

Conditions of Tender

1 Definitions

Addenda has the meaning given in clause 7.1(a).

Alternative Proposal has the meaning given in clause 8.2.

Approved Purpose has the meaning given in the Confidentiality Agreement.

Business Day means a day other than a Saturday or a Sunday or a public holiday in the Country and Location specified in the RFT.

Conditions of Tender means the terms and conditions of tender as set out in this document.

Confidentiality Agreement means the disclaimer and confidentiality agreement entered into by the Tenderer and the Inviter prior to this RFT and any Material being issued to the Tenderer.

Country and Location means the relevant country and location as specified in the RFT.

Departure means any condition of sale, quotation, offer or proposal of any nature appearing on any documents submitted with or within the Tender which constitutes any variation of, or omission from or addition to the RFT.

Draft Contract means the terms and conditions that will be entered into between the Inviter and the successful Tenderer as set out in the RFT.

Due Date means the time and date specified in the RFT for submission of Tenders, or such other date and time as may be notified by the Inviter by way of Addenda.

Inviter means the Fortescue entity specified as being the Inviter in the RFT.

Iron Bridge Joint Venture means the Iron Bridge unincorporated joint venture established under the Joint Venture Agreement.

Joint Venture Agreement means the *Iron Bridge Joint Venture Agreement* between FMG Magnetite Pty Ltd and Formosa Steel IB Pty Ltd, dated 11 October 2013, and as amended and restated on 14 August 2020, and as subsequently amended or restated from time to time.

Material means all information in any form or media (including oral, visual, machine readable and written form) including: representations, statements, data, intellectual property, samples, calculations, assumptions, deductions, determinations, drawings, designs, specifications, models and plans.

Online System means the Inviter's sourcing and supplier online management system used for issuing and administering RFTs.

Participant means, where the Inviter is IB Operations Pty Ltd (ABN 88 165 513 557), a participant in the Iron Bridge Joint Venture from time-to-time, as set out in the Joint Venture Agreement.

Participating Interest has the meaning given under the Joint Venture Agreement, and as at the date of the RFT, is allocated as 69% to FMG Magnetite Pty Ltd (ACN 125 124 405) and 31% to Formosa Steel IB Pty Ltd (ACN 163 535 788).

Request for Tender (RFT) means documents issued by the Inviter through the Online System, or by an alternative method approved by the Inviter, to source Scope from the Tenderer, as updated and amended from time to time.

Scope means the goods, services and/or works the subject of the RFT.

Scope of Works means the information titled as the "Scope of Works" within the RFT.

Statement of Compliance/Departures means the tender schedule of this name in the RFT, to be completed by the Tenderer to confirm compliance with, or detail Departures from RFT.

Tender means the offer to be submitted by the Tenderer in accordance with the RFT via the Online System or by an alternative method approved by the Inviter.

Tender Process means the process of inviting, progressing, clarifying, evaluating, negotiating and accepting or rejecting Tenders commencing from the date of the RFT or any prior invitation for expressions of interest or industry briefing, up to the earlier of, execution of final contract for the Scope or the date the Inviter terminates the process of considering Tenders.

Tenderer means an entity or, if applicable, a person to whom or organisation to which the RFT has been issued.

Validity Period has the meaning given in clause 3.3.

2 Acknowledgement and Acceptance

The Tenderer's representative acknowledges and agrees that:

- (a) it has read through these Conditions of Tender;
- (b) is the duly authorised representative to bind the Tenderer to these Conditions of Tender; and
- (c) in consideration of the Inviter inviting the Tenderer to submit a Tender, the Tenderer is bound by these Conditions of Tender.

3 Lodgement of Tenders

3.1 Submission

- (a) The Tender must be submitted:
 - (i) by the person, firm or company to whom the RFT is addressed, unless the Inviter's prior written permission is obtained to refer the RFT to another party;
 - (ii) by the Due Date;
 - (iii) unless instructed otherwise by the Inviter, in writing via the Online System or via email with any attachments to be in Microsoft Office (or compatible) format or other format specified by the Inviter; and
 - (iv) if required in the RFT, in hard copy with the Inviter at the address specified in the RFT and marked to the attention of the contact person specified in the RFT.
- (b) A Tenderer who submits a Tender will be deemed to have warranted to the Inviter that:
 - (i) the Tenderer has the necessary resources, experience, expertise and capacity to deliver the Scope;
 - (ii) the statements, representations, claims and assertions made in the Tender are true and correct; and
 - (iii) it accepts all of the terms and conditions contained in these Conditions of Tender and Draft Contract, and any other terms and conditions stipulated in the RFT except as indicated by the Tenderer in the Statement of Compliance/Departures.
- (c) the Tenderer has obtained the required corporate authorisations and approvals to issue and commit to the Tender.
- (d) To avoid doubt, the Tenderer is not under an obligation to accept any terms and conditions stipulated in the Draft Contract and may negotiate the Draft Contract by indicating which clauses it does not accept in the Statement of Compliance/Departures. The Inviter reserves the right to further alter or add to the provisions of the Draft Contract during negotiations with the Tenderer(s) on the Statement of Compliance/Departures.

