

**TERMS AND
CONDITIONS FOR
THE SUPPLY OF
GOODS AND SERVICES**

PART A – GENERAL CONDITIONS

GENERAL CONDITIONS

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G.C.1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

Unless the context otherwise requires, the following terms have the meanings given when used in this Agreement.

'Agreement' means:

- (a) the Formal Instrument of Agreement (including the Agreement Particulars) and the Schedules;
- (b) the General Conditions in this Part A;
- (c) the Appendices in Part B; and
- (d) all Purchase Orders and any other document stated in a Purchase Order to be part of the Agreement,

and unless otherwise agreed in writing by the parties, the Agreement does not include tender documents or correspondence including letters of offer or acceptance exchanged between the parties prior to the Commencement Date.

'Agreement Particulars' means the details specified in the Formal Instrument of Agreement and the Schedules attached thereto.

'Anti-Corruption Laws' means:

- (a) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997 (OECD Convention);
- (b) the United Nations Convention against Corruption 2003;
- (c) the Foreign Corrupt Practices Act of 1977 of the United States of America (FCPA);
- (d) the Bribery Act 2010 of the United Kingdom (UK Bribery Act);
- (e) any other Relevant Law which:
 - (i) prohibits the offering of any gift, payment or other benefit to any person or any officer, employee, agent or advisor of such person; or
 - (ii) is broadly equivalent to the FCPA or the UK Bribery Act, is intended to enact the provisions of the OECD Convention, or has as its objective the prevention of corruption,

and is applicable in the jurisdiction in which the Company or the Supplier are registered or conduct business or in which the Services and/or Goods are to be provided.

'Background IP' means the protected intellectual property or industry rights (whether legal or equitable) in a party's procedures, processes, systems, know-how and methodologies which are pre-existing or developed other than in the supply and delivery of the Services and which are made available to the other party for the purposes of the Agreement.

'BBBEE Act' means the latest version of the Broad-Based Black Economic Empowerment Act, No 53 of 2003 and the Broad Based Black Economic Empowerment Amendment Act No. 46 of 2013.

'Business Day' means a calendar day, other than a Saturday, Sunday or public holiday in the Relevant Jurisdiction.

'Business Integrity Policy' means the policy of that name published by Anglo American plc, which has the purpose of combating corrupt behavior including such behavior among those with whom the Company does business, as amended from time to time and available at www.angloamerican.com.

'Change in Law' means:

- (a) the adoption, enactment or application to the Company or the Supplier of any Relevant Law not existing, foreseeable or otherwise applicable to the Company or the Supplier on the Commencement Date; or
- (b) any change in a Relevant Law or the application or interpretation of a Relevant Law, after the Commencement Date,

in either case that materially and adversely affects (in time and/or cost) the ability of the Company or the Supplier to perform their obligations under the Agreement, provided that the following do not constitute a Change in Law:

- (c) a change in a Relevant Law imposing a tax or rate of tax; or
- (d) the application to the Company or the Supplier, of a Relevant Law that was in existence at the Commencement Date that by its terms became applicable to the Company or the Supplier after the Commencement Date.

'Change in Requirements' means:

- (a) the amendment or alteration of any of the Company's Corporate Policies or SHE Requirements; or
- (b) the notification by the Company of any additional Company Corporate Policies or SHE Requirements that are not referred to in the Agreement or otherwise notified by the Company to the Supplier at Commencement Date,

after Commencement Date, in either case that materially and adversely affects (in time and/or cost) the ability of the Supplier to perform its obligations under this Agreement.

'Commencement Date' means the date set out in the Agreement Particulars.

'Company' means the party so named in the Formal Instrument of Agreement and its Schedules.

'Company's Corporate Policies' means the most current version of the policies, codes and principles referred to in this Agreement (and such other policies, codes and principles as may be notified by the Company to the Supplier) published by Anglo American plc, as amended from time to time, but which does not include the SHE Requirements, copies of which are available on request from the Company or alternatively are available at www.angloamerican.com.

'Completion Date' means the date set out in the Agreement Particulars.

'Data Subjects' means the Company, including its mining operations, its Staff, authorized representatives and contractors.

'Date of Acceptance' means the date certified by the Company in an acceptance certificate to be the date that the Goods were accepted by the Company.

'Defect' means Goods and/or Services not in accordance with the terms of the Agreement and/or Purchase Order and includes omissions.

'Delivery Date' means the date(s) for delivery of the Goods at the Site(s) as set out in the Purchase Order and/or approved delivery schedule and/or the Appendices attached hereto.

'DTI Code of Good Practice' means the latest version of the Codes of Good Practice on Black Economic Empowerment, issued under section 9(1) of the BBBEE Act.

'Goods' means the goods or equipment specified in the Agreement Particulars, Purchase Order or the Appendices (if any).

'Government Consent' means an approval, consent, waiver, authorization, permit, clearance, license or other precondition required under Relevant Law or from government or any ministry, department, court, tribunal, competition authority, commission, board, agency, institution or similar entity of such government in relation to provision of the Services and Goods.

'Hazardous Materials' means any substance, emissions or material regulated by an authority, or any substance, emission or material deemed dangerous to safety, health or the environment.

'Income Tax Act' means the South African Income Tax Act, 58 of 1962.

'Local SMMEs' means a BEE compliant local Small Medium and Micro Enterprise which is a BEE Entity located in the Site's primary zone of influence (as identified within the respective social and labor plan) or within 50km radius of the Site.

'Losses' includes losses, damages, costs, charges, expenses, penalties, interest and fines, including those arising as a result of claims, demands, actions, proceedings or suits by any person.

'Materials' means the supplies, spare parts, oil, chemicals and other materials used by the Supplier in the performance of the Services.

'Mining Charter' means the latest version of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry, issued under section 100(2)(a) of the Mineral and Petroleum Resources Development Act, No 28 of 2002 and the Amendment of the Broad-Based Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry, September 2010.

'Personal Information' means information relating to the Data Subject, including but not limited to -

- (a) views or opinions of another individual about the Data Subjects; and
- (b) information relating to the Data Subjects' –
 - (i) race, sex, gender, sexual orientation, pregnancy, marital status, nationality, ethnic or social origin, color, age, physical or mental health, well-being, disability, religion, conscience, belief, cultural affiliation, language and birth;
 - (ii) education, medical, financial, criminal or employment history;
 - (iii) names, identity number and/or any other personal identifier, including any number(s), which may uniquely identify a data subject, account or client number, password, pin code, customer or data subject code or number, numeric, alpha, or alpha-numeric design or configuration of any nature, symbol, e-mail address, domain name or IP address, physical address, cellular phone number, telephone number or other particular assignment;
 - (iv) blood type, fingerprint or any other biometric information;
 - (v) personal opinions, views or preferences;
 - (vi) correspondence that is implicitly or expressly of a personal, private or confidential nature (or further correspondence that would reveal the contents of the original correspondence); and
 - (vii) corporate structure, composition and business operations (in circumstances where the data subject is a juristic person) irrespective of whether such information is in the public domain or not.

'POPI' means the Protection of Personal Information Act, 4 of 2013 (as amended from time to time) and all regulations promulgated in terms of it.

'Processing' means any operation or activity or any set of operations, whether or not by automatic means, concerning Personal Information, including -

- (a) the collection, receipt, recording, organization, collation, storage, updating or modification, retrieval, alteration, consultation or use;
- (b) dissemination by means of transmission, distribution or making available in any other form by electronic communications or other means; or
- (c) merging, linking, blocking, degradation, erasure or destruction.

'Process' has a corresponding meaning.

'Purchase Order' means the request or order from the Company to the Supplier to supply Services and Goods.

'Relevant Jurisdiction' means the jurisdiction specified in the Agreement Particulars.

'Relevant Law' includes statutes, ordinances, regulations, by-laws, orders and awards of any authority and proclamations applicable in connection with the supply of the Goods and Services.

'Services' means the Services to be provided by the Supplier to the Company as set out in this Agreement and any incidental work that can be reasonably inferred as necessary or appropriate to perform the Services as described.

'SHE Requirements' means:

- (a) all Relevant Law, codes, standards and Government Consents relating to workplace health and safety (including health and safety legislation specifically applicable to the mining industry), and the environment that apply to the Site; and
- (b) the Company's SHE policies for the Site referred to in the Agreement or as otherwise notified by the Company to the Supplier.

'Site' means the areas specified in the Agreement Particulars at which the Goods are to be delivered and commissioned (if applicable) and Services are to be provided.

'Staff' means permanent, fixed term and temporary employees as well as sub-contractors, agents, consultants, independent contractors to the Company.

'Supplier' means the party so named in the Formal Instrument of Agreement.

'Term' means the period from the Commencement Date to the Completion Date.

'VAT Act' means the Value-Added Tax Act, 89 of 1991.

'Warranty Period' means the period set out in the Agreement Particulars and/or Purchase Order.

