Purchase Order Terms and Conditions

1 DEFINITIONS
In this Contract unless the context otherwise requires:
(a) "Contract" means the Purchase Order and these Terms and Conditions;
(b) "Contractor" means the party identified as the Contractor in the Purchase Order;
(c) "Date for Delivery" means the date/s and/or times on which the Goods and/or Services/Works are to be delivered and/or provided to the Delivery Location;
(d) "Defective" means:
   (i) defective in quality or workmanship;
   (ii) defective in material;
   (iii) unsuitably fit for the purpose for which they were supplied; and
   (iv) any other defect;
(e) "Defective Liability Period" means the period stated in the Contract after the Date of Delivery or completion of all the Services/Works;
(f) "Delivery Location" means the location specified in the Purchase Order, or as otherwise directed by the Principal;
(g) "Defective Warranty Period" means the period specified in the Purchase Order or directed by the Principal;
(h) "Direction" means a direction, decision, demand, determination, instruction, notice, order, rejection or requirement of the Principal;
(i) "FOT" means, in relation to delivery of the Goods, free on truck (or other transport) and includes the responsibility (and associated costs) for packing, loading, transportation and insurance (for the full replacement value of the Goods);
(j) "Goods" means the goods, materials, equipment, articles, any other property or parts to be provided or products described and specified in the Purchase Order including all necessary ancillary and associated items, things or services;
(k) "Goods and/or Services/Works" means the Goods and/or Services/Works and includes any specifications, drawings or other documents that may be contained or referred to therein or annexed thereto;
(l) "Insurance" means insurance (for the full replacement value of the Goods);
(m) "Intellectual Property" means any intellectual or industrial property rights, whether registered or unregistered, including without limitation:
   (i) all patents, trade marks, copyright, designs, trade secrets, know-how and other rights in any design, materials, processes, documents and methods of working; and
   (ii) all licences and other rights to use or to grant the use of any of the foregoing;
(n) "Payment Claim" means the claim for payment made by the Contractor in accordance with this Contract;
(o) "Price" means:
   (a) where there is a lump sum in the Purchase Order, that lump sum;
   (b) where there are rates in the Purchase Order, the sum ascertained by multiplying those rates by the quantity properly delivered and performed in accordance with this Contract;
   (c) where there are rates and lump sums in the Purchase Order, the aggregate of the rates and lump sums referred to in paragraph (a) and (b) as adjusted under this Contract.
(p) "Principal" means the party issuing the Purchase Order, unless stated otherwise in the Purchase Order;
(q) "Project" means the project at which the Principal is carrying out its own works;
(r) "Purchase Order" means the document issued by the Principal to the Contractor in order to supply the Goods and/or Services/Works and includes any specifications, drawings or other documents that may be contained or referred to therein or annexed thereto;
(s) "Price Claim" means the claim for payment made by the Contractor in accordance with this Contract;
(t) "Terms and Conditions" means this document titled "Purchase Order Terms and Conditions";
(u) "Variation" means any:
   (a) change in the quantity of the Goods and/or Services/Works including any Goods and/or Services/Works with a view to undertaking the supply by itself or its permitted assigns;
   (b) variation in the character or quality of the Goods and/or Services/Works; or
   (c) change in the cost of the supply under this Contract, as directed by the Principal in writing and identified as a Variation.

2 INTERPRETATION
2.1 In this Contract unless a contrary intention appears:
(a) clause headings are inserted for convenience only and will not be used in the interpretation of this Contract;
(b) a reference to the word "including" and similar expressions are not words of limitation;
(c) references to parties, clauses, schedules or annexures are references to parties, clauses, schedules or annexures to, or of, this Contract and a reference to this Contract includes their respective permitted assigns;
(d) a reference to this Contract or to any other agreement, deed or document, includes any modification or amendment to this Contract or the said deed or document as amended, novated, supplemented, varied or replaced from time to time;
(e) a reference to a person includes a reference to a firm, body corporate, an unincorporated body or other entity however constituted;
(f) a party includes the party’s executives, administrators, successors and permitted assigns;
(g) if a party consists of more than one person this Contract binds them jointly and each of them severally;
(h) references to a person or party shall be construed to include payments to any person or party under which either such party or person is permitted to receive such payments or to whom such payments are due or to whom such person is entitled or had entitled it or to whom such person or party is entitled to receive or to whom such person or party is entitled to make payments in all circumstances or other persons or parties in respect of whom or in respect of whose dealings any person or party might reasonably be expected to deal or to whom any person or party might reasonably be expected to make payments;
(i) references to any legislation, or to any section or provision of any legislation, includes any amendment, modification or regulation to that legislation as amended or modified, and any supplementary, novelled, varied or replaced from time to time;
(j) a person executes this Contract in its capacity as a trustee, a reference to that party includes any substituted or additional trustee;
(k) an obligation to make a payment or representation to or by a person or party, or the part of more than one party shall be deemed to be an obligation, covenant, representation or warranty on the part of those parties jointly and each of them severally;
(l) the singular will include the plural and vice versa and a reference to any gender includes all genders; and
(m) a reference to a day, or time, or date, or hour, or to Australian Dollar shall mean a day, or time, or date, or hour, or Australian Dollar.

