

**GENERAL CONDITIONS OF CONTRACT (for Consumables)**

1. **DEFINITIONS**  
In these terms and conditions, unless the context clearly requires a different interpretation, the words and expressions set out below shall have the meanings assigned to them – and cognate expressions shall have corresponding meanings
- 1.1 'Business Day' means any calendar day, other than a Saturday, Sunday or public holiday in the Republic of South Africa.
- 1.2 'Commencement Date' means the date on which the Contract shall commence, as set out in this Contract
- 1.3 'Company' means Sibanye Gold Limited, its subsidiaries, and/or associated companies from time to time.
- 1.4 'Company Representative' means the person nominated by the Company to act on its behalf in terms of the Contract, or his authorised nominee.
- 1.5 'Company Standards' means:
- 1.5.1 the standard health, safety and environmental rules, procedures, codes of procedure and managerial instructions, including the General Health and Safety Requirements;
  - 1.5.2 the procedures and standards of the MHSA;
  - 1.5.3 the Company's ISO 14001 certification requirements, associated environmental management systems, plans, procedures and policies;
  - 1.5.4 the Mining Charter (if applicable);
  - 1.5.5 the Product Standards/Specification;
  - 1.5.6 the following Sibanye Gold Limited policies:
    - 1.5.6.1 the Sibanye Gold Limited Ethics Policy, and Code of Ethics;
    - 1.5.6.2 the Sibanye Gold Limited Environmental Policy;
    - 1.5.6.3 the Sibanye Gold Limited Human Rights Policy Statement;
    - 1.5.6.4 the Sibanye Gold Limited Labour policy;
    - 1.5.6.5 the United Nations Global Compact;
    - 1.5.6.6 the ten principles of the International Council on Mining and Metals to continually improve sustainable development performance, being:-
      - 1.5.6.6.1 Implement and maintain ethical business practices and sound systems of corporate governance;
      - 1.5.6.6.2 Integrate sustainable development considerations within the corporate decision making process;

- 1.5.6.6.3 Uphold fundamental human rights and respect cultures, customs and values in dealings with employees and others who are affected by our activities;
- 1.5.6.6.4 Implement risk management strategies based on valid data and sound science;
- 1.5.6.6.5 Seek continual improvement of our health and safety performance;
- 1.5.6.6.6 Seek continual improvement of our environmental performance;
- 1.5.6.6.7 Contribute to conservation of biodiversity and integrated approaches to land use planning;
- 1.5.6.6.8 Facilitate and encourage responsible product design, use, re-use, recycling and disposal of our products;
- 1.5.6.6.9 Contribute to social, economic and institutional development of the communities in which we operate;
- 1.5.6.6.10 Implement effective and transparent engagement, communication and independently verified reporting arrangements with our stakeholders.

1.5.7 Sibanye Gold Limited Safe Production Rules (v9);

- 1.6 'Confidential Information' means all information (whether written, oral or in electronic form) concerning the business of either Party that the other Party obtains or receives as a result of the discussions leading up to or during the performance of the Contract, and will include but not be limited to: any technical, security, commercial, financial, scientific, marketing or business information, know-how, trade secrets, software, marketing strategies, mining plans, information relating to shareholders or subsidiary companies, client and/or supplier lists, processes, machinery, designs, drawings, reports, technical specifications and data, business practices, business plans, policies, practises, any information to which intellectual property rights apply, whether such information is formally designated as confidential or not.
- 1.7 'Contract' means collectively the contract document together with its Annexures or schedules listed and attached hereto from time to time, including, Particular Conditions constituting one indivisible Contract. No other terms/conditions and/or prices, stated or implied, which may be contained in any tender/quotation or in any written or verbal acknowledgement of, or reference to the Contract or in any packing slip/waybill/consignment note/invoice/statement relating to the Contract, shall apply, notwithstanding any signature thereto or other express or implied confirmation thereof by any person purporting to act on behalf of the Company.
- 1.8 'Delivery address' means the address stated on the order.
- 1.9 'EFT' means electronic funds transfer.
- 1.10 'General Health and Safety Requirements' means the general health and safety requirements as set out in this Contract.
- 1.11 'Head of Procurement' means the head of the procurement department of the Company.
- 1.12 'Intellectual Property' shall include, but shall not be limited to know how, any technical, security, commercial, financial, scientific, marketing or business information and know-how, including without limitation, the trade secrets, software, marketing strategies, information relating to shareholders or subsidiary companies, client and/or supplier lists, processes, machinery, designs, drawings, technical specifications and data in whatever form relating to a Party's business practices or the promotion of a Party's business plans, policies or practises, which information is communicated to the receiving party, or otherwise acquired by the receiving party from a Party, during the course of the parties' relationship and

during the parties' commercial interactions, discussions and negotiations with one another, whether such information is formally designated as confidential or not.

- 1.13 'MHSA' means the Mine Health and Safety Act, No. 29 of 1996.
- 1.14 'Mine' means the property/premises of the Company.
- 1.15 'OHS Act' means the Occupational Health and Safety Act, No.85 of 1993.
- 1.16 'Parties' means the Company and the Supplier and shall include an individual reference to either one of them as the context may require.
- 1.17 'Product' means the Product to be supplied by the Supplier to the Company, as set out in the Special Terms and Conditions.
- 1.18 'Purchase Order' means the purchase order to be issued by the Company to the Supplier, as more fully described in the Purchase Order clause below.
- 1.19 'Price' means the Price payable by the Company to the Supplier for the supply of the Product, as set out in the Contract,
- 1.20 'Sibanye Gold Limited' means Sibanye Gold Limited, its subsidiaries, and/or associated companies from time to time.
- 1.21 'Signature date' means the date of signature of the Contract by the Party signing last in time.
- 1.22 'Site' means the place on the Company's property where Product must be delivered.
- 1.23 'Specification' means the specification and requirements of the Product, as well as the brand name of the Product, as set out in the Special Terms and Conditions.
- 1.24 'Subcontract' means any Contract made between any corporate body, trading trust, partnership or person and the Supplier the execution of any part of the Contract and which has been approved by the Company.
- 1.25 'Subcontractor' means any corporate body, trading trust, partnership or person (other than the Supplier ) to which or to whom any part of the Contract has been subcontracted, and which has been approved by the Company.
- 1.26 'Supplier' means any corporate body, partnership or person to which or to whom the Contract has been awarded and shall include the Supplier's legal representatives, successors in title and permitted assigns.
- 1.27 'Supplier's Representative' means the person delegated to act on behalf of the Supplier whose name shall be advised on the commencement date and kept updated.
- 1.28 'Termination date' means the date on which the Contract finally terminates.
- 1.29 'Value Added Tax' means the tax to be levied in terms of the Value Added Tax Act, Act 89 of 1991
- 1.30 'Variation' means a Written variation to the Contract, agreed to by the Parties and signed by authorised representatives of the Parties.
- 1.31 'Writing' means any manuscript, or printed statement signed by an authorised representative of either the Company or the Supplier and includes any telex, e-mail, telefaxed message, from one party to the other and written shall bear the corresponding meaning;

## 2. INTERPRETATION

- 2.1 In the Contract, unless the context clearly requires otherwise –
  - 2.1.1 words importing any one gender shall be capable of being construed as a reference to the other two genders;
  - 2.1.2 the singular shall include the plural and vice versa;
  - 2.1.3 a reference to natural persons shall include created entities (corporate or unincorporated) and vice versa.
- 2.2 In the Contract, the headings have been inserted for convenience only and shall not be used for nor assist or affect its interpretation.
- 2.3 If anything in a definition is a substantive provision conferring rights or imposing obligations on anyone, effect shall be given to it as if it were a substantive provision in the body of the Contract.
- 2.4 The rule of construction that a contract shall be interpreted against the Party drafting it shall not apply.
- 2.5 References to legislation shall include all amendments from time to time as well as applicable regulations.
- 2.6 When any number of days is prescribed such number shall exclude the first and include the last day unless the last day falls on a Saturday, Sunday, or a public holiday in the Republic of South Africa, in which case the last day shall be the next succeeding day.
- 2.7 The eiusdem generis rule shall not apply and accordingly, whenever a provision is followed by the word "including" and specific examples, such examples shall not be construed so as to limit the ambit of the provision concerned.

## 3. SUPPLY

- 3.1 The Supplier agrees to supply such quantities of the Product to the Company as the Company may require from time to time and the Company agrees to purchase the Product from the Supplier, subject to the terms and conditions set out in this Contract.

