

Terms and Conditions  
of Contract



THIRD EDITION 2021

-  COMMITMENT
-  ACCOUNTABILITY
-  RESPECT
-  ENABLING
-  SAFETY

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## Index

|                              |   |  |    |
|------------------------------|---|--|----|
| General Terms and Conditions | 1 | General Provisions.....  | 7  |
|                              |   | 1.1 Definitions .....  | 7  |
|                              |   | 1.2 Interpretation .....   | 11 |
|                              |   | 1.3 Domicilia and Notices .....                                      | 13 |
|                              |   | 1.4 Solicitation .....   | 14 |
|                              |   | 1.5 Right to Audit.....  | 14 |
|                              |   | 1.6 Severability .....   | 14 |
|                              |   | 1.7 Waiver .....   | 14 |
|                              |   | 1.8 Entire Agreement.....  | 15 |
|                              |   | 1.9 Conflict of Interest.....  | 15 |
|                              |   | 1.10 Costs.....  | 15 |
|                              |   | 1.11 Cession, Assignment and Delegation.....                         | 15 |
|                              |   | 1.12 Cession of Book Debts.....                                      | 15 |
|                              |   | 1.13 Ownership and Risk .....  | 16 |
| 2                            |   | Laws, Regulations, Policies and Compliance.....                      | 16 |
|                              |   | 2.1 Laws and Regulations .....                                       | 16 |
|                              |   | 2.2 Assessing risks and hazards .....                                | 16 |
|                              |   | 2.3 Company Standards .....  | 16 |
|                              |   | 2.4 Radiation .....  | 17 |
|                              |   | 2.5 Black Economic Empowerment.....                                  | 17 |
|                              |   | 2.6 International Compliances and Benefits.....                      | 18 |
|                              |   | 2.7 Anti-Bribery and Sanctions Laws and Policies.....                | 19 |
|                              |   | 2.8 Jurisdiction and Governing Law.....                              | 19 |
|                              |   | 2.9 Ethics, Human Rights and Harassment-Free Working Environment ... | 19 |
|                              |   | 2.10 Fronting .....  | 20 |
|                              |   | 2.11 Non-Dealing Agreement .....                                     | 20 |
|                              |   | 2.12 Protection of Personal Information .....                        | 20 |
|                              |   | 2.13 Environmental Compliance.....                                   | 21 |
|                              |   | 2.14 Health and Safety.....  | 22 |
|                              |   | 2.15 Labour Laws .....   | 22 |
| 3                            |   | The Contractor.....  | 22 |
|                              |   | 3.1 General Obligations .....  | 22 |
|                              |   | 3.2 Relationship between the Parties .....                           | 23 |
|                              |   | 3.3 Subcontracting .....   | 23 |
|                              |   | 3.4 Non-exclusive relationship .....                                 | 24 |
|                              |   | 3.5 Liens on Company's Property .....                                | 24 |
|                              |   | 3.6 Contractor Designs.....  | 24 |
|                              |   | 3.7 Contractors Documents.....                                       | 24 |
|                              |   | 3.8 Contractors Documents as a Deliverable.....                      | 25 |
|                              |   | 3.9 Mistakes in Documentation .....                                  | 25 |
|                              |   | 3.10 Existing Works and Separate Contractors .....                   | 25 |
|                              |   | 3.11 Articles of Value or Antiquity .....                            | 25 |

|      |  |    |
|------|--|----|
| 4    | The Company .....  | 26 |
| 4.1  | The Company Representative .....                             | 26 |
| 5    | Personnel and Labour .....                                   | 26 |
| 5.1  | Engagement and labour relations.....                         | 26 |
| 5.2  | Key Personnel.....   | 26 |
| 5.3  | Facilities for Staff and Labour .....                        | 27 |
| 6    | Commencement, Delays and Suspension .....                    | 27 |
| 6.1  | Duration of Contract .....                                   | 27 |
| 6.2  | Commencement of Work.....                                    | 27 |
| 6.3  | Suspension .....   | 27 |
| 7    | Contract Price and Payments .....                            | 28 |
| 7.1  | Payments and Invoices.....                                   | 28 |
| 7.2  | Taxes, Duties, Fees, Levies and Permits.....                 | 29 |
| 7.3  | Withholding Payment .....                                    | 29 |
| 8    | Variations and Contract Price Adjustment.....                | 30 |
| 8.1  | Contract Price Adjustment .....                              | 30 |
| 8.2  | Variations .....   | 31 |
| 9    | Inspections, Testing, Examinations, and Defects.....         | 31 |
| 9.1  | Contractors Obligations.....                                 | 31 |
| 9.2  | Notice of Inspections or Testing.....                        | 31 |
| 9.3  | Defects.....   | 32 |
| 9.4  | Failure to Remedy Defects .....                              | 32 |
| 9.5  | Access to the Deliverables and Tests .....                   | 32 |
| 9.6  | Making Good Defects.....                                     | 33 |
| 10   | Risk and Indemnity.....                                      | 33 |
| 10.1 | Indemnification by the Contractor .....                      | 33 |
| 10.2 | Indemnification by Company .....                             | 34 |
| 10.3 | Indemnification and Third Parties.....                       | 34 |
| 10.4 | Limitation of Liability .....                                | 35 |
| 10.5 | No Consequential Losses .....                                | 35 |
| 10.6 | Exclusions and carve-outs.....                               | 36 |
| 10.7 | Obligation to Mitigate.....                                  | 36 |
| 10.8 | No Double Recovery .....                                     | 36 |
| 11   | Insurance .....  | 36 |
| 11.1 | Insurance to be maintained.....                              | 36 |
| 11.2 | Requirements and Obligations.....                            | 37 |
| 11.3 | Failure to Insure .....                                      | 37 |
| 12   | Confidentiality.....   | 37 |
| 12.1 | Protection of Confidential Information.....                  | 37 |
| 12.2 | Exclusions .....   | 38 |
| 12.3 | Disclosure, Use or Copying of Confidential Information ..... | 38 |
| 13   | Intellectual Property .....                                  | 39 |
| 13.1 | Third Party Intellectual Property Rights Infringement.....   | 39 |
| 13.2 | Intellectual Property and Discoveries .....                  | 40 |

|      |   |    |
|------|---|----|
| 14   | Default and Termination .....                 | 40 |
| 14.1 | Termination by the Company .....              | 40 |
| 14.2 | Termination by the Contractor .....           | 41 |
| 14.3 | Effect of Termination .....                   | 42 |
| 14.4 | Curtailment and Cessation of Operations ..... | 43 |
| 15   | Force Majeure .....                           | 43 |
| 15.1 | Definition of Force Majeure .....             | 43 |
| 15.2 | Notice of Force Majeure .....                 | 44 |
| 15.3 | Obligation to Remedy and Mitigate .....       | 45 |
| 15.4 | Consequences of Force Majeure .....           | 45 |
| 15.5 | Termination .....                             | 45 |
| 16   | Claims, Disputes and Arbitration .....        | 45 |
| 16.1 | Claims .....                                  | 45 |
| 16.2 | Extension of Time .....                       | 46 |
| 16.3 | Standing Time .....                           | 46 |
| 16.4 | Contemporaneous Records .....                 | 47 |
| 16.5 | Critical Path Analysis .....                  | 47 |
| 16.6 | Good Faith Negotiations .....                 | 47 |
| 16.7 | Dispute Resolution .....                      | 47 |

Main Options

- Main Option 1 – Mining Services
- Main Option 2 – Services
- Main Option 3 – Supply
- Main Option 4 – Manufacture and Supply
- Main Option 5 – Offsite Repairs
- Main Option 6 – Transport Services

## Foreword

These General Conditions and such of the Main Option Clauses relevant to the Deliverables to be provided by the Contractor shall apply to all requests made by Sibanye-Stillwater for quotations or offers and are an integral part of any Contract or Purchase Order placed by Sibanye-Stillwater with its Contractors.

Where Sibanye-Stillwater and the Contractor enter into a formal agreement, these Conditions of Contract and such of the Main Options specified in such formal agreement will govern the Parties contracting obligations.

# 1 General Provisions

## 1.1 Definitions

In these terms and conditions, unless the context clearly requires a different interpretation, the words and expressions set out below will have the meanings assigned to them, and cognate expressions will have corresponding meanings. These definitions are relevant to all the documents that together comprise a Contract between the Company and the Contractor.

- 1.1.1 **Amendment** means any amendment to the Contract, agreed to by the Parties and signed by authorised representatives of the Parties.
- 1.1.2 **Anti-Bribery Laws** has the meaning ascribed in clause 2.7.1.
- 1.1.3 **Anti-Corruption Legislation** means includes, but is not limited to, the United Kingdom Bribery Act 2010, the U.S. Foreign Corrupt Practices Act, the US OFAC Regulations, the US Export Administration Regulations, the Canadian Corruption of Foreign Public Officials Act (S.C. 1988. c.34) and the South African Prevention of Organised Crime Act of 1998, as amended from time to time and any applicable law, rule, regulation and other legally binding measure relating to the prevention of bribery, corruption, fraud or similar or related activities in South Africa, Botswana or any other relevant jurisdiction;
- 1.1.4 **Applicable Laws** means all laws (including common law), regulations, codes, rules, judgments, notices, approvals, orders, decrees, permits, directives, protocols, consents, authorisations, guidelines, orders, policies, generally applied standards and similar requirements by any Authority applicable to the Deliverables and/or to the performance and/or subject matter of this Contract (as applicable).
- 1.1.5 **Applicable Standards** means any standards or requirements applicable to work or design in the mining engineering or construction industries in the relevant country where the Deliverables are performed, as amended or revised from time to time or such higher standards as are otherwise specified in the Contract, together with the Equator Principles.
- 1.1.6 **Background Intellectual Property** means the proprietary rights in and to Intellectual Property created prior to, or outside, the scope of the Contract.
- 1.1.7 **"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;
- 1.1.8 **BEE** means black economic empowerment, as set out in the Broad-Based Black Economic Empowerment Act, Act 53 of 2003 and the Broad-Based Socio-Economic Empowerment Charter for the South African Mining Industry (the Mining Charter).
- 1.1.9 **Codes of Practice** means any and all codes of practice and standards applicable in the Country as codes of practice and standards are amended or revised from time to time or such more rigorous codes of practice and higher standards which may be identified in the Contract.
- 1.1.10 **Company Representative** means the person nominated by the Company to act on its behalf in terms of the Contract, or his authorised nominee.
- 1.1.11 **Company Standards** has the meaning ascribed to it in clause 2.3
- 1.1.12 **Competent Authority** means the government of the Country or any subdivision of it and any ministry or regulatory body having jurisdiction over the Project and/or the Works.
- 1.1.13 **Confidential Information** means all information, whether written, oral or in electronic form, concerning the business and affairs of either Party that the other Party obtains or receives (whether before or after the Effective Date) as a result of the discussions leading up to or during the performance of the Contract. Confidential Information will include, but not be limited to, the Contract, any technical, security, commercial, financial, scientific, environmental, 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, all the data of the Company and any written document, including e-mails, pertaining to the Deliverables.

- 1.1.14 **Contract** means any formal contract or Purchase Order read with these Terms and Conditions of Contract ("Conditions of Contract") including all Schedules which are specifically listed in such contract or Purchase Order.
- 1.1.15 **Contract Price** means the amount payable by the Company to the Contractor for the Services as stated in the Contract.
- 1.1.16 **Contractor Documents** means calculations, computer programmes, models, drawings, designs, manuals, drafts, and all other documents of a technical nature or related to the Deliverable supplied by the Contractor under the Contract or which should be supplied the Contractor in a form acceptable to the Company.
- 1.1.17 **Contractor's Equipment** means all apparatus, machinery, vehicles, facilities and other things of whatsoever nature required in or for the execution, maintenance and/or defects correction of the Works, but does not include Materials, Plant or other things intended to form or forming part of the Works.
- 1.1.18 **Defect or Defective** means any defect or deficiency in the Deliverables, including any defect in design, workmanship, materials or equipment that is not in conformity with the requirements of this Contract.
- 1.1.19 **Deliverables** means any Service and/or Supply or Works that the Contractor must provide in order to fulfil its obligations in terms of a Contract.
- 1.1.20 **Discoveries** means all work, ideas, concepts, reports, designs, discoveries, inventions (whether patentable or not) and Intellectual Property made by the Contractor or his employees, alone or with others, in the course of executing the Contract or otherwise arising out of the use of any of the Company's materials, resources or facilities including all computer programs, source codes, data, information, designs, compilations, flowcharts and software developed or adapted for specific application to the Company.
- 1.1.21 **Dispute** means any dispute, difference or controversy of whatsoever nature arising under, out of, relating to or in connection with this Contract or after its completion and whether before or after repudiation, suspension or other termination of this Contract or termination by the Company of the employment of the Contractor (whether by breach or any other manner), and arising under, out of, relating to or in connection with the Contract or the breach, termination or validity thereof and any dispute arising between the Company.
- 1.1.22 **DTI Codes 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;
- 1.1.23 **Environment** means the environment as defined in section 1 of NEMA;
- 1.1.24 **Environmental Approvals** means required Authorisations issued or required by any Authority pursuant to the Environmental Laws, with respect to the Site;
- 1.1.25 **Environmental Law** means any and all Applicable Laws in South Africa (whether civil, criminal or administrative) relating to degradation, pollution, protection or rehabilitation of the Environment which is capable of enforcement by legal process in South Africa;
- 1.1.26 **Environmental Liability** means any claim, liability or proceeding by any person in respect of any Environmental Law or an Environmental Matter;
- 1.1.27 **Environmental Matters** means matters pertaining to the Environment arising out of the Environmental Laws and/or the Environmental Approvals and/or Environmental Liabilities in relation to the Site under either of the above;



- 1.1.28 **Fronting** means a transaction, arrangement or other act or conduct that directly or indirectly undermines or frustrates the achievement of the objectives of the Broad-Based Black Economic Empowerment Act or the implementation of any of the provisions of thereof, and includes the offence provided for in section 130(1) of the BBBEE Act.
- 1.1.29 **Goods** means all Materials and/or Plant to be supplied and delivered by the Contractor to the Company for consumption and/or use by the Company at the Operations;
- 1.1.30 **Good Industry Practice** means the standards, practices, methods and procedures conforming to Applicable Laws. Without derogating from the generality of this definition, Good Industry Practice means practices followed by the Contractor:
- (a) in a professional, competent, sound and workmanlike manner, and exercising that degree of skill and care, diligence and prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced contractor engaged in a similar type of undertaking under the same or similar circumstances as the Contractor;
  - (b) with due care and skill using internationally accepted methods and practices having due regard to the nature of the Deliverables and its intended purpose;
  - (c) with due expedition and without unnecessary or unreasonable delays;
  - (d) in a manner which:
    - (i) allows for the Deliverables to be performed efficiently, promptly and accurately in accordance with the Performance Criteria required under the relevant Main Option, the requirements of the Contract and the standards as specified by the Company's Representative;
    - (ii) complies at all times with the provisions and/or requirements of the Company's Mining Right as it applies to the Site, the EMP and all Applicable Laws (including but not limited to the MPRDA, the Environmental Laws and the Health and Safety Legislation Governmental or Ministerial directives, or any term or condition under which any Authorisation is given to the Company or the Contractor)
    - (iii) which is safe and efficient;
  - (e) in accordance with all Applicable Standards, and Codes of Practice; and
  - (f) unless otherwise specified in the Scope of Deliverables, using new materials of purpose merchantable quality which are fit and suitable for their intended purpose.
- 1.1.31 **Governmental Authority** means the government of any country, province, state or territory, or any political subdivision thereof, having or exercising jurisdiction over the Parties, the Site, the Deliverables, or the Contract, including all agencies, instrumentalities and political subdivisions of, or entities controlled by, such government and any judicial, executive, legislative, administrative, police, military or regulatory body of any government or political subdivision thereof and any official of any of the above.
- 1.1.32 **Health and Safety Legislation** means all Applicable Laws and all requirements of any Competent Authority in respect of health and safety matters in the Country and/or which relate to the Services.
- 1.1.33 **Intellectual Property** means intellectual property in the form of any and all technical or commercial information, including, but not limited to chemical structures; biological or chemical information; manufacturing techniques and designs; specifications and formulae; know-how, data, systems and processes; production methods; trade secrets; financial and marketing information; as well as registered or unregistered intellectual property rights in the form of inventions, trademarks, designs and plant varieties (whether patented, registered or applied for), and any copyrighted works, including literary works and computer programs.

- 1.1.34 **Key Personnel** means the individuals performing the roles identified in the Scope of Deliverable and any replacements in such roles.
- 1.1.35 **Local Communities** means local communities or neighbouring communities as approved or directed by the Company's Representative
- 1.1.36 **Localised SMMEs** means BEE compliant SMMEs located in the zone of influence as identified by the Site's Social and Labour Plan
- 1.1.37 **Material** means things of all kinds (other than Plant) including all products, spares, consumables and computer software.
- 1.1.38 **MHSA** means the Mine Health and Safety Act, Act 29 of 1996.
- 1.1.39 **Mine** means any of the Company's operations where its mineral deposits are being exploited and includes the Mining Area, all buildings, structures, machinery, mine dumps, access roads or objects that are used or intended to be used in connection with searching, winning, exploiting or processing of minerals.
- 1.1.40 **Mining Area** means a prospecting area, mining area, retention area, exploration area and production area as defined in the Minerals and Petroleum Resources Development Act, Act no. 28 of 2002.
- 1.1.41 **MPRDA** means the Mineral and Petroleum Resources Development Act No. 28 of 2002;
- 1.1.42 **Necessary Consents** means all consents, licences, permissions and approvals whether of a public or a private nature, which are necessary for the carrying out and completion of the Works, including environmental, licencing, planning extraction and exploration consents and other consents which are listed in the Contract.
- 1.1.43 **NEMA** means the National Environmental Management Act No.107 of 1998;
- 1.1.44 **OHSA** means the Occupation Health and Safety Act, No.85 of 1993.
- 1.1.45 **Operation** means any one of the Company's Mines or Mining Areas and **Operations** means all or any combination thereof.
- 1.1.46 **Personal Information** means personal information as defined in the Protection of Personal Information Act, Act 4 of 2013 (POPI) that the Contractor may acquire or have access to in the execution of the Contract.
- 1.1.47 **Personnel** means in relation to a Party, means any partner, employee (whether permanent, fixed or temporary), officer, director, agent, professional adviser, subcontractor, consultant, independent associate or supplier, licensee and the staff of such licensee, consultant, associate, supplier, subcontractor, or other authorised representative of that Party acting in that capacity. In the case of the Contractor it shall include its Subcontractors.
- 1.1.48 **Plant** means all machinery, equipment, plant and apparatus.
- 1.1.49 **POPI** and **POPIA** mean the Protection of Personal Information Act, No. 4 of 2013.
- 1.1.50 **Price** means the amount payable by the Company to the Contractor in consideration for the successful execution and completion of the Deliverables.
- 1.1.51 **Other Contractor** means any person and or firm (other than the Contractor, its Personnel, or Subcontractors) engaged directly by the Company to carry out any services or works of whatever nature related to a project or at the Site.
- 1.1.52 **Price Adjustment** has the meaning ascribed to it in clause 8.1.2.
- 1.1.53 **Purchase Order** means a written official purchase order issued to the Contractor by the Company's Supply Chain Department, ordering the Deliverables from the Contractor.
- 1.1.54 **Radiation Protection Certificate** has the meaning ascribed to it in clause 2.4.1.
- 1.1.55 **Reasonable and Prudent Contractor** means a contractor seeking in good faith to perform its contractual obligations and, in so doing and in the general conduct of its undertaking, exercising that degree of skill, diligence, prudence, responsibility and foresight which would reasonably and ordinarily be

expected from a skilled and appropriately mining services contractor for the Deliverables as defined under this Contract, who is complying with all Applicable Laws, engaged in the same or a similar type of undertaking, in the same or similar circumstances and conditions, and any references herein to the "standards of a Reasonable and Prudent Contractor" will be construed accordingly.

