PURCHASE ORDER GENERAL CONDITIONS – FRANCE/EU/EEA
EFFECTIVE AS OF 1 October 2016

I. ACCEPTANCE; NO ADDITIONAL TERMS. For purposes of these PO General Conditions and all related activity, the following terms have the meaning set out in this Clause unless a contrary intention appears:

“Company” means the Company identified on the applicable PO;

“Purchase Order” / “PO” means a purchase order issued by the Company to the Service Provider in respect of the supply of Goods and/or Services;

“Rio Tinto” / “Rio Tinto Group” means the Supplier, Seller, Contractor or Vendor identified on the applicable PO;

PO” means the Supplier, Seller, Contractor or Vendor identified on the applicable PO;

2. DELIVERY; RISK OF LOSS; INSPECTION. Supplier will supply the Goods and/or Services to Company at the delivery point identified in the PO ("Delivery Point") and by the date specified therein or, if no date is so specified, within a reasonable time after Supplier receives the PO. Time is of the essence of Supplier’s performance of the PO. Risk of loss of the Goods remains with Supplier, and title will not pass to Company, until the Goods are delivered to and accepted by Company at the Delivery Point. All Goods and/or Services shall be received subject to Company’s inspection and approval. The Supplier must pack and protect all Goods ready for despatch so that they are in accordance with all applicable laws, comply with the Company’s policies provided in writing to the Supplier, and comply with first class international standards having regard to methods of transport to the Delivery Point and handling and to the weather conditions whilst in transit to the Delivery Point. Goods that are not in good condition, not packaged in accordance with Company’s policies (if any), damaged by delivery or rejected by Company as not conforming to the PO shall, at Company’s option, be returned to Supplier at Supplier’s risk and cost and may only be replaced by Supplier with Company’s written authorization.

3. PRICES; INVOICES; PAYMENT. Supplier shall supply the Company for a period commencing on the first day of a calendar month and ending on the last day of that calendar month (“Accumulation Period”). Unless otherwise specified in the PO, Company will make payment of all undisputed amounts due to Supplier on the fifteenth day of the second month following the end of the Accumulation Period in which the invoice is received by Company (for the avoidance of doubt, the term ‘45 days after the end of Accumulation Period’ when used referred to in the PO has this same meaning). For the purpose of these PO General Conditions, the term ‘EOAP’ means the end of the Accumulation Period in which the invoice is received. However, if an invoice for Goods is received by Company before delivery of the Goods, the applicable Accumulation Period will be the period in which the Goods are actually delivered to Company. Payment of an invoice is not evidence or an admission that the Goods or Services meet the requirements of the PO. Subject to clause 4 below, the prices listed in the PO are inclusive of all costs (including taxes) and expenses of Supplier in providing the Goods and/or Services to the Delivery Point.

4. TAXES; FREIGHT COSTS AND CUSTOMS DUTIES. The prices specified in the PO are exclusive of any value added tax ("VAT"), goods and services tax ("GST"), sales, use or consumption tax or similar government tax payable on the supply of the Goods and/or Services (collectively, “Indirect Transaction Taxes”). If Supplier is required by applicable laws to collect and pay Indirect Transaction Taxes to relevant government agency, Company shall remit payment to Supplier of applicable Indirect Transaction Taxes at the percentage rate required by applicable laws in the jurisdiction where the supply takes place, provided Supplier has first provided to Company an invoice for Indirect Transaction Taxes that complies with applicable laws. Company reserves the right to withhold payment of Indirect Transaction Taxes if it has provided a valid tax exemption certificate to Supplier. If the PO requires Supplier to provide Services, and if Supplier is a foreign corporation or company (i.e. having its principal place of business outside of the country identified in Company’s address on the PO) or a non-resident alien individual, then, unless Supplier provides Company with valid documentation (received prior to payment for Services) showing that an exemption applies where the Services are performed: (a) Company requires proof of the right to deduct payment of amounts required to satisfy tax withholding obligations under applicable laws on account of the Services; and (b) Company will use commercially reasonable best efforts to furnish Supplier receipts, proof of payment or other relevant documentation for any withholding taxes so paid. Unless specified otherwise on the PO or in any attachments thereto, the prices are inclusive of, and Supplier shall be solely responsible for any and all costs, fees, tariffs or similar analogous taxes on imports or exports of the Goods ("Customs Duties"). Supplier will take all reasonable steps to minimize Customs Duties costs.