## 4. STOCK TO BE MAINTAINED

- 4.1 The Supplier shall maintain sufficient quantities of the Product for the proper execution of the Contract. The Company may, at its discretion stipulate in Writing the quantity of Product which the Company requires the Supplier to maintain in stock.
- 4.2 If at any time during this Contract the stock maintained by the Supplier is insufficient to meet the Company's consumption, the Supplier shall immediately give Written notice to the Company.
- 4.3 Subject to this clause, should the Supplier fail to fulfil its obligations under this clause, if required by the Company, the Supplier shall source and supply Product of the same Specification and Price at the Supplier's expense to the Company.
- 4.4 Should the Supplier fail to act or refuse to act in terms of this clause, the Company shall be entitled to buy out the quantity of Product or an alternative product at the expense of the Supplier.

## 5. PURCHASES OUTSIDE THE CONTRACT

- 5.1 This Contract does not give exclusive rights of supply to the Supplier.

- 5.2 The Company may purchase the same or similar Product from any other Supplier.
- 5.3 The purchase of Product by parties outside the Contract for use on any work undertaken by such outside parties on behalf of the Company during the Contract shall not be a breach of the Contract. In addition, the Contract excludes Product supplied as component of any equipment purchased by the Company during the Contract.

6. **WARRANTIES**

- 6.1 The Supplier warrants to the Company that the Product shall –
- 6.1.1 comply with to the Specification;
  - 6.1.2 be to the complete satisfaction of the Company, which shall have the right, without prejudice to any other rights which it may have in terms of the Contract or in law, to reject any Product that is defective by reason of workmanship, material or preparation, or which does not conform to the Specification;
  - 6.1.3 be subject to ISO 14001 and a production process or quality management system that the Company may require; as well as appropriate initial and on-going risk assessment.
  - 6.1.4 be free from both patent and latent defects and be of good quality in workmanship;
  - 6.1.5 be fit for the purpose for which it is intended and for which the Company purchases it from the Supplier;
  - 6.1.6 comply with all applicable legislation, by-laws and regulations and that the normal use of the Product by the Company for the purpose for which it is acquired will not contravene applicable legislation, by-laws or regulation;
  - 6.1.7 be supplied with the full benefit to the Company of any manufacturer's warranty.
  - 6.1.8 will not infringe any third party's intellectual property rights.
- 6.2 The Supplier warrants it has obtained and maintains all permits, licences, certificates of roadworthiness, other certificates or other consents or approvals required by the Supplier under any statute and shall provide the Purchaser with copies thereof on request.
- 6.3 The Company enters into the Contract on the strength of the warranties undertaken by the Supplier herein.
- 6.4 The Supplier indemnifies the Company against all loss, liability, damage and expense (including legal costs on the scale as between attorney and own client and disbursements) incurred by the Purchaser as a result of any breach by the Supplier of any of the warranties given by the Supplier in terms of this clause.

7. **TESTING**

- 7.1 Without derogating from the Supplier's warranties in terms of the Warranties clause, the Company may inspect and/or test a Product at any time during or at the completion of preparation or manufacture and at any time thereafter, and to reject any Product that is defective by reason of workmanship, material or preparation, or which does not conform to the Specification or is unlikely on completion, or manufacture, or processing to comply with the Specification. The Supplier shall assist the Company to undertake such inspections and/or tests.

- 7.2 The Supplier shall, for purposes of this clause on request by the Company, supply reasonable quantities of samples of the Product free of charge to the Company.
- 7.3 The Supplier shall furnish the Company with such information and documentation with regard to the Product as the Company may reasonably require.
- 7.4 Should the Company reject any Product in terms of clauses 7.1 to 7.3, then: –
- 7.4.1 the Company shall inform the Supplier and the Supplier shall take such steps as may be necessary to comply with its obligations in terms of the Contract; and/or
  - 7.4.2 the Supplier shall forthwith replace the rejected Product with Product that is not defective. The Supplier shall be liable for any costs associated with such replacement.

8. **PURCHASE ORDER**

- 8.1 The Supplier shall -
- 8.1.1 upon receiving a Purchase Order, supply the Company with the Product in terms of the Contract and such Purchase Order. The Supplier shall not deliver a substitute product or a product that differs from the Product listed in the delivery documents;
  - 8.1.2 ensure that it has sufficient stocks and/or staff available to fulfil a Purchase Order;
  - 8.1.3 deliver Product within the lead time for delivery.
- 8.2 Each Purchase Order issued by the Company to the Supplier shall state -
- 8.2.1 quantity of Product ordered;
  - 8.2.2 delivery date; and
  - 8.2.3 the Site at which Product must be delivered.
- 8.3 Notwithstanding the provisions of the Special Terms and Conditions, should the Company request early delivery of a Product, the Supplier shall try to deliver the Product within the time requested.
- 8.4 Should the Supplier fail to deliver, in whole or in part, an order placed in terms of clause 8.1 within the lead time, then, without prejudice to any other rights which the Company may have in terms of the Contract or in law: -
- 8.4.1 the Company shall have the right to purchase the Product from any third party so as to make good the deficit in the said order; and
  - 8.4.2 the Supplier shall be liable to the Company for any excess cost of the Product incurred by the Company in purchasing such Product from such third party; and/or
  - 8.4.3 the Supplier shall be liable for the penalty for late delivery set out in this Contract.
- 8.5 In the event that a power-outage is experienced during office hours, orders will be placed on a manual basis by duly authorised Company personnel.

9. **PACKAGING**

- 9.1 The Supplier shall package the Product to ensure, in the opinion of the Company, the safe, adequate and lawful transport, loading, offloading, handling, and storage, all according to accepted international standards. The Supplier shall ensure that packing shall be suitable for the methods of transport, delivery

and offloading to be used. The Supplier shall also issue instructions for the placing of the Product on ship or aircraft, if appropriate, to ensure proper protection and preservation of the Product.

9.2 Unless otherwise agreed by the Parties in writing, and except in the case of consignment stock as contemplated in the Consignment Stock clause, ownership of the packing cases and packaging materials shall on delivery of the Product pass to the Company. For consignment stock, ownership of the packing cases and packing materials of such consignment stock shall pass to the Company when the consignment stock is drawn by the Company.

9.3 Each package shall be marked in accordance with the National Road Traffic Act 93 of 1996, and with the number of the relevant Purchase Order, a clear description of the Product and appropriate warning labels.

9.4 The Supplier shall specify in full detail on all packing cases and/or packaging materials and receptacles containing the Product -

9.4.1 Product identification;

9.4.2 immediate and long term potential hazards and dangers, including, but not limited to, whether the Product is toxic, flammable, poisonous, harmful by inhalation or direct contact associated with the direct or indirect use thereof; and

9.4.3 the most appropriate safety precautions, including, without limiting the generality of the foregoing, the Product name, its properties, full instructions on handling, storage, fire, disposal, spillage and first aid.

9.5 The Supplier shall supply appropriate Material Safety Data Sheets with each delivery.

## 10. QUANTITY

10.1 Quantity amounts or estimates of amounts of Product required by the Company shall be indicative only and the Company shall not be bound to accept such quantity or estimate.

## 11. CONSIGNMENT STOCK

11.1 Should the Supplier and the Company agree that Product shall be retained by the Supplier at the Company's premises on consignment, then the Company shall hold such consignment stock on Site and shall draw the Product from the consignment stock as required.

11.2 On or about the 15th (fifteenth) day of each calendar month, the Company shall take stock of such consignment stock and shall notify the Supplier of the quantity of the Product consumed during the preceding period from the date of the last stocktaking. Such consumed Product shall be invoiced and included on the statement issued by the Supplier to the Company.

11.3 The Company shall give reasonable notice to the Supplier of the date and time on which it will take stock of the Product and the Supplier shall be entitled to have a representative present.

## 12. DELIVERY

12.1 The Product shall be delivered to the Company by the Supplier in the manner stipulated in the Contract and at the Supplier's cost to the Site designated by the Company in the Purchase Order. The Supplier shall ensure that it applies for an import licence for the Product in the Company's name if necessary.

12.2 The Company shall not be liable for any Product not delivered to the Company's Site.

12.3 Supplier shall, in respect of each Purchase Order, furnish to the Company the following information in the waybill: -

12.3.1 a clear description of each Product;

12.3.2 name of the manufacturer of each Product;

12.3.3 quantity of each Product;

12.3.4 net and gross weight of the Product;

12.3.5 number of containers in which the Product are supplied;

12.3.6 consignee;

12.3.7 Purchase Order and the Contract Number;

12.3.8 Company's material code number;

12.3.9 date and point of dispatch; and

12.3.10 delivery note number, and

12.3.11 further particulars and supporting documentation as may be required by the Company from time to time.

