

# Contract Template

## **Reverse Auction Terms and Conditions**

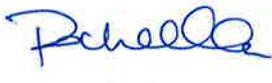
---

### **Strategic Procurement & Supply Chain**

**10 June 2015  
100-CO-CP-0044**

**Disclaimer:**

*This document is protected by copyright, no part of this document may be reproduced or adapted without the consent of the originator/company owner, all rights are reserved. This document is "uncontrolled when printed", refer to electronic copy for up to date version.*

		Reverse Auction Terms and Conditions	100-CO-CP-0044
Revision Number	0		10/06/2015
Status	IFU - ISSUED FOR USE		
Author	Rochelle Carr	 Signature	10/06/2015
Checked	Dean Powell Sam Youngs	 Signature	10 Jun 15 10/06/15
Approved	Cindy Dunham	 Signature	11/6/15
Confidentiality	PUBLIC USE (ACCESS TO ALL)	Publish on Extranet	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Review Date	10/06/2016		

**Revision History** (to be completed for each version retained by Document Control)

Author	Checker	Approver	Rev No.	Status	Issued Date
R.Carr	D.Powell ; S.Youngs	C.Dunham	0	IFU	10/06/2015



**Fortescue**  
The New Force in Iron Ore

**Fortescue Metals Group**

**Reverse Auction Terms and Conditions**

100-CO-CP-0044 Rev 0

---

**TABLE OF CONTENTS**

<b>1</b>	<b>Definitions .....</b>	<b>2</b>	<b>6</b>	<b>Costs .....</b>	<b>2</b>
<b>2</b>	<b>Conditions of Auction .....</b>	<b>2</b>	<b>7</b>	<b>Liability .....</b>	<b>2</b>
<b>3</b>	<b>Evaluation of bids .....</b>	<b>2</b>	<b>8</b>	<b>Governing Law .....</b>	<b>2</b>
<b>4</b>	<b>Ethical Conduct .....</b>	<b>2</b>	<b>9</b>	<b>Survival .....</b>	<b>2</b>
<b>5</b>	<b>Confidentiality.....</b>	<b>2</b>			

# Reverse Auction Terms and Conditions

## 1 Definitions

**Ariba System** means the Inviter's system for issuing and administering Request for Tenders and forum for running Reverse Auctions, also referred to within the Inviter's business as Fort-e-buy.

**Bidder** means an entity or, if applicable, a person to whom or organisation which has registered to participate in the Reverse Auction which may or may not have already submitted a response to the Inviter's Request for Tender.

**Bidding Rules** means the Ariba System bid process rules for the Reverse Auction.

**Commercial Terms** means the terms and conditions issued by the Inviter in the Ariba System with the Request for Tender, including the Pricing Schedule and/or Scope of Works.

**Goods** means the goods the subject of the Request for Tender and/or the Reverse Auction (as applicable).

**Inviter** means the Fortescue entity specified as being the Inviter in the Request for Tender.

**Pricing Schedule** means the Pricing Schedules included in the Request for Tender.

**Request for Tender** means documents issued by the Inviter through the Ariba System to source Goods and/or Services from the Bidder, as updated and amended from time to time.

**Reverse Auction** means the reverse auction for the goods and/or services run by the Inviter the subject of these Reverse Auction Terms and Conditions.

**Reverse Auction Terms and Conditions** means these reverse auction terms and conditions.

**Scope of Works** means the Scope of Works detailing the Goods and/or Services required by the Inviter included in the Request for Tender.

**Services** means the services the subject of the Request for Tender and/or Reverse Auction (as applicable).

**Starting Price** means the starting price specified by the Inviter at the outset of the Reverse Auction.

**Statement of Compliance/Departures** means the tender schedule of this name in the Request for Tender, to be completed by the Bidder to confirm compliance with, or detail departures from the Commercial Terms.

**Successful Bidder** means the Bidder/s notified by the Inviter as the successful Bidder/s (as the case may be) with whom the Inviter wishes to continue negotiations or execute Commercial Terms upon the completion of the Reverse Auction.

**Timing Rules** means the bidding start time, bidding end time and running time of the Reverse Auction set out in the Ariba System.

## 2 Conditions of Auction

In consideration of the opportunity to participate in the Reverse Auction held and conducted by the Inviter, the Bidder agrees to the following Reverse Auction Terms and Conditions:

### 2.1 Bid Process

- (a) The Bidder agrees to be bound by the Bidding Rules set out in the Ariba System specific to the Reverse Auction.
- (b) The Inviter may elect to specify a Starting Price.
- (c) If no bids are forthcoming during the Reverse Auction, the Principal reserves its rights to recommence negotiations with any Bidder after the Reverse Auction.
- (d) The Bidder agrees to submit bids only through the on-line bidding mechanism supplied by the Ariba System and not to submit bids via any other mechanism including, but not limited to, post, courier, fax, e-mail, or orally unless specifically requested by the Inviter.

