

Terms and Conditions of Supply to Easternwell (Definitions)

1. Application

The definitions and interpretation provisions contained in this document apply to the following Easternwell documents:

- (a) [FRM-S01-030: Terms and Conditions of Supply to Easternwell \(Goods and Services\)](#);
- (b) [FRM-S01-031: Terms and Conditions of Supply to Easternwell \(Transport\)](#);
- (c) [FRM-S01-052: Terms and Conditions of Supply to Easternwell \(Goods and Services\)](#); and
- (d) [FRM-S01-055: Terms and Conditions of Supply to Easternwell \(Hire\)](#),

which are available on the Easternwell website at www.easternwell.com.au.

2. Definitions

Additional Services means any services provided by the Contractor at the request of Easternwell in addition to the Services.

Agreement means the agreement entered into by Easternwell and the Contractor (either solely or with another person) which:

- (a) reflects the agreed terms for the supply of Goods, the provision of Services or hire of Equipment to Easternwell;
- (b) is accepted in accordance with the Terms and Conditions; and
- (c) incorporates this document, the Order, the relevant Terms and Conditions, any Schedules and Special Conditions.

Agreement Particulars means the schedule entitled 'Agreement Particulars' (if any) in the Agreement.

Applicable Codes and Standards means the codes, standards, regulations and requirements expressed or implied in any Law, Government Consent or Scope of Work, and in the event of an inconsistency or conflict between any of the above, the more rigorous performance standard or requirement applies.

Associate has the meaning given in the *Corporations Act 2001 (Cth)*.

Associated Entity has the meaning given in the *Corporations Act 2001 (Cth)*.

Authorised Person means:

- (a) any of the Contractor's personnel whose duties require him or her to have access to the Logistics Induction Manual; and
- (b) any other person nominated by the Contractor in writing to Easternwell and to whom Easternwell has consented in writing.

Business Day means a day that is not a Saturday, Sunday or gazetted public holiday in the Jurisdiction and concludes at 5 pm on that day.

Claim includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort, statute or otherwise and whether involving a party to the Agreement or a third party.

Commencement Date means the date of the Agreement, (which may be when the Contractor accepts the Agreement by written notice or in accordance with the Agreement) or such other date as agreed in writing between the parties.

Confidential Information means, without limitation, information and Derived Information which:

- (a) Easternwell indicates or has indicated is confidential or which might reasonably be considered confidential by Easternwell;
- (b) by its very nature might reasonably be understood to be confidential or to have been disclosed to the Contractor in confidence;
- (c) is commercially valuable or would be of commercial value to a competitor of Easternwell;
- (d) relates to Easternwell's business or financial affairs, including performance or profitability reports and margins and the price which Easternwell charges for its products or services; or
- (e) relates to trade secrets, Intellectual Property or Intellectual Property Rights of Easternwell, including the Logistics Induction Manual and HSE Guidelines, but does not include information that:
 - (i) was rightfully in the possession of the Contractor and not subject to an obligation of confidentiality on the Contractor to Easternwell;
 - (ii) is or becomes available in the public domain (other than as a result of a breach of this document); or
 - (iii) is required to be disclosed by Law for the purposes of that disclosure.

A reference to 'Easternwell' in this definition of 'Confidential Information' includes a reference to an Associated Entity of Easternwell.

Consequential Loss includes Loss on account of profit, revenue, business contracts, anticipated savings, delay of production, opportunity, use of equipment or any other indirect loss related to or connected with the Agreement.

Consumables means all supplies and other materials (e.g. oil, chemicals, welding rods) that are consumed in using the Equipment and that are not incorporated into the Equipment.

Contractor means the entity named or described as 'vendor' or 'supplier' in the Order or Agreement.

Contractor Representative means the person referred to as such in the Order or Agreement or as otherwise notified in writing by Contractor to Easternwell and agreed to by Easternwell in writing.

Day means each period of 24 hours from midnight to midnight.

Default Rate means the rate per annum equal to the Westpac Indicator Rate as published in the Australian Financial Review from time to time plus two percent.

