



**GRAYMONT**

## STANDARD TERMS AND CONDITIONS OF SALE

### 1. Application of Terms

- (a) These Terms apply to all Products supplied by Graymont (Australia) Pty Ltd ACN 004 406 688 (or a Subsidiary) (**Seller**) to a Buyer.
- (b) Unless expressly agreed by the Seller in writing, these Terms override any quotes, purchase orders, invoices or other documentation exchanged between the parties whether or not such documents expressly provide that they override these Terms. These terms will be deemed to have been accepted by the Buyer placing a Purchase Order.

### 2. Quotations and Purchase Orders

- (a) A Quotation will be valid for a period of 30 days from the date the Quotation was provided (unless extended in writing by the Seller).
- (b) A Quotation is subject to change at any time prior to acceptance of a Purchase Order by the Seller, which acceptance may be by supply of all or part of the Products ordered.
- (c) The Seller may refuse to accept a Purchase Order, or part of a Purchase Order, placed by the Buyer without giving reasons.

### 3. Price

- (a) Subject to clause 3(b), unless otherwise agreed in writing, such as in a valid Quotation, the price of the Products will be the Seller's current price at the date of the delivery of the Products according to the Seller's current price list and standard charges.
- (b) The Seller may change its prices and charges relating to the Products as a result of any changes to mineral royalties or government taxes (including tariffs) or if the Seller incurs any increase in the costs of producing, transporting or supplying the Products.
- (c) Unless prices are stated to include any sales, value added, Products tax or similar tax or import duties that may apply, such taxes and duties are payable by the Buyer in addition to the quoted prices.
- (d) Where the Seller is supplying Products on a delivered basis, the price charged by the Seller contains a fuel cost component which is subject to increase where the Seller's delivery costs for those Products increase.
- (e) If the Seller incurs any increase in the costs of producing, transporting or supplying the Products as a direct or indirect result of the introduction or operation of legislation relating to the production or emission of carbon dioxide, those costs will be passed through to the Buyer except to the extent this may be prohibited by legislation.
- (f) Notwithstanding anything in this clause 3, the Seller must provide the Buyer with written notice of any pricing or cost changes.

### 4. Payment

- (a) The Seller will issue a valid Tax Invoice (as defined in the GST Act) for each delivery of Products.
- (b) The Buyer must pay all invoices by the due date for payment and on the terms stated on the Seller's invoice. If no date is stated by the Seller, then payment must be made within 30 days from invoice date.
- (c) The Buyer must make payment in cash by electronic transfer into the account nominated by the Seller in the currency nominated in the invoice.
- (d) The Seller may amend the Buyer's credit terms at any time by providing written notice to the Buyer. If the Buyer fails to comply with the new credit terms, the Seller may cancel the supply of Products by providing written notice to the Buyer. The Seller is not liable for any Loss arising from such cancellation.
- (e) Without prejudice to any other rights or remedies of the Seller, if the Buyer fails to make any payment by the due date, the Buyer must also pay to the Seller:
  - (i) interest on the unpaid amount at the current Reserve Bank of Australia cash rate plus 5%, or the highest rate permitted by law, accruing from the date payment was due to the date payment is made; and
  - (ii) any reasonable costs for agents incurred by the Seller in recovering money due from the Buyer, including legal costs on a solicitor-client basis, debt collection charges, and court costs.

- (f) In the event of non-payment by the Buyer or a breach of clause 12, the Seller may immediately by written notice either suspend supply or terminate a Contract.
- (g) The Seller may immediately terminate a Contract by written notice if the Buyer suffers, or in the Seller's reasonable opinion is likely to suffer, an Insolvency Event.