### 2.2 Inviter's discretion

- (a) Without prejudice to any other rights expressed in these Reverse Auction Terms and Conditions, the Inviter may, in its sole discretion and at any stage before, during or after the Reverse Auction, do all or any of the following:
  - (i) require additional information from any Bidder;
  - (ii) change the structure of the Reverse Auction;
  - (iii) terminate further participation in the Reverse Auction by any Bidder for any reason, regardless of whether any bid submitted conforms with the requirements of these Reverse Auction Terms and Conditions, the Bidding Rules and the Request for Tender;
  - (iv) change the scope of the required Goods, Services and/or deliverables or any other elements of the Request for Tender or Reverse Auction; and
  - (v) vary, amend (including by discarding bids and recommencing the Reverse Auction) or terminate the Reverse Auction.
- (b) The Inviter may in its sole discretion elect to notify, or not to notify affected Bidders when it takes any action with respect to the Request for Tender via the Ariba System or by notice, but will not be obliged to provide any reasons to any Bidder for any of its actions in relation to the Request for Tender.

### 2.3 Timing Rules

- (a) Without limiting the Inviter's discretion as described in clause 2.2 whatsoever, the Timing Rules for the Reverse Auction are set out in the Ariba System.
- (b) If a bid is placed within the final minutes of the Reverse Auction, the Bidder agrees the bidding end time may be extended so each Bidder has an opportunity to respond to the bid.

## 3 Evaluation of bids

### 3.1 Successful Bidder

- (a) The Bidder acknowledges and agrees:

- (i) that submission of a bid and/or being ranked 1 at the bidding end time, or being notified as the Successful Bidder, does not create a contract or any expectation by the Bidder of a future business relationship with the Inviter;
  - (ii) by submitting a bid, the Bidder is making a firm offer to supply the Goods and/or perform the Services for the price specified in the Bid which is not retractable and which the Inviter may accept to form a contract, subject to the Statement of Compliance/Departures notified to the Inviter prior to the Reverse Auction; and
  - (iii) that the Inviter at its sole discretion may award the contract for the Goods and/or Services to multiple Bidders or one Bidder.
- (b) The Inviter reserves the right to alter or add to the provisions of the Commercial Terms at any stage during negotiation and prior to execution of a contract with the Successful Bidder(s).
  - (c) Bidders must not directly or indirectly provide any form of inducement or reward to any representative of the Inviter or its employees, contractors and consultants in respect of a Reverse Auction.
  - (d) In the event of a tied bid, the Inviter reserves its right to select the Successful Bidder at its absolute discretion.

### 3.2 Bidder capacity

- (a) The Bidder's parent company, if any, may be required to provide a guarantee, an indemnity (or both) to the Inviter in the form specified in the Commercial Terms.
- (b) The Inviter will not consider joint Bidders, except to the extent that such Bidder is submitted by a formally constituted joint venture or an alliance specifically formed to bid for the Goods and/or Services. However, the Inviter will only communicate with one point of contact in relation to the Reverse Auction.

### 3.3 Information to be Supplied

- (a) Prior to the Reverse Auction, the Bidder must provide the Inviter with all documentation and information required in the Request for Tender, and any additional information required by the Inviter from time to time.

## 4 Ethical Conduct

- (a) The Inviter reserves its rights to terminate the Reverse Auction at any stage if it determines, in its absolute discretion, that the bids submitted or behaviour of Bidders is counter-productive to the fair operation of the Reverse Auction.

## 5 Confidentiality

- (a) The Inviter will treat all bids as confidential and undertakes to keep confidential any information provided by the Bidder in participating in this Reverse Auction unless disclosure of any part of it is required by law.
- (b) The Bidder must:
  - (i) treat the Request for Tender, the Reverse Auction and any additional information obtained from the Inviter or submitted by the Bidder as confidential;
  - (ii) refrain from divulging any confidential information to any third party; and
  - (iii) if required to divulge any confidential information to a third party, first seek the Inviter's consent and ensure any person receiving confidential information is similarly bound.

## 6 Costs

The Inviter is not responsible for any costs and expenses incurred by the Bidder in connection with the Reverse Auction including, but not limited to, providing any further documentation required by the Inviter, information or presentations to the Inviter, attending negotiations and interviews with the Inviter, any site visits or inspections and any alternative proposal which may or may not lead to the execution of the Commercial Terms. All such costs will be borne entirely and exclusively by the Bidder.

## 7 Liability

To the maximum extent permitted by law, the Inviter will not be liable to any Bidder on the basis of any promissory estoppel, quantum meruit or on any other contractual, quasi contractual, tortious (including negligence), statutory or restitutionary grounds whatsoever as a consequence of any matter or thing relating or incidental to a Bidder's participation in the Reverse Auction, including instances where:

- (a) a Bidder is not engaged to provide the Goods and/or Services;
- (b) the Inviter varies, or terminates the Reverse Auction or any negotiations with a Bidder;
- (c) the Inviter decides not to proceed with the Reverse Auction or acquiring the Goods and/or Services in whole or in part; or
- (d) the Inviter exercises any of its other rights under or in relation to the Request for Tender or Reverse Auction.

## 8 Governing Law

The Reverse Auction will be governed by the laws of the State of Western Australia.

## 9 Survival

These Reverse Auction Terms and Conditions shall survive completion of the Reverse Auction.