

# GLENCORE

**GLENCORE CANADA CORPORATION**

**PURCHASE ORDER  
TERMS AND CONDITIONS**

## PURCHASE ORDER TERMS & CONDITIONS

### 1. Agreement:

(A) The agreement between Purchaser and Supplier is this purchase order (the “**Purchase Order**”). This Purchase Order consists only of the terms contained (a) in these terms and conditions (the “**Terms and Conditions**”), (b) on the purchase order form (the “**Form**”), and (c) on any supplements, specifications, drawings or other documents expressly incorporated by reference on the Form (each, a “**Supplement**”).

(B) If the Purchase Order is deemed to be an acceptance of a prior offer from Supplier, such acceptance is limited to the express terms contained herein and on the Form. Additional terms or any attempt by Supplier to vary in any degree any terms of the Purchase Order shall be deemed material and are hereby rejected.

(C) Supplier shall deliver the Products to the Delivery Point by the Delivery Date. Supplier shall ensure that the Products are suitably packed to avoid damage while in transit and shall mark each package containing the Products with the Purchase Order number, item number, destination, contents, quantity, weight, date of shipment and method of dispatch. Except as expressly provided for in the Purchase Order, the Products shall include the provision of all raw materials, services and goods that are necessary for the fabrication of the Products and delivery of the Products to the Delivery Point.

(D) No alteration or variation of any of the provisions of these Terms and Conditions shall be of any force or effect unless it is recorded in writing and signed by Purchaser. This Purchase Order constitutes the sole and entire agreement between the Parties with respect to the subject matter hereof. Written or verbal acceptance of the Terms and Conditions by Supplier shall constitute Supplier's assent to the Terms and Conditions. Purchaser hereby expressly objects to and rejects any and all additional or different terms proposed by Supplier (including any attempted disclaimer or limitation of warranties or liability), irrespective of where contained, and no such different or additional terms shall form part of the Purchase Order or be binding on Purchaser. Purchaser's acceptance of, or payment for, the Products shall not constitute Purchaser's acceptance of any counter-proposal submitted by Supplier unless otherwise specifically accepted in writing by Purchaser.

### 2. Application and Priority:

(A) Where this Purchase Order is made pursuant to a framework agreement between the Parties for the supply of products or commodities, these Terms and Conditions shall govern with respect to the supply of the Products described on the Form except to the extent of any conflict with the terms and conditions of the framework supply agreement (in which case the terms and conditions of the framework supply agreement shall govern).

(B) Where the Parties have agreed to specified terms and conditions that will govern the supply to Purchaser by Supplier of any and all products that may be purchased from time-to-time, such specified terms and conditions shall govern with respect to the supply of the Products described on the Form, and these Terms and Conditions will not apply.

(C) In the event of a conflict between provisions appearing on the Form, any Supplement and these Terms and Conditions, the provisions on the Form and any Supplement shall prevail and take priority over these Terms and Conditions to the extent of the conflict.

### 3. Cancellation of Purchase Order:

(A) Purchaser may cancel this Purchase Order and refuse Delivery of the Products or other tender of performance, without payment or other obligation to Supplier, if: (a) the Products are not Delivered (or if Supplier has advised Purchaser that it will not be able to Deliver the Products) by or within three days after the Delivery Date without regard to whether or not the delay is caused by events or circumstances beyond Supplier's control, unless Purchaser has specifically agreed in writing to an extension or unless and to the extent Supplier can demonstrate that the delay was unavoidably the result of the negligence or wilful misconduct of Purchaser after the date hereof; (b) prior to the Delivery of the Products, Supplier breaches any of its obligations in Section 10 hereof or refuses to remove rejected goods or workmanship from the Products as reasonably requested by Purchaser pursuant to Section 12 hereof; or (c) prior to the Delivery of the Products, Supplier becomes insolvent, makes an assignment in bankruptcy, makes a general assignment for the benefit of creditors, makes any proposal under the *Bankruptcy and Insolvency Act* (Canada) or any comparable law, seeks relief under the *Companies' Creditors Arrangement Act*

(Canada), or any other bankruptcy, insolvency or analogous law, is adjudged bankrupt, files a petition or proposal to take advantage of any act of insolvency, consents to or acquiesces in the appointment of a trustee, receiver, custodian, or other person with similar power, of all or a portion of its assets or Supplier or its property or assets become the subject of any proceeding for the relief of creditors, which in the opinion of Purchaser would materially and adversely affect the ability of Supplier to perform or comply with its obligations hereunder. Supplier shall not be entitled to any monetary consideration (including payment of the Price) for termination by Purchaser in accordance with this Section 3(A).

(B) Purchaser may, by notice in writing to Supplier at any time, without reason or cause and at its absolute discretion, cancel this Purchase Order, in whole or in part, and refuse Delivery of the Products or other tender of performance, in which event Purchaser will pay Supplier for any Products delivered but not yet paid for as well as Supplier's direct out-of-pocket costs incurred to the date of termination, which are reasonably attributed to this Purchase Order (which, for the avoidance of doubt, shall not include an allowance for reasonable overhead or profit).