Interpretation

In this Agreement, unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of the Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words importing a gender include other genders;
- (d) the words 'include' and 'including' are to be construed without limitation;
- (e) other grammatical forms of defined words or expressions have corresponding meanings;
- (f) a reference to:
 - (i) a clause, schedule, part or appendix is a reference to a clause, schedule, part or appendix to or of the Agreement and a reference to the Agreement includes any schedules and appendices;
 - (ii) any legislation, statutory instrument or regulation is a reference to that legislation, instrument or regulation as amended, modified, substituted or re-enacted from time to time;
 - (iii) a person includes any individual, firm, body corporate, partnership, unincorporated association, government, state or agency of a state, joint venture or authority;
 - (iv) a party includes its executors, administrators, successors and permitted assigns;
 - (v) a day means a period of 24 (twenty-four) consecutive hours from midnight;
 - (vi) a week means 7 (seven) consecutive days commencing and ending at midnight on Sunday;
 - (vii) a month means a calendar month;
- (g) if the due date for anything to be done under the Agreement falls on a day that is not a Business Day, then it must be done on the next Business Day;
- (h) no provision herein shall be construed against or interpreted to the disadvantage of a party by reason of such party having or being deemed to have structured, drafted or introduced such provision;

- (i) references to any statute or statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time;
- (j) Ranking provision:
 - (i) For the avoidance of doubt, in the event of any conflict or inconsistency relating to the description of the Goods and Services between the provisions of a Purchase Order on the one hand and the Formal Instrument or General Conditions, as the case may be, on the other hand, the provisions of the Purchase Order shall prevail.
 - (ii) For the avoidance of doubt, in the event of any conflict or inconsistency relating to any legal provisions between a Purchase Order on the one hand and the Formal Instrument or General Conditions, as the case may be, on the other hand, the provisions of the Formal Instrument or General Conditions shall prevail; and
- (k) the rule of construction that if general words or terms are used in association with specific words or terms which are a species of a particular genus or class, the meaning of the general words or terms shall be restricted to that same class (i.e. the *eiusdem generis* rule) shall not apply, and whenever the word "including" is used followed by specific examples, such examples shall not be interpreted so as to limit the meaning of any word or term to the same genus or class as the examples given.

G.C.2. DURATION

- (a) This Agreement shall commence on the Commencement Date and endure for the Term, unless terminated earlier in accordance with the provisions of this Agreement.
- (b) The Term may be extended on the same terms and conditions (unless otherwise agreed by the parties) by mutual agreement in writing between the parties.

G.C.3. PURCHASE ORDER

- (a) No Goods and Services shall be provided to the Company unless a Purchase Order is placed by the Company. All Purchase Orders are subject to this Agreement and the Company shall not be bound by any terms and conditions that may appear on a quotation or any other order and/or delivery documentation provided by the Supplier to the Company in relation to the Goods and Services.
- (b) The Supplier must provide the Goods and Services in accordance with this Agreement to the Site/s by the dates set out in the Agreement Particulars or Purchase Order.

(c) No exclusivity

Notwithstanding any other provision of this Agreement, the Company is not obliged to use the Supplier to provide the Goods and Services and may obtain the Goods and Services from other suppliers at any time, without reference to the Supplier. As such, the appointment of the Supplier is on a non-exclusive basis.

G.C.4. DELIVERY

4.1 Delivery Date

The Supplier shall deliver the Goods to the Site(s) on the Delivery Date(s).

4.2 Submission of delivery schedule

The Company may direct the Supplier to provide for approval a delivery schedule (within the time and in the form directed) setting out the Delivery Dates (including key manufacturing dates for the Goods (if any)).

4.3 Compliance with approved delivery schedule

The Supplier must not depart from an approved delivery schedule without the Company's written consent.

4.4 Costs

The Supplier must bear all costs incurred in the preparation and submission of a delivery schedule.

4.5 Protection of Goods

- (a) The Supplier must protect the Goods from loss or damage arising from any cause and ensure that the Goods are appropriately packaged, handled and transported to Site to prevent damage while in transit or storage. In this regard, the Supplier shall be liable for any loss or damage so incurred.
- (b) Without limiting 4.5(a) above, the Supplier is liable for Losses (including increased freight charges) incurred by the Company as a result of Goods being packed or described inappropriately or the Supplier's failure to follow any transport instruction issued by the Company or specified in this Agreement.

G.C.5. DELAYS

- (a) If any delay in supplying the Goods occurs or is foreseen, the Supplier must immediately notify the Company of the cause and anticipated length of the delay and the steps taken or proposed by the Supplier to minimize the delay and the costs incurred as a result of it.

- (b) If the Supplier is not able to comply with the approved delivery schedule as a result of the delay, the Supplier may submit a claim to the Company for an extension and/or alteration of the delivery schedule specifying details of the delay event and all other facts that the claim for an extension of time is based on.

G.C.6. ACCEPTANCE OR REJECTION OF GOODS

6.1 Notification of acceptance or rejection

The Company shall notify the Supplier whether the Goods are accepted or rejected within the number of days after delivery of the Goods to the Site as set out in the Agreement Particulars.

6.2 Notice of rejection

If Goods are rejected, the Company's notice of rejection must state the reasons for the rejection and may either:

- (a) direct the Supplier to remove the Goods and refund any amounts paid in relation to them; or
- (b) direct the Supplier to replace or rectify the Goods; or
- (c) notify the Supplier that the Company elects to accept the Goods and claim damages for the Supplier's failure to comply with this Agreement.

If the Supplier is directed to replace or rectify Goods, the Supplier must notify the Company when the replacement or rectification is completed and G.C.6.1 will apply again.

6.3 Acceptance Certificate

- (a) If the Goods are accepted, the Company must issue an acceptance certificate to the Supplier specifying the Date of Acceptance and any defects in the Goods to be rectified by the Supplier. There is no deemed acceptance.
- (b) The Supplier must deliver to the Company, within 7 (seven) days of the issue of the acceptance certificate, documents and other information required under the Agreement or essential for the use, operation and maintenance of the Goods.

6.4 Variations Prior to Acceptance

- (a) The Company may, at any time prior to the Date of Acceptance, give the Supplier a direction to alter, amend, omit, add to or otherwise vary the Goods.
- (b) Within 10 (ten) Business Days of the direction of a variation, the Supplier must submit an estimate of the effect of the variation on the price and the Delivery Date. If the Supplier does not submit an estimate in accordance with this G.C. 6.4, the Supplier is

barred from claiming any compensation or an extension of time in relation to a variation.

- (c) The Supplier shall not alter the Goods or deviate from the requirements of the Agreement unless and until the Company's Representative instructs or approves a variation in writing. Any action taken by the Supplier prior to receiving such written approval from the Company shall be for its own account and at its own risk.

6.5 No Acceptance

Neither payment for Goods or inspection of Goods under G.C.13(a) constitutes acceptance of Goods that do not comply with this Agreement or affects the power of the Company to subsequently reject the Goods under G.C.6.2.

G.C.7. PASSING OF TITLE AND RISK IN THE GOODS

7.1 Clear title

The Supplier warrants that title to the Goods, when it passes to the Company under G.C.7.2, will be free and clear of any and all liens, restrictions, reservations, security interests and encumbrances.

7.2 Passing of title

Title in and to the Goods will pass to the Company upon the earlier of payment for the Goods by the Company or acceptance of delivery by the Company of the Goods to the Site.

7.3 Passing of Risk

Risk in and to the Goods will pass to the Company upon acceptance of delivery by the Company of the Goods to the Site.

G.C.8. ACCEPTANCE OR REJECTION OF SERVICES

8.1 Services that do not accord with the Agreement

Without limiting any other rights of the Company or the responsibilities of the Supplier, if Services performed are not in accordance with the Agreement, the Company may direct the Supplier, at the Supplier's cost, to re-perform the Services within the reasonable time specified by the Company.

8.2 Failure to comply with direction

If the Supplier fails to comply with a direction given under G.C.8.1 within the time specified, the Company may, after notifying the Supplier, retain another person for that purpose and costs incurred by the Company as a result will be a debt due from the Supplier to the Company.

G.C.9. VARIATION

- (a) Variations may be instructed by the Company's Representative at any time prior to termination of the Agreement, either by an instruction or by a request to the Supplier to submit a proposal.
- (b) Within 10 (ten) Business Days of the direction of a variation, the Supplier must submit an estimate of the effect of the variation on the price and service delivery. If the Supplier does not submit an estimate in accordance with G.C.9, the Supplier is barred from claiming any compensation or an extension of time in relation to a variation.
- (c) The Supplier shall not alter the Services or deviate from the requirements of the Agreement unless and until the Company's Representative instructs or approves a variation in writing. Any action taken by the Supplier prior to receiving such written approval from the Company shall be for its own account and at its own risk.

(d) Change in Law

If a Change in Law necessitates a change to the method of carrying out the Services or providing the Goods or an increase or decrease in a fee or charge included in the contract price or the payment of a new fee or charge not included in the contract price, then:

- (i) the Supplier must promptly notify the Company of all relevant details of the Change in Law (including the Supplier's calculation of the impact of the Change in Law on the contract price);
- (ii) the Supplier must promptly provide the Company with all information (including documents and reports) reasonably requested by the Company that is relevant to the Supplier's claim;
- (iii) the Supplier must use its best endeavors to mitigate or offset any increase in the contract price resulting from the Change in Law, including seeking and applying for any exemption, adjustment or compensation available to the Supplier in relation to the Change in Law; and
- (iv) the Company must adjust the contract price as agreed by the parties.

G.C.10. MATERIALS

10.1 Supply of Materials

The Supplier must at its own cost and risk, supply and arrange transportation to Site for all the Materials required to provide the Services.

10.2 Quality of Materials

All Materials supplied by the Supplier must:

- (a) be of merchantable quality and fit for their intended purpose;
- (b) be free from all defects and imperfections affecting performance; and
- (c) be of current manufacture, appropriate grade and suitable capacity.

10.3 Storage of Materials

Unless otherwise specified, the Supplier is responsible for the prompt unloading, safe storage and safe keeping of all Materials in accordance with the SHE Requirements and/or any other Relevant Law.

10.4 Passing of Title and Risk

- (a) Title and risk in and to the Materials will remain with the Supplier, save and except where the Materials, as part of the Services, accede to the Site and/or the Company's equipment, in which event title will pass to the Company upon accession.
- (b) The Supplier warrants that title to the Materials supplied by the Supplier will be free and clear of any and all liens, restrictions, reservations, security interests and encumbrances.

