

# Terms and Conditions for the Supply of Goods and/or Services - Perseus Ghanaian entities

Version August 2021



## 1 AGREEMENT

- (a) The Agreement consists of:
- (i) the Order;
  - (ii) these terms and conditions for the supply of Goods and/or Services (**Terms and Conditions**); and
  - (iii) any other document which is attached to or incorporated by reference in the Order or these Terms and Conditions.
- (b) If there is any conflict or inconsistency between the documents constituting the Agreement, the documents will rank in order of precedence in the order they are listed in clause 1(a).
- (c) The Agreement contains the entire agreement between the Parties regarding its subject matter and supersedes all prior communications between the Parties.
- (d) No terms or conditions submitted by either Party that are in addition to, different from, or inconsistent with those contained in these Terms and Conditions or in the Order, including, without limitation, the Supplier's printed terms and conditions and any terms and conditions contained in any quotation, invoice, order acknowledgment, confirmation, acceptance, bill of lading or other instrument from the Supplier, shall be binding upon either Party unless specifically and expressly agreed to in writing and signed by duly authorised representatives of both Parties.
- (e) No amendment or variation of the Agreement is valid or binding on a party unless in writing and signed by both Parties.

## 2 SUPPLY OF GOODS AND/OR SERVICES

- (a) In consideration of payment of the Price by Perseus, the Supplier must supply to Perseus the Goods and/or perform the Services in accordance with the Agreement.
- (b) The Parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership, and the Supplier does not have the right or authority to act on behalf of or bind Perseus unless the Supplier has been expressly authorised by Perseus in writing.

## 3 SUPPLIER'S WARRANTIES

- (a) The Supplier warrants that:
- (i) the Goods and/or Services supplied will match the description (if any) referred to in the Order;
  - (ii) the Goods and/or Services supplied will be of the highest standard and in accordance with Perseus's specifications (where those specifications are made known to the Supplier) or in the absence of such specifications, in accordance with any applicable standards or regulations;
  - (iii) if the Supplier gave Perseus a sample of the Goods or a demonstration of the Services, the Goods and/or Services will be of the same nature and quality as the sample or demonstration given;
  - (iv) the Goods and/or Services supplied will 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 Perseus specifies;
  - (v) it will obtain at its cost all usual trade warranties and any warranties specifically requested by Perseus in respect of the Goods and/or Services and will assign the benefit of any such warranties to Perseus including any warranties obtained from the Supplier's subcontractors and/or suppliers;
  - (vi) any Goods supplied will be of merchantable quality and free from any security interest or other encumbrance;
  - (vii) in relation to the provision of any Services:
    - (A) the Supplier and its personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work;
    - (B) any equipment used on the Site by the Supplier will be in safe working condition, comply with

all legislation which is applicable to such equipment and be operated and maintained by suitably qualified and competent personnel, to the satisfaction of Perseus;

- (C) if the Services are Defective or otherwise do not comply with this clause 3, the Supplier must, if requested by Perseus, re-perform the Services at the Supplier's cost and Perseus may terminate the Agreement at no cost to Perseus; and

- (D) any Services provided must be undertaken by persons who are appropriately licensed, qualified and/or trained to provide those Services; and

- (viii) it will comply with the requirements under any applicable law in respect of the manufacturing, handling, storage and transport of the Goods and/or the performance of the Services including having obtained and maintained all required licences, permits or approvals and complying with the conditions thereof.

