

## **GENERAL TERMS AND CONDITIONS OF PURCHASE** **(Unless otherwise expressly agreed upon** **in the course of the order preparation)**

### **Article 1: Scope**

1. The Purchase order is a legal document. The present general terms of purchase shall apply to all purchases of goods, products and services (the "Supply") and to any order of provisions of services, issued by Rio Tinto-QMM SA.
2. The purchase order is handed over to the Supplier in one (1) exemplary

### **Article 2: Entry into force and Duration**

1. The Purchase order shall be deemed accepted by the supplier by signing on Rio Tinto-QMM S.A.'s register or by acknowledging its reception.
2. The reception of the purchase order shall be worth acceptance and date of entry into force of these terms and conditions, unless a particular date or deadline is expressly indicated by Rio Tinto-QMM SA.
3. Any initial step in the execution of the Order shall be deemed an express acceptance thereof. The duration and the possible renewal of the contract shall be specified in the Order.
4. If the amount indicated in the Order issued by the purchaser differs from the agreed prices between the parties or if the order comprises elements which make its execution impossible, the supplier shall return the aforementioned Order duly modified and signed to the purchaser within 3 calendar days following its issuance by the purchaser.

### **Article 3: Contractual documents**

1. The present general terms and conditions of purchase shall prevail over the Supplier's general terms and conditions of sale. They shall have the value of a contract. The price of the supplies and/or the services shall be those shown on the Order. Unless otherwise expressly stipulated in the Order, the price shall be deemed firm, not revisable, contractual and tax-free.
2. Within the scope of a contract concluded on line, such contract shall be deemed concluded once Rio Tinto-QMM SA has placed its order, get its reception acknowledged by the author of the offer, and confirms its acceptance.
3. The supplier shall be bound to check if the indications and data contained in the documents constituting the contract are compliant with the laws and regulations in force and the code of practice and shall inform Rio Tinto-QMM SA in case of non compliance.
4. The Supplier shall commit itself to respect the Specifications and the Product technical requirements

### **Article 4: Packaging and Shipping**

1. The packaging of supplies, at the expense of the Supplier, shall be fit to the type of supplies, the way they are shipped, the place of destination and must allow its safe and easy unloading.
2. The Supplier shall commit itself in respecting the set of rules applicable to the shipping of goods and products ordered by Rio Tinto-QMM SA. The Supplier shall organize the shipping of these goods and products with the constant concern to ensure the respect of their quality and complete safety, in particular, by checking that the conveyor abstains from transporting hazardous products such as defined by the applicable standards in the vicinity of the goods and products ordered by Rio Tinto-QMM SA.

### **Article 5: Delivery**

1. Deliveries, at the Supplier's own expenses and risks, shall be made during Rio Tinto-QMM SA working hours, at the place shown on the Purchase order. There cannot be tacit reception.
2. Any delivery could be refused if it is not accompanied by a detailed Delivery order containing a reference to the Order number.
3. In the event of modification brought to the order by the Supplier, such order shall expressly be accepted by Rio Tinto-QMM SA and shall give rise to a new order (or an amendment to the initial order) incorporating this modification.
4. Hazardous products must be accompanied by the safety identification sheet or MSDS (Materials Safety Data Sheets), otherwise the delivery could be refused.

## Article 6: Reception

1. The delivery shall be deemed accepted only after control of quality and quantity by the services of Rio Tinto-QMM SA. In the event of a partial delivery, the supplier must advise the Procurement Manager as of the reception of the Purchase order. The company reserves the right to reject a partial invoicing.
2. If, at the time of the reception, it appears that the Supplier did not meet its contractual or legal obligations, Rio Tinto-QMM SA shall reserve the right not to pronounce the reception and to proceed to the cancellation of the Purchase order by simple mail, of all or part of an order not delivered within the agreed delay and to have the failing contractor take in charge of expenses subsequent to the non-performance of its delivery obligation.
3. All the agreed deadlines set out in the order shall bind the supplier in an imperative way; no modification can be made to the deadlines stipulated in the order without the prior written agreement of Rio Tinto-QMM SA.
4. The supplier shall be held to immediately inform Rio Tinto-QMM SA of any event which may impact on these deadlines. In the event of attributable to the supplier, the purchaser shall reserve the right, without the need to issue a notice:
  - to ask to the Supplier about the measures taken to curtail the delay;
  - to apply the penalties for delay, without prejudice of possible damages.
5. In any event, the penalties for delay are computed according to the formula:

$$P = V \times R / 2D$$

(P = penalty, V = late value, R = delay in days and D = deadline)