10.5 Hazardous Materials

- (a) Where the Materials include Hazardous Materials, the Supplier must not bring, handle, store or use such Hazardous Materials on the Site without the prior consent of the Company.
- (b) The Supplier must:
 - (i) comply at its cost with any conditions imposed by the insurances procured by the parties and the Company in the granting of the consent;
 - (ii) exercise utmost care in the use, handling and storage of Hazardous Materials on the Site;
 - (iii) only allow competent, trained and qualified personnel to handle the Hazardous Materials;
 - (iv) establish a material register for the Services that includes comprehensive safety data sheets for all Hazardous Materials used or stored on the Site in connection with the Services and allow the Company access to that materials register;

- (v) clearly label and identify any Hazardous Material brought on to Site; and
- (vi) perform any necessary clean up or remediation work in relation to Hazardous Materials brought on to Site by the Supplier.

10.6 Warranties on PDS systems

- a) All products sold, excluding batteries, will be guaranteed for a period of 12 months from the date of production, fair wear and tear excluded.
- b) The aforesaid guarantee will not apply to products that have been physically damaged.
- c) Batteries are guaranteed for a period of 3 months, subject to the end user complying with Maucal Mining & Minerals user guidelines for batteries.
- d) All defective units in warranty must be returned to Maucal Mining & minerals within the warranty period, failing which the warranty / guarantee shall expire.
- e) The following items are excluded from Maucal Mining & Minerals warranty:
 - (i) Any physical damage to a product, regardless of the reason, therefore.
 - (ii) Any incidental damage to a product, such as scratches and dents.
 - (iii) Any tampering with a product.
 - (iv) Any repairs by a person other than Maucal Mining & Minerals or a person authorized thereto by Maucal Mining & Minerals.

G.C.11. WORKING HOURS

The Supplier must work on-Site only during the working hours set out in the Agreement Particulars or a Purchase Order unless the prior approval of the Company to a change in the working hours is obtained.

G.C.12. SERVICES PROVIDED OFF-SITE

- (a) In the event that the Supplier has to remove the Company's equipment (which is the subject to the Services) off-Site in order to provide the Services it must obtain the prior approval of the Company.
- (b) All risk in and to the Company's equipment while it is off-Site shall vest in the Supplier and the Supplier shall be liable for any loss or damage suffered by the Company in this regard irrespective of howsoever arising.
- (c) The Supplier shall provide the Company with an exchange unit, if possible, whilst the equipment is off-Site.
- (d) The Supplier shall remove the Company's equipment at its own cost and with the least

possible disruption and/or harm to the Company's operations, other equipment and/or the Site.

G.C.13. INSPECTION

- (a) The Company, on giving reasonable notice, shall have access to the Supplier's premises and those of its subcontractors for the purpose of inspecting work in progress on Goods.
- (b) The Company, on giving reasonable notice where such place is not on the Company's Site, shall have access to any place where the Services are being performed and/or Materials are being stored for the purpose of inspecting the Materials and the work in progress.
- (c) Where the Supplier provides accommodation and welfare facilities for its personnel, the Company shall have access to such accommodation and welfare facilities for the purpose of inspecting same to ensure compliance with labor and health and safety regulations and legislation.
- (d) The Supplier must keep those parts of the Site where the Services are performed clean and tidy when performing the Services.

G.C.14. PENALTIES

14.1 Liability for penalties

If the Supplier fails to perform any of its obligations as set out in this Agreement, then the Supplier must pay the Company penalties at the rate specified in the Agreement Particulars.

14.2 Extent of Company's rights

Subject to G.C.35.7, the Company's right to recover penalties under G.C.14.1 may be exercised at the absolute discretion of the Company and without prejudice to any of the Company's rights at law or under the Agreement.

14.3 Limit on penalties

The Supplier's liability for penalties under G.C.14.1 is limited to the amount stated in the Agreement Particulars.

G.C.15. QUALITY OF GOODS AND WORKMANSHIP

15.1 Supplier's warranty

The Supplier warrants that:

- (a) it will at all times provide adequate and suitably qualified and experienced personnel to supply, deliver and commission the Goods and to perform the Services;
- (b) its obligations will be performed in accordance with the Agreement and to best practice standards of diligence, skill, care and efficiency to be expected of a competent

contractor supplying, delivering and commissioning goods of a similar nature to the Goods and providing services of a similar nature to the Services;

- (c) it will comply with all the requirements of this Agreement, relevant laws, government requirements and any applicable codes or standards;
- (d) it will not place any liens and/or encumbrances against any property of the Company, including the Goods and Materials, for any reason whatsoever;
- (e) the Goods and Materials will be of merchantable quality and fit for their intended purpose;
- (f) the Goods and Materials will be free from all defects and imperfections affecting performance;
- (g) the Materials will be of current manufacture, appropriate grade and suitable capacity; and
- (h) it has the full power and authority to enter into this Agreement and to grant the rights granted in this Agreement to the Company.

15.2 Subcontractors' warranties

- (a) Without prejudice to the Supplier's obligations under the Agreement, all guarantees, and warranties obtained by the Supplier from subcontractors must be extended to the Company to the full extent of their terms.
- (b) If required by the Company, the Supplier must procure the assignment of these guarantees or warranties to the Company.

15.3 Warranty period

The Supplier:

- (a) must, at its expense, rectify any Defect discovered with the Goods and Services and/or Materials within the Warranty Period at no cost to the Company.
- (b) is responsible for any damage to the property of the Company resulting directly or indirectly from any Defect or the replacement of the Goods and/or the re-performance of the Services during the Warranty Period.
- (c) must replace any parts (at its own cost) required to rectify a Defect or for the purpose of testing or commissioning prior to expiration of the Warranty Period.

15.4 Failure to rectify

If the Supplier fails to rectify a Defect within a reasonable time after receiving notice of the Defect, the Company may, without prejudice to its other rights, rectify the Defect and the costs incurred in doing so will be a debt due from the Supplier to the Company.

15.5 Disorderly conduct

The Supplier shall at all times take all necessary precautions to prevent any unlawful, riotous or disorderly conduct by or amongst its personnel, and to preserve peace and protection of persons and property on or near the Site. The Company may request the immediate removal of any of the Supplier's personnel who, in its sole discretion, have breached this clause.

15.6 Access to Site

It is recorded that access to the Site and continued presence on the Site is provided by the Company in its sole discretion and subject to its access requirements from time to time whether oral or written. In this regard, the Company reserves the right to search any of the Supplier's personnel as well as their belongings prior to granting access to the Site and prior to leaving the Site.

G.C.16. PAYMENT

16.1 Payment

The Company shall pay the price for the Goods and Services as set out in the Agreement.

16.2 Submission of Invoices

The Supplier must submit invoices at the times stated in the Agreement Particulars in the format approved by the Company.

16.3 Other information

The Supplier must provide any information required to substantiate an invoice if reasonably required by the Company.

If the Supplier fails to provide the information requested, the invoice will be rejected.

16.4 VAT

- (a) All prices for taxable supplies of goods and services quoted in the Agreement are deemed to be exclusive of VAT, unless specifically stated otherwise.
- (b) Notwithstanding any other provision of the Agreement, the Company need not make a payment until the Supplier has given the Company a valid tax invoice prepared in accordance with the VAT Act for the supply to which the payment relates. The Supplier must give the Company an adjustment note and a valid credit note or debit note, as the case may be, for an adjustment arising from an adjustment event relating to a taxable supply made under or in connection with the Agreement within (7) seven days after the date the Supplier becomes aware of the adjustment event.

16.5 Payment by the Company

Subject to the approval of the invoice by the Company, the Company must pay the Supplier at the time specified in the Agreement Particulars.

Client shall make payment to Maucal Mining & Minerals upon order of products.

Client shall not be permitted to deduct or withhold any monies due by the Client to Maucal Mining & minerals for any reason whatsoever.

16.6 Taxes, duties and levies

The Supplier must pay any fees, charges, levies and taxes imposed by a government entity in relation to the Services.

16.7 Income Tax Act

- (a) The Supplier warrants that it understands the criteria that apply to distinguish independent contractors from personal service providers as envisaged in the Income Tax Act.
- (b) The Supplier shall provide the Company with written confirmation that it is not a personal service provider as envisaged in the Income Tax Act in the format prescribed by the Company from time to time. Such confirmation must be provided on signature of the Agreement. The Supplier will notify the Company immediately should the status of any statement in the written confirmation change during the duration of the Agreement. The Supplier shall absolve the Company of any liability on its part should such confirmation be found to be false or incorrect. The Company will notify the Supplier as soon as practicable if it is required to withhold employees' tax from amounts due under the Agreement.
- (c) The Supplier indemnifies the Company against all losses, claims, liabilities, damage or expense which the Company may suffer or be exposed to as a result of, or which may be attributable to any liability of the Supplier for tax in respect of payments made in terms of the Agreement. For these purposes' "tax" includes PAYE and all other forms of duties or taxation, and any penalties or interest.
- (d) In the event that the Company suffers any claim, loss, liability, damage or expense of which an indemnity is given above, the Company may deduct the amount of such claim, loss, liability, damage or expense from any amount payable by the Company to the Supplier in terms of this Agreement.

16.8 Company's right to withhold

Notwithstanding any other provision to the contrary, if the Company considers it necessary to satisfy its obligations under the Income Tax Act and the regulations, interpretation notes or practice notes issued by the South African Revenue Service (the Regulations), the Company may:

- (a) withhold an amount from a payment made to the Supplier; and

- (b) pay the withheld amount directly to the Commissioner of the South African Revenue Services (Commissioner)

and that amount is deemed to have been paid to the Supplier on the date on which the remainder of the payment to which it relates was paid to the Supplier.