## 4 DELIVERY, ACCEPTANCE AND SITE ACCESS

- (a) The Supplier must supply the Goods and/or perform the Services in accordance with the terms of the Agreement to the Delivery Location by the Delivery Date.
- (b) Goods must be accompanied by a delivery docket detailing the Goods, if so requested by Perseus any certificates of origin or other relevant documents concerning the Goods, all relevant manufacturer's or supplier's instructions and manuals concerning the use of the Goods and all relevant manufacturer's or supplier's warranties.
- (c) Goods will be deemed accepted by Perseus when Perseus's Representative acknowledges receipt of the Goods. Acceptance does not mean that Perseus acknowledges that the Goods are not Defective or otherwise in accordance with the Agreement.
- (d) If the Supplier fails to deliver all of the Goods and/or perform the Services in accordance with the Agreement, Perseus may, in addition to all other rights and remedies available:
- (i) reject any Goods and sell or dispose of any rejected Goods at the Supplier's cost if the Supplier does not collect the rejected Goods within 15 days of being Notified of the rejection;
  - (ii) terminate the Agreement by Notice; and/or
  - (iii) set off against the Price any additional costs incurred by Perseus as a consequence of the Supplier's failure.

- (e) Whilst delivering Goods and/or performing Services on the Site, the Supplier must comply, and must ensure that its employees, contractors, visitors and agents comply, with all Site Policies and instructions and directions given by Site staff.

- (f) Notwithstanding any other term of the Agreement, in the event of any breach of clause 4(e) Perseus may require the Supplier and/or its employees, contractors, visitors and agents to leave the Site immediately and remove any material or substance from the Site at the Supplier's cost, and the Supplier must, at its own cost, ensure such request is immediately complied with and take all possible action to ensure the protection and safety of all works, personnel and the environment.

## 5 HAZARDOUS MATERIALS

- (a) The Supplier must transport and store all Goods that are hazardous materials and dangerous goods in accordance with all applicable legislative requirements and provide Perseus with the relevant Materials Safety Data Sheet (**MSDS**) for such Goods prior to delivery of such Goods.
- (b) No hazardous Goods may be delivered until the relevant MSDS has been provided to Perseus.

## 6 DIRECTIONS TO VARY THE GOODS AND/OR SERVICES

- (a) Perseus shall have the right at any time to make changes to drawings, specifications, quantities, delivery timing, shipment method or any other details set out in the Order.
- (b) If the Supplier considers a change described in clause 6(a) would result in a time or cost effect to the Agreement, the Supplier shall notify Perseus immediately.

- (c) No later than 10 Business Days after the Supplier's Notice in clause 6(b), the parties must attempt to agree such cost and time effects. If the amount payable or deductible by Perseus is not agreed, Perseus will determine a reasonable amount having regard to the costs and risks associated with the variation.

## **7 PRICE**

- (a) Perseus must pay the Supplier the Price in consideration for the supply of the Goods and/or Services.
- (b) Unless otherwise agreed in writing, the Price in the Order shall be in the currency set out in the Order. The Price shall not be subject to change without written consent of Perseus.
- (c) The Price is inclusive of all costs incurred by the Supplier in the supply of the Goods including all charges for packing, insurance and delivery of the Goods.
- (d) The Price is inclusive of all taxes and duties, except any applicable value added tax or similar tax imposed or levied by any government authority.
- (e) Payment shall not constitute an acceptance by Perseus that the Goods and/or Services are not Defective or in any way affect Perseus's rights under the Agreement.

## **8 TITLE AND RISK TO GOODS**

- (a) Title in the Goods passes to Perseus upon the earlier of payment of the Price or delivery of the Goods to the Delivery Location.
- (b) Risk in the Goods will remain with the Supplier until the Goods are delivered to the Delivery Location and accepted by Perseus in accordance with clause 4(c).

## **9 INVOICES/PAYMENT**

- (a) The Supplier must, unless otherwise agreed with Perseus, render an invoice in relation to Goods supplied within five (5) Business Days of delivery of the Goods to the Delivery Location and in relation to Services performed at the end of each month during which Services are being performed, calculated by reference to the rates, prices or other amounts specified in the Order.
- (b) Invoices must be in a form acceptable to Perseus and must contain, in addition to compulsory provisions of Ghanaian law where applicable:
- (i) the Order number;
  - (ii) a description of the Goods and/or Services;
  - (iii) the packing slip number;
  - (iv) for the provision of Services, time sheets; and
  - (v) the Supplier's tax registration number.
- (c) Subject to the invoice including the information required by clause 9(b) and subject to clause 9(f), Perseus must pay the Supplier within 30 days following the end of the month in which the invoice is received by Perseus.
- (d) Each Order must be invoiced separately and each line item must have its own line in accordance with the Order.
- (e) All invoices and payments must be in Ghanaian Cedis unless otherwise specified on the Order or approved by Perseus. In no event will such approval be granted without the Supplier providing Perseus with a valid exemption issued by the Bank of Ghana.
- (f) Perseus may set-off any account owing from the Supplier to Perseus, or to any Related Entity:
- (i) against any amount due or owing to the Supplier under the Agreement; and
  - (ii) any amount by which, in Perseus's opinion, the value of the Goods are diminished as a result of the Supplier's failure to comply with the Agreement.

