

Working with Fortescue

Thank you for choosing to join us in changing the world. With your help, a pollution-free world, for you and future generations is possible.

Our values are at the heart of everything we do. They are Safety, Family, Empowerment, Frugality, Stretch Targets, Integrity, Enthusiasm, Courage and Determination, Generating Ideas and Humility. Each are core threads, all of equal importance, tightly woven together, ingrained in the fabric and character of our organisation and anyone who represents us.

We are a company with a conscience and strive to create thriving communities, wherever we work. We insist upon equal education outcomes for girls and boys to drive employment equality, No Modern Slavery in formal and informal workforces, Zero forced, bonded or compulsory labour and Zero forced marriage, and zero child marriage.

Are you with us?

If so, outlined below are terms on which we can work and together change the world.

USA Purchase Order Standard Terms and Conditions (V1.4U)

1 Our Agreement

- 1.1 The terms of Our Agreement are comprised of the Purchase Order, these Standard Terms and Conditions and all other documents annexed to the Purchase Order or this document or specifically incorporated by reference.
- 1.2 If there is ambiguity, conflict, discrepancy or inconsistency between the documents comprising Our Agreement, the following order of precedence shall apply:
- (a) the Purchase Order;
 - (b) these Standard Terms and Conditions; and
 - (c) any other documents forming part of Our Agreement.
- 1.3 Our Agreement does not confer upon You any exclusivity in respect of the supply of any Goods and/or Services. Fortescue is not required to procure any minimum level of Goods or Services from You.
- 1.4 Any terms and conditions created or supplied by You, in respect of the Goods and/or Services, will be of no legal effect and will not constitute part of Our Agreement, regardless of whether or when You supplied them. Your acceptance, fulfilment or other performance under the Purchase Order constitutes acceptance of Our Agreement terms.

2 Acting with Integrity

Modern Slavery and Human Rights

- 2.1 Fortescue is committed to complying with Legislation relevant to Modern Slavery, respecting Human Rights and works to align its business with the UNGPs and the VPI, and expects the same of its contractors.
- 2.2 You and your Personnel must:
- (a) not engage in any conduct that is inconsistent with Human Rights or engage in Modern Slavery;
 - (b) investigate, assess and address Human Rights and Modern Slavery risks, in Your operations and supply chain, including implementing appropriate due diligence and remediation programs;
 - (c) have, or be working to develop and establish, the necessary processes, procedures, investigation and compliance systems appropriate to Your size and circumstances in place to undertake the actions in clauses 2.2(a) and 2.2(b);
 - (d) promptly notify Fortescue of any confirmed instances of Modern Slavery and conduct inconsistent with Human Rights within Your operations or those in Your supply chain, and

the actions undertaken by You to remedy the issue;

- (e) upon request, and within a reasonable time specified by Fortescue, provide evidence to Fortescue's reasonable satisfaction to validate Your compliance with this clause 2.2; and permit Fortescue's Personnel or its nominated representatives to undertake verification activities to validate Your compliance with this clause; and
 - (f) use reasonable endeavours to include a clause similar to this clause 2.2 in all subcontracts with subcontractors providing goods or services for Our Agreement.
- 2.3 If You request assistance to comply with clause 2.2, and Fortescue reasonably determines that You require assistance to comply with clause 2.2, Fortescue may, at its sole discretion, provide commercially reasonable assistance to You.
- 2.4 Any action taken or not taken by Fortescue under clause 2.3 is not a waiver by Fortescue of its rights, claims, or defences under Our Agreement or applicable law.

Sanctions

- 2.5 You and Your Personnel, Your Affiliates and Your Affiliates' Personnel must not:
- (a) be a Sanctioned Person;
 - (b) violate any applicable Sanctions; and
 - (c) engage with a Sanctioned Person.
- 2.6 If:
- (a) You or your Personnel provides incorrect information in connection with the Sanctions;
 - (b) You or your Personnel breach any provision of Our Agreement relating to Sanctions; or
 - (c) Your Affiliates or Your Affiliates' Personnel, become a Sanctioned Person (including any of Your Personnel's contractors),
- You must:
- (d) immediately give notice to Fortescue; and
 - (e) cooperate in good faith with Fortescue to enable Fortescue's Personnel to investigate any suspected or actual breaches of the obligations under this clause 2.6.

Export Controls

- 2.7 Fortescue is committed to complying with Export Control Laws governing the export (including deemed export) or transfer of strategically controlled goods, software, technical data and technologies (**Controlled Items**). Fortescue expects the same of its contractors.
- 2.8 You and Your Personnel must:

- (a) comply with all relevant Export Control Laws;
- (b) obtain all export licenses, authorisations and similar documentation required in connection with Controlled Items. This extends to Controlled Items which are supplied by You, and Controlled Items which are supplied by Fortescue to You and are in Your custody and care as part of Our Agreement;
- (c) not export or share Controlled Items with any Sanctioned Person, end user or denied party that appears on lists relevant to Export Control Laws; and
- (d) upon request by Fortescue, as soon as reasonably practicable, provide export licence determinations for any Controlled Items, including the determination of relevant Export Control Classification Numbers where applicable.

2.9 You and Your Personnel represent and warrant that:

- (a) to the best of Your knowledge, there are no pending or threatened claims against You or Your Personnel with respect to Export Control Laws; and
- (b) there are no actions, conditions or circumstances pertaining to Your export transactions that would reasonably be expected to give rise to any future administrative or criminal violations of Export Control Laws.