16.9 Breach

- a) In the event that the client was to fail to make payment or not perform its obligation as and when such payment becomes due, to Maucal I, then Maucal shall be entitled to:
 - 1) withhold any and all products that are in Maucal's possession, for repairs, and
 - 2) refuse to provide the client with any further products and / or services, until such time as the full amount outstanding to MPI has been paid.
- b) In addition to the aforesaid, Maucal shall be entitled to immediately, and without further notice to the client, issue Summons for the full outstanding amount due to Maucal and deal directly with end users of Maucal products.
- c) During the contractual period, both parties agree not to solicit or attempt to establish any business relationship, directly or indirectly on their behalf or on behalf of any other person(s) during the nature of this contact with that of either parties customers, clients or distributors, including but not limited to any of its subsidiaries if the solicitation or establishment of the business relationship is in connection with or on behalf of any business the parties are precluded to providing services to.

16.8.2 Repairs to units

- a) The Client shall, as soon as reasonably possible after receiving a unit that requires repairs, send the units to Maucal for repairs.
- b) The client shall, insofar as it is reasonably possible for the client to do so, provide Maucal with a short description of the nature of the repairs required, alternatively the nature of the defect to a product.
- c) After receipt of the product, Maucal will as soon as reasonably possible evaluate and identify the root cause of the defect, and specifically further, and in writing, confirm to the Client whether the repairs required are the result of the failure of the product, or physical damage thereto.
- d) Insofar as the repairs required to the product are as a result of a failure of the product, and the product is still within warranty, MPI shall repair the product at no cost to the client. In the event that this product is out of warranty, Maucal shall repair the product and invoice the client accordingly.
- e) If the defect in a unit is as a result of physical damage to the unit, Maucal shall return the unit to the client and propose that the unit be replaced.
- f) ISS units have a useful life of 3 years, and PPS units have a useful life of 2 years. Units shall accordingly be replaced after the expiration of the unit's useful life. If the units are therefore sent in for repairs, and have extensive physical damage, and / or the repairs are not economically viable, and

/ or a unit has exceeded its useful lifespan, Maucal may in its discretion refuse to repair such unit and recommend that the unit be replaced.

- g) Any repairs to any unit shall be done by Maucal only, or an agent approved by Maucal.
- h) Any tampering with a unit, or repair thereof by a person other than Maucal or Maucal's approved agent, will entitle the client to refuse to honor any of the warranties or guarantees (referred to hereunder) in respect of that specific unit.

G.C.17. RIGHT TO SET-OFF

17.1 Company's rights

The Company may at any time, deduct moneys from any amount due or becoming due to the Supplier under this Agreement in order to meet all debts and amounts due from the Supplier to the Company under or in connection with this Agreement (including any penalty amounts). For the avoidance of doubt the balance of the amount due and payable will be paid to the Supplier in terms of G.C.16.

17.2 Notice of amount deducted

The Company must notify the Supplier in writing of any amounts deducted under G.C. 17.1 and the basis for the deduction, at the time that the deducted amount would otherwise be due to the Supplier.

G.C.18. INSURANCE

The Supplier must affect and maintain all insurances that a prudent person in the Supplier's position would consider appropriate in the circumstances and/or as may specifically be requested by the Company having regard to the Supplier's obligations under the Agreement and in any event, must affect and maintain:

- (a) public liability insurance in respect of loss or damage that may occur to any physical property, or death or bodily injury to any person that arises out of or in connection with the supply of the Services for a limit of indemnity of not less than R10 million per claim;
- (b) insurance in terms of the Compensation for Occupational Injuries and Diseases Act, 130 of 1993 and Regulations (or local statutory equivalent) in relation to employees;
- (c) insure the Goods for the period when they are in transit to the Site against all loss or damage arising from any insurable cause, for a limit of not less than the full replacement cost of those Goods; and
- (d) Professional Indemnity insurance in the event that the Supplier will be undertaking any engineering or design work in the course of providing the Services, for a limit of not less than 2 (two) times the total value of the Services being rendered in terms of this Agreement.

G.C.19. COMPLIANCE WITH POLICIES AND LEGISLATION

19.1 Supplier's obligations and acknowledgement – SHE Requirements

The Supplier:

- (a) must, prior to going on Site, obtain the Company's SHE policies that form part of the SHE Requirements relevant to the Site;
- (b) must acquaint itself, and fully comply with the SHE Requirements when on Site;
- (c) acknowledges the extreme importance that the Company places on establishing and maintaining high standards in relation to workplace health and safety, the protection of the environment and positive stakeholder relationships;
- (d) acknowledges that the Company is committed to eliminating work related injuries and occupational illnesses with a view to achieving the vision of 'Zero Harm'; and
- (e) warrants that the contract price includes all amounts necessary for compliance with the SHE Requirements.

19.2 Supplier's obligations and acknowledgement – Company's Corporate Policies

The Supplier:

- (a) acknowledges the extreme importance that the Company places on compliance with the Company's Corporate Policies;
- (b) must acquaint itself with the Company's Corporate Policies and use its reasonable endeavors when performing the Services to:
 - (i) comply with the Company's Corporate Policies; or
 - (ii) where full compliance is not immediately practicable, take action to continuously improve compliance with the Company's Corporate Policies;
- (c) acknowledges that the Supplier's compliance with Company's Corporate Policies during the Term of the Agreement may be a factor taken into account by the Company when determining whether the Company will:
 - (i) extend or vary the term of the Agreement;
 - (ii) invite the Supplier to tender or offer to supply to the Company in the future; or
 - (iii) enter further arrangements, agreements or relationships with the Supplier after the end of the term of the Agreement;
- (d) must, if reasonably requested by the Company, complete a self-assessment questionnaire supplied by the Company and, if required by the Company, provide proof of statements made;
- (e) acknowledges that the Company (or an agent or contractor of the Company) may audit

the Supplier's compliance with the '*Sustainable Development in the Supply Chain Policy*' and the '*Supplier Sustainable Development Code*' forming part of Company's Corporate Policies (together the **Sustainable Development Requirements**):

- (i) no more regularly than once in any 12 (twelve) month period; and
 - (ii) on providing no less than 14 (fourteen) days prior notice to the Supplier, (**Annual Audit**) and then require the Supplier to prepare, document and implement a corrective action plan to address any failure to use reasonable endeavors to comply or to continuously improve compliance with, the Sustainable Development Requirements and prevent its recurrence, and submit regular reports to the Company describing progress made by the Supplier against the corrective action plan;
- (f) acknowledges that if the Company reasonably believes, whether as a result of an Annual Audit or otherwise, that the Supplier has not used its reasonable endeavors to:
- (i) comply with the Sustainable Development Requirements; or
 - (ii) where full compliance is not immediately practicable, take action to continuously improve compliance with the Sustainable Development Requirements,
- then without limiting the rights of the Company under G.C.24 and notwithstanding G.C. 19.2(e), the Company may require the Supplier to:
- (iii) provide proof that the Supplier is using its reasonable endeavors to comply with the Sustainable Development Requirements;
 - (iv) allow the Company (or an agent or contractor of the Company) an opportunity to conduct an audit to verify compliance with the Sustainable Development Requirements; and/or
 - (v) prepare, document and implement a corrective action plan to address any failure to use reasonable endeavors to comply or to continuously improve compliance with, the Sustainable Development Requirements and prevent its recurrence, and submit regular reports to the Company describing progress made by the Supplier against the corrective action plan;
- (g) acknowledges that the Company may verify the Supplier's performance against a corrective action plan required under G.C. 19.2(e) or G.C. 19.2(f)(v), by audits or inspections of the Supplier; and
- (h) must allow the Company, its agents and contractors access to documentation, premises and workers for the purposes of conducting Annual Audits and audits under this Agreement.

19.3 Effect of Change in Requirements

If the Supplier believes that a Change in Requirements would necessitate a change to the method of carrying out the Services or otherwise amounts to a variation, the provisions of G.C.9 must be followed.

19.4 Audit of Supplier – SHE Requirements

The Company may at any time undertake, or engage a third party to undertake, an audit of the performance of the Services by the Supplier to ensure that the Supplier is compliant with the applicable SHE Requirements.

19.5 Reporting of incidents

The Supplier must:

- (a) report any incident relating to workplace health and safety or the environment or which impacts on stakeholder relationships (which is reportable under the SHE Requirements) to the Company as soon as reasonably possible and in any event, within a time period that ensures the Company can comply with Relevant Law; and
- (b) provide the Company with reasonable assistance (including access to relevant documents and the Supplier's and subcontractor's employees) in investigating such incident.

19.6 Breach of contract

Notwithstanding any other provision of the Agreement, a failure of the Supplier to comply with:

- (a) as SHE Requirement; or
- (b) any parts of the Sustainable Development Requirements that prohibit:
 - (i) the use of exploitative child labor; or
 - (ii) the tolerance of forced, bonded or involuntary prison labor,constitutes a substantial and material breach of the Agreement and without limiting any other right or remedy available to the Company, the Company may in the event of such failure, immediately:
 - (c) remove the Supplier from the Site; and
 - (d) suspend the provision of Goods and Services at the Supplier's expense until the failure has been remedied; or
 - (e) terminate the Agreement with immediate effect by serving notice on the Supplier.

