

SOUTHERN CROSS GOLD PTY LTD PURCHASE ORDER

TERMS FOR SUPPLY OF GOODS AND SERVICES

1. Definitions

- 1.1 **Acceptance** has the meaning given in clause 3.4.
- 1.2 **SXG** means Southern Cross Gold Pty Ltd (ABN: 70 652 166 795) a wholly owned subsidiary of Southern Cross Gold Consolidated Limited (ARB 681 229 854) issuing the Purchase Order or its related body corporate identified as the Purchaser in the Purchase Order.
- 1.3 **Contract** means these Terms together with the Purchase Order and all documents and particular terms referenced in the Purchase Order which comprise the entire agreement for the purchase of the Goods and/or Services.
- 1.4 **Dispute** has the meaning given to it in clause 9.1.
- 1.5 **Goods** means the goods to be supplied by the Seller to SXG under the Contract as described in the Purchase Order.
- 1.6 **GST** has the same meaning given to it in the GST Law.
- 1.7 **GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 1.8 **Modern Slavery** has the same meaning as in the Modern Slavery Act 2018 (Cth)
- 1.9 **Modern Slavery Laws** means the Modern Slavery Act 2018 (Cth) and any other applicable laws relating to modern slavery, human trafficking, forced labour, child labour, or similar practices in any jurisdiction where the Seller operates or sources goods or services.
- 1.10 **Party** means SXG or the Seller and **"Parties"** means both of them.
- 1.11 **Purchase Order** means the written Purchase Order and any documents attached or incorporated by reference.
- 1.12 **Purchase Price** means the payment to be made by SXG to the Seller as described in the Purchase Order.
- 1.13 **Seller** means the party supplying Goods and Services to SXG under a Purchase Order.
- 1.14 **Services** means the services to be performed by the Seller under the Contract as described in the Purchase Order.
- 1.15 **Tax Invoice** means a document that complies with the requirements of the GST Law for a tax invoice.
- 1.16 **Terms** means these Terms for Supply of Goods and Services.

2. General

- 2.1 An amendment or variation to the Contract is not effective unless it is in writing and signed by the Parties.
- 2.2 The Contract constitutes the entire agreement between SXG and the Seller with respect to the supply of the Goods and/or Services. The Contract replaces all prior proposals and negotiations and supersedes any prior documentation in relation to the supply of the Goods and/or Services.
- 2.3 If the Seller comprises two or more persons, each person is jointly and severally responsible for all and any obligations, liabilities and indemnities in favour of SXG.
- 2.4 The Parties agree that time is of the essence in the Contract.
- 2.5 The Seller shall comply with all directions of SXG including to remove any of its personnel from SXG's site immediately upon being directed to do so by SXG a failure to comply with SXG's OHS requirements or site entry requirements including breach of duty or other wrongful conduct by the Seller or the Seller's personnel.
- 2.6 The Seller acknowledges that the SXG seeks to share economic benefits with First Nations and local communities through business and employment relationships, and in performing this Contract the Seller will seek to encourage opportunities to benefit First Nations people and local

communities. On an annual basis, Seller shall report to SXG the number of First Nations persons in Seller's organization (and in any Seller subcontractors' organizations) who are providing/have provided Goods and/or Services during the calendar year. Such report shall contain a break-down of the relevant First Nations communities of which such persons are members.

- 2.7 The relationship between SXG and the Seller is a relationship of principal and independent contractor and nothing contained in this Contract shall be construed so as to create a relationship of employment, agency or partnership between SXG and the Seller, or between SXG and any of the Seller's personnel

3. Acceptance of delivered Goods and/or Services

- 3.1 This Contract is formed upon a Purchase Order being issued by SXG to the Seller in acceptance of a tender, quotation or offer to supply Goods and/or Services by the Seller.
- 3.2 Delivery will only occur when the Goods and/or Services have been received and accepted by SXG notwithstanding any agreement to pay freight, express or other transportation charges or the passage of title by operation of law or otherwise and the cost of loss or damage in transit will be borne by the Seller.
- 3.3 Risk and property in the Goods and/or Services will pass to SXG when SXG unconditionally accepts the Goods and/or Services in accordance with the Contract.
- 3.4 All Goods and/or Services will be subject to SXG's inspection and written acceptance (**Acceptance**). If any Goods and/or Services are rejected by SXG, those Goods and/or Services will be held, subject to the Seller's instructions, at the Seller's risk and at the Seller's expense and, may be returned by SXG to the Seller, or as otherwise instructed by the Seller at the Seller's expense.
- 3.5 SXG reserves the right to reject any Goods and/or Services which are damaged or which do not conform to the quality, conditions or type specified in the Purchase Order.
- 3.6 Acceptance by SXG of all or any part of the Goods and/or Services supplied under the Purchase Order which is not in accordance with the Terms of the Purchase Order will not bind SXG to accept future deliveries.
- 3.7 Acceptance by SXG of all or any part of the Goods and/or Services will not be deemed to be a waiver of any of SXG's rights of termination or cancellation under the Contract.

