

BGC Purchase Order

Terms and Conditions

BGC Cement

Date: 4th February 2011

1.

Definitions

BGC means the BGC entity named in the Purchaser Order its authorised agents, employees, heirs and successors.

Consequential Loss means loss or damage arising from a breach of contract, in tort (including negligence), in law, in equity or under statute, including without limitation; loss of use, loss of profit, loss of production, loss of business, loss of opportunity, loss of chance, loss of goodwill, loss of business reputation, loss of access to markets or market share and liabilities to third parties.

Defective means Goods and/or Services (or any aspect of them) which are not in accordance with the Purchase Order or which are damaged, deficient, faulty, inadequate or incomplete.

Delivery Address means the address described as the address to 'Ship To' in the Purchase Order.

Delivery Date means the delivery date specified on the Purchase Order.

Goods means the goods, if any, described on the Purchase Order in the Item Description.

"GST", "GST law" and other terms used in clause 15 have the meanings given to them by the *A New Tax System* (Goods and Services Tax) Act 1999 (as amended from time to time).

Law means:

- (a) Commonwealth, State and local government legislation including regulations, bylaws, orders, awards and proclamations;
- (b) common law and equity;
- (c) Authority requirements and consents, certificates, licences, permits and approvals (including conditions in respect of those consents, certificates, licences, permits and approvals); and
- (d) guidelines of Authorities with which the Vendor is legally required to comply.

Purchase Order means the purchase order for Goods and/or Services issued by BGC to the Vendor from time to time containing, amongst other things, a description of the Goods and/or Services.

Price means the price set out in the Purchase Order which is exclusive of GST, but is inclusive of all other costs and charges.

Vendor means the party named in the box 'Vendor's name and address in the Purchase Order.

Services means the services, if any, described on the Purchase Order in the Item Description.

Site means the Delivery Address, BGC's premises or any other location where BGC requires the Vendor to provide Goods or Services.

Warranty Period means the period of 12 months commencing on the date of delivery of the Goods and/or 12 months from the date on which the Services are performed.

2. Supply of Goods or Services

2.1 In consideration of payment of the Price by BGC, the Vendor must supply to BGC the Goods and/or perform the Services in accordance with the Purchase Order.

2.2 To the extent the Vendor's terms and conditions are supplied with the Goods or Services (including as printed on consignment notes or other documents), those terms and conditions will be of no legal effect and will not constitute part of this Purchase Order (even if any of representative of BGC signs those terms and conditions or annexes the terms and conditions to this Purchase Order).

2.3 The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership and no contractual relations will arise between any of the Vendor's employees, agents or subcontractors and BGC as a result of the Vendor's and BGC's relationship, and the Vendor does not have the right or authority to act on behalf of or bind BGC unless the Vendor has been expressly authorised by BGC in writing.

3. Delivery

3.1 The Vendor must deliver the Goods to the Delivery Address by the Delivery Date.

3.2 If the Vendor fails to deliver the required quantity BGC may terminate the Contract at any time by notice in writing.

4. Time for Performance

4.1 The Vendor must supply the Goods and/or Services in accordance with the terms of this Purchase Order by the Delivery Date. If the Supplier does not supply the Goods and/or Services by the Delivery Date, BGC, in addition to all other rights and remedies available to BGC, may set off against the Price any additional costs incurred by BGC (with the exception of those costs excluded under clause 11) as a consequence of the Vendor's failure to supply the Goods and/or Services by the Delivery Date.

5. Title and Risk

5.1 Title in the Goods passes to BGC upon the earlier of payment of the Price or delivery of the Goods to the Delivery Address.

5.2 Risk in the Goods passes to BGC when the Goods are delivered to the Delivery Address.

6. Price

6.1 BGC must pay the Vendor the Price for the Goods and/or Services.

6.2 The Price is inclusive of all costs incurred by the Vendor in the supply of the Goods and/or performance of the Services including all charges for taxes, packing, insurance and delivery of the Goods and the cost of any items used or supplied in the performance of the Services.

6.3 The Price is inclusive of all taxes and duties, except GST.

6.4 BGC will make payment for the Goods and/or Services when the whole of any work as identified in the Purchase Order is complete.