19.7 Safety incidents

Notwithstanding any other provision contained in this Agreement, if a safety incident occurs on the Site which was caused or contributed to by the Supplier, then the Supplier must:

- (a) to the extent that the safety incident was caused or contributed to by the Supplier,

indemnify the Company for all costs and expenses incurred by the Company in investigating the safety incident, whether or not the investigation is conducted by the Company's personnel or by third parties engaged by the Company; and

- (b) bear all costs and expenses in relation to any investigation that the Supplier independently wishes to conduct, unless otherwise agreed with the Company.

19.8 Legislation

Without limiting the Supplier's obligations under the general conditions, the Supplier warrants that it is compliant with all laws and has read, made itself fully acquainted with and fully understands the implications of, and, where appropriate, complies with and will carry on complying with (but not limited to) the:

- (a) Mine Health and Safety Act, 29 of 1996 (MHSA);
- (b) Occupational Health and Safety Act, 85 of 1993 (OHSA);
- (c) Compensation for Occupational Injuries and Diseases Act, 130 of 1993;
- (d) The Labor Relations Act, 66 of 1995 (as amended) (LRA);
- (e) Hazardous Substances Act, 15 of 1973;
- (f) Road Traffic Act, 29 of 1989;
- (g) National Road Traffic Act, 93 of 1996;
- (h) National Road Safety Act, 9 of 1972;
- (i) Road Transportation Act, 74 of 1977;
- (j) Explosives Act, 26 of 1956 and, once promulgated, the Explosives Act, 15 of 2003;
- (k) Customs and Excise Act, 91 of 1964;
- (l) all environmental legislation including those laws and regulations governing water and air quality; and
- (m) all regulations promulgated pursuant to any of a foregoing.

19.9 Assistance to Company

The Supplier:

- (a) acknowledges that certain legislation referred to in G.C.19.8 (and in particular the MHSA and the OHSA) imposes obligations on the Company which may require the Supplier's compliance or the Supplier's assistance whilst on a Site to achieve compliance;
- (b) shall comply with such procedures and/or such instructions as the Company may require or give from time to time, orally or in codes of practice, to enable the Company and/or the Supplier to comply with their respective duties under the legislation listed in

G.C.19.8; and

- (c) without limiting the foregoing, undertakes to do all such things as shall be necessary to enable the Company to comply with its duties under the MHSA.

19.10 Release of Liability

Where the OHSA is applicable to any of Services being performed or Goods being provided by the Supplier, the Supplier agrees that it will enter into an agreement in terms of section 37(2) of the OHSA with the Company, in terms of which arrangements and procedures will be agreed to ensure that the Supplier complies with the OHSA. Accordingly, the parties agree that the Company is relieved of its liabilities in terms of section 37(1) of the OHSA as regards the Supplier and any employee, representative, consultant, contractor, invitee or otherwise of the Supplier.

19.11 Undertaking in terms of Employment Law

- (a) The Supplier undertakes to notify the Company on a monthly basis of all disputes/claims or potential disputes/claims that have arisen or may in future arise in relation to:
 - (i) any of its employees rendering services at the Company;
 - (ii) any related trade union.

This includes potential disputes that may arise as a result of:

- (iii) disciplinary action to be taken against employees rendering services to the Company;
- (iv) grievances that may be lodged; or
- (v) disputes that have been, or may be, referred to the Commission for Conciliation, Mediation and Arbitration, a bargaining council or court

The Supplier agrees to notify the Company of any disciplinary, incapacity and/or operational-requirement-related proceedings against any of its employees who are rendering services to the Company, prior to the institution thereof. The Supplier further agrees to notify the Company of the outcome of such proceedings.

- (b) Without in any way detracting from the rights of the Company in terms of the Agreement, the Supplier hereby indemnifies and holds the Company harmless against all:
 - (i) Claims by the employees of the Supplier against the Company, under the employment laws, and in the event of an award or determination being made against the Company, the Supplier shall pay any amount ordered to be paid by the Company. Should the Company be compelled to pay any such amount(s) to an employee of the Supplier, the Supplier shall pay that amount to the Company;
 - (ii) without derogating from the generality of the aforesaid -

- (A) Claims made in consequence of any termination of the employment of the Suppliers employees for any reason; and
 - (B) Claims made by the Commissioner for the South African Revenue Service in respect of a failure by the Supplier to deduct, or to pay over, employees' tax (sufficiently or at all).
- (c) If a claim is instituted against the Company, arising from (an) alleged contravention(s) of any employment law, the Company may, in its sole discretion, and at the expense of the Supplier, either:
- (i) request that the Supplier deal with such a claim in such a manner as to avoid all prejudice to the Company and keep the Company fully informed, and to the extent that relevant legislation allows, this may include that the Supplier shall take all necessary steps to have the claim abandoned against the Company and redirected to the Supplier; or
 - (ii) the Company may deal with such a claim at its discretion, in which event the Supplier will render to the Company all necessary assistance.
- (d) In the event of any claims being instituted against either party, the Supplier shall not be entitled to enter into any settlement or similar agreements without the Company's prior written consent.
- (e) These obligations in terms of employment law shall remain in force notwithstanding the termination of this Agreement.

G.C.20. DISPOSAL OF A SITE

If, during the Term, any Site ceases to be owned, leased, managed, controlled or operated by any member of, and to otherwise form part of, the Company, its subsidiaries, its holding company or its holding company's subsidiaries or any joint venture (whether incorporated or unincorporated) in which any person or persons referred to above has (or together have) directly or indirectly a participation interest of at least 50% ('**Cessation**'), this Agreement will terminate for all purposes in respect of such Site (but no other Site). In respect of such Site (but no other Site), this Agreement will be read as if the Completion Date had arrived on the date of such Cessation, provided that each accepted but unfulfilled Purchase Order as at the date of such Cessation may, at the Supplier's election, be cancelled or fulfilled in accordance with its terms.

G.C.21. INTELLECTUAL PROPERTY

21.1 Goods

(a) Warranty

The Supplier warrants that neither the supply of Goods under this Agreement nor the use of those Goods by the Company will infringe the intellectual property rights of a third

party.

(b) Right to use

- (i) Where necessary, the Supplier shall procure that the Company has a license to use the Goods or the relevant part of the Goods that is subject to an intellectual property right.
- (ii) If the Company is prevented from using or maintaining the Goods or any part of them as a result of any actual or alleged infringement of intellectual property rights, the Supplier must, at its cost, take all reasonable steps necessary to procure for the Company the right to use the Goods or the relevant part for their intended purpose.

21.2 Services

- (a) Subject to each party retaining title to its Background IP, title to, copyright in and other intellectual property rights in any documents or other property created by the Supplier for or in connection with the Services (the “Documents”) vests in the Company on creation and the Supplier hereby cedes and assigns all such rights to the Company with effect from the date of creation in order to vest such intellectual property in the Company. The Company grants the Supplier a revocable license to use the Documents for the performance of the Services and for the Term of this Agreement.
- (b) Unless otherwise agreed by the parties, the Supplier grants to the Company a non-exclusive, perpetual, irrevocable, royalty free license to use any of the Supplier’s Background IP in connection with the Services and this Agreement.

21.3 Right to use and maintain

If the Company is prevented from receiving the Goods or Services or any part thereof as a result of any actual or alleged infringement of intellectual property rights, the Supplier must, at

its cost takes all reasonable steps necessary to procure for the Company the right to receive the Goods or Services or the relevant part thereof for its intended purpose.

21.4 Modification or replacement of the Services

If the Supplier fails to procure the necessary rights in accordance with G.C.21.3 within a reasonable time, the Company may direct the Supplier, at its cost, to promptly:

- (a) modify the Goods or Services or the relevant part thereof to avoid the infringement of intellectual property rights; or
- (b) replace the Goods or Services or the relevant part thereof with Goods or Services that do not infringe intellectual property rights.

Any action taken by the Company under this G.C.21.4 will be without prejudice to the Company's other rights under the Agreement or at law.

G.C.22. INDEMNITY

22.1 Indemnity by the Supplier

Without limitation to any other provisions of this Agreement, the Supplier hereby indemnifies the Company against all Losses arising in connection with:

- (a) any damage to the Site, Goods or any property;
- (b) death or injury to any person;
- (c) a breach by the Supplier of a Government Consent or Relevant Law in connection with the performance of the Services;
- (d) any actual or alleged infringement of any intellectual property rights, caused by the performance of the Services and/or use of the Goods or the use of any process, work, material, matter, thing or method used or supplied by the Supplier;
- (e) the breach by the Supplier of an obligation or a warranty contained in the Agreement,

if the Losses arise in connection with any act, error or omission of the Supplier or a subcontractor or their employees, agents, subcontractors or assigns.

If the Losses are caused in part by any act, error or omission of the Company then the Supplier's liability to indemnify the Company under this G.C.22.1 will be reduced proportionally to the extent that the Losses are caused by any act, error or omission of the Company.

22.2 Extent and duration of indemnity

The indemnity given by the Supplier under G.C.22.1:

- (a) is a continuing obligation, separate and independent from the other obligations of the Supplier and survives the termination of this Agreement; and
- (b) extends to include any claims by the Supplier's personnel and third parties whether or not specifically stated in G.C.22.1.

22.3 Exclusion of Consequential Loss

A party ('**First Party**') shall not be liable to the other party ('**Second Party**') in contract (including under any indemnity), delict (including negligence or for breach of statutory duty) or otherwise for any:

- (a) special, indirect or consequential loss or damages of any nature; or
- (b) loss of profit, revenue, business, contracts or anticipated savings,

('**Consequential Loss**') related to or connected with this Agreement except Consequential Loss:

- (c) incurred as a result of the fraud, gross negligence or willful, reckless or deliberate breach of the Agreement by the First Party, its employees, agents or contractors;
- (d) in respect of claims by third parties for personal injury or death;
- (e) arising from G.C.22.1(d); or
- (f) which cannot be excluded by law.