Bribery and Corruption

2.10 Fortescue has a zero-tolerance approach to bribery and corruption and is committed to complying with Anti-Corruption Laws. Fortescue expects the same of its contractors.

2.11 You must not, and must procure that Your Personnel, do not:

- (a) violate any Anti-Corruption Laws;
- (b) pay or accept any commissions or fees, or make or accept any payments or rebates to or from any employee or officer of Fortescue or its Affiliates, or favour any of those persons with gifts or entertainment of unusual or substantial value, or enter into any business arrangements with any of those persons, that would result in a detriment to Fortescue or is contrary to fair dealing;
- (c) provide or offer to provide a benefit or anything of value (which is not legitimately due) to a public official (including a foreign public official) in order to retain or obtain a business advantage; and
- (d) provide bribes (in any form) or facilitation payments to anyone in the course of supplying Goods or Services to Fortescue, or when representing Fortescue.

2.12 You and Your Personnel must promptly report to Fortescue conduct of the kind referred to in clause 2.11.

Conflict of interest

2.13 You must, and must ensure Your Personnel, in connection with Our Agreement declare any potential, perceived or actual conflict of interest prior to entering into any agreements with Fortescue, and in any event as soon as any such conflict of interest comes to the attention of You.

Failure to Comply

2.14 Without limiting any remedy to which Fortescue may otherwise be entitled, Fortescue may terminate Our Agreement immediately on written notice under clause 19.1(d), if Fortescue determines that:

- (a) You do not remedy, or provide a reasonably acceptable plan to remedy to Fortescue's satisfaction, any identified instance of Modern Slavery or conduct inconsistent with Human Rights within the time frame specified by Fortescue;
- (b) Our Agreement violates any applicable Sanction;
- (c) Our Agreement violates any applicable Export Control Laws; or
- (d) You or Your Personnel:
 - (i) breached an applicable Anti-Corruption Law;
 - (ii) provided any incorrect information in connection with the Sanctions;
 - (iii) breached an applicable Sanction;
 - (iv) became a Sanctioned Person; or
 - (v) have not declared a conflict of interest that would result in a detriment to Fortescue.

3 Your Performance

3.1 You agree to:

- (a) commence the supply of the Goods and/or performance of the Services from the date of the Purchase Order;
- (b) diligently carry out the supply of the Goods and/or performance of the Services; and
- (c) complete the delivery of the Goods to the Site and/or performance of the Services by the Delivery Date.

3.2 You represent and warrant that:

- (a) You will carry out the Services with due skill and care, in accordance with Good Industry Practice and in compliance with Our Agreement, all applicable Legislation and any applicable international standard;
- (b) all Goods supplied will be new and of merchantable quality, free from any faults or

defects, manufactured in accordance with, and will otherwise comply with the description of the Goods as specified in, Our Agreement, in compliance with all applicable Legislation and any applicable international standards and free from any encumbrance, lien, mortgage, security or charge; and

- (c) any Equipment You supply (including spare parts and consumable items) is at Your own risk and expense and such Equipment will be maintained in safe and operable working condition, will comply with all Legislation and will be maintained and operated by suitably qualified and competent Personnel, for the duration of Our Agreement. Fortescue may reject any item of Equipment which it determines is unsafe or unsuitable for the purposes of Our Agreement.

3.3 These warranties remain unaffected notwithstanding any information which Fortescue provides to You.

4 Rewarding Your Performance

4.1 In consideration for the supply of the Goods and/or Services, Fortescue will pay You the Price.

4.2 Unless otherwise agreed in writing, the Price is inclusive of all costs, duties, Taxes (other than Sales Tax on supplies made by You), packing, insurance, freight, delivery and other expenses and liabilities incurred by You in the supply of Goods and/or performance of Services.

4.3 Except to the extent expressly set out in Our Agreement, the Price is not subject to change.

4.4 Unless specified otherwise in the Purchase Order, You must submit an Invoice to Fortescue within the first 15 business days of each calendar month, for the Goods and/or Services supplied in the preceding month.

4.5 The Invoice must set out particulars of all Goods and/or Services supplied by You and the amount payable by Fortescue under Our Agreement in respect of those Goods and/or Services, and how the amount of the Invoice was calculated.

4.6 Subject to clause 16.3, Fortescue will pay all Invoices submitted by You by the period specified in the Purchase Order after the date Fortescue receives the Invoice (or such other period required by Legislation). Any such payment shall be on account only.

4.7 You shall provide, as a condition to any payment by Fortescue, an executed release of liens releasing Fortescue and its property from any and all claims or rights of mechanics of materialman's liens associated with the Goods and/or Services furnished by You or any subcontracts up to the date of the releases. You shall execute and deliver all such documents, if any, as may be required under local law to make the foregoing release effective and shall give all required notices to subcontractors with respect to the foregoing release.

4.8 You hereby waive your right to any lien under any applicable Legislation or otherwise in respect of the Goods and/or Services provided in connection with Our Agreement. If applicable, payments to You hereunder may be subject to a statutory lien holdback. If applicable, Fortescue shall withhold such statutory lien holdback from amounts payable to You hereunder and shall release such holdback following expiration of the statutory period therefor in accordance with Legislation, provided however that no liens (for greater certainty, including construction liens and encumbrances) have been registered, and subject to Fortescue's rights to withhold or set-off amounts under the Agreement or in accordance with Legislation.

