

2 BK SP SUP General Terms and Conditions of Metal Recycling Purchase Order

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Authorised by: Chief Procurement Officer



The following are the terms and conditions ("Conditions") upon which the offer to purchase on the reverse side hereof or to which these Conditions are attached, form part of or are referred to therein (the "Order") is given by Bradken Resources Pty Limited (ABN 82 098 300 988) ("Bradken") a wholly owned subsidiary of Bradken Limited to the addressee named in the Order ("Supplier") and the terms and conditions upon which the goods and services described in the Order (collectively the "Goods") are to be sold and supplied or sold, supplied and delivered by the Supplier to Bradken.

1. CONDITIONS CONSTITUTE WHOLE CONTRACT

- (a) Except to the extent to which these terms and conditions are expressly varied by Bradken in writing in the Order these terms and conditions shall apply to the Goods the subject of the Order and shall constitute all of the terms and conditions of any contract for sale of the Goods from the Supplier to Bradken. The acceptance of this Order by the Supplier shall constitute an absolute and unconditional acceptance by the Supplier of these terms and conditions without amendment as the terms and conditions of the contract for sale.
- (b) Where the Order is comprised of different items or services or two or more units of the same item or service, the Supplier's acceptance of the Order shall be deemed to have created separate contracts (each of which shall be on these terms and conditions) for the supply of each unit or different item or services, which together or separately comprise the Goods. The inability or failure of the Supplier to supply any individual item which comprises the Goods or to comply with the terms and conditions hereof or to remedy any defect or breach of contract in respect of any of the individual items or services comprising the Goods delivered shall not affect the validity or enforceability of the remaining contracts.

2. PRICES

- (a) All prices shown in the Order are fixed and firm and include all extras (such as, but without limitation, freight, cartage, insurance, packing, use or supply of pallets and containers, etc.) unless otherwise shown in the Order and no increase in prices will be allowed unless approved by Bradken in writing.
- (b) Subject to paragraph 2(c), if any price in the Order does not include GST, the following provisions shall apply:
 - (i) The Supplier shall be entitled to recover from Bradken an additional amount equal to any GST payable on the supply of the Goods such additional amount to be payable by Bradken at the same time and subject to the same conditions as the price; and
 - (ii) If the total amount of GST payable on the supply of the Goods differs from the amount paid to the Supplier in respect of GST (whether because of an adjustment event within the meaning of the GST Legislation, an error in calculation or for any other reason), the Supplier shall refund the difference to Bradken or Bradken shall pay an additional amount to the Supplier, as the case requires, to ensure that the total amount of GST paid to the Supplier corresponds to the total GST liability in respect of the supply of the Goods.
- (c) The Supplier shall not be entitled to recover any amount in respect of GST (whether as part of the price on the face hereof or pursuant to paragraph 2(b) above) unless and until it has provided a tax invoice (within the meaning of the GST Legislation) to Bradken.
- (d) In these Conditions:

"GST" means tax payable on taxable supplies under GST Legislation; and

"GST Legislation" means A New Tax System (Goods and Services Tax) Act 1999 or any related or replacement legislation which imposes GST or legislation that is enacted to validate, recapture or recoup such tax.

3. BINS

- Bradken may provide bins or other similar receptacles ("Bins") as an aid to the supply of the Goods.
- (a) The price shown in the Order includes all costs incurred by the Supplier irrespective of whether Bins have been provided by Bradken ("Bradken's Bins") or the Supplier.
 - (b) Any Bradken Bins provided to the Supplier are provided as an aid to the supply of the Goods by the Supplier only and Bradken accepts no responsibility for the condition, misuse or otherwise of Bradken Bins. Property in and title to Bradken Bins shall remain with Bradken at all times.
 - (c) The Supplier shall keep in good order and repair any Bradken Bins provided to the Supplier and in the event of loss, destruction or damage of or to the Bradken Bins shall pay to Bradken the actual cost incurred by Bradken in replacing or repairing the lost, destroyed or damaged Bradken Bins.