(C) Upon cancellation of this Purchase Order, (a) Supplier shall cease production and supply of the Products and (b) Purchaser shall have the right to the work-in-progress of the Products, any materials acquired by Supplier to be incorporated into or used in the manufacturing of the Products and any Products manufactured to the date of cancellation, to the extent paid for by Purchaser, which Supplier shall deliver on Purchaser's instructions.

4. **Modification of Purchase Order:** Purchaser has the right to modify the Purchase Order with respect to quantities, delivery schedules and/or specifications, by means of a change order. The Price shall be equitably increased or decreased on the basis of Supplier's actual and direct increased costs or savings resulting from the content of such change order. The change order shall not become effective until the Parties have agreed to any increase or decrease in Price.

5. **Transfer of Title and Risk:** Title and the risk of loss or damage to the Products shall pass to Purchaser upon the delivery ("**Delivery**") of the Products to the Delivery Point, provided that where progress or instalment payments are made prior to Delivery, Purchaser shall have title to the work in progress and to the materials incorporated therein but risk of loss or damage shall remain with Supplier until Delivery is affected.

6. **Price, Invoicing and Payment:**

(A) Purchaser shall pay Supplier the Price for the Products. The Price is inclusive of all costs (excluding Sales Tax) incurred by Supplier in the manufacturing and supply of the Products, including without limitation all charges for handling, packaging, storage, transportation and drayage of the Products and may not be increased due to surcharges or escalation or otherwise, except with Purchaser's express written consent, which may be withheld in Purchaser's sole discretion. Unless otherwise specified on the Form, upon or following Delivery, Supplier shall furnish Purchaser with invoices for the Products Delivered, indicating the Price therefor plus applicable Sales Tax, and including all prescribed information necessary to allow Purchaser to recover such Sales Tax from the appropriate governmental authority. Unless otherwise specified on the Form, Purchaser shall, subject to its rights to withhold or set off any amount owed to it by Supplier, pay the amount specified in Supplier's invoice by the 45<sup>th</sup> day after receipt of said invoice, or within such other period of time as may be required pursuant to applicable Law.

(B) Supplier shall be solely responsible for collecting and remitting Sales Tax and shall indemnify and hold harmless Purchaser from its failure to timely and properly collect and remit Sales Tax. Where Purchaser provides Supplier with a valid purchase exemption certificate or tax registration number in respect of Sales Tax, Supplier agrees not to collect the Sales Tax covered by such certificate or registration number and Supplier's obligations set forth in this Section 6(B) to indemnify and hold Purchaser harmless shall not apply.

(C) Purchaser shall be entitled to deduct, withhold or set off from any amount payable to Supplier: (a) any amount required to be withheld or deducted under applicable Law (including the *Income Tax Act* (Canada)), and any amount so deducted will be deemed to have been paid by Purchaser to Supplier; (b) any amount owing by Supplier to Purchaser by means of set-off; and (c) any amounts paid by Purchaser to sub-contractors. Where Purchaser has withheld an amount required to be withheld under the *Income Tax Act* (Canada), Purchaser shall remit such amount to the appropriate government authority and shall provide Supplier with a receipt or other document evidencing such withholding. If it is subsequently

determined that Purchaser was entitled or required to withhold an amount exceeding the amount withheld, Supplier shall pay such added amount (including all related costs, interest and penalties) to Purchaser promptly upon request therefor. Supplier will be solely responsible for claiming any applicable tax credits related to such deductions or withholdings. Supplier will indemnify Purchaser for and save it harmless from any and all *taxes (including interest, penalties or additions to tax)* as a result of the failure by Purchaser to withhold any amount that it would have otherwise have been required to withhold pursuant to section 105 of the Income Tax Regulations or any provincial equivalent, as applicable, together with any reasonable costs and expenses incurred in connection therewith. The provisions of this paragraph shall survive the termination of this Agreement. Supplier's invoice shall (i) specify the Consideration payable for the applicable Services, (ii) specify the portion of such Services that were performed in Canada by Supplier or Supplier Parties and (iii) identify the amount of the Consideration attributable to the Services described in clause (ii) of this Section 6(C).

**[Note: (D) and (E) only to be used where products supplied are in the nature of an 'improvement' (i.e. Products are installed/assembled at the Purchaser's Premises (see Section 16 below) such that construction lien legislation may apply.]**

**(D) [The Purchaser's obligation to pay the Supplier shall be subject to any applicable Laws pertaining to construction, mechanic or builder liens, or to legal hypothecs relating to construction renovation or improvements, including any provisions thereof requiring or allowing for holdbacks, and any provisions thereof requiring prompt payment.**

**(E) Where the Products are supplied, or the Delivery Point is located, in the Province of Ontario, the Supplier acknowledges and agrees to abide by the requirements of the *Construction Act (Ontario)*, including the provisions therein concerning prompt payment and holdbacks, in all dealings with any Sub-contractors or suppliers in connection with the Products and/or Delivery Point, as the case may be.]**

7. **Insurance:** Without in any way limiting or affecting Supplier's other obligations under this Purchase Order, Supplier shall take out, maintain and pay, for itself and, where Supplier uses any Supplier Parties, shall include such Supplier Parties as insureds or shall cause such Supplier Parties to arrange and maintain the insurance coverages set forth in Schedule A (the "**Insurance Policies**"). Supplier shall comply with all provisions regarding insurance in Schedule A.