Defect means any damage, breakage or flaw in the Goods that has, or may, lead to the Goods not being fit for the purpose for which they were designed, taking into account reasonable wear and tear and whether the Goods comply with the specifications or description of the Goods in the Order.

Defect Period means the period specified in writing by Easternwell to the Contractor prior to entering into the Agreement and, if no period is specified, the earlier of:

- (a) 12 months after the Goods are used by Easternwell; or
- (b) 18 months from the date of delivery of the Goods.

Delivery Address means the address or place set out in the Order or Agreement.

Delivery Date means the date specified in the Order or Agreement, or such other date as agreed between the Parties.

Delivery Fees means the amount/s set out in the Order or Agreement.

Derived Information means any material derived or produced by or on behalf of the Contractor wholly or partly from Confidential Information (for example, an analysis, note, calculation, conclusion or summary) and any Record of that material made by or on behalf of the Contractor.

Easternwell means the entity issuing the Order or Agreement.

Easternwell Representative means the person referred to as such in the Order or Agreement or as otherwise notified in writing by Easternwell to the Contractor.

Equipment means any equipment (excluding Vehicles) used or provided by the Contractor in supply of Goods, the provision of Services or in the case of hire, the items so described in the Agreement.

Equipment Failure means:

- (a) a breakdown of the Equipment; or
- (b) the occurrence of a defect in or a malfunction of the Equipment that renders the Equipment unsafe or unsuitable for use,

unless the breakdown, defect or malfunction is the direct result of the negligent or deliberate misuse or care of the Equipment by Easternwell or its Personnel.

Ex-Works means that the Contractor delivers the Goods when they are placed at the disposal of Easternwell at the Contractor's local branch or distribution centre and not loaded on any collecting vehicle. For the avoidance of doubt, if a Contractor has a number of local branches or distribution centres, the Contractor will supply all Goods Ex-Works the local branch or distribution centre nearest the location of the Easternwell office from which the Order was issued.

Fees means the amounts specified in the Order or Agreement for supply of Goods, the provision of Services or hire of Equipment and, unless specifically stated otherwise, are specified exclusive of GST.

Force Majeure means any circumstance, other than an Industrial Dispute, that is not within the reasonable control (whether directly or indirectly) of the party affected by the circumstance (**Affected Party**), but only if and to the extent that:

- (a) despite the exercise of reasonable diligence, it cannot be (or be caused to be) prevented, avoided or removed by the Affected Party;
- (b) it materially adversely affects (in cost or time) the Affected Party's ability to perform its obligations under the Agreement;
- (c) the Affected Party has taken all reasonable precautions, due care and reasonable alternative measures in order to avoid the effect of the circumstance on its ability to perform its obligations under the Agreement (and to mitigate the consequences of it); and
- (d) the event is not the direct or indirect result of the Affected Party's failure to perform any of its obligations under the Agreement,

and, to avoid doubt, does not include any circumstance due to non-payment.

Goods means the goods described in the Order or Agreement.

Governing Law means the law which shall govern and by which the Agreement shall be construed, in accordance with the laws of the Jurisdiction. The Contractor and Easternwell submit to the non-exclusive jurisdiction of the Courts of the Jurisdiction.

Government Agency means:

- (a) a government (including a local government or council) or government department, authority, agency or other body;
- (b) a government or semi-government or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

Government Consent means an approval, consent, authorisation, permit, clearance, licence or other precondition required under a Law or from a Government Agency in relation to the supply of Goods, the provision of Services or hire of Equipment.

GST has the same meaning as in the GST Act.

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

HSE Guidelines means Easternwell's health, safety and environmental guidelines as communicated by Easternwell to the Contractor.

Industrial Dispute means any strike, picket line, work ban or other industrial action that is caused or contributed to by the Contractor or its subcontractors.

Initial Term means the period of 12 months from the Commencement Date or as otherwise agreed in writing by the parties.