## **10 PACKING, DESPATCH AND TRANSPORT OF GOODS**

- (a) The Supplier is responsible at its cost for packing and unless provided otherwise in the Order, transporting the Goods to the Delivery Location.
- (b) If the Order provides that Perseus is responsible for arranging transport of all or some of the Goods, then the Supplier must notify Perseus's Representative of the details of those Goods ready for despatch in sufficient time to enable transport to be arranged.
- (c) The Supplier must pack and protect all Goods ready for despatch in accordance with best practice having regard to methods of carriage and handling and to weather conditions through which they will pass whilst being transported to the Delivery Location. The Supplier must provide and fit all lifting and handling devices required for lifting and handling the Goods in transit.

- (d) The Supplier must notify Perseus's Representative promptly of each item and the estimated time for arrival at the Delivery Location.

- (e) Each package must be labelled clearly with Perseus's name, the Order number and a description of the Goods, including the quantities and stock codes.

## **11 WARRANTY PERIOD**

- (a) If, during the Warranty Period, any of the Goods and/or Services are found to be Defective, Perseus may:
- (i) return the Defective Goods to the Supplier at the Supplier's cost;
  - (ii) repair or make good the Defective Goods; or
  - (iii) reject the Defective Services or re-perform or make good the Defective Services at the Supplier's cost.
- (b) If requested by Perseus, the Supplier must repair or replace the Defective Goods and/or re-perform the Defective Services or reimburse Perseus for any expenses incurred in repairing, replacing, re-performing or making good (as the case may be) any Defective Goods or Services at the Supplier's cost.
- (c) The Supplier must pay for any damage caused by the Supplier or arising from Defective Goods or Services to property.

## **12 INDEMNITIES**

The Supplier must indemnify Perseus and agrees to hold Perseus harmless from all claims for:

- (a) injury to or death of any of the Supplier's employees, agents, suppliers or subcontractors, except to the extent the claim for such injury or death arises solely as a result of Perseus's negligence or breach of the Agreement;
- (b) damage to or destruction of any property belonging to the Supplier or in the Supplier's possession or under the Supplier's control except to the extent the claim for such damage or destruction arises solely as a result of Perseus's negligence or breach of the Agreement;
- (c) injury to or death of any person (including employees, agents, suppliers or subcontractors of Perseus) or damage to or destruction of any property (including property of Perseus, its agents, employees, suppliers or subcontractors) caused by any negligent acts or omission by the Supplier or the Supplier's employees, agents, suppliers or subcontractors; and
- (d) failure by the Supplier to comply with any law or the payment of any taxes required at law or in accordance with the Agreement.

## **13 CONFIDENTIALITY**

- (a) If Perseus discloses or grants the Supplier access to any research, development, technical, economic, or other business information of a confidential nature, whether reduced to writing or not, the Supplier agrees, as a condition of receiving such information, that the Supplier will not without Perseus's written consent use or disclose any such information to any other person at any time unless required by law.
- (b) The Supplier shall use such information only for the purpose of the Agreement.

## **14 CONSEQUENTIAL LOSS**

Despite any other provision in the Agreement, neither Party is liable for any Consequential Loss suffered by the other Party.