6.5 Payment shall not constitute an acceptance by BGC that the Services or Goods are not Defective and shall not in any way effect BGC's rights under the Purchase Order including but not limited to those rights set out in clauses 7 and 8.

7. Quality

7.1 The Goods and/or Services must match the description (if any) referred to in the Purchase Order.

7.2 If the Vendor gave BGC a sample of the Goods or a demonstration of the Services, the Goods and/or Services must be of the same nature and quality as the sample or demonstration given.

7.3 The Goods and/or Services must be fit for the purpose for which Goods and/or Services of the same kind are commonly supplied or bought and for any other purpose BGC specifies.

7.4 The Goods must be of merchantable quality, unencumbered and, unless otherwise specified in the Purchase Order, must be new.

7.5 All Services provided by the Vendor must be undertaken by persons who are appropriately licensed, qualified and/or trained to provide those Services.

7.6 If the Goods are found to be Defective or otherwise do not comply with this clause 7, the Vendor must replace the Goods at the Vendor's cost and BGC may terminate the contract constituted by this Purchase Order at no cost to BGC.

7.7 If the Goods are Defective or otherwise do not comply with this clause 7, BGC may hold the Goods for the Vendor at the Vendor's risk. The Goods will be returned at the Vendor's cost.

7.8 If the Services are Defective or otherwise do not comply with this clause 7, the Vendor must, if requested by BGC, re-perform the Services at the Vendor's cost and BGC may terminate the contract constituted by this Purchase Order at no cost to BGC.

8. Warranty Period

8.1 If, during the Warranty Period, any of the Goods or Services are found to be Defective, BGC may:

- (a) return the Defective Goods to the Vendor at the Vendor's cost;
- (b) reject the Defective Services;
- (c) repair or make good the Defective Goods; or
- (d) re-perform or make good the Defective Services.

8.2 The Vendor must:

- (a) repair or replace the Defective Goods;
- (b) re-perform or make good the Defective Services; or

- (c) reimburse BGC for any expenses incurred in repairing, re-performing or making good (as the case may be) any Defective Goods or Services at the Vendor's cost, if requested to do so by BGC.
- 8.3 The Vendor must pay for any damages made by the Vendor or arising from Defective Goods or Services to property on or near the company sites.
- 8.4 The Vendor must assign the benefits of any warranties provided by manufacturers of the Goods or materials and other components which are used in the performance of this Purchase Order where BGC will ultimately take ownership of those Goods, materials or components.
- 9. Indemnities**
- 9.1 The Vendor must indemnify BGC and agrees to hold BGC harmless from all claims for:
- (a) injury to or death of any of the Vendor's employees, agents, suppliers or subcontractors, except to the extent the claim for such injury or death arises solely as a result of the negligence of BGC or a breach of the contract constituted by this Purchase Order by BGC;
- (b) damage to or destruction of any property belonging to the Vendor or in the Vendor's possession or under the Vendor's control except to the extent the claim for such damage or destruction arises solely as a result of BGC's negligence or breach of the contract constituted by this Purchase Order by BGC;
- (c) injury to or death of any person (including employees, agents, suppliers or subcontractors of BGC) or damage to or destruction of any property (including property of BGC, its agents, employees, suppliers or subcontractors) caused by any negligent acts or omission by the Vendor or the Vendor's employees, agents, suppliers or subcontractors; and
- (d) failure by the Vendor to comply with any Law and the payment of any taxes required at Law or in accordance with these Purchase Order Terms and Conditions.
- 10. Insurance**
- 10.1 The Vendor must obtain and maintain the following insurances:
- (a) Materials, plant and equipment insurance, including all constructional plant and equipment, the Goods to be supplied for not less than full replacement value;
- (b) Transit (all risk) insurance covering transit, loading and unloading of Goods for not less than full replacement value;
- (c) Workers compensation and employer's liability insurance, covering all claims and liabilities in respect of any statutory or common law liability for the death, injury or illness of or to any person employed by (or deemed to be employed by), the Vendor;
- (d) Public and products liability insurance for an amount not less than \$5,000,000 any one occurrence (and in the

annual aggregate in respect of products liability insurance) if the Vendor is supplying Goods; and

- (e) any other insurance which is required by law for the time being in force in the State of Western Australia.

