other formalities reasonably required by LMSA or applicable law.

8.6 Unless otherwise stated in the Purchase Order, the Retention Percentage shall be deducted from each Contractor's invoice until completion of the Work at which point:

(a) the amount equal to 50% of the amount retained shall be released to the Contractor following the issuance of the Notice of Acceptance, subject to any deductions or adjustments due under this Contract to LMSA; and

(b) the remaining 50% of the amount retained shall continue to be retained by LMSA until the issuance of a Contractor Certificate of Completion.

8.7 LMSA shall have the right to deduct or set off from any amount due to the Contractor any amounts due from the Contractor to the Group together with as much of the Contract Price as it deems fit to deduct or set off in respect of any liability for damages arising out of the non-fulfilment of the Contractor's obligations under the Purchase Order.

## **9. OBLIGATIONS OF THE CONTRACTOR**

9.1 The Contractor shall be deemed to have satisfied itself as to all the terms and conditions and circumstances affecting the Contract Price and no additional allowance will afterwards be made in respect of the Contract Price, except as otherwise expressly provided in the Contract.

9.2 The Contractor is deemed to have understood the nature and extent of the Work required to be supplied and to have visited the Site and shall make no claim

founded on its failure to do so. LMSA shall, on request by the Contractor, grant such access as may be reasonable for this purpose.

- 9.3 Unless otherwise specified, the Contractor shall provide all equipment, tools, material, labour, crantage, haulage and other things necessary to complete the Work.
- 9.4 The Contractor shall complete the Work in accordance with all laws that apply (both in the country of origin of the Work, the country where any Work is to be carried out or Work is to be delivered and the country of the Site) and with the instructions and program as set out in the Contract.
- 9.5 The Contractor undertakes to LMSA that the Work carried out shall strictly comply with the provisions of the Contract and, unless otherwise stated, all Work supplied shall be new, of the best quality and description within the normal limits of industrial quality and to normally accepted standard specifications and shall be of the best merchantable quality and otherwise to the entire satisfaction of LMSA. The Contractor shall ensure that any Work shall be entirely fit for the purposes for which it is intended.
- 9.6 The Contractor shall complete a quality control plan ("**Quality Control Plan**") as set out in the scope of work / specification forming part of the Contract. The Quality Control Plan must be submitted to LMSA in accordance with the documentation requirements of the Contract. A representative of LMSA will review adherence to the Quality Control Plan on a regular basis. The Contractor shall maintain records capable of demonstrating such adherence, in accordance with the documentation requirements of the Contract.
- 9.7 The Contractor shall comply with the provisions of ISO/SABS 9000 at the relative level stipulated in this Contract.
- 9.8 The Contractor shall, at its own expense, protect from deterioration any item of Work or part thereof that is capable of deterioration during transportation or storage or installation.
- 9.9 Unless otherwise specified in the Purchase Order the Contractor shall be entirely responsible for all transport costs to the Site or other place of delivery specified in the Purchase Order and shall ensure that all Goods and/or Plant are properly packed for transport and inspected for export by a relevant, reputable and appropriately accredited inspection organisation. The Goods and/or Plant shall be at the Contractor's risk until properly delivered at the Site or other place specified for delivery.
- 9.10 Without prejudice to the fitness for purpose requirement in clause 9.5, where the Contractor is responsible for the design of the Work the Contractor shall ensure that the design is prepared to the standards expected of an expert designer experienced in designing Work for use in circumstances similar to that required by the Contract.

## 10. CONTRACTOR'S INTELLECTUAL PROPERTY

- 10.1 As between the parties, the Contractor shall retain the copyright and other intellectual property rights in the documents produced by the Contractor in respect of the Works and other design documents made by (or on behalf of) the Contractor (the "**Contractor's Documents**"). The Contractor shall be deemed (by signing the Contract and/or commencing the Work) to

give to each member of the Group an irrevocable, perpetual, non-terminable transferable non-exclusive worldwide royalty-free licence to copy, use and communicate the Contractor's Documents, including making and using modifications of them. This licence shall:

- (a) apply throughout the actual or intended working life (whichever is longer) of the relevant parts of the Work and shall not be affected by any termination of the Contract (howsoever arising);
- (b) entitle any member of the Group and any person in proper possession of the relevant part of the Work to copy, use and communicate the Contractor's Documents for the purposes of completing, operating, maintaining, altering, adjusting, repairing and demolishing the Work; and
- (c) in the case of Contractor's Documents which are in the form of computer programs and other software, permit their use on any computer on the Site and other places as envisaged by the Contract.