Insolvency Event occurs if:

- (a) the Contractor disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
- (b) the Contractor ceases to carry on business;
- (c) the Contractor ceases to pay its debts as they become due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or part of the Contractor's assets, operations or business;
- (e) any step is taken to enter into any arrangement between the Contractor and its creditors;
- (f) any step is taken to appoint a receiver, a receiver and manager, a provisional liquidator, a liquidator, an administrator, a trustee in bankruptcy or other like person to the whole or part of the Contractor's assets, operations or business; or
- (g) where the Contractor is a partnership, any step is taken to dissolve that partnership or a partner dies or otherwise loses legal capacity.

Intellectual Property means all things including documents, material, CAD drawings, items, information, concepts, know how, data, goodwill, reputation, developments, modifications, improvements, processes, standards, licences, rights, goods, devices, inventions, trade secrets and Confidential Information that are or are potentially subject to or capable of protection by Intellectual Property Rights or in which Intellectual Property Rights subsist or potentially subsist.

Intellectual Property Rights includes copyright, trade mark, design, drawings, patent, Moral Rights, rights to confidentiality, business and company names and other proprietary rights, and any rights to registration of such rights, whether created in Australia or elsewhere.

Jurisdiction means the State or Territory in which the Order is issued or if no Order is issued, in which the Goods are to be delivered, Services are to be performed or Equipment is to be hired or as otherwise specified in the Agreement.

Laws includes Acts, ordinances, regulations, by-laws, orders, awards and proclamations applicable in the Jurisdiction.

Logistics Induction Manual means a specialised rig move package developed and owned by Easternwell.

Loss means any Claim (including any damage, loss, cost, expense or liability) (including legal costs on an indemnity basis), charge, payment, debt, fine or other penalty or any other liability or detriment, irrespective of whether it is:

- (a) actual or contingent;
- (b) a contractual, tortious, legal, equitable or statutory obligation;
- (c) owed, incurred or imposed by, to, for or on account of any person alone or severally or jointly with another person;
- (d) owed, incurred or imposed as a principal obligation or by way of surety or indemnity;
- (e) owed, incurred or imposed as interest, a Tax, fee, charge, levy, fine, penalty or other impost;
- (f) owed, incurred or imposed as compensation or damages, whether for breach of contract or tort or on any other basis, or as a loss, cost or expense or Consequential Loss or on any other account; or
- (g) any contractual, tortious, legal, equitable, statutory or other obligation or liability to perform any act or to refrain from performing any act.

Manufactured Goods has the meaning set out in the Agreement.

Month means a calendar month.

Moral Rights means each right defined as a 'moral right' in Part IX of the *Copyright Act 1968 (Cth)*, and if any relevant work or document is used in any jurisdiction other than Australia, any similar right capable of protection under the laws of that jurisdiction.

Operator means a person or persons supplied by the Contractor to Easternwell to operate the Equipment.

Order means a written order for the supply of Goods, provision of Services or hire of Equipment to Easternwell authorised by the Easternwell Representative or delegate, including all associated and related documentation, for example, any documents issued for a tender or quotation process in respect of the Goods, Services or Equipment.

Permitted Purpose means the use by the Contractor and its Personnel of the Logistics Induction Manual in the application of work practices and procedures applicable to the Services for the purposes of the Agreement only.

Personnel means officers, employees, agents and contractors to the person or any of its Associates and officers, employees and agents of the contractor to the person or any of its Associates.

Record means a document or record (including a copy) in any form of media (visible or invisible, computerised or electronic) containing, referring to or based on any Confidential Information or any analysis of it.

Renewal Term means any extension of the Initial Term agreed in accordance with the Agreement.