3 AGREEMENT TO SUPPLY GOODS AND/OR SERVICES/WORKS
3.1 The acceptance by the Contractor of a Purchase Order constitutes a contract for the supply of the Goods and/or Services/Works in accordance with the Terms and Conditions of this Contract. The Contractor agrees to supply the Goods and/or Services/Works to the Principal in consideration for the Price.
3.2 The Contractor is deemed to accept a Purchase Order on the first to occur of:
(a) the Contractor acknowledging in writing that it accepts the Purchase Order; and
(b) the Contractor commencing the supply of the Goods and/or Services/Works.

4 WARRANTIES
4.1 The Contractor represents and warrants that the Principal will have ownership of the Goods and/or the product of the Services/Works free of any charge, lien, encumbrance or any other interest by a third party and that the Principal will have the ownership of all Intellectual Property relating to the Goods and/or Services/Works.
4.2 The Contractor warrants and represents to have carefully examined all documents furnished by the Principal and fully satisfied itself regarding all the conditions, risks, circumstances and other aspects which are to the performance of the Services/Works and the supply of the Goods. No increase in the Purchase Order Price will be allowed for the Contractor’s failure to ensure that it is fully informed regarding all the circumstances and other aspects which are to the performance of the Goods.
4.3 The Contractor shall comply with all applicable laws, by-laws, ordinances, regulations, a reasonable standard of practice, all the lawful requirements of public authorities and other authorities in any way related to the supply of the Goods and/or Services/Works, including without limitation all occupational health and safety laws.
4.4 The Contractor shall be responsible for the payment of all the relevant Australian (Federal, State and Local Government) and overseas taxes, PAYG taxes, duties and charges payable with respect to the Goods and/or Services/Works.

5 DIRECTIONS
5.1 The Contractor and its personnel, consultants and subcontractors must comply with the Principal’s directions whether oral or in writing.

6 ACCESS
6.1 The Contractor acknowledges that if the Contractor enters the Site or any other premises, the Contractor must take all measures necessary to protect people and property, and prevent unnecessary interference with the passage of people and vehicles and prevent nuisance and unnecessary noise and disturbance.
6.2 The Contractor must ensure that its employees, representatives and agents act in a safe and lawful manner and that they comply with all relevant safety legislation and with the Principal’s safety standards and requirements when they are on the Site or on any other premises.

7 DELIVERY OF THE GOODS AND/OR SERVICES/WORKS
7.1 The Goods will be delivered to the Delivery Location on the Date for Delivery, or, if no date is specified, as soon as is reasonably possible and in accordance with any direction given by the Principal. Delivery may be required on any day.

7.2 The Services/Works must be delivered:
(a) commenced immediately upon the acceptance by the Contractor of a Purchase Order or as otherwise directed by the Principal;
(b) completed on or before the Date for Delivery; and
(c) carried out at the Delivery Location/site.
7.3 The Principal may, at its sole discretion, amend the Date for Delivery to an earlier or later date by giving notice to the Contractor of the new Date for Delivery. The Contractor must not deliver the Goods and/or Services/Works until the amended Date for Delivery and is not entitled to claim any additional payments as a result of the amended later Date for Delivery.
7.4 On the Date of Delivery, the Contractor (unless otherwise directed by the Principal), at its expense, shall promptly unload the Goods at the area(s) of the Delivery Location as directed by the Principal.
7.5 The Contractor must:
(a) provide to the Principal a detailed program for the projected supply of the Goods and/or Services/Works and strictly abide by that program;
(b) advise the Principal when the Goods are delivered to the Delivery Location and provide the anticipated delivery time;
(c) advise the Principal when the Goods arrive at the Delivery Location;
(d) ensure that the Goods are unloaded and delivered to the Delivery Location;
(e) ensure that all Goods are clearly marked and identified;
(f) ensure that any equipment or material present at the Delivery Location/ SITE observe the rules of the Delivery Location/ SITE, including any personal protective equipment requirements;
(g) in the event that the Goods are damaged or destroyed during delivery to the Delivery Location, indemnify the Principal in relation to any losses in relation to that damage or destruction;
Purchase Order Terms and Conditions