## 13. TRANSPORT

13.1 The Supplier shall, at its own cost, obtain and maintain all necessary permits under any legislation, and other authorisations necessary for the transport and delivery of the Product to the Company and transport of empty containers from the Company's Site.

13.2 If the Supplier is unable to obtain or maintain any such permits or authorisations, the Company may terminate the Contract forthwith and the Supplier shall not have any claim of whatsoever nature and howsoever arising against the Company arising out of the Contract or its termination.

13.3 The Supplier shall indemnify the Company against all loss and damage arising from any cause whatsoever in the performance of its obligations under this clause, irrespective of where such loss or damage occurred.

## 14. INTELLECTUAL PROPERTY RIGHTS

14.1 The existing Intellectual Property rights in the Product shall remain the property of the Supplier, and future rights in improved or modified models shall vest in the Supplier. The Supplier indemnifies and shall keep indemnified the Company against all losses and costs (including legal costs as between attorney and client) and all other expenses whatsoever that the Company may incur as a result of any action, proceeding or claim made against the Company arising from the acquisition, use, reproduction or adaptation of the Product or of any process associated therewith, or of any documents pertaining to the Product, which may constitute an infringement intellectual property rights in respect of the Product.

14.2 This indemnity shall extend also to all losses, costs and expenses as aforesaid incurred by the Company in the event that the Product, or any part thereof, or any process, or any design, trademark, copyright, or documents in any way associated with the Product or any part thereof, become the subject of an interdict or other process of law depriving the Company of its rights to, or possession of, the Product.

- 14.3 This indemnity shall not apply to any infringement which is due to the Supplier having followed in its entirety a design stipulated by the Company which was not known by the Supplier to be an unauthorised infringement of patent or other protected rights as aforesaid.
- 14.4 The Supplier grants to the Company the right to incorporate part numbers relating to the Product, in its catalogue systems, and to reproduce the part numbers, in whole or in part, for any purpose and, in particular, for procuring such Product, maintenance, or parts.
- 14.5 The Supplier shall disclose all Intellectual Property rights in the Product, including patents, patent applications, and patent numbers held in respect of Product supplied in terms of the Contract.
- 14.6 The rights and obligations contained in this clause shall continue in full force and effect for 10 (ten) years from Termination of the Contract.

15. **COMPANY VARIATION OF THE SPECIFICATION**

- 15.1 Should the Company require a variation of the Specification, it shall notify the Supplier in Writing of the variation it requires.
- 15.2 If the variation, in the opinion of the Supplier, merits -
- 15.2.1 an increase or decrease in the Price; or
  - 15.2.2 an extension or acceleration of the date for delivery of the Product,
  - 15.2.3 the Supplier shall notify the Company thereof in writing within a reasonable time after receipt of the aforementioned notice.
- 15.3 If the Parties agree on a new Price and/or delivery date in respect of the Product, that variation shall: -
- 15.3.1 be reduced to writing by the Parties and signed by them; and
  - 15.3.2 be subject to the approval of the Company.
- 15.4 Should the Parties fail to reach agreement within 14 (fourteen) Business Days of the commencement of such negotiations, then the Company may, at its election, immediately terminate the Contract in whole or in part, on written notice to the Supplier and the Company shall not be liable to the Supplier for any loss, costs, damage or compensation of whatsoever nature and howsoever arising.

16. **SUPPLIER VARIATION OF THE SPECIFICATION**

- 16.1 The Supplier will only be paid for Product as specified in the Contract. If the Supplier makes an improvement and/or additions to the Product -
- 16.1.1 the Supplier shall inform the Company of such improvements and/or additions; and
  - 16.1.2 the Company shall be entitled, at its sole discretion, to require the Supplier to supply it with such improved Product at an agreed Price.
- 16.2 The Supplier shall supply such improved Product only where such supply has been approved by the Company.
- 16.3 The Supplier shall embark on a continuous improvement drive, especially with regard to sustainability, saving of electricity, water and other natural resources and shall issue a written report of these savings, with quantifiable measurements against the base date/quality/performance on an annual basis to the Company.

- 16.4 Except for Confidential Information, the Supplier will update its particular industry trends and forecasts which will influence its prices or supply at the request of the Company.

17. **PRICE AND PAYMENT**

- 17.1 The Price shall be inclusive of -
- 17.1.1 transport costs, handling and offloading charges;
  - 17.1.2 packaging;
  - 17.1.3 storage;
  - 17.1.4 VAT and any other taxes and levies;
  - 17.1.5 maintenance;
  - 17.1.6 training;
  - 17.1.7 necessary consumables;
  - 17.1.8 operating manuals.
- 17.2 Provided the Supplier complies with its obligations to the Company, and unless otherwise agreed by the Parties in the Special Terms and Conditions, the Company shall pay invoices received and ratified by it in 30 (thirty) calendar days. The invoices shall be recorded in a monthly statement by the Supplier.
- 17.3 The Company shall not be liable for payment of any interest on the outstanding balance of any statement or for any related charges.
- 17.4 All payments made by the Company to the Supplier shall be made by way of EFT into a bank account nominated and updated when necessary by the Supplier.
- 17.5 On giving or causing to be given an instruction to the Company's bankers to effect the transfer of the amount due to the Supplier, the Company will fully and effectively discharge its obligation to make payment to the Supplier.
- 17.6 The Supplier may not cede or assign the right to receive payment for Product supplied in terms of the Contract without the prior written consent of the Company.
- 17.7 Costs, damages or expenses for which the Supplier is liable to the Company, may be set-off or deducted, by the Company from any monies due or becoming due to the Supplier as a result of its business dealings with the Company, or may be recovered by action at law from the Supplier.
- 17.8 Payment or ratification of invoices shall not affect the Company's rights relating to quality or warranty under this Contract.

18. **PRICE ADJUSTMENT**

- 18.1 Price shall be fixed and firm for the first 12 (twelve) months of the Contract.
- 18.2 Thereafter, and unless agreed otherwise by the Company, application for price adjustments shall be made by the Supplier in Writing 60 (sixty) days before the proposed effective date to the Company and shall be supported by such documentary evidence as may be required by the Company. No price adjustment shall be effective until all documentary evidence is received and the adjustment has been accepted in Writing by the Company.

- 18.3 Cost Drivers must be submitted as part of the application. It will only trigger a contract price adjustment when the total contract value is impacted by more than 5%.
- 18.4 The Supplier shall give a detailed cost breakdown of:
- 18.4.1 variation in costs of labour, material, equipment and transport actually incurred by the Supplier;
  - 18.4.2 the number of the Products ordered by the Company in the period of 12 (twelve) months preceding the date of the application;
  - 18.4.3 the period of time expressed in months, for which the adjusted Price, if any, will remain fixed;
  - 18.4.4 proposed Price in respect of each Product;
  - 18.4.5 motivation for the adjustment of the Price;
  - 18.4.6 If the Product is imported, fluctuation in the exchange rate, the rate of exchange on the Signature Date, as well as the time and source of the rate so quoted; the rate of exchange on the date of the application for the adjustment of the Price, as well as the time and source of the rate so quoted; and the anticipated rate of exchange for future deliveries.
- 18.5 The Company may, in the event of an application for the adjustment of the Price being lodged:-
- 18.5.1 purchase all or any part of the Supplier 's existing stock of the Product at the Price in preference to any similar right granted to any third party; and/or
  - 18.5.2 call for tenders for supply of the Product and may, should more favourable tenders be submitted for the supply to the Company of the Product, terminate the Contract in accordance with the termination provisions in the Breach and Termination clause.
- 18.6 Should the application referred to in clause 18.3 be accepted by the Company, the adjustment of the Price shall be reflected in a signed amendment by the Parties. Adjustment shall not apply to any Product ordered in terms of a Purchase Order issued prior to the date of signature of such amendment.
- 18.7 Should the application referred to in clause 18.3 not be acceptable to the Company, the Company shall have the right to terminate the Contract by giving the Supplier 30 (thirty) days' written notice and the Supplier shall be obliged to continue to supply the Product to the Company during such 30 (thirty) day period in terms of the Contract, and at the Price paid by the Company immediately prior to any such application being made by the Supplier until the termination of the Contract becomes effective.
- 18.8 In the event the requested effective date passes before the application for price adjustment is accepted by the Company any Deliveries shall continue to be made at the current Price until the application for price adjustment is accepted in Writing by the Company.
- 18.9 The Company shall have the right to reject any proposed price adjustment and, the Company may, at its discretion, cancel the Contract forthwith without payment of any compensation to the Supplier for any damages whatsoever including loss of business and/or profits resulting from such cancellation. The Company shall, however, purchase at the Contract Price any quantity of Product which in terms of the Stock to be Maintained clause the Company has stipulated that the Supplier maintain in stock.
- 18.10 The Supplier shall provide a Written quarterly forecast of trends and cost drivers for the Product.