## Article 7: Conditions and modes of payment

1. Unless otherwise stated in the order, the payments shall take place thirty (30) days following the reception of the invoice by Rio Tinto-QMM SA's accounting department. Payments are made by transfer, cheque or 30-day bill for the end of month.
2. The Supplier shall not be able to in no case dispose of or delegate its debt without the express and prior authorization of Rio Tinto-QMM SA.
3. Under penalty of making hindrance to payment, invoices must be addressed by e-mail to: [gmmcomptes.payables@riotinto.com](mailto:gmmcomptes.payables@riotinto.com) < <mailto:gmmcomptes.payables@riotinto.com> >, and if this is not possible, the mailing address is as follows: P.O. Box 225, Fort Dauphin 614. It is necessary to mention the Purchase order number and to join the delivery slip and/or proof of acceptance of services.

## Article 8: Guarantee

1. For any accepted order, there is an implicit guarantee against hidden defects, defects of execution or bad workmanship, fitting of installation, professional misconducts for one year period as from the delivery.
2. If it appears that the Supplier did not meet its obligations, it shall, and this rests upon the choice of Rio Tinto-QMM SA, notify by any means the Supplier: to recover at its own expenses and risks, to replace, remake or correct any questionable supply and/or service or have made the supply and/or the service compliant at the expenses of the supplier, including transportation costs, labour, and fitting.
3. If necessary, the supplier shall repay the purchaser the already settled installments, without prejudice to damages and interest Rio Tinto-QMM SA could charge the Supplier.

## Article 9: Insurance

1. The Supplier shall contract and maintain valid any insurance needed to the adequate coverage of all the risks likely to occur because of the execution of the contract.
2. This insurance policy shall be subscribed at a manifestly solvent insurance company and the supplier shall be able to present, at any time and on simple request from Rio Tinto-QMM SA this insurance policy and the payment of premiums.
3. Such an insurance shall be maintained for all the duration of the contract or the guarantee.
4. Within the scope of the execution of the order, the Supplier is responsible for any loss or material or immaterial damage (including the operating losses) suffered by Rio Tinto-QMM SA because of its action or that of its agents, employees or subcontractors.

## Article 10: Patent or intellectual property right

1. The Supplier shall guarantee Rio Tinto-QMM SA against any claim relating to patent or intellectual property right, in the course of the execution of the contract and in the use of supply or services.
2. The supplier shall transfer in an exclusive way to Rio Tinto-QMM SA, generally, all creations (technical or intellectual and on whatever support it may be) carried out within the scope of the order, as well as related intellectual property rights and in particular the copyright, the rights of representation, adaptation, marketing and use, and this for all the duration of provided legal protection and for the whole world.
3. Consequently, only Rio Tinto-QMM SA shall be authorized to use, reproduce, adapt, modify, disseminate and exploit, in whatever form and format it may take, the aforementioned creations.
4. The plans, working drawings, sketch, diagrams of manufacture, models, software, notes and generally, any document, any written or verbal information communicated to the supplier during the execution of the contract, remain the exclusive property of Rio Tinto-QMM SA.

## Article 11: Confidentiality

1. Any information, of whatever nature and in whatever format, transmitted to the supplier or to which this latter would have access within the scope of the contract, shall be considered by this one as strictly confidential and be used exclusively for the execution of the order. The supplier shall guarantee the respect of this clause by its subcontractors or sub-suppliers.
2. The contract shall not in no case give place to any direct or indirect advertising without the written and prior agreement of Rio Tinto-QMM SA.

