

Minerals Australia

Guidance Note

Supportive Arrangements for Supplier Payment Terms

A. Purpose

BHP offers standard 60 day payment terms to our suppliers globally. This documents sets guidance regarding the application and management of exemptions to this standard.

A portion of BHP's annual spend is with small businesses, local community and indigenous suppliers. We value the relationships we have with those supplier groups greatly and we are proud of the value that these business relationships add to the development and sustainability of the local economies of the communities in which we operate.

In November 2015, as part of its global procurement strategy to better align with industry benchmarks, BHP extended the standard payment terms offered to our suppliers to 60 days from receipt of invoice. In congruence with this change and in recognition of the unique challenges faced by small businesses, local community and indigenous suppliers and others that may be facing undue financial hardship, we adapted our approach to payment terms. This guidance note describes BHP's approach to apply more supportive payment terms for those supplier groups.

B. Small Business Suppliers

Small Business suppliers shall be entitled to an exemption from BHP's standard 60-day payment terms and payment terms of 30 days or less will apply in lieu of the standard 60 day terms.

For the purposes of this guidance note, a "**Small Business**" is defined as a supplier that:

- employs less than 20 people (excluding contractors); and
- has an annual turnover of less than AUD\$10 million (or equivalent).

C. Other Exempt Suppliers

In addition to Small Business suppliers, the following groups of suppliers ("**Other Exempt Suppliers**") shall also be entitled to an exemption from BHP's standard 60 day payment terms and payment terms of 30 days or less will apply in lieu of the standard 60 day terms.

1. Local Community Suppliers

Suppliers that have their primary business location in one of the communities adjacent to our operations, or that are deemed to be affected by our operating presence, as determined by our Communities function.

2. Indigenous Suppliers

Suppliers that are;

- a. 50% or more Indigenous owned; and
- b. demonstrate a commitment to the employment and training of Indigenous people.

BHP must be satisfied that the supplier is 50% or more Indigenous owned by using at least one of the following assessment steps:

- obtaining a statutory declaration, declaring 50% or more Indigenous ownership; and/or
- obtaining certificates or letters of Indigeneity of the Indigenous owners, provided by a recognised Indigenous organisation such as a land council; and/or
- checking whether the Supplier is listed with an Indigenous Chamber of Commerce or another business list; and/or
- checking whether the enterprise is listed with the Office of the Registrar of Indigenous Corporations (www.oric.gov.au); and/or
- checking whether the enterprise is Registered and/or Certified with Supply Nation (www.supplynation.org.au)

3. Local Law Exemptions

In Australia, there is local legislation applicable to the construction industry that imposes specific maximum payment terms to relevant construction contracts. Details of these local law exemptions are set out in the table at Appendix A. Any future local law exemptions relevant to payment terms will be captured in the table as and when they become applicable.

D. Financial Hardship

A supplier that does not qualify as a Small Business or Other Exempt Supplier, but is nonetheless experiencing significant financial hardship may also be granted exemption from BHP's standard 60-day payment terms and offered alternative payment terms. Such alternative payment terms will range from 14 to 59 days, as determined by the relevant BHP Supply team on a case-by-case basis, taking into consideration all relevant circumstances and with an aim to ensuring that any exemption granted will have an appropriate positive impact on the supplier's financial position.

In determining whether to grant an exemption, the relevant BHP Supply team may also take into account other relevant criteria, including but not limited to:

- whether the supplier receives more than \$US50,000 (or equivalent) per year in payments from BHP; and
- whether BHP contributes to at least 30% of the supplier's annual turnover.

(For clarity, satisfaction of the above two (2) criteria will not result in an automatic financial hardship exemption).

Any financial hardship exemption granted under this Section D must be approved by the BHP Supply team.

E. Alternative Payment Terms

In the event that an exemption under Sections B, C or D apply, such terms will be agreed on the basis that in the event that the supplier subsequently no longer qualifies as a Small Business or Other Exempt Supplier or for a financial hardship exemption, the payment terms will revert back to the BHP standard 60 day payment terms as soon as reasonably practicable. This expectation will be communicated to the supplier when the alternative payment terms are agreed.

Any agreed alternative payment terms will be subject to review at a regularity considered appropriate by the relevant BHP Supply team.

F. Exceptions

It is recognised that there may be exceptional circumstances in which, despite a supplier qualifying as a Small Business or Other Exempt Supplier, an exemption under Sections B or C should nonetheless not be granted and the BHP standard 60 day payment terms should apply in any event. For example, where the supplier has a state, national or international footprint, or is a dealership or subsidiary of such organisation. In such cases, subject always to compliance with any mandatory local law requirements as set out in Appendix A, it remains open for the relevant BHP Supply team to exercise its discretion to disapply the exemption. The exercise of such discretion however must be fully justified and can only be made with the appropriate approval.

Any decision to disapply an exemption will be subject to review at a regularity considered appropriate by the relevant BHP Supply team.

G. More Information

For further information on this guidance note, please contact your BHP Supply representative.

APPENDIX A – Local Law Exemptions

Jurisdiction	Legislation	Maximum payment term period	Detail
Australia - WA	<i>Construction Contracts Act 2004 (WA)</i>	42 days	s.10: “A provision in a construction contract that purports to require a payment to be made more than 42 days after the payment is claimed is to be read as being amended to require the payment to be made within 42 days after it is claimed.”
Australia - NT	<i>Construction Contracts (Security of Payments) Act 2004 (NT)</i>	50 days <i>Note: if 50 days is exceeded, the payment term reverts to 28 days not 50 as per WA</i>	s.13: “A provision in a construction contract that purports to require a payment to be made more than 50 days after the payment is claimed must be read as being amended to require the payment to be made within 28 days after it is claimed.”
Australia - NSW	<i>Building and Construction Industry Security of Payment Act 1999 (NSW)</i>	Payment from principal to head contractor: 15 <i>business days</i> Payment to subcontractor: 30 <i>business days</i>	s.11: Payment from principal to head contractor <ul style="list-style-type: none"> (if contract is silent) 15 business days after the payment claim (for the progress payment) is made; or <i>an earlier</i> date as specified in the contract. Payment to be made to subcontractor <ul style="list-style-type: none"> (if contract is silent) 30 business days after the payment claim (for the progress payment) is made; or <i>an earlier</i> date as specified in the contract. <i>Note: this applies to ‘progress payments’, however this is defined in the NSW Act broadly to cover any payment for construction work or related goods or services supplied under a construction contract.</i>
Australia - QLD	<i>Building and Construction Industry Payments Act 2004 (QLD)</i>	‘Construction management trade contract or subcontract’: 25 <i>business days</i> All other ‘commercial building contracts’ (i.e. not domestic or a construction management trade contract): 15 <i>business days</i>	s.67U: “A provision in a construction management trade contract or subcontract is void to the extent it provides for payment of a progress payment by a contracting party to a contracted party later than 25 business days after submission of a payment claim.” s.67W: “A provision in a commercial building contract is void to the extent it provides for payment of a progress payment by a contracting party to a contracted party later than 15 business days after submission of a payment claim.”