4.9 In the event that a lien arising from the performance of the Services and/or Goods utilized for Services pursuant to the Agreement is registered against any lands, including the Site, or notice of a lien claim is given to the owner of such lands, or given to Fortescue, You shall within 10 business days, at Your sole expense, vacate or discharge such lien. In the event that You fail or refuse to make alternative arrangements to bond or otherwise secure the amount of the lien claim and costs associated therewith, and vacate or discharge the lien within the time prescribed above, Fortescue shall, at its option, be entitled to take all steps necessary to vacate and/or discharge the lien, and all costs and expenses incurred by Fortescue in so doing (including, without limitation, all legal fees and disbursements and the amount and cost of any security to vacate the lien) shall be for Your account and You shall immediately reimburse Fortescue for all such costs and expenses, either by payment or set-off against amounts owed to You pursuant to Our Agreement. For clarity, the foregoing obligations do not apply to liens filed by You or any of Your subcontractors or suppliers which are claimed as a result of any failure by Fortescue to make payments in accordance with Our Agreement.

5 Your Personnel

5.1 You must employ or cause to be employed only personnel that are careful, skilled and experienced to the degree ordinarily expected of personnel engaged in the supply of goods and/or services similar to the Goods and/or Services acting in accordance with Good Industry Practice.

5.2 None of Your Personnel may commence work on Site unless she/he has attended, at Your expense, any induction courses required by Fortescue.

5.3 Fortescue may, acting reasonably, direct You to withdraw any of Your Personnel from providing any part of the Goods and/or Services.

5.4 You must comply, and ensure Your Personnel comply, with all reasonable directions of Fortescue's Representative.

5.5 Your Representative will represent and act for You at all times. You are bound by the actions of Your

Representative. Matters within the knowledge of Your Representative are deemed to be within Your knowledge.

- 5.6 You must not subcontract any part or the whole of Your obligations under Our Agreement except with the prior written consent of Fortescue (acting reasonably). You must ensure that all subcontracts entered into in accordance with this clause contain obligations in relation to Intellectual Property, Modern Slavery, Human Rights, Sanctions, bribery and corruption and Confidential Information consistent with, and no less onerous than, those set out in Our Agreement.
- 5.7 You must:
- (a) pay each subcontractor engaged by You in accordance with this clause to the extent required under applicable Legislation; and
 - (b) provide to Fortescue a completed lien and claim waiver from the subcontractor indicating that the subcontractor has been paid by You, which shall be a condition to payment.

6 New Creations, Ideas and Developments

- 6.1 You remain the owner of Your Background IP and Fortescue remains the owner of Fortescue's Background IP.
- 6.2 You grant to Fortescue a perpetual, worldwide, irrevocable, non-exclusive, transferable and royalty-free licence for Fortescue and Fortescue's Personnel to use, adapt, modify and copy Your Background IP to the extent necessary to:
- (a) complete the installation of, maintain, operate, make improvements to, repair and alter the Goods;
 - (b) exercise Fortescue's rights with respect to the Project IP; and
 - (c) otherwise enjoy the full benefit of the Goods and Services, and Fortescue's rights, title and interest in the Project IP.
- 6.3 Fortescue may grant a sub-licence of the licence granted to it under clause 6.2 to any person:
- (a) for any purpose referred to in clause 6.2; or
 - (b) who has also been granted use of the Project IP by Fortescue.
- 6.4 You acknowledge and agree that all Project IP is vested in Fortescue and is Fortescue's property as and when created. To the extent it does not automatically vest, You assign all rights, title and interest in and to the Project IP to Fortescue as and when created.
- 6.5 Fortescue grants to You a non-exclusive, non-transferable, non-sublicensable (except to subcontractors in accordance with clause 5.6), revocable and royalty-free licence to use Fortescue's Background IP and Project IP, which Fortescue provides to You for the sole purpose of

providing the Goods and/or Services in accordance with Our Agreement.

- 6.6 You must not disclose, reproduce or otherwise deal with the Project IP or Fortescue's Background IP, or allow any other person to do the same, for any purpose other than to provide the Goods and/or Services in accordance with Our Agreement.
- 6.7 You warrant that:
- (a) You own the Intellectual Property Rights in Your Background IP or You are otherwise entitled to provide it, and that the use of Your Background IP does not and will not infringe any rights of third parties (including any Intellectual Property Rights);
 - (b) Your Background IP is unencumbered and free from security interests;
 - (c) the provision of the Goods and/or Services does not and will not infringe the rights (including Intellectual Property Rights) of any third party;
 - (d) the Project IP and its use does not and will not infringe any rights of third parties (including any Intellectual Property Rights);
 - (e) use, publication, reproduction, communication and modification of any Goods or Services by Fortescue for any reason will not infringe or violate any Moral Rights of any person; and
 - (f) You have the right to assign all Project IP to Fortescue in accordance with clause 6.4.

7 Access to Site and Our Commitment to Safety

- 7.1 Fortescue grants to You a non-exclusive and non-assignable licence to access the Site to perform Your obligations under Our Agreement.
- 7.2 You must obtain all applicable permits, licences, exemptions, consents and approvals required for You to supply the Goods and/or perform the Services and must comply with all:
- (a) applicable Legislation (including HSES Legislation);
 - (b) Fortescue's Policies and Procedures, except to the extent that any update to Fortescue's Policies and Procedures causes them to differ materially from Fortescue's Policies and Procedures as they existed on the date of the Purchase Order; and
 - (c) reasonable and proportionate directions given by Fortescue's Representative.
- 7.3 Without limiting Your other obligations under Our Agreement, You must notify Fortescue's Representative as soon as practicable but in any event within 12 hours of any accident, injury, loss or damage which occurs at the Site.

