

Topdrill Purchase Order Standard Terms

1. DEFINITIONS

"Client" shall mean the ultimate purchaser (if any) of the Work.

"Topdrill" means Topdrill Pty Ltd, Topdrill Core Pty Ltd and Ashburton Equipment Pty Ltd. "Topdrill Group" means Topdrill, Client, Topdrill's other contractors, its and their parent, subsidiary and affiliate companies and the employees and agents of all of them.

"Order" shall mean the purchase order issued by Topdrill to Supplier in relation to the Work including the Conditions together with all documents referred to therein and/or exchanged between the parties prior to the issue of the purchase order, as varied by any variation.

"Price" shall mean all sums payable to Supplier as specified in the Order for performance of the Work.

"Work" shall mean the goods and/or services to be provided by Supplier under the Order.

2 QUALITY, DESCRIPTION

2.1 All Work shall: (a) conform strictly as to quantity, quality and description with the particulars stated or referred to in the Order and with all statutory requirements applicable to such Work; (b) be of sound materials and workmanship; (c) be in strict compliance with drawings or specifications, if any, referred to in the Order; (d) be capable of the standard of performance specified in the Order; and (e) be fit for the purpose for which it is supplied under the Order.

2.2 All workmanship shall be in accordance with the relevant manufacturer's recommendations or, if none, the relevant Australian Standards.

2.3 All Work performed pursuant to the Order shall be performed by suitably qualified and competent personnel and all equipment and tools provided shall at all times be maintained in first class operating condition by Supplier.

2.4 Supplier hereby acknowledges that any breach by Supplier of the Order may result in Topdrill committing breaches of and/or becoming liable for damages to the Client and/or under other contracts made by Topdrill in connection or relating to the work and all such damages, loss and expense are hereby agreed to be within the contemplation of the parties as being probable results of any such breach by Supplier.

3 PAYMENT, PRICE

3.1 In consideration of the satisfactory performance of the Work, Topdrill shall pay Supplier the Price.

3.2 Payments hereunder shall be made within 30 days of the end of the month of receipt of Supplier's true and correct invoice at Topdrill's invoicing address. Payment shall not operate as a waiver of any of the rights of Topdrill under the Order or otherwise.

3.3 Supplier acknowledges that except as specifically provided in the Order the rates and Prices contained therein are sufficient to cover all its obligations whether expressed or implied under the Order. When the Work or any part thereof is to be performed other than at Supplier's premises, Supplier shall be deemed to have satisfied itself as to (and be entitled to no extra payment in respect of) all local conditions, site rules (including inductions), site safety requirements, local productivity factors and all other factors as may in any way affect the performance of the Work.

3.4 Topdrill may withhold any payment due to Supplier to such extent as may be necessary to protect Topdrill from loss because of a doubt that the Work will fulfil the requirements of the Order or breach by Supplier of any of the Conditions, or due to a dispute in an invoice.

3.5 Final payment may at Topdrill's discretion be subject to Supplier executing a release in terms satisfactory to Topdrill.

4 INSPECTION AND TESTING

Inspection and test plans shall if required by Topdrill be supplied to Topdrill prior to commencement of the Work and shall be adhered to by Supplier in the execution of the Work.

5 COMPLETION AND DELIVERY

5.1 The Work shall be completed by the delivery date specified in the Order as varied by any variation.

5.2 Delivery of the Work shall be effected in the manner(s), and at time(s) specified by Topdrill. If the Work is not delivered in accordance with Topdrill's requirements, Supplier shall be responsible for any additional expense arising therefrom.

6. DELAY

6.1 If Supplier fails to commence performance of the Work or if it appears to Topdrill that Supplier may not be able to complete the Work by the delivery date or Supplier shall fail so to do Topdrill may terminate the Order or any part thereof in accordance with the provision of clause 12.

6.2 If it appears that any part of the Works may be delayed Supplier shall notify Topdrill promptly thereof. Supplier shall as soon as possible and not later than 3 days after such notification, inform Topdrill in writing about the cause of the delay, the estimated effect on the agreed time of completion/and or delivery and proposed remedial actions to avoid or reduce the delay.

6.3 If Topdrill considers Supplier's remedial actions are inadequate, Topdrill may direct Supplier to effect measures considered necessary. The costs of such measures shall be borne by Supplier. If the delay is caused by circumstances for which Topdrill is responsible, such measures may be evaluated in accordance with clause 8.