## 19. PRICE ADJUSTMENT AT THE INSTANCE OF THE COMPANY

- 19.1 The Company may, at any time and for any reason, apply to the Supplier in writing for an adjustment of the Price.

- 19.2 Any application in terms of clause 19.1 shall be submitted to the Supplier at its domicile at least 60 (sixty) days prior to the proposed date of adjustment of the Price.
- 19.3 Should the Parties fail to reach Contract on any adjustment of the Price -
- 19.3.1 the Company shall be entitled to cancel the Contract in terms of the termination provisions of the Breach and Termination clause and
  - 19.3.2 the Supplier shall be obliged to continue supplying the Product to the Company in terms of the Contract until the termination of the Contract becomes effective.
- 19.4 The Company may set off any amount owed by the Company to the Supplier against any amount owed by the Supplier.

## 20. FOREIGN CURRENCY CONTROL

- 20.1 Should the Contract Price contain any amounts in respect of imported Plant/components which are subject to exchange rate variation then the Supplier shall declare such amounts to the Company at the time of submission of the tender. To this end the Supplier shall furnish the following information: -
- 20.1.1 the country of origin of such imported goods;
  - 20.1.2 the actual FOB value of the imported goods (not expressed as a percentage of the Contract Price); and
  - 20.1.3 bank's selling rate of exchange on which the price is based.
- 20.2 The Company reserves the right to pay either the Supplier's principal direct, bear the foreign currency risk on such amounts declared or request the Supplier to provide forward cover therefore. If the Company instructs the Supplier to purchase forward cover, the Supplier shall obtain and confirm forward cover within 5 (five) days of the date of the last party signing the Contract and the Supplier shall carry the risk of failure to obtain forward cover after the fifth day.
- 20.2.1 Should additional cost be incurred due to the Supplier defaulting in the following obligations, then such additional cost shall be for the account of the Supplier:
    - 20.2.1.1 the submission of foreign currency with its offer; or
    - 20.2.1.2 in the timely provisioning of forwarded cover when requested to provide such; or
    - 20.2.1.3 the timely submission of commercial invoices in the foreign currency; or
    - 20.2.1.4 the delivery date,
- 20.3 Control Documents: Where the Company has elected to bear the foreign currency risk itself and to pay the relevant amount in foreign currency then the Supplier shall within one (1) month of the date of receipt of the goods at the port of entry into the Republic of South Africa provide the Company with original:-
- 20.3.1 custom stamped commercial invoices;
  - 20.3.2 custom stamped bill of lading;
  - 20.3.3 custom stamped bill of entry.
- 20.4 In the event that the Supplier is unable to submit originals of the said documents to the Company then the Supplier shall provide to the Company, in a form approved by the Company, an undertaking, signed by an official of the Supplier having authority to do so, guaranteeing that the Supplier will hold the original documents in its safe keeping and make them available for inspection by either the Company or an

official of the South African Reserve Bank when required to do so. The said documents shall be retained by the Supplier for the period prescribed by the South African Reserve Bank Rules and Regulations.

20.5 The Supplier shall be liable to the Company for any liability incurred by the Company for breach by the Company or Supplier of South African Reserve Bank Rules and Regulations due to failure of the Supplier to supply appropriate documentation.

## 21. TAXES DUTIES AND LEVIES

21.1 The Supplier shall pay when due, all taxes, duties, wharfage, fees or charges of whatever nature required in South Africa and applicable to this Contract.

21.2 The Supplier shall pay all payroll taxes and contributions which are measured by wages, salaries or other remuneration paid to persons employed by the Supplier which arise by virtue of their employment under this Contract and which now or hereafter are imposed by any government, provincial, municipal, local or other lawful authority, including without limitation such taxes or contributions for annual holiday pay, Unemployment Insurance, and Industrial Council Levy.

## 22. RISK AND OWNERSHIP

22.1 Unless otherwise specified in an Incoterm ownership of and risk in and to the Product, excluding consignment stock, shall pass to the Company once delivery and offloading at the Site by the Supplier have been completed and have been accepted in Writing by an authorised Company Representative.

22.2 In respect of the consignment stock as contemplated in the Consignment Stock clause, ownership of and risk in and to such consignment stock shall pass to the Company when such consignment stock is drawn by the Company.

22.3 The passing of risk shall not affect any warranty applying to the Product.

## 23. INSURANCE

23.1 The Supplier shall, at its own cost, take out and maintain in force during the currency of the Contract -

23.1.1 insurance policies indemnifying the Supplier and the Company from and against any losses, damages, costs, claims and demands referred to in the Indemnity clause and in accordance with prudent industry practices;

23.1.2 insurance policies indemnifying the Supplier and the Company from and against any losses, damages, costs, claims and demands in respect of any of its plant, vehicles, and equipment to be used in the execution of the Contract.

23.1.3 Public Liability: insurance in respect of claims for accidental death of or injury to third party persons and/or accidental loss of or damage to third party property arising directly from the execution of the Contract and/or in connection with the Supplier's presence on the Site when delivering, including during the maintenance or Defects Liability Period;

23.1.4 Motor Vehicle Liability Insurance must be effected in respect of all motor vehicles brought onto the Contract site or which is to be used for the Contract which is owned, hired, leased or operated by the Supplier.

23.1.5 Employers Common Law Liability Insurance - covering the Supplier's liability at common law to its employees.

23.1.6 Insurance in terms of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 as may be amended or in terms of any similar Workers Compensation and Unemployment Insurance enactments.

23.1.7 Manufacture: Where manufacturing or fabrication is required, the Supplier will insure materials or equipment for incorporation in the Product while manufacturing or fabrication are being done off site.

23.2 Once the Supplier has been notified of a claim under an insurance policy, the Supplier shall not do anything which would reduce the amount of indemnity funds available to settle the claim.

23.3 The Supplier shall not settle an insurance claim where the Company is involved without the Company's consent.

23.4 The Party at fault will be liable for the deductibles.

## 24. INDEMNITY

24.1 The Supplier indemnifies and holds the Company, Sibanye Gold Limited and their respective directors and employees harmless from and against -

24.1.1 any liability, loss and expense which the above companies, directors or employees may sustain or incur based on any act or omission of the Supplier or any of its employees and arising from whatsoever cause, including delict, contract or a breach of any statutory duty; and/or

24.1.2 any liability, loss or expense which the said companies, directors or employees may incur, arising from any injury to, death or disease of any of their employees and whether or not in the course of supplying the Product; unless such injury or death or disease was caused by the wilful conduct of the said companies, directors or employees.

24.2 The Supplier hereby indemnifies and holds the Company harmless against any liability, loss, claim, costs or damages which may be incurred by the Company or brought against or claimed from the Company arising out of or in connection with the conclusion of the Contract, the supply of the Product and/or the Supplier's presence at the Site, including, without derogating from the generality of the foregoing -

24.2.1 any defect of whatsoever nature in the Product; or

24.2.2 the unauthorised use of or the infringement of any patent rights, trademarks or other protected rights in respect of the Product; or

24.2.3 any disease, death or injury of or to any of the Company's or the Supplier's employees howsoever arising,

24.2.4 any disease, death or injury of or to any person, arising out of, due to or in connection with the undertaking by the Supplier of its obligations in terms of the Contract; or

24.2.5 any damage to property by the Supplier; or

24.2.6 the cost of any damages arising from any industrial action by the Supplier's employees.

24.3 Should the Company at any time incur any liability, loss, damages, costs or claims as envisaged in this clause, it shall be entitled, without prejudice to any other rights which it may have, to withhold any or all monies due to the Supplier in terms of the Contract until such time as the Supplier has made good its obligations in terms of this clause.

24.4 If required, the Supplier shall furnish the Company with such security for all those costs, charges, liabilities and expenses as the Company may reasonably require.