**8. Warranties on the Products:**

(A) Supplier represents and warrants to Purchaser that: (a) at the time of Delivery, it will have good title to the Products, free and clear of all liens and encumbrances and upon the passing of such title to Purchaser in accordance with Section 5 hereof, Purchaser shall receive good title to such Products, free and clear of all liens and encumbrances; (b) all Products to be furnished hereunder conform and will conform to the Purchase Order (including any specifications, drawings or other descriptions contained or specified therein) and will perform as specified therein; (c) all Products to be furnished hereunder will be new, merchantable and of good material, in good working order, free from defects due to faulty design, materials or workmanship and will be fit for the purpose intended by Purchaser (and Supplier acknowledges that Supplier knows of Purchaser's intended use for the Products); and (d) all Products (and all parts thereof) to be furnished hereunder comply and will comply with Laws applicable in the jurisdiction of the Delivery Point or at such other place or places of intended use as may be specified by Purchaser, and the intended use of the Products by Purchaser shall not be an infringement of any such Laws.

(B) Supplier undertakes to make good by repair or replacement, defects in the Products arising from any breach of warranty in Section 8(A) and discovered by Purchaser within the Warranty Period, promptly after being notified of the defect by Purchaser. All costs incurred by Supplier in such repair or replacement (including any freight, customs, duties or brokerage fees) shall be the responsibility of Supplier. The Warranty Period shall be extended by the time during which any of the Products supplied were out of service by reason of defects, which Supplier is required to repair or replace. Repairs shall be done at Purchaser's convenience and, at Purchaser's option, on Purchaser's premises unless the repairs are of such a nature as to require repair facilities that are not or cannot be made available on Purchaser's

premises. Repairs shall be done as expeditiously as possible. The warranties in Section 8(A) shall also apply to all repaired or replaced Products. Supplier also undertakes to reimburse Purchaser for any costs incurred by Purchaser in shipping, installing and commissioning the repaired or replaced Product. The obligation of Supplier in this Section 8(B) is without prejudice to any other right or remedy Purchaser may have at Law or under this Purchase Order. If Supplier fails to remedy any such defect promptly upon notice thereof, Purchaser shall be entitled, without prejudice to any of its rights and remedies, to repair the defect or purchase a replacement item from another supplier at Supplier's cost and expense.

**9. Specific Representations, Warranties and Indemnity re Intellectual Property Rights:** Supplier represents and warrants that the Products and the intended use thereof by Purchaser (which use Supplier acknowledges it is aware of) will not infringe the Intellectual Property rights of any third party. Supplier agrees to indemnify and hold harmless Purchaser and its Affiliates from and against all claims and demands for actual or alleged breach of applicable Laws or infringement of any Intellectual Property rights by reason of the ownership or use (in accordance with Purchaser's intended use) of the said Products or any of them or any part thereof and from all costs, expenses (including legal fees and disbursements) or damages suffered or incurred by reason thereof or in respect thereto.

**10. Specific Representations, Warranties and Covenants re: Anti-Corruption Laws:** Supplier represents, warrants and covenants that: (A) neither it nor any of its directors, officers and employees nor, to its knowledge, any of its contractors, agents or representatives has directly or indirectly made, and, further, it shall not make any contribution, gift, bribe, rebate, payoff, influence payment, kickback or other payment to any person, private or public, whether in money, property or services to (a) obtain favourable treatment or to secure any contracts, agreements or commitments, (b) pay for favourable treatment or for any contracts, agreements or commitments secured or (c) obtain special concessions or for special concessions already obtained, in each case, in violation in any material respect of any Law, including the *Corruption of Foreign Public Officials Act* (Canada), 1998, c. 34, the *Bribery Act* (U.K.), 2010, c. 23 (in each case, whether or not applicable to Supplier), and any other Law concerned with the prevention of bribery and corruption applicable to Supplier; (B) any compensation paid by Supplier to any person or entity in connection with the manufacturing and supply of the Products will be for legitimate, *bona fide* goods or services; (C) it has fully disclosed to Purchaser all information pertaining to former or current relationships between Supplier's directors, officers, employees, distributors, representatives, dealers and agents (collectively, the "**Representatives**") and any government officials and/or candidates for government office; (D) it has fully disclosed to Purchaser whether any of its Representatives are or are likely to hold the status of an official of a government or a candidate for government office; (E) no part of the Price shall accrue for the benefit of any government official or candidate, regardless of the existence or non-existence of a relationship between the Representative and such government official or candidate; and (F) it will maintain (and cause any sub-suppliers and sub-contractors to maintain) for a minimum of five years following the final Delivery of Products hereunder, books, records and accounts prepared in accordance with generally accepted accounting principles, consistently applied, which accurately and completely reflect the nature of every transaction related to the manufacturing, procurement, supply and delivery of the Products. Supplier grants Purchaser the right, on reasonable notice, to audit the books and records of Supplier (and shall use its reasonable commercial efforts to obtain such right for Purchaser from its sub-suppliers and sub-contractors) for conformity by Supplier to the terms of this Purchase Order, including the representations, warranties and covenants set forth in this Section 10, and codes of conduct which can be found at <http://www.glencore.com/who-we-are/corporate-governance/policies/code-of-conduct/> as updated from time to time applicable to Purchaser. If at any time there are changes to the information provided to Purchaser, including but not limited to the development of a new relationship between any of the Representatives and a government official, Supplier covenants to immediately notify Purchaser of those changes. Purchaser reserves the right to cancel this Purchase Order with immediate effect on written notice to ensure that such relationships will not result in a violation of the Laws and codes of conduct and business principles applicable to Purchaser.