### 5. Delivery

- (a) The Seller will use reasonable endeavours to deliver the Products for which it has accepted a Purchase Order or Contract to the agreed delivery location by the date specified in the Purchase Order or Contract.
- (b) If the Seller provides the Buyer with a weighbridge delivery docket, the docket will be conclusive and binding on the parties.
- (c) The Seller may deliver the Products by separate instalments. Each separate instalment will be invoiced and paid for in accordance with clauses 3 and 4.
- (d) The delivery date is an estimate only and the Seller is not liable for any Loss whatsoever due to the failure by the Seller to deliver the Products (or any of them) promptly or at all.
- (e) The Seller may invoice the Buyer for the reasonable costs of storage, insurance and any other holding charges incurred by the Seller if delivery of the Products is delayed by the Buyer.
- (f) While on the other party's premises, each party must comply, and require its agents and subcontractors to comply, with the other party's policies, procedures and any other site instructions and all applicable laws, including "chain of responsibility" laws.
- (g) The Buyer is responsible for managing all environmental, health and safety hazards at the Buyer's premises and delivery site and otherwise ensuring that the receiving equipment is in a suitable condition for receiving the Product safely and without causing environmental harm.
- (h) Without limiting the obligations in clause 5(f), where the Seller delivers the Products to the Buyer by bulk pneumatic truck, the Buyer must ensure that the receiving facility (including without limitation a receiving silo, isocontainer or spreader truck) has such items as a working high level sensor alarm, a relief valve and an appropriate pollution control device to manage discharged air quality; and must ensure that each silo has an adequate filtration system and an adequate pressure release valve that is serviceable and fitted at all times.
- (i) Where the Product is supplied ex-works, the Buyer must ensure that any vehicle and equipment used to collect the Product is in a safe working condition and insured for third party property damage.
- (j) Acronyms or terminology used to describe the manner of delivery of the Products have the meaning given to them in the Incoterms 2020 unless otherwise specified by the parties.

### 6. Delivery by Offshore Vessels

- (a) If the Products are to be delivered by bulk shipment, the following terms apply:
  - (i) If the Buyer's vessel is to be used, the Seller reserves the right to inspect the holds of the Buyer's vessel prior to loading. The inspection will be conducted by a registered independent surveyor at the Seller's discretion and cost.
  - (ii) If the Seller, acting reasonably, does not approve the Buyer's vessel, the risk and cost of such rejection and associated cleaning and protection shall be at the Buyer's account. Furthermore, laytime shall not count until the Buyer's vessel is suitable in all respects for loading.
  - (iii) The Seller shall not be responsible for contamination of Products which has occurred after the Products have been loaded into the holds of Buyer's vessel, regardless of whether an inspection has been conducted.
- (b) If the Products are to be delivered by bulk or container shipment, the following terms also apply:
  - (i) The Parties must comply with the insurance obligations set out in the relevant Incoterms 2020. The Buyer must ensure such policies of insurance provide sufficient coverage so as to cover the value of loss of the entire shipment of Products and are effected and maintained with a reputable and solvent insurer.

- (ii) The Seller will provide the Buyer with a certificate of weight which will specify the quantity of the Products as determined using equipment certified by a government-approved third party.
- (iii) The Seller may provide the Buyer with a certificate of analysis in relation to the Products supplied.
- (iv) Subject to clause 9, the certificates of weight and analysis shall be conclusive and binding on the parties.
- (v) Demurrage costs incurred due to port congestion beyond the Seller's control shall be sole liability of the Buyer.

#### 7. Title and Risk

- (a) The risk in the Products passes to the Buyer at the following times:
  - (i) for supply for which the Buyer is responsible for transportation arrangements, at Seller's Site when the Products have been loaded into the transportation equipment supplied by or on behalf of the Buyer; or
  - (ii) for all other supplies, when the Products have been unloaded at the point of delivery.
- (b) Title to the Products passes to the Buyer on payment in full of the Price for the Products.
- (c) Until full payment in cleared funds is received by the Seller for all Products supplied by it to the Buyer:
  - (i) legal title and property in all Products supplied under a Contract remain vested in the Seller and do not pass to the Buyer (regardless of whether the Products have been altered from their supplied form or commingled with other goods);
  - (ii) the Buyer holds the Products as bailee for the Seller;
  - (iii) the Buyer must keep the Products separate from other Products and maintain the labelling and packaging of the Seller so that they are readily identifiable as the property of the Seller;
  - (iv) the Buyer must not sell the Products except in the ordinary course of the Buyer's business;
  - (v) the Buyer holds and agrees to hold the proceeds of any sale of the Products on trust for the Seller; and
  - (vi) the Seller may without notice, enter any premises where it suspects the Products may be located and remove them without committing a trespass, even though they may have been attached to other Products or land not the property of the Seller, and for this purpose the Buyer irrevocably licences the Seller to enter such premises and also indemnifies the Seller from and against all Loss suffered or incurred by the Seller.