25. **FORCE MAJEURE**
- 25.1 A Party shall be relieved of liability for the non-performance or defective performance of an obligation under this Contract caused by an event or series of events of force majeure or casus fortuitus (herein referred to as force majeure event) beyond the reasonable control of that Party.
- 25.2 If the obligations of a Party are adversely and materially affected by a force majeure event that results in cessation, lessening, or degradation of an essential service such as electricity, water or sewerage, and/or an actual or potential hazard that affects or may affect the health and safety of persons on the Company's property, a Party will not be liable for performance of the obligation affected.
- 25.3 A Party subject to force majeure shall as soon as possible notify the other Party in Writing of the circumstances amounting to force majeure and shall provide an estimate (updated in Writing from time to time) of when those circumstances are expected to cease.
- 25.4 In conditions of force majeure, each Party shall take all reasonable steps by lawful means to resume performance of the Party's obligations under this Contract as soon as reasonably possible and shall discuss with the other Party ways and means to overcome such conditions.
- 25.5 If conditions of force majeure persist continuously in respect of a Party for a period in excess of 60 (sixty) calendar day's either Party may terminate this Contract with immediate effect on written notice.
- 25.6 The affected Party will bear the direct and indirect costs for the duration of the time that it is affected by the force majeure event, as well as the costs connected with or incidental to termination under clause 25.4. A Party shall not in any event be entitled to additional or extra compensation by reason of the force majeure event. Standing time will not be paid. A Party subject to force majeure shall not be liable for any costs or damages, penalties or inconvenience suffered by the other Party.
- 25.7 Force majeure event may include, but not be limited to: war, (whether declared or not); armed conflict; or the serious threat of same; blockade; military embargo; civil war; act of a foreign enemy; terrorism; sabotage; piracy; act of governmental authority; expropriation; compulsory acquisition; seizure of works; nationalisation; act of God; plague; natural disaster; seismic event; fall of ground; ingress of water; lightning damage/strike; explosion; fire; epidemic; industry strike and/or lock out. Temporary cessation of mining operations due to Government instructions is a force majeure event.
- 25.8 If either Party experiences economic hardship as a result of a Force Majeure event, then that Party may apply to the other Party to amend the relevant Contract obligations.

26. **REMEDIES IN CASE OF DEFAULT IN PERFORMANCE**

- 26.1 If the Product is of defective quality, the Company shall, without prejudice to any other rights which the Company may have in terms of the Contract or in law, be entitled -
- 26.1.1 to purchase replacement Product from any third party and the Supplier shall be liable to the Company for any excess cost of the Product incurred by the Company; or
- 26.1.2 to instruct the Supplier to purchase replacement Product from any third party and the Supplier shall be liable to the Company for any excess cost of the Product incurred by the Company; and/or
- 26.1.3 put the Supplier in breach as in the Breach and Termination clause.
- 26.2 The Supplier shall remove and replace the defective Product and shall pay all costs of and incidental to such removal, including demurrage.

- 26.3 Should any dispute arise as to whether or not Product refused or rejected by the Company comply with the Contract Specification, the Supplier may within 7 (seven) days of such refusal or rejection arrange for tests and/or analyses to be undertaken by a suitably qualified expert to be nominated by the Company and the result of such tests and/ analyses shall be final and binding. The costs of such tests and/or analyses shall initially be borne by the Supplier but in the event of the tests and/or analyses proving that such Product do comply with the contract specification the Company shall refund to the Supplier all costs incurred by the Supplier in respect of such tests and/or analyses. If the Supplier, within 7 (seven) days of such refusal or rejection, fails to arrange for such tests and/or analyses, the Supplier shall be bound by the provisions of clause 26.1.
- 26.4 Where Product is perishable or where Product is patently of a specification other than the Contract Specification the decision of the Company shall be final and binding.
- 26.5 Where a defective Product has been used in an installation or structure, the Supplier shall be liable for all costs incurred in demolishing the installation or structure to carry out the inspection, repair, replacement, or other remedial work.
- 26.6 In the event of any latent defects manifesting themselves after the Product is accepted by the Company, the Supplier shall replace the defective Product, and the Supplier shall pay all costs of and incidental to such replacement.
- 26.7 Should any dispute arise as to whether or not latent defects are present in the Product, the Supplier shall within 7 (seven) days of the date of receipt of such notice arrange for tests and/or analyses to be undertaken by a suitably qualified expert to be nominated by the Company and the results of such tests and/or analyses shall be final and binding. The costs of such tests and/or analyses shall initially be borne by the Supplier but in the event of the tests and/or analyses proving that latent defects are not present in the Product, the Company shall refund to the Supplier all costs incurred by the Supplier in respect of such tests and/or analyses. In the event of the Supplier, within 7 (seven) days of the date of receipt of such notice, failing to arrange for such tests and/or analyses to be undertaken, the Supplier shall replace the Product.
- 26.8 Failure on the part of the Company to implement the provisions of this clause shall not prejudice or affect the rights of the Company to invoke the said provisions in a subsequent delivery of Product.
- 26.9 In addition to the rights of the Company set out in this clause, the Company shall have all other common law rights which it would otherwise have for defects in the Product, both with regard to the remedies available to it and with regard to the length of time the Supplier remains liable for the defects.

27. **BREACH AND TERMINATION**

- 27.1 Either Party may terminate this Contract immediately on Written notice to the other Party in the event of a breach of this Contract by the other Party which is incapable of remedy. Where the breach is capable of remedy, the innocent Party may terminate this Contract on Written notice to the breaching Party where the breaching Party has failed to remedy the breach within 7 (seven) days from receipt of a Written notice from the innocent Party requesting the breach to be remedied.
- 27.2 The innocent Party's remedies in terms of this clause are without prejudice to any other remedy to which the innocent party may be entitled in law.
- 27.3 The Supplier shall be deemed to have breached the Contract, entitling the Company (without prejudice to any other rights that the Company may have in law or in terms of the Contract) to cancel the Contract



forthwith, with or without claiming damages or to obtain an order for specific performance with or without claiming damages, in the event that: –

27.3.1 the Supplier goes into liquidation or judicial management (whether provisional or final), or commits any act of insolvency.

27.3.2 a judgment in any competent court for more than R5 million being given against the Supplier, which judgment is not paid or appealed within 14 (fourteen) Business days;

27.3.3 the Supplier and Company fail to reach agreement on a variation in Price;

27.3.4 a change in ownership or shareholding which may affect the quality or Delivery of Product;

27.3.5 the Supplier fails to comply with a Company Standard;

27.3.6 the Supplier breaches any of the warranties in this Contract;

27.3.7 the Supplier delivers short mass and/or measure or gives false mass and/or measure in the waybills and/or invoices, or renders a statement to the Company for Product not supplied;

27.3.8 the Supplier or anyone in its employ pays or offers to pay, gives or offers to give any money and any gift of whatsoever nature whether by way of a commission, gratuity or otherwise, or lends or offers to lend any money or any asset, or gives or offers to give any other valuable consideration to any person in the employ of the Company or Sibanye Gold Limited;

27.3.9 the Supplier breaches the Anti-Bribery and Sanctions Laws or Policies and Anti-Collusion Warranties and Undertakings clause;

27.3.10 the Supplier breaches any appropriate legislation;

27.3.11 the Supplier submits Tax invoices that contain material errors;

27.3.12 the Supplier fails to take out and maintain any licence or permission necessary for the Supplier to carry out its obligations under this Contract.

27.4 The Company shall be entitled to indemnification and payment by the Supplier of its legal costs on a scale as between attorney and own client in any legal proceedings arising from or associated with any breach by the Supplier of its obligations in terms of this clause.

27.5 On termination of the Contract in terms of this clause, the Supplier shall deliver all Product, or part of Product, and shall transfer the benefit of all work done, to the Company. The benefit shall include any present or future right in the Intellectual Property or licences required to operate the Product.

27.6 On termination the Supplier shall provide to the Company all information necessary for a smooth transition to another supplier.

## 28. CESSATION OF CURTAILMENT OF OPERATIONS

28.1 Notwithstanding any other clause in this Contract, the Company shall be entitled to terminate this Contract in the event of the Company experiencing a material and significant curtailment of operations in its operations, or ceasing to carry out gold mining activities in the country where this Contract normally operates.

28.2 The Supplier will bear the direct and indirect costs connected with or incidental to termination, including the cost of specialised equipment or vehicles for this Contract. The Supplier shall not in any event be entitled to additional or extra compensation by reason of this termination.