- 1.1.56 **Sanctions Laws** means the sanction laws referred to in clause 2.7.
- 1.1.57 **Scope of Deliverables** means the deliverables to be executed by the Contractor under the Contract.
- 1.1.58 **Schedules** means the schedules attached to the Contract.
- 1.1.59 **Service** means the work as set out in the Contract and all incidental work, services and actions to be provided by the Contractor in the execution of the Contract.
- 1.1.60 **Signature Date** means the date of signature of the Contract by the Party that is the last to sign.
- 1.1.61 **Site** means the place or places on the Mine where any part of the Deliverables must be executed.
- 1.1.62 **Site Regulation** means the rules, requirements and procedures issued by the Company and updated and revised from time to time which govern how work and services are to be carried out at or around the Site.
- 1.1.63 **SMMEs** means small, medium and micro enterprises as contemplated in the DTI Codes of Good Practice
- 1.1.64 **Specification** means the specification and requirements of the Deliverables, as set out in the Contract.
- 1.1.65 **Subcontractors** means any contractor, supplier, consultant or vendor of whatever tier within the Contractor's supply chain appointed by the Contractor or a subcontractor or sub-sub-contractor to the Contractor to carry out all or any part of the Deliverables.
- 1.1.66 **Supply** means the supply and delivery of Goods.
- 1.1.67 **VAT** means the Value Added Tax to be levied in terms of the Value Added Tax Act, Act 89 of 1991.
- 1.1.68 **Writing** means any manuscript, document or printed statement signed by an authorised representative of either the Company or the Contractor and includes any e-mail or telefaxed message from one Party to the other, and written will bear the corresponding meaning.
- 1.1.69 **Works** means the works to be executed by the Contractor in terms of the Contract, which include, as the case may be the procurement and delivery of Material and/or Plant intended to permanently form part of such works, the Supply of Material and Plant required for the works and the remedying of defects therein and/or the provision of all Services necessary for the completion of such works and the remedying of defects therein.
- 1.1.70 **Year** means a period of 12 consecutive Months from 1 January in each year during the Term with appropriate adjustment:
  - (a) where the Commencement Date does not fall on the first day of any such period, to the first Year in the Term; and
  - (b) where the day on which this Contract expires or terminates is not the last day of any such period, to the last Year in the Term.

## 1.2 Interpretation

- 1.2.1 In the Contract, unless inconsistent with the context, an expression that denotes:
  - (a) any one gender will be capable of being construed as a reference to all other genders;
  - (b) the singular will include the plural and vice versa;
  - (c) a natural person includes a juristic person and vice versa.
- 1.2.2 Party means the Company or the Contractor, as the context requires, and Parties means the Company and the Contractor both.
- 1.2.3 In Contract the title page, the page numbers, the table of contents and all headings to the clauses are for ease of reference only and will not be taken into consideration in the interpretation of the meaning and effect thereof.

- 1.2.4 If any provision in a definition is a substantive provision, conferring rights or imposing obligations on any Party, notwithstanding that such provision is only contained in the relevant definition, effect will be given thereto as if such provision were a substantive provision in the body of the Contract.
- 1.2.5 References to legislation is as at the Signature Date, and will include all subsequent amendments to such legislation, as well as all applicable regulations.
- 1.2.6 Reference to 'days' will be construed as calendar days unless qualified by the word 'business', in which instance a 'business day' will be any day excluding a Saturday, Sunday or statutory public holiday in the Republic of South Africa.
- 1.2.7 When any number of days is prescribed, such number will exclude the first and include the last day. Where business days are applicable and the last day falls on a Saturday, Sunday, or a public holiday in the Republic of South Africa, the last day will be the next business day.
- 1.2.8 The Contract, including all documents forming part of this Contract, the Contractor Documents and correspondence will be drawn up, construed and interpreted in English.
- 1.2.9 The rule of construction that the Contract will be interpreted against the Party responsible for the drafting of the Contract, will not apply.
- 1.2.10 The words "include" and "including" mean "include without limitation" and "including without limitation". The use of the words "include" and "including" followed by a specific example or examples will not be construed as limiting the meaning of the general wording preceding it.
- 1.2.11 The Contractor acknowledges and agrees that:
- (a) it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of the Contract and that it has either taken such independent advice or has dispensed with the necessity of doing so; and
  - (b) all of the provisions of the Contract and the restriction herein contained are fair and reasonable in all the circumstances and are in accordance with the Contractor's intentions.
- 1.2.12 Any reference in this Contract to:
- (a) a clause is, subject to any contrary indication, a reference to a clause of this Contract;
  - (b) law means any law including common law, statute, constitution, decree, judgment, treaty, regulation, directive, by-law, order or any other measure of any government, local government, statutory or regulatory body or court having the force of law; and
  - (c) person means any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership (whether or not having separate legal personality)
- 1.2.13 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning
- 1.2.14 The words "including" and "in particular" are without limitation
- 1.2.15 Any reference to a document or instrument includes the document or instrument as ceded, delegated, novated, altered, supplemented or replaced from time to time
- 1.2.16 A reference to a Party includes that Party's successors-in-title and permitted assigns.
- 1.2.17 A time of day is a reference to South African time.
- 1.2.18 The use of any expression in this Contract covering a process available under South African law, such as winding-up, shall, if either of the Parties to this Contract is subject to the law of any other jurisdiction, be construed as including any equivalent or analogous proceedings under the law of such other jurisdiction.

- 1.2.19 references to the Contractor include the obligations of the Contractor Personnel (as may be applicable)
- 1.2.20 references to any amount shall mean that amount exclusive of VAT, unless the amount expressly includes VAT
- (a) where this Contract requires or makes provision for any a Party to:
- (i) receive or send any communication;
  - (ii) consent;
  - (iii) confirm;
  - (iv) approve;
  - (v) agree;
  - (vi) waiver;
  - (vii) nominate; or
  - (viii) accept,
- such communication, consent, confirmation, approval, agreement, nomination or acceptance must be in writing to be effective.
- 1.2.21 Time is of the essence in the performance of the Parties' respective obligations.
- 1.2.22 Words and abbreviations that have well known technical or trade meanings are used in the Agreement in accordance with such recognized meanings.
- 1.2.23 References containing terms such as "best endeavours" when used in connection with an obligation of either Party, means taking in good faith and with due diligence all reasonable steps to achieve the objective and to fulfil the obligation at the earliest possible time, including doing all that a Reasonable and prudent owner or provider of engineering procurement and construction management services (as the case may be) in comparable circumstances would do

### 1.3 Domicilia and Notices

- 1.3.1 The Company select as its domicilia citandi et executandi for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this Contract, the following addresses.
- (a) legal proceedings – Legal.Notices@sibanyestillwater.com, with a hard copy delivered to Libanon Business Park, 1 Hospital Street, Libanon, Westonaria;
  - (b) notice provided for or necessary in terms of this Contract – the email address of the Company Representative specified in the Contract. In the event where no email address is specified in the Contract, such notices will be sent to the email address in 1.3.1 (a)
- 1.3.2 Contractor its domicilia citandi et executandi for the purpose of legal proceedings and notice provided for or necessary in terms of this Contract the email address specified in the Contract. If no email address is specified in the Contract such other address or email address as may be substituted by notice. In the event where no email address is notified, the Contractor select as its domicilia citandi et executandi its registered office.
- 1.3.3 Any communication required to be given or made under the Contract between the Parties will be in writing and will be deemed to have been duly made or given if either sent by prepaid registered post, hand delivered to or by email and to have been received by the intended addressee, for all purposes:
- (a) if delivered by hand, on the day of normal business following the date of dispatch of such communication or notice;

- (b) if made by prepaid registered post, on the tenth day following the date of dispatch of such communication or notice; if such tenth day is not a normal business day, then on the next normal business day thereafter;
- (c) if delivered by e-mail, when the e-mail message is available on the recipient's network for reading, assumed to be within 24 (twenty-four) hours of sending.

1.3.4 Any Party may, at any time, by written notice to the other Party, change its stated domicilium citandi et executandi to another address in South Africa, but this will not invalidate any notices sent prior to receipt of such communication.

## **1.4 Solicitation**

1.4.1 Neither Party will employ, or seek to employ or entice (directly or indirectly) to leave the employment of the other Party, any employee of the other for the duration of the Contract, plus a period of 6 (six) months thereafter, without the written consent of the other Party, which will not be unreasonably withheld.

1.4.2 It is recorded that a general advertisement advertising job vacancies will not constitute a breach of this Clause.

## **1.5 Right to Audit**

1.5.1 The Company will have the right to appoint an auditor, being either an independent auditing firm or the Company's internal auditing department, to audit the Contractor's records that specifically relate to the Contract.

1.5.2 The auditor will give the Contractor notice of its intention to conduct an audit, and the Contractor will assist and co-operate with the auditor.

1.5.3 The cost of any such audit will be for the Company's account.

1.5.4 The Contractor agrees that the Company may disclose findings from these audits to any relevant stakeholders from time to time, including Company management, senior Company executives, trade union leadership, Regulatory bodies and international watchdog bodies, as applicable.

## **1.6 Severability**

1.6.1 If any one or more of the provisions of the Contract will be declared or adjudged (formally or informally) by a competent authority to be illegal, invalid or unenforceable under any law applicable in any jurisdiction in which the Contract is to be performed (the 'Severable Provision'), that provision will be severable and divisible from the other terms and conditions of the Contract, and the Parties will retain the right to enforce all the other terms of the Contract and will retain all such rights as are validly conferred on them by the Contract.

## **1.7 Waiver**

1.7.1 Failure by the Company to enforce any provision of the Contract will not constitute a waiver of such provision or affect in any way the Company's right to require performance of any such provision at any time in the future, nor will the waiver of any subsequent breach nullify the effectiveness of the provision itself.

1.7.2 No act of relaxation, indulgence or grace on the part of the Company will operate as or be deemed to be capable of founding an estoppel.

## **1.8 Entire Agreement**

1.8.1 The Contract constitutes the entire agreement between the Parties. No variation, addition to or cancellation of the Contract will be of any force or effect unless reduced to writing and signed by authorised representatives on behalf of the Parties as an Amendment to the Contract. For the purposes of this clause, the meaning of the word "*writing*" and "*signature*" as contained in the Electronic Communications and Transactions Act 25 of 2002 are excluded.

## **1.9 Conflict of Interest**

1.9.1 The Contractor undertakes and warrants that it does not hold any interest or have any obligation, whether directly or indirectly under and by virtue of a contract or otherwise, which may or may appear to conflict with the obligations of the Contractor under the Contract, that have not previously been advised in writing to the Company.

1.9.2 The Contractor may not cause, or in any way contribute, to a conflict of interest. If the Contractor is aware of, or suspects, a conflict of interest, the Contractor will immediately report such conflict of interest to the Company Representative, or will use the confidential reporting mechanism, details of which can be obtained from the Company's website. The obligation on the Contractor is continuous and a conflict of interest must be reported when it arises, not merely at the inception of the Contract.

1.9.3 Notwithstanding anything to the contrary herein contained, the Company reserves the right to terminate any Contract as a result of such actual or apparent conflict of interest. The Company will incur no liability of any means whatsoever arising from such termination.

## **1.10 Costs**

1.10.1 Each Party will bear its own cost in connection with the preparation of the Contract.

## **1.11 Cession, Assignment and Delegation**

1.11.1 The Contractor may not cede, assign, delegate or transfer any part the Contract or any benefits, rights or obligations thereunder to any other person, except with the prior written consent of the Company Representative.

1.11.2 Either Party may assign any rights under the Contract to any legal entity that assumes all of the Party's obligations and accepts all of the Party's rights by giving 14 (fourteen) days' notice thereof to the other Party.

## **1.12 Cession of Book Debts**

1.12.1 The Contractor may not, during the currency of the Contract, cede or transfer to any person its right, title and interest in and to any existing or future book debts of its business, except with the prior consent, in writing, of the Company.

1.12.2 The Company will not be bound to give such consent and may withhold same without assigning any reason therefore, or it may grant such consent subject to such terms and conditions as the Company may, at its absolute discretion, deem fit.

1.12.3 The Contractor will notify the Company before the Signature Date of the existence of any cession of book debts and whether such cession is in respect of existing book debts or future book debts, or both. If the Contractor fails to comply with the above provisions, the Company will be at liberty to terminate the Contract. The Company will incur no liability of any means whatsoever arising from such termination.



### 1.13 Ownership and Risk

- 1.13.1 Each item of the Deliverables will become the property of the Company at whichever is the earlier of the following times, and the Contractor warrants that such Deliverable is free of any liens and other encumbrances:
- (a) when it is delivered to the Site; or
  - (b) when the Contractor receives payment.
- 1.13.2 Risk in the Deliverables will pass to the Company from the Contractor upon physical receipt and/or Completion of the Deliverables by the Company.

## 2 Laws, Regulations, Policies and Compliance

### 2.1 Laws and Regulations

- 2.1.1 The Contractor must at all times comply in all respects with the provisions of all Applicable Laws, including but not limited to Anti-Corruption Legislation, World Bank Group Integrity Compliance Guidelines, Practice, Codes of Health and Safety Legislation, Site Regulations and all Applicable Laws relevant to the Deliverables.
- 2.1.2 If the cost to the Contractor for the performance of the Contract is increased or reduced by reason of the passing or amendment of any Applicable Laws after the Signature Date or the date of the Purchase Order as the case may be, the Contractor may apply for an adjustment to the Price so that such increase or reduction will be added to or deducted from the Contract Price, as the case may be.
- 2.1.3 The Contractor will hold the Company harmless against all losses, damages, penalties and liabilities incurred by the Contractor in breach of any Applicable Laws.

### 2.2 Assessing risks and hazards

- 2.2.1 Before any Equipment, Goods or items required to execute the Deliverables are delivered to the Site, the Contractor will assess the hazards of the Equipment, Goods or items required to execute the Deliverables in accordance with the recognized UN Global Harmonised System of Hazard Classification and Labelling system or in accordance with any equivalent hazard classification and labelling system.
- 2.2.2 Nothing in these Conditions will be construed as negating the Contractor's statutory obligations in terms of any provisions of Section 21 of the MSHA.

### 2.3 Company Standards

- 2.3.1 The Contractor and the Contractor's Personnel shall strictly comply with all standards, rules, Codes of Practice, procedures, and managerial instruction of whatever nature applicable to the Site.
- 2.3.2 Such standards, rules, codes of practice, procedures shall include but not be limited to:
- (a) the standard health, safety and environmental rules, procedures and codes of practice;
  - (b) the procedures and standards of the MSHA and the OSHA;
  - (c) all Company policies, which are available on the Company's website, including but not limited to:
    - (i) the Company's Ethics Policy and Code of Ethics;
    - (ii) the Company's ESG Policy;
    - (iii) the Company's Human Rights Policy Statement;
    - (iv) Material Stewardship & Responsible Sourcing Policy Statement



- (v) the Company's Labour policy;
  - (vi) Sexual harassment policy;
  - (d) the Mining Charter;
- (clauses 2.3.1 and 2.3.2 collectively referred to as "**Company Standards**")
- 2.3.3 The Contractor will be held liable for any and all errors and/or omissions due to its failure to adhere to the Company's Standards.

## 2.4 Radiation

- 2.4.1 The Contractor acknowledges that Material on Site may be radioactive. The Contractor will, at its own cost, comply with the Applicable Laws, including the rules, regulations and laws of the National Nuclear Regulator (NNR) and the Company's Standards, when working on Site or handling the Company's property. If necessary, prior to the commencement of any Deliverables the Contractor will obtain from the Company a Radiation Protection Certificate. Such a certificate will state the protective measures the Contractor must take. Prior to the dismantling or stripping of any Company's property, the Contractor will obtain a Radiation Protection Certificate, issued by the Company and approved by the NNR.
- 2.4.2 The Company reserves the right to claim against the Contractor any loss, damage or penalties which the Company may suffer as a result of any claim for compensation or otherwise from any person which arises from nuclear damage that was caused by the Contractor, or its Personnel Personneleither through any act or omission, negligence, default or deliberate misconduct, or breach.

## 2.5 Black Economic Empowerment

- 2.5.1 The Contractor warrants that:
- (a) it has read, made itself fully acquainted with and fully understands the implications of the Mining Charter;
  - (b) it has read and familiarised itself with section 100(2) of the MPRDA, and fully understands that its value proposition to the Company is to provide the Deliverables as an empowered Contractor, such that the Company will attain the highest level of recognition;
  - (c) it has read and familiarised itself fully acquainted with, fully understands the implications of, and, where appropriate, follows and will continue to follow the BBBEE Act and DTI Codes of Good Practice; and
  - (d) it has fully acquainted itself with and fully understands the implications of Fronting. All representations related to South African transformation requirements, whether made by the Contractor or by any other person, may be subject to review throughout the term of this Contract.
- 2.5.2 The Contractor acknowledges that in complying with the Mining Charter, the Company is required to meet particular BEE procurement spend targets and to report on all such expenditure incurred and spent with its Contractors.
- 2.5.3 Local employment
- (a) In the event that the Deliverables in execution of the Contract does not require a specific skill set, or may be done by unskilled labourers, the Contractor will as far as reasonably practicable source the required complement for the Contract from Local Communities.
  - (b) The Contractor will endeavour to support the Company's local development initiatives through developing skills of the sourced complement from the Local Communities. The Company will

track measurement and the Contractor will report on its measurement of the requirements as per this Clause.

- (c) The Contractor shall provide the Company with monthly 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 programs, and the Company's environmental, social and governance targets (if applicable).

#### 2.5.4 Local procurement

- (a) The Contractor undertakes to contribute to local economic development through implementation of local procurement by purchasing certain goods and services from Localised SMMEs.
- (b) The Contractor shall procure from Localised SMMEs without compromising on safety, technical capability, cost and delivery requirements. If a shortage of suitably skilled or capable SMMEs within the zone of influence, the Contractor 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 Contractor shall provide the Company with monthly reports containing information as requested from the Company including, but not limited to, total spend with Localised SMMEs, evidence of supplier development activity and the number of tenders issued to Localised SMMEs.

2.5.5 Where there is a change in the BEE status of the Contractor, either through a change in circumstances, ownership or management, or through the amended assessment of a rating agency, then the Contractor will advise the Company Representative of such change within 10 (ten) days.

2.5.6 In the event that the Company, in its sole and absolute discretion, at any time determines that the Contractor's BEE credentials or compliance to sourcing from Local Communities or Local SMMEs are unsatisfactory, the Company will notify the Contractor thereof in writing, whereafter representatives of the Company and the Contractor will meet in an attempt to agree on an appropriate resolution to the requirement. In the event that no such resolution is reached within 7 (seven) days of delivery of the written notice to the Contractor, the Company will be entitled (but not obliged) to terminate the Contract by giving 30 (thirty) days written notice to the Contractor. The Company will incur no liability of any means whatsoever arising from such termination.

## 2.6 International Compliances and Benefits

2.6.1 The Company reports on its carbon footprint, including Scope 3 emissions (emissions associated with purchased goods and services). The Contractor will support this process by endeavouring to supply information on greenhouse gas emissions for the products/services procured by the Company through submission of their annual carbon footprint or related information to determine carbon intensities of products/services where no carbon footprint monitoring is in place as yet.

2.6.2 The Company reports on its water footprint. The Contractor will support this process by endeavouring to supply information, as and when requested to do so by the Company, in regard to the products/services supplied to the Company.