#### 8. Changes to Volume, Delivery, etc.

- (a) Product volumes are in metric tonnes.
- (b) If the Buyer orders a volume of Products that is less than the minimum volume required for the vehicle combination that the Seller selects, acting reasonably, for the delivery of Products, the Buyer will be charged the freight costs for such minimum volume required for the vehicle combination.
- (c) The Seller may charge the Buyer for any costs incurred by the Seller arising from any addition, cancellation, or re-scheduling of a Purchase Order that is received by the Seller's order desk after 12:00 pm, local time, on the Business Day before the applicable scheduled delivery date.
- (d) Any order for Products that is cancelled or postponed at any time after the Products have been dispatched from the relevant point of supply may be subject to a cancellation fee, freight cost, and a returns handling fee. If the order can be diverted to an alternate location, it may be subject to a diversion fee and a cancellation fee.
- (e) If delays beyond the Seller's control occur at the point of delivery, the Seller may charge the Buyer demurrage fees.

#### 9. Warranty

- (a) If the Buyer is a "consumer" for the purposes of the Australian Consumer Law, certain statutory guarantees (**Consumer Guarantees**), rights and remedies may be conferred on the Buyer which cannot be excluded, restricted or modified. However, liability for a breach of the Consumer Guarantees may be limited as provided for in clause 9(b).
- (b) The Seller's liability for failure to comply with a Consumer Guarantee (other than a guarantee under section 51, 52 or 53 of the Australian Consumer Law) which applies to a good or service supplied under this Agreement which is not of a kind ordinarily acquired for personal, domestic or household use or consumption is limited to:

- (i) in the case of goods, to any one of the following as determined by the Seller:
  - (A) the replacement of the goods or the supply of equivalent goods; or
  - (B) the payment of the cost of replacing the goods or of acquiring equivalent goods; and
- (ii) in the case of services, to any one of the following as determined by the Seller:
  - (A) the supplying of the services again; or
  - (B) the payment of the cost of having the services supplied again.

- (c) In addition to, and without limiting, the Consumer Guarantees at law, the Seller warrants solely to the Buyer that, for a period of thirty (30) days after the Products were delivered (**Warranty Period**), that the Products will materially conform with any specifications provided in the Contract or, if none have been provided, the Seller's "Technical Data Sheet" or "General Specifications" for Products (**Limited Warranty**). Except only for the express Limited Warranty, the Consumer Guarantees and similar state and territory laws, which cannot be lawfully excluded, restricted or modified, all conditions and warranties, whether statutory or otherwise, are excluded in relation to the Products, including without limitation the exclusion of any implied warranties of merchantability or fitness for a particular purpose.
- (d) The Buyer must, as soon as possible after delivery, check the Products. In the event of a suspected defect, the Buyer must, within the Warranty Period, deliver written notice to the Seller accompanied by documentation and Product samples demonstrating that the Product does not comply with the Limited Warranty and identifying how much of the Product is not in compliance (**Notice of Defect**).
- (e) Should a dispute arise regarding whether Products meet the Limited Warranty, the parties must submit a representative sample from the relevant order of Products for independent testing, and the results of that test will be conclusive of the matter.
- (f) The Buyer shall be deemed to have fully and finally accepted all the Product without objection or reservation if a Notice of Defect is not delivered to the Seller by the Buyer within the Warranty Period and in strict accordance with this clause. In the event of a breach of the Limited Warranty and if the Buyer timely delivers to the Seller a Notice of Defect within the Warranty Period, the Seller shall, at its option:
  - (i) deliver, free of charge, replacement Products; and / or
  - (ii) refund the Buyer the amount actually paid for the defective portion of the Products not replaced by the Seller (unless the Buyer requests otherwise, such refund will be provided by way of credit to the Buyer).
- (g) Subject to clause 9(a) and 9(b), the performance of the Seller's obligations under this clause shall be the Buyer's sole and exclusive remedy and constitute the Seller's entire obligation and aggregate liability to the Buyer for any breach of the Limited Warranty.