**11. Grant of Access:** Subject to compliance by Supplier with these Terms and Conditions and with the rules, regulations and codes of conduct applicable to the Delivery Points, Purchaser shall afford Supplier's employees and Supplier Parties access to the Delivery Points (or, where the Delivery Points are not controlled by Purchaser, Purchaser shall arrange for such access to be provided) during the

regular operating hours of the Delivery Points, as may be necessary for the supply of Products. It shall be Supplier's responsibility to ascertain the content of such rules, regulations and policies and to ensure that its employees and Supplier Parties comply with them. Where access to a Delivery Point has been refused for any reason, Supplier shall be responsible for the safeguarding of the Products until delivery of the Products to the Delivery Point or any changed Delivery Point designated by Purchaser. The unloading of Products at any place other than the Delivery Point or any changed Delivery Point designated by Purchaser shall not satisfy the obligation of Supplier to supply the Products for the purposes hereof, and until such Products have been delivered to the Delivery Point (or any changed Delivery Point designated by Purchaser) the Products shall be deemed not to have been Delivered for the purposes hereof and title to and risk of loss for such Products shall not pass to Purchaser.

**12. Purchaser's Rights of Access and Inspection:** At any time during the manufacture or fabrication of any Products, Purchaser shall be entitled to (and Supplier shall give or cause to be given free and safe access for Purchaser's representatives to) inspect, examine and test the work-in-progress or any part thereof and any materials to be incorporated therein at any time during business hours. Any inspection, examination or testing shall not relieve Supplier of any of its obligations under this Purchase Order. Purchaser has the right to reject any goods or workmanship at any time if they are not in accordance with this Purchase Order and Supplier must forthwith discard and remove or cause to be discarded and removed from the premises where the work is being done all rejected goods or workmanship and promptly replace same. The exercise of any such right of inspection shall be without prejudice to Purchaser's other rights and remedies at Law and under this Purchase Order, including its right to make a claim against Supplier for breach of representation, warranty or covenant.

**13. Confidential Treatment of Technical Information:** All materials, documents, drawings, specifications and other information obtained by Supplier, directly or indirectly, from Purchaser in connection with this Purchase Order are the property of Purchaser and shall be treated as confidential by Supplier, and shall not be used by Supplier for any purpose other than the fulfillment of this Purchase Order, and shall be immediately returned to Purchaser upon request. Supplier shall not advertise nor issue any information, publication or article for publication or media release or other publicity relating to this Purchase Order, the supply of the Products or Purchaser's business and activities without the prior written approval of Purchaser, which approval may be withheld in Purchaser's sole discretion.

**14. Assignment of Created Intellectual Property Rights.** Supplier agrees to assign to Purchaser absolutely, for the full duration thereof and throughout the world, all of Supplier's rights, title and interest in Intellectual Property made by or on behalf of Supplier during, in connection with or arising out of the performance of its obligations under this Purchase Order (the "**Created Intellectual Property**") on its creation, and to cause any other person, including any Supplier Party involved in the development or creation of any Created Intellectual Property, to assign to Purchaser absolutely, for the full duration thereof and throughout the world, all of such person's rights, title and interest in such Created Intellectual Property. Supplier undertakes, on request, to do all things and sign all documents necessary to assign the aforementioned rights, title and interest to Purchaser and take all steps necessary to record such assignment at any office responsible for the registration of Intellectual Property rights. If the rights, title and interest of any of the Created Intellectual Property are not capable of being assigned to Purchaser, Supplier undertakes, on request, to do all things and sign all documents necessary to ensure that Purchaser is granted an irrevocable and unlimited royalty-free licence to use the Created Intellectual Property for the full duration of the rights and throughout the world. In the event of assignment, Purchaser grants Supplier a non-exclusive licence to use the Created Intellectual Property only for the performance of its obligations pursuant to this Purchase Order. Supplier will obtain and provide unconditional and irrevocable assignments or waivers, where applicable, of all moral rights of all authors of any copyright work included in the Created Intellectual Property in favour of Purchaser, to the extent permitted by Law, whether in Canada or anywhere else in the world. Supplier agrees that all Intellectual Property of Purchaser, its Affiliates and agents, shall remain the exclusive property of Purchaser, its Affiliates or agents, as the case may be, and that nothing in this Purchase Order or in the delivery of the Products grants to Supplier or any Supplier Parties or any other person any right in such Intellectual Property, except as expressly stated herein.