## 2.7 Anti-Bribery and Sanctions Laws and Policies

- 2.7.1 The Contractor undertakes, on behalf of itself and the Contractor's Personnel:
- (a) comply with all adequate procedures (as referred to in section 7(2) of the Bribery Act 2010 in the United Kingdom and any guidance issued by the Secretary of State under section 9 of the Bribery Act 2010 in the United Kingdom), Anti-Corruption Legislation, anti-bribery, anti-corruption and anti-money laundering laws, regulations, policies and best practice standards of 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 they, any of their Affiliates, shareholders or joint venture partners is or are subject, including those of any jurisdiction where they, any of their Affiliates, shareholders or joint venture partners conduct business (such laws, regulations, policies and best practice standards are hereinafter collectively referred to as the "Anti-Bribery Laws");
  - (b) to comply with all International Anti-Bribery Laws, Sanctions Laws and/or any Anti-Bribery and Sanctions Legislation to which the Company is subject, including those of any jurisdiction where it conducts business;
  - (c) to implement and enforce its Anti-Corruption Programme;
  - (d) to implement and/or enforce any code of ethical business practice adopted from time to time by the Company;
  - (e) not to engage in any corrupt activities;
  - (f) not to directly or indirectly pay, give or offer to pay or give any loan of 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 Party in obtaining or retaining business or directing business to any person/entity or to secure any improper advantage; and not to make facilitation payments to facilitate or expedite any routine governmental action.
- 2.7.2 The Contractor and the Contractor's Personnel will 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.
- 2.7.3 The Contractor undertakes to endeavour to ensure that any Sub-Contractor sub-contracted for any part of any Contract it enters into with the Company will comply with the provisions of this Clause.
- 2.7.4 The Contractor warrants that it has not infringed any law of any sovereign state prohibiting collusion, price fixing, bid rigging, or illegal price information exchange.

## 2.8 Jurisdiction and Governing Law

- 2.8.1 The Contract will be governed, construed and interpreted in accordance with the law of the Republic of South Africa, including its conflict of laws rules.

## 2.9 Ethics, Human Rights and Harassment-Free Working Environment

- 2.9.1 In accepting the Contract, the Contractor undertakes to act only with utmost good faith and care in the execution thereof. In the event that the Contractor commits an act that may compromise the ethical relationships between the Contractor and the Company, in terms of this or other contracts, or

that is contrary to standard business practices, then the Company will have the power, at its discretion, to terminate the Contract immediately by giving notice to that effect to the Contractor.

- 2.9.2 The Contractor will not unlawfully discriminate against its employees within the meaning of any appropriate law.
- 2.9.3 The Contractor will prohibit slavery, servitude, forced labour, compulsory labour and human trafficking (together, "Modern Slavery") from its operations. The Contractor will also take reasonable steps to understand its supply chains (comprising both its suppliers and its suppliers' suppliers) and work with its suppliers to reduce the risk of Modern Slavery in its supply chains.
- 2.9.4 Without derogating from any other obligations, contractually or at law, the Contractor will respect its employees' human rights and seek to foster respect and equality for all.
- 2.9.5 The Contractor will prohibit the use of corporal punishment, harsh or degrading treatment, sexual or physical harassment, mental, physical or verbal abuse, coercion or intimidation, or threats of these. The Contractor will comply with all Applicable Laws relevant to labour including but not limited to those laws prohibiting the use of forced labour and child labour.

## **2.10 Fronting**

- 2.10.1 Where the Company receives a notification of possible Fronting practices and/or suspects that the Contractor is participating in Fronting practices, the Company may suspend any Contract while the Fronting allegations are being investigated.
- 2.10.2 The Company shall request information from the Contractor regarding the fronting allegations which information shall be provided within 10 business days. The Contractor shall comply will all requests for information and promptly assist the Company in its investigations.
- 2.10.3 Should the Company find that the Contractor was participating in Fronting practices, the Company will be entitled to terminate any Purchase Order with immediate effect. Unless any wilful, reckless or grossly negligent conduct is proved to be attributable to the Company, the Contractor hereby indemnifies the Company against any losses suffered as a result of such suspension or termination, even if the Contractor is found not to have been participating in Fronting practices.

## **2.11 Non-Dealing Agreement**

- 2.11.1 The Contractor acknowledges that the Company is part of a group of companies, the ultimate parent of which is listed on the New York and Johannesburg Stock Exchanges. The Contractor hereby irrevocably undertakes that it and its Personnel will not deal in the shares or other securities of Sibanye-Stillwater when in possession of any inside information, or in the shares or other securities of any other company to whom the inside information may relate or on the price of whose shares or other securities such information would, if in the public domain, be reasonably expected to have a material effect.

## **2.12 Protection of Personal Information**

- 2.12.1 The Contractor will:
  - (a) comply with the information protection principles under POPIA, the Company's information protection policies (in so far as they are relevant) and any equivalent or associated legislation governing the collection, use and processing of Personal Information;
  - (b) only process Personal Information which is reasonably required in the execution of the Contract and in accordance with the Company's instructions from time to time; and
  - (c) ensure that the processing of any Personal Information will not place the Company in breach of any applicable privacy and data protection laws or states:

- (i) only disclose Personal Information to persons, to whom disclosure is necessary for the execution of the Contract. The Contractor will ensure that such persons that have access to the Personal Information are bound by legally binding confidentiality and non-use obligations similar to the conditions stipulated under this clause;
- (ii) immediately inform the Company of any request from an individual for access to the Personal Information, and comply with the Company's instructions in relation to complying with that request;
- (iii) immediately inform the Company of possible infringements of the applicable privacy protection legislation by the Contractor, its employees or any other Party/ies acting on its behalf; and
- (iv) take appropriate technical and organisational measures to ensure that the integrity and confidentiality of the Personal Information in its possession or under its control is secure and that such Personal Information is protected against accidental loss, destruction, damage, unlawful access or processing.

2.12.2 The Personal Information:

- (a) is the property of the Company;
- (b) will be returned or destroyed on request of the Company upon termination or expiration of this Contract; and
- (c) may not be copied and/or retained in any form by the Contractor upon expiration or termination of the Contract, except as required by law or under the Contract.

2.12.3 On reasonable notice from the Company, the Contractor will permit any authorised officers of the Company to investigate the steps taken by the Contractor to comply with any applicable privacy and data protection laws.

2.12.4 The Contractor will indemnify and keep indemnified the Company against all claims, demands, actions, proceedings, damages, charges, costs and expenses (including legal costs and expenses) as well as penalties and fines arising from the Contractor's non-compliance with the provisions of this clause and any relevant privacy protection legislation which may be brought against the Company.

2.12.5 The obligations contained in this clause will endure after the termination of the Contract for whatever reason.

## 2.13 Environmental Compliance

2.13.1 The Contractor warrants that it will at all times comply with the Company's environmental standards and policies as may be applicable to the Contractor in the execution of this Contract, including the Company's Standards.

2.13.2 The Contractor shall comply with all Environmental Approvals in respect of the Deliverables and the Site.

2.13.3 In the event of pollution and/or degradation (the incident) of the environment by the Contractor, the Contractor will advise the Company within 2 (two) hours of the incident and the Parties will set up the measures for the Contractor to implement whatever remedial and/or preventative action is deemed necessary by the Company to ensure legal compliance. Such measures shall include:

- (a) investigate, assess and evaluate the impact on the Environment;
- (b) (b) inform and educate Personnel about the environmental risks of their work and the manner in which tasks must be performed to avoid causing significant pollution or degradation of the Environment;
- (c) cease, modify or control any act, activity or process causing the pollution or degradation;
- (d) contain or prevent the movement of pollutants;

- (e) eliminate any source of the pollution or degradation; and
  - (f) remedy the effects of the pollution or degradation;
- 2.13.4 The Company may at its sole discretion conduct an environmental audit to ensure compliance by the Contractor with all the Company's Policies. Should the audit identify any flaws and/or non-compliance by the Contractor, the Contractor will immediately implement remedial, preventative and/or other measures necessary to ensure legal compliance.
- 2.13.5 Should the Contractor fail to implement any corrective, remedial and/or preventative measures as per the aforementioned paragraphs of this Clause, such failure will constitute a material breach of these General Conditions.
- 2.13.6 In the event that the Contractor establishes or has an established site within the Company's Mining Area from which it operates or conducts its business, such site will comply with the ISO 14001 environmental management system. In the event that the Contractor does not establish or does not have an established site within the Company's Mining Area, the Contractor will conduct its affairs in such a manner so as not to compromise the Company's ISO14001 registration.

## **2.14 Health and Safety**

- 2.14.1 The Contractor must at all times take all reasonable precautions and must comply with all Health and Safety Legislation, for the duration of the Contract.
- 2.14.2 In collaboration with local health authorities, the Contractor will ensure that medical staff, first aid facilities, sick bay and ambulance services are available at all times at the Site and any accommodation for the Contractor's Personnel, if applicable, and that suitable arrangements are made for all necessary welfare and hygiene requirements.

## **2.15 Labour Laws**

- 2.15.1 The Contractor will comply with all Applicable Laws relevant to its employees including laws relating to their employment, health and safety, welfare, immigration and emigration and will allow them all their legal rights.

# **3 The Contractor**

## **3.1 General Obligations**

- 3.1.1 The Contractor warrants that:
- (a) it has obtained and maintains all Necessary Consents and will, when requested to do so by the Company, provide the Company with copies thereof.
  - (b) it is fully experienced and properly organised, financed, equipped, staffed, qualified, licensed and able to fulfil its obligations in terms of the Contract and in terms of any generally accepted good practices and standards, legislation and specifications that may govern it in fulfilling its contractual obligations;
  - (c) it has power, authority and legal right to sign and execute the Contract and that the Contract has been duly authorised by all necessary actions and constitutes valid and binding obligations on it in accordance with the terms of the Contract.
  - (d) it shall comply with all Applicable Laws;
- 3.1.2 The Contractor further warrants that the Deliverables will:

- (a) comply with all Applicable Laws including the specification and/or the standard agreed by the Parties, Applicable Standards and the Company's Standards
- (b) be carried out in a professional manner by suitably trained Personnel of the Contractor;
- (c) be free from both patent and latent Defects and be of good quality and workmanship;
- (d) be supplied with the full benefit to the Company of any manufacturer's warranty; and
- (e) be provided in accordance with Good Industry Practice.

## **3.2 Relationship between the Parties**

- 3.2.1 The Contractor is an independent contractor and has the responsibility for and control over the details and means for performing the Deliverables, provided that the Contractor acts within the scope of the Contract.
- 3.2.2 Nothing in the Contract will be deemed to constitute or appoint the Contractor or any of the Contractor's Personnel to be the agent, representative, partner, co-venturer or employee of the Company. Under no circumstances will the Contractor be deemed to be in any relationship with the Company that carries with it fiduciary responsibilities.
- 3.2.3 The Contractor shall act in respect of the Deliverables (where applicable) as a contractor in terms of section 101 of the MPRDA.

## **3.3 Subcontracting**

- 3.3.1 Unless otherwise directed or approved by the Company the Contractor shall not subcontract the primary or material components of the Scope of Deliverables or any specialist components of the Scope of the Deliverables, which are awarded to the Contractor on the basis of its expertise. In the event of a disagreement or dispute as to the primary, material or specialist component of the Scope of the Deliverables, the Company will provide direction and the direction will be final and binding on the Parties.
- 3.3.2 The Contractor will be responsible for the acts, errors, omissions, defaults and neglects of any Subcontractor, its agents, representatives or employees as fully as if they were the acts, errors, omissions, defaults or neglects of the Contractor, its agents, representatives or employees.
- 3.3.3 Each subcontract between the Contractor and an approved Subcontractor shall include provisions which would:
  - (a) entitle the Company to require the assignment of the subcontract to the Company;
  - (b) if this Contract terminates for whatsoever reason by either Party, entitle the Company at its sole discretion, to either contract directly with the relevant subcontractor to provide any portion or the whole of the Deliverables remaining to be completed under the Contract.
- 3.3.4 The Company may at any time request the Contractor to submit reasonable evidence that an approved Subcontractor providing any of the Deliverables under a subcontract with the Contractor, has received payment from the Contractor of all amounts due to it under the subcontract. If the Contractor fails to submit such reasonable evidence, or fails to satisfy the Company that the Contractor has a legitimate entitlement to refuse payment of any such amounts and further fails to demonstrate the course of action taken, then the Company shall be entitled, at its sole discretion, to elect to make payment of any such amounts due to the relevant Subcontractor directly, and such payments will be set-off any amounts due and payable to the Contractor.
- 3.3.5 The Contractor shall not preclude a Subcontractor, in contract or otherwise, from providing the Company with any requested confirmation that payment has been made by the Contractor to the Subcontractor for amounts due to the Subcontractor under the relevant subcontract. Should the



Company obtain confirmation from the Subcontractor that it has not received payment of amounts due to it under the subcontract, then the Company may at its sole discretion exercise its entitlement to the election specified in clause 3.3.4.

### **3.4 Non-exclusive relationship**

3.4.1 The Contract does not give exclusive rights to the Contractor and the Company may obtain the same or similar Deliverables from any other third party.

### **3.5 Liens on Company's Property**

3.5.1 The Contractor warrants that it will not have any lien or right of retention of whatsoever nature in respect of the Company property and expressly waives all rights that it may have in this regard whether in terms of the common law or otherwise.

3.5.2 The Contractor will at its own expense, keep the Site and all Material and Plant acquired by the Company free and clear of third party liens.

### **3.6 Contractor Designs**

3.6.1 Where the Contract expressly provides for preparation by the Contractor of designs and details of any Deliverables, the Contractor shall submit to the Company Representative for its approval all drawings or such other documentation as may be required, giving full details, dimensions and particulars, together with all relevant information, and erecting and operating instructions (if any) and shall obtain the Company Representative's written approval before commencing such work. When any such documents or drawings have been approved in writing by the Company Representative, these shall not be departed from in any way except with the written consent of the Company Representative.

3.6.2 The Company Representative shall be provided with copies in triplicate of any such approved documents or drawings and erecting or operating instructions required in connection with any work to be designed by the Contractor. The Contractor shall, notwithstanding any approval by the Company Representative, be liable for any error or deficiency in any drawing or document supplied by him for that part of the Works and for any loss or damage arising out of such error or deficiency.

### **3.7 Contractors Documents**

3.7.1 Any of the Contractor Documents that requires the approval of the Company Representative will be submitted to the Company Representative prior to executing any Work reliant upon such approval.

3.7.2 The Company Representative may respond with approval or disapproval thereof, with comments or recommended modifications required thereto. Such modifications will be incorporated into the relevant Contractors Documents by the Contractor and re-submitted to the Company Representative without delay. Notwithstanding approval by the Company Representative, the Contractor will be liable for the accuracy and adequacy of all Contractor Documents.

3.7.3 The Contractor will maintain an up-to-date schedule of all Contractor Documents. The Contractor will supply the schedule to the Company Representative at intervals stipulated by the Company Representative in consultation with the Contractor.

3.7.4 The Company Representative will have the right at all reasonable times to inspect the Contractor Documents at the premises of the Contractor or any Subcontractor.

3.7.5 All Contractor Documents will become and remain the property of the Company.



### **3.8 Contractors Documents as a Deliverable**

3.8.1 Prior to the Completion Date of the Contract, the Contractor will supply to the Company Representative all Contractor Documents forming part of the Deliverables required in terms of the Contract and any other documentation requested by the Company Representative. Such Contractor Documents will include the operating and maintenance instructions, spares lists and drawings of the Deliverables as completed, in sufficient detail to enable the Company to maintain, dismantle, reassemble and adjust all parts of the Deliverables. Ownership of all such Contractor Documents will vest in the Company.

### **3.9 Mistakes in Documentation**

3.9.1 The Contractor will be responsible for all discrepancies, errors or omissions, including faulty design and/or detailing in any of the Contractor Documents, whether or not such documentation has been approved by the Company Representative, except insofar as the discrepancies, errors, omissions, faulty design and/or detailing are due to discrepancies, errors or omissions in the Technical Information.

### **3.10 Existing Works and Separate Contractors**

- 3.10.1 The Contractor will at all times ensure minimal disruption of the normal operations of the Mine and its service providers. The Contractor will, prior to commencement of work, obtain from the Company Representative either a layout of the existing Works or a certificate of clearance that the Contractor may proceed with work in a specific area. The Contractor will be liable for any damages incurred by the Company due to the Contractor's interference with the normal operations of the Mine or its service providers. Where applicable, the Contractor will familiarise itself with shaft times, rules and regulations.
- 3.10.2 All work entailing interruption of activities of operating installations will only be carried out following agreement with the Company Representative on the sequence and timing of such work.
- 3.10.3 Other work may be performed by others concurrently with the execution of this Contract. The Contractor recognises that the Works hereunder may be executed under joint occupancy conditions and agrees to co-operate with the Company and other contractors on the Site so that the project as a whole will progress smoothly with a minimum of delays due to obstructive activities between various Contractors on the Site.

### **3.11 Articles of Value or Antiquity**

- 3.11.1 All fossils, coins, articles of value or antiquity and structures and other remains or items of geological or archaeological interest discovered on the Site will, subject to the provisions of the National Heritage Resources Act, Act 25 of 1999, be the absolute property of the Company and must immediately be placed under the care and authority of the Company.
- 3.11.2 The Contractor will take reasonable precautions to prevent its workmen or any other person from removing or damaging any such findings. Should the Contractor discover graves on the Site it will not destroy, damage, alter, exhume or remove the graves from their original position without the relevant legal authority.
- 3.11.3 The Contractor will carry out the Company Representative's instructions as to the actions to be taken.
- 3.11.4 Any actions taken will be in accordance with the requirements of the National Heritage Resources Act, Act 25 of 1999, and the regulations framed thereunder and any other relevant law or regulation. If the Contractor suffers delay and or incurs costs as a result of complying with the Company's instructions in terms of this Clause, the Contractor will give a further notice to the Company and will be entitled to any reasonable costs and extension of time so incurred, as approved by the Company Representative in writing.

## 4 The Company

### 4.1 The Company Representative

- 4.1.1 The Company will appoint a Company Representative who will carry out the duties assigned to him in the Contract. The Company Representative may, from time to time, assign duties and delegate the necessary authority to assistants, and may also revoke such assignment or delegation. The assignment, delegation or revocation will be in writing and will not take effect until the Contractor and the appointed assistant(s) have received copies of any such assignment or delegation by the Company Representative. The assistants will be suitably qualified persons, who are competent to carry out the assigned duties and exercise the delegated authority.
- 4.1.2 Except where stated otherwise in the Contract:
- (a) the Company Representative will have no authority to amend the Contract;
  - (b) the Company Representative has no authority to relieve any party of any duty, obligations or responsibilities under the Contract; and
  - (c) any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by the Company Representative shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances.

## 5 Personnel and Labour

### 5.1 Engagement and labour relations

- 5.1.1 The Contractor will make its own arrangements for the employment of all its employees, local or otherwise, and for their payment, housing, meals and transport.
- 5.1.2 The Contractor is responsible for all losses, delay or disruption it suffers arising out of, or in connection with, any:
- (a) strike, lockout, dispute or other industrial action of its Personnel which affects the Deliverables; and
  - (b) any claim for payment on behalf of any Subcontractor of the Contractor or any employee of the Contractor or the Contractor's Subcontractor.
- 5.1.3 The Contractor agrees and undertakes that, before the Signature Date, it informed itself of all matters relevant to the employment of labour at the Site.
- 5.1.4 The Contractor shall be responsible for all labour relation matters and shall establish and maintain sound labour management practices and good industrial relations, and shall strive to maintain harmony among the Subcontractors and Personnel employed by it and any unions or associations to which they belong, if any.

### 5.2 Key Personnel

- 5.2.1 All Contractor's labour and personnel, including the Key Personnel, shall be appropriately skilled and qualified for the role for which they are engaged.
- 5.2.2 All the Key Personnel's appointment for this Contract are subject to the Company's prior written approval, which approval will not be unreasonably withheld.
- 5.2.3 Upon the Company's request, the Contractor shall provide the Company with the curricula vitae of, and arrange for the interview by the Company of, all Key Personnel.

5.2.4 The Contractor shall not remove or replace any Key Personnel without the prior consent of the Company (such consent not to be unreasonably withheld or delayed). At the time of any such removal, the Contractor shall replace such Key Personnel by new personnel appointed by the Contractor and reasonably acceptable to the Company and provide the Company with the curriculum vitae of such new personnel.