10.2 The Contractor's Documents and other design documents made by (or on behalf of) the Contractor shall not, without the Contractor's consent, be used, copied or communicated to a third party by (or on behalf of) LMSA or a member of the Group other than to its professional advisers or other than for those purposes permitted under this clause 10.

10.3 The Contractor shall be liable for and shall indemnify (and keep indemnified) and hold harmless all members of the Group and any person in proper possession of the relevant part of the Work in accordance with clause 10.1(b) against and from all damages, losses and expenses (including reasonable legal fees and expenses) resulting from any infringement of any existing or future copyright, design rights or intellectual property rights, patent, registered design, unregistered design rights, trade mark, trade name or other intellectual property right of any third party caused by or arising out of the Work and/or the use of the Contractor's Documents in carrying out of the Work, the exercise of the licence granted in this clause 10 or the failure to procure such a licence.

## 11. LMSA'S INTELLECTUAL PROPERTY

11.1 Any specifications, plans, drawings, process information, patterns or designs supplied by LMSA or any member of the Group to the Contractor in connection with the Contract shall remain the property of LMSA or the relevant Group member (as applicable), and any information derived therefrom, or otherwise communicated to the Contractor in connection with the Contract, shall be held by the Contractor as secret and confidential and shall not, without the consent in writing of LMSA, be published or disclosed to any third party, or made use of by the Contractor except for the purpose of carrying out the Work.

11.2 Any specifications, plans, drawings, process information, pattern or designs supplied by LMSA or any member of the Group to the Contractor must be returned to LMSA on expiry or termination of the Contract. Likewise, any specifications, plans, drawings, process information or designs developed by Contractor in terms of the Contract shall not be disclosed to or used for other work or other parties without the prior written consent of LMSA.

**12. FORCE MAJEURE**

If either LMSA or the Contractor is prevented or hindered from carrying out its obligations under this Contract by as a result of a Force Majeure Event which affect the performance of the obligations under this Contract, for a continuous period exceeding seven (7) days, then the performance of such obligations shall be suspended for such time as the Force Majeure Event continues and the party affected shall not be liable for any delay occasioned as a result of that Force Majeure Event. If such delays extend for 30 continuous days, or 30 days in total within a continuous period of 60 days, the unaffected party may terminate the Contract and no liability shall attach to either party. LMSA shall pay the Contractor such sum as may be equitable in respect of Work performed prior to termination.

**13. RESPONSIBILITY FOR INFORMATION**

The Contractor shall be responsible for any errors or omissions in any drawings, calculations, packing details or other particulars supplied by it whether such information has been approved by LMSA or not, provided that such errors or omissions are not due to inaccurate information furnished in writing by LMSA.

**14. FREE ISSUE MATERIALS**

Where LMSA issues materials 'free of charge' to the Contractor, such materials shall be and remain the property of LMSA and shall be clearly marked as such. The Contractor shall maintain all such materials in good order and condition subject, in the case of tooling, patterns and like to fair wear and tear. The Contractor shall use such materials solely in connection with this Contract. Any surplus materials shall be disposed of at LMSA's sole discretion. Waste of such materials arising from bad workmanship or negligence of the Contractor shall be made good at the Contractor's expense. The Contractor shall be required to sign acceptance on delivery of all free issue materials and, unless stated in writing to the contrary by the Contractor, all such materials shall be deemed to have been delivered in good condition and the Contractor shall be deemed to have approved their suitability for the Work.

**15. NOTIFICATION OF DELIVERY**

15.1 Where it has been specified in the Contract that delivery of any Plant, Goods or other items is to be effected to any location, the Contractor shall be obliged to obtain LMSA's approval prior to dispatch. The Contractor shall make all necessary arrangements for storage, protection and insurance of such Plant, Goods or other items and shall be responsible until LMSA has taken delivery. Should the Contractor dispatch such Plant, Goods or other items without LMSA's prior approval, the Contractor shall bear its own expenses and be liable for any expenses incurred by LMSA as a result of the premature dispatch, up to the date on which LMSA would otherwise have accepted the Work. LMSA shall nevertheless have the right to reject the Plant, Goods or other items in the meantime.