8 Our Commitment to Timing

- 8.1 You must immediately give Fortescue's Representative written notice of all incidents, circumstances or events of any nature affecting or likely to affect Your ability to deliver the Goods and/or perform the Services by the Delivery Date.
- 8.2 Fortescue may grant an extension of time to the Delivery Date if the supply of the Goods and/or Services has been delayed by any act or omission of Fortescue or its Personnel, but excluding acts or omissions authorised or permitted under Our Agreement and which are done or omitted in accordance with Our Agreement.
- 8.3 Fortescue may suspend Our Agreement or any part of Our Agreement immediately. When You receive a notice of suspension from Fortescue, You must suspend the performance of Your obligations until such time as Fortescue directs that Our Agreement is no longer suspended.
- 8.4 Fortescue agrees to reimburse You for Your Open Book Costs (not including costs paid to any of Your Affiliates) incurred due to suspension under clause 8.3 if the reason for suspension is not caused or contributed to by You or Your Personnel's act or omission.

9 Dealing with Changes

- 9.1 Fortescue may by written notice direct a Variation. Subject to this clause 9, You must perform and are bound by any such Variation.
- 9.2 If Fortescue directs You to perform a Variation under clause 9.1, the value of the Variation, as determined under this clause 9, will be added to or deducted from the Price.
- 9.3 The value of the Variation will be:
 - (a) to the extent there are applicable rates or prices agreed by Fortescue and You, as set out in the Purchase Order or otherwise recorded in writing, an amount calculated by reference to those rates or prices; or
 - (b) otherwise, Your Open Book Costs reasonably incurred or saved as a result of the Variation plus, in the case of Open Book Costs reasonably incurred, an amount equal to 10% of such Open Book Costs, for Your profit and corporate overheads.
- 9.4 If You have an obligation under Our Agreement to supply Goods or perform Services, or to do any other act, by a certain date or within a certain period, and Your ability to satisfy that obligation is directly impacted by a Variation, You may give Fortescue a notice setting out the impact and the reasons for it, and proposing a reasonable and proportionate revised date or period for Your performance of the obligation. Provided Your notice is issued within 14 days of the Variation and otherwise complies with this clause, Our Agreement will be taken to be amended to reflect your proposal. Despite any such amendment, You must use reasonable endeavours to satisfy the

obligation by the original due date, or within the originally required period.

10 Monitoring Quality Together

- 10.1 You must keep Fortescue's Representative fully informed of all aspects of the provision of the Goods and/or Services.
- 10.2 Subject only to providing reasonable notice, Fortescue may inspect, examine, review and witness tests on the Goods and/or Services at the Site, Your premises or at the premises of Your Personnel.
- 10.3 If, as a result of any review, inspection, examination, or witnessing of testing, Fortescue is not satisfied that the Goods and/or Services will materially comply in all respects with Our Agreement, Fortescue may terminate Our Agreement under clause 19.1(b) as a material breach. You must keep Fortescue's Representative fully informed of all aspects of the provision of the Good and/or Services.

11 Fixing Defects and Mistakes

- 11.1 If at any time prior to the end of the Warranty Period, Fortescue identifies Defective Goods and/or Services, it may at its election:
 - (a) reject the Defective Goods and/or Services;
 - (b) direct You to make good the Defective Goods and/or Services; or
 - (c) make good the Defective Goods and/or Services itself,and You must:
 - (d) refund to Fortescue any payments made by Fortescue in respect of any Defective Goods and/or Services that Fortescue rejects;
 - (e) make good free of charge any Defective Goods and/or Services as per Fortescue's request; or
 - (f) reimburse Fortescue for any expenses Fortescue incurs in making good any Defective Goods and/or Services itself or by engaging a third party to make good.

- 11.2 The remedies provided in this clause do not exclude any other remedies provided by law.

12 Successful Delivery

- 12.1 Title in any Goods passes to Fortescue on the earlier of when Fortescue pays for the relevant Goods or when such Goods are delivered to the Site.
- 12.2 Risk in, including risk of loss for, any Goods remains with You until delivery to the Site.
- 12.3 To the extent permitted by law, You enter onto the Site and supply the Goods and/or Services under Our Agreement at Your own risk.

13 Protecting People and Property

13.1 You must, before commencing the supply of Goods and/or Services, effect and maintain insurances for:

- (a) Employers' liability/Workers compensation insurance: You must comply with all applicable statutory requirements in the relevant jurisdiction where You or Your Personnel are domiciled and/or performing the Services and/or manufacturing Goods, including providing any compulsory statutory workers' compensation benefits and take out Employers Liability Insurance for an amount of not less than US\$1,000,000 per occurrence and in the aggregate, each including a waiver of subrogation in favour of Fortescue and its Affiliates if You have employees attending a Fortescue Site;
- (b) General Liability insurance: You must ensure Your legal liability to third parties (including counterparties) for death, personal injury and damage to property caused by an occurrence during the period of insurance, where such occurrence arises in connection with performing the Services for an amount of not less than US\$1,000,000 for any one claim and US\$2,000,000 in the aggregate. Where the Services includes supply of Goods, provide cover for products liability to a limit of US\$1,000,000 any one claim and US\$2,000,000 in the aggregate, and include Fortescue and its Affiliates as an additional named insured or other such extension for the policy to act as primary on a non-contributory basis;
- (c) Motor Vehicle insurance: If Our Agreement requires You to use or provide use of motor vehicles, You must ensure the vehicle is correctly licensed and registered for compulsory third party insurance as required by applicable Legislation, and You must also take out Automobile Liability to provide cover for your legal liability to third parties for bodily injuries or property damage caused by a motor vehicle for an amount of US\$1,000,000;
- (d) Professional Indemnity insurance: If the Services include professional services, You must take out a professional indemnity policy or obtain an errors and omissions extension under your Commercial General Liability insurance policy of not less than US\$1,000,000 per occurrence and in the annual aggregate;
- (e) Equipment insurance: If Our Agreement requires You to bring Equipment onto a Site, You must insure all items of Equipment for market value of the Equipment;
- (f) Transit insurance: If Our Agreement provides that You are responsible for transportation of Goods to the Site (or

another delivery point as nominated by Fortescue in writing), You must take out goods in transit insurance to cover loss or damage to such Goods for 100% of the replacement value; and