## Article 12: Subcontracting

1. The supplier shall only resort to one or more subcontractors or sub-suppliers with the prior written agreement of the purchaser. The supplier shall also be held to obtain from the purchaser the acceptance of the terms of payment. This agreement on subcontractors or sub-suppliers does not imply in no case an opinion on the qualification of those. The supplier only remains responsible for the execution of the contract.
2. The supplier shall commit itself to bring forward in these subcontracts all contractual and legal stipulations facilitating the execution of the contract in accordance with the generally accepted practice and the contractual obligations.
3. Moreover, Rio Tinto-QMM SA reserves the right to subject its payments to the proof brought by the supplier whom has actually paid its subcontractors and sub suppliers.
4. The contract is untransferable, in whole or part, by the supplier without the prior written agreement of Rio Tinto-QMM SA.
5. Rio Tinto-QMM SA can, at any time, yield the contract or the order to a third entity and inform the supplier about this.

## Article 13: Recruitment and procurement

Rio Tinto-QMM SA requires from the supplier its strong commitment to respect the environment and the local community.

Within the scope of local service requiring the recruitment of labour, the supplier is committed to give priority and to encourage applicants and labour in the Anosy Region's surrounding communities. The supplier is committed to observe the local applicable recruitment procedures in force. Local employments must be managed in accordance with the provisions of the applicable Labour Code and Social Security Code.

As regards procurement, the supplier is committed to give priority and to encourage local purchases (goods and services) to providers and/or suppliers legally and fiscally established in the Anosy Region and this, in accordance with the approach and the policy adopted by QMM S.A.

## Article 14: Force majeure

1. Shall be considered as force majeure any external, unforeseeable and insurmountable fact that makes impossible the execution of whole or part of the contractual obligations.
2. The concerned party will notify the other party in writing, within 48 hours following the occurrence of such force majeure event, and the contractual delivery periods shall accordingly be extended for one period equivalent to the duration of the force majeure.
3. In the case where a force majeure event persists more than thirty (30) working days, each party could terminate the contract by notifying the other by registered letter with acknowledgement of receipt.
4. In any event, the followings shall not be regarded as cases of force majeure:
  - strike on the supplier side, its sub suppliers or subcontractors;
  - direct or indirect consequences of failures in the information processing systems of suppliers, their sub-suppliers and subcontractors.
5. The end of the force majeure shall have to be notified to the other party in writing within a 48-hour deadline as from the suspension.

## Article 15: Hygiene - Safety - Environment – Labour law

Rio Tinto-QMM SA requires from the supplier a strong commitment with regards the responsible management of health, safety, the elimination of injuries and occupational diseases as well as the respect of the environment, labour law and Rio Tinto' Code of conduct during the execution of the order.

For this reason the supplier is committed:

1. to comply with Rio Tinto's practices and standards as set out in "The way we work" and "The way we buy ", applicable to this order.
2. to comply with all HSEQ provisions of Rio Tinto-QMM SA
3. to respect the legislation and the regulation in force and in particular the provisions generally accepted in the trade concerning hygiene and safety, environment law, notably those relating to the prohibition of concealed work, whether the supplier intervenes alone on the site or simultaneously with other suppliers, and to observe all the conditions which would be imposed upon the supplier by a particular rule on the site of intervention.

4. The supplier is the only responsible for its personnel ; it shall thus ensure that the latter takes note:i) of the internal rules, ii) of the security directives, iii) of the particular rules, notably those concerning the wearing of personal protective equipment.
5. to be aware of the Philosophy of the Rio Tinto group and to respect it and have it respected by its possible subcontractors.

**Article 16: Applicable law, litigations and attribution of competence**

1. The contract (particular conditions and general terms and conditions of purchase hereof) is subject to Malagasy law, except for any other rule concerning conflicts of laws, if at least one of the parties is of Malagasy nationality.
2. The purchase of goods from a non Malagasy entity is subject to the provisions of the Vienna Convention dated April 11, 1980, governing contracts for the international sale of goods.
3. For the provisions not governed by the Vienna Convention and for contracts relating to provisions of services, the applicable law will be that of the nationality of Rio Tinto-QMM SA.
4. The Parties are committed to settle beforehand and amicably any disagreement, litigation or dispute arising from this order. Failing settlement, the disputes relating to the validity, interpretation or execution of this order will come within the competence of the Court of Fort Dauphin.

Read and approved this..... in Fort Dauphin/Antananarivo (*Cross out inapplicable mention*)

(*Name, signature and seal of the company*)