### **5.3 Facilities for Staff and Labour**

5.3.1 Unless otherwise stated in the Contract, the Company will not provide any accommodation, ablution or messing facilities for the Contractor's Personnel. All accommodation and messing facilities will be arranged and provided by the Contractor at its sole cost.

5.3.2 Unless otherwise stated in the Contract, the Company will not provide any change-house facilities for the Contractor's Personnel.

5.3.3 The Contractor will provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor will not permit a Contractor's Employee to maintain any temporary or permanent living quarters within the structures forming part of the Deliverables.

## **6 Commencement, Delays and Suspension**

### **6.1 Duration of Contract**

6.1.1 The Contract shall become effective on the Signature Date and shall, subject to the further provisions of this Contract, continue until the date specified in the Contract.

6.1.2 The Company and the Contractor may negotiate an extension to the Contract, provided that written notice of such intention is presented by the Company to the Contractor prior to the Expiry Date.

### **6.2 Commencement of Work**

6.2.1 The Contract, in its entirety or in part, will not be enforceable until such time as valid a Purchase Order is generated by the Company and delivered to the Contractor as and when the Contractor is required to supply or execute the Deliverables.

6.2.2 This Clause will remain in full force, notwithstanding any of the following:

- (a) a Contract may have been signed, or a notice to commence may have been issued by the Company's Representative;
- (b) the Contract may have been adopted and applied by the Parties, or
- (c) a Party may have performed in terms of the Contract.

6.2.3 In the event that the Contractor performs any work relevant to a Deliverable without a valid Purchase Order unless the work is authorised in terms of Sibanye-Stillwater's Emergency/Breakdown procedure, the Company will not be liable for payment for such work and action may be taken against the Contractor. This may include, but is not limited to, a review of the Contractor's vendor status.

### **6.3 Suspension**

6.3.1 The Company Representative may at any time instruct the Contractor to suspend the provision of the Deliverables or any part thereof. During such suspension, the Contractor will properly protect, the Deliverables or part thereof against any deterioration, loss or damage. The Company's Representative may also notify the Contractor as to the cause of the suspension and whether it arose as a result of the Contractor's default.

- 6.3.2 If the Contractor suffers delay or incurs additional costs from complying with the Company Representatives' instruction under this clause, the Contractor will give notice to the Company's Representative of a claim pursuant to clause 16.1.
- 6.3.3 The Contractor shall not proceed with the work without the written permission of the Company's Representative to proceed.
- 6.3.4 After permission to proceed is given, the Contractor and the Company's Representative will jointly examine the Deliverables or the Works affected by the suspension. The Contractor will make good any deterioration or defect or loss of the Deliverables, which has occurred during the suspension at its cost.
- 6.3.5 If any suspension has continued for more than 90 (ninety) consecutive days, the Contractor may request, in writing, the written permission of the Company's Representative to proceed. If the Company's Representative does not respond within 28 (twenty-eight) days after receipt of the Contractor's request, the Contractor may, by giving notice to the Company's Representative, submit a notice in terms of 8.2.3 to omission of the affected part of the Deliverable from the Scope of Deliverables. If the suspension affects the whole of the Deliverable, the Contractor may give notice of termination to the Company's Representative.

## 7 Contract Price and Payments

### 7.1 Payments and Invoices

- 7.1.1 The Contractor will follow the measurement process or payment certification requirements stated in the Contract. If no measurement process is stipulated in the Contract and measurement is required to determine the value of the completed Deliverables, the Contractor will on a monthly basis submit a measurement request to the Company for the measurement of completed Deliverables.
- 7.1.2 The Company will confirm measurement of the completed Deliverables stipulated on the request for measurement and will approve payment. The Parties are jointly responsible for the accuracy of measurements.
- 7.1.3 The Contractor will submit invoices once the Company Representative certifies payment by replicating your invoices in the Coupa supplier portal or by submitting a system generated invoice to [invoice@sibanyestillwater.com](mailto:invoice@sibanyestillwater.com), which will be recorded in a monthly statement by the Contractor. Invoices will be paid following a period of 30 (thirty) days from month of statement provided that the invoice is recorded on the statement as detailed in clause 7.1.6 below and all necessary supporting documentation is received by the Company.
- 7.1.4 The Contractor warrants the accuracy of the invoices and supporting documents.
- 7.1.5 The Contractor's invoices must be fully detailed and include, where applicable, the following:
  - (a) Invoice Number (sequential);
  - (b) Addresses of both parties;
  - (c) VAT registration numbers of both Parties;
  - (d) Date of Issue;
  - (e) Time period during which the section of the Deliverables was executed and for which the invoice is submitted;
  - (f) Description of the Deliverables and the amount claimed;
  - (g) The Contract and/or Purchase Order number;
- 7.1.6 The Contractor will deliver a monthly statement to the Company's Accounts Payable department at [statements@sibanyestillwater.com](mailto:statements@sibanyestillwater.com) and copy the relevant account holder nominated by the Company Representative on or before the 10th of each month reflecting all overdue invoices (including the

invoices detailed in clause 7.1.3), payment allocations, debit and credit notes with supporting documentation. The Company will make payment against statements received and ratified by it by the 30th of that month. By way of example, invoices that are submitted to and certified by the Company Representative for completed Deliverables in a month should be recorded on a monthly statement and submitted to the Company's Accounts Payable Department by no later than the 10th of the following month for payment by the 30th of that month.

- 7.1.7 The Company will not be liable for payment of any interest on the outstanding balance of any statement or for any related charges.
- 7.1.8 Payment or ratification of invoices will not affect the Company's rights relating to quality or warranty under the Contract.
- 7.1.9 Late submission of payment documentation and submission of incomplete or incorrect documentation will result in delayed certification or payment.
- 7.1.10 If any item or part of an invoice ("Contested Invoice") submitted by the Contractor is contested by the Company, the Company will give a notice of its intention to withhold the payment with reasons. The Company will not make partial payments however may accept a credit note for the full Contested Invoice and effect payment against an invoice submitted for the undisputed part of the Contested Invoice.

## **7.2 Taxes, Duties, Fees, Levies and Permits**

- 7.2.1 The Contractor must pay or cause to be paid, when due, any and all payroll taxes and contributions that are measured by wages, salaries or other remuneration paid to Personnel employed by the Contractor or a Subcontractor, that arise by virtue of their employment and that now or hereafter are imposed by any government, provincial, municipal, local or other lawful authority, including - without limitation - taxes or contributions for annual holiday pay, Unemployment Insurance, Industrial Council Levy, sick pay, Provident Fund, Medical Aid, Service Levy and Living-out allowances.
- 7.2.2 The Contractor will pay, when due, all taxes, duties, levies, wharfage, demurrage, fees or charges of whatever nature required for the execution of the Work in terms of the Contract, and implied by the Contract.
- 7.2.3 The Contractor will be responsible for complying with all importation regulations and the payment of all customs and excise duties, levies or any other costs incurred by the Contractor in respect of any imports into the Republic of South Africa.
- 7.2.4 In the event that the Contractor is to be reimbursed by the Company, such costs will be shown separately in the Contract. The Company will not be responsible for any costs incurred by the Contractor due to the Contractor's failure to comply with import control regulations.
- 7.2.5 Any import permit obtained by the Contractor in terms of the foregoing is to be in the joint names of the Contractor and the Company, if so stated in the Contract.
- 7.2.6 The Contractor will, at its cost, obtain from the relevant authorities and administer all necessary permits and licences and fulfil all immigration formalities to enable the Contractor to fulfil its obligations in terms of the Contract.
- 7.2.7 The Company will, at its cost, obtain from the relevant authorities that require the necessary permission to carry out the Deliverables. The Contractor shall provide the Company with all reasonable assistance, the Company requires to comply with this clause 7.2.7.

## **7.3 Withholding Payment**

- 7.3.1 Without prejudice to any other provision of this Contract, if the Contractor fails to perform or observe any obligation, term, condition or stipulation in this Contract which is to be observed by it or breaches

any of its representations and warranties, then the Company's Representative may, acting reasonably, without prejudice to any other right that he may have under this Contract or at law, withhold payment applicable to that part of this Contract which it has failed to perform or observe, until the matter has been remedied or until such earlier time as the Company's Representative may determine.

## 8 Variations and Contract Price Adjustment

### 8.1 Contract Price Adjustment

- 8.1.1 Unless otherwise agreed to by the Parties, the Price will be fixed and firm for the first 12 (twelve) months of the Contract. Thereafter, unless agreed to otherwise by the Company, application may be made by the Contractor for an adjustment of the Price.
- 8.1.2 Any application for an adjustments of the Price will be made by the Contractor to the Company 60 (sixty) days before the proposed effective date of the adjustment to the Price, in writing by email to [priceadjustments@sibanyestillwater.co.za](mailto:priceadjustments@sibanyestillwater.co.za), which application will be supported by such documentary evidence as may be required by the Company ("**Price Adjustment**"). No price adjustments will be effective until all documentary evidence is received and the Price Adjustment has been approved in writing by the Company.
- 8.1.3 The Contractor shall include in its Price Adjustment a cost breakdown of:
- (a) variation in costs of labour, material, equipment, consumables and transport actually incurred by the Contractor;
  - (b) the period of time expressed in months, for which the adjusted Price, if any, will remain fixed;
  - (c) any additional employees required (complement);
  - (d) proposed increased Price for the Deliverables, and
  - (e) motivation for the adjustment of the Price.
- 8.1.4 The Company may, in the event of an application for the Price Adjustment being lodged, call for tenders or proposals for the supply of the Deliverables. If more favourable tenders or proposals are submitted, the Company may elect to terminate the Contract in accordance with the termination provisions.
- 8.1.5 If the application for Price Adjustment is accepted by the Company, the adjustment of the Price will be reflected in an Amendment, signed by the Parties.
- 8.1.6 If the application for Price Adjustment is not accepted by the Company, the Parties will negotiate in good faith and make every reasonable effort to come to an agreement. Should the Parties fail to reach an agreement, the Company will have the right to terminate the Contract by giving the Contractor 60 (sixty) days' notice of termination. The Contractor will be obliged to continue to supply the Deliverables to the Company, at the Price paid by the Company immediately prior to any such application for Price Adjustment being made by the Contractor, until the termination of the Contract becomes effective.
- 8.1.7 In the event that the requested amendment date has passed before the application for Price Adjustment is approved by the Company, any Deliverables will continue to be supplied at the Price applicable at the time that the application is made, until the application for Price Adjustment is accepted in writing by the Company and this Contract is amended by the Parties. .
- 8.1.8 The Company will have the right to reject any proposed Price Adjustment and the Company may, at its discretion, cancel the Contract without payment of any compensation to the Contractor for any damages whatsoever, including loss of business and/or profits resulting from such cancellation.

## **8.2 Variations**

- 8.2.1 All variations to the Contract will be processed according to the Company's policies and procedures and will be reflected as a Contract amendment, and signed by the Parties to the Contract.
- 8.2.2 The Deliverables may be subject to change by additions, deletions or revisions by the Company, and the Contractor will be advised of such changes in writing.
- 8.2.3 The Contractor will submit to the Company, within 10 (ten) days after receipt of notice of a change, a document containing a detailed breakdown with supporting calculations and pricing for the change together with any change in the time required for execution of the amended Deliverables. Pricing will be in accordance with the pricing structure of the Contract and will clearly define increase, decrease or no change in compensation.
- 8.2.4 The Contractor may not suspend performance of the Contract during the review and negotiation of any change, except as may be instructed by the Company.
- 8.2.5 The Contractor will not perform any additional work or work not specified in the Contract without a written commitment, in the form of an amendment to the Contract, unless such work is authorised in terms of Sibanye-Stillwater's Emergency/Breakdown procedure. In the event that the Contractor performs such additional work not covered by the Emergency/Breakdown procedure, or specified in the Contract, the Company will not be liable for payment of the extra work and action may be taken against the Contractor. This may include, but is not limited to, a review of the Contractor's vendor status.

## **9 Inspections, Testing, Examinations, and Defects**

### **9.1 Contractors Obligations**

- 9.1.1 The Deliverables shall be subjected from time to time to such tests as is specified in the Contract or as the Company may direct at the place of manufacture or fabrication or on the Site or such other place or places as may be specified in the Contract. The Contractor shall provide such assistance as is normally required for examining, measuring and testing any Work and the quality, weight or quantity of any Materials or Plant used and shall supply samples of Materials as may be selected and required by the Company for testing.
- 9.1.2 The Contractor shall provide all necessary assistance, labour, materials, testing equipment and instruments for the purpose of such tests to be performed by himself or, if so instructed by the Company, for the purposes of tests to be performed by others.
- 9.1.3 The Contractor shall be deemed to have allowed in his Prices for all such tests as are required to be performed by him.

### **9.2 Notice of Inspections or Testing**

- 9.2.1 The Contractor will provide the Company Representative with at least five (5) days prior notice in writing of the time, date and place at which such Deliverables will be ready for the said inspections and/or tests. Special arrangements will be agreed on in respect of Plant being manufactured overseas.
- 9.2.2 Inspections and testing will be conducted so that progress of the Contract is not delayed and the witnessing of such inspections and/or tests will not be reason for the Contractor to delay manufacture, delivery or completion of any Deliverables. Inspections and/or tests will not be delayed by the absence of the Company Representative. Provided notice has been given by the Contractor in accordance with the above, the Contractor may proceed with the inspections and/or tests on the date and at the



time and place indicated in the notice. The Contractor must forward to the Company Representative duly certified copies of the results of the inspections and/or tests carried out.

9.2.3 In the event that the Company Representative cannot be present to witness inspections and/or tests on any Deliverables where he had indicated his intention to be present, and provided that notice had been given by the Contractor in accordance with the above, the Contractor will again dismantle/disassemble, open or uncover such part of the Deliverables if the Company Representative so directs and again perform the specified inspections and/or tests to the satisfaction of the Company Representative at a time specified by the Company Representative. The cost of such dismantling/disassembling, opening or uncovering and inspection and/or testing will then be for the account of the Company.

9.2.4 If the Company Representative requires that the Deliverables be re-tested, the tests will be repeated under the same conditions as the previous tests. The Company Representative may direct the Contractor to perform additional or alternative inspections and/or tests for specific Deliverables. Costs of such inspections and/or tests will be for the Company's account.

### **9.3 Defects**

9.3.1 If any part or the whole of the Deliverables is Defective, the Company will, without prejudice to any other rights that the Company may have in terms of the Contract or in law, be entitled to reject any such defective Deliverables and the Company may:

- (a) instruct the Contractor to replace, redo or make good the Defective Deliverables; or
- (b) purchase replacement the Defective Deliverables or part of the Defective Deliverable from a third party and the Contractor will be liable to the Company for any excess cost of the Deliverables incurred by the Company; or
- (c) instruct the Contractor to purchase replacement the Defective Deliverables or part of the Defective Deliverable from a third party and the Contractor will be liable to the Company for any excess cost incurred by the Company; or

9.3.2 Failure on the part of the Company to implement the provisions of this Clause will not prejudice or affect the rights of the Company to invoke the said provisions in a subsequent delivery of service.

### **9.4 Failure to Remedy Defects**

9.4.1 If the defect is such that the Company has been deprived substantially of the Deliverables or a part thereof, the Company may terminate the Contract in respect of such parts of the Deliverables that cannot be put to the intended use. The Company will, to the exclusion of any remedy it may have in terms of the Contract or under law, be entitled to recover from the Contractor all sums paid in respect of such parts of the Deliverables. If applicable, this will include the cost of dismantling same, clearing the Site and returning unusable Contractor's Equipment and material to the Contractor or otherwise disposing of it in accordance with the Contractor's instructions.

### **9.5 Access to the Deliverables and Tests**

9.5.1 The Contractor will have the right of access to all parts of the Deliverables and to records of the Deliverables. Such right of access will be during the Company's normal working hours at the Contractor's risk and cost. Access will also be granted to any authorised representative of the Contractor whose name has been communicated in writing to the Company Representative. Subject to the Company Representative's approval, the Contractor may also, at its own risk and cost, make any tests that it considers necessary.



## 9.6 Making Good Defects

- 9.6.1 The Company may request the Contractor to make good the defect, or it may, at its sole discretion, either do the work itself or employ a third party to make good the defect.
- 9.6.2 If the defect is such that repairs cannot be expeditiously carried out on the Site, the Contractor may, with the written consent of the Company Representative, remove all of the Deliverable(s) from the Site, or any such part of the Deliverables that is defective, for the purposes of repair or reparation.
- 9.6.3 The Contractor will make good the defect(s) as soon as practicable.

## 10 Risk and Indemnity

### 10.1 Indemnification by the Contractor

- 10.1.1 The Contractor must indemnify and hold harmless the Company and its Personnel (each, "Company Indemnified Person") from and against any claim, loss or expense (including legal fees and expenses) which a Company Indemnified Person incurs, suffers or sustains arising out of or in connection with:
  - (a) any misrepresentation by the Contractor or breach of express representation or warranty given or made by the Contractor under this Contract;
  - (b) the non-fulfilment of any covenant or obligation on the part of Contractor under this Contract or any breach by the Contractor of this Contract;
  - (c) any wrongful, negligent act or omission of the Contractor, or any of its Personnel;
  - (d) the breach of, or failure to comply with, any Applicable Law by the Contractor, or its Personnel;
  - (e) a failure by the Contractor to pay any of its Personnel;
  - (f) any contamination, pollution, or public or private nuisance, related directly to this Contract or the Deliverables arising from any act, omission, negligence, default or breach by Contractor or any of its Subcontractors;
  - (g) damages arising out of acts of corruption determined under the applicable Laws by Contractor or any Subcontractor;
  - (h) third party claims for violation or infringement of any domestic or foreign patents, copyrights or trademarks or other intellectual property, or any improper use of confidential information or other proprietary rights that may be attributable to Contractor or any Subcontractor in connection with the Services;
  - (i) third party claims for damages for breach by the Contractor or any Subcontractor of the obligations to secure and maintain Contractor permits;
  - (j) any and all claims by any employee of the Contractor or any of the Subcontractors or Personnel employed by any of them;
  - (k) the vitiation of any insurance policies due to the Contractor's or any Subcontractor's breach of any representation, declarations or conditions contained in any insurance policy, including the provision of false or misleading information;
  - (l) bodily injury, sickness, disease or death, of any person whatsoever related directly to this Contract or the Deliverables arising from any act, omission, negligence, default or breach by Contractor or any of its Subcontractors, except to the extent caused or contributed to by breach of any provision of this Contract by the Company or its Personnel or any negligent act, omission or wilful misconduct of the Company or its Personnel; and

- (m) damage to or loss of any property, real or personal related directly to this Contract or the Deliverables arising from any act, omission, negligence, default or breach by Contractor or any of its Subcontractors, except to the extent caused or contributed to by breach of any provision of this Contract by the Company or its Personnel or any negligent act, omission or wilful misconduct of the Company or its Personnel.

## 10.2 Indemnification by Company

- 10.2.1 The Company must indemnify and hold harmless the Contractor and its Personnel (each, a "Contractor Indemnified Person") from and against any Claim, loss or expense (including legal fees and expenses) which a Contractor Indemnified Person incurs, suffers or sustains arising out of or in connection with:
  - (a) bodily injury, sickness, disease or death, of any person whatsoever related directly to this Contract or the Deliverables arising from any act, omission, negligence, default or breach by Company, except to the extent caused or contributed to by breach of any provision of this Contract by the Contractor or its Personnel or any negligent act, omission or wilful misconduct of the Contractor or its Personnel; and
  - (b) damage to or loss of any property, real or personal related directly to this Contract or the Deliverables arising from any act, omission, negligence, default or breach by Company or any, except to the extent caused or contributed to by breach of any provision of this Contract by the Contractor or its Personnel or any negligent act, omission or wilful misconduct of the Contractor or its Personnel.