15.2 If inspection at the Contractor's premises is stipulated in the Purchase Order, the Contractor shall not dispatch or invoice LMSA unless it is in receipt of a written release note signed by a LMSA representative, otherwise payment may be withheld. All Plant, Goods or other items must be delivered at the delivery point specified in the Purchase Order. If Plant, Goods or other items are incorrectly delivered, the Contractor will be

held responsible for any additional expense incurred in delivering them to their correct destination. Copies of relevant signed release notes must be attached to all delivery notes.

**16. ASSIGNMENT AND SUB-CONTRACTING**

16.1 The Contractor shall not be entitled to assign the Contract without LMSA's prior written consent.

16.2 The Contractor shall not be entitled to sub-contract the performance of Works or provision of Plant or Goods without LMSA's prior written consent. The restriction contained in this clause 16.2 shall not apply to subcontracts for materials, for minor elements of the Work or for any part of the Work for which the makers/suppliers or subcontractors are named in the Purchase Order. The Contractor shall be responsible for all the Work done, Plant and Goods supplied by its subcontractors notwithstanding any such subcontracting.

16.3 If LMSA has consented to the placing of subcontracts, copies of each subcontract shall be sent by the Contractor to LMSA immediately when they are issued. Such consent by LMSA shall not relieve the Contractor of any of its obligations under the Contract.

16.4 LMSA shall be entitled to assign transfer or charge the benefit or any obligations under the Contract to any person and the Contractor must, on request, enter into such documents as are reasonably required to give effect to any such assignment transfer or charge.

**17. VARIATIONS**

17.1 LMSA shall have the right, by notice in writing, to direct the Contractor to add to or omit or otherwise vary the Work and the Contractor shall carry out such additions, omissions or variations and be bound by the same conditions, so far as applicable, as though such additions, omissions or variations were anticipated by the Contract.

17.2 Where the Contractor receives any such direction from LMSA for which it would be reasonable to adjust the Contract Price, the Contractor shall promptly advise LMSA in writing as to the financial effect of any such proposed amendment, ascertained and determined at the same level of pricing as that contained in the Contractor's original tender or in the event no similar rates/prices were included the financial effect shall be a fair price.

17.3 Where the Contractor receives any such direction from LMSA for which it would be reasonable to adjust the date stated in the Purchase Order (if any) to achieve the issue of the Notice of Acceptance then the Contractor shall, promptly advise LMSA in writing as to the effect (if any) on the timescale for the issue of the Notice of Acceptance.

17.4 If, in the reasonable opinion of the Contractor, any such direction is likely to prevent the Contractor from fulfilling any of its other obligations under the Contract then it shall promptly notify LMSA and LMSA shall, its sole discretion, decide whether or not the relevant obligations shall be varied and shall confirm its instructions in writing. Until LMSA so confirms its instructions in writing they shall be deemed not to have been given. Failing agreement on any variation the matter shall be determined by LMSA acting reasonably. If the Contractor does not agree with LMSA's determination, then the Contractor may at any time

refer the issue for dispute resolution in accordance with clause 22 (*Law and Arbitration*).

## **18. CONFIDENTIALITY**

- 18.1 No photographs of any of the Group's equipment, installations or property shall be taken without LMSA's prior written consent.
- 18.2 The Contractor shall keep confidential and shall not divulge to any third party (except subcontractors accepting a like obligation of confidentiality, and then only to the extent necessary for the performance of the subcontract) all information given by LMSA or any member of the Group in connection with this Contract or which becomes known to the Contractor through carrying out the Work.
- 18.3 The Contractor shall not mention any member of the Group in connection with this Contract or disclose the existence of this Contract (including its terms) in any publicity material or other similar communication to third parties without LMSA's prior written consent.
- 18.4 The Contractor shall not copy or reproduce any document containing information about any member of the Group or the Work except as is necessary in fulfilling its obligations under the Contract. This clause shall not apply to information that is in the public domain other than by breach of the Contract or other obligation of confidentiality owed by a person to the Group or a member of it.

## **19. INDEMNITY**

The Contractor shall indemnify LMSA against any and all claims, losses, damages and costs which arise out of or in consequence of carrying out the Work including, without limitation, any claims as a result of the Contractor's breach of this Contract, for property damage or personal injury, whether such claims are made by LMSA or by a third party against the Contractor or against LMSA, and the Contractor shall indemnify LMSA against all actions, demands, damages, costs, charges and expenses arising in connection therewith provided the Contractor will not be liable under clause 19 to the extent that the liability was caused, or contributed to, by the negligent acts or omissions or willful misconduct of LMSA.