4. Seller's Warranty

- 4.1 The Seller warrants that:
 - (a) Goods match the description in the Purchase Order and are manufactured or performed in accordance with the specifications provided by SXG;
 - (b) Goods are of merchantable quality, being free from defects in materials, workmanship and design (if design is provided by the Seller) and will be of kind and quality designed or specified in the Contract. Where the kind and quality is not specified in the Contract, Goods will be in new condition;
 - (c) Services are performed with the skill, care and diligence reasonably expected from a qualified, competent and experienced provider of services of a similar type and complexity as the Services;
 - (d) the Seller's equipment is suitable to perform the Services or supply the Goods, as applicable, and maintained to a high standard to ensure safe operation and to avoid any unnecessary disruption to the performance of the Services or supply of the Goods;
 - (e) Seller's personnel are appropriately trained and

experienced;

- (f) Goods and/or Services are fit for the purpose for which the Goods and/or Services of the same kind are commonly supplied and for any other purpose described in the Purchase Order or which SXG otherwise makes known to the Seller;
- (g) Goods and/or Services are of an equal standard to any sample or demonstration provided by the Seller;
- (h) Goods do not, and SXG's use will not, infringe any patent, copyright, moral right, design or trademark; and
- (i) Goods and/or Services comply with all applicable laws, regulations, licenses, permits, approvals and Australian Standards.

5. Payment Terms

- 5.1 SXG shall pay to the Seller the Purchase Price. The Purchase Price shall be the sole consideration payable to the Supplier under this Contract, and is deemed to include all risks, liabilities and obligations expressed or implied in this Contract or incurred in the course of the performance of the Services or supply of the Goods, as applicable.
- 5.2 The Seller shall submit a Tax Invoice and all such further information reasonably necessary to substantiate the Tax Invoice or any part thereof by the end of each calendar month. SXG shall pay the amount of the Tax Invoice to the Seller within the terms specified in the Purchase Order. If no payment terms are specified in the Purchase Order, the payment shall be made within 30 days of invoice date.
- 5.3 If SXG disputes any Tax Invoice, in whole or in part, SXG shall promptly notify the Seller of the dispute and shall pay only the undisputed portion. SXG and the Seller shall endeavour to settle at the earliest possible date any amount in dispute in accordance with clause 9 and any required adjustment shall be made promptly following the date of such settlement.
- 5.4 Payment for the Goods and/or Services does not imply Acceptance of the Goods and/or Services by SXG.

6. GST/Other Taxes

- 6.1 The Seller agrees to pay and discharge all taxes, duties and other imposts on the Goods and/or Services and to indemnify SXG against any liability for such taxes, duties and imposts. SXG retains the right to withhold monies due to the Seller in respect of any unpaid taxes, duties or other imposts where payment of these by SXG is required by law.
- 6.2 If the Seller is obliged under the GST Law to pay an amount of GST for a taxable supply made by the Seller to SXG or a related body under the Contract, SXG must pay the Seller an amount equal to the GST payable on the supply by the Seller.
- 6.3 SXG must pay the amount referred to in clause 6.2 and any interest, penalty, fine or expense relating to the GST, in addition to and at the same time as the consideration otherwise payable by the Seller for the supply.
- 6.4 If requested by SXG, the Seller must provide SXG with a Tax Invoice on or before payment of the amounts required by this clause 6.
- 6.5 If an adjustment event arises for a taxable supply under clause 6.2, the amounts required to be paid must be recalculated (**Recalculated Amount**) and SXG must pay the Seller the Recalculated Amount.
- 6.6 Where a Party is required to pay for or reimburse an expense or outgoing of another Party, the amount required to be paid or reimbursed is the amount of the expense or outgoing less any input tax credits to which the other party, or the representative member of a GST group to which they belong, is entitled.