28.3 Upon termination in terms of this clause, the Company shall not be liable to the Supplier for damages, any other claim or compensation arising out of the termination whether for loss of business, profits or any other cause.

## 29. SUSPENSION OF THE SUPPLY

29.1 The Company's Representative may at any time instruct the Supplier to suspend progress of the Supply or any part thereof. During such suspension, the Supplier shall properly protect, store and secure such Product or part thereof against any deterioration, loss or damage. The Company's Representative may also notify the Supplier for the cause of the suspension and whether it is the responsibility of the Supplier.

### 29.2 Consequences of Suspension

29.2.1 If the Supplier suffers delay or incurs additional costs from complying with the Company's Representatives instruction under this clause or from resuming the work, the Supplier shall give notice to the Company's Representative, and the Supplier shall be entitled to claim:

29.2.1.1 an extension of time for any such delay, if completion is or will be delayed; and

29.2.1.2 payment of any such additional costs, which shall be included in the Contract Consideration.

29.2.1.3 Upon receipt of this notice the Company's Representative shall determine any additional payment to be made to the Supplier in respect of such claim. However, the Supplier shall not be entitled to payment of any additional costs if such suspension is necessary by reason of any default on the part of the Supplier.

### 29.3 Prolonged Suspension

29.3.1 If any suspension of the Supply has continued for more than 90 (ninety) consecutive days, the Supplier may request, in Writing, the Written permission of the Company's Representative to proceed. If the Company's Representative does not give permission within 28 (twenty eight) days after being requested to do so, the Supplier may, by giving notice to the Company's Representative, treat the suspension as an omission of the affected part of the Product. If the suspension affects the whole of the Product, the Supplier may give notice of termination to the Company's Representative in terms of the Duration Clause.

### 29.4 Resumption of Supply

29.4.1 After permission to proceed is given, the Supplier and the Company's Representative shall jointly examine the Product and the Plant and materials affected by the suspension. The Supplier shall make good any deterioration or defect or loss of the Product or Plant or materials, which has occurred during the suspension.

29.4.2 The Supplier may claim for actual costs incurred during the Suspension. In no event will the Supplier be entitled to any prospective profits or any damages because of the Suspension or subsequent resumption of Supply.

## 30. RIGHT TO AUDIT

30.1 The Company shall have the right to appoint an auditor, being either an independent auditing firm or the Company's Internal Auditing Department, (the Auditing Authority) to audit the Supplier's records specifically relating to the Contract.

- 30.2 The auditor shall give the Supplier notice of its intention to conduct an audit, and the Supplier shall assist and cooperate with the auditor. The cost of any such audit shall be for the Company's account.
- 30.3 In addition to the Supplier's performance in terms of the Contract, the Company may at any time audit the Supplier's compliance with any law or term of this Contract. The Supplier consents to the distribution of the finding of the audit to any relevant stakeholder, such as a representative trade union or government department or international watchdog body.

31. **ETHICS AND HUMAN RIGHTS**

- 31.1 In acceptance of the Contract the Parties undertake to act only on the basis of utmost good faith and trust in the execution thereof. Should a Party, or an employee of that Party commit an act which may compromise the ethical relationships between the Supplier and Company, in terms of this or other contracts, or which is contrary to standard business practices, then the innocent Party shall have the power at its discretion to terminate the Contract immediately by giving notice to that effect to the other Party.
- 31.2 The Supplier shall not unlawfully discriminate against its employees within the meaning of any appropriate law.

32. **CONFLICT OF INTEREST**

- 32.1 The Supplier shall not cause, or in any way contribute to a conflict of interest. If the Supplier is aware of, or suspects, a conflict of interest, the Supplier shall immediately report such conflict of interest to an appropriate senior manager of the Company, or shall use the confidential reporting mechanism, details of which can be obtained from the Company's website. The obligation on the Supplier is continuous and a conflict of interest must be reported when it arises, not merely at the inception of the Contract.

33. **WAIVER**

- 33.1 Failure by either Party to enforce any provision of the Contract shall not constitute a waiver of such provision or affect in any way that Party's right to require performance of any such provision at any time in the future, nor shall the waiver of any subsequent breach nullify the effectiveness of the provision itself.

34. **LAWS AND REGULATIONS AND GOVERNING LAW**

- 34.1 The Parties shall at all times conform in all respects with the provisions of all applicable statutes, ordinances, proclamations, by-laws and regulations of South Africa. These shall include, but not be limited to:
- 34.1.1 Atmospheric Pollution Prevention Act, Act 45 of 1965;
  - 34.1.2 Basic Conditions of Employment Act,
  - 34.1.3 Broad Based Black Economic Empowerment Act, Act 53 of 2003;
  - 34.1.4 Constitution of South Africa, Act 108 of 1996,
  - 34.1.5 Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993;
  - 34.1.6 Competition Act, Act 89 of 1998;
  - 34.1.7 Conservation of Agricultural Resources Act, Act 43 of 1983;

- 34.1.8 Employment Equity Act, Act 55 of 1998;
- 34.1.9 Environment Conservation Act, Act 73 of 1989;
- 34.1.10 Hazardous Substances Act, Act 15 of 1973;
- 34.1.11 Labour Relations Act, Act 66 of 1995;
- 34.1.12 Mine Health and Safety Act, Act 29 of 1996;
- 34.1.13 Mine Health and Safety Amendment Act, Act 72 of 1997;
- 34.1.14 Mineral and Petroleum Resources Development Act, Act 49 of 2008;
- 34.1.15 National Energy Act, Act 34 of 2008; National Environmental Management Act, Act 107 of 1998;
- 34.1.16 National Environmental Management: Air Quality Act, Act 39 of 2004; National Environmental Management: Waste Act, Act 59 of 2008;
- 34.1.17 National Forests Act, Act 36 of 1998;
- 34.1.18 National Heritage Resources Act, Act 25 of 1999,
- 34.1.19 National Nuclear Regulator Act, Act 47 of 1999;
- 34.1.20 National Road Traffic Act, Act 93 of 1996;
- 34.1.21 National Water Act, Act 36 of 1998;
- 34.1.22 Nuclear Energy Act, Act 46 of 1999;
- 34.1.23 Occupational Diseases in Mines and Works Act, Act 78 of 1973;
- 34.1.24 Occupational Health and Safety Act, Act 85 of 1993;
- 34.1.25 Road Transportation Act, Act 74 of 1977;
- 34.1.26 Unemployment Insurance Act, Act 63 of 2001;
- 34.1.27 Value Added Tax Act, Act 89 of 1991.

- 34.2 The Supplier shall hold the Company harmless against all penalties and liabilities incurred by the Supplier in breach thereof.

35. **JURISDICTION AND GOVERNING LAW**

- 35.1 This Contract is governed by the laws of South Africa, including its conflict of laws rules.

36. **ANTI-BRIBERY AND SANCTIONS LAWS OR POLICIES AND ANTI-COLLUSION WARRANTIES AND UNDERTAKINGS**

- 36.1 Supplier's Warranty on Adherence to Anti-Bribery and Sanctions Laws Or Policies:
- 36.2 The Supplier warrants that the Supplier complies with all anti-bribery, anti-corruption and anti-money laundering laws, regulations and/or policies of South Africa, South Africa, Australia, Peru, the United Kingdom of Great Britain and Northern Ireland ("UK"), European Union ("EU"), the United States of America "USA"), Organisation for Economic Co-operation And Development ("OECD") and the United Nations ("UN") to which the Company/Employer is subject. (such laws, regulations and/or policies are hereinafter collectively referred to as the "International Anti-Bribery Laws").
- 36.3 The Supplier warrants that the Supplier complies with all laws, regulations and policies relating to economic or trade sanctions or export controls of the above territories (hereinafter collectively referred to as the "Sanctions Laws").