## **15 INSURANCE**

- (a) The Supplier must take out and maintain for the duration of the Agreement:
- (i) insurance for the Goods up to the time they are delivered for an amount not less than their replacement value;
  - (ii) public and products liability insurance for an amount of five million US dollars (US\$5,000,000) (or equivalent in the Supplier's policy currency) to cover the Supplier's legal liability in respect of occurrences resulting in:
    - A. death of or bodily injury (including illness) to any third party; and
    - B. damage to property not belonging to nor held in trust by nor in the care, custody or control of the Supplier,arising out of or in the course of or caused by the execution, performance or purported performance of the Supplier's obligations under the Agreement.

(iii) any other insurance which is required by Law in respect of the Agreement or the supply of the Goods and/or Services including any insurance as required for its workers and motor vehicles.

(b) The Supplier must upon receipt of the Order and at any time on request by Perseus, provide to Perseus certificates of currency to evidence the existence of the policies required to be arranged by the Supplier and its sub-contractors in respect of such insurance.

(c) The Supplier must at all times be responsible for complying with and abiding by the terms and conditions of the insurances arranged by them and for the payment of all excesses or deductibles under the terms of such insurances.

(d) The Supplier must immediately advise Perseus of any change or cancellation of any of the insurances referred to in clause 15(a).

## 16 FORCE MAJEURE

(a) If a Party (**Affected Party**) is or will be prevented or delayed from performing any of its obligations under the Agreement (other than for payment of monies) directly as a result of Force Majeure Event, then the Affected Party must give the other Party a Notice containing full particulars of the Force Majeure Event as soon as possible and in any event within one (1) Business Day of when the Affected Party became aware, or should reasonably have become aware, of the Force Majeure Event.

(b) Following Notice of a Force Majeure Event in accordance with clause 16(a), and while the Force Majeure Event subsists, the obligations of the Affected Party to perform the Affected Obligations will be suspended.

(c) The Affected Party must give Notice, to the other party as soon as practicable after the Affected Party ceases to be affected by the Force Majeure Event. Following such notification, the obligations of the Parties under the Agreement will continue on the terms existing immediately prior to occurrence of the Force Majeure Event.

(d) The Affected Party must take and continue to take all action reasonably practicable to mitigate the effects of the Force Majeure Event (including any loss suffered by the other party as a result of the Affected Party's failure to carry out its obligations under the Agreement).

## 17 JURISDICTION

The Agreement shall be governed by and construed with reference to the laws of the Republic of Ghana.

## 18 DISPUTE RESOLUTION

(a) If a dispute, difference, controversy or claim arises between the Parties in respect of any fact, act, matter or thing arising out of or in any way connected with the Agreement (**Dispute**) and one Party requires the Dispute to be resolved, then that Party shall promptly give the other Party a Notice giving details of the Dispute.

(b) Within 10 Business Days of a Party receiving a Notice referred to in clause 18(a), the Parties and/or their delegates must attempt to resolve the Dispute amicably.

(c) If, within 10 Business Days of the meeting referred to in clause 18(b), the Dispute is still not resolved, then either Party may proceed to arbitration in accordance with clause 18(d).

(d) Any Dispute shall be referred to and finally resolved by arbitration in accordance with the provisions of the Alternative Dispute Resolution Act, 2010 (Act 798) in force at the time the Dispute is referred to arbitration by a Party.

(i) The number of arbitrators shall be three, appointed in accordance with the provisions of the Alternative Dispute Resolution Act, 2010 (Act 798) in force at the time.

(ii) The place and seat of arbitration shall be Accra, Ghana.

(iii) The language to be used in the arbitral proceedings shall be English.

(iv) This arbitration agreement shall be governed by the laws applicable in the Republic of Ghana.

## 19 TERMINATION

(a) Perseus may terminate the Agreement or any part of it at any time by giving Notice to the Supplier (i) prior to the Delivery Date or actual delivery of the Goods (whichever is later) if or to the extent the Agreement involves the supply of Goods and (ii) at any time if and to the extent the Agreement involves the provision of Services.