4. DELIVERY

- (a) All Supplier invoices, packing slips, delivery dockets and correspondence must clearly show Bradken's Purchase Order Number.
- (b) The Goods shall be delivered at no additional cost to Bradken to the destination indicated on the Order.
- (c) If the Supplier fails to deliver all or any of the Goods at the time or times specified in the Order or in accordance with any delivery schedule mutually agreed upon, then Bradken in its absolute discretion and without any requirement to provide notice to the Supplier may treat the Order as having been repudiated by the Supplier and Bradken shall then be entitled to recover from the Supplier as liquidated damages an amount not less than the total profit lost by Bradken on any and all contracts in which the Goods or any item forming part of the Goods were to be utilised or form part in addition to any liquidated damages, costs, penalties or other expenses Bradken incurred or may thereafter incur by reason of such repudiation.
- (d) Time shall be of the essence of the Order.
- (e) Bradken accepts no liability for Goods delivered in excess of the quantity ordered or Goods delivered in excess of the quantity agreed in any delivery schedule approved by the parties.
- (f) Receipt of the Goods must be acknowledged in writing by an authorised representative of Bradken and be accompanied by an original weighbridge ticket.

5. PACKAGING

Notwithstanding that Bradken may have provided Bradken Bins to the Supplier, the Goods must be suitably packaged or otherwise prepared for transportation to avoid damage, to comply with carrier requirements and to secure minimum transportation costs and insurance rates.

6. INSPECTION

- (a) The Supplier of the Goods is solely responsible for controlling the quality of the Goods and shall only supply to Bradken those Goods which conform to the requirements of the Order. The Supplier shall make complete inspections and tests on the Goods where required by Bradken and make those inspection and test records available to Bradken upon request. Where the Order contains particular specification requirements for the Goods, the Supplier shall deliver a Certificate of Compliance with the Goods confirming that the specification requirements of the Order have been satisfied.
- (b) The Supplier acknowledges that the Goods delivered to Bradken are accepted subject to Bradken's inspection and the signing of a delivery docket as evidence of receipt of the Goods or payment in part or in full does not constitute acceptance of the Goods by Bradken.
- (c) The Goods shall, notwithstanding payment or part payment or confirmation of receipt, be subject to rejection by Bradken and may be rejected by Bradken after inspection if they do not strictly comply with the Order.
- (d) Goods returned to the Supplier as defective or otherwise outside the Order for rework, replacement or credit are at the risk of the Supplier and all handling, insurance and transportation costs (including Bradken's costs of inspection) both from the initial point of delivery of the Goods and return will be borne by the Supplier and the Supplier shall forthwith pay to Bradken any such costs and refund any payment or part payment made by Bradken in respect of the Goods.

7. WARRANTIES

- (a) The Supplier acknowledges by its acceptance of the Order that it is aware that Bradken is relying on the Supplier's skill, expertise and judgement in the supply of the Goods.
- (b) Goods supplied must carry any applicable warranty which passes on to any customer of Bradken without liability to Bradken. The Supplier must assign to Bradken at the request of Bradken, the benefit of any

warranty or guarantee that the Supplier has received from any supplier of the Supplier (whether under contract or by implication or operation of law). This warranty shall endure for the benefit of Bradken, its successors and assigns.

- (c) The Supplier by its acceptance of the Order warrants that the Goods supplied are of merchantable quality and conform with the specifications provided by Bradken and are fit for the purpose for which Bradken or Bradken's customers intend to use the Goods or the purpose for which the Goods would normally be used, (such purpose being made known to the Supplier either expressly or by implication), and that the goods are free from defect in material and workmanship.
- (d) The Supplier acknowledges that the law implies terms, conditions and warranties (the "Prescribed Terms") into contracts for the manufacture of, or supply of goods and services and prohibits the exclusion, restriction or modification of certain terms, conditions and warranties. Some Prescribed Terms permit a supplier and/or manufacturer to limit its liability for breach of the Prescribed Terms. The Supplier covenants with Bradken that the Supplier's liability in respect of a breach of any Prescribed Term relating to the Goods or any part of the Goods or breach of an express warranty shall not be limited in any way, notwithstanding that limitation may be available to the Supplier under statute. Any attempt by the Supplier to limit or exclude its liability for breach of a Prescribed Term or any express warranty is void.

8. PAYMENTS

- (a) Payment to the Supplier shall not constitute an acceptance of the Goods by Bradken or waiver of any of the Supplier's warranties.
- (b) Statements of all invoices in respect of Goods supplied must be rendered on or before the 15th day of the month following delivery of those Goods and statements received after that date will be treated by Bradken as accounts relating to the following month for the purpose of payment.
- (c) Where Bradken has paid progress payments to the Supplier for work completed and/or materials procured by the Supplier to fulfil the Order (such work completed and materials procured being "Work in Progress"), property in all Work in Progress regardless of the level of completion or processing shall immediately pass to Bradken, and the Supplier must clearly identify Work in Progress as the property of Bradken.