7. Required insurances

- 7.1 The Seller must, at its own cost, obtain and maintain the following insurances for the term:
 - (a) general and product liability insurance including property damage for not less than \$20,000,000 with respect to any one claim;
 - (b) goods in transit insurance for not less than the replacement value of the Goods;
 - (c) worker's compensation insurance in accordance with the applicable State legislation;
 - (d) comprehensive motor vehicle insurance covering all mechanically propelled vehicles used at any time in connection with the Supply including third party property damage for not less than \$30,000,000;
 - (e) compulsory third party personal injury motor vehicle insurance; and
 - (f) if the performance of this Contract involves the performance of professional services, professional indemnity insurance in the amount of \$5m with respect to any one claim and in the aggregate in respect of acts, errors and omissions in the performance of professional services.

7.2 Evidence of insurance

The Seller shall, before supplying Goods and/or Services, lodge with SXG certificates of currency to evidence the existence of the policies required to be arranged by the Seller and its subcontractors in respect of such insurance, and shall provide updated certificates of currency during the term.

8. Assignment and Subcontracting

- 8.1 The Seller will not, without the prior written consent of SXG, assign or otherwise transfer any of its rights, duties or obligations under the Contract, either in whole or in part. SXG will not unreasonably withhold its consent.
- 8.2 SXG, without the consent of the Seller, may:
 - (a) assign or transfer any or all of its rights or transfer or novate any or all of its liabilities and obligations under the Contract and any asset delivered or provided under the Contract to:
 - (1) a related entity of SXG; or
 - (2) any person to whom SXG transfers an asset to which the Goods and/or Services relate.
- 8.3 The Seller must ensure that all subcontractors of the Seller engaged in respect of any Goods and/or Services take out insurances providing the same coverage to the subcontractors and to SXG and SXG's personnel as the insurances required under clause 7. If requested by SXG, the Seller must provide to SXG certificates of currency for each of the policies for its subcontractors' insurance.

9. Dispute Resolution

- 9.1 If a dispute arises between the Parties in relation to the interpretation of the Contract or the rights of any Party under the Contract (**Dispute**), a Party must not commence court or arbitration proceedings relating to the Dispute unless that Party has participated in the dispute resolution procedures set out in this clause 9.
- 9.2 Nothing in this clause 9 will prevent a Party instituting proceedings for the purposes of seeking urgent injunctive or similar interim relief from a court.
- 9.3 A Party claiming that a Dispute has arisen must give a written notice specifying the nature of the Dispute (**Dispute Notice**) to the other Party.
- 9.4 As soon as practicable after the giving of a Dispute Notice, a senior executive of each Party must meet and attempt to resolve the Dispute by negotiation within 7 days of the giving of the Dispute Notice.

- 9.5 Notwithstanding the existence of a Dispute, each Party must continue to perform its obligations under the Contract.

10. Indemnity

- 10.1 The Seller indemnifies SXG and SXG's related entities (each an **Indemnified Person**) against:
- (a) any liability or claim suffered or incurred by the Indemnified Person in connection with any wrongful act or omission by the Seller or the Seller's personnel, including:
- (1) a breach of contract, including a breach of these Terms;
 - (2) tort, including negligence or breach of a statutory duty; or
 - (3) breach of equitable duty.
- (b) without limitation to clause 10.1(a) above, any liability suffered or incurred in connection with any claim against the indemnified person arising in connection with:
- (1) death or personal injury to any person (including SXG's personnel or the Seller's personnel) or damage to, or loss or destruction of, property of any person (including any Indemnified Person) that occurs whilst the Seller is delivering the Goods and/or Services; or
 - (2) the performance or non-performance of the Goods and/or Services or any activity for which the Seller is responsible under this Contract or the presence on or about SXG's site of the Seller or the Seller's personnel,
- whether or not the liability arises in connection with a breach of duty or other wrongful conduct by the Seller or the Seller's personnel,
- provided that the Seller is not liable to an Indemnified Person under this indemnity to the extent (and in the proportion) that such liability or claim (as applicable) arises from any negligent or wrongful act or omission of any Indemnified Person.
- 10.2 Any liability of the Seller to indemnify SXG or SXG's related entities under this clause 10 shall be reduced proportionally to the extent that a wrongful act or omission of SXG or a related entity of SXG caused the:
- (a) death or personal injury to any person; or
 - (b) damage to or loss of property of any person.
- 10.3 An Indemnified Person need not incur any cost or make any payment before enforcing any right of indemnity under this clause 10.
- 10.4 SXG holds the benefit of the indemnity under this clause 10 for itself and on behalf of each other Indemnified Person.
- 10.5 Without limitation to the above indemnity, the Indemnified Persons must use reasonable endeavours to minimise any liability which is the subject of the above indemnity.