(h) ensure that the Goods have a delivery docket attached to them at the time they are delivered to the Delivery Location, that it is signed by the person delivering the Goods;
(i) at the time of delivery, have the delivery docket signed by the Principal’s representative, stating the time and Date of Delivery. Signed delivery docket will be deemed to constitute acceptance of the Goods by the Principal;

7. Without prejudice to any other rights to which the Contractor is entitled under this Contract, if the Contractor:
(a) delivers the wrong type, quantity or quality of Goods then the Principal may accept or reject, entirely or in part, the Goods delivered and where the Goods are returned to the Contractor, shall be packaged and returned at the Contractor’s expense;
(b) delivers the Goods at a time or place other than the Date for Delivery and the Delivery Location, then the Principal may refuse or reject the Goods, and the Principal may, without prior notice, procure the Goods from another Contractor, and recover from the Contractor any additional costs incurred by the Principal;

8. INSPECTION AND TESTING

8.1 The Principal may at any time, in connection with the Goods, test the Goods or any Goods or Services/Works. No inspection or testing, or the results of the inspection or testing by the Principal will be in any way relieve or release the obligations of the Contractor to the Principal under this Contract or otherwise.

8.2 At all reasonable times, the Principal has the right to carry out site inspections, examinations and testing at the Contractor’s premises or any other premises where the Goods are being manufactured or stored.

8.3 The Contractor must:
(a) provide to the Principal, at the Principal’s request, copies of all technical and safety/quality documentation and information relating to the Goods and/or Services/Works and all other reasonable assistance; and
(b) enable the Principal to have access to the Contractor’s premises or any other premises where the Goods are or were being manufactured or stored, to enable the Principal to examine and test the Goods and/or Services/Works and the costs incurred by the Principal in conducting the inspection, examination and tests will be a debt due from the Contractor to the Principal.

8.4 If the inspections, examinations or tests show Defective Goods and/or Services/Works, the Contractor must, at its own expense, take all reasonable care to rectify the Defects Goods and/or Services/Works.

9. CARE OF THE WORKS

9.1 At all reasonable times, the Principal has the right to the Goods delivered and/or Services/Works. Goods and/or Services/Works are deemed to be collected after they have been loaded onto the Principal’s or its agent’s transport; or
(b) to the extent that this Contract provides for the amount of the alteration, then that amount;
(c) to the extent that the rates contained in this Contract apply, by applying those rates to the quantities properly supplied in accordance with this Contract;
(d) failing any of the above being applicable, then by the amount reasonably assessed by the Principal.

13. RETENTION

13.1 Unless specified otherwise in the Purchase Order, retention of 10% of each payment will be held by the Principal to ensure the Contractor’s performance of all and any of its obligations under this Contract.

13.2 The Principal will release the Contractor’s retention at the end of the Defects Liability Period subject to all defects having been rectified to the satisfaction of the Principal.

13.3 The Principal may, at any time, issue a Direction for the Contractor to refund any expenses or damages which the Principal claims that it has incurred or might in the future incur as a consequence of any act or omission of the Contractor which the Principal asserts constitutes a breach of the Contract.

14. VARIATIONS

14.1 The Principal may, at any time, issue a Variation and the Contractor must perform the Variation. The Contractor must provide to the Principal an estimate of the cost of the Variation and the impact on the Date for Delivery within seven (7) days of the Principal issuing the Variation.

14.2 If the Contractor considers that a Direction from the Principal is a Direction for a Variation but which does not comply with the formal requirements of a Variation, in order to have any entitlement arising from the Direction, the Contractor must, within seven (7) days of the Principal notifying the Contractor of the proposed Variation, together with an estimate of the cost of the Variation and the impact on the Date for Delivery.