(b) If an Agreement involving the supply of Goods is terminated, Perseus will only be liable for the cancellation of any custom-made Goods for which Perseus does not take delivery. Perseus's liability for such Goods shall be the lesser of:

(i) the Supplier'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 terminated portion of the Agreement; and

(ii) the Price per finished unit, after giving effect to any discount Perseus would otherwise be entitled to, for the terminated portion of the Agreement.

(c) Perseus's liability for termination of an Agreement involving the provision of Services, shall be the lesser of:

(i) the Supplier's actual cost of the Services rendered prior to termination; and

(ii) the Price for the Services cancelled.

If any hourly or other time-based rate for Services is specified in the Order, such rate will be used in determining the Supplier's actual costs. In no case shall Perseus be liable for the Supplier's lost profits as a result of such termination.

(d) Upon receipt of a termination Notice, the Supplier will, unless otherwise directed by Perseus, immediately cease performing its obligations under the Agreement, return to Perseus any items supplied to the Supplier by Perseus and follow Perseus's reasonable directions relating to the termination of the Agreement. The rights set out in this clause comprise the Supplier's sole entitlements upon termination of the Agreement. The Supplier releases Perseus from any and all other claims.

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

## 20 NOTICES

Any notice (**Notice**) given or made pursuant to the Agreement must be in writing and will be taken to be duly given:

(i) in the case of delivery by hand, when delivered; or

(ii) in the case of email, at the time the email is sent unless the sender receives a return email notification that the email was not delivered, undeliverable or similar,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day or the Notice is sent or is later than 5.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day.

## 21 ANTI-BRIBERY AND CORRUPTION AND CONFLICTS OF INTEREST

(a) Anti-bribery and Corruption

(i) The Supplier represents that it is, and that it will ensure that its relevant associates are, familiar with and will comply with the Anti-Corruption Laws in connection with this Agreement and matters regarding Perseus.

(ii) The Supplier agrees to promptly and truthfully complete and execute any document that Perseus may require the Supplier to complete and execute from time to time to confirm compliance with clause 21(a).

(b) Indemnity

If the Supplier breaches its obligations or makes misrepresentations under clause 21(a), the Supplier must indemnify Perseus, its Related Entities and their directors, officers, employees, agents (each an **Indemnified Party**) from and against any and all losses, claims, damages and liabilities arising from that breach and the Supplier must reimburse any Indemnified Party for all expenses (including legal costs and expenses on a solicitor and own client basis) as they are incurred in connection with the investigation of, preparation for or defence of any pending or threatened claim of any action or proceeding arising from that breach.

(c) Termination

If the Supplier breaches its obligations or makes misrepresentations under this clause 21, Perseus may, without waiving any claims under clause 21(b), immediately terminate the Agreement.

## 22 HUMAN RIGHTS AND ANTI-SLAVERY

- (a) In performing its obligations under this Agreement, the Supplier must comply and must ensure that its relevant Associates comply with the Human Rights Laws and Policies. The Supplier undertakes not to purchase goods or products used directly or indirectly in connection with this Agreement or otherwise for the benefit of Perseus that have been sourced from producers or manufacturers using forced labour in their operations.
- (b) The Supplier must:
- (i) notify Perseus as soon it becomes aware of any breach of the Human Rights Laws and Policies in a supply chain that has a connection with this Agreement; and
  - (ii) promptly and truthfully complete any questionnaire or declaration provided by Perseus in relation to compliance with Human Rights Laws and Policies in a supply chain that has a connection with this Agreement. Parties to meet
- (c) If Perseus determines there to be a breach or potential breach by the Supplier of this Clause 22, the Parties will meet within a reasonable period nominated by Perseus to attempt to resolve any concerns raised by Perseus.
- (d) Following such discussion (or if the Supplier declines or fails to meet with Perseus after the period nominated by Perseus) Perseus may, in its absolute discretion and notwithstanding any other provision of this Agreement:
- (i) suspend the operation of this Agreement to collect more information or further analyse the effect of such breach; or
  - (ii) immediately terminate this Agreement.
- (e) In the event of termination under Clause 22(d)(ii) Perseus will not have any liability to the Supplier for:
- (i) any fees, reimbursements or other compensation under this Agreement (except for compensation for Services already provided or Goods already delivered to Perseus); or
  - (ii) any other loss, cost, claim or damage resulting, directly or indirectly, from such termination.