22.4 Claims

If a claim or demand is made, or an action, suit or proceeding brought, against the Company in relation to any matter covered by the indemnity in G.C.22.1(d), the Company may require the Supplier to, at its cost, conduct any litigation or settlement negotiations relating to the claim, demand, action, suit or proceeding provided that the Supplier must not consent to any judgment against the Company or settle the claim, demand, action, suit or proceeding without first obtaining the Company's consent.

G.C.23. EVENTS OF FORCE MAJEURE

23.1 Notice

Should either the Company or the Supplier (hereinafter referred to as "**the invoking Party**") be prevented from fulfilling any of its obligations in terms of this Agreement as a result of any act of God, war, fire, flood, legislation, insurrection, sanctions, trade embargo, strikes or any economic or other cause beyond the reasonable control of such party (any such event hereinafter called "**force majeure**") then the invoking party will forthwith give written notice thereof to the other party

–

- (a) specifying the cause and anticipated duration of the force majeure; and
- (b) promptly upon termination of the force majeure, stating that such force majeure has terminated.

23.2 Suspension of performance

Performance of any such obligations will be suspended from the date on which notice is given of force majeure until the date on which notice is given of termination of force majeure (hereinafter referred to as the "**Suspension Period**"), subject always to the remaining provisions of this 22.2.

The invoking party will not be liable for any delay or failure in the performance of any obligation hereunder, or loss or damage due to or resulting from the force majeure during the Suspension Period provided that –

- (a) the invoking party uses and continues to use its best efforts to perform such obligations;
- (b) if the force majeure shall continue for more than 60 (sixty) consecutive days, the other party will be entitled to cancel this Agreement on the expiry of such period, but will not be entitled to claim damages against the invoking party as a result of the delay or failure in the performance of any obligations hereunder due to or resulting from the force majeure; and
- (c) the party not invoking force majeure will be entitled to elect, by giving written notice within 10 (ten) days of the termination thereof, as to whether or not it requires the invoking party to perform any obligations incurred prior to the force majeure.

G.C.24. DEFAULT BY SUPPLIER

24.1 Insolvency Event

An insolvency event occurs if:

- (a) the Supplier disposes of the whole or part of its assets, operations or business other than in the ordinary course of business;
- (b) the Supplier ceases to carry on business or is deregistered;
- (c) the Supplier ceases to be able to pay its debts as they become due;
- (d) any step is taken to enter into any arrangement between the Supplier and its creditors;
- (e) any step is taken to appoint a receiver, a liquidator, a business rescue practitioner, an administrator or other like person to the whole or part of the Supplier's assets, operations or business;

- (f) where the Supplier is a partnership, any step is taken to dissolve that partnership or a partner die;
- (g) the Supplier is a natural person and commits an act which is an act of insolvency under section 8 of the Insolvency Act, 1936,

then the Supplier must advise the Company of same in writing within 7 (seven) days of its occurrence. The Company may then terminate this Agreement immediately by written notice to the Supplier or the person in whom this Agreement is vested as a result of the insolvency event.

24.2 Breach

- (a) If the Supplier fails to perform or comply with any of its obligations under the Agreement, then the Company may provide the Supplier with 7 (seven) days written notice to remedy such failure. In the event that the Supplier fails to remedy the failure within such period, then the Company may, without prejudice to any other rights of the Company, terminate the Agreement.
- (b) In the event that the Supplier consistently breaches the terms of this Agreement, the Company may, notwithstanding G.C.24.2(a), terminate this Agreement immediately without providing any notice to remedy to the Supplier. For the purposes of this clause, 'consistently breaches' is defined as more than 2 (two) breaches within a consecutive 6 (six) month period.

G.C.25. TERMINATION FOR CONVENIENCE

25.1 Right of the Company

In addition to any other rights that the Company may have under the Agreement, the Company may at any time, in its absolute discretion and without cause, terminate the Agreement in whole or in part by giving written notice for the time period as set out in the Agreement Particulars to the Supplier of its intention to terminate.

25.2 Remedies

If the Agreement is terminated under G.C.25.1, then subject to the Company's rights under the Agreement to deduct and withhold amounts owing to the Supplier, the Company must pay the Supplier, as the Supplier's sole remedy in relation to the termination, all amounts due and unpaid for the Goods and Services at the date of termination.

25.3 Continued performance

Notwithstanding the foregoing provisions of this G.C.25, the Supplier must continue to supply any part of the Goods and Services in respect of which the Agreement is not terminated.

25.4 Obligations of the Supplier after termination

- (a) The Supplier shall furnish to the Company, within a reasonable time after this Agreement is terminated or ceases to have any effect, copies of all drawings, data sheets and other documentation and information relating to the Goods and Services.
- (b) The Supplier shall at no cost to the Company, give all such reasonable assistance and explanations to the Company and to any third party which has been appointed by the Company to provide the Goods and Services in place of the Supplier, if any, to enable that third party to understand what has been done to date by the Supplier regarding the Goods and Services.

G.C.26. ANTI CORRUPTION

26.1 Receipt of benefits

A director, employee or agent of the Supplier must not:

- (a) give or receive any commission, fee, rebate, gift or entertainment of significant value from; or
- (b) enter into any business agreement with,

any director, employee or agent of the Company other than as a representative of the Company or in the ordinary and proper course of business between any of those parties.

26.2 Compliance with Anti-Corruption requirements

The Supplier must (and must ensure that the Supplier's employees and its subcontractors and their employees), when performing its obligations under this Agreement, comply with:

- (a) all applicable Anti-Corruption Laws; and
- (b) the Business Integrity Policy.

The Supplier must ensure that its sub-contracts include obligations on the relevant subcontractors that are equivalent to the obligations in G.C.26.2.

26.3 Dealings with Public Officials

Without limiting G.C.26.2, the Supplier must not receive or offer, pay or promise to pay, give or promise to give, either directly or indirectly, anything of value to:

- (a) a Public Official; or
- (b) any person with the knowledge or being aware of a high probability, that all or a portion of such money or thing of value will be unlawfully offered, given or promised, directly or indirectly, to any Public Official,

in connection with any aspect of the Supplier's obligations under the Agreement, for the purpose of:

- (c) influencing any act or decision of such Public Official in their official capacity;
- (d) inducing such Public Official to do or omit to do any act in violation of their lawful duty;
- (e) securing any improper advantage;
- (f) inducing such Public Official to influence any act or decisions of any entity or enterprise owned or controlled by government or any ministry, department, court, tribunal, competition authority, commission, board, agency, institution or similar entity of such government; or
- (g) assisting the Supplier in obtaining or retaining business for or with or directing business to the Supplier.

For the purposes of G.C.26.3, a Public Official is:

- (h) any official or employee of government or any ministry, department, court, tribunal, competition authority, commission, board, agency, institution or similar entity of such government or government-owned or controlled entity;
- (i) any person performing a public function;
- (j) any official or employee of a public international organization such as the World Bank;
- (k) any candidate for political office; or
- (l) any political party or an official of a political party.

26.4 Provision of information regarding corruption

From Commencement Date, the Supplier must immediately notify and provide full particulars to the Company upon becoming aware:

- (a) that it has breached G.C.26.2;
- (b) of any conduct which may give rise to a breach of G.C.26.2;
- (c) that it has been found guilty by a court of or has admitted guilt or accepted liability in relation to, a contravention of any Anti-Corruption Law.

26.5 Response to breaches

If the Supplier gives notice under G.C.26.4 or the Company otherwise becomes aware or has a reasonable suspicion of any breach of G.C.26 or any conduct which may give rise to a breach of these provisions ('**Misconduct**'), the Company may in its absolute discretion:

- (a) request the Supplier to provide all information that the Company reasonably requires in relation to the alleged Misconduct;
- (b) request the Supplier to assist the Company with any investigation that the Company wishes to conduct into the alleged Misconduct;
- (c) request the Supplier to:
 - (i) prepare, document and implement a corrective action plan to address any failure to comply or to mitigate the risk, damage or potential damage arising from the Misconduct, including:
 - (A) the termination of any relationship between the Supplier and its employees or subcontractors involved in the Misconduct;
 - (B) procuring personnel from the Supplier to prepare, document and implement corrective action plans; and
 - (ii) confirm to the Company in writing that such measures have been implemented.

26.6 Consequence of breach

If the Supplier or its employees, subcontractors and their employees breach G.C.26 then, without limitation to any other right or remedy available to the Company, the Company may:

- (a) propose to the Supplier any revised terms under which the Company is prepared to continue the performance of the Agreement and if those terms are not agreed by the parties within the time specified in the Company's proposal, terminate this Agreement by giving 10 (ten) days written notice to the Supplier; or
- (b) terminate the Agreement by giving 10 (ten) days written notice to the Supplier;

without any liability for any loss suffered by the Supplier or its employees, its subcontractors and their employees.

26.7 Conflict of interest

The Supplier represents that at Commencement Date, there is no relationship between it and the Company, between any of the Supplier's directors or employees and the Company, or between the Supplier and a director or employee of the Company that gives rise to an actual or potential conflict of interest.

The Supplier must immediately notify the Company upon becoming aware that any such relationship exists. The Supplier must take reasonable steps to eliminate or overcome the conflict of interest without in any way adversely affecting its continued performance of its obligations under the Agreement.

26.8 Collusive activities

Without limiting any other warranty given by the Supplier under this Agreement and if applicable, the Supplier warrants that during the tender process and until Commencement Date, it did not engage in:

- (a) any collusive activities with any other entity involved in the tender process; or
- (b) any conduct or have any arrangement or arrive at any understanding with any other entity involved in the tender process.