14.3 Where the Principal issues a Variation, the Price will be altered by an amount calculated in the following order or priority:
(a) to the extent that the parties have agreed the amount of the alteration, then that amount;
(b) to the extent that the Contractor is entitled to an extension to the Date for Delivery, then that amount;
(c) to the extent that the Contractor is entitled to an extension to the Date for Delivery, then that amount.

15. EXTENSION OF TIME

15.1 The Principal may, by notice in writing to the Contractor, extend the Date for Delivery. The Principal is not under any obligation to grant an extension of time of any kind, nor for the benefit of the Contractor. The Contractor is not entitled to claim any additional payments as a result of the later Date for Delivery.

15.2 The performance of the Works/Services or delivery of Goods is likely to be delayed for any reason, the Contractor must notify the Principal in writing within 24 hours of the alleged cause of the delay giving a full explanation of the reason for the delay on the Date for Delivery and what measures the Contractor is taking to mitigate the delay.

15.3 The Contractor is only entitled to an extension to the Date for Delivery when:
(a) the Contractor can demonstrate that it has actually been or will be delayed in achieving the Date for Delivery by a Variation or any act or omission by the Principal, the Principal’s other subcontractors, agents, consultants or employees;
(b) the cause was beyond the reasonable control of the Contractor;
(c) the Contractor has not contributed to the cause and taken all reasonable steps to mitigate the effect of the delay; and
(d) the Contractor has given all notices strictly in accordance with the requirements of this clause 15.

15.4 Where one period of delay has more than one cause, and if one or more of those causes is or is not a cause for which the Contractor is entitled to claim an extension of time, the Contractor will have no entitlement to an extension of time for that period of delay.

15.5 Where the Contractor claims an entitlement to an extension of time, then it must give a notice in writing to the Principal within seven (7) days of the commencement of the cause of the delay which provides full detailed particulars of the cause of the delay, how that cause has delayed or will delay the Contractor from delivering the Goods and/or Services/Works and the impact of the period of delay (including the dates of commencement and, if applicable, conclusion of the delay) and the extension of time claimed.

15.6 The Principal will determine the period of any extension of time to the Date for Delivery to which the Contractor is entitled as a consequence of the alleged cause of the delay. A failure by the Principal to grant a reasonable extension of time will not cause the Date for Delivery to be set at large.

15.7 The Contractor’s sole remedy for delay shall be an extension of time to the Date for Delivery as provided in this Contract and any other entitlement to be met by any court, losses, expenses or damages as a result of or in connection with any delay or extension of time.

15.8 Except as provided in this clause, the Contractor will have no entitlement to claim any extension of time or any costs in relation to delay or disruption.

16. DELIVERY

16.1 The Contractor indemnifies the Principal from any loss, cost, damage or expense suffered or incurred by the Principal by reason of the Goods and/or Services/Works not being delivered by the Date for Delivery.
Purchase Order Terms and Conditions

17 HEALTH AND SAFETY

17.1 The Contractor must provide to the Principal, Safety Data Sheets (SDS) and identify potentially hazardous materials in the production, storage or transportation of the Goods. Such information must include measures and precautions to be taken in storing and handling the Goods.

17.2 Where plant and equipment is supplied by the Contractor to the Principal, the Contractor must ensure:
   (a) the plant and equipment is in safe working order, repair and condition and complies with current occupational health and safety legislation or codes of practice; and
   (b) a compliance certificate is provided by the Contractor to the Principal confirming that the plant and equipment is in compliance with current occupational health and safety legislation, and any operating instructions, logbooks, manuals and risk assessments are provided and operators have received an induction in the safe use of the plant and equipment.

17.3 The Contractor must ensure the works are completed within the time period specified in the contract and the Principal may extend the time period if the Contractor fails to comply with any of the following:
   (a) the Contractor is not capable of meeting its obligations under this contract, which will result in the Contractor being in breach of contract.

18 INDEMNITY AND LIABILITY

18.1 The Contractor will be liable for, and must indemnify the Principal and keep the Principal indemnified from and against any liability and any loss or damage of any kind whatsoever arising directly or indirectly from or in connection with any breach of this Contract by the Contractor, as well as any other loss, cost, damage or expense suffered or incurred by reason of the Contractor's default, and
   (b) the amount of suspension payments and security (including any retention) called on by the Principal.