## 10.3 Indemnification and Third Parties

- 10.3.1 All claims for indemnification by any indemnified person (whether under clauses 10.1 or 10.2) as to a third party claim asserted or initiated against such indemnified person must be asserted and resolved as set out in this clause 10.3.
- 10.3.2 If any third person notifies any person indemnified under clauses 10.1 or 10.2 (each, an "Indemnified Party") with respect to any matter (a "Third-Party Claim") that may give rise to a claim for indemnification against a Party ("Indemnifying Party") under clauses 10.1 or 10.2 the Indemnified Party must promptly (and in any event within 10 Business Days after receiving notice of the Third-Party Claim from such third party) notify the Indemnifying Party of the Third Party Claim.
- 10.3.3 Notwithstanding Clause 10.3.2, no delay on the part of an Indemnified Party in notifying the Indemnifying Party will relieve the Indemnifying Party of any of its obligations clauses 10.1 or 10.2 (as the case may be) unless and then solely to the extent that the Indemnifying Party is irrevocably prejudiced by such delay.
- 10.3.4 The notice given by an Indemnified Party under Clause 10.3.2 must include a description of the Third-Party Claim and copies of all documents relating to the Third-Party Claim.
  - (a) Any Indemnifying Party will have the right to assume and thereafter conduct the defence of the Third-Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Party, except in the event of a conflict of interest, in which case the Indemnified Party will have the right to retain its own counsel at the cost of the Indemnifying Party.
  - (b) Notwithstanding the foregoing the Indemnifying Party must not consent to the entry of any judgment or enter into any settlement with respect to the Third-Party Claim without the prior written consent of the Indemnified Party (not to be unreasonably withheld, conditioned or delayed) unless the judgment or proposed settlement fully releases such Indemnified Party with respect to such Third-Party Claim or involves only the payment of money damages that are

covered in full by the indemnity and does not impose an injunction or other equitable relief upon the Indemnified Party and is subject to confidentiality provisions acceptable to the Indemnified Party (which approval of such provisions must not be unreasonably withheld, conditioned or delayed by the Indemnified Party).

- 10.3.5 An election to assume the defence of a Third-Party Claim will not be deemed to be an admission that the Indemnifying Party is liable to the Indemnified Party in respect of such Third-Party Claim. Unless and until an Indemnifying Party assumes the defence of the Third-Party Claim as provided for in this Clause 10.3 the Indemnified Party may defend against the Third-Party Claim in any manner it reasonably may deem appropriate.
- 10.3.6 To the extent the Indemnifying Party controls or participates in the defence, settlement or compromise of a Third-Party Claim, the Indemnified Party must, from time to time:
- (a) provide the Indemnifying Party and its counsel access to, during normal business hours, Documentation and other information of the Indemnified Party relevant to the Third Party Claim but excluding any documentation or advice (whether in permanent or electronic form) the subject of legal professional privilege;
  - (b) permit the Indemnifying Party and its counsel to consult with the Personnel and counsel of the Indemnified Party; and
  - (c) cooperate with the Indemnifying Party in any reasonable manner requested by the Indemnifying Party and use commercially reasonable efforts to assist the Indemnifying Party in the defence, settlement or compromise of such Third-Party Claim as and when requested by the Indemnifying Party.

## 10.4 Limitation of Liability

- 10.4.1 The aggregate liability of either Party to the other Party in connection with this Contract or any claim made in respect of the Services or this Contract will not exceed the amount of:
- (a) where the Claim or liability arises from is an insured risk under an insurance policy required to be maintained by the liable Party in accordance with this Contract, to the total amount paid under that insurance policy in respect of the claim; and
  - (b) in respect of all other Claim or liabilities which are not an insured risk under an insurance policy required to be maintained by the liable Party in accordance this Contract, the twice the value of the Contract Price.
- 10.4.2 If clause 10.4.1 (a) applies to a Claim made in respect of the Deliverables or this Contract and if the liable Party:
- (a) has not diligently pursued the relevant claim for indemnity under the relevant insurance policy; or
  - (b) has failed to effect or maintain the relevant insurance policy as required by this Contract; or
  - (c) an act or omission of the liable Party voids or otherwise prejudicially affects such insurance policy or the amount of any proceeds to be obtained from such insurance policy,
- then proceeds from the insurance policy will be deemed to be equal to the proceeds which would have been received had the events referred to in clauses (b) to (c) not taken place.

## 10.5 No Consequential Losses

- 10.5.1 Notwithstanding any other provision in this Contract to the contrary, neither Party will be liable to the other Party for or in relation to any indirect or consequential loss, liability or damage.

## 10.6 Exclusions and carve-outs

- 10.6.1 The limitation of liability stated under clause **Error! Reference source not found.** and 10.5, shall not apply to any liability in respect of:
- (a) Delay damages and low performance damages incurred under Clause **Error! Reference source not found.** (in respect of Clauses 10.4 only);
  - (b) a breach of a warranty contained in this Contract (in respect of Clauses 10.4 only);
  - (c) an express contractual indemnity covered under this Contract;
  - (d) a Third-Party Claim covered in this Contract;
  - (e) an intellectual property claim covered in this Contract;
  - (f) fraud, gross negligence, deliberate or reckless default, reckless misconduct, fraudulent misrepresentation by the defaulting Party;
  - (g) any untrue representation or warranty by the liable Party or any of its Subcontractors;
  - (h) illegal or unlawful acts or omissions, by the defaulting Party, its employees, agents, and Subcontractors;
  - (i) the abandonment of this Contract; and
  - (j) matters which cannot be excluded by law.

## 10.7 Obligation to Mitigate

- 10.7.1 Each Party shall exercise reasonable efforts to mitigate or limit its losses or damage in the event of a breach or default by the other Party under or in connection with this Contract, including in the event of termination of this Contract.

## 10.8 No Double Recovery

- 10.8.1 Notwithstanding any other provisions of this Contract, neither Party shall be entitled to recover compensation or make a Claim under this Contract in respect of any loss that it has incurred to the extent that it has already been compensated in respect of that loss pursuant to this Contract or otherwise.

# 11 Insurance

## 11.1 Insurance to be maintained

- 11.1.1 The Contractor will, at its own cost and expense, obtain and maintain in force during the currency of the Contract:
- (a) insurance in amounts sufficient to cover its liabilities under the Indemnities clauses of the Contract;
  - (b) insurance against any liability to pay damages or compensation to its Personnel with an insurer approved by the Company (which approval will not be unreasonably withheld). The Contractor will ensure that all its Subcontractors insure against this liability with regard to their own employees; and
  - (c) insurance on all the Contractor's Equipment owned, hired or operated by it. Such insurance will provide cover to the full value of the Contractor's Equipment, will be arranged in the joint names of the Contractor and the Company and will be effected with an insurer approved by

the Company (which approval will not be unreasonably withheld). The Contractor must ensure that all Subcontractors have such insurance with regard to their own equipment;

- (d) Public liability insurance in amounts sufficient to cover its liability for accidental death of or injury to third parties 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 Contractor's presence on the Site, including during the maintenance of Defects Liability Period;
  - (e) Motor vehicle insurance in respect of all motor vehicles brought onto the Site by the Contractor.
- 11.1.2 In the case of the Contractor's operations, should any person (in the execution of this Contract) be injured or killed in circumstances where such injury or death would result in a "Simrac" levy being imposed in terms of Chapter 35 of the Regulations promulgated in terms of the Minerals Act, No. 50 of 1991, then unless such injury or death was caused exclusively by the Company, its employees or representatives or any third party or their employees or representatives, the Contractor shall be liable to the Company for an amount equal to the total amount of levies that will be payable by the Company as a result thereof, calculated at the then ruling levy applicable at the site of the Company where the incident causing the injury or death occurred. Such amount shall be payable on demand or shall be deducted from any monies due to the Contractor as a lump sum one-off payment.

## 11.2 Requirements and Obligations

- 11.2.1 Insurance will be maintained in full force and effect for the duration of the Contract and the Company may request written proof of the existence and terms of such insurance.
- 11.2.2 The Contractor hereby waives subrogation against and releases Company and its directors, officers, employees and representatives from all liability covered by the Contractor's insurances for losses or claims arising out of the Contractor's performance of the Deliverables.

## 11.3 Failure to Insure

- 11.3.1 If the Contractor fails to effect and keep in force any insurance which it may be required to effect as above, then the Company may effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid from any payments due or which may become due to the Contractor or recover same as a debt from the Contractor. This will not relieve the Contractor from its liability in the event of damage.

# 12 Confidentiality

## 12.1 Protection of Confidential Information

- 12.1.1 'Receiving Party' will mean the Party receiving the other's Confidential Information and 'Disclosing Party' will mean the Party disclosing its Confidential Information to the other Party.
- 12.1.2 The Receiving Party may disclose Confidential Information only to its officers and employees and then only such officers and employees to whom such disclosure is necessary, provided that such officers and employees agree in writing to be bound by the terms and conditions of this Clause.
- 12.1.3 The Receiving Party agrees
  - (a) not to disclose Confidential Information to any third party for any reason or purpose whatsoever without the prior written consent of the Disclosing Party;
  - (b) not to utilise, employ, exploit or in any other manner whatsoever use Confidential Information for any purpose whatsoever other than in relation to the Contract;

- (c) that the unauthorised or unlawful use or disclosure of Confidential Information may cause irreparable loss, harm and damage to the Disclosing Party, which Party make take recourse in the law.
- 12.1.4 The Receiving Party agrees to protect Confidential Information by using the same standard of care used to safeguard its own information of a confidential nature and by taking all reasonable steps to prevent any unauthorised disclosure of Confidential Information.
- 12.1.5 The Disclosing Party may, at any time by way of written notice to the Receiving Party, require the Receiving Party to return any material containing, pertaining to or relating to Confidential Information and to expunge such Confidential Information from any word processor, computer or other similar device into which it was entered or programmed, and may, in addition, require the Receiving Party to furnish a written statement (certified as correct by a director of the Receiving Party) to the effect that, upon such return, the Receiving Party has not retained in its possession, or under its control, either directly or indirectly, any such material. The Receiving Party will comply with all requirements in terms of this Clause within 7 (seven) days of receipt of written notice thereof.

## **12.2 Exclusions**

- 12.2.1 The obligations of the Receiving Party pursuant to the provisions of the Contract will not apply to any information that:
  - (a) is known to or in the possession of the Receiving Party prior to disclosure thereof by the Disclosing Party;
  - (b) is or becomes publicly known, otherwise than pursuant to a breach of the Contract by the Receiving Party;
  - (c) is acquired or developed independently of the Disclosing Party by the Receiving Party in circumstances that do not amount to a breach of the provisions of the Contract;
  - (d) is disclosed by the Receiving Party to satisfy the order of a Court of competent jurisdiction or to comply with provisions of any law or regulations in force from time to time, provided that in these circumstances, the Receiving Party will advise the Disclosing Party in writing prior to such disclosure to enable the Disclosing Party to take whatever steps it deems necessary to protect its interest in this regard; provided further that the Receiving Party will disclose only that portion of the Confidential Information that it is legally required to disclose and the Receiving Party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent possible in the circumstances;
  - (e) is disclosed to a third party pursuant to the prior written authorisation from the Disclosing Party;
  - (f) to the extent necessary under the rules of any recognised stock exchange.
  - (g) The Contractor may not take any photographs, with any device, of any of the Company's premises, workings, Employees or any other thing belonging to the Company or relating to the Contract, without the express written permission of the Company.

## **12.3 Disclosure, Use or Copying of Confidential Information**

- 12.3.1 The Contractor may not make press releases or issue other advertising pertaining to the Contract without first obtaining the written approval of the Company.
- 12.3.2 The Contractor may not use the Company's name for marketing or advertising purposes.
- 12.3.3 Breach of this Clause will be a material breach of the Contract, entitling the non-breaching Party to summarily terminate the Contract in addition to any other remedies available to it in law.

- 12.3.4 The rights and obligations contained in this Clause will continue in full force and effect after termination or completion of the Contract.
- 12.3.5 The Receiving Party acknowledges and agrees that the Disclosing Party has expended considerable time, effort and expense in establishing a reputable brand and that the Confidential Information, if used or disclosed in breach of its obligations under these General Conditions, may have or are be likely to have an adverse effect on the Disclosing Party for which the Receiving Party may be held liable in damages.
- 12.3.6 Copies Necessary for the Execution of the Work: The Receiving Party may make copies of written or computer-stored materials incorporating Confidential Information only if those copies are necessary for the execution of the Work and must return to the Disclosing Party all Confidential Information (including any copies made by it) and permanently delete any Confidential Information stored by it in a computer or electronic retrieval system so that it is incapable of retrieval, within 7 (seven) days of the first to occur of the following:
- (a) a receipt of a request from the Disclosing Party to do so; or
  - (b) the termination of the engagement of the Contractor in accordance with the Breach and Termination Clause, and
  - (c) provide a certificate to the Disclosing Party within 7 (seven) days that these obligations have been complied with. The provisions of this Clause will not apply to any copies of such electronic storage made for bona fide back-up purposes in the normal course of the Contractor's business, but the duties of confidentiality of the Contractor will continue in respect of such back-up media.
- 12.3.7 The Receiving Party must notify the Disclosing Party immediately if it becomes aware of, or suspects, any disclosure, use or copying of Confidential Information that is not authorised and must take all steps reasonably required by the Company to stop that unauthorised disclosure, use or copying.
- 12.3.8 The Receiving Party must restrict disclosure of the Confidential Information to employees who need to know it in order to execute the Contract and must ensure that those employees execute confidentiality agreements similar in effect to this entire Confidentiality Clause.
- 12.3.9 The Contractor will not, without the prior written consent of the Company,
- (a) publish, cause or permit to be published any article, story or other material having any reference whatsoever to the Deliverables; or
  - (b) display any advertisements in connection with the Deliverables.

## 13 Intellectual Property

### 13.1 Third Party Intellectual Property Rights Infringement

- 13.1.1 The Contractor will in no way infringe or allow any infringement of a third party's intellectual property rights in the performance of its obligations in terms of the Contract. The Contractor hereby warrants that it holds all necessary licences, authorities and permissions necessary to perform its duties and that where necessary it will assign the benefit of the same to the Company in respect of the Work.
- 13.1.2 The Contractor hereby indemnifies the Company against any claims arising against it as a result of any such infringement by the Contractor, including all costs, damages and attorney fees, if any, finally awarded against the Company in any action which is attributable to such claim and will reimburse the Company with all costs including management time and legal costs incurred by it in connection with any such action (including providing guarantees for such costs satisfactory to the Company); provided that the Company gives written notice to the Contractor of such action.



- 13.1.3 The indemnity will not apply to any infringement of Intellectual Property Rights that is due entirely to the Contractor following a design or process stipulated by the Company, provided that such infringement was not at the time known by the Contractor to be an infringement.
- 13.1.4 It is a condition of this indemnity that the Company will give the Contractor notice of any action, proceeding, claim or threat instituted or made against it. The Company will consult with the Contractor and the Company has the option to either:
- (a) permit the Contractor, at Contractor's expense, to conduct all negotiations or any litigation that may ensue with the proviso that the Company is informed of all actions taken and the results thereof; or
  - (b) conduct any negotiations or litigation that may ensue, with the proviso that the Contractor will be consulted and will not be liable for costs incurred, outside the normal course of litigation, of which the Contractor does not approve.

## **13.2 Intellectual Property and Discoveries**

- 13.2.1 The Company grants the Contractor a non-exclusive right and license to use the Company's Background Intellectual Property including the Technical Information solely for the purpose of undertaking its obligations under the Contract.
- 13.2.2 The Company and the Contractor shall retain the rights in and to their respective Background Intellectual Property.
- 13.2.3 The Contractor may in its sole discretion include its Background Intellectual Property in the Deliverables and the Contractor Documents solely to enable the Client to understand and interpret the Deliverables and the Contractor Documents. The inclusion of the Contractor's Background Intellectual Property in the Deliverables and the Contractor Documents:
- (a) will be clearly marked as Contractor Background Intellectual Property and distinguished from Foreground Intellectual Property; and
  - (b) will be subject to the confidentiality provisions applicable to the Contract.
- 13.2.4 Unless otherwise stated and to the extent that the Company wishes to use any of the Contractor's Background Intellectual Property, the Contractor shall grant the Company a license to use the Contractor's Background Intellectual Property.
- 13.2.5 The rights in and to all Discoveries shall vest in the Company. The rights however in and to Discoveries which constitute the improvement, modification or development of Contractor's Background Intellectual Property shall vest in the Contractor.

## **14 Default and Termination**

### **14.1 Termination by the Company**

- 14.1.1 If the Contractor breaches any material provision or term of the Contract which is capable of remedy and fails to remedy such breach within 10 (ten) business days of receipt of written notice from the Company requiring it to do so, then the Company will be entitled, without notice and in addition to any other remedy available to it at law or under the Contract, to:
- (a) claim immediate specific performance of all of the Contractor's obligations; or
  - (b) execute the Deliverables itself or acquire the Deliverables from a third party, in which event the Company will be entitled to recover from the Contractor any amount so paid and any costs, expenses, loss and damages associated with acquiring the Deliverable from such third party; or



(c) terminate the Contract,  
without prejudice to its right to claim damages arising from such breach.

14.1.2 The Contractor will 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, in the event that:

- (a) the Contractor goes into liquidation, business rescue or judicial management (whether provisional or final), or commits any act of insolvency;
- (b) a judgement is given against the Contractor in any competent court for more than R5 million, which judgement is not paid or appealed within 14 (fourteen) Business Days;
- (c) a change in ownership or shareholding occurs that may affect the quality or delivery of Deliverables;
- (d) the Contractor breaches a material provision or term of the Contract which cannot be remedied;
- (e) the Contractor fails to comply with the Company Standards;
- (f) the Contractor commits or permits an action which brings the Company into public disrepute;
- (g) the Contractor breaches any of the warranties in the Contract;
- (h) the Contractor carries out the same or a similar breach more than once in 6 (six) months;
- (i) the Contractor breaches the Anti-Bribery and Sanctions Laws and Policies Clause;
- (j) the Contractor or anyone in its employ pays or offers to pay, or gives or offers to give, any money or 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;
- (k) the Contractor breaches any Applicable Laws;
- (l) the Contractor fails to take out and maintain a licence or permission to carry out the Deliverables;
- (m) the Contractor and Company fail to reach agreement on a change in Price arising from any annual adjustment.

14.1.3 The Company may, at its option, terminate the Contract in whole or in part at any time by giving 60 (sixty) days' written notice thereof to the Contractor, whether or not the Contractor is in default, without incurring any liabilities arising from the early termination of the Contract. The Company may itself complete the remaining portion of the Deliverables or have this completed by others.

14.1.4 Upon any such termination, the Company will pay to the Contractor all amounts due and not previously paid to the Contractor for Deliverables completed in accordance with the Contract, as at the date of termination.

## **14.2 Termination by the Contractor**

14.2.1 If the Company breaches any material provision or term of the Contract and fails to remedy such breach within 10 (ten) business days of receipt of written notice from the Contractor requiring it to do so, then the Contractor will be entitled, without further notice and in addition to any other remedy available to it at law or under the Contract to:

- (a) claim immediate specific performance; or
- (b) terminate the Contract

without prejudice to its right to claim direct damages arising from such breach.