**15. Importing Products and Shipping Documentation:**

(A) Unless otherwise expressly stated on the Form, Supplier shall act as the importer of record for all Products that originate from sources or suppliers based outside Canada ("**Foreign Products**") and be responsible for all requirements concerning the lawful importation and sale of the Foreign Products in Canada. If Purchaser agrees, in writing, to act as the importer of record into Canada for any Foreign Products, Supplier shall, prior to or promptly upon the dispatch of a shipment of Products to the Delivery Point (a "**Shipment**"), provide Purchaser with adequate and timely prior notice and true, accurate, timely and valid information and all necessary documents to permit the lawful importation of such Foreign Products into Canada at the most preferential duty and tax rates. Without limiting the foregoing, Supplier shall provide Purchaser, with respect to Foreign Products, true, accurate and valid certificates of origin required for preferential tariff treatment prior to the Shipment of such Foreign Products and shall advise Purchaser immediately of any change in the manufacturing or production process of the Foreign Products which could affect the validity of any certificate of origin provided to Purchaser. Supplier shall promptly and fully cooperate with the relevant government authorities and also with Purchaser on any inquiries, audits or reviews concerning the validity and accuracy of such certificates of origin provided to Purchaser; and in the event of any unfavourable determinations by the relevant government authorities concerning such certificates of origin, Supplier, at the direction of Purchaser, shall appeal or provide Purchaser with assistance in pursuing any appeals of such unfavourable determinations. Supplier shall indemnify and hold harmless Purchaser and its Affiliates from and against any claims, demands, proceedings, injuries and actions, and all losses, liabilities, costs, charges, expenses and damage (including legal fees and disbursements), including customs duties, taxes, interest, penalties (including administrative monetary penalties) suffered or incurred by Purchaser or its Affiliates arising out of or in any manner connected with the failure of Supplier to fulfill its obligations set out herein, including to provide true, accurate, timely and valid information and documents required to permit the lawful importation of the Foreign Products at the most preferential duty and tax rates.

(B) In addition to the requirements in Section 14(A) hereof, promptly after the dispatch of a Shipment, Supplier shall send by facsimile (with originals sent by courier or other personal delivery) to Purchaser (a) a bill of lading, marked "freight prepaid"; (b) a material safety data sheet or comparable information with respect to the Products in the Shipment as required to comply with applicable workplace hazardous material information system regulations; and (c) any other documents reasonably requested by Purchaser from time-to-time to facilitate any shipping of the Products in the Shipment from the Delivery Point to another place (including certificates of origin in respect of the Products).

**16. Liens:** In respect of any Products that are to be fabricated, assembled or installed in whole or in part upon Purchaser's premises, Supplier covenants to keep such premises free of all liens arising in connection with the supply of Products and execute or cause to be executed and submit with each invoice such waivers, statutory declarations, sworn statements and related forms as Purchaser shall request, subject to applicable Law. Supplier shall execute such documents as Purchaser may reasonably require as evidence of Purchaser's interest in any equipment or property owned by Purchaser in the possession of Supplier. If a lien arising from the supply of Products is registered against title to such premises, Supplier shall, within 10 days, at Supplier's sole expense, vacate or discharge any such lien. If Supplier fails or refuses to discharge or vacate such lien within the time prescribed above, Purchaser shall, at its option, be entitled to take all steps necessary to discharge or vacate the lien, and all costs and expenses incurred by Purchaser in so doing (including legal fees and any payment which may ultimately be made out of or pursuant to security posted to discharge or vacate the lien) shall be for the account of Supplier. Without limiting any of the foregoing, Supplier shall indemnify and hold harmless Purchaser and its Affiliates from and against any claims, demands, proceedings, injuries and actions, and all losses, liabilities, costs, charges, expenses and damage (including legal fees and disbursements) suffered or incurred by such person of whatsoever nature resulting from or arising out of any such lien. This Section 16 does not apply to any lien which arises as a direct result of the failure of Purchaser to pay amounts of the Price which are properly due and payable to Supplier.

**17. Other Obligations of Supplier:** Supplier covenants that it will, in carrying out its obligations under this Purchase Order: (a) comply with all Law (including with respect to the environment, health and safety (including packaging) and transportation of goods) and industry standards in the manufacturing, supply and Delivery of the Products; (b) obtain and maintain all licenses, permits and approvals necessary for

the manufacturing, supply and Delivery of the Products to Purchaser; (c) promptly bring to Purchaser's attention any information that is likely to impact adversely on the supply of Products, including the timing of Deliveries; and (d) not, under any circumstances, substitute products of a different specification, design, manufacture, model or manufacturer for the Products without having first received the express written consent of Purchaser, which consent may be withheld in Purchaser's sole and absolute discretion.

18. **Assignment:** Supplier shall not assign this Purchase Order or any of its interest therein or any moneys to become due hereunder without first obtaining the written consent of Purchaser, which may be withheld in Purchaser's sole discretion. Purchaser may assign this Purchase Order and its therein (in whole or in part) to an Affiliate or a person that is purchasing or has purchased all or substantially all of the assets of Purchaser at the Glencore site for which it has purchased the Products.