3.2 Late Tenders

The Inviter may, at its sole discretion, accept or reject any Tender sent after the Due Date or by an alternative method than the Online System.



3.3 Validity Period

The Tender must remain valid for a minimum period of 120 calendar days from the Due Date, or for such longer period as agreed in writing by the Tenderer and the Inviter (**Validity Period**) and will remain binding and be capable of acceptance at any time up to the expiration of that period.

3.4 Tenderer Capacity

- (a) The Tenderer's parent company, if any, may be required to provide a guarantee and indemnity to the Inviter in the form specified in the Draft Contract.
- (b) Two or more firms or corporations may lodge a joint Tender provided that the parties obtain the Inviter's prior written approval.
- (c) If two or more parties submit a joint Tender:
 - (i) they, and their successors and permitted assigns, will be jointly and severally bound by the Tender and any resulting contract, irrespective of whether those parties are a partnership.
 - (ii) the Inviter will only communicate with one point of contact nominated in the Tender during the Validity Period.

3.5 Information to be Supplied with Tender

- (a) The Tender must be accompanied by all documentation and Material required in the RFT, and any additional Material required by the Inviter from time to time.
- (b) The Tender and any associated documentation and Material provided to the Inviter to substantiate the Tender will be the Inviter's intellectual property, and will not be returned to the Tenderer irrespective of the outcome of the Tender Process. The Inviter is permitted to reproduce, transfer, assign or otherwise use this intellectual property in its sole discretion. The following should be adhered to by the Tenderer when preparing and submitting the Tender:
 - (i) unless stated otherwise in the RFT, all documentation must be in the language relevant to the Country and Location and all tendered rates must be in the relevant currency;
 - (ii) measurements and quantities must be in units consistent with the *National Measurement Act 1960* (Cth), or in the absence of any specification therein must be in accordance with the Australian Metric Tables and Australian Standard AS1000 – "*The International System of Units (SI) and its application*"; and
 - (iii) all information required to be supplied must be typewritten or legibly hand-written in ink without alterations or erasures (including whiting or blanking out) unless each alteration or erasure is signed in ink.
- (c) The Tenderer should pay particular attention to fully answering all the questions asked in the RFT.
- (d) The Inviter reserves the right to seek clarification of any parts of a Tender.
- (e) The Inviter may, on reasonable notice and at such reasonable times as agreed with the Tenderer, undertake site visits to the Tenderer's premises and conduct interviews as part of the evaluation.
- (f) Any Tender which does not comply with the requirements of the RFT including these Conditions of Tender may be rejected at the Inviter's sole discretion.

4 Site Inspections

- (a) An inspection of the site to which the Scope may be required to be delivered or Scope performed may be arranged by the Inviter. If the Inviter arranges such a site inspection, the Tenderer will be informed of the time and place of such inspection.

- (b) A Tenderer will not be permitted to ask any questions regarding the Tender Process during a site inspection. All queries must be provided in writing through the Online System (or an alternative method approved by the Inviter) in accordance with clause 6.3.

5 Opening of Tenders

The opening of Tenders will not be public.

6 Tenderer's obligations

6.1 Tenderer to Inform Itself

In submitting a Tender, the Tenderer will be deemed to have:

- (a) examined and informed itself in relation to all aspects of the RFT including all documents included or referred to in them and any Addenda provided to the Tenderer;
- (b) formed its own assessment of the amount of work, materials, plant and equipment necessary to carry out the Scope of Works and the difficulties and hazards which affect the provision of the Scope;
- (c) examined all further Material relevant to the risks, contingencies and other circumstances having an effect on its Tender available on reasonable enquiry; and
- (d) satisfied itself as to the correctness and sufficiency of its Tender including tendered rates, or lump sums which will be deemed to cover the cost of complying with all obligations under the Draft Contract and of all matters and things necessary for the due and proper performance and provision of the Scope as described in the Draft Contract (in each case, subject to the Statement of Compliance/Departures).