- 36.4 Supplier warrants that the Supplier has adequate anti-corruption compliance programmes, policies and procedures ("Anti-Corruption Programme") in place to enable compliance with all anti-bribery, anti-corruption and anti-money laundering laws, regulations and/or policies as well as economic or trade sanctions or export control related laws, regulations and/or policies to which the Company is subject, including but not limited to: the provisions of the South African Prevention and Combating of Corrupt Activities Act no 12 of 2004, the U.S. Foreign Corrupt Practices Act of 1977, the US OFAC Regulations, the US Export Administration Regulations, provisions of the Anti-Corruption Commission Act no. 46 of 1996, the United Nations Convention Against Corruption (UNODC), and if applicable, the United Kingdom Bribery Act of 2010.
- 36.5 The Supplier warrants that the Supplier nor any of his Employees nor any acting on the Supplier's behalf has ever been subject to any economic or trade sanctions or export controls imposed by any Territory; and neither the Supplier nor any of the Supplier's employees nor any other person acting on the Supplier's behalf, has ever engaged in any corrupt activities; or directly or indirectly through intermediaries, paid, given or offered to pay or give any money, gift or anything else of value to attempt to influence any act or decision for the purpose of obtaining or keeping business, (including a decision not to act) of any person, including but not limited to :
- 36.5.1 a government official, governmental employee, or
- 36.5.2 any official or employee of any entity in which any official or employee of a public international organisation, or
- 36.5.3 any political party or political party official, or
- 36.5.4 candidate for political office in his/her official capacity or
- 36.5.5 to induce an official to use his/her influence to effect/affect a decision so as to assist the Supplier in obtaining or retaining business or directing business to any person/entity, or
- 36.5.6 to secure any improper advantage.
- 36.6 Supplier's Undertaking on Adherence to Anti-Bribery and Sanctions Laws or Policies
- 36.6.1 The Supplier undertakes, on behalf of itself and its employees or other agents, until the date on which the Supplier has fulfilled the Supplier's obligations under the Contract, (including any defects liability period):
- 36.6.1.1 to comply with all International Anti-Bribery Laws, Sanctions Laws and/or any Anti-Bribery and Sanctions Legislation to which the Employer/Company is subject, including those of any jurisdiction where it conducts business;
- 36.6.1.2 to implement and enforce its Anti-Corruption Programme;
- 36.6.1.3 to implement and/or enforce any code of ethical business practice adopted from time to time by the Company;
- 36.6.1.4 not to engage in any corrupt activities;
- 36.6.1.5 not to directly or indirectly pay, give or offer to pay or give any loan money, gift or anything else of value to attempt to influence any act or decision (including a decision not to act) of any person, including but not limited to a government official, governmental employee, or any political party or political party official, or candidate for political party official, or candidate for political office, in his/her official capacity or to induce an official to use his/her influence to effect a decision so as to assist the Supplier in obtaining or retaining business or directing business to any person/entity or to secure any

improper advantage; and not to make any facilitation payments to facilitate or expedite any routine governmental action. Facilitation payments are prohibited.

- 36.7 The Supplier shall, during such period, comply with any changes or amendments to the International Anti-Bribery Laws, Sanctions Laws and/or any Anti-Bribery and Sanctions Legislation. For the avoidance of doubt, the Supplier undertakes that it shall at all times comply with any such International Anti-Bribery Laws, Sanctions Laws and any other Anti-Bribery and Sanctions Legislation, as amended from time to time.
- 36.8 The Supplier or anyone in the Supplier's employ shall not pay or offer to pay, give or offer to give any money and any gift of whatsoever nature whether by way of a commission, gratuity or otherwise, or lend or offer to lend any money or any asset, or give or offer to give any other valuable consideration to any person in the employ of the Company.

### 37. HEALTH AND SAFETY

- 37.1 The Supplier shall comply with the Company's Standards and all relevant legislation and the provisions of the Policy and Procedure for Contractors Working on Site.

### 38. CONFIDENTIALITY

- 38.1 Neither the Company nor the Supplier shall disclose to any third party (other than its respective employees, in their capacities as such) any information with regard to this Contract and/or the other Party's business or trade secrets, except:
- 38.1.1 to the extent necessary to comply with law or with any valid court order;
- 38.1.2 under the rules of any recognised stock exchange;
- 38.1.3 as part of its normal reporting or review procedure to its auditors and its attorneys;
- 38.1.4 to a Party's employees who carry out the obligations of a Party. Each Party shall supply confidential information to its employees on a "need to know basis";
- 38.2 The Supplier shall not make press releases or issue other advertising pertaining to this Contract without first obtaining the written approval of the Company.
- 38.3 The Supplier shall not take photographs of the Site.
- 38.4 Breach of this clause shall be a material breach of this Contract entitling the non-breaching Party to summarily cancel this Contract in addition to any other remedies available to it in law.
- 38.5 The rights and obligations contained in this clause shall continue in full force and effect after Termination Completion of the Contract.
- 38.6 On termination of the Contract, the Supplier shall cease to use the Company's information, and shall, subject to the laws of document retention in South Africa, return any material containing, pertaining to or relating to Company information and to expunge such Company information from any word processor, computer or other similar device into which it was entered or programmed, and may, in addition, require the Supplier to furnish a written statement (certified as correct by a director of the Supplier) to the effect that, upon such return, the Supplier has not retained in its possession, or under its control, either directly or indirectly, any such material. The Supplier shall comply with all requirements in terms of this clause 39.6 within 7 (seven) days of receipt of written notice thereof.

39. **CESSION, ASSIGNMENT AND SUBCONTRACTORS**
- 39.1 The Supplier shall not cede, assign, transfer or sublet the Contract or any portion thereof without the prior written consent of the Company. The Company shall not be bound to give such consent but may withhold same without giving any reason.
- 39.2 The Supplier may not cede any of its rights to payment or delegate any of its obligations under the Contract to any third party without the prior written consent of the Company.
- 39.3 The Supplier may not cede any of its rights or delegate any of its obligations under the Contract to any third party without the prior written consent of the Company.
- 39.4 The Supplier shall not appoint a sub-contractor without the prior written approval of the Company. The Supplier shall be responsible for the acts or defaults of sub-contractors, agents and employees as if they were the acts or default of the Supplier. Sub-contractors and agents of the Supplier shall for the purpose of the Contract be deemed to be employees of the Supplier.
- 39.5 The Company may purchase any quantity of an equivalent Product from a third party for valid testing purposes. To the extent that such trial purchases result in a decrease in the proportion of the total aggregate requirement of the Product from all the sites, such decrease may result in a decrease in the discount applied to the product, which shall be applied within the sole discretion of the Supplier.

40. **SEVERABLE**

- 40.1 Each provision in this Contract is severable the one from the other and if any provision is found by any competent court to be defective or unenforceable for any reason whatever, the remaining provisions shall be of full force and effect and continue to be of full force and effect.

41. **WHOLE AGREEMENT AND VARIATION**

- 41.1 This Contract embodies the entire agreement between the Parties. No variation, addition to or cancellation of the Contract shall be of any force or effect unless reduced to Writing and signed by authorised representatives on behalf of the Parties as an amendment to this Contract.

42. **RATIFICATION**

- 42.1 This Contract in its entirety or in part, will not be enforceable until such time as it has been approved and signed by the Company as well as the designated representative of the Supplier.
- 42.2 This clause will remain in full force, notwithstanding any of the following:
- 42.2.1 The Contract may have been signed, or a notice to commence may have been issued by a person with ostensible or actual authority;
- 42.2.2 The Contract may have been adopted and applied by the Parties, or
- 42.2.3 A Party may have performed in terms of this Contract.

43. **NOTICES**

- 43.1 Any communication or notice required to be given or made under the Contract between the parties shall be in Writing and shall be deemed:

43.1.1 to have been duly made or given if either sent by prepaid registered post or hand delivered to the addresses of the parties given in the Contract or by e-mail or facsimile to the appropriate numbers of the parties or such other address as notified in terms hereof;

43.1.2 to have been received by the intended addressee for all purposes thereunder:

43.1.2.1 if delivered by hand or transmitted by facsimile, on the day of normal business following the date of despatch of such communication or notice;

43.1.2.2 if delivered by e mail, when the e mail message is available on the recipient's network for reading;

43.1.2.3 if made by prepaid registered post, on the tenth day following the date of despatch of such communication or notice unless such tenth day is not a normal business day, then on the next normal business day immediately thereafter.

44. **COSTS**

- 44.1 Each Party shall bear its own costs to be incurred in connection with the drafting and negotiation of this Contract.

45. **EXECUTION IN COUNTERPARTS**

- 45.1 This Contract may be executed in several counterparts, each of which shall together constitute one and the same instrument.