19. **Governing Law:** This Purchase Order shall be interpreted in accordance with the laws of the Province and the laws of Canada applicable therein and the Parties agree to submit to the non-exclusive jurisdiction of the courts of the Province.

20. **Limitation of Liability:** Purchaser does not assume, and Supplier hereby releases Purchaser, its Affiliates and their respective directors, officers, employees, agents and representatives from any liability, whether in tort, contract or otherwise, in respect of any losses, damages, expenses or injuries suffered by Supplier, its employees or any Supplier Parties due to any cause whatsoever that is related to the performance of Supplier's obligations under this Purchase Order, except to the extent that such losses, damages, expenses or injuries are directly attributable to a breach of this Purchase Order by Purchaser or to the gross negligence or wilful misconduct of Purchaser and its Affiliates.

21. **General Indemnification by Supplier:** Supplier agrees to indemnify and save harmless Purchaser, its Affiliates and their respective directors, officers, employees, agents and representatives from and against any claims, demands, proceedings, injuries and actions, and all losses, liabilities, costs, charges, expenses and damage (including legal fees and disbursements) suffered or incurred by any of them arising out of or in any manner connected with the performance of this Purchase Order, to the extent caused directly or indirectly by a breach of any obligation or covenant of Supplier or any inaccuracy or misrepresentation in any representation or warranty contained in this Purchase Order or the negligence or wilful acts or omissions of Supplier, its employees or Supplier Parties.

22. **Non Solicitation :** The Supplier covenants and agrees that neither it, nor any of its Affiliates shall, directly or indirectly, solicit or hire any employees of the Purchaser or any Affiliate thereof, or induce or attempt to induce any employee of the Purchaser or any Affiliate thereof to leave their employment; provided that the Supplier shall not be in breach of this Section 22 in connection with a general solicitation that is not directed to any employees of the Purchaser, or any Affiliate thereof. The Supplier acknowledges and agrees that in the event of any breach or threatened breach of this Section 22, the Purchaser shall, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an interim or permanent injunction, specific performance and any other relief that may be available from a court of competent equitable jurisdiction (without any requirement to post a bond or other security). The Supplier acknowledges and agrees that the restrictions set out in this Section 22 are reasonable and necessary to protect the legitimate interests of the Purchaser and constitute a material inducement to the Purchaser entering into this Agreement. The covenants contained in this Section 22 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

23. **General Matters:** (A) Supplier is an independent contractor and the relationship between Purchaser and Supplier under this Purchase Order does not constitute nor may it be construed as constituting a fiduciary relationship, a joint venture, contract of agency, partnership or employment. Supplier shall not represent or allow itself to be represented as an employee or agent of Purchaser. (B) This Purchase Order shall enure to the benefit of and be binding upon the respective heirs, executors, administrators,



successors and permitted assigns of the Parties. (C) No waiver of any breach of any term or provision of this Purchase Order is effective or binding unless made in writing and signed by the Party purporting to give the same and, unless otherwise provided, is limited to the specific breach waived. (D) Each paragraph and Section of these Terms and Conditions is severable and, if one or more of the paragraphs or Sections are declared invalid, the remaining provisions will remain in full force and effect. (E) The exercise of any right or remedy under this Purchase Order is without prejudice to any other right or remedy which may be available to Purchaser by Law or under these Terms and Conditions. (F) With the exception of (a) damages arising as a result of a breach of Section 13 or as a result of fraud or wilful misconduct and (b) any liquidated damages that may be payable by Supplier in accordance with this Purchase Order, neither Party shall be liable to the other for any special, punitive, consequential and/or like damages (including loss of profits or loss of business). (G) All notices and other communication pertaining to this Purchase Order shall be in writing and shall be sent by courier to the other Party at the address set out in the Form or sent by electronic delivery to the fax number or e-mail address of such Party as set out in the Form. Such addresses and fax numbers may be changed in accordance with this Section 23(G). Such notices and other communications shall be deemed to have been given on the date of the courier delivery or electronic transmission. (H) All headings in the Terms and Conditions are for convenience of reference only and shall not be used in the interpretation of any provision in the Terms and Conditions. (I) The terms of this Purchase Order, which expressly or by their nature are intended to survive the termination of this Purchase Order, shall survive such termination. (J) Words importing: (a) any one gender include the other gender; (b) the singular include the plural and vice versa; and (c) persons include individuals, partnerships, associations, trusts, unincorporated organizations, corporations and government authorities. (K) A reference herein to any legislation or legislative provision includes any statutory amendment or re-enactment of, or legislative provision substituted for, and any rules, regulations or notices issued under, that legislation or legislative provision. (L) The representations, warranties and covenants of Supplier in this Purchase Order shall survive the delivery of Products or the earlier cancellation of this Purchase Order for the benefit of Purchaser. (M) Any liquidated damages assessable or payable hereunder have been calculated as the Parties' good faith estimates of the damages that Purchaser would incur as a consequence of Supplier's failure to meet a specified deadline, and shall be payable by Supplier (as damages and not as a penalty) each day for so long as Supplier has failed to comply with the specified deadlines, as set forth in this Purchase Order.

