

Purchase Order Standard Terms (Australia)



Hello and welcome to Fortescue

Content of these Terms

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About the Agreement

1 Parties and Agreement Structure

1.1 Parties and Agreement Structure

(a) The Agreement between You and Fortescue is made up of the following documents:

 Purchase Order The document issued to You confirming the Goods or Services, the Price, and any special conditions (agreed by both Parties).	 These Terms The details of how we will work together and Fortescue's expectations.	 Other commercial document Such as a Scope of Work or other reference document annexed or specifically incorporated by reference in the Agreement.
▲ You are here ▲		

- (b) If there is conflict between the various parts of the Agreement, to the extent of any inconsistency, the order of priority is as follows: (1) the Purchase Order, (2) these Terms, and (3) any other documents annexed or specifically incorporated by reference in the Purchase Order.
- (c) Your terms and conditions, or any other terms and conditions You provide, on any documentation or instrument, will have no legal effect on the Agreement.
- (d) Where Goods or Services are provided pursuant to a contract already in effect between You and Fortescue, the terms of that contract continue to apply and these Terms do not apply.

1.2 Acceptance and purpose

By commencing and/or continuing to perform under the Agreement, You agree to supply the Goods or perform the Services by the Delivery Date, and in accordance with these Terms.



1.3 Definitions and interpretations

- (a) Words beginning with a capital letter are defined in clause 27. Where a word or phrase is given a defined meaning in clause 27, another part of speech or other grammatical form in respect of that word or phrase has the corresponding meaning.
- (b) If You comprise two or more persons, the liability of each of those persons under the Agreement is joint and several.
- (c) Headings in the Agreement are inserted for convenience only and do not affect its interpretation, unless the context indicates a contrary intention.
- (d) In the Agreement, a reference to:
 - (i) the singular includes the plural and vice versa, and any gender also denotes the other gender;
 - (ii) a person includes a body corporate and vice versa;
 - (iii) time is the time in Perth, Australia, unless the Delivery Point of Goods and/or Services occurs outside Australia, in which case the time is the relevant time zone where the Fortescue entity is registered, or as otherwise stated;
 - (iv) "including", "or" and other similar expressions are not words of limitation;
 - (v) two or more clauses is inclusive of those referenced clauses;
 - (vi) each provision will be interpreted without disadvantage to the Party that drafted or proposed that provision; and
 - (vii) any Legislation means that Legislation as amended, substituted, consolidated, re-enacted or replaced.

1.4 Independent business entities

- (a) Nothing in the Agreement makes either Party an agent of the other Party, or gives a Party any authority to enter binding legal obligations on behalf of the other Party, or in the name of the other Party.
- (b) Fortescue is not responsible to You or Your Personnel for any employment related expenses.

1.5 Non-exclusive relationship and no minimum spend

Unless otherwise clearly specified in a Scope of Work, this contractual relationship between You and Fortescue is non-exclusive, and Fortescue is not required to procure any minimum level of Goods or Services from You.

1.6 Assignment, subcontracting and PPSA

You must not:

- (a) assign or subcontract Your obligations (or part of them) under the Agreement, unless You have received Fortescue's prior written consent, which Fortescue will not unreasonably withhold; or
- (b) create or allow any security interest under the PPS Law to subsist over the Goods or Services, or the Agreement generally, unless Fortescue has provided its prior written consent. If Fortescue reasonably requests, You must promptly take all steps in relation to the PPS Law which would be prudent for a contractor in Your position to take in connection with the supply of Goods or the performance of Services.
- (c) You must ensure that all subcontracts entered into in accordance with clause 1.6(a) contain obligations in relation to Intellectual Property, Modern Slavery, Human Rights, Sanctions, bribery and corruption, Conflict of Interest, export controls and Confidential Information consistent with, and no less onerous than, those set out in the Agreement.



Acting with integrity

2 Acting with integrity

2.1 Modern Slavery and Human Rights

- (a) Fortescue is committed to respecting Human Rights, complying with Human Rights and Modern Slavery Legislation, and expects the same of its suppliers and contractors.
- (b) Each Party must:
 - (i) operate in a manner that is consistent with Human Rights, and not engage in Modern Slavery;
 - (ii) investigate, identify, assess and address Human Rights and Modern Slavery risks in its operations and supply chain, including implementing appropriate due diligence and remediation programs;



- (iii) maintain (or are working to establish and maintain) reasonable policies, processes, procedures, investigations, monitoring, compliance systems and grievance mechanisms appropriate to its size and circumstances to undertake the actions in clauses 2.1(b)(i) and 2.1(b)(ii); and
 - (iv) use reasonable endeavours to include contractual provisions similar to clauses 2.1(b) and 2.1(c), and procure that its Subcontractors in supplying the Goods and/or performing the Services comply with clauses 2.1(b) and 2.1(c).
- (c) You:
- (i) acknowledge that Fortescue has reporting obligations in relation to Modern Slavery and Human Rights;
 - (ii) must promptly notify Fortescue upon becoming aware of any incidents of Modern Slavery or Human Rights breaches within Your operations or supply chain and the actions undertaken by You to remedy the issue; and
 - (iii) must, at Fortescue's request and at Your own expense, provide such information as is reasonably requested by Fortescue for the purpose of complying with clauses 2.1(b) and 2.1(c).
- (d) If You request Fortescue's assistance for the purpose of complying with clause 2.1(b) then Fortescue may, but is not obliged to, provide such assistance as it considers reasonable, and any action taken or not taken by Fortescue under this clause 2.1(d) will not derogate from, limit or otherwise affect Fortescue's rights against You whether under the Agreement or otherwise at Law.

2.2 Sanctions

- (a) Throughout the Engagement Period, You and Your Related Bodies Corporate must:
- (i) not be a Sanctioned Person;
 - (ii) not violate any applicable Sanctions;
 - (iii) not engage with a Sanctioned Person in connection with the Agreement; and
 - (iv) procure that Your Personnel comply with clauses 2.2(a)(i) to 2.2(a)(iii).
- (b) If You or Your Personnel:
- (i) provide any incorrect information in connection with the Sanctions;
 - (ii) breach any provision of the Agreement relating to Sanctions; or
 - (iii) become a Sanctioned Person,
- then You must immediately give notice to Fortescue.

2.3 Export Controls

- (a) 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 suppliers and contractors.
- (b) You must, and must ensure that Your Personnel:
- (i) comply with all relevant Export Control Laws;
 - (ii) obtain all export licenses, authorisations and similar documentation required in connection with Controlled Items (including Controlled Items supplied by You and Controlled Items supplied by Fortescue that are in Your custody and care);
 - (iii) 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
 - (iv) if requested by Fortescue provide export licence determinations for any Controlled Items, including the determination of relevant *Export Control Classification Numbers* (ECCN), where applicable.
- (c) You warrant that, to the best of Your knowledge:
- (i) there are no pending or threatened claims against You or Your Personnel with respect to Export Control Laws; and
 - (ii) 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.

2.4 Bribery and corruption

- (a) Fortescue has a zero-tolerance approach to bribery and corruption, is committed to complying with Anti-Corruption Laws. Fortescue expects the same of its suppliers and contractors.
- (b) You must not, and must ensure that Your Personnel, do not:
- (i) violate any Anti-Corruption Laws;



- (ii) accept any commissions or fees, or make or accept any payments or rebates to or from any employee or officer of Fortescue or its Related Bodies Corporate, 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;
 - (iii) 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; or
 - (iv) provide, offer to provide, or accept, bribes (in any form) or facilitation payments to or from anyone in the course of supplying the Goods to and/or performing the Services for Fortescue, or when representing Fortescue.
- (c) You must, and must ensure that Your Personnel, immediately report to Fortescue any conduct of the kind referred to in clause 2.4(b).

2.5 Conflict of Interest

- (a) You must, and must ensure Your Personnel in connection with the Agreement, declare any potential, perceived or actual Conflict of Interest, prior to entering into any agreements with Fortescue or being involved in the supply of the Goods and/or performance of the Services, and in any event, as soon as any such Conflict of Interest comes to Your attention.
- (b) Upon receipt of a notice under clause 2.5(a), or upon Fortescue otherwise identifying a Conflict of Interest, Fortescue may Direct You as to how to manage the Conflict of Interest and You must comply with any reasonable direction so given by Fortescue.