**GENERAL HEALTH AND SAFETY REQUIREMENTS**

1. Without limiting its duties or liabilities in any way, whether such duties arise ex lege, ex contractu or by operation of any law, the Supplier shall comply with the duties set out herein.
2. In terms of section 21 of the MHSA any Contractor (Supplier) who:
  - 2.1 designs, manufactures, repairs, imports or supplies any article for use at a mine, is required to ensure, as far as is reasonably practical:
    - 2.1.1 that the article is safe and without risk to health and safety when used properly; and
    - 2.1.2 that it complies with all of the requirements of the MHSA;
  - 2.2 erects or installs any article for use at a mine must ensure, as far as is reasonably practicable, that nothing about the manner in which it is erected or installed makes it unsafe or creates a risk to health and safety when used properly;
  - 2.3 designs, manufactures, erects or installs any article for use at a mine must ensure, as far as is reasonably practicable, that ergonomic principles are considered and implemented during design, manufacture, erection or installation;
  - 2.4 designs or constructs a building or structure, including a temporary structure for use at the mine, must ensure, as far as is reasonably practicable, that the design or construction safe and without risk to health and safety when used properly;
  - 2.5 manufactures, imports or supplies any hazardous substance for use at a mine must:
    - 2.5.1 ensure, as far as is reasonably practicable, that the substance is safe and without risk to health and safety when used, handled, processed, stored or transported at a mine in accordance with the information provided by the Supplier in terms of clause 0; provide adequate information about:
      - 2.5.1.1 the use of the substance;
      - 2.5.1.2 the risks to health and safety associated with the substance;
      - 2.5.1.3 any restriction or control on the use, transport and storage of the substance, including but not limited to exposure limits;
      - 2.5.1.4 safety precautions to ensure that the substance is without risk to health or safety;
      - 2.5.1.5 the procedure to be followed in the case of an accident involving excessive exposure to the substance, or any other emergency involving the substance;
      - 2.5.1.6 the disposal of use containers in which the substance has been stored and any waste involving that substance;
      - 2.5.1.7 ensure that the information provided by the Supplier complies with the provisions of the Hazardous Substances Act, 15 of 1973.
3. In terms of section 10 of the OHSA, any Contractor (Supplier) :
  - 3.1 who designs, manufacturers, imports, sells or supplies any article for use at work shall ensure, as far as is reasonably practicable, that the article is safe and without risk to health when properly used and that it complies with all prescribed requirements;
  - 3.2 who erects or installs any article for use at work or on any premise shall ensure, as far as is reasonably practical, that nothing about the manner in which it is erected or installed make it unsafe or creates a risk to health when properly used;
  - 3.3 who manufactures, imports, sells or supplies any substance for use at work shall:
    - 3.3.1 ensure, as far as is reasonably practical, that the substance is safe and without risk to health when properly used; and
    - 3.3.2 take such steps as may be necessary to ensure that information is available with regard to the use of the substance at work, the risk to health and safety associated with that substance the conditions necessary to ensure that the substance will be safe and without risks to health when properly used and the procedures to be followed in the case of an accident involving such stance.
4. The Supplier acknowledges that it knows and understands the duties set out above.
5. No terms of the Contract shall be construed as an assumption by the Company of any of the Supplier's duties.
6. In terms of Section 37(2) of the OHSA (if applicable), the Supplier hereby agrees that the Company is relieved of any and all of its liabilities in terms of Section 37(1) in respect of any acts or omissions of the Supplier , and the Supplier 's agents or sub-contractor to the extent permitted by the OHSA, and that the obligation on the Supplier to comply with the Company's codes, instructions, policies etc. will be the written Contract between the Parties for the purposes provided for in Section 37(2).
7. The Supplier undertakes to comply with all of the provisions of the MHSA or the OHSA (whichever is applicable) in relation to persons employed by the Company, and any other persons (third parties).
8. The Supplier undertakes to comply with all of the provisions of the MHSA or the OHSA (whichever is applicable) in respect of its own employees and sub-contractors.
9. Without detracting from the generality of the above, and without limiting its liability, in any way, the Supplier undertakes to ensure that it and its employees, agents and sub-contractors will at all times comply with any conditions, codes of practice or any other provisions of a like nature which may be specified by the Company from time to time, or any instructions, orders, prohibitions, exemption certificate etc., issued in terms of the MHSA or the OHSA. The Supplier and its employees acknowledge that they are required to contact the manager or a person nominated by him, in the event that they do not understand, or require clarification on any conditions, codes of practice, or any other provisions of a like nature which are applicable, any exceptions etc.

10. All work performed and/or articles/substances supplied for and on behalf of the Company or on or at the Company's premises, must be performed under close supervision of a person nominated and appointed in writing by the Supplier to be responsible for such supervision and to ensure compliance with the contract, and the MHSA or the OHSA (whichever is applicable). The Supplier warrants that the person so appointed is suitably qualified and trained to understand the risks and hazards associated with any work performed or articles/substances supplied by the Supplier, and to ensure compliance with this contract, and the MHSA or the OHSA (whichever is applicable).
11. The Supplier undertakes that it, and its employees and/or sub-contractors, will comply with all reasonable instructions regarding health and safety which the Company, or its nominee, may from time to time stipulate.
12. The Supplier shall ensure that all the provisions in terms of the MHSA or the OHSA relating to personal protective equipment shall be complied with.
13. The Supplier shall ensure that the provisions of Section 21 of the MHSA or Section 10 of the OHSA (whichever is applicable) are complied with at all times. The Supplier warrants that no unsafe equipment, machinery, articles or substances will be used by the Supplier, its employees or sub-contractors, whilst performing work and/or supplying articles/substances in terms of the Contract.
14. The Supplier warrants that its employees and sub-contractors are suitably qualified, trained and experienced to render the services required in this contract.
15. Notwithstanding the provisions of this contract, the Company retains an interest in any investigation and/or enquiry conducted in terms of the MHSA or the OHSA or any other investigations that may be conducted into any incident.
- 15.1 The Supplier shall ensure that it and all its employees are familiar with and comply with the Company's Standards. The Supplier shall comply with all instructions given by representatives of the Company.
- 15.2 The Supplier shall ensure that all its employees are properly trained in order to perform their work safely and with due regard to health standards.
- 15.2.1 The Supplier shall –
- 15.2.1.1 provide its employees with any and all information, instruction, training or supervision that is necessarily required to enable them to perform their work safely and without risk to health and safety;
- 15.2.1.2 ensure that every one of its employees becomes familiar with work-related hazards and risks and the measures that must be taken to eliminate, control and minimise those hazards and risks;
- 15.2.1.3 ensure that its employees are properly trained in all work and emergency procedures.

16. Where the Supplier, any of its employees, agents or sub-contractors, is found to be incompetent, or behaves in a manner which endangers, or potentially endangers the health or safety of any employee or other person, the Supplier shall immediately remove such person, and such person shall not be allowed to perform any work, and/or render services in terms of the Contract.
17. The Supplier is deemed to have knowledge of the Company's health and safety structures, and agrees to elect a health and safety representative to participate in such health and safety structures, if requested to do so by the Company.
18. The Supplier shall ensure that any sub-contractor employed by it complies with the provisions set out in this Annexure.
19. The Supplier shall be deemed to have full knowledge of the work and/or articles/substances supplied in terms of this contract, and the implications or potential implications on the health and/or safety of employees and other persons. The Supplier shall, prior to conducting any work and/or supplying any article/substance in terms of this contract, conduct a risk assessment to the satisfaction of the Company. The results of such risk assessment shall be provided, in writing, to the Company prior to but not less than 14 (fourteen) days before the work and/or supply of articles/substances in terms of this Contract.
20. The Supplier shall be obliged to nominate an appropriate employee of the Supplier to sign (and the Supplier shall procure that such employee does sign) an appointment letter in a form acceptable to the Company relating to the employee's appointment in terms of Section 7(2) of the MHSA, read with Regulation 2.6.1, before or simultaneously with the conclusion of the contract.
21. The Company shall, at any time, be entitled to require the Supplier to forward to the Company the Supplier's registration certificate issued in terms of the Compensation for Occupational Injuries and Diseases Act No. 130 of 1993 and the Supplier shall be obliged to furnish same to the Company.
22. In the event that the Product are a hazardous substance as defined in Section 1 of the Hazardous Substances Act No. 15 of 1973, the Supplier warrants that, as far as reasonably practicable, the Product are safe and without risk to health and safety when used, handled, processed, stored or transported at the mine in accordance with the information that will be provided by the Supplier in terms of Section 21(4) of the Mine Health and Safety Act.
23. The Supplier shall appoint a person to be responsible for all matters relating to health and safety.
24. The Supplier acknowledges having read and understood all of the regulations, rules and procedures of the Company relating to health and safety which are referred to herein, or which are otherwise contained in the Standards, Methods and Procedures.