24. **Definitions:** The following terms used in these Terms and Conditions shall have the following meanings unless the context clearly otherwise requires:

- (A) **"Affiliate"** where one body corporate is affiliated with another body corporate if one of them is the subsidiary of the other or both are subsidiaries of the same body corporate or each of them is controlled by the same person; and if two bodies corporate are affiliated with the same body corporate at the same time, they are deemed to be affiliated with each other.
- (B) **"Created Intellectual Property"** has the meaning set out in Section 14 hereof.
- (C) **"Delivery"** has the meaning set out in Section 5 hereof.
- (D) **"Delivery Date"** means the date for Delivery specified on the Form.
- (E) **"Delivery Point"** means the location for Delivery specified on the Form; which shall, for certainty, be a location on Purchaser's premises or a consolidation point controlled by Purchaser or a contractor of Purchaser, and shall not, under any circumstances, be a consolidation point of Supplier or of a Supplier Party.
- (F) **"Final Transit"** has the meaning set out in paragraph 2(C)b of Schedule A hereof.
- (G) **"Foreign Products"** has the meaning set out in Section 15(A) hereof.
- (H) **"Form"** has the meaning set out in Section 1(A) hereof.
- (I) **"Insurance Policies"** has the meaning set out in Section 7 hereof.
- (J) **"Intellectual Property"** includes domestic and foreign trade-marks, business names, trade names, domain names, trading styles, patents, trade secrets, software, industrial designs, integrated circuit topographies, mask works, documentation and copyrights, whether registered or unregistered, and all applications for registration thereof, and all goodwill associated with any of the foregoing, and inventions, formulae, recipes, product formulations, processes and processing methods, technology, techniques and know-how.
- (K) **"Jurisdiction"** means: (i) the province of Canada in which the site, operation or project is located, (ii) otherwise, the province of **[Quebec/Ontario]**.

- (L) **“Laws”** means standards or guidelines approved by recognised industry bodies and all domestic or foreign laws, including any statute, subordinate legislation or treaty, and any guideline, directive, rule, standard, requirement, policy, order, judgment, injunction, award or decree of a governmental authority having the force of law.
- (M) **“Parties”** means both of Supplier and Purchaser; and **“Party”** means either one of them.
- (N) **“Price”** means the price for the Products as specified on the Form.
- (O) **“Products”** means the products to be supplied to Purchaser by Supplier as specified on the Form.
- (P) **“Province”** means: (i) where the Purchase is identified as for a particular site, operation or project of the Purchaser, the province of Canada in which the site, operation or project is located, (ii) otherwise, the province of Ontario
- (Q) **“Purchase Order”** has the meaning set out in Section 1(A) hereof.
- (R) **“Purchaser”** has the meaning set out in the Form, or in the absence of any such designation shall mean Glencore Canada Corporation.
- (S) **“Representatives”** has the meaning set out in Section 10 hereof.
- (T) **“Sales Tax”** means the taxes imposed under Part IX of the *Excise Tax Act* (Canada) and any other value-added or provincial sales taxes payable on the sale of the Products.
- (U) **“Shipment”** has the meaning set out in Section 15(A) hereof.
- (V) **“Supplement”** has the meaning set out in Section 1(A) hereof.
- (W) **“Supplier”** has the meaning set out in the Form.
- (X) **“Supplier Parties”** means Supplier’s contractors, sub-contractors, carriers, freight forwarders, sub-suppliers, agents and representatives and any of their respective employees involved in the supply of the Products pursuant to the Purchase Order.
- (Y) **“Terms and Conditions”** has the meaning set out in Section 1(A) hereof.
- (Z) **“Warranty Period”** means the period of 24 months commencing on later of the date of Delivery or installation.

## SCHEDULE A INSURANCE

### 1. Requirements:

(A) All coverages in the Insurance Policies shall be primary and any coverage Purchaser may have in any of its own insurance policies shall not be considered contributory.