#### 10. Claims and limitation of liability

- (a) Subject to Clause 10(b) and to the extent permitted by law, the Seller's maximum liability to the Buyer in respect of any claim for loss or damage arising out of or in connection with the supply of the Product (including as a result of third party claims) or the Contract shall be limited to the price paid for the Products in respect of which such loss or damage is claimed regardless of the form of action, whether based in contract (including under an indemnity), tort (including negligence), strict liability, or otherwise, or for any fundamental or wilful breach.
- (b) In no circumstances whatsoever will the Seller be liable for any consequential, special or indirect loss or damage, or for any loss of profit, loss of use, loss of goodwill, loss of revenue, loss of business opportunity, loss of production, or any similar type of loss however arising.

#### 11. Hazardous Products

- (a) If the Products have been classified as a hazardous substance the Buyer acknowledges that the Buyer has received and read the information provided to the Buyer by the Seller, including, but not limited to:
  - (i) the relevant Safety Data Sheets attached to the Quotation, if applicable;
  - (ii) the acknowledgements (if any) concerning the possible risks associated with the hazardous substance; and
  - (iii) any other safety materials or information provided by the Seller including any safety information contained on the

Seller's website at [www.graymont.com](http://www.graymont.com) which the Seller specifically identifies as being applicable to the Product(s) purchased (**Safety Data**).

- (b) The Buyer warrants and represents that it will:
- (i) ensure that each purchaser of a Product from it agrees in writing to read all Safety Data before using the Product; and
  - (ii) ensure that each purchaser of a Product from it is purchasing that Product for its own use (including a use that involves applying that Product to the land of one or more of its customers).

## 12. Healthy and Safety

- (a) When attending any site or premises at which the Products are delivered to or collected by a party (**Site**), the relevant party will, and must ensure that its employees, agents, officers, apprentices/students, volunteers, or subcontractors (**Workers**) will:
- (i) comply with all Safety Laws and keep the other party indemnified against all fines, penalties, losses or damages incurred by reason of, and/or any claim made as a result of any breach by that party or its Workers of the Safety Laws;
  - (ii) comply with the other party's standards and rules applicable to health and safety at the Site, ensuring that they are inducted to an appropriate induction standard at that Site;
  - (iii) comply with any lawful direction given by the other party with respect to work health and safety;
  - (iv) not wilfully or recklessly interfere with or misuse anything provided for work health and safety at the Site;
  - (v) not wilfully place at risk the work health and safety of any other person;
  - (vi) not wilfully injure themselves;
  - (vii) not do anything or fail to do anything that would cause the other party to be in breach of its obligations under the Safety Laws;
  - (viii) assist the other party to provide and maintain a safe and healthy workplace where all hazards, unsafe acts and/or conditions are identified and analysed before being controlled by elimination/isolation or minimisation of the risk of harm; and
  - (ix) immediately notify the other party of any identifiable hazards, incidents or near misses which come to its attention whilst on the Site when collecting or delivering the Products.
- (b) Each party will ensure that plant and equipment (including transport vehicles) being used by it when taking possession of the Products are adequately maintained by appropriately qualified persons, roadworthy (as applicable), clean, fit for purpose, and safe for use, including by maintaining appropriate maintenance records and providing, on request by the other party, copies of those records and access to all necessary manuals, instructions or other safe operating procedures where relevant.
- (c) The Buyer must have a written procedure to ensure that checks of the condition of plant and equipment are conducted (to the Seller's satisfaction) for damage likely to cause or promote contamination; cleanliness; and presence of foreign material in or on the walls, bed, top and bottom hatches, tarpaulins, pneumatic lines, and hoses.
- (d) Without limiting the obligations in this clause 12, where the Seller delivers the Products to the Buyer by bulk pneumatic truck, the Buyer must ensure that the receiving facility (including without limitation a receiving silo, isocontainer, or spreader truck) has items such as a working high level sensor alarm, a relief valve, and an appropriate pollution control device to manage discharged air quality; and must ensure that each silo has an adequate filtration system and an adequate pressure release valve that is serviceable and fitted at all times.