- 14.2.2 The Company will be deemed to have breached the Contract, entitling the Contractor, without prejudice to any other rights that the Contractor may have in law or in terms of the Contract, to cancel the Contract forthwith, with or without claiming damages, in the event that:
- (a) the Company goes into liquidation, business rescue or judicial management (whether provisional or final), or commits any act of insolvency;
  - (b) the Company carries out the same or a similar breach more than once in 6 (six) months;
  - (c) the Company breaches the Anti-Bribery and Sanctions Laws and Policies Clause;
  - (d) the Company breaches any relevant legislation;

### 14.3 Effect of Termination

- 14.3.1 Regardless of the manner in which the engagement of the Contractor is terminated, the following Clauses are expressly agreed as surviving such termination, in addition to any other such provision in the Contract:
- (a) Indemnities;
  - (b) Warranties;
  - (c) Confidentiality;
  - (d) Intellectual Property;
  - (e) Resolution of Disputes.
- 14.3.2 In the event that the Company terminates the Contract for whatsoever reason and appoints a contractor of its choice to complete the Deliverables, the Contractor will actively participate and ensure a smooth handover to the new contractor. This will include, but is not limited to, providing all relevant Documentation.
- 14.3.3 The Contractor shall take any or all of the following actions immediately after receipt of the notice of termination:
- (a) cease providing the Deliverables and, if required by the Company, performance of the Deliverables, except as may be reasonably necessary to terminate the development and implementation or handover of the performance of the Deliverables to the Company;
  - (b) ensure that the Site and relevant portions of the Mine relevant to the Deliverables, are left in a safe condition and are properly secured in accordance with the Company's directions;
  - (c) not place any further purchase orders nor enter into any further contracts in respect of the Deliverables (and shall ensure that its Subcontractors mitigates this risk by not placing any further purchase orders nor enter into any further contracts ;
  - (d) remove from any office of the Contractor located on the Site all Contractor Personnel, and Equipment and other things brought on to the Site by or on behalf of the Contractor or Contractor's Personnel, unless otherwise directed by the Company;
  - (e) take any other action relating to the Deliverables which the Company may reasonably require;
  - (f) do all things reasonably possible to mitigate expenses or costs to the Company consequent upon such termination;
  - (g) assign to the Company and all rights (if any) of the Contractor under any subcontracts;
  - (h) do all things reasonably required by Company to assist Company to place Company or its nominee in possession and control of the Site so as to allow (if applicable) the continuation of the Deliverables on the Site;

- (i) provide such assistance as Company may require to effect an orderly hand over of the Deliverables to any of the prospective incoming contractor(s) and/or Company to take over the Deliverables. Such assistance includes, but is not limited to, the Contractor making itself available to deal with requests for information, provide assistance, be available for transition or handover meetings, and to advise on matters relating to the Deliverables.
- (j) ensure that all liabilities and debts, which includes, but is not limited to Subcontractor debts, and Contractor's Personnel and employee salaries and benefits, incurred prior to the effective termination date are settled in full or that arrangements are in place for Contractor to settle these accounts.
- (k) deliver to the Company within 10 Business Days after the date of termination:
  - (i) all Documentation;
  - (ii) any document recording, containing, setting out or making reference to the Deliverables;
  - (iii) copies of all documentation relating to the Deliverables;
 except that the Contractor may keep 1 copy of such documentation and material in accordance with the confidentiality obligations of this Agreement.

#### 14.4 Curtailment and Cessation of Operations

- 14.4.1 Notwithstanding any other Clause in the Contract, the Company will be entitled to terminate the Contract in its entirety, or to reduce the scope of the Deliverables in the event of the Company experiencing a material and significant curtailment of operations, or ceasing to carry out any mining activities, as the case may be, in the country where the Contract normally applies.
- 14.4.2 The Contractor will bear its own direct and indirect costs connected with or incidental to such termination, including the purchase of specialised equipment or vehicles for the Contract. The Contractor will not in any event be entitled to additional or extra compensation by reason of this termination.
- 14.4.3 Upon termination in terms of this Clause, the Company will not be liable to the Contractor for damages, any other claim or compensation arising out of the termination, whether for loss of business, profits or any other cause.

## 15 Force Majeure

### 15.1 Definition of Force Majeure

- 15.1.1 For the purposes of this Contract ("**Force Majeure**") means, other than as a consequence of the negligence or default of a Party, an event or cause:
  - (a) which is beyond the control of the Party claiming Force Majeure,
  - (b) which is not able to be avoided or overcome by the exercise of reasonable care, proper precautions and the consideration of reasonable alternatives with the intention of avoiding the effects of the Force Majeure of the Party claiming Force Majeure,
  - (c) which could not have been reasonably foreseen before entering in this Contract, by the Party claiming Force Majeure,
  - (d) which is not substantially attributable to the Party claiming Force Majeure,
  - (e) and includes (subject to satisfying the requirements of the foregoing):
    - (i) an act of God (other than adverse weather conditions);
    - (ii) cyclones, fire, violent wind storms, or floods (other than adverse weather conditions);

- (iii) acts of war, acts of public enemies, terrorist acts, riots or civil commotions;
- (iv) strikes, interference of trade unions, lockout, secondary boycott, civil or community unrest by people that are not the Contractor's employees, Contractor's Personnel, or that of its Subcontractors;
- (v) laws, rules and regulations or orders of any Governmental Authority enacted or made after the Commencement Date that cause the performance of the Services to cease;
- (vi) any failure to act by any Governmental Authority, which requires the Governmental Authority to act as prescribed by any applicable Laws, including the unlawful denial in granting any Permit upon due application and diligent effort by the Party complying with its obligations under this Contract to obtain same, or the unlawful failure once granted to remain (without justifiable cause) in full force and effect or to be renewed on substantially similar terms;
- (vii) protests, demonstrations or other events by environmental lobbyists, non- governmental organizations or local community groups that cause the performance of the Services to cease;
- (viii) A pandemic or epidemic that cause the performance of the Services to cease;
- (ix) A major or material disruption to the mining operations which prevents the mine from operating and does not result in the Company terminating the Contract pursuant to 14.4 or a major or material disruption to the mining operations which prevents the Contractor from performing the Scope or a part of the Scope of Deliverables. Such major disruptions may include safety related stoppages ("Major Operations Disruption").

15.1.2 but does not include:

- (a) economic hardship, or for lack of money, credit or markets or inability to pay any sum of money due and payable under this Contract;
- (b) strikes, interference of trade unions, lockout, secondary boycott, civil or community unrest, a riot, stoppage of work, slowdown or withdrawal of labour caused by a strike or lockout strike or lockout involving the Contractor, its Subcontractors or its Personnel;
- (c) late performance by the Contractor caused by the Contractor's failure or inability to engage or retain qualified Personnel or to hire an adequate number of Personnel;
- (d) submission by the Contractor of material for review by the Company at a time later than that provided for in this Contract or Project Schedule, unless such late submission is itself caused by and delayed by a Force Majeure;
- (e) delays resulting from adverse weather and other environmental conditions

## 15.2 Notice of Force Majeure

15.2.1 A Party will not be liable for any delay or failure to perform any of its obligations under this Contract (other than an obligation of indemnification or to pay money) if as soon as possible after the beginning of the Force Majeure affecting the ability of the Party to perform any of its obligations under this Contract, it gives a notice to the other Party, which notice must, as a condition precedent to an entitlement, in any event be given within 3 (three) Business Days of the Party becoming aware or ought reasonably to have become aware of the Force Majeure arising.

15.2.2 The force Majeure notice must:

- (a) specify the obligations the Party cannot perform;
- (b) fully describe the Force Majeure;

- (c) estimate the time during which the Force Majeure will continue; and
- (d) specify the measures proposed to be adopted to remedy or abate the Force Majeure.

### **15.3 Obligation to Remedy and Mitigate**

- 15.3.1 The Party that is prevented from carrying out its obligations under this Contract as a result of Force Majeure must:
- (a) remedy the Force Majeure to the extent reasonably practicable and resume performance of its obligations as soon as reasonably possible; and
  - (b) take all action reasonably practicable (but without any obligation to make any monetary payment) to mitigate any liability suffered by the other Party as a result of its failure to carry out its obligations under this Contract.

### **15.4 Consequences of Force Majeure**

- 15.4.1 Notwithstanding the foregoing, nothing will require the Party that is prevented from performing its obligations under this Contract as a result of Force Majeure to resolve or compromise any labour dispute or to question or to test the validity of any law, rule, regulation or order of any Governmental Authority or to perform its obligations under this Contract if Force Majeure renders performance impossible.
- 15.4.2 Neither Party will be liable to the other Party for any costs, loss or damages, penalties or inconvenience suffered by the other Party as a result of a Force Majeure event and each Party will bear its own direct and indirect costs for the time that it is affected by the Force Majeure event, A Party will not in any event be entitled to additional or extra compensation by reason of the Force Majeure event.
- 15.4.3 Subject to clause 16.1, if a Party's performance is delayed by a Force Majeure event, the Party will be entitled to an extension of time for performance.

### **15.5 Termination**

- 15.5.1 If the Force Majeure continues for a period greater than 6 (six) consecutive months and such Force Majeure event prevents a Party from performing any of its obligations under this Contract for a period greater than 6 (six) consecutive months, then either Party will have the right to terminate this Contract. If the Force Majeure continues for a period longer than 3 (three) consecutive months, the Parties shall meet in good faith to negotiate a fair and reasonable resolution to deal with the impact of the continuing Force Majeure event for the Company to consider as the way forward, which resolution must not adversely impact either Parties.
- 15.5.2 Subject to this Contract, upon termination of this Contract:
- (a) each Party remains liable for any obligation or liability of it which accrued or arose under this Contract before the date of termination;
  - (b) each Party is released from its obligation to further perform this Contract; and
  - (c) no Party may make any claim against the other Party arising out of or in connection with the termination of this Contract.

## **16 Claims, Disputes and Arbitration**

### **16.1 Claims**

- 16.1.1 If there are any circumstances in which the Contractor considers itself entitled to claim additional payment, costs or an extension of time, pursuant to clause 16.2, for completing the Deliverables, the Contractor will:

- (a) give written notice to the Company Representative of its intention to claim for additional payment, costs or an extension of time, within 14 (fourteen) days after becoming aware of the circumstances giving rise to the claim; and
  - (b) as soon as reasonably possible after the date of the written notice, but not later than 28 (twenty eight) days from such written notice, submit full and complete details of its claim to the Company Representative, together with any additional information that may be required to assess the validity of its claim.
- 16.1.2 After due consultation between the Company Representative and the Contractor, the Company Representative will determine whether the Contractor is entitled to additional payment or an extension of time to complete the Deliverables and will advise the Contractor accordingly. The Company Representative will initiate an Amendment to the Contract if the Company Representative determines that an additional payment is required.
- 16.1.3 The Company will not be liable for and the Contractor hereby waives its right to any claim or potential claim of the Contractor that was not reported by the Contractor in accordance with the provisions of this Clause. The Contractor agrees to continue performance of the Contract during the time that any claim of the Contractor is pending.

## **16.2 Extension of Time**

- 16.2.1 Subject to complying with clause 16.1, an written application to the Company for an extension of the Completion Date of a Deliverable will only be considered if:
- (a) the completion of the Deliverable is or will be delayed and the delay impacted the critical path pursuant to clause 16.5; and
  - (b) the delay was caused as a result of:
    - (i) force majeure; or
    - (ii) the impediment or event was caused by or attributable to the Company or the Company's Personnel and the Contractor has not contributed to the delay.
- 16.2.2 The Company Representative may grant such extension of time as is necessary to complete the execution of the Deliverables. The terms and conditions of any such extension of time granted will be confirmed by means of an Amendment to the Contract, issued by the Company.

## **16.3 Standing Time**

- 16.3.1 Subject to complying with clause 16.1, written application for Standing Time Claim will only be considered where:
- (a) the Scope of Deliverables are production related and not subject to a specific Completion Date;
  - (b) the Contractor was prevented from executing the Scope of Deliverables for more than a full and consecutive 24 hours by an event and impacted the critical path pursuant to clause 16.5;
  - (c) the event was caused by or attributable to the Company or the Company's Personnel; and
  - (d) the Contractor has not contributed to the delay.
- 16.3.2 If the Standing Time Claim meets the requirements of clause 16.3.1 the Company Representative may make a determination in accordance with clause 16.1.2 by allowing a cost relief. The cost relief will be limited to the Contractor's actual and proven direct costs and expressly excludes profit, profit-mark-up or indirect costs and overheads.

## **16.4 Contemporaneous Records**

- 16.4.1 The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Company. Without admitting liability, the Company may, after receiving any notice under this Section, monitor the record-keeping and/or instruct the Contractor to keep further contemporary records. The Contractor shall permit the Company to inspect all these records, and shall (if instructed) submit copies to the Company.

## **16.5 Critical Path Analysis**

- 16.5.1 Any claim or variation which entitles the Contractor to an adjustment to the Completion Date is subject to the Contractor proving that such claim or request directly affects its ability to perform the Deliverables on the critical path, as determined from the programme.
- 16.5.2 Any claim for a relieve for standing time is subject to the Contractor proving that the Contractor Personnel or rental equipment could not have been utilised in any other area of the Operations or Site.

## **16.6 Good Faith Negotiations**

- 16.6.1 In the event of any dispute or difference between the Parties relating to or arising from the Contract, the senior executives or senior non-executives Parties will first seek to informally resolve the dispute, in good faith, before resorting to any of the other formal dispute resolution procedures below, for a period of 20-days from a Party notifying a dispute.

## **16.7 Dispute Resolution**

- 16.7.1 If the Parties fail to settle a dispute informally in terms of Clause 16.2.1, either Party may refer the dispute to be settled by arbitration, in accordance with the construction (un-administered) arbitration Rules of the Arbitration Foundation of South Africa (AFSA). Such arbitration will be held in Johannesburg, unless otherwise agreed to.
- 16.7.2 Each Party agrees that the decision of the arbitrator in the arbitration proceedings
- (a) will be final and binding on each of them; and
  - (b) will be carried into effect; and
  - (c) may be made an order of Court by agreement between the Parties.
- 16.7.3 The appointment of the arbitrator will be agreed on between the Parties, but failing agreement between them within 5 (five) Business Days after the arbitration has been demanded pursuant to clause 16.7.1, either of the Parties will be entitled to request the Chairperson of the Johannesburg Bar Association to make the appointment. In making the appointment, the Chairpersons will have regard to the nature of the Contract, the dispute and shall appoint senior counsel of no-less than 10 years experience at the Johannesburg Bar.
- 16.7.4 The tariff applicable to any award of costs in the arbitration will be awarded on an attorney own client scale. Notwithstanding the foregoing, nothing will preclude either Party from applying to court for a temporary interdict or other relief of an urgent nature, pending the decision of the award of the arbitrator.



## Main Contract Option 1: Mining Services

### 1 General Provisions

#### 1.1 Additional Definitions

- 1.1.39 **Survey mark** means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring the Works.

### 3 The Contractor

#### 3.1 Additional General Obligations

- 3.1.3 The Contractor will provide all superintendence, labour, materials, Contractor's Equipment and all other things, whether of a temporary or permanent nature, required for the execution of the Contract and completion of the Deliverables and for the remedying of any defects in terms of the Contract, to the sole satisfaction of the Company.
- 3.1.4 The Contractor will give prompt written notice to the Company Representative, of any error, omission, fault or other defects in the specification for the Deliverables that the Contractor discovers when reviewing the Technical Information or executing the Contract. The Deliverables will include any work that is necessary to satisfy the Company's requirements that is implied by the Contract, and any work that, although not mentioned in the Contract, is deemed necessary for the completion or safe and proper and environmentally sound operation of the Deliverables, or for stability. Such additional work will be subject to the specifications of these Conditions.
- 3.1.5 The Contractor will be responsible for the adequacy, stability and safety of all Site operations and methods of construction and of all the Deliverables. The Contractor will, whenever required by the Company, submit details of the arrangements and methods that the Contractor proposes to adopt for the execution of the Contract. No alterations to these arrangements and methods will be made without the Company having been previously notified in writing by the Contractor.

#### 3.8 Contractor's Representative

- 3.8.1 The Contractor will employ a competent representative to superintend the carrying out of the Deliverables on the Site and will give him all the authority to act on the Contractor's behalf under the Contract.
- 3.8.2 Any instruction or notice that the Company Representative gives to the Contractor's Representative will be deemed to have been given to the Contractor.
- 3.8.3 The Contractor's Representative will be appointed as a 'Subordinate Manager' for the purposes of the MPRDA and MHSA and will be present on the Site during working hours. If the Contractor's Representative has to be absent from the Site for a period in excess of 24 (twenty-four) hours, an alternative representative must be appointed by the Contractor for the duration of that period. The Contractor may not revoke the appointment of its Representative or appoint a replacement without the prior written consent of the Company.
- 3.8.4 The Contractor will comply with and adhere strictly to the Company Representative's instructions on any matter, whether mentioned in the Contract or not, concerning the Deliverables. The Contractor will take instructions only from the Company Representative or his nominated, duly appointed and delegated assistant.

### **3.9 Site Data**

- 3.9.1 Except as otherwise provided for in the Contract:
- (a) The Contractor will be deemed to have obtained all necessary information as to risks, remediation work, defects, contingencies and other circumstances that may influence or affect the Deliverables.
  - (b) By signing the Contract, the Contractor accepts responsibility for having foreseen all reasonable difficulties and costs of successfully executing the Contract, including any rehabilitation or cleaning up of environmental pollution.
  - (c) The Contract Price will not be adjusted to take account of any unforeseen difficulties or costs. The Contract Price will be deemed to include all items necessary to execute the Contract in accordance with the requirements of the Company Representative and the specifications, and the Contract Price will be deemed to include all the Contractor's activities, costs and profits.

### **3.10 Physical Obstructions and Conditions**

- 3.10.1 Subject to clause 16.1 (the claims provisions under the Contract), if during the execution of the Contract on Site the Contractor encounters physical obstructions or conditions that could not have been reasonably foreseen by the Contractor in its capacity as a reasonable expert, the Contractor will be entitled at the Company's approval, which will not be unreasonably withheld to reimbursement of the additional costs reasonably incurred in consequence, including the extension of the time for completing the works, from the Company.
- 3.10.2 The Contractor's Representative and the Company Representative will certify such additional costs and the additional costs so incurred will be added to the Contract Price by means of a Variation to the Deliverables, as detailed in Clause 14 (Variations and Amendments).

### **3.11 Sufficiency of Contract Price**

- 3.11.1 The Contractor will be deemed to have satisfied itself of and taken account of:
- (a) all the conditions and circumstances affecting the Contract;
  - (b) the provision of the Deliverables as described in the Contract and all things incidental thereto to enable the Contractor to complete the Works;
  - (c) the general conditions and circumstances at the Site;
  - (d) the cost of conducting any environmental management in accordance with the environmental management plan, the clean-up of any environmental incident and the remediation and rehabilitation of the Site and the surrounding areas caused by the Contractor in executing the Contract, and
  - (e) the general labour position on Site.
- 3.11.2 All quantities contained in the Contract or Price schedule are estimated quantities only. Such estimated quantities are not guaranteed or warranted by the Company.

### **3.12 Setting Out the Works**

- 3.12.1 Unless otherwise specified in the Contract, the Company will set out the Works and, without limitation, will survey the Site and set out all survey marks, levels, boundaries and profiles required by the Contractor to perform the Works.

- 3.12.2 The Contractor shall keep in their true positions all survey marks supplied by the Company's Representative.
- 3.12.3 If a survey mark is disturbed or obliterated, the Contractor shall immediately notify the Company's Representative and, unless it is due to the fault of the Contractor or its employees, agents or suppliers, the Company shall reinstate the survey mark at its own cost.
- 3.12.4 If the Contractor discovers an error in the position, level, dimensions or alignment of any Works, the Contractor shall immediately notify the Company's Representative.

### **3.13 Quality Assurance**

- 1.13.1 The Contractor shall:
  - (a) plan, establish and maintain a Quality Assurance Plan which conforms to the Company's quality assurance requirements, the EMS and the Company's safety management system; and
  - (b) provide the Company's Representative with access to the Contractor's Quality Assurance Plan to enable monitoring and quality auditing.
- 1.13.2 Any such quality system shall be used only as an aid to achieving compliance with the Contract and to document such compliance. Such system shall not relieve the Contractor of the responsibility to comply with the Contract.

### **3.14 Site Meetings**

- 3.14.1 Site meetings will be held at times and dates to be agreed to between the Parties. The Contractor will ensure that one or more representatives of the Contractor are present at such meetings, having the necessary authority to make decisions on the Contractor's behalf. In addition, the Contractor must ensure that it represents all its Sub-contractors. Minutes of any Site meeting will not be deemed to serve as notice for or an instruction to commence any additional work and/or notice of claims.