- (g) Other insurances: You must effect and maintain any other insurances required by Legislation or regarded as Good Industry Practice in the jurisdiction in which the Goods and/or Services are being provided.

13.2 Before commencing performance of the Services and/or supply of the Goods, You must give to Fortescue a valid certificate of insurance or currency evidencing Your insurance, and otherwise at any time upon request.

13.3 You must ensure any subcontractor engaged by You in relation to the Goods and/or Services effects and maintains the insurances nominated in this clause 13 and provides certificates of currency to You.

14 Dealing with Loss and Damage

14.1 To the extent permitted by law, You indemnify Fortescue from and against all claims, liability, losses, damages, costs and expenses (including legal expenses), due to:

- (a) any loss of, damage to or destruction of any property, including the Goods; and
- (b) personal injury or death,

to the extent contributed to by any breach of Our Agreement by You or by the negligence, wilful misconduct or unlawful acts or omissions of You or Your Personnel arising out of or in connection with Our Agreement.

14.2 You must indemnify Fortescue from and against all claims, liabilities, losses, damages, costs and expenses (including legal expenses) suffered or incurred by Fortescue arising out of or in connection with any actual or alleged infringement of any Intellectual Property Rights or Moral Rights of any person resulting from the performance of Our Agreement, Your Background IP or the Project IP.

14.3 Subject to clause 14.4 and to the maximum extent permitted by Legislation:

- (a) the maximum aggregate liability of either one of Us to the other in connection with Our Agreement is limited to the higher of 100% of the Price or the cost to re-perform the Services or replace the Goods; and
- (b) neither of Us will be liable to the other for any Excluded Loss.

14.4 The limitation and exclusion of liability in clause 14.3 does not apply in relation to either Your or Fortescue's liability:

- (a) in respect of the injury or death of any person or the loss or destruction of any real or personal property;

- (b) for any act or omission of fraud, criminal act, dishonesty, gross negligence, wilful misconduct or misrepresentation of You and/or any of Your Personnel;
- (c) for any penalty imposed for breach of Legislation, permit or licence in connection with the supply of the Goods and/or Services by You;
- (d) for breach of clauses 2.2, 2.5, 2.6, 2.8, 2.11, 2.12, 6 or 15;
- (e) for any loss arising from an occurrence which should be covered by a policy of insurance in the name of You required under Our Agreement (up to the limits of insurance required under Our Agreement) or which would have been so covered but for the application of this clause 14.4 or any act or omission of You; or
- (f) which, by law, You cannot contract out of.

15 Protecting Confidential Information

15.1 Each Party must, subject to the terms of Our Agreement, at all times:

- (a) keep each other Party's Confidential Information secret and preserve its confidential nature;
- (b) implement appropriate security and other measures to safeguard the other Party's Confidential Information, which must be no less stringent than the measures the Party takes in respect of its own confidential information;
- (c) not use the other Party's Confidential Information for any purpose other than (in Your case) the purpose of supplying Goods and / or performing the Services or (in Fortescue's case) using or receiving the benefit of the Goods or Services (including any deliverables) supplied, or exercising the rights Fortescue receives under Our Agreement; and
- (d) only copy or reproduce the other Party's Confidential Information for an applicable purpose as stated in paragraph (b), or with the written consent of the other Party.

15.2 Neither Party may disclose the other Party's Confidential Information to any person except:

- (a) with the prior written approval of the other Party, which consent may be withheld in its discretion;
- (b) to the Party's Personnel, Affiliates or professional advisors, but, in each case, only where the recipient has been advised of the confidential nature of the Confidential Information, and only to the extent necessary for an applicable purpose as stated in clause 15.1(c); and further, in the case of professional advisors, contractors, suppliers, agents, consultants or representatives, only

where the recipient is obliged to the receiving Party to keep the Confidential Information confidential; or

- (c) if the receiving Party is required to do so by Legislation, a Government Authority or by a stock exchange.

15.3 Each Party is, and remains, liable for any breach of confidentiality or of this clause 15 by any recipient to which it discloses the other Party's Confidential Information.

15.4 You and Your Personnel must not publish, display or otherwise release any advertisement, information, media announcement or release, or promotional material in connection with Fortescue or the Site, including Your appointment under Our Agreement, without the prior written approval of Fortescue.

16 Dealing with Taxes

16.1 Unless otherwise expressly stated otherwise, the Price payable under Our Agreement does not include Sales Tax. If Sales Tax is applicable to any supply made by You under or in connection with Our Agreement, and subject to any specific regulations regarding special taxpayers, You are responsible for calculating the applicable Sales Tax amount and issuing a valid Invoice. Thereafter, Fortescue is responsible for payment of the Sales Tax to You.