## **20. CONTRACTOR'S DEFAULT OR INSOLVENCY**

- 20.1 Without prejudice to any rights which LMSA may have under the applicable law in any of the following circumstances LMSA may, by notice, terminate the Contractor's employment under this Contract if:
- (a) the Contractor fails to carry out promptly any of LMSA's instructions, and fails within seven (7) days of notice in writing by LMSA drawing attention to such failure, to take such steps as to reasonably satisfy LMSA to address such failure;
  - (b) the Contractor commits a breach of this Contract, and fails within seven (7) days of notice in writing by LMSA to take such steps as to reasonably satisfy LMSA to remedy such breach;
  - (c) the Contractor acts in a manner which LMSA considers to be substantially prejudicial or harmful to LMSA and/or the Group or any member of it;
  - (d) an Insolvency Event occurs in relation to the Contractor;
  - (e) the Contractor is prohibited from performing the

Contract, or LMSA is prohibited from (or liable to penalties for) engaging the Contractor to perform the Contract, by applicable laws; or

- (f) the Contractor commits any breach of this Contract which is in the view of LMSA not capable of remedy (including, without limitation, a breach of clause 25.

- 20.2 Without prejudice to any other of its rights, LMSA may itself complete the Work or have it completed by a third party, and LMSA shall not be liable to make any further payment to the Contractor until the Work has been completed in accordance with this Contract and shall be entitled to deduct from the Contract Price any additional cost or liability incurred by LMSA. If the total cost or liability to LMSA exceeds the sums paid and owing by LMSA to the Contractor, the difference shall be recoverable by LMSA from the Contractor as a debt.

## **21. LANGUAGE AND TRANSLATION**

- 21.1 All communications, specifications, drawings or other documents shall be in the English language which is the language according to which this Contract is to be construed and interpreted.
- 21.2 These terms and conditions have been drafted in English and, where there is any conflict or difference in interpretation, context, or meaning between English and any corresponding French translation of these terms and any other documents associated with the Contract, the English language shall prevail.

## **22. LAW AND ARBITRATION**

- 22.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Western Australia.
- 22.2 The Contractor and LMSA irrevocably agree to submit to the -exclusive jurisdiction of the courts of Western Australia.

## **23. PASSING OF PROPERTY TO LMSA**

- 23.1 Ownership of property and clear title to all Work furnished by the Contractor shall pass to LMSA upon the earlier of the following:
- (a) delivery to the Site of the relevant materials;
  - (b) delivery to the care of LMSA at a place other than the Site (where LMSA is to arrange for transport to Site); and
  - (c) the date on which the Contractor receives any payment for the Work by the Principal.
- 23.2 The Contractor shall on request enter into any such documents as LMSA may reasonably require to give effect to this clause 23.1 (including, without limitation, waivers of lien or property).
- 23.3 Notwithstanding the transfer of ownership contemplated in clause 23.1 the care, custody, and control of the Work shall remain with the Contractor until the issue of the Notice of Acceptance.

## **24. PURCHASE ORDER NUMBER**

The purchase order number shown on the Purchase Order shall be shown on all invoices, communications, packing lists, containers and bills of lading.