### **3.15 Electricity, Water and Compressed Air**

- 3.15.1 The Contractor, by arrangement with the Company Representative and at its own cost will be entitled to use, for the purposes of the execution of the Contract, electricity, water and compressed air as may be ordinarily available on the Site.
- 3.15.2 The Company will be responsible for providing a point of supply to the Contractor. The Contractor will, at its own risk and cost, provide all apparatus, approved by the Company Representative, required for connection to the Company's point of supply. The Contractor will be responsible for all costs to connect to the Company's point of supply, including the cost of the apparatuses required for connection and the cost in connecting to the Company's point of supply.
- 3.15.2 The Company will provide drinking water for Contractor Employees, unless otherwise agreed in writing. Where the Contractor and its Employees work underground, the instructions of the Shaft's management regarding sustenance that may be allowed underground must be complied with. Failure to comply with such instructions is a material breach of this Contract.
- 3.15.3 The Contractor will ensure that the quantities of electricity, water and air used are reasonable and will not interfere with the operation or maintenance of other installations belonging to the Company or Other Contractors. No guarantee of uninterrupted supply is given by the Company. The Company will not be held liable for any consequences, damages (whether direct or indirect), costs or delays incurred by the Contractor as a result of any such interruption or fluctuations to the services detailed herein.
- 3.15.4 The Contractor will, where the services are not ordinarily available on the Site, be responsible for the provision of all power, water, compressed air and other services it requires.

### **3.16 Telephones & Electronic Devices**

- 3.16.1 The Company will not supply telephones on Site to the Contractor. The Contractor will make its own arrangements for this service at its own cost. The Company will make available its underground telecommunications infrastructure for the Contractor's use, as and when required.
- 3.16.2 The Contractor will not carry a cellular phone, or have a cellular phone in a car, in the vicinity of an explosive magazine or a bank area at a shaft.
- 3.16.3 The Contractor and its Employees will not carry a cellular phone or any other electronic device or camera into a metallurgical plant, or any other area prohibiting such devices, without written consent by the relevant Mine Manager.

### **3.17 Cranes**

- 3.17.1 Unless otherwise agreed to by the Parties in Writing, the use of the Company's cranes by the Contractor will not be permitted.

### **3.18 Transport**

- 3.18.1 The Contractor will provide all necessary surface transport for its Personnel, Materials, Plant and Contractor's Equipment. The Contractor will comply with all the relevant laws, including environmental laws, as well as the Company's Standards relating to the transportation of employees, Materials, Plant and Contractor's Equipment.
- 3.18.2 The Company will provide transport from a designated point in the shaft bank area to the appropriate underground station. Such transport will be requested by the Contractor in writing a minimum of seven (7) days prior to it being required by the Contractor. The Company Representative will confirm the arrangements not less than two (2) days prior to the transport being required. The Contractor will be responsible for receiving, at the underground station, all items being transported, and will accompany the underground transport from the station to the place of work. The Contractor will provide all labour necessary for the loading of materials and Contractor's Equipment into the transport device and subsequent unloading thereof.

### **3.19 Raw Materials, Utilities and Effluents**

- 3.19.1 The Company will provide or terminate, whichever may be the case, from dates and at points on the battery limits agreed between the Contractor and the Company Representative, supplies of the raw materials and utilities required for the commissioning, testing and operating of the Deliverables, and unless agreed to otherwise in writing, the Contractor will be responsible for the disposal, from agreed points on the battery limits, of all products, by-products and effluents produced by the Deliverables, in accordance with the Environmental Management Plan and all Applicable Laws. The Contractor will be responsible for making the necessary connections or disconnections to the points of supply and disposal, to the approval of the Company Representative. Notwithstanding any such approval or otherwise by the Company Representative, the Contractor will be responsible for ensuring that such connections are suitable for the purpose of the Deliverables.

### **3.22 Contractor's Equipment**

- 3.22.1 Unless otherwise provided in the Contract, the Contractor will:
  - (a) provide all Contractor's Equipment necessary to ensure execution of the Contract;
  - (b) ensure that all the Contractor's Equipment will, when brought on to the Site, be exclusively intended for the execution of the Contract.

- 3.22.2 The Contractor will give reasonable advance notice to the Company when Contractor's Equipment will be delivered to the Site.
- 3.22.3 The Contractor will not remove from the Site any Contractor Equipment except:
  - (a) when it is no longer required for the fulfilment of its obligations as agreed to in the Contract; or
  - (b) when the Company Representative has given its written consent to remove the Contractor Equipment; or
  - (c) when the Company Representative instructs in writing that the Contractor's Equipment be removed.
- 3.22.4 Clause 3.22.3 will not apply to vehicles engaged in transporting any of the Contractors employees, Contractor's Equipment, Material and Plant to or from the Site.
- 3.22.5 All Contractor's Equipment will be in good operating condition, safe, fit for the use for which intended, and suitable for the safe and efficient execution of the Contract. The Contractor's Equipment will be subject to inspection and approval from time to time by the Company. Any Contractor's Equipment that is rejected by the Company as not conforming to the foregoing, will be promptly removed by the Contractor and replaced with equipment acceptable to the Company, without additional cost to the Company.
- 3.22.6 All Contractor's Equipment will, when brought onto the Site, be deemed to be exclusively intended for the execution of the Contract and the Contractor will not remove same or any parts thereof, except for the purpose of moving it from one part of the Site to another, without the prior written consent of the Company Representative, as stipulated.
- 3.22.7 Notwithstanding the above, the risk of loss of or damage to the Contractor's Equipment, will remain with the Contractor at all time.

### **3.23 Control of Contractor's Equipment**

- 3.23.1 All Contractor's Equipment brought onto the Site for the purposes of fulfilling its obligations as set out in the Contract, will be under the control of the Company Representative.
- 3.23.2 The Contractor's Equipment will remain on Site and be used by the Contractor or, should the Contract or any part of it be terminated for reasons other than default on the part of the Company, by the Company or such other contractors or persons as may be engaged by the Company to complete the work to execute the obligations of the Contract.
- 3.23.3 The Contractor's Equipment will be used solely for such purpose and will not, without the prior consent in writing of the Company Representative, be taken from the Site while it is required for the purpose of completing the work required to execute the Contract.
- 3.23.4 The following provisions will apply to any Contractor's Equipment that is hired, leased or the subject of a hire purchase agreement:
  - (a) Details of all Contractor's Equipment that is brought on to the Site by or on behalf of the Contractor for the purpose of execution of the Contract and that is hired, leased or the subject of hire purchase agreements, together with the names of the hirers, lessors or owners thereof, will be supplied to the Company Representative by the Contractor.
  - (b) The Company may, in order to avoid seizure by the hirer, owner or lessor, at the Company's option, pay to such hirer, owner or lessor the amount of any overdue instalment or other sum payable under the agreement for hire, lease or hire purchase and, in the event of the Company doing so, any amount so paid will be a debt due from the Contractor to the Company and may be deducted by the Company from any monies due or that may become due to the

Contractor in terms of the Contract or may be recovered by the Company from the Contractor at law.

- (c) The Contractor will, when entering into any Subcontract for the execution of any part of the Contract, incorporate in such Subcontract the abovementioned provisions in relation to the Contractor's Equipment brought onto the Site by the Sub-contractor.

### **3.24 Security of the Site**

- 3.24.1 The Contractor will be responsible for keeping unauthorised persons off the Site; the authorised Employees will be limited to the Contractor's Personnel and the Company's Personnel. The Company will notify the Contractor of any other authorised employees entitled to be on the Site, including the Other Contractors.
- 3.24.2 The Company will have the right to open and inspect any containers, tool boxes, vehicles and other items on Site at any time.

### **3.25 Contractor's Operations on Site**

- 3.25.1 The Contractor will confine its operations to the Site. The Contractor will keep the Contractor's Equipment and the Contractor's Personnel on the Site and any approved additional working areas, and will keep Contractor's Equipment and Personnel off any adjacent land. Approved additional working areas will be considered part of the Site for purposes of this Contract.
- 3.25.2 During the execution of the Contract, the Contractor will keep the Site free from all unnecessary obstruction, and will lawfully store or dispose of any Contractor's Equipment or surplus materials. The Contractor will clear away and remove from the Site any wreckage, rubbish and works not intended to form part of the Deliverables and which are no longer required.

### **3.26 Contractor Supplied Plant and Materials**

- 3.26.1 The Contractor will be responsible for arranging the shipment and delivery of all Materials and Plant to the Site.
- 3.26.2 The Contractor will advise the Company in advance of all major shipments of Plant and Materials and will co-ordinate with the Company the arrival, unloading and release thereof.
- 3.26.3 The Contractor will bear the risk and loss for any damage during the transportation of any Plant and Material on and off Site.

### **3.27 Protection and Control of Materials, Plant and the Works**

- 3.27.1 The Contractor will at all times, in accordance with the best practices and at no additional cost to the Company, provide storage facilities, and protection for all Plant, Material and the Company's equipment used by the Contractor in the execution of the Deliverables from damage or loss due to weather, fire, theft, unexplained disappearance or other similar casualty.

### **3.28 Noise Level of Machinery and Equipment**

- 3.28.1 No equipment, whether new, repaired or modified, will have a noise level higher than the legislated 85dBA, or as amended from time to time.
- 3.28.2 It will be regarded as a material breach of this Contract if the equipment does not comply with the above noise level requirements.

## 4 The Company

### 4.2 Site Data

- 4.2.1 The Company will make available to the Contractor all relevant information in its possession applicable to the Site. The Contractor will be responsible for verifying the accuracy, sufficiency and completeness of such data.
- 4.2.2 The Company will not be held responsible for any delays or costs incurred by the Contractor due to any incorrect alignment and/or measurement of the Deliverables.

## 4 Labour

### 5.1 Engagement and Labour laws

- 5.1.1 The Contractor's Personnel will obey all applicable laws, including - but not limited to - those concerning safety at work. In the event that the Contractor and/or any of the Contractor's Personnel do not comply with any of the Company's policies or procedures or any applicable legislation regarding health, safety and labour requirements, then the Contractor will pay the sum of R25 000.00 (Twenty-Five Thousand Rand) per incident of such non-compliance.

### 5.2 Working Hours

- 5.2.1 The Contractor will observe the normal working hours prescribed by the Applicable Laws, unless otherwise agreed between the Parties.
- 5.2.2 No work will be carried out on the Site outside normal working hours or on South African public holidays unless agreed to in writing between the Parties.

### 5.4 Contractor's Superintendence

- 5.4.1 For the duration of the Contract, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor will provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Deliverables. Superintendence will be given by a sufficient number of persons having adequate knowledge of the language used for communications and of the operations to be carried out for the satisfactory and safe execution of the Contract.

### 5.5 Conduct of Contractor's Personnel

- 5.5.1 The Contractor will prevent any unlawful, riotous or disorderly conduct by or among the Contractor's Personnel, and will preserve the peace and protection of persons, property and the environment on and near the Site. The Contractor will be liable for all damage or loss resulting from any unlawful, riotous or disorderly conduct or any act contrary to any regulations of the Company by or among the Contractor's Personnel.
- 5.5.2 The Contractor must, on the Company Representative's written instruction, remove (or cause to be removed) and replace any person employed on the Site or Deliverables, including the Contractor's Representative, if necessary, who:
  - (a) persists in any misconduct or lack of care;
  - (b) carries out duties incompetently or negligently;
  - (c) fails to comply with any provisions of the Contract; or
  - (d) persists in any conduct that is prejudicial to safety, health, or the protection of the environment.



## 6 Commencement, Delays and Suspension

### 6.2 Commencement of Work

6.2.4 The Contractor shall commence with the Works with due expedition and without delay after receipt of a Purchase Order ("Commencement Date").

### 6.4 Work programme

6.4.1 The Contractor shall be obliged to:

- (a) execute and complete the Works within the times specified in the Contract or the Purchase Order (Completion Date). Should there be any discrepancy between the date specified in the Contract and the Purchase Order, the date specified in the Purchase Order will prevail. If a date is not specified in the Purchase Order, the date specified in the Contract will apply; and/or
- (b) achieve the agreed production targets specified in the Contract ("Target").

6.4.2 The Company's Representative may direct in what order and at what time the various stages or parts of the Works shall be performed. If the Contractor cannot reasonably comply, the Contractor shall notify the Company's Representative in writing, giving reasons.

6.4.3 If the Company's Representative forms the view that the Contractor has not complied with the obligations in relation to progress or resources, the Company Representative may direct the Contractor to increase its labour force, Equipment, hours of work and/or shifts, or to make other special arrangements so as to comply with its obligations in relation to progress and resources.

### 6.5 Completion

6.5.1 For the purpose of the Contract, the Works or any section thereof is completed when:

- (a) the Contractor has completed the whole of the Works or any section thereof as the case may be;
- (b) the Contractor has passed all of the tests the Contractor is required to perform in terms of the Contract; and
- (c) the Company's Representative has certified and accepted the Works or any section thereof as being completed;

### 6.6 Low Performance Penalties

6.6.1 Without derogating from any other rights of the Company have under this Contract or on law, if the Contractor fails to

- (a) complete the Deliverables or section of the Deliverables as stated in the Contract by the Completion Date, then the Contractor will be liable to pay penalties. The penalty shall be the sum of 0,5% for every business day that elapse between the Completion Date and the date the Contractor achieves completion up to a maximum of 10% of the Contract Price; and/or
- (b) meet the Target/s set out in the Contract then the Contractor will be liable to pay penalties. The penalty shall be the sum the sum of 0,1% of the Contract Price for every 10% the Contractor's production was below the Target, up to a maximum of 10% of the Contract Price per annum.

- 6.6.2 The Company and Contractor hereby acknowledge and agree that the penalties are a reasonable estimation of the loss and damage that the Company will incur in the event of the Contractor's failure to complete the Works by the Completion Date or meet the Target/s set out in the Contract.
- 6.6.3 Having agreed that the amount of such penalties are reasonable in light of the anticipated harm caused by the breach related thereto, and in lieu of the Company electing to seek actual damages for delays associated with the failure to complete the Deliverables by the Completion Date or its failure to meet the Targets, the Parties hereby waive any right or entitlement to contest or challenge the validity or enforceability of such penalties, or the reasonableness of the penalties.
- 6.6.4 Where the Contractor seeks to challenge the penalties, and if a court determines that the rate will not apply, the Company is entitled to claim all damages associated with the Contractor's failure to meet the Completion Date and/or Targets.

## 9 Inspections, Testing, Examinations, and Defects

### 9.7 Examination of Work Before Covering Up

- 9.7.1 No part of the Deliverables will be covered up or put out of view without the prior written approval of the Company Representative. The Contractor will give the Company Representative full opportunity to inspect, examine, measure and test any such part of the Deliverables that is about to be covered up or put out of view, and to examine any foundations before any part of the Deliverables is placed thereon. The Contractor will give notice to the Company Representative whenever such work is ready for inspection, examination, measurement or testing and the Company Representative will, without unreasonable delay, attend for the purpose of inspecting, examining, measuring and testing such part of the Deliverables, or for examining the foundations.
- 9.7.2 The Contractor must uncover any part of the Deliverables or make any openings in or through the same, as the Company Representative may from time to time instruct, and must reinstate and make good such part as required by the Company Representative. If any such part has been covered up or put out of view after compliance with the requirement of the preceding paragraph above, and is found to be executed in accordance with the Contract, the costs in respect of such uncovering will be for the account of the Company.

## Main Contract Option 2: Services

### 1 General Provisions

#### 1.1 Additional Definitions

- 1.1.39 **Survey mark** means a survey peg, benchmark, reference mark, signal, alignment, level mark or any other mark for the purpose of setting out, checking or measuring the Works.

### 3 The Contractor

#### 3.1 Additional General Obligations

- 3.1.3 The Contractor will provide all superintendence, labour, materials, Contractor's Equipment and all other things, whether of a temporary or permanent nature, required for the execution of the Contract and completion of the Deliverables and for the remedying of any defects in terms of the Contract, to the sole satisfaction of the Company.
- 3.1.4 The Contractor will give prompt written notice to the Company Representative, of any error, omission, fault or other defects in the specification for the Deliverables that the Contractor discovers when reviewing the Technical Information or executing the Contract. The Deliverables will include any work that is necessary to satisfy the Company's requirements that is implied by the Contract, and any work that, although not mentioned in the Contract, is deemed necessary for the completion or safe and proper and environmentally sound operation of the Deliverables, or for stability. Such additional work will be subject to the specifications of these Conditions.
- 3.1.5 The Contractor will be responsible for the adequacy, stability and safety of all Site operations and methods of construction and of all the Deliverables. The Contractor will, whenever required by the Company, submit details of the arrangements and methods that the Contractor proposes to adopt for the execution of the Contract. No alterations to these arrangements and methods will be made without the Company having been previously notified in writing by the Contractor.

#### 3.8 Contractor's Representative

- 3.8.1 The Contractor will employ a competent representative to superintend the carrying out of the Deliverables on the Site and will give him all the authority to act on the Contractor's behalf under the Contract.
- 3.8.2 Any instruction or notice that the Company Representative gives to the Contractor's Representative will be deemed to have been given to the Contractor.
- 3.8.3 The Contractor's Representative will be appointed as a 'Subordinate Manager' for the purposes of the MPRDA and MHSA and will be present on the Site during working hours. If the Contractor's Representative has to be absent from the Site for a period in excess of 24 (twenty-four) hours, an alternative representative must be appointed by the Contractor for the duration of that period. The Contractor may not revoke the appointment of its Representative or appoint a replacement without the prior written consent of the Company.
- 3.8.4 The Contractor will comply with and adhere strictly to the Company Representative's instructions on any matter, whether mentioned in the Contract or not, concerning the Deliverables. The Contractor will take instructions only from the Company Representative or his nominated, duly appointed and delegated assistant.

### **3.9 Site Data**

3.9.1 Except as otherwise provided for in the Contract:

- (c) The Contractor will be deemed to have obtained all necessary information as to risks, remediation work, defects, contingencies and other circumstances that may influence or affect the Deliverables.
- (d) By signing the Contract, the Contractor accepts responsibility for having foreseen all reasonable difficulties and costs of successfully executing the Contract, including any rehabilitation or cleaning up of environmental pollution.
- (e) The Contract Price will not be adjusted to take account of any unforeseen difficulties or costs. The Contract Price will be deemed to include all items necessary to execute the Contract in accordance with the requirements of the Company Representative and the specifications, and the Contract Price will be deemed to include all the Contractor's activities, costs and profits.

### **3.10 Physical Obstructions and Conditions**

3.10.1 If during the execution of the Contract on Site the Contractor encounters physical obstructions or conditions that could not have been reasonably foreseen by the Contractor in its capacity as a reasonable expert, the Contractor will be entitled at the Company's approval, which will not be unreasonably withheld to reimbursement of the additional costs reasonably incurred in consequence, including the extension of time for completing the Services, from the Company.

3.10.2 The Contractor's Representative and the Company Representative will certify such additional costs and the additional costs so incurred will be added to the Contract Price by means of a Variation to the Deliverables, as detailed in Clause 14 (Variations and Amendments).

### **3.11 Sufficiency of Contract Price**

3.11.1 The Contractor will be deemed to have satisfied itself of and taken account of:

- (a) all the conditions and circumstances affecting the Contract;
- (b) the provision of the Deliverables as described in the Contract and all things incidental thereto to enable the Contractor to complete the Deliverables;
- (c) the general conditions and circumstances at the Site;
- (d) the cost of conducting any environmental management in accordance with the environmental management plan, the clean-up of any environmental incident and the remediation and rehabilitation of the Site and the surrounding areas caused by the Contractor in executing the Contract, and
- (e) the general labour position on Site.

3.11.1 The Contractor will be deemed to have satisfied itself of and taken account of:

3.11.2 All quantities contained in the Contract or Price schedule are estimated quantities only. Such estimated quantities are not guaranteed or warranted by the Company. A

### **3.12 Setting Out the Works**

3.12.1 Unless otherwise specified in the Contract, the Company will set out the Works and, without limitation, will survey the Site and set out all survey marks, levels, boundaries and profiles required by the Contractor to perform the Works.