11. Limitation of Liability

- 11.1 **Exclusion of Consequential Loss**
- Subject to clause 11.3, no Party will be liable to the other for any loss of actual or anticipated profit, loss of overhead, loss of contract, loss of revenue or loss of opportunity, howsoever caused, including under a tort (including negligence), by statute or otherwise.
- 11.2 **Cap on Seller's liability to SXG**
- Subject to clause 11.3, the Seller's maximum liability to SXG in respect of this contract will be limited to the Purchase Price.
- 11.3 **Exceptions**
- Clauses 11.1 and 11.2 do not limit the Seller's liability:

- (a) in respect of death of or personal injury to any person (including SXG's personnel or the Seller's personnel);
- (b) in respect of damage to or destruction of the property of a third party caused by the wrongful act or omission of the Seller or the Seller's personnel;
- (c) in respect of any act or omission which constitutes fraud, wilful misconduct or gross negligence;
- (d) for any obligation to indemnify SXG in respect of any of the matters set out in this clause 11.3;
- (e) for any amount which is recoverable under a policy of insurance effected under this Contract or which would have been recoverable had the Seller effected insurance in accordance with this Contract; and
- (f) for the costs of rectifying any defect.

12. Confidentiality

A Party must not disclose the contents or terms of the Contract or any information or documents received by it in connection with the negotiation or terms of the Contract without the prior written consent of the other Party unless:

- (a) the information is available to the public generally (except as a result of a previous breach of this clause 12);
- (b) that Party is required to make the disclosure by law; or
- (c) the disclosure is made on a confidential basis to the representatives or professional advisers of that Party for the purpose of obtaining advice.

13. Suspension and Termination

- 13.1 SXG may, without prejudice to any other of its rights or remedies, by written notice to the Seller, suspend or immediately terminate this Contract for its convenience. If SXG terminates this Contract pursuant to this clause 13.1, the Seller shall be entitled to payment from SXG for any Goods and/or Services supplied to SXG prior to the suspension or termination.
- 13.2 SXG may, without prejudice to any other of its rights or remedies, by written notice to the Seller, suspend or immediately terminate this Contract if:
- (a) the Seller becomes insolvent;
 - (b) the performance of the Seller's personnel is in the reasonable opinion of SXG unsatisfactory (and the Seller has no replacement personnel acceptable to SXG) by reason of an unreliable or unprofessional approach to the delivery of the Goods and/or Services, insobriety, personal illness or incapacity, or personal misconduct;
 - (c) the Seller or its personnel fail to comply with or breach any of the terms of any applicable health and safety laws and the breach is not remedied within 30 days of receiving written notice from SXG that it is required to do so; or
 - (d) the Seller breaches any of the terms or conditions of the Contract and does not remedy the breach within 30 days of receiving written notice from the Seller that it is required to do so.
- 13.3 At the termination of the Contract, or at any time before then if so requested by notice from SXG, the Seller shall deliver all property of SXG which is in the possession, power or control of the Seller or any personnel and shall do so in accordance with any reasonable requirements set out in SXG's notice.
- 13.4 Termination of the Contract is without prejudice to any other rights or remedies a Party may have.

14. Modern Slavery Compliance

- 14.1 The Seller warrants and undertakes that:
- (a) it does not engage in any Modern Slavery practices

- and complies with all Modern Slavery Laws;
- (b) it has implemented appropriate policies and due diligence processes to identify and address Modern Slavery risks in its operations and supply chains;
- (c) it will take reasonable steps to ensure that its subcontractors and suppliers do not engage in Modern Slavery practices; and
- (d) it will immediately notify SXG if it becomes aware of any actual or suspected Modern Slavery practices in connection with this Contract or its supply chain;
- (e) it will cooperate with SXG in relation to any Modern Slavery compliance inquiries, audits or investigations; and
- (f) provide SXG with reasonable information about its supply chain and Modern Slavery compliance measures upon request
- (g) it indemnifies SXG and SXG's related entities against any liability, loss, damage, cost or expense arising from any breach of this clause 14 or any Modern Slavery practices by the Seller or any entity in the Seller's supply chain;

15. Governing Law

This Contract is governed by and construed in accordance with the Laws of Victoria, Australia and each party submits unconditionally to the exclusive jurisdiction of the courts of Victoria, Australia.