6.2 Tenderer responsible

- (a) The Inviter and its directors, employees and agents do not make any warranty (express or implied) as to the accuracy or completeness of the Material provided to a Tenderer as part of the RFT or otherwise.
- (b) If a Tenderer finds any error, discrepancy, ambiguity or omission in the RFT, or any other Material provided by the Inviter, the Tenderer must promptly notify the Inviter in writing through the Online System or an alternative method approved by the Inviter, with full details of such errors, discrepancies, ambiguities or omissions.

6.3 Tenderer to seek clarification

- (a) If the Tenderer is in doubt as to the meaning of any part of the RFT or has any questions in relation to the RFT, the Tenderer may seek clarification from the Inviter within the Online System or an alternative method approved by the Inviter, in writing at any time up to the date for final questions and clarifications as set out in the RFT.
- (b) The Inviter may:
 - (i) provide a clarification to any of the issues identified in clause 6.3 before the Due Date through an Addenda;
 - (ii) not respond to any clarification; or
 - (iii) share a clarification with any other Tenderer, with the exception of an clarification:
 - A. designated as confidential or proprietary in accordance with clause 6.3(c); or
 - B. the Inviter has determined contains confidential information relevant to the Tender.
- (c) Where clarification has been made by the Tenderer under clause 6.3(a):
 - (i) the Tenderer must ensure that any clarification designated by the Tenderer as containing confidential or proprietary information relevant to its Tender is marked "CONFIDENTIAL"; and



- (ii) if the Inviter, in its absolute discretion, is of the opinion that the clarification is not confidential, the Inviter will advise the Tenderer that the clarification and the Inviter's response will be provided to all Tenderers and that the Tenderer has the opportunity to withdraw the clarification. If the Tenderer does not withdraw the Enquiry within 2 Business Days or reaffirms its request for a response to the clarification, the clarification and the Inviter's response may be provided to all Tenderers.

7 Addenda to Request for Tender

7.1 Inviter may issue Addenda

- (a) The Inviter may, at any time prior to the Due Date, revise or amend any part of the RFT Documents (including drawings and specifications) or supply new RFT Documents. Any such revisions or amendments, or new RFT Documents, will be provided to the Tenderer under a supplementary notice (**Addenda**).
- (b) All Addenda when issued will become part of the RFT.
- (c) No person has the authority to make any representation or explanation to the Tenderer as to the meaning of any of the RFT documents, or as to anything to be done or not to be done by the successful Tenderer, or as to any other matter or thing so as to bind the Inviter in the exercise of its powers and duties under the RFT unless such information is issued by Addenda.

8 Compliance

8.1 Treatment of non-compliance and Departures

The Inviter has the sole, unconditional right to consider a Tender which does not fully comply with the RFT including the Draft Contract or Scope. A Statement of Compliance/Departures must be submitted with the Tender and the Inviter reserves the right not to consider a Tender if a completed Statement of Compliance/Departures is not submitted.

8.2 Alternative Proposals

- (a) If the Tenderer wishes to make a proposal which it considers will result in cost reduction or other advantages to the Inviter, but which includes a departure from the Inviter's requirement as stated in the RFT, it may submit an alternative proposal (**Alternative Proposal**). Alternative Proposals may only be submitted if a complying Tender is also submitted. For an Alternative Proposal to be considered by the Inviter the Tender must:
 - (i) fully address the requirements as set out in the RFT and be fully costed;
 - (ii) meet all the requirements of clause 3 for lodgement;
 - (iii) be marked "ALTERNATIVE PROPOSAL"; and
 - (iv) be accompanied by a Statement of Compliance/Departures describing clearly and in full detail the proposed Departures from the documents provided by the Inviter.
- (b) An Alternative Proposal may be evaluated at the discretion of the Inviter. The Inviter will have the sole discretion to accept or reject an Alternative Proposal.

9 Evaluation and Acceptance of Tenders

9.1 Inviter to have Sole Discretion

- (a) The Inviter:
 - (i) will not be obliged to either proceed with the Tender Process, or to contract out any part of the Scope;
 - (ii) has the sole discretion in determining the final outcome from the evaluation of Tenders, whether those Tenders meet all the requirements of clause 3 for lodgement, are Alternative Proposals, or otherwise; and

- (iii) at its sole discretion may award the contract for the Scope to multiple Tenderers or one Tenderer if it is deemed as best suited to the interests of the Inviter.