2.6 Verification rights and failure to comply

- (a) Upon request, and within a reasonable time specified by Fortescue, You must, and must procure that Your Personnel, in connection with the Agreement:
- (i) provide evidence to Fortescue's reasonable satisfaction to validate their compliance with clause 2; and
 - (ii) cooperate and permit Fortescue's Personnel to undertake verification activities to confirm compliance by You and Your Personnel with clause 2 (including by providing access to their premises and records).
- (b) You must, and must ensure that Your Personnel, cooperate in good faith with Fortescue to enable Fortescue's Personnel to investigate any suspected or actual breaches of clause 2.
- (c) Without limiting any of Fortescue's rights or remedies under the Agreement or otherwise at Law, Fortescue may terminate the Agreement under clause 24.5(a) if Fortescue considers that:
- (i) You have not remedied, or demonstrated to Fortescue's satisfaction that You are taking steps to remedy, any identified instance of Modern Slavery or conduct inconsistent with Human Rights, within such time frame as is reasonably specified by Fortescue;
 - (ii) the Agreement violates any applicable Sanction or Export Control Laws; or
 - (iii) You or any of Your Personnel breach clause 2.



Working together safely

3 HSES (Safety) and Site access

3.1 Safety and security are core priorities

- (a) You must promptly notify Fortescue's Representative and the Site Manager of any reportable or notifiable incidents under HSES Laws or Environmental Laws, including if an accident, injury, loss or damage occurs at a Site, pursuant to Fortescue's Policies and Procedures.
- (b) You and Your Personnel must:
- (i) deliver Goods or Services in a safe manner and use best endeavours to achieve zero recordable injuries;
 - (ii) comply with all applicable:
 - A. Laws (including HSES Laws and Environmental Laws);
 - B. Fortescue's Policies and Procedures, including the "Code of Conduct and Integrity", the "Contractor Right of Entry" and the "Equal Opportunity and Appropriate Behaviour" policies, as updated or amended from time to time; and
 - C. reasonable directions given by Fortescue's Representative and Site Manager;
 - (iii) not interfere with Fortescue's activities or the activities of anyone else at the Site; and
 - (iv) not pollute, contaminate or otherwise damage the environment at the Site.



- (c) You must have and maintain all applicable permits, licences, exemptions, and approvals required for You to supply the Goods or Services.

3.2 Working on Site, induction and prequalification

- (a) Prior to starting work at a Site, You and Your Personnel must, at Your own cost:
 - (i) attend and complete, all applicable safety and induction courses relevant to the Scope of Work or as reasonably required by Fortescue; and
 - (ii) submit all applicable Work Plans, qualifications, permits, licences, certificates, or documentation relevant to the Scope of Work or as requested by Fortescue (Deliverables), for Fortescue's information or endorsement (as applicable). If requested by Fortescue, You will submit the Deliverables through the relevant Contractor Management System.
- (b) For Your Personnel who will be working at a mine site and are approved by Fortescue to do so, Fortescue will provide domestic flights between Perth and the mine site, and accommodation and/or messing facilities at no additional cost to You. However, if You do not notify Fortescue of any change or cancellation to a booking (including no-shows) for Your Personnel at least 48 hours prior to the scheduled flight departure time or check-in, You will be liable to Fortescue for the relevant flight, accommodation and/or messing fees.

3.3 Limited licence to access Fortescue's Site

- (a) Fortescue grants You a revocable, non-exclusive, non-assignable licence to access the Site during the Engagement Period to perform Your obligations under the Agreement.
- (b) To the extent permitted by Law, You and Your Personnel may enter the Site and supply the Goods or Services under the Agreement at Your own risk.

4 How we will work together

4.1 Fortescue's Representative providing instructions to You

- (a) In connection with the Agreement, each Party will appoint a Representative.
- (b) Generally, all directions under the Agreement will be provided to You by Fortescue's Representative (or its Representative's delegate notified to You), or Fortescue's Site Manager.
- (c) You and Your Personnel must promptly comply with reasonable directions from Fortescue's Representative and Site Manager.
- (d) You must keep Fortescue's Representative informed of all aspects of the supply of the Goods or Services that may affect the Delivery Date, the Site, or Fortescue's scheduling requirements for its operations or projects.

4.2 Your Representative will represent and act for You

- (a) Your Representative will represent and act for You during the Engagement Period.
- (b) You are bound by the actions of Your Representative.
- (c) If Your Representative is aware of (or should reasonably be aware of) a particular matter, then You are deemed to be aware of that matter.

5 Your Personnel

5.1 You are responsible for Your Personnel

- (a) You are responsible to engage the required number of Personnel to meet Your obligations under the Agreement.
- (b) You must only employ Personnel with the required skills and experience expected for the supply of the Goods or Services in accordance with Good Industry Practice.
- (c) You are responsible for managing all industrial relations in connection with Your Personnel, and must manage Your Personnel in a way that:
 - (i) supports the efficient provision of the Goods or Services;
 - (ii) promotes and maintains stable operations at the Site, including by promptly reporting potential or actual industrial relations issues;
 - (iii) minimises disruption in the supply of the Goods or Services and other operations at the Site; and
 - (iv) maintains productive and harmonious relationships with each Party's respective Personnel.
- (d) You must take all reasonable steps to ensure Your Personnel do not engage in sexual harassment or other inappropriate behaviour.
- (e) If You become aware of any inappropriate behaviour or incident involving Your Personnel who are working on Site or in relation to the Agreement, You must promptly notify Fortescue's Representative in writing.



5.2 Fortescue may request changes in Your Personnel

Fortescue may, acting reasonably but taking into consideration its operational or reputational requirements, require You to (at Your own cost):



- (a) remove one or more of Your Personnel from a Site, or from delivering any part of the Goods or Services;
- (b) promptly stop one or more of Your Personnel from being involved in providing the Goods or Services in any manner; and/or
- (c) provide replacement Personnel with suitable skills, experience and qualifications within a reasonable timeframe.

6 Insurance


6.1 Insurance You must hold and maintain

This clause 6 sets out the insurance which You are required to hold and maintain. Different insurance requirements may apply to You and Your Personnel.


6.2 Workers' Compensation insurance

Applicability	Insurance required:
 <p>(a) If You or Your Personnel attend Fortescue's Site</p>	Cover for all Employee Claims, including any compulsory statutory workers' compensation benefits and common law liability, as required by Law in all relevant legal jurisdictions applicable to You and Your Personnel.
 <p>(b) If 6.2(a) is applicable where You or Your Personnel hold a Western Australian workers' compensation policy</p>	Cover to include: <ul style="list-style-type: none"> (i) a principal's indemnity extension in favour of Fortescue and its Related Bodies Corporate for statutory and common law benefits; and (ii) a waiver of subrogation in favour of Fortescue and its Related Bodies Corporate. If You engage any Subcontractors who will attend site, You must also ensure they (and their subcontractors) hold Workers' Compensation insurance that includes the extensions noted above, with the principal's indemnity and waiver of subrogation being in favour of Fortescue and its Related Bodies Corporate, whether in addition to or in place of the Contractor.

6.3 Public and Product Liability insurance


Applicability	Insurance required:
 <p>(a) If You or Your Personnel attend Fortescue's Site and/or supply Goods (product)</p>	Cover for Your legal liability to third parties (including counterparties) for death, personal injury (including illness), and damage, destruction or loss of property caused by an occurrence during the period of insurance, arising in connection with the performance of the Services (including supply of Goods) or supply of Goods. The policy must provide coverage of: <ul style="list-style-type: none"> (i) public liability - A\$20 million any one occurrence and unlimited in the aggregate; and (ii) products liability - A\$20 million any one occurrence and in the aggregate; and Cover must also include: <ul style="list-style-type: none"> (iii) a principal's indemnity extension in favour of Fortescue and its Related Bodies Corporate, with respect to the liability incurred as a result of Your acts or omissions (vicarious liability); and (iv) a waiver of subrogation in favour of Fortescue and its Related Bodies Corporate.

6.4 Motor Vehicle insurance


Applicability	Insurance required:
 <p>(a) If You or Your Personnel bring any motor vehicles (owned, hired or leased) to Fortescue's Sites</p>	All motor vehicles must be licensed in accordance with applicable Legislation that incorporates compulsory third party bodily injury (CTP) insurance for injuries caused to others in a motor vehicle accident. In addition, each vehicle must: <ul style="list-style-type: none"> (i) be insured for third party liability covering all liability in respect of any injury to, or death of, any person or any loss, damage or destruction to any property for an amount of A\$20,000,000 for any one occurrence;




6.5 Professional Indemnity Insurance

Applicability	Insurance required:
 <p>(a) If You supply Services that include professional services, advice, or design</p>	<p>Cover against any legal liability arising from breach of professional duty under or in connection with Your performance of the Services for the duration of the Engagement Period and for 24 months after the Expiry Date, in accordance with the following limits:</p> <ul style="list-style-type: none"> (i) contract value less than or equal to A\$1 million - cover for liability to a minimum limit of A\$2 million in relation to any one claim, and A\$2 million in the aggregate; or (ii) contract value greater than A\$1 million - cover for liability to a minimum limit of A\$5 million in relation to any one claim, and A\$10 million in the aggregate. <p>If You engage any Subcontractors that carry out professional services, You must also ensure they (and their subcontractors) hold professional indemnity cover as per the limits noted above.</p>


6.6 Equipment insurance (including Hired Equipment)

Applicability	Insurance required:
 <p>(a) If You or Your Personnel bring large mobile plant and Equipment (owned, hired or leased) to Fortescue's Site</p>	<p>You must insure all items of Equipment for market value of the Equipment.</p> <p>Cover to include:</p> <ul style="list-style-type: none"> (i) a principal's indemnity extension in favour of Fortescue and its Related Bodies Corporate; (ii) a waiver of subrogation in favour of Fortescue and its Related Bodies Corporate; and (iii) legal liability coverage for both road registered and unregistered Equipment to a limit of liability of not less than A\$20 million for any one occurrence and in the aggregate.