G.C.27. DISPUTE RESOLUTION

27.1 Resolution of disputes

A party must not commence court proceedings (except proceedings seeking urgent interdictory or interlocutory relief) in respect of any dispute under the Agreement unless it has complied with this G.C.27.

27.2 Notice of dispute

If a party considers that a dispute exists in connection with the Agreement, that party may give the other party notice detailing the nature of the dispute (**Notice of Dispute**).

27.3 Meeting of representatives

Within 10 (ten) Business Days after the service of a Notice of Dispute, representatives of the parties must confer at least once to attempt to resolve the dispute.

27.4 Arbitration

If a dispute has not been settled by the representatives 30 (thirty) Business Days after notice is served under G.C.27.2 then the dispute must be referred to and settled by an arbitrator in accordance with the commercial arbitration rules of the Arbitration Foundation of Southern Africa (AFSA).

27.5 Appointment of Arbitrator

The arbitrator must be selected by agreement between the parties, or if the parties fail to agree, the person nominated by (which nomination binds the parties):

- (a) in the case of a financial or accounting matter, the President for the time being of the South African Institute of Chartered Accountants; and
- (b) for all other matters, the President for the time being of AFSA.

27.6 Arbitrator's decisions

The arbitrator's decision is final and binding on the parties who must give effect to the decision immediately.

27.7 Arbitrator's costs

The arbitrator's costs are payable by the party determined by the arbitrator or, in the absence of a determination, equally by the parties.

27.8 Continued Performance

Notwithstanding the existence of a dispute, and subject to G.C.24 and G.C.25, the parties must continue to perform in terms of the Agreement.

G.C.28. CONFIDENTIALITY

28.1 Definition

- (a) Each party acknowledges and agrees that all material and information which has or will come into its possession or knowledge in connection with this Agreement, or the performance hereof, or relating to the party's business or operations consists of confidential and proprietary data, whose disclosure to or use by third parties will be damaging to the other of them.
- (b) Confidential and proprietary information does not include any information which, at the time of disclosure:
 - (i) is generally known by the public and any competitors of the disclosing party;
or
 - (ii) which is developed independently by a party without reference to information provided by the other party; or
 - (iii) was made available on a non-confidential basis by a third party who is not prohibited from providing the information to the recipient.

28.2 Disclosure

- (a) Both parties, therefore, agree to hold such material and information in strictest confidence, not to make use thereof other than for the performance of this Agreement, to release it only to employees or sub-contractors reasonably requiring such information and who are bound by written confidentiality obligations no less stringent than those contained in this Agreement prior to such release, and not to release or disclose it to any other party, unless so required by law.

- (b) No provision of the Agreement shall be construed in such a way that a disclosing party is deemed to have granted its consent to the receiving party to disclose the whole or any part of the confidential information notwithstanding that:
 - (i) the receiving party receives a request for the whole or any part of the confidential information in terms of the provisions of the Promotion of Access to Information Act, 2 of 2000 (the PAIA); or
 - (ii) the disclosing party has previously disclosed any of its confidential information to a third party in terms of the provisions of the PAIA or any other law or court order.
- (c) The parties acknowledge that the provisions of G.C.28 shall not be construed in such a manner as to exclude the applicability of any ground of refusal contained in the PAIA.

28.3 Obligations with respect to Privacy Requirements

The Supplier shall ensure that any personal information will be held, used and disclosed in a manner consistent with any applicable Privacy Requirements.

28.4 Media releases and photography

The Supplier must not, without the prior approval of the Company:

- (a) issue any information, publication, document or article for publication concerning the Goods and Services in any media;
- (b) advertise at the Site;
- (c) participate in a media interview that mentions or refers to the Goods and Services, or
- (d) take photographs or make sketches of any part of the Company's operations and/or Sites.

G.C.29. PROTECTION OF PERSONAL INFORMATION

29.1 Consent to Processing of Personal Information

- (a) The Company consents to the Supplier using its Personal Information to the extent that such Personal Information is necessary for purposes of discharging its obligations in terms of the Agreement.
- (b) The Data Subjects may withdraw their consent given in clause 29.1(a), or object to the Supplier Processing their Personal Information at any time.
- (c) The Supplier will ensure that it will Process Personal Information only for purposes of discharging its obligations in terms of the Agreement or such other purposes as the

Data Subjects may consent to from time to time, and the Supplier will not Process any Personal Information for any other further purposes which the Company or Data Subject as the case may be has not consented to.

29.2 Storage of Personal Information

- (a) The Supplier warrants that it will keep the Data Subjects' Personal Information that it Processes secure and confidential and it will maintain the integrity and confidentiality of the Personal Information in its possession or under its control by taking appropriate, reasonable technical and organizational measures in line with international best practice to prevent the loss of, damage to, unauthorized destruction of or unlawful access to the Personal Information.
- (b) The Supplier will provide the Company with sufficient proof, to the satisfaction of the Company, that it has implemented physical, organizational, contractual and technological security measures to keep all Personal Information secure, including protecting any Personal Information from loss or theft, and unauthorized access, disclosure, copying, use or modification.
- (c) The Supplier will notify the Company in writing in the event of a security breach (or a reasonable belief of a security breach) in respect of the Company's Personal Information. The Supplier will provide such notification as soon as reasonably possible after it has become aware of any security breach of the Company's Personal Information, and immediately upon notifying the Company, at its own cost, take all necessary steps as well as the reasonable steps directed by the Company to mitigate the continuation of the compromise, the repetition of a similar compromise, and mitigate the extent of the loss occasioned by the compromise of the Personal Information.

29.3 Retention of Personal Information

- (a) The Supplier will Process Personal Information for as long as necessary to fulfil the purposes for which that Personal Information was collected and/or as permitted or required by applicable law.
- (b) The Supplier may retain Personal Information for longer periods for statistical, historical or research purposes, and should this occur, the Supplier will ensure that appropriate safeguards have been put in place to ensure that all recorded Personal Information will continue to be Processed in accordance with this Agreement and POPI.
- (c) Once the purpose for which the Personal Information was initially collected and processed no longer applies or becomes obsolete, the Supplier will ensure that it is

deleted, destroyed or de-identified so that a third party cannot re-identify such Personal Information.

29.4 Providing Personal Information to Third Parties

- (a) The Supplier may disclose Personal Information to third party service providers provided that it will enter into agreements with such third party service providers to ensure that they Process all Personal Information in accordance with the provisions of this Agreement and POPI and only to fulfil the purposes for which that Personal Information was collected.
- (b) In addition, the Supplier may not send Personal Information to any jurisdiction outside of the Republic of South Africa without the prior written consent of the Company.

29.5 Access to Personal Information

- (a) The Data Subjects may, at any time, request access to its Personal Information held by the Supplier and request the correction or deletion of such Personal Information.
- (b) The Data Subjects can challenge the accuracy or completeness of its Personal Information in the Supplier's records. If the Data Subjects successfully demonstrate that their Personal Information in the Supplier's records is inaccurate or incomplete, the Supplier will ensure that such Personal Information is amended or deleted as required by the Data Subjects. The provisions of this clause 29.5 shall apply to any third parties contemplated in clause 29.4.

29.6 Audit

The Company, or any third party appointed by the Company, shall have the right to audit the Supplier at any time in order to determine whether the Supplier (and any of its sub-contractors) complies with the provisions of G.C.29. Such audit rights shall include but not be limited to the right of access to systems, procedures and software, and inspection of the physical security of the Supplier's premises where the Personal Information is being stored and Processed. The Supplier shall offer reasonable assistance and cooperation to the Company and/or any third party appointed by the Company in the carrying out of such auditing exercise.

29.7 Indemnity

The Supplier hereby indemnifies and holds the Company harmless against all Losses (including costs on an attorney and own client basis), interest and/or penalties or expenses the Company may incur as a result of any claim lodged against it in connection with a breach of G.C.29 by the Supplier. This obligation to indemnify shall continue notwithstanding the termination of this Agreement for as long as the Supplier is in possession of Personal Information.

G.C.30. TRADE AND ECONOMIC SANCTIONS

30.1 Definitions

For the purposes of this G.C.30:

'Country Based Sanction' means any program that prohibits and/or restricts:

- (a) Trade with or investment in, or the transfer of property or assets to or from a specified country, including its government, government subdivisions, agencies and other entities under the control or acting on behalf of government; or
- (b) Engaging in transactions that relate to investing in and/or provision of advice or assistance in relation to a specified country which, in each case, are maintained, amended and imposed by any Sanction Authority.

'Sanction' means an SDN Sanction, a Country Based Sanction and any other similar sanctions, regulations, statutes, prohibitions and official embargo measures that relate to the enforcement of economic and trade sanctions which are maintained, amended and imposed by any Sanction Authority.

'Sanction Authority' means the United Nations, the European Union, Her Majesty's Treasury in the United Kingdom, the United States Department of Treasury's Office of Foreign Assets Control, the Commonwealth of Australia, Switzerland, South Africa, Canada or any replacement or other regulatory body enforcing economic and trade sanctions legislation in such countries or by any state, supranational or international government organization.

'Sanctioned Person' means any person, being an individual, corporation, company, association, government or other entity who:

- (c) is the subject or target of a Sanction or in respect of which a Sanction has been imposed or targeted; or
- (d) is owned, operated or controlled by any person who is the subject or target of a Sanction or in respect of which a Sanction has been imposed by any Sanction Authority.

'SDN Sanction' means any Specially Designated Nationals or Blocked Persons lists and/or any replacement lists which are maintained, amended and imposed by any Sanction Authority.