- (b) The determination of the Inviter in respect of each Tender will be final and binding. The Tenderer accepts that it cannot dispute or question the Inviter's decision.

- (c) Notwithstanding any other provision in the RFT, the Inviter:

- (i) is not bound to accept the lowest price Tender;
- (ii) may reject or refuse to consider any or all of the Tenders; and
- (iii) evaluation and comparison of Tenders is confidential to the Inviter and will not be disclosed to the Tenderer or any other persons not officially concerned with such process.

9.2 Negotiation Period

The Inviter can conduct negotiations in the Tender Process with one or more Tenderers either simultaneously or otherwise.

9.3 Acceptance of Tender

- (a) The acceptance of the Tender will include:
 - (i) each Departure specifically noted and described in a Statement of Compliance/Departures that has been expressly referred to and agreed in writing between the Inviter and the successful Tenderer; and
 - (ii) any Departure that is submitted as part of an Alternative Proposal that has been expressly referred to and agreed in writing between the Inviter and the successful Tenderer.
- (b) A Tender will not be deemed to have been accepted and no contract in respect of the Scope will arise between any Tenderer and the Inviter unless and until a legally binding contract has been executed by the Inviter and the successful Tenderer.

9.4 Contract formation

- (a) Subject to clause 9.3, the successful Tenderer will be required to enter into the Draft Contract.
- (b) Tenderers must not directly or indirectly provide any form of inducement or reward to any representative of the Inviter or its employees, contractors and consultants in respect of a RFT.

9.5 Inviter's Rights

- (a) Without prejudice to any other rights expressed in these Conditions of Tender, the Inviter may, in its sole discretion and at any stage of the Tender Process, do all or any of the following:
 - (i) require additional Material from any Tenderer (including requiring the Tenderer to resubmit a Tender that conforms with the RFT where the Tenderer has failed to do so);
 - (ii) change the structure of the Tender Process;
 - (iii) terminate further participation in the Tender Process by any Tenderer for any reason, regardless of whether any Tender submitted conforms with the requirements of the RFT;
 - (iv) terminate at any time any negotiations being conducted with any Tenderer for any reason;
 - (v) change the scope of the required deliverables or any other elements of the RFT; and
 - (vi) vary, amend (including by replacement) or terminate the Tender Process.
- (b) The Inviter may in its sole discretion elect to notify, or not to notify affected Tenderers when it takes any action with respect to the RFT, but will not be obliged to provide any reasons to any Tenderer for any of its actions in relation to the RFT.

10 Inviter's Material

- (a) The information contained in the Material provided to the Tenderer by or on behalf of the Inviter or its related corporate



entities in connection with this Tender Process, including any information in respect of this RFT is the property of, and is confidential to, the Inviter or its related corporate entities (as the case may be). In the case where a Confidentiality Agreement exists between the parties, the Tenderer is reminded that its confidentiality obligations and undertakings under the Confidentiality Agreement apply to that Inviter Material.

- (b) The Inviter Material is issued for the purpose of providing Tenderers with general background information in relation to the RFT. It is the responsibility of Tenderers to ascertain for themselves all information relevant to the submission of a Tender and the delivery of the Scope prior to the Tenderer's entry into any contract or the Tenderer's performance of that contract.
- (c) The Inviter, its related corporate entities, directors, officers, employees, consultants and contractors (**Information Providers**) do not make any representation or give any warranty (express or implied) as to the accuracy, completeness, correctness, reasonableness or reliability of the contents of any Inviter Material.
- (d) By submitting a Tender, the Tenderer:
 - (i) represents and warrants that it has not relied and will not rely upon any Inviter Material made by or on behalf of any Information Provider; and
 - (ii) acknowledges and agrees that no Information Provider is liable for any losses or damages of whatsoever nature incurred or suffered by the Tenderer as a result of its reliance in any way upon any Inviter Material.
- (e) Inviter Material will not form part of any contract, unless the parties expressly agree in a formal legally binding written agreement.