16.2 You must pay all Taxes (other than Sales Tax), and the Price will not be adjusted for any such Taxes, other than as set out in clause 16.1. You must provide documentary evidence of the payment of any Taxes for which You are liable.

16.3 Where Fortescue is required by Legislation to withhold or deduct from any payment due to You any amount with respect to or which relates to any Tax, such withholding or deduction is hereby authorised by You, and payment made to the appropriate Government Authority of the amount so withheld or deducted constitutes good and full payment by Fortescue to You of an amount equal to the amount of such payment made.

17 Communicating with Each Other

17.1 A notice (and any other document) must be in writing, legible, in English, marked for the attention of Fortescue's Representative or Your Representative (as applicable) and delivered in person, by registered mail or by email.

17.2 A notice (and other documents) shall be deemed to be given and received:

- (a) upon actual receipt when hand delivered;
- (b) if sent by email, at the time the email becomes capable of being retrieved by the recipient's email system; or
- (c) if sent by registered mail, three business days after posting if sent domestically within the United States of America and, in all other

cases, on the fifth business day after the date of posting.

18 Resolving any Disagreements

18.1 If an issue or dispute arises in connection with Our Agreement, the Parties agree, prior to the initiation of any legal proceedings, to use their reasonable endeavours to reach a resolution of the dispute.

18.2 Where the dispute has not been resolved within 30 days after the Parties first convene to resolve the dispute, either of Us may refer the dispute to be administered and finally settled under the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Each Party shall have the right to conduct discovery in any matter and to the extent authorized by the Federal Rules of Civil Procedure as interpreted by the United States District Court of the United States District Court for the District of Delaware. The Party seeking arbitration shall furnish to the other Party with a dated written statement indicating (A) the intent to commence arbitration proceedings, (B) the nature, with reasonable detail, of the dispute and (C) the remedy or remedies such Party will seek (**Arbitration Notice**). Within 30 days of the receipt of the Arbitration Notice, the responding Party shall deliver to the other Party its answer and any counterclaim(s), setting out the nature of such counterclaims(s) and the relief requested.

18.3 The tribunal shall consist of one arbitrator. Within twenty (20) days of the Arbitration Notice, the Parties shall select a single arbitrator from a list of members of the AAA's National Panel of Commercial Arbitrators. Such arbitrator must be "neutral" and must have at least fifteen (15) years' experience in transactions substantially similar to the dispute set in the Arbitration Notice. If the Parties do not reach agreement on the selection of a single arbitrator within the twenty (20) day period, the AAA shall have the right to make such selection upon the request of any party to the arbitration proceedings.

18.4 The forum for arbitration shall be Delaware. The Parties irrevocably submit to the jurisdiction and governing law of the State of Delaware without regard to conflict of law principals. The arbitrator shall have authority to award legal fees and associated costs to the Party that substantially prevails in any arbitration proceeding.

18.5 Despite the existence of a dispute, You must continue without delay to perform Your obligations under Our Agreement.

18.6 Nothing in this clause prevents either of Us from applying to a court for urgent injunctive relief.

19 Ending Our Agreement

19.1 Our Agreement may be terminated:

- (a) at any time for the convenience of Fortescue by providing 7 days' written notice to You, in

which case Fortescue shall, as its sole liability, pay You such of the Price as is payable as at the date of termination and the cost of any materials reasonably ordered as part of the Goods which You are obliged to pay for and cannot cancel, provided such Goods are delivered to and become the property of Fortescue and Your Open Book Costs of complying with directions Fortescue gives You following the notice of termination;

- (b) upon a material breach of Our Agreement by either of Us which is not remediated within a reasonable time (and in any case within 14 days) of written notice by the non-breaching party of the material breach;
- (c) immediately by written notice by either of Us in the event the other Party becomes insolvent or financially unable to proceed with Our Agreement; or
- (d) by Fortescue immediately by written notice to You, if Fortescue is entitled to exercise a right of termination under clause 2.14.

19.2 Upon termination of Our Agreement, You must promptly return to Fortescue the Confidential Information and any materials, documents and other information provided by Fortescue in connection with Our Agreement and must ensure Your Personnel do the same.

19.3 You must mitigate and minimise Your costs of complying with any directions of Fortescue referred to in clause 19.1(a).

19.4 If either of Us breaches (including repudiates) Our Agreement, nothing in this clause 19 shall prejudice the right of the other Party to recover damages or exercise any other right or remedy.

20 Other Matters

20.1 **Survival** – Clauses 2.5 to 2.122.13, 3.2, 6 (excluding 6.5), 11, 13.1, 15, 17, 18, and 20 survive the expiry or earlier termination of Our Agreement.

20.2 **Waiver** – Waiver of any right arising from a breach of Our Agreement must be in writing and executed by the Party granting the waiver. Failure by Fortescue to exercise a right, remedy or power at any time will not be construed in any way to affect the enforceability of that right, remedy or power in any other instance, or the enforceability of Our Agreement as a whole.

20.3 **Governing law and jurisdiction** – We accept the laws of the State of Delaware as the governing law of Our Agreement without regard to conflict of law principles..

20.4 **Further assurances** – Each of Us must promptly sign all documents and do all things that either of Us from time to time reasonably request to effect, perfect or complete Our Agreement and all transactions incidental to it.

20.5 **Entire Agreement** – Our Agreement as amended or varied from time to time represents the entire

agreement between Us and supersedes all prior arrangements whether written or oral in relation to the Services. Except where Legislation otherwise provides, where Our Agreement has been translated into any other language, the English version shall prevail.