## 23 GENERAL

- (a) The Supplier cannot assign or subcontract its rights or obligations under the Agreement in whole or in part, without prior written consent of Perseus (at its absolute discretion). If an assignment or subcontracting is permitted by Perseus, the Supplier shall be wholly liable to Perseus for the acts and omissions of the Supplier's suppliers and/or subcontractors.
- (b) No Party may rely on the words or conduct of the other Party as a waiver of any right unless the waiver is in writing and signed by the Party granting the waiver.
- (c) A waiver by Perseus of any term or provision of the Agreement will only be taken to have been made if it is expressed in writing and signed by Perseus's Representative.
- (d) If part or all of any provision of the Agreement is illegal or unenforceable it may be severed from the Agreement and the remaining provisions of the Agreement will continue in force.
- (e) The provisions of the Vienna Convention on the Sale of Goods are expressly excluded from the Agreement and do not apply to the Agreement or to any Goods supplied.
- (f) The rights and obligations intended to survive the Agreement including all indemnities and rights and obligations contained in clauses 3 (Supplier's Warranties), and 13 (Confidentiality) survive termination of the Agreement.

## 24 DEFINITIONS

**Agreement** has the meaning given in clause 1.

**Anti-Corruption Laws** means the Foreign Corrupt Practices Act (US), the Australian Criminal Code Act 1995 (Cth) and any other anti-corruption laws applicable to Perseus and/or the Supplier from time to time and any anti-bribery and corruption policies of the Perseus group of companies as may be amended from time to time and as available on [www.perseusmining.com](http://www.perseusmining.com).

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Ghana.

**Consequential Loss** means 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 arising from a breach of contract, in tort (including negligence), at law, in equity or under statute.

**Defective** means Goods and/or Services which are not in accordance with the Agreement or which are damaged, deficient or faulty.

**Delivery Date** means the delivery date specified in the Order.

**Delivery Location** means the place for delivery specified in the Order.

**Force Majeure Event** means any exceptional event or circumstance beyond the reasonable control of the party claiming force majeure, not able to be overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the force majeure by that party and which could not have been reasonably foreseen and (subject to satisfying the requirements of the foregoing) excludes the following events or circumstances unless and to the extent caused by a Force Majeure Event:

- (i) non-performance or delay by the Supplier or the Supplier's agents, suppliers or subcontractors;
- (ii) economic hardship of either party;
- (iii) severe economic fluctuations; and
- (iv) strikes, industrial activity or industrial unrest.

**Goods** means the goods – if any – described or referred to in the Order.

**Human Rights Laws and Policies** means all laws protecting human rights including all laws prohibiting human trafficking, slavery, servitude, forced and bonded labour and child labour applicable to Perseus and/or the Supplier from time to time and any human rights and anti-slavery policies of the Perseus group of companies as may be amended from time to time and as available on [www.perseusmining.com](http://www.perseusmining.com).

**Order** means a purchase order for Goods or a service order for Services issued by Perseus to the Supplier.

**Parties** means Perseus and the Supplier and “**Party**” means either of them.

**Perseus** means the company noted in the Order and its successors and assigns.

**Perseus's Representative** means the person so named in the Order or any other person appointed by Perseus from time to time.

**Price** means the price described in clause 7 and included in the Order.

**Related Entity** means any company which is part of the Perseus group of companies from time to time.

**Services** means the services, if any, described or referred to in the Order.

**Site** means the site where the Services are performed and/or the Goods are supplied.

**Site Policies** means Perseus's policies, procedures or guidelines applicable to the Site including those in relation to health, safety and the environment.

**Supplier** means the party so named in the Order.

**Warranty Period** means the period of 12 months commencing on the date of acceptance of the Goods under clause 4(c) and/or 12 months from the date on which the Services are completed unless otherwise stated in the Order.