5. WARRANTIES. Supplier represents and warrants that: (a) it has good title to the Goods and the right to transfer title to the Goods free and clear of any lien, hypothec, claim or other encumbrance of any kind; (b) the Goods will conform to any specifications and/or standards provided by Company, or by Supplier and approved by Company, and be provided in accordance with applicable laws, and will be free from defects in design, materials and workmanship, said warranty being valid for a period of 18 months from the date title passes to Company as set out in clause 2 hereof; (c) the Services (if any) will conform to any specifications and/or standards provided by Company, or by Supplier and approved by Company, comply with applicable law and be performed expeditiously and consistent with any applicable standards of skill and care, said warranty being valid for a period of 18 months from the date the performance of the Services is completed; and (d) the Goods and Services (if any) and their manufacture, sale, lease, distribution, or other commercialization do not and will not infringe, misappropriate or violate the trademarks, service marks, copyrights, patents, patent rights, trade secrets and other intellectual property rights of a third party; and (e) it will comply with all applicable local, state, provincial and federal laws and regulations. There are no warranties which extend beyond those set forth above.

6. REMEDIES. In addition to remedies otherwise available to Company, if Supplier is in breach of the warranties set out in clause 5(b) or clause 5(c) hereof, Supplier will, at the election of Company, and at Supplier’s sole cost (including any relevant
7. Force Majeure
7.1 A party will not be in breach of its obligations under the PO or otherwise liable to the other as a result of any delay or failure in the performance of its obligations if and to the extent that such delay or failure is directly caused by Force Majeure and is beyond the reasonable control of the party. Company will be relieved from any obligation to make payments to Supplier for Goods and/or Services to be provided under the PO for so long as the supply of Goods and/or Services is impacted by Force Majeure.
7.2 A party whose performance of obligations under the PO is delayed or prevented by Force Majeure will without delay:
(a) notify the other party on an ongoing basis of the nature, extent, effect and likely duration of the circumstances constituting the Force Majeure;
(b) use all reasonable endeavours to minimise the effect of the Force Majeure on its performance of its obligations under the PO; and
(c) subject to Clause 7.3, promptly after the cessation of the Force Majeure, notify the other party thereof, provide the other with all reasonable information concerning the impact of and planned response to the Force Majeure, and promptly resume full performance of its obligations under the PO.
7.3 If Supplier’s performance under the PO is prevented, hindered or delayed by an event of Force Majeure for a period exceeding one (1) month, Company may in its absolute discretion terminate the PO upon giving written notice of termination.

8. Compliance with Laws, etc.
In supplying the Goods and/or Services (if any), Supplier will and will ensure that its employees, agents, contractors and subcontractors ("Personnel"): (a) comply with all applicable laws and regulations; (b) comply with the Rio Tinto Group’s code of business conduct entitled “The way we work” (The Way We Work), the Supplier Code of Conduct and the Business Integrity Standard, available at http://www.riotinto.com/aboutus/policies-standards-and-guidance-5243.aspx or www.riotinto.co.za (together the “Rio Tinto Business Practices and Standards”), report all actual, alleged or suspected noncompliance with the Rio Tinto Business Practices and Standards to the Company through Rio Tinto’s Speak-OUT program and cooperate promptly and fully with Rio Tinto and the Company in any investigation of an alleged or suspected breach of the Rio Tinto Business Practices and Standards; (c) if Supplier’s Personnel are required to enter onto Company’s site or property, ensure that such Personnel (i) comply with Company’s written health, safety and environmental policies and standards provided to Supplier; (ii) are aware that they will be required by Company prior to entering onto Company’s Site.

Upon receipt from Company of any payment or approval of goods or services, Supplier waives and releases all rights to, and at its sole cost shall obtain the prompt removal of, any mechanics’, materialmen’s, mining or any similar lien, legal hypothec or claim fixed against Company or its assets, which exist or which may thereafter arise for Goods furnished or Services performed on or before the date of the relevant invoice. All payments owed to Supplier hereunder shall be contingent upon Supplier providing proof of its compliance with this provision to Company upon request.