11 Confidentiality

- (a) The Inviter will treat Tenders as confidential and undertakes to keep confidential any Material provided by the Tenderer in responding to this RFT unless disclosure of any part of it is required by law.
- (b) The Tenderer will treat the RFT as confidential and undertakes to keep confidential any Material provided by the Inviter as part of the Tender Process unless disclosure of any part of it is required by law.
- (c) The Inviter and Tenderer must:
 - (i) treat the RFT, Tender and any additional Material obtained from the Inviter or submitted by the Tenderer as confidential;
 - (ii) not disclose any confidential Material to any person not involved with the preparation of the Tender;
 - (iii) use a reasonable degree of care to protect and prevent any unauthorised use or disclosure of the RFT, Tender and any additional confidential Material; and
 - (iv) ensure any person receiving confidential Material is bound by these confidentiality obligations,
- (d) Upon the earlier of:
 - (i) The Inviter's written request; or
 - (ii) Within 14 days after the Validity Period expires; or
 - (iii) Within 14 days of the Due Date if a Tender was not submitted,

the Tenderer must delete or destroy (or if requested by the Inviter, return to the Inviter) any hard copies and any electronic copies of the RFT and any and all additional Material obtained from the Inviter.

- (e) Without limiting any other requirements of this clause, the Inviter and the Tenderer must not make or issue any announcement or statement (including to any third party) in relation to the RFT or

the Tender Process without the prior written consent of the other party.

12 Collusive Tendering

- (a) Tenderers must not participate in collusive tendering or anti-competitive behaviour with any person in preparing or lodging Tenders.
- (b) Fortescue may reject any Tender where Fortescue suspects that the Tenderer engaged in any collusive tendering or anti-competitive conduct in preparing or lodging the Tender.

13 Costs

The Inviter is not responsible for any costs and expenses incurred by the Tenderer in connection with the Tender Process including, but not limited to, providing any further documentation required by the Inviter, Material or presentations to the Inviter, attending negotiations and interviews with the Inviter, any site visits or inspections and any Alternative Proposal which may or may not lead to the execution of the Draft Contract. All such costs will be borne entirely and exclusively by the Tenderers.

14 Liability

To the maximum extent permitted by law, the Inviter will not be liable to any Tenderer on the basis of any promissory estoppel, quantum meruit or on any other contractual, quasi contractual, tortious (including negligence), statutory or restitutionary grounds whatsoever as a consequence of any matter or thing relating or incidental to a Tenderer's participation in the Tender Process, including instances where:

- (a) a Tenderer is not engaged to provide the Scope;
- (b) the Inviter varies, or terminates the Tender Process or any negotiations with a Tenderer;
- (c) the Inviter decides not to proceed with the Tender Process or acquiring the Scope in whole or in part; or
- (d) the Inviter exercises any of its other rights under or in relation to the RFT.

15 Governing Law and Forum

- (a) These Conditions of Tender are governed by the laws applicable at the registered company address of the Inviter where that address is in Australia, and the parties submit to the exclusive jurisdiction of the courts of that place and waive their right to trial by jury.
- (b) In every other case, these Conditions of Tender are governed by the laws of Singapore and in such case any dispute arising out of or in connection with the Conditions of Tender, including any question regarding its existence, validity or termination, will be referred to and finally resolved by arbitration administered by the International Chamber of Commerce (**ICC**) in accordance with its Rules of Arbitration (**ICC Rules**) for the time being in force, which rules are deemed to be incorporated by reference in this clause. The seat of the arbitration will be Singapore. The arbitration will consist of one (1) arbitrator where the dispute is for the equivalent of AUD 5 million or less and three (3) arbitrators otherwise. The language of the arbitration shall be English.

16 Authority and agency of IB Operations Pty Ltd in Iron Bridge Joint Venture

This clause 16 only applies if the Inviter is IB Operations Pty Ltd (ABN 88 165 513 557). In such case, the Tenderer acknowledges and agrees that the Inviter issues the RFT as agent for and on behalf of the Participants in the Iron Bridge Joint Venture and for this purpose:

- (a) each Participant is liable to the Tenderer severally in accordance with their Participating Interest from time to time in the Iron Bridge Joint Venture;



- (b) the Tenderer may only enforce rights and remedies under these Conditions of Tender against IB Operations Pty Ltd as agent severally for each Participant;
- (c) the Participating Interests of the Participants may change over time, and a Participant may assign some or all of its interests or novate its liabilities and obligations under these Conditions of Tender to another Participant;
- (d) where a Participant (the Transferring Participant) novates its liabilities and all obligations under the Conditions of Tender to another Participant, the Tenderer releases the Transferring

Participant from such liabilities and obligations to the extent so novated;

- (e) the Inviter is entitled to enforce the Conditions of Tender on behalf of the Participants, and may start proceedings on behalf of the Participants to enforce their rights and obligation, and make any claim which a Participant may have against the Tenderer under the Conditions of Tender; and
- (f) any such exercise by the Inviter under clause 16(e) is binding on the Participants.