6.7 Marine Transit (also known as Good In Transit / carrier) insurance

Applicability	Insurance required:
 <p>(a) If You are responsible for transporting Goods under the Agreement</p>	<p>Cover for all liabilities for loss or damage to such Goods for 100% of the replacement value, including a 90-day unpacking clause.</p>

6.8 Other Insurance

Applicability	Insurance required:
 <p>(a) If required by Legislation or Good Industry Practice</p>	<p>Any other insurances required by Legislation or regarded as Good Industry Practice.</p>

6.9 Other insurance requirements

- (a) You must ensure any Subcontractor engaged by You, and its subcontractors, in relation to the supply of Goods and/or performance of the Services, effects and maintains the appropriate insurance pursuant to clause 6.
- (b) If Fortescue requests, You must promptly provide certificates of currency as evidence of Your and Your Subcontractor's compliance under this clause 6.
- (c) If a deductible is payable under an insurance claim in connection with the Agreement, then You are responsible for paying it, unless Fortescue was solely responsible for the loss or damage giving rise to the insurance claim.
- (d) If You or Your Subcontractors fail to hold or maintain any required insurance, then Fortescue may, at Your own cost:
 - (i) effect and maintain that insurance;
 - (ii) pay the necessary premiums; and
 - (iii) recover from You the amount paid by Fortescue under this clause 6.9 as a debt due and payable.



Financials

7 Price

- (a) Fortescue agrees to pay You the Price in consideration for You supplying the Goods or Services and is not subject to change unless otherwise set out in the Agreement.
- (b) The Price represents all risks, liabilities, costs (including overheads and charges) and obligations expressed or implied in the Agreement or incurred in the course of, and in connection with, the supply of the Goods or Services and provision of Equipment.



- (c) Unless otherwise expressly agreed in writing by Fortescue, You must not claim any expenses or travel time in Your Tax Invoice; this includes any costs incurred by You or Your Personnel in connection with:
 - (i) time travelling to or from their workplace or the agreed point of hire, including travelling between mine site camp and the workplace, and time travelling on and around Site and/or mine site;
 - (ii) flights, meals, accommodation (including any travel changes by the airline provider);
 - (iii) removal or relocation costs;
 - (iv) travel expenses, including taxis, ride-shares or public transport;
 - (v) parking, fuel or mileage; and
 - (vi) administrative or personal protective equipment (PPE) costs.

8 Invoicing and payment

8.1 Valid Tax Invoice required for payment

- (a) Fortescue will pay You the Price for the Goods or Services provided under the Agreement when You have submitted a correctly rendered Tax Invoice to Fortescue or You have agreed to a recipient created tax invoice arrangement with Fortescue.
- (b) You warrant that each Tax Invoice submitted under the Agreement are accurate and a true reflection of the Goods or Services delivered, including actual materials, equipment and hours worked.
- (c) Unless otherwise specified in the Purchase Order, You must submit a monthly Tax Invoice for the ongoing supply of Goods or Services, and a final Tax Invoice within 60 days of the last Goods being delivered or Services being performed.
- (d) Where the Purchase Order provides for the Price to be paid in more than one instalment, You must submit a separate Tax Invoice for each instalment to Fortescue.
- (e) To ensure timely processing of a Tax Invoice, You must electronically submit a valid Tax Invoice to invoices@fortescue.com, unless otherwise directed by Fortescue. Each Tax Invoice must include the following information:
 - (i) Your entity name and Australian Business Number (ABN);
 - (ii) the unique Purchase Order reference number for the Goods or Services;
 - (iii) the date and description of the relevant Goods or Services that were delivered or performed;
 - (iv) the amount payable to You and the basis of Your calculation, including: any evidence to the reasonable satisfaction of Fortescue to substantiate the amount payable, the amount payable exclusive of GST, and the relevant GST amount payable;
 - (v) the total amount payable inclusive of GST; and
 - (vi) Proof of Delivery.

8.2 Payment terms

- (a) Subject to clause 8.2(b), Fortescue will pay each valid Tax Invoice submitted by You by the end of the calendar month, following the calendar month in which the Tax Invoice was received, subject to Your compliance and Fortescue's rights under this clause 8. If Fortescue is required by Law to pay within a shorter time frame, Fortescue will pay within that time frame.
- (b) If You are an eligible small business or an Aboriginal owned business, Fortescue may, at its sole discretion, approve a shorter payment term for the Agreement, and such payment term will be set out in the Purchase Order.

8.3 Set off or withhold

Fortescue may set off or withhold against any Tax Invoice an amount:

- (a) required by Law to be deducted;
- (b) which Fortescue reasonably believes is a debt due and payable by You to Fortescue; or
- (c) You are liable to pay Fortescue and such amount is not in dispute.

9 Taxes

- (a) If GST applies to Your supply of Goods or Services under the Agreement, You may, subject to You issuing a valid Tax Invoice, recover from Fortescue, the relevant amount of GST in addition to the Price.
- (b) Other than GST, You are responsible for paying all other Taxes levied on the Goods or Services. You must provide documentary evidence of the payment of those taxes if made on behalf of Fortescue.



Goods, Equipment and Fortescue's Property

10 Overview of Goods, Equipment, and Fortescue's Property

10.1 When title and risk passes to Fortescue

- (a) Title in Goods (except for any Hired Equipment) passes to Fortescue, at the earlier of:
 - (i) when the Goods are delivered to the Site or the delivery point nominated in the Purchase Order, in accordance with the Agreement; or
 - (ii) when Fortescue pays for the Goods.
- (b) Risk in any Goods (except for any Hired Equipment) remains with You until the Goods are delivered to the Site or the delivery point nominated in the Purchase Order, in accordance with the Agreement.
- (c) Title in Fortescue's Property remains with Fortescue, but You will be responsible for its risk, and have the care, custody and control of Fortescue's Property from the time of receipt, until the later of its return to Fortescue (where applicable) or the end of the Engagement Period.

10.2 Reinstatement of Goods

- (a) Where You bear the risk of loss under clause 10.1, You must at Your own cost promptly replace, make good any loss of, or repair the damage to, the relevant Goods.
- (b) Where You do not bear the risk of loss under clause 10.1, and Fortescue directs You to perform replacement, making good or repair work You may submit a Variation Proposal, and upon its receipt, Fortescue must issue a direction for a Variation for the replacement, making good or repair work in accordance with clause 12.

10.3 Using Fortescue's Property

- (a) If You are provided with Fortescue's Property under the Agreement, You must only use it for the purpose of fulfilling Your obligations under the Agreement, and implement procedures to ensure that Fortescue's Property is used in a safe, efficient and effective manner.
- (b) You are liable to pay Fortescue for any Loss arising from Your Personnel's use of Fortescue's Property, except for fair, wear and tear, and any such amount is a debt due and payable by You to Fortescue.
- (c) You must not remove Fortescue's Property from any relevant Site without Fortescue's prior written consent. If Fortescue provides You with written consent to remove Fortescue's Property from a relevant Site, then You must:
 - (i) ensure Fortescue's Property is serviced and maintained in good working order and condition (except for fair wear and tear) and only used for the purpose which it was intended, and
 - (ii) return Fortescue's Property to the relevant Site promptly after it is no longer required.

10.4 You supply Equipment at Your own risk

- (a) Subject to clause 11, You agree to supply the Equipment at Your own risk and expense.
- (b) You must comply with all Laws applicable to such Equipment.
- (c) You must maintain such Equipment on Site in proper and safe working order and with all necessary safety equipment fitted throughout the Engagement Period.
- (d) If the Equipment is operated by Your Personnel, You must ensure that they are suitably qualified and competent.
- (e) Fortescue may reject Equipment if it reasonably believes that such Equipment is unsafe or unsuitable for the Agreement. If Fortescue rejects Equipment, then You must promptly repair or replace it to Fortescue's reasonable satisfaction.