9. CANCELLATION OF ORDER

- (a) Bradken may cancel the Order in whole or in part in the event of the Supplier:
 - (i) At any time failing, or being unable or unwilling to comply with any of the Terms, Conditions or warranties herein contained;
 - (ii) Committing an act of bankruptcy or (if the Supplier is a company) having a receiver appointed or proceedings instituted against it or a resolution passed for its winding up; or
 - (iii) fails to deliver the Goods within the time specified or otherwise in accordance with the Order or any delivery schedule agreed upon by the parties.
- (b) The Supplier shall not be entitled to claim any compensation in respect of or arising from any such cancellation.

10. NON-DISCLOSURE OF SPECIFICATIONS AND INFORMATION

The Supplier undertakes that it will not now or in the future reproduce for or sell to any person or company other than Bradken, whether for profit or otherwise, the Goods (or any part of the Work in Progress manufactured by the Supplier to specifications provided by Bradken or any of its related entities, nor will the Supplier divulge to any other person any information, specifications, drawings or intellectual property received from or provided by Bradken or its related entities without the prior written consent of Bradken.

11. NON-ASSIGNMENT

The Supplier shall not delegate, subcontract or assign any duties, performance of work or claims under the contract constituted by its acceptance of the Order without the prior written consent of Bradken.

12. INDEMNITY

- (a) The Supplier by its acceptance of the Order indemnifies and holds harmless Bradken, its successors, administrators and assigns, from and against all claims for loss or damage to persons or property or loss of property or for death or injury caused by or arising out of or in connection with any act matter or thing done, omitted or permitted to be done by the Supplier, its servants or agents.
- (b) The Supplier by its acceptance of the Order indemnifies and holds harmless Bradken, its successors, administrators and assigns, from and against all claims for loss, (whether direct, indirect or consequential), loss of profit, loss of opportunity or loss of use and any and all other economic loss, including and without limitation, any loss by reason of a breach of a term or condition of the Order, or the negligence or any other act, matter or thing done, admitted or omitted to be done by the Supplier.

13. PERFORMANCE OF WORK ON BRADKEN'S PREMISES

If any work necessary for fulfilling the Order is performed on Bradken's premises, then the Supplier shall, prior to starting work provide evidence of Workers Compensation Insurance cover, and other Insurances as reasonably required by Bradken and comply fully and without exception with all of the requirements of Bradken's workplace and occupational health and safety and environmental controls, policy, guidelines and directions. The Supplier by its acceptance of the Order indemnifies Bradken its successors, administrators and assigns at all times hereafter from and against all costs, (including legal fees on a full indemnity basis), loss, liability, damage, claim or proceedings whatsoever arising out of the performance of such work for injury to or the death of any person and damage to any property and any other loss, liability, damage, claim or proceedings for which the Supplier, its employees, servants or subcontractors are liable and prior to commencement of any such work the Supplier shall furnish to Bradken satisfactory evidence that the Supplier and its subcontractors have adequate and current public liability and workers compensation insurance.

14. SUPPLY OF PARTS BY BRADKEN

If Bradken provides to the Supplier any parts or components to be incorporated by the Supplier in the Goods, the parts or components supplied shall at all times after delivery thereof to the Supplier until acceptance of the Goods by Bradken be at the risk of the Supplier who shall pay and bear the actual cost incurred by Bradken in replacing or repairing the parts or components where such loss or damage arose whilst the parts or components were in the possession of the Supplier.

15. QUALITY MANAGEMENT SYSTEMS

The Supplier shall operate and maintain an effective quality management system appropriate to the type of goods and services offered and/or in accordance with that specified in the Order. The Supplier shall provide Bradken, its principal or authorised representatives, access to the Supplier's premises or working area for the purpose of quality surveillance and audit.

16. HEALTH AND SAFETY REQUIREMENTS

The Goods supplied must comply with all applicable health and safety legislation, whether State or Commonwealth and meet or exceed the appropriate Australian or International Standard.

17. ENVIRONMENTAL REQUIREMENTS

The Goods supplied must comply with all applicable environmental legislation whether State or Commonwealth and meet or exceed the appropriate Australian or International Standard.

18. SEVERANCE

In the event that the whole or any part or parts of any clause in these terms and conditions is found to be unenforceable by a Court of competent jurisdiction then such clause or part thereof shall be to that extent severed from these terms and conditions without effect to the validity and enforceability of the remainder of these terms and conditions.