## **25. ANTI-CORRUPTION, ANTI-BRIBERY, HUMAN RIGHTS**

## AND HEALTH AND SAFETY

- 25.1 Notwithstanding any other provision of the Contract the Contractor shall:
- (a) comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption ("**Relevant Requirements**");
  - (b) not engage in any activity, practice or conduct which would constitute an offence under any anti-bribery and anti-corruption laws, statutes, regulations and codes which are applicable to the Contractor or LMSA;
  - (c) have and shall maintain in place throughout the term of this Contract its own policies and procedures to ensure compliance with the Relevant Requirements and will enforce them where appropriate; (
  - (d) promptly report to LMSA any request or demand for any undue financial or other advantage of any kind received by the Contractor in connection with the performance of this Contract; and
  - (e) immediately notify LMSA in writing if a public official becomes an officer or employee of the Contractor or acquires a direct or indirect interest in the Contractor.
- 25.2 The Contractor warrants and represents that in relation to this Contract:
- (a) to the best of the Contractor's knowledge none of its subcontractors or employees have given or offered to give (directly or indirectly) to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward: (i) for doing or forbearing to do any action in relation to the Contract; or (ii) for showing or forbearing to show favour or disfavour to any person in relation to the Contract;
  - (b) it shall ensure that no monies paid to it by LMSA under this Contract shall be used by the Contractor for bribery or similar illegal activity;
  - (c) it does not employ, engage or otherwise use any child labour or involuntary domestic servitude;
  - (d) it does not use forced labour in any form (including prison, indentured, bonded or otherwise);
  - (e) it shall provide a safe and healthy workplace, presenting no unusual hazards given the nature of the Work / Good to the Contractor's workforce and any housing provided by the Contractor shall be safe for habitation;
  - (f) it shall not discriminate against any employees on any ground (including race, religion, disability or gender);
  - (g) it shall not engage in or support the use of corporal punishment, mental, physical, sexual or verbal abuse and does not use cruel or abusive disciplinary practices in the workplace;
  - (h) it shall pay each employee at least a minimum wage according to the applicable legislation or a fair representation of the prevailing industry wage (whichever is the higher) and provides each employee with all legally mandated benefits;
- (i) it shall comply with the laws on working hours and employment rights (if any) in all countries in which it operates (including the country in which the Site is located if relevant);
  - (j) it shall be respectful of its employees' right to join and form independent trade unions and freedom of association; and
  - (k) it shall be responsible for undertaking due diligence upon and monitoring its own supply chain and that it shall encourage compliance with ethical standards and human rights by any subsequent suppliers of works, goods and services that are used by the Contractor when performing its obligations under the Contract.
- 25.3 The Contractor shall comply with the United Nations Declaration of Human Rights and shall maintain ethical and human rights policies which implement the Voluntary Principles on Security and Human Rights (published at <https://www.voluntaryprinciples.org/>). The policies shall incorporate an appropriate complaints procedure which caters for any breaches of those policies. Any breach of the Contractor's ethical and human rights policies shall be reported to LMSA as soon as practicable.
- 25.4 The Contractor will ensure that:
- (a) its employees and subcontractors undertake the Work in accordance with the Contractor's ethical and human rights policies; and
  - (b) its ethical and human rights policies and procedures are supported by a training package made available to all of the Contractor's employees and subcontractors who are at the Site.
- 25.5 LMSA or its nominees shall be entitled to undertake an audit of the Contractor and the Contractor's employees and subcontractors to ensure compliance with the provisions of this clause 25 and the Contractor shall promptly provide such information as LMSA (or its nominee) may require from time to time.
- 25.6 The Contractor agrees to comply with LMSA's health and safety rules, and any additional rules made available to the Contractor from time to time together with all applicable statutory rules and regulations regarding these matters. The Contractor will be responsible for procuring that the Contractor's employees and subcontractors also comply with these rules and regulations.
- 25.7 The Contractor shall ensure that each of the Contractor's employees and subcontractors are medically fit to undertake their duties, and do not have any medical condition or latent medical condition which is likely to cause harm to those who operate at the Site or affect the ability of the Contractor to undertake the Work. The Contractor shall provide such proof as LMSA may require as to the medical fitness of any of the Contractor's Personnel. LMSA may request any of the Contractor's employees and subcontractors to complete a medical questionnaire and if LMSA considers necessary undertake (at LMSA's cost) a medical examination by LMSA's doctor. The Contractor shall immediately remove from the Site any of the Contractor's employees and subcontractors who LMSA considers unfit to undertake his duties at the Site.
- 25.8 The Contractor shall notify LMSA as soon as practicable of any health and safety hazards at the



Site. The Contractor will draw these hazards to the attention of the Contractor's employees and subcontractors and will instruct those persons in connection with any necessary associated safety measures.

25.9 The Contractor shall ensure that any person associated with the Contractor who is performing services works or providing goods in connection with this Contract (including subcontractors) does equivalent to those imposed on the Contractor in this clause 25. The Contractor shall be responsible for the observance and performance by such persons of the Relevant Requirements, and shall be directly liable to LMSA for any breach by such persons of any of the Relevant Requirements.

25.10 The rights and remedies of LMSA provided in this or any other clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

25.11 If the Contractor enters into (or have entered into) contractual relations with a third party, the Contractor shall take reasonable steps to ensure that:

- (a) all applicable national and international export control regulations are complied with;
- (b) there will be no infringement of an embargo imposed by Australia, the European Union, United Kingdom, Canada, the United States of America and/ or by the United Nations or any other applicable jurisdiction (including the jurisdiction of incorporation of the Supplier), also considering the limitations of domestic business and prohibitions of by-passing;
- (c) in relation to goods, works or services provided by and/ or supplied to a third party, these are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorisation, unless required authorisation is provided; and
- (d) the regulations applicable to Sanctioned Persons concerning the trading with entities, persons and organisations listed therein are complied with.