11 Hired Equipment

- (a) This clause 11 applies if Fortescue has engaged You to lease equipment to Fortescue on Site.
- (b) You agree to lease to Fortescue the Hired Equipment for the duration set out in Purchase Order. Unless agreed otherwise by Fortescue in writing, You must:
 - (i) perform all maintenance on Hired Equipment at Your own cost and risk to ensure it is in good operating condition at all times; and
 - (ii) conduct or supervise any commissioning of the Hired Equipment to Fortescue's satisfaction.
- (c) You warrant that:
 - (i) You have the necessary rights, title and interest in the Hired Equipment to lease it to Fortescue;



- (ii) You have adequate insurance cover for the Hired Equipment pursuant to clause 6.6;
 - (iii) Hired Equipment is in proper and safe working order, complies with all Laws, and has all necessary safety equipment fitted, and
 - (iv) Your Personnel are suitably qualified and trained to operate Hired Equipment, and formally inducted to work at the Site in accordance with clause 3.2(a).
- (d) Subject to clause 11(e), You are responsible for Hired Equipment regardless of where the Hired Equipment is located.
- (e) Fortescue is responsible to pay the relevant deductible for the insurance policy under clause 6.6, for loss or damage to the Hired Equipment solely caused by Fortescue or Fortescue's Personnel, from the later of its delivery to the Site or its commissioning, until the Hired Equipment is returned to You at its relevant return point nominated in the Scope of Work, subject to fair, wear and tear, and Your warranties under clause 11(c).



Changes, delays and suspension

12 Changing the Agreement

12.1 Mutual agreement on any changes to these Terms

Unless both Parties have agreed in writing, the Terms of the Agreement cannot be varied.

12.2 Preparation of a Variation Proposal for Scope of Work

- (a) Either Party may propose a Variation to the Scope of Work. If either Party proposes a Variation, You will prepare a Variation Proposal, in accordance with the Variation process below.
- (b) If either Party requests a change to the Scope of Work, then You must prepare and send a Variation Proposal to Fortescue within seven (7) days from receiving this request.
- (c) The Variation Proposal must include the effect on the supply of the Goods or Services and the cost of the proposed Variation.
- (d) You must not commence work on the Variation until Fortescue has confirmed or notified Your Variation Proposal under clause 12.3.

12.3 Fortescue's options after receiving a Variation Proposal

Fortescue's options after receiving Variation Proposal	Price and changes
(a) Confirm Fortescue agrees to the proposed changed scope in accordance with the Variation Proposal.	Costs specified in the Variation Proposal are added to or deducted from the Price.
(b) Notify You that Fortescue does not accept the costs in the Variation Proposal and directs You to perform the Variation for Open Book Costs plus 10% for profit and corporate overheads.	Open Book Costs plus 10% for profit and corporate overheads will be calculated on the relevant Variation and the Price will be adjusted accordingly.
(c) Reject the Variation Proposal (or if Fortescue does not respond within 14 days).	No change.

13 Delays and suspension

13.1 Potential delay notice

If any circumstances or events affect (or are likely to affect) Your ability to deliver the Goods or Services by the Delivery Date, then You must promptly notify Fortescue of this in writing.

13.2 Detailed delay notice

Within 14 days (or earlier timeframe if the circumstance or event changes) of sending Fortescue a notice under clause 13.1, You must give a detailed delay notice including:

- (a) all material details of the circumstances or events (including if the delay is no longer impacting the Delivery Date);
- (b) any mitigating actions taken by You; and
- (c) responses to any specific questions that Fortescue has asked.

13.3 Delivery Date extension

- (a) Following receipt of the notice under clause 13.2, Fortescue may agree to extend the Delivery Date if supply of Goods or Services under the Agreement is delayed by:



- (i) a Force Majeure Event; or
 - (ii) Fortescue's acts or omissions (or those of Fortescue's Representative or Personnel), provided they are not any acts or omissions which are authorised under the Agreement.
- (b) Subject to clause 14.1(c), Fortescue agrees to reimburse You for Your Open Book Costs which are incurred directly as a result of the extension of the Delivery Date if such extension to the Delivery Date is caused or contributed by Fortescue or Fortescue's Personnel's acts or omissions.
- (c) Fortescue may, acting reasonably, extend the Delivery Date by written notice to You. Fortescue is not required to exercise its discretion under this clause for Your benefit.

13.4 Suspension

- (a) Fortescue may, due to its HSES or operational requirements, suspend the Agreement or any part of the Agreement immediately by giving written notice. Upon receiving a notice of suspension from Fortescue, You must suspend the performance of Your obligations until such time as Fortescue directs that the Agreement (or part of the Agreement as the case may be) is no longer suspended.
- (b) Fortescue agrees to reimburse You for Your Open Book Costs which are incurred directly as a result of the suspension if the reason for suspension is not caused or contributed to by You or Your Personnel's act or omission.

14 Force Majeure Event

14.1 Obligations suspended during Force Majeure Event

- (a) If a Force Majeure Event impacts a Party's performance of its obligations under the Agreement (the Affected Party), then the Affected Party must promptly give written notice to the other Party.
- (b) During the Force Majeure Event:
- (i) the Affected Party's obligations are suspended to the extent that such obligations are impacted by the Force Majeure Event. The Affected Party is not in default under the Agreement for not performing those impacted obligations; and
 - (ii) the Affected Party must:
 - A. keep the other Party informed of any changes to the Force Majeure Event;
 - B. use reasonable endeavours to overcome or mitigate the effect of the Force Majeure Event; and
 - C. comply with all unaffected obligations under the Agreement.
- (c) The Affected Party is not entitled to any financial relief from the other Party as a result of a Force Majeure Event.



Confidential Information, IP and data security

15 Protecting valuable Confidential Information

15.1 Mutual obligation when using Confidential Information

- (a) Subject to clause 15.2, neither Party may use or disclose the other Party's Confidential Information for any purpose other than for performing the Agreement, without the express written consent from that other Party.
- (b) Both Parties agree to keep the other Party's Confidential Information secret and preserve its confidential nature, including by taking appropriate measures to secure Confidential Information, so as to prevent unauthorised access.

15.2 Permitted disclosures

- (a) Subject to clause 15.3, each Party may disclose the other Party's Confidential Information:
- (i) with the other Party's prior written approval;
 - (ii) to each Party's respective Personnel, but only to the extent required to perform obligations under the Agreement;
 - (iii) to a Party's legal advisors, auditors, or financial advisors; or
 - (iv) if required by Law, to a Government Authority or a stock exchange.
- (b) Nothing in the Agreement prohibits Fortescue from disclosing any Confidential Information to its Related Bodies Corporate, and to their legal, auditors, financial, or other adviser, and any adviser of such adviser.



15.3 Each Party's responsibility for disclosure

Each Party is responsible to ensure its Personnel or any other third party, who receives the other Party's Confidential Information, does not disclose that information. Before each Party's Personnel has access to the other Party's Confidential Information, they must be bound by an appropriate confidentiality obligation in respect of the other Party's Confidential Information.

15.4 Unauthorised disclosure of Confidential Information

If a Party becomes aware of unauthorised access to, or use or disclosure of the other Party's Confidential Information, it must:

- (a) notify the other Party in writing as soon as reasonably practicable, giving details of the suspected or possible breach;
- (b) do everything reasonably necessary to remedy the unauthorised access, use or disclosure, and help prevent the suspected or possible breach of the confidentiality provisions in the Agreement; and
- (c) comply with all lawful written directions from the other Party in relation to the suspected or possible confidentiality breach.

15.5 Media releases and advertising

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 the Agreement, without the prior written approval of Fortescue.

16 Intellectual Property

16.1 Ownership and licence of each Party's background IP

- (a) You remain the owner of Contractor IP, and Fortescue remains the owner of Fortescue IP.
- (b) You grant to Fortescue a perpetual, worldwide, irrevocable, non-exclusive, transferrable, sub-licensable and royalty free licence for Fortescue and its Personnel to use, adapt, modify and reproduce the Contractor IP to the extent necessary to fully:
 - (i) install, maintain, operate, make improvements to, repair and alter the deliverables under the Agreement, and
 - (ii) enjoy and exercise Fortescue's rights with respect to the Project IP.
- (c) Fortescue grants You a non-exclusive, non-transferable, revocable and royalty free licence to use Fortescue IP and Project IP for the sole purpose of providing the Goods or Services under the Agreement.

16.2 Fortescue owns Project IP

- (a) Fortescue owns all Project IP as and when it is created, and You assign (and will procure the assignment of) all rights, title and interest in and to the Project IP to Fortescue.
- (b) You must not:
 - (i) disclose, reproduce or otherwise deal with the Project IP or Fortescue IP; or
 - (ii) allow any other person to do the same,for any purpose other than to provide the Goods or Services to Fortescue.

16.3 IP assignment rights in subcontracts

Any Subcontract You enter in relation to the Agreement must contain a condition that the Subcontractor agrees to assign to Fortescue:

- (a) any Contractor IP as required in clause 16.1; and
- (b) all Project IP created by them for the purposes of the Agreement.