7. DEFECTS AND WARRANTY

Supplier shall be responsible for remedying at his expense any defects that may arise in the Work or any other property or works, affected by the defective Work within 12 months from the date when the Work has been put into service (which shall be deemed for the date Topdrill is issued a certificate of Practical Completion by the Client). Supplier shall guarantee for a further period of 12

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months all remedial work carried out under this warranty. If any defects which Supplier is obliged to remedy under this clause are not remedied within a reasonable time, or circumstances render it impracticable for Supplier to do the same, Topdrill may do so itself or authorise others to do the same, and Supplier shall reimburse Topdrill for all costs arising therefrom.

8 VARIATIONS

8.1 Supplier shall perform any changes to the Work required by Topdrill which may include additions to, or reductions in the quantity of Work. When Topdrill is contemplating change, Topdrill shall give notice to Supplier, who shall promptly advise Topdrill of its reasonable effect on Price and delivery date.

8.2 The variation shall be valued by mutual agreement between Supplier and Topdrill reflecting the price levels in the Order or failing agreement, by Topdrill, and the Price increased or decreased accordingly.

8.3 At the request of Topdrill, the variation order shall be implemented without undue delay, irrespective of whether or not the Parties have agreed regarding the effect of the variation on the Order.

8.4 No change shall be accepted by Topdrill and Topdrill shall not be liable to make any payment therefor to Supplier unless such change has been authorised by written instruction subsequently confirmed by a variation issued by Topdrill.

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9 ASSIGNMENT, SUBCONTRACTING

Supplier shall not assign the Order nor subcontract any major part of the Work, without Topdrill's prior written consent.

10 REGULATIONS AND SAFETY

10.1 Supplier shall comply with all relevant Standards applicable to the place where the work is performed, statutes, laws, regulations, and bye-laws affecting or applicable to the performance of the Order and shall comply with all safety regulations in force at any location where the Work is performed.

10.2 Supplier shall provide Topdrill in writing with such information as is necessary relating to the use of any materials and or equipment supplied and/or used and its design, testing and use and relating to any conditions necessary to ensure it will be safe and without risk to health and environment when properly handled, stored, transported and used.

11 SUSPENSION

Topdrill may by written notice require Supplier to suspend performance of the Work. Supplier shall during suspension properly protect and secure any materials or equipment used in the performance of the Work.

2 TERMINATION

12.1 In the event of any default by Supplier in performance of any of its obligations hereunder including without limitation: the attainment of delivery date; failure to carry out the reasonable instructions of Topdrill; failure to commence the Work within the time stated in the Order; failure to proceed with the Work at a reasonable rate of progress; Supplier indicates that it is unable or unwilling to complete the Works, Topdrill may, by written notice, require Supplier to show cause by the date specified in the notice, why Topdrill should not exercise a right under clause 13.2.

12.2 If Supplier fails to show reasonable cause by the date specified by Topdrill, then Topdrill shall have the power upon notice in writing to Supplier to terminate the Order or suspend payment and take the work remaining to be completed wholly or partly out of the hands of Supplier without prejudice to any rights of Topdrill under the Order or at law. In such case Topdrill shall have the right to retain any Work previously supplied under the Order.

12.3 Without prejudice to Topdrill's other rights, on termination of the Order pursuant to this clause 12: (a) if Topdrill takes the work out of the hands of Supplier, Topdrill may itself or by means of other persons, complete the whole or any part of that work and may without payment of compensation take over any subcontract relating to work under the Order, take possession of the constructional plant and other things on or in the vicinity of the site as are owned by Supplier and/or (b) Topdrill shall be entitled to enter Supplier's premises or any place where the Work is situated and take possession of the whole or any part of the Work and remove the same, and title thereto (in so far as the same shall not already be vested in Topdrill) shall forthwith vest in Topdrill. Furthermore, Topdrill shall be entitled to retain and apply any balance of the Price in whole or in part which may be otherwise due to Supplier towards the payment of completing the Work whether by itself or by a third party. If the cost of completing the Work exceeds the balance due to Supplier, Supplier shall pay the excess forthwith to Topdrill.

12.4 If Supplier becomes insolvent or if a petition in bankruptcy is filed against it, or a receiver, administrator or liquidator is appointed in respect of Supplier, Topdrill shall have the right to terminate the Order immediately on notifying Supplier or receiver, administrator or liquidator or on notifying anyone in whom the Order may become vested, without prejudice to the existing rights and obligations of Supplier and Topdrill.

12.5 Topdrill shall be entitled at any time to terminate the Order in whole or in part by serving notice in writing on Supplier to such effect and Supplier shall cease all performance hereunder unless and to the extent otherwise provided in the notice of termination. In such event, title in all Work including goods and materials for which Supplier shall have been or shall be paid shall pass forthwith to Topdrill. Supplier shall take all reasonable steps to mitigate liabilities arising from such termination. In cases of such termination, Supplier shall be only entitled to be paid progress payments for Work performed until the date of termination (calculated by reference to the Order), plus reasonable demobilization costs.