## **26. HAZARDOUS MATERIALS**

26.1 The Contractor shall notify LMSA in writing upon receipt of this Contract if any Work is subject to laws or regulations relating to hazardous or toxic substances, or when disposed of, to regulations governing hazardous wastes, or to any other environmental or safety and health regulations.

26.2 The Contractor shall furnish all appropriate instructions and certification for shipping, safety, handling, exposure and disposal.

## **27. INSURANCE**

27.1 Unless otherwise stated in the Contract, the Contractor shall insure the Work in the name of LMSA as a co-insured against normal construction risks (if relevant) and transit risks up to the issue of the Notice of Acceptance, the cost of which insurance shall be deemed to be included in the Contract Price. The terms of such transit and construction all risks insurance shall be in accordance with industry standard policies and to be approved by LMSA acting reasonably.

27.2 The Contractor shall accept full and exclusive liability for the payment of any and all taxes and contributions; for unemployment insurance, old age retirement benefits and life pensions and annuities and the like, which may now or hereafter be imposed by any applicable Government, or any sub-division thereof, whether measured by wages, salaries or remuneration paid to persons employed by the Contractor in connection with the Work. The Contractor shall comply with all applicable laws on such subjects and all the rules and regulations promulgated and shall maintain suitable forms, books and records and indemnify and hold LMSA free and harmless from the payment of any and all such taxes and contributions or penalties.

27.3 Without limiting the Contractor's obligations and responsibilities under this Contract, the Contractor shall ensure that it procures all insurances required by law in respect of employer's liability.

27.4 Without limiting the Contractor's obligations and responsibilities under this Contract, the Contractor shall bring into effect the following insurances:

- (a) Employer's Common Law Liability - covering all liabilities, whether arising under statute, common law or civil law, in relation to the death of, or injury to, any employee or worker of the Contractor or any person deemed to be an employee or worker of the Contractor for a limit of not less than USD 2 million each and every claim.
- (b) Plant All Risks - covering Contractor's construction equipment to its full replacement value against physical loss or damage to such Contractor's construction equipment for the full period it shall be on the Site.
- (c) Motor Vehicle / Third Party Liability - covering material damage for an amount not less than the motor vehicles market value, all liabilities in respect of any injury to, or death of, any person or any loss, damage or destruction to any property arising from the use of such motor vehicles to a limit of USD 2 million each and every loss, including insurance that is compulsory under applicable legislative requirements governing the use of motor vehicles and liability for personal injury or death.
- (d) Public and Products Liability (Excluding Project site) - covering all liabilities in respect of any injury to, or death of any person not being a person who at the time of the occurrence is engaged in or upon the service of the Contractor under a contract of service or apprenticeship, or any loss, damage or destruction to property not belonging to nor in the care, custody or control of the insured, howsoever caused. Such insurance must provide cover to an amount not less than USD 5 million each and every occurrence. The policy is to be extended to cover the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Contract.

27.5 Only if expressly stated in the Purchase Order, without limiting the Contractor's obligations and responsibilities under this Contract, LMSA shall bring into effect insurances in respect of Contract Works Insurance, Marine/Transit Insurance and Public Liability Insurance in the joint names of LMSA, the Contractor, all subcontractors and any other relevant member of the Group.

- 27.6 Details of any such insurance effected by LMSA may be inspected by the Contractor by arrangement with LMSA.
- 27.7 The Contractor is deemed to understand and accept the terms of these insurances including, inter alia, the excess and the reduced cover provided during the period of guarantee.
- 27.8 All the policies relating to the insurances to be provided by the Contractor in terms of these conditions shall be in such form and be issued by such company or companies as may be acceptable to LMSA.
- 27.9 The Contractor shall, before commencing on Site, furnish to LMSA certificates of insurances from the assuring companies which shall evidence the existence of such policies and that the appropriate premiums have been paid. Should LMSA so request, the Contractor shall also provide copies of the policies of insurance.
- 27.10 The Contractor shall give immediate notice in the event of any accident or damage likely to form the subject of a claim under any insurance effected by any member of the Group and shall give all the information and assistance in respect thereof that the insurers may require.
- 27.11 The Contractor shall not negotiate, pay, settle, admit or repudiate any claim without the written consent of the insurers and shall permit the Insurers to take proceedings in the name of the Contractor to recover compensation or secure an indemnity from any third party in respect of the matters covered by the said insurance.
- 27.12 The insurances outlined in clause 27.4 must, unless prohibited by law, be endorsed to:
- (a) insure LMSA and its personnel for their respective rights and interests arising out of the performance of the Contract; and
  - (b) waive all express or implied rights of subrogation against LMSA and its personnel arising out of the performance of the Contract.