16.4 Arrange consent and waivers for Moral Rights

To the extent a person has Moral Rights in Contractor IP or the Project IP, You must obtain, at no cost to Fortescue, all necessary licences, consents or waivers from that person to use (including adapt, modify or reproduce), or assignments of, such rights. The licences, consents and waivers must be appropriate to ensure Fortescue does not infringe Moral Rights when it acts, or authorise acts or omissions, consistent with:

- (a) the licence granted in the Agreement to the Contractor IP; and
- (b) Fortescue's ownership of the Project IP under the Agreement



16.5 Notify Fortescue of infringement

If You become aware of any suspected, threatened or actual infringement of Project IP or Fortescue IP, You must promptly notify Fortescue in writing and give Fortescue all assistance it requests to:

- (a) protect Project IP or Fortescue IP;
- (b) help defend or prosecute any such infringement; and
- (c) procure such rights as Fortescue requires for use under the Agreement.

16.6 IP warranties and indemnities You give to Fortescue

- (a) You warrant that:
 - (i) You own the IP Rights in the Contractor IP, and Fortescue's use will not infringe the rights of third parties, or breach any Laws in respect of IP Rights;
 - (ii) Your supply of the Goods or Services and Fortescue's use or ownership of the Goods or Services (incorporated with Fortescue's Property, or otherwise) will not infringe the rights of any person, or breach any Laws in respect of IP Rights;
 - (iii) Your Price includes all licences and consents to use any IP Rights of a third party which are necessary for Fortescue to use and fully enjoy the Goods or Services; and
 - (iv) Project IP does not and will not infringe rights of third parties and You have the right to assign all Project IP to Fortescue in accordance with clauses 16.2 and 16.3.
- (b) If You sell the Contractor IP, then You must ensure that each successor in title to the Contractor IP is bound by the obligations set out in this clause 16 so far as is relevant to, or required by, the Agreement.
- (c) You are liable to indemnify Fortescue and its Personnel for any Loss in connection with any actual or alleged infringement or violation of IP Rights or Moral Rights resulting from the performance of the Agreement, the use of Project IP or the Contractor IP, or any of the uses referred to in under clause 16.1(b).

17 Security of Personal Data

17.1 Processing Personal Data

If You are Processing Personal Data, You must:

- (a) comply with all applicable Data Privacy Laws;
- (b) only Process Personal Data for the purpose it was obtained or required to be maintained by Law, and pursuant to the Agreement; and
- (c) assist Fortescue to respond to requests from data subjects to exercise their rights (including requests for access, rectification and erasure of Personal Data).

17.2 Securing Personal Data

You will:

- (a) place and maintain appropriate technical and organisational measures to secure and safeguard all Personal Data against any unauthorised or unlawful Processing;
- (b) ensure all Personnel who have access to the Personal Data are bound by the appropriate confidentiality obligations via existing statutory obligations or a confidentiality agreement; and
- (c) only keep Personal Data for as long as it is required by Law or for the purpose it was collected.

17.3 Unauthorised transfer, disclosure or cyber security breach of Personal Data

- (a) Unless Fortescue has provided prior written consent, You must not subcontract the Processing of any Personal Data to a third party, or transfer (including by remote access) any Personal Data to another country from which it was originally collected.
- (b) You must promptly notify Fortescue if any of the following occurs in connection with the Agreement:
 - (i) a breach or possible breach of applicable Data Privacy Laws;
 - (ii) accidental loss or destruction of, or unauthorised disclosure of or access to, Personal Data; or
 - (iii) a cyber security or data security breach on any system (including those of Your Subcontractor), which has or may impact Personal Data.
- (c) If any incidents occur under clause 17.3(b), You must:
 - (i) mitigate, to the extent practicable, any harmful effect of such disclosure or access;
 - (ii) cooperate with Fortescue in providing any notices to individuals or regulators regarding the incident, as directed by Fortescue; and



- (iii) cooperate with any investigation into the incident that is subsequently undertaken by any data privacy authority, in consultation with Fortescue.
- (d) If any of the Personal Data in Your possession or control, including through Your provision of software or associated support services, is corrupted, lost or degraded, You must, at Your own cost, remediate and restore such Personal Data, to the extent that You are capable.



Results and expectations

18 Representations and warranties

18.1 Promises You make about the Goods or Services

You make the following representations and warranties each time You supply Goods or Services to Fortescue. You promise the Goods or Services:

- (a) will match the description and specification in the Agreement;
- (b) will be supplied in accordance with Good Industry Practice;
- (c) are fit for their Intended Purpose;
- (d) will comply with all applicable Laws;
- (e) will be of merchantable quality;
- (f) are created in accordance with any manufacturing drawings, Scope of Work or descriptions Fortescue gives You; and
- (g) are free from any encumbrance, mortgage, security interest or other third party interest, from the time of delivery to Fortescue.

18.2 Your own due diligence

- (a) In entering into the Agreement, You agree You are responsible for and are satisfied with the nature and extent of the risks You are assuming, have gathered all information necessary to perform Your obligations.
- (b) Unless Fortescue acts fraudulently or negligently, the warranties You give under the Agreement remain, despite information which Fortescue may or may not have given You.

19 Greenhouse Gas Emissions

19.1 GHG Emissions reporting

- (a) You acknowledge that Fortescue and its Related Bodies Corporate have various obligations at Law, under GHG Protocol Corporate Accounting and Reporting Standards and/or any other corporate accounting or reporting standards or guidelines in relation to GHG Emissions, energy production and energy consumption, including external reporting requirements.
- (b) You agree to:
 - (i) if requested by Fortescue, or if applicable to the Goods or Services, to carry out emission management actions, and measure or provide Fortescue with GHG Emissions related information; and
 - (ii) if You perform Services at a Fortescue owned, controlled or operated Site submit all GHG Emissions related information to Fortescue, in the form set out in the GHG Template, monthly for the duration of the Agreement, in order to facilitate Fortescue's and Related Bodies Corporate discharge their obligations under clause 19.1(a).

20 Inspection and audit

20.1 Fortescue may inspect Goods or Services

Subject only to giving You reasonable notice, Fortescue may inspect, examine, review and test the Goods or Services or their results at the Site, Your premises, or at the premises of a Subcontractor.

20.2 Fortescue's right to audit Your records

At any time during the Engagement Period and for 12 months after the Expiry Date, Fortescue may conduct an audit of the basis of Your Prices from Your records.



21 Defective Goods or Services

21.1 If Fortescue identify defects

- (a) If Fortescue finds any Defects during the Engagement Period or Warranty Period, Fortescue may (at its election):
- (i) reject the Goods or Services with Defects by written notice;
 - (ii) direct You to make good the Defects; or
 - (iii) make good the Defects itself, and
- then, You must, at Fortescue's election:
- (iv) refund any payments Fortescue has made in respect of Goods or Services with Defects that Fortescue rejects;
 - (v) make good any Defects, free of charge, as per Fortescue's request; or
 - (vi) reimburse Fortescue for costs it incurs in making good any Defects itself.
- (b) The remedies set out in this clause 21.1 do not exclude any other remedies provided by Law.

21.2 If the Contractor identifies defects

If You identify Defects or carry out a product or safety recall, or equivalent process, in respect of any Goods, You must promptly notify Fortescue's Representative.

22 Indemnity and Liability

22.1 You are liable to pay Fortescue if You cause Loss

- (a) You are liable to indemnify Fortescue and Fortescue's Personnel from and against:
- (i) any loss or damage to Fortescue's property, whether within or outside the Site (except for any loss or damage to the Goods, to which clause 10.2 applies);
 - (ii) any Loss suffered or incurred in connection with:
 - A. illness, injury to, or death of any person;
 - B. the loss or damage of any third party property;
 - C. any breach by You or Your Personnel of applicable Legislation; and
 - (iii) any Loss suffered or incurred in connection with a breach by You or Your Personnel of the Agreement, in each case, in connection with Your supply of the Goods or Services or the Agreement.
- (b) Your liability to indemnify under clause 22.1(a), will be reduced to the extent that any such Loss is caused, or contributed to, by a negligent act or omission of Fortescue or Fortescue's Personnel.

22.2 Liability cap

Subject to clauses 22.3 and 22.4, each Party's total liability for Loss, incurred by the other Party in connection with the Agreement, is limited to the higher of either:

- (a) 100% of the total Price paid or payable by Fortescue under the Agreement; or
- (b) the cost to re-perform the Services or replace the Goods.

22.3 Consequential Loss

Subject to clause 22.4, and to the extent permitted by Law, neither Party is liable to the other Party for Consequential Loss whether arising out of or in connection with the Agreement, under statute, in tort (for negligence or otherwise) or any other basis in Law.