(B) Supplier shall: (a) forthwith upon receipt of the Form and upon the renewal of any Insurance Policy, provide to Purchaser certificates of insurance for all Insurance Policies showing Supplier and Purchaser as insured persons where required and showing required waivers of subrogation and coverage set forth in this Schedule A. Such coverage shall include all Supplier's employees and their equipment and vehicles used at Purchaser's premises in connection with this Purchase Order, if any. Either such certificates will show all Supplier Parties as insured persons or Supplier will obtain certificates for the same required insurance from its Supplier Parties (including all required hold harmless agreements and waivers of subrogation), and provide same to Purchaser. The certificates will show that all insurers shall give Purchaser prior written notice of cancellation or material amendment of any Insurance Policy. Should Supplier fail to take out and maintain said Insurance Policies or provide said certificates of insurance as and when required by this Purchase Order, Supplier will indemnify and hold harmless Purchaser for any loss suffered or incurred by Purchaser resulting from any shortfall in insurance; and Purchaser shall be entitled, at its discretion, to withhold any payments owing to Supplier until such time as Supplier provides the required certificates of insurance; (b) promptly notify Purchaser of any proposed amendment or any pending or actual non-renewal any of the Insurance Policies which reduces the insurance coverage provided thereunder to less than what has been stipulated in this Schedule A, and shall not agree to any such amendment or non-renewal without first obtaining the approval in writing of Purchaser; (c) ensure that all conditions of the Insurance Policies are complied with at all times; (d) not do or omit to do anything which might impair the cover under the Insurance Policies or prejudice any claim thereunder and, as soon as practical, notify Purchaser of any occurrence at Purchaser's premises of which it is aware that may give rise to a claim under any Insurance Policy and thereafter keep Purchaser informed of developments concerning the claim; (e) promptly notify Purchaser if the insurer gives notice of cancellation in respect of any Insurance Policy; and (f) immediately notify Purchaser of any event which may result in any of the Insurance Policies being cancelled.

2. **Insurance Policies:** In this Schedule A where a section states that certain specified insurance policies must be purchased and maintained to cover a specified activity and neither Supplier nor any of its employees or Supplier Parties will be undertaking such specified activity pursuant to this Purchase Order, such specified policy shall not be a required Insurance Policy for the purposes of this Purchase Order.

(A) *Products Liability Insurance:* not less than \$10,000,000 of products liability insurance on an occurrence form with a deductible of no more than \$50,000, including, without limitation, for claims by Purchaser or other third party for personal injury or property damage, including damage to the environment.

(B) *Automobile Liability Insurance:* If Supplier or any Supplier Party shall have any licensed vehicles entering Purchaser's premises (including those hauling Products) in connection with this Purchase Order, automobile liability insurance in respect of all such licensed vehicles, including all owned and/or leased vehicles in the care, custody or control of Supplier and/or any Supplier Party with minimum limit of \$2,000,000 inclusive per occurrence and such other coverages and limits as prescribed by applicable Law. To the extent that this coverage includes damage to the owned, leased or operated vehicles of Supplier and Supplier Parties, it shall include a waiver of subrogation in favour of Purchaser and its Affiliates and their respective employees and contractors.

(C) *Risk and Transit Insurance:*

**a.** In all cases (except for those Shipments noted in paragraph 2(C)b of this Schedule A), “all risks” property and cargo insurance on the replacement value of all Products to be furnished hereunder (including while on route to or from and while at, any consolidation point if any), until delivered to the applicable Delivery Point, and such insurance shall include the interests of Purchaser in such Products as they may appear, including where progress or instalment payments are made prior to delivery to the Delivery Point or where Purchaser shall otherwise have title or risk of loss to any portion of such Products.

**b.** In the case of (1) specific Shipments of Products with a value or more than \$1,000,000 in the Shipment or (2) any marine Shipments to Raglan, Quebec on Purchaser’s arranged ship, Purchaser shall arrange cargo insurance to cover the value of the such Products for the final transit to the Delivery Point from either Supplier’s site or Supplier’s consolidation point, as the case may be (the “**Final Transit**”). Such policy shall also cover Supplier’s interest in such Products, if any, provided that Supplier shall warrant to advise Purchaser of, and arrange load and stow and discharge surveys on, all shipments that are either:

- i. valued in excess of \$1,000,000;
- ii. oversized (exceeding at least one of the following dimensions: 15 M X 2.5 M X 2.5 M) or heavy lift (exceeding 20 tonnes gross weight);
- iii. shipped on deck (other than containerized cargo); and/or
- iv. critical to the on time completion of the work under this Purchase Order.

**c.** With respect to Shipments noted in paragraph 2(C)b of this Schedule A, any Shipment occurring prior to commencement of the Final Transit, Supplier shall arrange and maintain (either itself or through Supplier Parties) “all risks” property and cargo insurance on the replacement value of all Products to be furnished hereunder (including while on route to or at a consolidation point, if any), and such Insurance Policy shall include the interests of Purchaser in such Products as they may appear, including where progress or instalment payments are made prior to delivery to the applicable Delivery Point or where Purchaser shall otherwise have title to any portion of such Products.

(D) Where the employees of Supplier or any Supplier Party enter upon Purchaser’s property in connection with this Purchase Order:

- a.** statutory workers’ compensation insurance sufficient to cover all such employees; and
- b.** not less than \$2 million of commercial general liability and employer’s liability insurance for its (and Supplier Parties’) activities while on Purchaser’s property, including Purchaser as an additional insured; and

(E) if Supplier or any Supplier Party has on Purchaser’s site any assets, equipment or temporary structures that remain Supplier’s or a Supplier Party’s property, it shall (and shall cause all Supplier Parties to) insure such assets and waive any claim for theft, loss or damage to such assets that it may have against Purchaser, and indemnify and hold Purchaser harmless for any claim brought by a third party with respect to such assets, including by any Supplier Party (including respective suppliers and/or lessors of such assets) and Supplier shall obtain and cause any Supplier Party to obtain a waiver of subrogation by all insurers in favour of Purchaser.

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