13 TITLE AND RISK

13.1 Title in the Work shall pass to Topdrill on the earlier of when the Work or part thereof are first identifiable as being appropriated to the Order or on payment for the Work or part thereof.

13.2 Notwithstanding passage of title, risk shall remain with Supplier until delivery or acceptance of the Work by Topdrill in accordance with the provisions of the Order, whichever shall be the later.

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14 INDEMNITIES

14.1 Supplier shall indemnify and hold harmless Topdrill Group against any action, liability, cost or expense (including legal costs and expenses) whatsoever arising by reason of: (a) personal injury including fatal injury and disease and loss of or damage to or loss of use of the property of third parties arising out of or in connection with the performance of this Order irrespective of the negligence or breach of duty of any member of Topdrill Group; and (b) all injury to or death of personnel and agents of Supplier, its subcontractors of any tier and its and their suppliers and/or loss of or damage to the property of Supplier, its parent, subsidiary and associates, its subcontractors of any tier and its and their suppliers, including the property of, the personnel and agents of all of them arising out of or in connection with the performance of this Order irrespective of the negligence or breach of duty of any member of Topdrill Group.

14.2 Topdrill Group shall not be liable and Supplier shall indemnify, defend and hold harmless Topdrill Group in respect of any loss of profits or indirect or Consequential loss whatsoever incurred in connection with the Work by Supplier, its parent, subsidiary and associates, its subcontractors of any tier and its and their suppliers and the employees, and agents of all of them irrespective of any negligence or breach of duty of any member of Topdrill Group.

14.3 Supplier shall indemnify Topdrill against every liability which Topdrill may incur to Client and against any claims, demands, proceedings, damages, costs and expenses made against or incurred by Topdrill by reason of any breach by Supplier of the Order.

15 INSURANCE

15.1 Supplier shall ensure that the following insurances are maintained by itself and its subcontractors throughout the duration of the Work: (a) insurance to cover loss of or damage to the Works from any cause whatsoever (b) Employer's Liability/Worker's Compensation Insurance as appropriate to comply fully with all applicable laws; (c) Automobile Public and Passenger Liability Insurance; and (d) General Liability Insurance having a limit of not less than AU\$5 million equivalent combined single limit any one occurrence covering all operations of the insured including without prejudice to the foregoing generally the contractual liabilities assumed herein.

15.2 Supplier shall also ensure that all such insurances waive all rights of subrogation against Topdrill Group. Supplier shall if requested by Topdrill remit certificates evidencing said insurances.

16 FORCE MAJEURE

16.1 Where either party is unable to perform the Order in the time specified by reason of Force Majeure they shall be entitled to a reasonable extension of time for performance.

16.2 "Force Majeure" shall mean any acts of god, fire, explosion, cyclone, flood, lightning or strike or labour dispute (other than strike or labour dispute by personnel of Supplier).

16.3 The party concerned shall take all reasonable steps to avoid further or consequential delay and to proceed with the due performance of the Order.

16.4 The parties shall cover their own costs resulting from the Force Majeure situation.

17 SERVICES

If Supplier performs work in connection with the installation or fitting of the Work or where the Order requires either specifically or by implication the presence of Supplier at Topdrill's yard or Client's installation sites performing services (a) Supplier shall use its best endeavors not to impede or interfere with other work in progress at such yard or premises. (b) Supplier enters the yard or premises its own risk. (c) Supplier, its servants, agents and sub-contractors shall comply with the reasonable directions and orders of Topdrill supervisors.

18 DOCUMENTS, DRAWINGS

Supplier shall prepare at his own expense and submit to Topdrill such drawings as Topdrill may require.

19 CONFIDENTIAL INFORMATION

Supplier, its officers, employees, subcontractors and agents shall maintain full secrecy and confidentiality on all matters not in the public domain concerning or arising from the Order or the tendering thereof.

20. INTELLECTUAL PROPERTY

Any intellectual property provided by Topdrill or developed or arising out of the Work is owned by Topdrill.

21. LAW

The Order is governed by the laws of Western Australia.

22 ENTIRETY

The Order and documents made a part thereof by express reference constitute the entire agreement between the parties and supersede all prior agreements and understandings written or oral and shall in any event supersede any terms and conditions that may be contained in Supplier's delivery documentation.



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23 WAIVER

None of the provisions of this Order shall be considered waived by Topdrill unless such waiver is given by Topdrill in writing.