22.4 Uncapped liability

The liability cap and exclusion in clauses 22.2 and 22.3 do not apply to relieve or limit:

- (a) a Party's liability for:
- (i) damage to or destruction of third party tangible property;
 - (ii) personal injury, sickness or death;
 - (iii) acts or omissions of fraud, criminal act, dishonesty, gross negligence, wilful default or repudiation, wilful misconduct or misrepresentation;
 - (iv) a breach of Legislation, including any penalties imposed; or
 - (v) which that Party is prevented from contracting out of by Law; and



- (b) Your liability in relation to Loss:
 - (i) which is recoverable under an insurance policy (up to the sum insured as required by the Agreement); or
 - (ii) that would have been recoverable under an insurance policy (up to the sum insured as required by the Agreement) but for:
 - A. Your breach of the Agreement or relevant insurance policy;
 - B. an act or omission caused by You or Your Personnel; or
 - (iii) arising from any breach by You or Your Personnel under clauses 2, 6, 15, 16 or 17.



Resolving disputes and termination

23 Resolving disputes

23.1 Both Parties to meet and resolve issues before formal proceedings

- (a) If a dispute arises under or in connection with the Agreement, both Parties agree to use reasonable efforts to resolve the dispute before starting formal proceedings.
- (b) If after 30 days from the initial meeting to resolve the dispute, both Parties have not found a resolution, either Party may escalate to formal proceedings.
- (c) Despite an ongoing dispute, both Parties must, where possible, continue performing obligations under the Agreement.
- (d) Nothing in this clause stops either Party from applying to a court for urgent injunctive relief.

24 Terminating the Agreement

24.1 Mutual termination for Insolvency

- (a) Subject to clause 24.1(b), if either Party becomes Insolvent, then the other Party may immediately terminate the Agreement on written notice.
- (b) The Agreement is subject to any Ipso Facto Stay which may operate to prevent the enforcement of rights under the Agreement. To the extent that there is any conflict between the provisions of the Agreement and the Ipso Facto Stay, the Agreement is to be interpreted subject to the Ipso Facto Stay.

24.2 Your right to terminate the Agreement for non-payment

You may terminate the Agreement on 30 days' written notice if Fortescue has not paid the undisputed portion of a valid Tax Invoice for a period of 60 days or longer after the Tax Invoice became due under clause 8.2.

24.3 Mutual termination for misconduct

If either Party or its respective Personnel commit an act of fraud, criminal act, dishonesty, gross negligence, wilful default or repudiation, wilful misconduct or misrepresentation, in connection with the Agreement, then the non-breaching Party may immediately terminate the Agreement on written notice.

24.4 Mutual termination for extended Force Majeure Event or suspension

Either Party may terminate the Agreement upon 30 days' written notice to the other Party if:

- (a) Fortescue suspends the Agreement for a continuous period of three (3) months or longer; or
- (b) a Force Majeure Event prevents the Affected Party's performance of its obligations for either: a continuous period of three (3) months, or a cumulative period of six (6) months in any 12-month period.

24.5 Fortescue may terminate the Agreement for cause

Fortescue may terminate the Agreement, in whole or in part, and with immediate effect, by notice to You, if:

- (a) Fortescue is entitled to exercise a right of termination under clause 2.6;
- (b) You or Your Personnel breach a material provision of the Agreement and Fortescue determines that the breach is not capable of remedy; or
- (c) You or Your Personnel are in breach of a material provision of the Agreement which is capable of remedy, or You or Your Personnel are in breach of the Agreement and Your breach has or may have a material impact on any part of Fortescue's operations, and You fail to remedy that breach at Your own cost and to Fortescue's satisfaction, within 14 days after receipt of a notice from Fortescue specifying the breach.



24.6 Fortescue may terminate the Agreement for convenience and pay compensation

- (a) Subject to Fortescue paying You reasonable compensation under clause 24.6(b) below, Fortescue may terminate the Agreement in whole or in part, without cause at its absolute discretion, by giving You no less than seven (7) days' written notice.
- (b) Without waiving other rights in the Agreement, if Fortescue terminates the Agreement for convenience under clause 24.6(a), Fortescue will pay You any outstanding Price payable for Goods or Services You have supplied before the effective date of termination, and Open Book Costs incurred from:
 - (i) materials You have reasonably ordered to supply the Goods or Services, as long as those materials become Fortescue's property (and title will be transferred to Fortescue) once it pays those costs;
 - (ii) demobilisation of Your Personnel and Equipment from Site; and
 - (iii) complying with Fortescue's directions provided to You upon, or subsequent to, termination.

24.7 After the Agreement expires or is terminated

On the expiry or earlier termination of the Agreement, You must promptly:

- (a) stop supplying the Goods or Services;
- (b) stop using any of Fortescue's Property, Fortescue IP and Project IP;
- (c) take such action as necessary (or as Fortescue directs), for the transfer and protection of Fortescue's Property;
- (d) use Your best endeavours to mitigate and minimise the cost of termination to Fortescue; and
- (e) within 14 days after termination or expiration, return to Fortescue (or if requested, delete or destroy) all copies (in any form) of Fortescue IP and Project IP in Your (or Your Personnel's) possession or control, unless otherwise required by Law to be retained. If requested by Fortescue, You must provide a certificate confirming Your compliance with this clause.



General, joint ventures and definitions

25 Other matters

25.1 Giving notices

Notices in relation to the Agreement must be in writing, and sent to the relevant Representative via one of the following methods:

Method of notice	When is the notice regarded as received?
Email	At the time and date in the location to which the notice is sent, equivalent to the time shown on the delivery receipt notification received by the Party sending the email or other reliable electronic means to verify receipt.
Mail (post)	Australian address: 3 business days after posting. Outside Australia: 5 business days.
Hand delivered	Date of delivery.

25.2 Survival

The following clauses and obligations survive the expiry or termination of the Agreement:

Clauses 2 (Acting with integrity), 6 (Insurance), 15 (Confidentiality), 16 (Intellectual Property), 17 (Security of Personal Data), 18 (Representations and Warranties), 21 (Defective Goods or Services), 22 (Liability and Indemnities), 23 (Resolving disputes), and 25 (Other matters).

25.3 Waiver

- (a) Any waiver of a right arising from a breach of the Agreement must be in writing and signed by the Party granting the waiver.
- (b) A Party's failure to exercise a right, remedy or power does not affect the enforceability of that right, remedy or power in any other instance, or the enforceability of the Agreement as a whole.

25.4 Governing law and jurisdiction

Both Parties accept the laws of the State of Western Australia as the governing law of the Agreement, and agree to submit to the exclusive jurisdiction of the Courts of the State of Western Australia.



25.5 Entire agreement

The Agreement as amended or varied from time to time represents the entire agreement between the Parties, and supersedes all prior arrangements and negotiations whether written or oral in relation to the Goods or Services.

25.6 Severability

If any part of the Agreement is or becomes voidable or unenforceable in any jurisdiction, that will not affect or impair the validity, legality or enforceability of the remainder of the Agreement in that jurisdiction, and the Agreement will be read and construed and take effect for all purposes as if that provision were not contained in the Agreement.

25.7 Benefits held on trust

- (a) Each Party holds on trust for each of its Related Bodies Corporate, the benefit of:
 - (i) each indemnity given under the Agreement; and
 - (ii) each right under the Agreement to the extent such right is expressly stated to be for the benefit of a Party's Related Bodies Corporate.
- (b) Each Party acknowledges the existence of such trusts and consents to the other Party exercising rights in relation to, or otherwise enforcing, such indemnities and rights on behalf of its Related Bodies Corporate.

26 Capacity of Fortescue in the Iron Bridge Joint Venture

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

This clause 26 applies if **IB Operations Pty Ltd (ABN 88 165 513 557)** issues a Purchase Order to You. In such case, You acknowledge that Fortescue enters into the Agreement 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 You severally in accordance with their Participating Interest from time to time in the Iron Bridge Joint Venture;
- (b) You may only enforce rights and remedies under the Agreement 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 to another Participant;
- (d) where a Participant (the Transferring Participant) novates its liabilities and all obligations under the Agreement to another Participant, You release the Transferring Participant from such liabilities and obligations to the extent so novated;
- (e) Fortescue is entitled to enforce the Agreement 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 You under the Agreement; and
- (f) any such exercise by Fortescue under clause 26.1(e) is binding on the Participants.

27 Definitions and interpretations

In the Agreement, unless the contrary intention appears:

The word:	means:
Affected Party	the relevant Party that is prevented from performing its obligations by a Force Majeure Event under the Agreement.
Agreement	the agreement between You and Fortescue comprised of the Purchase Order, these Terms and all other documents annexed to this document, or specifically incorporated by reference.
Anti-Corruption Laws	Laws relating to bribery or corruption, including: the US <i>Foreign Corrupt Practices Act 1977</i> , the UK <i>Bribery Act 2010</i> ; and the Australian <i>Criminal Code Act 1995</i> (Cth), and any other relevant Laws applicable to the Site.
Confidential Information	<ul style="list-style-type: none"> (a) In respect of Fortescue - means all information communicated in whatever form, including: <ul style="list-style-type: none"> (i) the terms and contents of the Agreement, including any Personal Data; (ii) in relation to Fortescue's business or operations, customers, clients, employees, or subcontractors; (iii) disclosed by or on behalf of Fortescue to You at any time, or learnt by You in performing the Agreement, including all Fortescue supplied information, Fortescue IP and Project IP; and (iv) all information marked confidential, that is by its nature confidential, or which You ought to know is confidential, but excludes information that, without breaching the Agreement, (v) is already public or known to the receiving party.