**28. CONTRACTOR'S SUPERINTENDENT**

The Contractor shall have a competent supervisor for the management of the Contract any instructions given to such supervisor (written or verbal) shall be deemed to be given to the Contractor.

**29. SITE REGULATIONS**

- 29.1 The Contractor shall make no delivery nor commence any work on Site before obtaining the consent of LMSA.
- 29.2 The Work shall be carried out with proper regard to safety and the Contractor shall observe and conform to all statutory enactments and regulations. The cost of supplying and/or doing all things required to comply with relevant laws shall be deemed to be included in the Contract Price.

**30. SITE WORK BY CONTRACTOR**

If any Work is to be carried out by the Contractor at the Site, including the supervision of erection and/or commissioning of Goods and/or Plant, then the Contractor shall comply with the following:

- (a) before delivery is made, arrange for the off-loading and adequate storage of all Goods and/or Plant;

- (b) confirm to LMSA that all of the Contractor's employees and subcontractors have been engaged in compliance with relevant national agreements;
- (c) the Contractor shall not offer employment to any person employed by LMSA or by other contractors employed by LMSA (without LMSA's prior written consent);
- (d) the Contractor will ensure that no Work is covered up until LMSA has had a reasonable opportunity to inspect it;
- (e) the access to the Site shall not be exclusive to the Contractor who will carry out the Work concurrently with the execution of work by other persons; and
- (f) the Contractor shall keep Site premises and vicinity thereof clean of debris and rubbish caused by the Work and, upon completion of the Work, shall leave such premises and vicinity clean and free of debris and rubbish caused by the Work. Upon request of LMSA and at no extra cost to LMSA, the Contractor shall promptly remove from the Site any person under the control of the Contractor who violates any safety, health, plant laws, regulations, ordinances or rules or who may cause or threaten to cause a breach of peace, or who is otherwise objectionable to LMSA.

**31. ENVIRONMENTAL CONSIDERATIONS**

The Contractor shall comply, and shall procure that its subcontractors will comply, with all aspects of the Corporate Policies relating to the environmental and all relevant environmental and anti-pollution laws. The Contractor and its subcontractors shall be held responsible for any contraventions of the above policies and acts and for any penalties or prosecutions arising from his contravention of any aspect of the above acts.

**32. NON-EXCLUSIVITY**

These conditions do not confer upon the Contractor any exclusivity in respect of the Works or any other works or services provided by the Contractor at the Site unless specifically stated in the Purchase Order.

**33. SEVERANCE AND ENFORCEABILITY**

Any provision, or the application of any provision, of the Contract that is void, illegal or unenforceable in any jurisdiction is severed to the extent it is unenforceable. The validity or enforceability of the remainder of the Contract is unaffected.

**34. WAIVERS AND CONSENTS**

- 34.1 Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement, of a right provided by law or under the Contract does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by law or under the Contract.
- 34.2 A waiver or consent given under the Contract is only effective and binding if it is given or confirmed in writing.
- 34.3 A single or partial exercise of a right or remedy under the Contract does not prevent a further exercise of that or any other right or remedy.
- 34.4 No waiver of a breach of a term of the Contract operates as a waiver of another breach of that term or of a breach of any other term of the Contract.

34.5 A consent required under the Contract may be given or withheld, or may be given subject to any conditions, unless the Contract expressly provides otherwise.

**35. GENERAL CONDITIONS FURNISHED ON THE WEBSITE**

LMSA reserves the right to amend these General Conditions from to time in writing and following any such amendment, shall make available the amended conditions on the Leo Lithium Limited website ([www.leolithium.com](http://www.leolithium.com)). The Contractor agrees that any such amended Conditions shall apply to this Contract in substitution and replacement of the then existing conditions as at the date on which the Contractor is furnished with a written copy of such amended conditions.