20.6 Relationship between Us

- (a) Fortescue and You are independent contracting parties and nothing in Our Agreement will make either of Us an agent or legal representative of the other for any purpose whatsoever.
- (b) Fortescue and You are not in a joint venture, partnership, or fiduciary relationship for tax purposes.
- (c) Fortescue is not responsible to You or any of Your Personnel for any payments in respect of any employment related expenses including wages, annual leave, sick leave, long service leave, superannuation, workers' compensation, accidents, sickness, or lift insurance.

20.7 Interpretation

In Our Agreement:

- (a) all information and documentation must be in English;
- (b) if You comprise two or more persons, the liability of each of those persons under Our Agreement is joint and several; and
- (c) a reference to:
 - (i) the singular includes the plural and vice versa;
 - (ii) a person includes a body corporate and vice versa;
 - (iii) time is the time in Houston, Texas, or as otherwise stated;
 - (iv) "including" and similar expressions are not words of limitation; and
 - (v) all monetary amounts are expressed in US Dollars unless otherwise specified.

20.8 Severability – If any term or provision of Our Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of Our Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

20.9 Assignment – The services contemplated in Our Agreement are personal in nature and You shall not assign, transfer, delegate or subcontract any rights or obligations under Our Agreement without Fortescue's prior written consent. Any purported assignment or delegation in violation of this clause shall be null and void. No assignment or delegation shall relieve You of any of Your obligations under Our Agreement.

20.10 Definitions

In Our Agreement unless the contrary intention appears:

Affiliate means, in relation to each of the Parties, a holding company of the Party; a subsidiary of the Party; and a subsidiary of a holding company of the Party;

Agreement means the agreement between Fortescue and You comprised of the Purchase Order, these Standard Terms and Conditions and all other documents annexed to the Purchase Order, this document or specifically incorporated by reference;

Anti-Corruption Laws means Legislation relating to anti-bribery or anti-corruption, including but not limited to the US *Foreign Corrupt Practices Act 1977*, the UK *Bribery Act 2010* and the Australian *Criminal Code Act 1995*;

Confidential Information:

- (a) in respect of Fortescue – means:
 - (i) the terms and contents of our Agreement;
 - (ii) all information communicated in whatever form in relation to Fortescue's business or operations, customers, clients, employees, or subcontractors;
 - (iii) all information communicated in whatever form that is disclosed by or on behalf of Fortescue to You at any time, or learnt by You in performing this Agreement, including all Fortescue supplied information, Fortescue Background IP and Project IP; and
 - (iv) all information marked confidential, that is by its nature confidential, or which You ought to know is confidential; and,
- (b) in respect of You – means:
 - (i) the terms and contents of our Agreement, including any pricing information provided by You or Your Personnel to Fortescue; and
 - (ii) any information marked confidential, that is by its nature confidential, or which Fortescue ought to know is confidential;

but excludes information that, without breaching this Agreement, is already public or known to the receiving Party;

Defective Goods and/or Services means:

- (a) any aspect of the Goods and/or Services which are not in accordance with Our Agreement; or
- (b) defect, deficiency, damage, omission, fault, non-conformity or failure in the Goods and/or Services;

Delivery Date means (where relevant) the date the Goods must be delivered and the Services must be completed by You as specified in Our Agreement, or, if no such date is specified, the date following a reasonable period of time from the date of the Purchase Order, as may be amended in accordance with Our Agreement;

Equipment means the equipment, tools, appliances and other property supplied by You for the purpose of supplying the Goods and/or performing the Services;

Excluded Loss means any special, indirect or consequential loss, including loss of revenue and profit (other than revenue or profit derived directly from payments for Goods and/or Services under Our Agreement), punitive or exemplary damages, loss or denial of opportunity, loss of access to markets, loss of goodwill, loss of business reputation, increased overhead costs, and all other loss which is indirect, remote or unforeseeable loss;

Export Control Laws means all applicable provisions of export and re-export control Legislation, including but not limited to export control Legislation of the United States of America, Australia, the United Kingdom and the European Union, and any other applicable national export control and embargoes Legislation;

Fortescue means the party named as such on the Purchase Order;

Fortescue's Background IP means Fortescue's Intellectual Property Rights which:

- (a) are in existence at the date of the Purchase Order; or
- (b) come into existence after the date of the Purchase Order otherwise than in connection with Our Agreement;

Fortescue's Policies and Procedures means all of Fortescue's policies and procedures relating to the provision of the Goods and/or Services, as may be updated from time to time, including those set out at Fortescue's extranet (available via <https://fmgl.sharepoint.com/sites/extranet>) or posted on notices boards on the Site;

Fortescue's Representative means the person set out in the Purchase Order or as otherwise notified to You in writing from time to time;

Good Industry Practice means, in respect of You, performance as would ordinarily be expected of a contractor that exercises the degree of skill, quality, care, diligence and prudence that would reasonably be expected of a competent, expert and experienced contractor in undertaking work, tasks, services, functions, responsibilities and obligations the same or similar to the Services;

Goods means all goods and things to be supplied by You in accordance with Our Agreement, including all goods set out in or reasonably inferred from the Purchase Order;

Government Authority means a national, federal, state, regional, local, territorial or municipal government, ministry, governmental department or legislative, judicial or administrative body having jurisdiction over Us, the Goods and/or Services or the Site;

HSES Legislation means all Legislation relating to health and safety and includes all relevant health and safety regulations, codes of practice of safety standards made pursuant to that Legislation or any other legislation dealing with workplace health and safety that may apply from time to time;