The word:	means:
	<p>(b) In respect of the Contractor - means:</p> <ul style="list-style-type: none">(i) the terms and contents of the 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, <p>but excludes information that, without breaching the Agreement,</p> <ul style="list-style-type: none">(iii) is already public or known to the receiving party.
Conflict of Interest	occurs where Your or Your Personnel's financial, business or other activities conflict with the interests of Fortescue, and such conflict influences or materially impacts Your or Your Personnel's impartial performance of their obligations under the Agreement.
Consequential Loss	<p>(a) Any loss of:</p> <ul style="list-style-type: none">(i) production;(ii) revenue or profit (other than revenue or profit derived directly from payments for Goods or Services under the Agreement);(iii) opportunities or access to markets, including any anticipated production, revenue or profits (other than the Agreement);(iv) goodwill; or(v) business reputation; or <p>(b) any increased overhead costs; and</p> <p>(c) all other loss which is indirect, remote or unforeseeable loss.</p>
Contractor (including You or Your)	the person, firm or company who will deliver the Goods and/or Services to Fortescue, as set out in the Purchase Order.
Contractor IP	Your or Your Personnel's IP 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 the Agreement.
Contractor Management System	the preferred contractor management processes, as notified from time to time by the relevant Fortescue Personnel; for example: for Fortescue's operational sites: the Contractor Hub extranet, available via: https://fmgl.sharepoint.com/sites/ModernExtranet ; and for Fortescue's major projects sites: PIMS Supplier Portal, available via: https://pimssupplier.fmgl.com.au/ .
Controlled Items	has the meaning given in clause 2.3(a) of the Agreement.
Data Privacy Laws	all Laws relating to data protection, privacy and information security, that apply to either Fortescue or the Contractor in connection with the Agreement, including the European Union's General Data Protection Regulation (also known as "GDPR").
Defects	any issues with Goods or Services that do not meet the Intended Purpose, the requirements of the Agreement (including the specifications in a Scope of Work or Purchase Order), or are not to the quality or professionalism expected of a Relevant Contractor.
Deliverables	has the meaning given in clause 3.2(a)(ii) of the Agreement.
Delivery Date	<p>(a) the date as specified in the Purchase Order by which the Goods or Services must be supplied; or</p> <p>(b) if no date is specified, the date following a reasonable period of time from the date of the Purchase Order, having regard to the nature of the Goods or Services and the Intended Purpose.</p>
Employee Claims	means any Claim in respect of death, injury or occupational disease of any of Your Personnel in connection with the Agreement
Engagement Period	the period from the date of the Purchase Order until the Expiry Date (unless extended by the agreement of the Parties).
Environmental Laws	means any Law relating to the environment, including: (a) any Law relating to land use, planning, pollution of air, water, soil or groundwater, chemicals, waste, the use of, transport, storage or handling of dangerous goods, or any matters relating to the protection of the environment; and (b) the <i>Environmental Protection Act 1986</i> (WA).
Equipment	the equipment, mobile plant, tools, appliances and other property supplied by You for the purpose of supplying the Goods or Services and includes any Hired Equipment.
Expiry Date	the later of either the date when: (a) all Goods are delivered and, if applicable, commissioned, and the Services are provided; or (b) You have demobilised all Your Personnel and Equipment from Site pursuant to the Agreement.
Export Control Laws	all applicable provisions of export and re-export control Legislation, including: export control Legislation of Australia, the United States of America, the United Kingdom and the European Union, and any other applicable national export control and embargoes Legislation.



The word:	means:
Financiers	those persons who have provided or have committed to provide financing facilities to Fortescue, or any one or more of the Related Bodies Corporate of Fortescue for any purpose (including, without limitation, bonds, notes or other capital market issues, loans, guarantees, letters of credit and hedging facilities) and any assignee, transferee, agent, trustee or other representative at such time of any such person or persons.
Force Majeure Event	any one, or combination, of the following events or circumstances: (a) a named cyclone and any rain-bearing depression into which any such cyclone may weaken; (b) fire, earthquake, landslide, tsunami, mudslide or other catastrophic natural disaster; (c) civil riot, civil rebellion, revolution, terrorism, insurrection, militarily usurped power, act of sabotage, act of a public enemy, war (whether declared or not) or other like hostilities; (d) ionising radiation, contamination by radioactivity, nuclear, chemical or biological contamination, but excludes any such event or circumstance, or its consequences, to the extent: (e) it was caused by a breach of the Agreement by the Affected Party or the act or omission of the Affected Party or its Personnel; or (f) it was within the reasonable control of the Affected Party or their Personnel; or where the Affected Party is You, where: (g) it was caused by any breakdown of the Equipment or any Defects, or (h) it could have been protected against, prevented or overcome by You had it acted as would ordinarily be expected of a Relevant Contractor.
Fortescue	Fortescue Ltd (ABN 57 002 594 872) or its Related Body Corporate, including IB Operations Pty Ltd (ABN 88 165 513 557), as specified in the Purchase Order.
Fortescue's Policies and Procedures	(a) Fortescue's policies and procedures provided to You from time to time, which are relevant to Your supply of Goods or Services under the Agreement, or the location for the supply, including those online (available via: https://fortescue.com/suppliers/vendor-documentation and https://fmgl.sharepoint.com/sites/ModernExtranet); and (b) the policies and procedures (if any) set out or referred to in any schedule attached to the Agreement.
Fortescue IP	Fortescue's IP 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 the Agreement, and includes Personal Data.
Fortescue's Property	any plant, equipment, tools, appliances, materials, drawings, data, specifications, diesel fuel, consumables, or other items Fortescue provides to enable You and Your Personnel to perform Your obligations under the Agreement.
GHG Emissions	the greenhouse gas emissions covered by Scopes 1, 2, and 3 Emissions.
GHG Template	means the template format published by Fortescue on its website https://fortescue.com/suppliers/vendor-documentation , which may be amended from time to time.
Good Industry Practice	the methods and procedures engaged in or approved by a person exercising a degree of due diligence and prudence ordinarily exercised by skilled and experienced persons. In respect of You, performance as would ordinarily be expected of a Relevant Contractor.
Goods or Services	all goods to be supplied and services to be performed by You in accordance with the Agreement including: (a) all goods and/or services set out in any applicable Purchase Order or Scope of Work; (b) the provision of any Equipment (including Hired Equipment); (c) other services, responsibilities and obligations the Agreement provides that You have or will perform; and (d) all responsibilities and functions not specifically described in the Agreement, but which are incidental to, or otherwise necessary for You to provide the Goods or Services under the Agreement.
Government Authority	a national, state, regional, local, territorial or municipal government, ministry, governmental department or legislative, judicial or administrative body that has jurisdiction over the Parties, the Goods and/or Services or the Site.
GST Law	has the meaning given in section 195-1 of <i>A New Tax System (Goods or Services Tax) Act 1999</i> (Cth).
Hired Equipment	the Equipment that Fortescue has engaged You to hire or lease to Fortescue on Site, as specified in the Purchase Order or a Scope of Work.
HSES	health, safety, emergency and security.
HSES Laws	means all relevant Legislation relating to HSES on Site, or any other premises applicable to the supply of Goods or Services, including the <i>Work Health and Safety Act 2020 (WA)</i> , <i>Work Health and Safety (General) Regulations 2022 (WA)</i> , <i>Work Health Safety (Mines) Regulation 2022 (WA)</i> , <i>Rail Safety National Law (WA) Act 2015</i> , <i>Dangerous Goods Safety Act 2004 (WA)</i> , and any other Legislation dealing with workplace health and safety that may apply from time to time.