Required Insurances means:

- (a) where the Contractor is to supply Goods to Easternwell, product liability insurance in respect of the Goods for not less than \$20 million;
- (b) where the Contractor is to provide Services to Easternwell under the Agreement:
 - (i) public liability and liability to third parties insurance for:
 - 1) loss or damage that may occur to any physical property; and
 - 2) death or bodily injury to any person, that arises out of or in connection with the performance of the Services for not less than \$20 million per occurrence and must note Easternwell as an interested party; and
 - (ii) professional indemnity insurance for not less than \$10 million, from the Commencement Date until the date that is 7 years after the Termination Date with, to the extent possible, one automatic reinstatement;
- (c) where the Contractor is to supply transport or haulage services, carrier's liability insurance (including transshipment, temporary storage, loading and unloading) to cover the full replacement value of the Goods being carried on each occasion and liability for the delay and Consequential Loss for not less than \$20 million per occurrence and must note Easternwell as an interested party;
- (d) workers compensation insurance for every employee of the Contractor, including liability under the Laws;
- (e) comprehensive motor vehicle insurance including third party liability, death or injury cover as required by the Laws; and
- (f) any other insurances required by Laws applicable to the supply of the Goods, provision of Services or hire of Equipment or as required by Easternwell.

Safety Laws means the Laws relating to occupational health, safety, environment protection, dangerous goods or electrical safety and any directions on safety or notices issued by any Government Agency and any code of practice appropriate or relevant to the supply under the Agreement.

Safety Requirements means all directions, instructions, requests or requirements relevant to compliance by the Contractor with Safety Laws.

Services means the services detailed in the Order or Agreement and if applicable, the transport of (including loading and unloading) of Goods including any goods owned or supplied by Easternwell's clients to and from various locations within Australia.

Site means the site notified by Easternwell to the Contractor prior to performing the Services.

Subcontract means an agreement between the Contractor and a Subcontractor.

Subcontractor means any person engaged by the Contractor to supply any part of the Goods, Services or Equipment.

Supervisory Services means the supply of the Contractor's Personnel to fulfil the roles requested by Easternwell with the functions and duties to be performed by such Personnel to be outlined by Easternwell.

Tax Invoice has the same meaning as in the GST Act.

Taxes means taxes, levies, imposts, charges and duties (including stamp and transaction duties) imposed by any Government Agency together with any related interest, penalties, fines and expenses in connection with them, other than any in the nature of a tax on income or capital gain.

Term means the period from the Commencement Date to the Termination Date.

Termination Date means:

- (a) the date the Agreement is terminated pursuant to the Agreement; or
- (b) the date specified or provided in the Agreement Particulars or as amended in accordance with the Agreement.

Terms and Conditions means the relevant document referred to in clause 1 relating to the supply of Goods, provision of Services or hire of Equipment; such relevant document being advised by Easternwell to the Contractor in the Supplier Payment and Insurance Form, Agreement or other document provided by Easternwell to the Contractor.

Vehicles means any vehicle supplied by the Contractor for the performance of the Services.

WHS Requirements means all laws, codes, standards and Government Consents relating to workplace health and safety (including health and safety legislation specifically applicable to the relevant mining industry) and the environment and Easternwell's policies with respect to health, safety and the environment.

3. Interpretation

In the Terms and Conditions, unless the context clearly indicates otherwise:

- (a) a reference to the Agreement or another document means the Agreement or that other document and any document which varies, supplements, replaces, assigns or novates the Agreement or that other document;
- (b) a reference to a clause, schedule, annexure or attachment is a reference to the clause, a schedule or an annexure to or of the Agreement;
- (c) the schedules, annexures and attachments, if any, form part of the Agreement;
- (d) a reference to a party is a reference to a party to the Agreement;
- (e) a reference to a person includes its successors and permitted assigns, a natural person, corporation, trust, partnership, a body whether incorporated or unincorporated, Government Agency, any other exempt public authority or Corporation Sole or other entity whether or not it comprises a separate legal entity;
- (f) an obligation or warranty on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (g) a reference to legislation means that legislation as amended or replaced;
- (h) 'including' and 'includes' are not words of limitation;
- (i) a reference to a time is to that time in the place in the State or Territory in which the Order is issued;
- (j) a singular word includes the plural and vice versa;
- (k) monetary amounts are expressed in Australian dollars;
- (l) a reference to a thing includes a reference to a part of that thing; and
- (m) any consent or approval required under this document must be in writing.