30.2 Warranty

The Supplier warrants that, as at Commencement Date:

- (a) to the best of its knowledge, information and belief neither it, nor any of its employees, agents, contractors, subcontractors or related corporate entities (including the employees, agents and contractors of such subcontractors and related corporate

entities) (together with the Supplier, the '**Supplier Group**') is a Sanctioned Person;
and

- (b) it has provided all information of which it is aware, that the Company reasonably requires in order for the Company to:
 - (i) manage the risk of Sanctions being imposed on the Company; and
 - (ii) comply with laws or regulations applying in the jurisdictions in which the Goods and Services are provided, the parties are located or in any other country.

30.3 Provision of information regarding status

From Commencement Date, the Supplier must:

- (a) immediately notify the Company upon becoming aware that it or any member of the Supplier Group has:
 - (i) become or is reasonably likely to become a Sanctioned Person; or
 - (ii) violated a Sanction;
- (b) provide all information that the Company reasonable requires from time to time in order for the Company to:
 - (i) determine whether any member of the Supplier Group has become or is reasonably likely to become a Sanctioned Person;
 - (ii) comply with any request by a regulatory authority that oversees Sanctions;
 - (iii) manage the risk of Sanctions being imposed on the Company; and
 - (iv) comply with laws or regulations applying in the jurisdictions in which the Goods and Services are being provided, the parties are located or in any other country.

30.4 Suspension by Company

If the Company suspects that any member of the Supplier Group has become a Sanctioned Person or has violated any Sanction then (without limitation to any other right or remedy available to the Company), the Company may:

- (a) suspend performance of; or
 - (b) withhold any payment due and owing,
- under the Agreement.

30.5 Termination by Company

If, during the Term of the Agreement, the Company:

- (a) is notified by any Sanction Authority or the Supplier that any member of the Supplier Group has or is reasonably likely to become a Sanctioned Person; or
- (b) has reasonable cause to believe that any member of the Supplier Group is a Sanctioned Person which, if so, would result or be reasonably likely to result in:
 - (i) the Company and/or an affiliate of the Company becoming a Sanctioned Person; or
 - (ii) the continued performance of the Agreement being in violation of a Sanction,

then (and without limitation to any other right or remedy available to the Company) the Company may terminate the Agreement with immediate effect without liability for any loss suffered by any member of the Supplier Group.

30.6 Continuing supply obligations

Where the Supplier is prevented from receiving or accessing (or is otherwise not permitted to receive or access) any payment made by the Company for the Goods and Services under the Agreement as a result of any member of the Supplier Group being or becoming a Sanctioned Person, that payment is taken to have been validly made by the Company and the Supplier is not relieved of its obligation to provide the Goods and Services.

G.C.31. NOTICES

31.1 *Domicilium citandi et executandi*

The parties choose as their *domicilium citandi et executandi* for court process the addresses specified in the Agreement Particulars.

31.2 Notice requirements and time of receipt

A notice under this Agreement must be in writing, in English and addressed to the receiving party, and will be deemed to have been received:

- (a) if posted, on the 10th day after posting;
- (b) if delivered personally, upon delivery; or
- (c) if sent by facsimile or email:
 - (i) on a Business Day, on dispatch of the transmission; or
 - (ii) on a day other than a Business Day, on the next Business Day, unless proved otherwise.

31.3 Notice details

A party may specify another address or facsimile number for the purposes of this G.C.31 by notice to the other party.

31.4 Actual receipt

A notice actually received by a party is adequate service of such notice even if the Notice is received at an address or facsimile number or email address different to the address or facsimile number or email address specified in the Formal Instrument of Agreement or a later notice.

G.C.32. SOUTH AFRICAN TRANSFORMATION

32.1 Supplier's warranty relating to Mining Charter

The Supplier warrants that it has read, made itself fully acquainted with, fully understands the implications of, and, where appropriate, complies and will continue to comply with, at a minimum, the definition of BEE Entity as set out in the Mining Charter.

32.2 Supplier's warranty relating to the BBBEE Act and the DTI Code of Good Practice

In addition to clause 32.1, the Supplier warrants that it has read, made itself fully acquainted with, fully understands the implications of, and, where appropriate, follows and will continue to follow the BBBEE Act and DTI Code of Good Practice.

32.3 Information to be supplied to the Company

The Supplier shall, within 21 Business Days after receipt of a written request from the Company, provide the Company with:

- (a) a current and valid BBBEE verification certificate issued by auditors authorized by the Independent Regulatory Board for Auditors or a rating agency accredited by the South African National Accreditation Service, reflecting the Supplier's current black ownership level and BBBEE rating; and
- (b) any additional verification of HDSA ownership levels if required to demonstrate compliance with the Mining Charter requirements.

32.4 Supplier's BBBEE obligations

The Supplier shall, for the duration of the Agreement:

- (a) maintain or improve its black ownership status in accordance with the BEE Entity definition;

- (b) maintain (as a minimum) a level 4 or better rated BBBEE contributor in accordance with the DTI Code of Good Practice;
- (c) notify the Company in writing within 14 days of any occurrence which affects, will affect, or would be reasonably likely to affect its compliance with respect to the BEE Entity definition and/or its BBBEE rating; and
- (d) notify the Company in writing within 30 days of the occurrence as to what steps have been and/or will be taken to restore its compliance with respect to the BEE Entity definition and/or its BBBEE rating.

32.5 Supplier's failure to comply

In the event that the Supplier fails to comply with the provisions of G.C.32, the parties may (but are not obliged to) negotiate and agree on a time plan within which the Supplier shall become compliant. If the parties do not agree a date by which the Supplier must become compliant, then notwithstanding G.C.24, the Company shall be entitled to terminate the Agreement with immediate effect and without payment of any compensation to the Supplier (other than amounts due and payable under the Agreement at the date of termination).

G.C.33. SOCIAL DEVELOPMENT

33.1 Local employment

- (a) The Supplier warrants that its primary source of labor shall be the immediate local community as per the social labor plan of the relevant Site.
- (b) Should the skills not be available from the immediate local community, the Supplier shall submit to the Company and implement a skills transfer plan for employment of the immediate local community.
- (c) The Supplier shall provide the Company with quarterly reports containing information as requested by the Company such as, but not limited to, the number of employees from the local communities that are providing the Services as well as details on the skills transfer plan and skills development programmes.

33.2 Local procurement

- (a) The Supplier undertakes to contribute to local economic development through implementation of local procurement by purchasing certain goods and services from Local SMMEs.
- (b) The Supplier shall procure from Local SMMEs without compromising on safety, technical capability, cost and delivery requirements. In the event of a shortage of suitably skilled or capable SMME's within the zone of influence, the Supplier shall

embark, and demonstrate evidence of, active supplier development activity aimed at increasing local capability consistent with the requirements of the BBBEE Act.

- (c) The Supplier shall provide the Company with quarterly reports containing information as requested from the Company such as, but not limited to, total spend with Local SMMEs, evidence of supplier development activity and the number of tenders issued to Local SMMEs.

G.C.34. ASSIGNMENT AND SUBCONTRACTING

- (a) The Supplier must not subcontract, cede, assign and/or delegate any or all of its rights and obligations (including liabilities) under this Agreement to any person, without the prior written consent of the Company.
- (b) The Supplier shall not subcontract any part of the Services other than to subcontractors approved by the Company, which approval may be withheld in the absolute discretion of the Company. The Supplier shall be responsible for the acts or defaults of any subcontractor, its agents or employees, as if they were the acts or defaults of the Supplier.

G.C.35. MISCELLANEOUS PROVISIONS

35.1 Governing Law

The Agreement is governed by and must be construed and enforced in accordance with the laws of the Relevant Jurisdiction and the parties unconditionally submit to the exclusive jurisdiction of the courts of the Relevant Jurisdiction (and courts of appeal from them).

35.2 Entire Agreement

The Agreement contains the entire agreement between the parties and supersedes all prior arrangements, letters of intent, memorandums of understanding, purchase orders, representations and documents (if any) relating to the Goods and Services or the Agreement.

35.3 Severability

If any provision contained in the Agreement is void, illegal or unenforceable, that provision is severable from the Agreement and the remainder of the Agreement has full force and effect.

35.4 Non-waiver

No failure by a party to enforce any provision of this Agreement will constitute a waiver of such provision or affect in any way a party's right to require the performance of such provision at any time in the future.

35.5 Amendment

The Agreement may be altered only in writing signed by both parties. This requirement will only be satisfied if such amendment or variation is made in a written, paper-based form on which the signatures of the parties are reflected. The provisions of the Electronic Communications and Transactions Act, No. 25 of 2002 (as amended from time to time) are expressly excluded from this clause 35.5.

35.6 No other relationship

Nothing contained in the Agreement is to be construed as constituting a joint venture, agency or partnership between the Supplier and the Company.

35.7 Conventional Penalties Act

In the event that any provisions in the Agreement qualifies as a penalty in terms of the Conventional Penalties Act 15 of 1962, as amended, in relation to any act or omission by the Supplier, such provisions shall not be deemed to preclude the Company from recovering damages in lieu of the relevant penalty.

35.8 Agency

The Supplier warrants to the Company that it has concluded this Agreement as a principal and not as an agent whether for an undisclosed principal or an unnamed principal or otherwise.

35.9 Survival

Any provision of the Agreement which contemplates performance or observance subsequent to any termination or expiration of the Agreement shall survive any termination or expiration of the Agreement and continue in full force and effect.

35.10 Counterparts

This Agreement may be executed in any number of counterparts but will not be binding until executed counterparts are exchanged. Counterparts may be exchanged by facsimile transmission or email of executed copies of this Agreement.