18.5 Notwithstanding any other clause in this Contract, the Principal's aggregate liability (whether in contract, statute or otherwise), for any loss of profits, loss of business, loss of revenue, loss of goodwill, cost of capital, loss of use of property, loss of anticipated saving, increase in capital costs, increase in operating costs or any other financial or economic loss or indirect, special, incidental, or consequential loss or consequential damage arising under or in connection with this Contract.

18.10 Notwithstanding any other clause in this Contract and to the full extent permitted by law, the Principal will be entitled to terminate the Contract and to claim the cost of doing so, together with interest

19 INSURANCE

19.1 The Contractor must effect and maintain the following insurance policies for the duration of this Contract:

   (a) any information relating to the Project; and
   (b) any information relating to the Contractor or the Contractor's performance of this Contract;
   (c) protect the personal information from misuse and loss and from unauthorised access, publication, modification, disclosure or stripping or extraction.

22.2 The Contractor must, and must ensure that each of its sub-contractors does not, use or disclose confidential information unless:

   (a) comply with the provisions of the Privacy Act 1988 (Cth);
   (b) use or collect the personal information for the sole purpose of providing the Goods and/or Services/Works, unless that information has been published or made available to the public at large, other than due to a breach of an obligation of confidentiality.

24 CONFIDENTIALITY

24.1 The Contractor must not, and must ensure that each of its sub-contractors does not, use or disclose confidential information unless:

   (a) any information relating to the Project; and
   (b) any information relating to the Goods and/or Services/Works, unless that information has been published or made available to the public at large, other than due to a breach of an obligation of confidentiality.

24.2 If the Contractor is provided with, or has access to, personal information (as defined in the Privacy Act 1988 (Cth)), the Contractor must:

   (a) any information relating to the Project; and
   (b) any information relating to the Goods and/or Services/Works, unless that information has been published or made available to the public at large, other than due to a breach of an obligation of confidentiality.

24.1 The Contractor must not, and must ensure that each of its sub-contractors does not, use or disclose confidential information unless:

   (a) any information relating to the Project; and
   (b) any information relating to the Goods and/or Services/Works, unless that information has been published or made available to the public at large, other than due to a breach of an obligation of confidentiality.
26.2 Unless otherwise stated in this Contract, none of the Terms and Conditions of this Contract will be varied, waived, discharged or released either at law or equity, except with prior consent, in writing by both parties. Any waiver provided in writing is limited to the relevant specified instance and is not a general waiver.

26.3 Every provision of this Contract shall be deemed to be severable and if any provision of this Contract shall be void or illegal or unenforceable for any reason then the same shall be deemed to be severed and omitted from and this Contract with such provision thus severed and omitted and with such consequent amendment as may be necessary shall otherwise remain in full force and effect.

26.4 This Contract constitutes the entire, final and concluded agreement between the parties in respect of the Goods and/or Services/Works. Subject to the other express terms of this Contract, no prior or subsequent representation, quotations or terms and conditions (whether verbal or in writing) by the Principal or the Contractor, or any of their respective employees or agents, will bind the parties. The Contractor warrants that it did not rely upon any the Principal provided information, representations or statements for the purposes of entering into this Contract and that it did so upon its own investigations and determinations. To the extent that the Contractor’s terms and conditions are supplied with Goods and/or Services/Works, the subject of a Purchase Order, the Contractor’s terms and conditions shall be of no legal effect and shall not constitute part of the contract for supply and purchase of those Goods and/or Services/Works.

26.5 The Contractor is an independent contractor of the Principal and this Contract does not constitute a partnership or a joint venture or employment relationship between the Parties, or authorise a party to assume or create any obligations on behalf of another party except as specifically permitted under this Contract.

27 PRINCIPAL’S POLICIES AND PROCEDURES

27.1 The Principal adheres to various corporate policies ("Corporate Policies") of which the full texts of the Corporate Policies are available on the Principal’s website at www.malilithium.com/CorporateGovernance.html

27.2 The Contractor agrees to abide by the terms of the Corporate Policies in force from time to time and to cooperate with the Principal to support and comply with the Corporate Policies to the extent relevant to the Contractor’s Works/Services or scope for supply of Goods.

27.3 The Contractor must notify the Principal without delay of any breach of any Principal’s Corporate Policies by the Contractor or its subcontractors, agents or representatives.