Neither party will be liable to the other party under the PO for any special, incidental, indirect, consequential, exemplary or punitive damages or losses, loss of profits or revenues, loss of opportunities, loss of goodwill or loss of capital (collectively "Consequential Loss"), with the exception of Consequential Loss caused by a party’s criminal acts, fraud or willful misconduct or Consequential Loss caused by Supplier for which Supplier is required to be insured under a policy of insurance pursuant to clause 12 hereof.

11. Indemnification.
Subject to clause 10 hereof, Supplier agrees to indemnify and hold harmless Company, other members of the Rio Tinto Group, and its/their officers, directors, employees and agents, from and against any claims, losses, damages or injuries of any kind or character (including, without limitation, reasonable attorneys’ fees) caused by Supplier’s breach of the PO. Supplier shall have no obligation to indemnify pursuant to this clause 11 if and to the extent that the relevant claim or liability is caused by an indemnified party; provided, however, that Supplier immediately relieve Supplier of any pro rata, proportional, contributory or other allocation of liability or fault imposed by applicable laws.

12. Insurance.
Without limiting Supplier’s obligations or liabilities hereunder, Supplier shall, at its sole expense and for the duration of the PO and all applicable warranty periods, purchase and maintain the following insurance: (a) commercial general liability insurance, including, except in the case of workers’ compensation insurance and professional liability insurance: (i) an endorsement including Company and its directors, officers, employees, agents and representatives as additional insureds; (ii) an endorsement including a cross liability clause, noting transportation and labor costs), either replace or repair (including, if applicable, reinstall) the Good or re-perform the Services to Company’s satisfaction.

that each of the parties comprising the insured shall be considered as a separate entity, the insurance applies as if a separate policy has been issued to each party, and no “insured-versus-insured” exclusion exists in the policy; and (iii) an endorsement waiving all exclusions, including subrogation against Company. Supplier shall on request provide to Company or its designee certificates of insurance and endorsements as evidence of the insurance required under the PO.

13. CONFIDENTIAL INFORMATION. In the course of performing the PO, Supplier and/or Company may obtain certain information, oral or written (in whatever form), of a confidential nature (or which reasonably ought to be known as confidential) of the other party in relation to the business, operations, affairs or activities of the disclosing party and/or its affiliates (“Confidential Information”). The parties agree, unless required by a lawful court order, subpoena, or similar legal request, not to make each other’s Confidential Information available in any form to a third party (except to Company’s personnel and affiliates) or to use each other’s Confidential Information for any purpose other than the implementation of the PO. In that regard, Supplier expressly acknowledges that, by providing any Confidential Information to Company, or by including any Confidential Information in any Goods supplied to Company, Supplier is expressly authorizing Company to inspect such Confidential Information for all purposes incident to the transaction covered by the PO, including but not limited to future use, repair, or replacement of any Goods provided under the PO. Each party agrees to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its personnel in violation of the terms of this PO. If the receiving party is required to disclose any Confidential Information of the disclosing party’s to a third party, all laws that apply, and any warnings or requirements of the PO shall promptly notify the disclosing party in writing of such requirement so that the disclosing party may seek an appropriate protective order. Each party acknowledges that failure to comply with this clause may irreparably harm the business of the other party, and that a breach of one party’s obligations under this clause shall entitle the other party to seek immediate injunctive relief, in addition to any other remedies that it may have.

13A PRIVACY AND DATA PROTECTION. Under this PO, Company is the data controller and Supplier is the data processor. Company and Supplier each warrant that it will comply with its obligations under applicable laws regulating the Processing of Personal Data (“Applicable Data Privacy Laws”) that is collected by or disclosed to it under this PO.

Definitions: the terms “Personal Data” and “Process” and “Processing” have the meaning under Applicable Data Privacy Laws, and “Company Personal Data” means Personal Data disclosed to Supplier by Company, or collected by Supplier for the purposes of this PO.