11. Consequential Loss

- 11.1 Despite any other provision in this Purchase Order, neither party is liable for any Consequential Loss suffered by the other party unless otherwise stated in a contract or agreement.

12. Jurisdiction

- 12.1 The Purchase Order shall be governed by and construed with reference to the laws of the State of Western Australia.
- 12.2 The parties submit to the exclusive jurisdiction of the Western Australian Courts.

13. Dispute Resolution

- 13.1 If a dispute or difference arises between BGC and the Vendor in respect of any fact, act, matter or thing arising out of or in any way connected with the Purchase Order and one party requires the dispute or difference to be resolved, then that party shall promptly give the other party a written notice giving details of the dispute.
- 13.2 Within 14 days of a party receiving a notice referred to in clause 13.1, BGC and the Vendor and/or their delegates must meet and attempt to resolve the dispute in good faith.
- 13.3 If, within 14 days of the meeting referred to in clause 13.2, the dispute is still not resolved, then, either party may proceed to litigation.

14. Cancellation/Termination

- 14.1 BGC may cancel all or any portion of a Purchase Order at any time by giving notice to the Vendor. In the event of cancellation of Goods, BGC will only be liable for the cancellation of any custom-made Goods for which BGC does not take delivery.
- 14.2 BGC's liability for such Goods shall be the lesser of:
- (a) the Vendor's actual price for raw materials, components, work in progress and any finished units on hand at the time of such cancellation that are attributable to the cancelled portion of the Purchase Order; or
- (b) the Price per finished unit, after giving effect to any discount BGC would otherwise be entitled to, for the cancelled portion of the Purchase Order.
- 14.3 BGCs liability for cancellation of Services, shall be the lesser of:
- (a) the Vendor's actual cost of the services rendered prior to termination; or
- (b) the Price for the Services cancelled. If any hourly or other time-based rate for Services is specified in the Purchase Order, such rate will be used in determining the Vendor's actual costs. In no case shall BGC be liable for the Vendor's lost profits as a result of such cancellation.

- 14.4 Upon receipt of a cancellation notice, the Vendor will, unless otherwise directed, cease work and follow BGC's directions as to disposal of work in progress and finished goods.

- 14.5 The rights set out in this clause comprise the Vendor's sole entitlements upon cancellation of the Purchase Order. The Vendor releases BGC from any and all other claims.

- 14.6 The Purchase Order may also be terminated by BGC at any time immediately upon written notice in the event of the Vendor's material breach of any term or provision of the Purchase Order. If the Purchase Order is terminated for the Vendor's default, BGC may have the Vendor's obligations performed by another party. The Vendor shall be responsible for, and shall indemnify BGC against, any damages, costs (including, without limitation, legal fees on a solicitor own client basis), losses and expenses, incurred by BGC as a result of the breach.

15. Goods and Services Tax (GST)

- 15.1 Unless otherwise stated, the Price or any other amounts payable by BGC to the Vendor, is exclusive of GST.
- 15.2 If a Supply under this agreement is subject to GST, BGC will pay to the Vendor an additional amount equal to the amount of the Price multiplied by the prevailing GST rate.
- 15.3 The additional amount under clause 15.2 is payable at the same time as the amount payable for the Supply is to be paid. However, the GST need not be paid until the Vendor provides a Tax Invoice to BGC.
- 15.4 If the amount of GST payable in accordance with clause 15.3 is found to differ from the amount paid in relation to a Supply:
- (a) If the amount of GST paid is more that is required under the GST law the Vendor shall refund the excess amount to BGC;
- (b) If the amount of GST paid is less than is required under the GST law, BGC shall pay the Vendor the difference.
- 15.5 For the purposes of calculating further variations under clause 15.4, any additional amount referred to in clause 15.2 is taken to be amended by the amount of any earlier variation made under clause 15.4.
- 15.6 If either BGC or the Vendor is entitled to be reimbursed or indemnified under this Purchase Order, the amount to be reimbursed or indemnified by either party is to be the GST exclusive amount. For the avoidance of doubt, the amount of any reimbursement does not include any amount attributable to GST for which either BGC or Vendor is entitled to an Input Tax Credit.