## 13. Insurance

- (a) The Seller represents that it holds and maintains with a reputable insurer:
- (i) Workers compensation insurance in accordance with statutory obligations; and
  - (ii) Public and product liability insurance up to a limit of AUD\$10,000,000.
- (b) If requested by the Buyer, the Seller will provide certificates of currency for these insurance policies.

## 14. Taxes and Duties

- (a) Terms used in this Clause 14 are as defined in the GST Act, unless the context indicates otherwise.
- (b) To the extent that any supply of Products is a taxable supply, the Buyer must pay, in addition to the consideration to be provided

under the Contract for that supply (unless it expressly includes GST) an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply, provided that the Seller has first issued to the recipient a Tax Invoice in respect of that taxable supply.

- (c) Unless otherwise agreed, all other taxes and import duties owing for the purchase, sale, production, shipment, transportation or delivery of the Products shall be at the Buyer's own account. The Buyer agrees that if any of the foregoing is paid by the Seller or withheld by the Buyer, the Buyer shall reimburse the Seller for the amount paid.

## 15. Dispute Resolution

- (a) In event of any dispute, claim or failure to agree, arising out of or relating to a Contract, the parties shall try to settle that dispute, claim or failure to agree, amicably by negotiation within thirty (30) days of giving notice of the dispute in writing to the other party. If the parties cannot resolve the dispute within thirty (30) days, then by agreement the dispute may be resolved by arbitration by a single arbitrator.
- (b) The arbitration will be conducted in the State of New South Wales Australia according to the applicable commercial rules of the International Chamber of Commerce (ICC). All proceedings, decision and findings shall be confidential and final and binding on the parties with respect to the subject matter in dispute.

## 16. PPSA

- (a) Terms used in this Clause 16 are as defined in the PPSA, unless the context indicates otherwise.
- (b) The Buyer agrees that the Seller will have a Purchase Money Security Interest in the Products; consents to the Seller registering any security interest under a Contract on the PPS Register; irrevocably and unconditionally waives its right to receive any notice from the Seller under the PPSA; and agrees not to allow a security interest to be created over the Products in priority to that held by the Seller.

## 17. General

- (a) Except as otherwise permitted by the Seller in writing, the Products are for the Buyer's use only and the Buyer will not sell the Product to a third party.
- (b) The parties agree to keep confidential the contents of a Contract and related material.
- (c) The Seller may collect the Personal Information and Sensitive Information (each as defined in the *Privacy Act*) of the Buyer from the Buyer directly or from any person authorised by the Buyer from time to time. The Seller may collect, use, disclose, process and otherwise handle such information in accordance with the Seller's privacy policy, a copy of which can be found on the Graymont website or requested by the Buyer. To the extent that Personal Information or Sensitive Information held by the Seller or its agents is provided to, obtained or accessed by the Buyer, the Buyer must, in the course of collecting, using, disclosing, transferring, storing or otherwise handling such information, comply with the Privacy Act, the Seller's policies, and all reasonable requests and directions from the Seller.
- (d) All intellectual property rights in the Products shall remain the property of the Seller.
- (e) Where Force Majeure prevents or delays the Seller from performing any obligation under a Contract, that obligation is suspended as long as the Force Majeure continues.
- (f) The relationship between the Seller and the Buyer is that of an independent contractor and is not, shall not be construed to be, a partnership, agency, or employment relationship.
- (g) The Buyer and the Seller exclude the application of the United Nations Convention on Contracts for the International Sale of Goods.
- (h) Any term by its nature intended to survive termination of a Contract survives termination.
- (i) These terms are governed by the laws of New South Wales, Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State and courts entitled to hear appeals from those courts.
- (j) Each Contract supersedes all previous agreements in respect of its subject matter and embodies the entire agreement between the parties in respect of its subject matter.
- (k) A waiver of any right arising under a Contract must be in writing and signed by the party granting the waiver. Any variation of a Contract must be in writing and signed by the parties.