Data Processing Obligations: Supplier accepts that in relation to all Company Personal Data, it must (a) only Process it for the purposes of supplying Goods or Services under the PO, and as directed by Company, except where Supplier reasonably believes that by following such directions, it would be in breach of Applicable Data Privacy Laws. In such circumstances, Supplier must inform Company of its concerns prior to undertaking Processing of Company Personal Data; (b) not disclose Company Personal Data to any other party, other than in accordance with Tinto’s prior written consent, unless the disclosure is required by applicable law (and Supplier immediately notifies Rio Tinto, unless such notification is prohibited by that law) or is to an approved subcontractor under clause 17; (c) take appropriate action to ensure any Supplier personnel who Process Company Personal Data understand and comply with the Supplier’s privacy and confidentiality obligations under this PO; (d) upon request, provide all reasonable assistance to Company to facilitate the exercise of rights of data subjects; (e) provide information required by Company to meet its obligations under Applicable Data Privacy Laws and to demonstrate compliance with this clause; and (f) promptly notify Company as soon as it has received a complaint from any data subject regarding the way in which that data has been processed and cooperate with Company in investigating any claim related to individual complaints. Personal Data Transfers: Supplier must not transfer Company Personal Data from the European Economic Area (EEA) to a country deemed by the European Commission not to provide adequate protection (within the meaning of Directive 95/46/EC or its replacement), unless Company consents in writing or unless contractual clauses approved by the European Commission for the transfer of personal data to processors in third countries are in place. In the event of a conflict of law rules. Company and Supplier expressly disclaim, and exclude, application to the PO of (a) the United Nations Convention on Contracts for International Sale of Goods, (b) the International Sale of Goods Act, and (c) the International Convention on Contracts for the International Sale of Goods, to the extent that such conflicts of law rules would prevent Supplier from fulfilling its obligations under this PO.

14. INTELLECTUAL PROPERTY. To the fullest extent permitted by the applicable laws, if, in performing the PO, Supplier provides to Company any intellectual property, trade secrets, work product, work of authorship, technical materials, drawings, designs, reports, recommendations or other writings, information or material embodied in a tangible medium and created or developed for purposes of providing the Goods and/or Services under the PO (“Deliverables”), such Deliverables shall be deemed to be owned by Company, unless Company expressly agrees in writing otherwise. Company shall be deemed the “inventor,” “author,” and “owner” of all Deliverables under applicable law, and Supplier agrees to assign, and hereby assigns, to Company any and all intellectual property rights in and to such Deliverables.

15. TERMINATION. Company or Supplier may terminate the PO by written notice to the other party in the event of a breach by the other party that is not cured within 30 days after written notice thereof has been given. Company may terminate the PO without cause by giving thirty (30) days prior written notice of termination to Supplier, and Company shall only be liable to pay for that part of the Goods and/or Services provided in compliance with the terms of the PO prior to such date that Supplier receives Company’s written notice to terminate. Any termination hereunder shall be without prejudice to any claims from either party arising from or in connection with the PO.

16. GOVERNING LAW AND FORUM. The PO is governed by the laws of the country, state, province or territory identified in the address for Company on the PO, excluding its choice or conflict of law rules. Company and Supplier expressly disclaim, and exclude, application to the PO of (a) the United Nations Convention on Contracts for International Sale of Goods, (b) the International Sale of Goods Act, and (c) the International Convention on Contracts for the International Sale of Goods, to the extent that such conflicts of law rules would prevent Supplier from fulfilling its obligations under this PO.

17. MISCELLANEOUS. Supplier shall not assign, delegate or subcontract the PO or any interest herein, including any performance or any amount that may be due hereunder, without Company’s prior written consent. Supplier must remain responsible and liable for all Processing of Personal Data by any assignees, delegates or subcontractors. The Company reserves the right to monitor and/or audit the Supplier’s adherence to the Rio Tinto Business Practices and Standards. Without prejudice to any other rights of the parties, and any attachments noted in the PO, constitutes the entire agreement relating to the subject matter hereof and supersedes all prior and contemporaneous understandings or statements unless expressly contained herein. If there is any conflict between these PO General Conditions and a provision elsewhere in the
PO (including attachments to the PO), these PO General Conditions will prevail. No modification or alteration of the terms hereof shall be binding unless such modification or alteration is in writing and signed by both Company and Supplier. Either party's waiver of any breach, or failure to enforce any of the PO General Conditions, at any time, shall not in any way affect, limit or waive such party's right thereafter to enforce and compel strict compliance with every term and condition hereof. If the date for payment of any monies under the PO falls on either a weekend or public holiday, the payment will be due on the following business day. Supplier and Company have agreed that these PO General Conditions be drafted in English.