The word:	means:
Human Rights	internationally recognised human rights laws and standards, including: <i>the International Bill of Human Rights</i> ; the principles concerning the rights set out in the International Labour Organisation's (ILO) <i>Declaration on Fundamental Principles and Rights at Work</i> ; the United Nations <i>Guiding Principles on Business and Human Rights (UNGPs)</i> ; and the <i>Voluntary Principles for Security and Human Rights (VPI)</i> , and in the event of ambiguity between the above documents, the highest standard applies.
Insolvent	has the meaning given to it in the <i>Corporations Act 2001 (Cth)</i> , and includes Insolvency .
Intended Purpose	the relevant purpose of the Goods or Services as stated in the Agreement or as could be reasonably inferred from the Agreement by a Relevant Contractor.
IP Rights	all copyright and analogous rights, rights in relation to inventions (including patents), plant varieties, registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets), know-how, circuit layouts and all other rights throughout the world resulting from intellectual activity in the industrial, scientific or artistic fields.
Ipsso Facto Stay	any limitation on enforcement of rights or self-executing provisions in a contract, agreement or arrangement pursuant to sections 415D, 415F, 434J, 434L, 434LA, 451E, 451G or 451GA of the <i>Corporations Act 2001 (Cth)</i> .
Iron Bridge Joint Venture	the Iron Bridge unincorporated joint venture established under the Joint Venture Agreement.
Joint Venture Agreement	the <i>Iron Bridge Joint Venture Agreement</i> 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.
Law	Legislation, common law, principles of equity, and any Government Authority requirements.
Legislation	<p>(a) any legislation for the time being in force and all subordinated or delegated legislation, proclamations, regulations, by-laws, orders, notices, rules of court, town planning schemes, resolutions or other instruments made under or by a Government Authority or any such legislation as amended, consolidated, re-enacted or replaced; and</p> <p>(b) all licences, permits, consents, approvals, determinations, permissions, qualifications, registrations and other statutory requirements required from a Government Authority or under legislation, and any conditions or requirements under any of them, necessary for supply of the Goods or performance of Services under the Agreement.</p>
Loss	costs, expenses (including legal costs on a full indemnity basis), losses, damages, charge, compensation, amounts paid on advice of legal advisers to compromise or settle a claim, taxes, outgoings or other payments.
Modern Slavery	<p>any exploitative practices and crimes including:</p> <p>(a) human trafficking or trafficking in persons as defined in Article 3 of the <i>Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations' Convention against Transnational Organized Crime</i>, done at New York on 15 November 2000 ([2005] ATS 27);</p> <p>(b) child labour or the worst forms of child labour as defined in Article 3 of the <i>ILO Convention (No. 182) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour</i>, done at Geneva on 17 June 1999 ([2007] ATS 38);</p> <p>(c) 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</p> <p>(d) 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.</p>
Moral Rights	has the meaning given in the <i>Copyright Act 1968 (Cth)</i> .
Open Book Costs	the costs necessarily, actually, reasonably and properly incurred, and evidenced on an open book basis net of any rebates that may have been received or will be received.
Party	You or Fortescue, and Parties means both of them.
Participant	Where Fortescue 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 Purchase Order, 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).
Personal Data	any information relating to an identified or identifiable natural person (<i>data subject</i>) which is provided by Fortescue to the Contractor in connection with the Agreement; an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.
Personnel	<p>(a) in relation to Fortescue, any of Fortescue's or its Related Bodies Corporates' employees, contractors, agents, consultants or Fortescue's Representative, but excluding any of the Contractor's Personnel; and</p> <p>(b) in relation to the Contractor, any of Your or Your Related Bodies Corporates' employees, contractors, agents, consultants, Your Representative, Your Subcontractors (and any of Your Subcontractors' employees, contractors, agents, consultants, officers or representatives) and any Site Invitees.</p>



The word:	means:
Price	the net amount for the Goods or Services paid or payable by Fortescue, as set out in the Purchase Order as adjusted in accordance with clause 12.3 in the case of a Variation.
PPS Law	the PPSA, the regulations made at any time under the PPSA, and relevant amendments to the PPSA.
PPSA	the <i>Personal Property and Securities Act 2009</i> (Cth).
Process	any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.
Project IP	all IP 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 the Agreement.
Proof of Delivery	(a) in respect of Goods , a document which shows the Goods were delivered and includes at least the freight provider's details, the packing list, name and signature of the recipient (for example: signed delivery slip, acceptance checklist); and (b) in respect of Services , a time sheet, service log or similar document which shows You performed the Services.
Purchase Order	the document titled 'Purchase Order' issued by Fortescue to You for the supply of Goods or Services in accordance with the Agreement.
Related Body Corporate	any related body corporate as defined in the <i>Corporations Act 2001</i> (Cth) and, where relevant, each Participant.
Relevant Contractor	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 undertaking work, tasks, services, functions, responsibilities and obligations of a similar nature to those under the Agreement.
Representative	each Party's authorised Personnel appointed to take and give instructions and act in relation to the Agreement. Each Party's Representative will be named in the Scope of Work, or otherwise notified in writing.
Sanction	any economic or financial sanction, trade embargo or similar restrictive measures imposed, enacted, administered or enforced from time to time by a relevant Sanctions Authority.
Sanctioned Country	any country or territory which is the target of country-wide or territory-wide Sanctions, and as at the date of the Agreement, includes: Cuba, Iran, North Korea, Syria, and Crimea, Donetsk and Luhansk regions of Ukraine.
Sanctioned Person	any person or entity which is: (a) listed on, or is owned or controlled directly or indirectly (as such terms are used in the Sanction or in any guidance in relation to the Sanction) by a person or entity listed on, a Sanctions List; (b) organised under the laws of, or a citizen or resident of, any Sanctioned Country; or (c) otherwise a target of a Sanction.
Sanctions Authority	each of the following Government Authorities: Australia, the United States of America, the European Union, the United Kingdom, the United Nations, and the relevant governmental and official institutions or agencies of any of the foregoing, including: the Australian Sanctions Office by Australia's Department of Foreign Affairs and Trade, the Office of Foreign Assets Control by the United States Department of the Treasury, the United States Department of State, Council of Europe Union, His Majesty's Treasury by the Government of the United Kingdom and the Security Council of the United Nations.
Sanctions List	any of the lists of specially designated nationals or designated persons or entities (or equivalent) held, issued or maintained by any relevant Sanctions Authority, each as amended, supplemented or substituted from time to time.
Scope of Work	the Goods and/or Services to be supplied or performed by You and Your Personnel, as specified in the Purchase Order, including documents annexed to the Purchase Order, or incorporated in the Purchase Order by reference.
Scope 1 Emissions	direct greenhouse gas emissions that occurred from sources that are owned or controlled by a relevant Party. For example, emissions from fuel combustion in owned or controlled vehicles, generators, boilers, furnaces, or emissions from owned or controlled refrigeration units.
Scope 2 Emissions	any indirect greenhouse gas emissions resulting from the generation of purchased electricity, steam, heat or cooling. These emissions occur at the facility where the energy is produced, not where it is consumed.
Scope 3 Emissions	all other indirect greenhouse gas emissions, other than Scope 2 Emissions, which are a consequence of the activities of a relevant Party, but occurred from sources not owned or controlled by that Party, for example, they may occur upstream such as extraction and production of purchased materials; downstream such as the transportation of purchased fuels; or the use of products or services procured by the relevant Party.
Site	the locations specified in the Purchase Order or Scope of Work, where the Goods or Services are to be supplied or performed.
Site Invitee	any person invited on to the Site by You or Your Personnel.
Site Manager	(a) for a Site which is a 'mine' under reg 5A of the <i>Work Health Safety (Mines) Regulation 2022 (WA)</i> (WHSMR), the person appointed from time to time as the "Site Senior Executive" at the Site for the purposes of regulation 675ZI of the WHSMR; and (b) for any other Site , any person appointed by Fortescue from time to time as the manager of the Site.



The word:	means:
Subcontract	any permitted contract or other arrangement between You and a Subcontractor in relation to the performance of Your obligations under the Agreement.
Subcontractor	any person engaged by You to perform any portion of the Services or supply any part of the Goods, and includes their employees, agents, consultants and invitees.
Taxes	any and all present and future sales, use, personal, property, real property, value added, goods and services, GST, turnover, stamp, documentary, interest equalisation, business, occupation, excise, income, corporation, profits, gains, gross receipts, or other taxes, tariffs, fees, withholdings, imposts, levies, duties or other charges of any nature imposed (other than Taxes on Fortescue's net income) by a Government Authority, together with any penalties, fines or interest thereon or similar additions thereto, imposed, levied or assessed or otherwise payable.
Tax Invoice	has the same meaning as set out in the GST Law.
Terms	means these Purchase Order Standard Terms.
Variation	any addition, reduction, or change to the Scope of Work or Price pursuant to clause 12.
Variation Proposal	a written proposal provided by You addressing the particulars of any Variation.
Warranty Period	(a) the relevant period of time stated referred to as such in the Purchase Order or Scope of Work, starting on the Expiry Date; or (b) if no period is set out in the Purchase Order or Scope of Work, 12 months after the Expiry Date.
Work Plans	any or all of the Contractor's HSES or work management plans, including but not limited to: the safety management plan, the security management plan, the emergency response plan (including the cyclone management plan as a sub-plan), the environmental management plan, the construction management plan, the traffic management plan, the commissioning and handover plan; the local content strategy; the quality management plan, and the employee relations management plan.
You or Your	the person, firm or company named in the Purchase Order who will deliver Goods or Services to Fortescue.