Human Rights means all internationally recognised human rights laws and standards, including, those rights and standards expressed in:

- (c) the International Bill of Human Rights;

- (d) the principles concerning the rights set out in the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work;

- (e) the UNGPs; and

- (f) the VPI,

and in the event of ambiguity between the above documents, the highest standard applies;

Invoice means an invoice that complies with any Legislation applicable to Tax;

Intellectual Property Rights means all copyright and analogous rights, all rights in relation to inventions (including patent and related rights), discoveries, plant varieties, registered and unregistered trade marks (including service marks), designs, trade secrets, know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity including in the industrial, scientific or artistic fields;

Legislation means:

- (a) all national, federal or state laws, legislation, statutes, ordinances, regulations, by-laws or any other laws of any legally constituted public authority; and

- (b) all licences, qualifications, registrations and other statutory requirements necessary for supply of the Goods and/or performance of Services under Our Agreement;

Modern Slavery means:

- (a) any exploitative practices and crimes including:

- (i) human trafficking or trafficking in persons as defined in Article 3 of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, done at New York on 15 November 2000 ([2005] ATS 27);

- (ii) child labour or the worst forms of child labour as defined in Article 3 of the *ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour*, done at Geneva on 17 June 1999 ([2007] ATS 38); and

- (iii) slavery and slavery like practices, servitude, forced labour, debt bondage, forced marriage, sale of or sexual exploitation of children, deceptive recruiting for labour or services, removal of organs and organ trafficking; or

- (b) any activity, practice or conduct that would constitute an offence or is otherwise defined as modern slavery in any applicable anti-slavery and human trafficking Legislation;

Moral Rights means any rights to claim authorship of or credit on a work of authorship, to withdraw from circulation or control the publication or distribution of a work of authorship, to object to or prevent the modification or destruction of a work of authorship, and any similar right, existing under judicial or statutory law of any country or state, or under any treaty, regardless of whether or not such right is denominated or generally referred to as a moral right;

Open Book Costs means costs necessarily, actually, reasonably and properly incurred, and evidenced on an open book basis;

Party means You or Fortescue and **Our, Parties, Us or We** means both of You and Fortescue;

Personnel means any of a Party's or its Affiliates' employees, contractors, suppliers, agents, consultants or representatives;

Price means the total amount payable for the Goods and/or Services, as set out in the Purchase Order;

Project IP means all Intellectual Property Rights (present or future) created, discovered or coming into existence as a result of, for the purpose of, or in connection with, the provision of any Goods or Services or Our Agreement;

Purchase Order means the document entitled 'Purchase Order' describing the Goods and/or Services to be supplied, which may be attached to these Standard Terms and Conditions;

Sales Tax means any value added, good and services, consumption or similar tax, and in the United States of America, means any sales and use tax;

Sanction means any economic or financial sanction, trade embargo or similar restrictive measures imposed, enacted, administered or enforced from time to time by a Sanctions Authority;

Sanctioned Country means any country or territory which is the target of country-wide or territory-wide Sanctions, and as at the date of this Agreement, comprise: Cuba, Iran, North Korea, Syria and Crimea, Donetsk, Luhansk regions of Ukraine;

Sanctioned Person means any person or entity which is a target of a Sanction, such as:

- (a) a person or entity listed on a Sanctions List;
- (b) an entity owned or controlled (directly or indirectly) by a person or entity listed on a Sanctions List; or
- (c) a person or entity located in, incorporated under the law of, or acting on behalf of a person located in or organised under the laws of a Sanctioned Country;

Sanctions Authority means each of the following: the United States of America (**US**), the United Nations (**UN**), the European Union (**EU**) (and any present or future member state of the EU), the United Kingdom (**UK**), Australia, and the respective governmental and official institutions or agencies of any of the foregoing including the Office of Foreign Assets Control (**OFAC**) by the US Department of the Treasury, the US Department of State, the Security Council of the UN, His Majesty's Treasury by the Government of the UK, the Ministry for the Economy and Finance (Directorate-General of the Treasury) of France and the Australian Sanctions Office by Australia's Department of Foreign Affairs and Trade;

Sanctions List means any of the lists of specifically designated nationals or designated persons or entities (or equivalent) held, issued or maintained by a Sanctions Authority, as updated from time to time;

Services means all services to be supplied by You in accordance with Our Agreement, including all services set out in or reasonably inferred from the Purchase Order;

Site means the location specified in the Purchase Order;

Tax means any tax, levy, impost, fee, charge, excise, duties, customs, rate, compulsory loan, deduction, withholding or surcharge whether imposed under a law of the United States of America, a law of a state or a law of another country;

UNGPs means the United Nations' Guiding Principles on Business and Human Rights;

Variation means any addition, reduction, change or omission to the Goods and/or Services;

VPI means the *Voluntary Principles for Security and Human Rights*;

Warranty Period means the period commencing on the first date of delivery of Goods or performance of Services under Our Agreement, ending:

- (a) 12 months; or
- (b) such other period stated in the Purchase Order, after the date on which all of the Goods have been delivered and the Services have been performed;

You, Your, Yours, Yourself means the person, firm or company named in the Purchase Order as the supplier of Goods and/or Services;

Your Background IP means Your or Your Personnel's Intellectual Property Rights, which:

- (a) are in existence at the date of the Purchase Order; or
- (b) come into existence after the date of the Purchase Order otherwise than in connection with Our Agreement,

but does not include the Project IP; and

Your Representative means the person set out in the Purchase Order or as otherwise notified to Fortescue in writing from time to time.