- (l) The Buyer must not assign or transfer a Purchase Order or Contract or any of its rights or obligations thereunder without the prior written consent of the Seller.

#### 18. Definitions

**Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.

**Business Day** means any day which is not a Saturday, Sunday or public holiday in the applicable Australian state or territory.

**Buyer** means the person or entity who buys Products from the Seller.

**Contract** means a contract to sell Products arising out of a Quotation or any other specific terms expressly agreed to by the Seller in writing and these Terms.

**Force Majeure** means an act of God; war, revolution or any other unlawful act against public order or authority; an industrial dispute including strike or other labour disturbances; port or traffic congestion; a governmental restraint; a shortage or unavailability of raw materials, reserves, production capacity or transportation; cyber-attack or ransomware, that impacts the Seller or any of its suppliers or service providers; and any other event which is not within the reasonable control of the Seller.

**GST Act** means *A new Tax System (Goods and Services Tax) Act 1999 (Cth)*;

**Insolvency Event** means in respect of a person, any one or more of the following events:

- a. an application is made to a court for an order that it be wound up, declared bankrupt or that a provisional liquidator or receiver or receiver and manager be appointed, and the application is not withdrawn, struck out or dismissed within 14 days of it being made;
- b. a liquidator or provisional liquidator is appointed and the appointment is not terminated within 14 days of it being made;
- c. an administrator or a Controller (as defined in section 9 of the *Corporations Act*) is appointed to any of its assets and the appointment is not terminated within 21 days of it being made;
- d. it enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors, in each case other than to carry out a reconstruction or amalgamation while solvent;
- e. it proposes a winding-up or dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- f. it is insolvent as disclosed in its accounts, or otherwise states that it is insolvent, or it is presumed to be insolvent under an applicable law;
- g. it becomes an Insolvent under Administration or action is taken which could result in that event and the proceeding is not dismissed within 14 days of the date action is taken;
- h. it is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the *Corporations Act*;
- i. a notice is issued under sections 601AA or 601AB of the *Corporations Act* and not withdrawn or dismissed within 21 days;
- j. a writ of execution is levied against it or its property which is not dismissed within 21 days;
- k. it ceases to carry on business or threatens to do so, other than for reorganisation or restructuring in accordance with the terms of this deed; or
- l. anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition.

**Loss** means all actions, claims, costs (including legal costs on an indemnity basis), damages, expenses, interest, liabilities and losses (including any *special, indirect, consequential loss*, loss of profit, loss of goodwill, loss of revenue, loss of business opportunity, loss of production or any similar type of loss, however arising).

**PPSA** means the *Personal Property Securities Act 2009 (Cth)*;

**Privacy Act** means the *Privacy Act 1988 (Cth)*.

**Products** means products supplied by the Seller to the Buyer.

**Purchase Order** means an order issued by or on behalf of the Buyer setting out details of the Products that the Buyer requires the Seller to supply.

**Quotation** means any quotations or offer of "Contract for Sale" for the sale of Products issued by the Seller to the Buyer.

**Safety Laws** means work health and safety statutes, by-laws and regulations, codes of practice, advisory standards or relevant

policies or procedures as in force from time to time in the relevant jurisdiction affecting or in any way relating to the Products.

**Subsidiary** has the meaning given in *Corporations Act 2001 (Cth)*.

**Terms** means the terms and conditions of the supply set out in this document, including any variation to such terms and conditions.