- 3.12.2 The Contractor shall keep in their true positions all survey marks supplied by the Company's Representative.
- 3.12.3 If a survey mark is disturbed or obliterated, the Contractor shall immediately notify the Company's Representative and, unless it is due to the fault of the Contractor or its employees, agents or suppliers, the Company shall reinstate the survey mark at its own cost.
- 3.12.4 If the Contractor discovers an error in the position, level, dimensions or alignment of any Works, the Contractor shall immediately notify the Company's Representative.

### **3.13 Quality Assurance**

- 1.13.1 The Contractor shall:
  - (a) plan, establish and maintain a Quality Assurance Plan which conforms to the Company's quality assurance requirements, the EMS and the Company's safety management system; and
  - (b) provide the Company's Representative with access to the Contractor's Quality Assurance Plan to enable monitoring and quality auditing.
- 1.13.2 Any such quality system shall be used only as an aid to achieving compliance with the Contract and to document such compliance. Such system shall not relieve the Contractor of the responsibility to comply with the Contract.

### **3.14 Site Meetings**

- 3.14.1 Site meetings will be held at times and dates to be agreed to between the Parties. The Contractor will ensure that one or more representatives of the Contractor are present at such meetings, having the necessary authority to make decisions on the Contractor's behalf. In addition, the Contractor must ensure that it represents all its Sub-contractors. Minutes of any Site meeting will not be deemed to serve as notice for or an instruction to commence any additional work and/or notice of claims.

### **3.15 Electricity and Water**

- 3.15.1 The Contractor, by arrangement with the Company Representative and at its own cost will be entitled to use, for the purposes of the execution of the Contract, such supplies of electricity and water as may be ordinarily available on the Site. The Company will be responsible for providing a point of supply to the Contractor. The Contractor will, at its own risk and cost, provide any apparatus necessary for its use of these Deliverables, including any cost in connecting to the Company's point of supply, and for the measuring of the quantities consumed and will not make any direct connection to the Company's reticulation.
- 3.15.2 The Company will not be responsible to provide drinking water for the Contractors Employees.
- 3.15.3 The Contractor will ensure that the quantities used are reasonable and will not interfere with the operation or maintenance of other installations belonging to the Company or others at the Site. No guarantee of uninterrupted supply is given by the Company. The Company nor will not be held liable for any consequences, damages (whether direct or indirect), costs or delays incurred by the Contractor as a result of any such interruption or fluctuations to the services detailed herein.
- 3.15.4 The Contractor will, where the services are not ordinarily available on the Site, be responsible for the provision of all power, water and other services it requires.

### **3.16 Telephones & Electronic Devices**

- 3.16.1 The Company will not supply telephones on Site to the Contractor. The Contractor will make its own arrangements for this service at its own cost. The Company will make available its underground telecommunications infrastructure for the Contractor's use, as and when required.

- 3.16.2 The Contractor will not carry a cellular phone, or have a cellular phone in a car, in the vicinity of an explosive magazine or a bank area at a shaft.
- 3.16.3 The Contractor and its Employees will not carry a cellular phone or any other electronic device or camera into a metallurgical plant, or any other area prohibiting such devices, without written consent by the relevant Mine Manager.

### **3.17 Cranes**

- 3.17.1 Unless otherwise agreed to by the Parties in Writing, the use of the Company's cranes by the Contractor will not be permitted.

### **3.18 Transport**

- 3.18.1 The Contractor will provide all necessary surface transport for its employees, Materials, Plant and Contractor's Equipment. The Contractor will comply with all the relevant laws, including environmental laws, as well as the Company's Standards relating to the transportation of employees, Materials, Plant and Contractor's Equipment.

#### **3.21.1 Contractor's Equipment**

- 3.21.1 Unless otherwise provided in the Contract, the Contractor will:
  - (a) provide all Contractor's Equipment necessary to ensure execution of the Contract;
  - (b) ensure that all the Contractor's Equipment will, when brought on to the Site, be exclusively intended for the execution of the Contract.
- 3.21.2 The Contractor will give reasonable advance notice to the Company when Contractor's Equipment will be delivered to the Site.
- 3.21.3 The Contractor will not remove from the Site any Contractor Equipment except:
  - (a) when it is no longer required for the fulfilment of its obligations as agreed to in the Contract; or
  - (b) when the Company Representative has given its written consent to remove the Contractor Equipment; or
  - (c) when the Company Representative instructs in writing that the Contractor's Equipment be removed.
- 3.21.4 Clause 3.21.3 will not apply to vehicles engaged in transporting any of the Contractors employees, Contractor's Equipment, Material and Plant to or from the Site.
- 3.21.5 All Contractor's Equipment will be in good operating condition, safe, fit for the use for which intended, and suitable for the safe and efficient execution of the Contract. The Contractor's Equipment will be subject to inspection and approval from time to time by the Company. Any Contractor's Equipment that is rejected by the Company as not conforming to the foregoing, will be promptly removed by the Contractor and replaced with equipment acceptable to the Company, without additional cost to the Company.
- 3.21.6 All Contractor's Equipment will, when brought onto the Site, be deemed to be exclusively intended for the execution of the Contract and the Contractor will not remove same or any parts thereof, except for the purpose of moving it from one part of the Site to another, without the prior written consent of the Company Representative, as stipulated.
- 3.21.7 Notwithstanding the above, the risk of loss of or damage to the Contractor's Equipment, will remain with the Contractor at all time.

### **3.22 Control of Contractor's Equipment**

- 3.22.1 All Contractor's Equipment brought onto the Site for the purposes of fulfilling its obligations as set out in the Contract, will be under the control of the Company Representative.
- 3.22.2 The Contractor's Equipment will remain on Site and be used by the Contractor or, should the Contract or any part of it be terminated for reasons other than default on the part of the Company, by the Company or such other contractors or persons as may be engaged by the Company to complete the Services.
- 3.22.3 The Contractor's Equipment will be used solely for such purpose and will not, without the prior consent in writing of the Company Representative, be taken from the Site while it is required for the purpose of completing the work required to execute the Contract.
- 3.22.4 The following provisions will apply to any Contractor's Equipment that is hired, leased or the subject of a hire purchase agreement:
  - (a) Details of all Contractor's Equipment that is brought on to the Site by or on behalf of the Contractor for the purpose of execution of the Contract and that is hired, leased or the subject of hire purchase agreements, together with the names of the hirers, lessors or owners thereof, will be supplied to the Company Representative by the Contractor.
  - (b) The Company may, in order to avoid seizure by the hirer, owner or lessor, at the Company's option, pay to such hirer, owner or lessor the amount of any overdue instalment or other sum payable under the agreement for hire, lease or hire purchase and, in the event of the Company doing so, any amount so paid will be a debt due from the Contractor to the Company and may be deducted by the Company from any monies due or that may become due to the Contractor in terms of the Contract or may be recovered by the Company from the Contractor at law.
  - (c) The Contractor will, when entering into any Subcontract for the execution of any part of the Contract, incorporate in such Subcontract the abovementioned provisions in relation to the Contractor's Equipment brought onto the Site by the Sub-contractor.

### **3.23 Security of the Site**

- 3.22.1 The Contractor will be responsible for keeping unauthorised persons off the Site; the authorised Employees will be limited to the Contractor's Personnel and the Company's Employees. The Company will notify the Contractor of any other authorised employees entitled to be on the Site, including the Company's other contractors on Site.
- 3.22.2 The Company will have the right to open and inspect any containers, tool boxes, vehicles and other items on Site at any time.

### **3.23 Contractor's Operations on Site**

- 3.23.1 The Contractor will confine its operations to the Site. The Contractor will keep the Contractor's Equipment and the Contractor's Personnel on the Site and any approved additional working areas, and will keep Contractor's Equipment and Employees off any adjacent land. Approved additional working areas will be considered part of the Site for purposes of this Contract.
- 3.23.2 During the execution of the Contract, the Contractor will keep the Site free from all unnecessary obstruction, and will lawfully store or dispose of any Contractor's Equipment or surplus materials. The Contractor will clear away and remove from the Site any wreckage, rubbish and Temporary Works that are no longer required.



### **3.24 Contractor Supplied Equipment and Materials**

- 3.24.1 The Contractor will be responsible for arranging all shipments of Materials and Equipment/Plant to the site and will consign all such shipments to itself as consignee at the project shipping address, freight fully prepaid. The Contractor will be responsible for making demurrage agreements and settlements with the carriers of its shipments.
- 3.24.2 The Contractor will advise the Company in advance of all major shipments of the Contractor's Equipment and Materials and will co-ordinate with the Company the arrival, unloading and release of the carrier's equipment. The Contractor will promptly unload its shipments and promptly release the carriers' equipment.

### **3.25 Protection and Control of Materials, Equipment and Works**

- 3.25.1 The Contractor will at all times, in accordance with the best practices and at no additional cost to the Company, provide storage facilities, and protection for all Goods and the Company's equipment used by the Contractor in the execution of the Deliverables from damage or loss due to weather, fire, theft, unexplained disappearance or other similar casualty.

### **3.26 Noise Level of Machinery and Equipment**

- 3.26.1 No equipment, whether new, repaired or modified, will have a noise level higher than the legislated 85dBA, or as amended from time to time.
- 3.26.2 It will be regarded as a material breach of this Contract if the equipment does not comply with the above noise level requirements, and if the stipulations of the Policy and Procedure for Contractors Working on Site and the relevant legislation are not complied with.

## **4 The Company**

### **4.2 Site Data**

- 4.2.1 The Company will make available to the Contractor all relevant information in its possession applicable to the Site, including all necessary environmental data and information. The Contractor will be responsible for verifying the accuracy, sufficiency and completeness of such data.
- 4.2.2 The Company will not be held responsible for any delays or costs incurred by the Contractor due to any incorrect alignment and/or measurement of the Deliverables.

## **5 Personnel and Labour**

### **5.1 Engagement and Labour laws**

- 5.1.3 The Contractor's Personnel will obey all applicable laws, including - but not limited to - those concerning safety at work. In the event that the Contractor and/or any of the Contractor's Personnel do not comply with any of the Company's policies or procedures or any applicable legislation regarding health, safety and labour requirements, then the Contractor will pay the sum of R25 000.00 (Twenty-Five Thousand Rand) per incident of such non-compliance.

### **5.2 Working Hours**

- 5.2.1 The Contractor will observe the normal working hours prescribed by the Applicable Laws, unless otherwise agreed between the Parties.

5.2.2 No work will be carried out on the Site outside normal working hours or on South African public holidays unless agreed to in writing between the Parties.

### **5.3 Facilities for Staff and Labour**

5.3.1 Unless otherwise stated in the Contract, the Company will not provide any accommodation or messing facilities for the Contractor's Personnel. All accommodation and messing facilities will be arranged and provided by the Contractor at its sole cost.

5.3.2 The Contractor will provide and maintain all necessary accommodation and welfare facilities for the Contractor's Personnel. The Contractor will not permit a Contractor's Employee to maintain any temporary or permanent living quarters within the structures forming part of the Deliverables.

5.3.3 The Contractor will provide toilet facilities for Contractor's Personnel on Site.

### **5.4 Contractor's Superintendence**

5.4.1 For the duration of the Contract, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor will provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Deliverables. Superintendence will be given by a sufficient number of persons having adequate knowledge of the language used for communications and of the operations to be carried out for the satisfactory and safe execution of the Contract.

### **5.5 Conduct of Contractor's Personnel**

5.5.1 The Contractor will prevent any unlawful, riotous or disorderly conduct by or among the Contractor's Personnel, and will preserve the peace and protection of persons, property and the environment on and near the Site. The Contractor will be liable for all damage or loss resulting from any unlawful, riotous or disorderly conduct or any act contrary to any regulations of the Company by or among the Contractor's Personnel.

5.5.2 The Contractor must, on the Company Representative's written instruction, remove (or cause to be removed) and replace any person employed on the Site or Deliverables, including the Contractor's Representative, if necessary, who:

- (d) persists in any misconduct or lack of care;
- (e) carries out duties incompetently or negligently;
- (f) fails to comply with any provisions of the Contract; or
- (g) persists in any conduct that is prejudicial to safety, health, or the protection of the environment.

## **6 Commencement, Delays and Suspension**

### **6.2 Commencement of Work**

6.2.4 The Contractor shall commence with the Deliverables with due expedition and without delay after receipt of the Purchase Order ("Commencement Date").

### **6.4 Work programme**

6.4.1 The Deliverables shall be completed by the Contractor within the times specified in the Contract or the Purchase Order (Completion Date). Should there be any discrepancy between the date specified in the Contract and the Purchase Order, the date specified in the Purchase Order will prevail. If a date is not specified in the Purchase Order, the date specified in the Contract will apply.

- 6.4.2 The Company's Representative may direct in what order and at what time the various stages or parts of the Deliverables shall be performed. If the Contractor cannot reasonably comply, the Contractor shall notify the Company's Representative in writing, giving reasons.
- 6.4.3 If the Company or Company's Representative forms the view that the Contractor has not complied with the obligations in relation to progress or resources, the Company may direct the Contractor to increase its labour force, Equipment, hours of work and/or shifts, or to make other special arrangements so as to comply with its obligations in relation to progress and resources.
- 6.4.4 All quantities contained in the Technical Information or Price schedule are estimated quantities only. Such estimated quantities are not guaranteed or warranted by the Company. A direction shall not be required to be given by the Company's Representative by reason of the actual quantity of an item required to perform the Works being greater or less than the quantity shown in the Technical Information or Price schedule.

## **6.5 Completion**

- 6.5.2 For the purpose of the Contract, the Works or any section thereof is deemed completed when:
- (h) the Contractor has completed the whole of the Works or any section thereof as the case may be;
  - (i) the Contractor has passed all of the tests the Contractor is required to perform in terms of the Contract; and
  - (j) the Company's Representative has certified the Works or any section thereof as being completed.

## **6.6 Low Performance Penalties**

- 6.6.1 Without derogating from any other rights of the Company have under this Contract or on law, if the Contractor fails to complete the Deliverables or section of the Deliverables as stated in the Contract by the Completion Date, then the Contractor will be liable to pay penalties. The penalty shall be the sum of 0,5% for every business day that elapse between the Completion Date and the date the Contractor achieves completion up to a maximum of 10% of the Contract Price; and/or
- 6.6.2 The Company and Contractor hereby acknowledge and agree that the penalties are a reasonable estimation of the loss and damage that the Company will incur in the event of the Contractor's failure to complete the Works by the Completion Date or meet the Target/s set out in the Contract.
- 6.6.3 Having agreed that the amount of such penalties are reasonable in light of the anticipated harm caused by the breach related thereto, and in lieu of the Company electing to seek actual damages for delays associated with the failure to complete the Deliverables by the Completion Date or its failure to meet the Targets, the Parties hereby waive any right or entitlement to contest or challenge the validity or enforceability of such penalties, or the reasonableness of the penalties.
- 6.6.4 Where the Contractor seeks to challenge the penalties, and if a court determines that the rate will not apply, the Company is entitled to claim all damages associated with the Contractor's failure to meet the Completion Date and/or Targets.



## Main Contract Option 3: Supply

### 3 The Contractor

#### 3.8 Supply

- 3.8.1 The Contractor agrees to Supply such quantities of the Goods to the Company as the Company may require from time to time, the Company agrees to purchase the Product from the Contractor, subject to the terms, and conditions set out in this Contract.
- 3.8.2 The Contractor warrants to the Company that the Goods will be supplied with the full benefit to the Company of any manufacturer's warranty.

#### 3.9 Stock to be Maintained

- 3.9.1 The Company may, at its discretion, stipulate in writing the quantity of Goods that the Contractor is required to maintain in stock.
- 3.9.2 If at any time during this Contract the stock so maintained by the Contractor is insufficient to meet the Company's consumption or to fulfil its obligations under the Contract, the Contractor will source and supply Goods of the same Specification and Price at the Contractor's expense to the Company.

#### 3.10 Packaging

- 3.10.1 The Contractor will package the Goods to ensure, the safe, adequate and lawful transport, loading, offloading, handling, and storage of the Goods, all in accordance with the accepted international standards. The Contractor will ensure that packing will be suitable for the methods of transport, delivery and offloading to be used. The Contractor will also issue proper instructions when transporting the Goods on ship or aircraft, if appropriate, to ensure proper protection and preservation of the Goods.
- 3.10.2 Each package will 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 Goods and appropriate warning labels.
- 3.10.3 The Contractor will specify in full detail on all packing cases and/or packaging materials and receptacles containing the Goods:
- (a) Goods identification;
  - (b) immediate and long term potential hazards and dangers, including, but not limited to, whether the Goods is toxic, flammable, poisonous, harmful by inhalation or direct contact associated with the direct or indirect use thereof; and
  - (c) the most appropriate safety precautions, including, without limiting the generality of the foregoing, the Goods name, its properties, full instructions on handling, storage, fire, disposal, spillage and first aid.
- 3.10.4 The Contractor will supply appropriate Material Safety Data Sheets with each delivery.

#### 3.11 Quantity

- 3.11.1 Quantity amounts or estimates of amounts of Goods required by the Company will be indicative only and the Company will not be bound to accept such quantity or estimate.

### 3.12 Delivery

- 3.12.1 Unless specified otherwise in the Contract, the Goods will be delivered to the Company by the Contractor at the Contractor's cost to the Site designated by the Company in the Purchase Order. The Contractor will ensure that it applies for an import licence for the Goods in the Company's name if necessary.
- 3.12.2 The Company will not be liable for any Goods not delivered to the Site as required in terms of the Purchase Order.
- 3.12.3 Contractor will, in respect of each Purchase Order, furnish to the Company the following information in the waybill:
- (a) a clear description of the Goods;
  - (b) name of the manufacturer of the Goods;
  - (c) quantity of the Goods;
  - (d) net and gross weight of the Goods;
  - (e) number of containers in which the Goods are supplied;
  - (f) consignee;
  - (g) Purchase Order and the Contract Number;
  - (h) Company's material code number;
  - (i) date and point of dispatch;
  - (j) delivery note number, and
  - (k) further particulars and supporting documentation as may be required by the Company from time to time.

### 3.13 Transport

- 3.13.1 Unless specified otherwise in the Contract, the Contractor will, at its own cost, obtain and maintain all necessary permits under any legislation, and other authorisations necessary for the transport and delivery of the Goods to the Company and where applicable the transport of empty containers from the Company's Site.
- 3.13.2 If the Contractor is unable to obtain or maintain any such permits or authorisations, the Company may terminate the Contract forthwith and the Contractor will not have any claim of whatsoever nature and howsoever arising against the Company arising out of the Contract or its termination.
- 3.13.3 The Contractor will 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.

## 6 Commencement, Delays and Suspension

### 6.2 Commencement of Work

- 6.2.4 The Contractor will:
- (a) upon receiving a Purchase Order, supply the Company with the Goods in terms of the Contract and such Purchase Order. The Contractor will not deliver substitute or alternative Goods to the Goods ordered and specified in the delivery documents;
  - (b) deliver the Goods within the time for delivery ("Delivery Date") as specified in the Contract or the Purchase Order. Should there be any discrepancy between the date specified in the

Contract and the Purchase Order, the date specified in the Purchase Order will prevail. If a date is not specified in the Purchase Order, the date specified in the Contract will apply.

- 6.2.5 Each Purchase Order issued by the Company to the Contractor will state:
- (a) quantity of Goods ordered; and
  - (b) the Site at which Goods must be delivered.
- 6.2.6 Notwithstanding the provisions of the Contract, should the Company request early delivery of any Goods, the Contractor will make every reasonable endeavour to deliver the Goods within such earlier delivery time requested.

### **6.3 Low Performance Penalty**

- 6.3.1 Should the Contractor fail to deliver, in whole or in part, any Goods by the Delivery Date, then, without prejudice to any other rights which the Company may have in terms of the Contract or in law, the Contractor will be liable to pay a penalty to the Company for this default. The penalty shall be the sum of 0,5% for every business day that elapse between the Delivery Date and the date the Goods were delivered up to a maximum of 10% of the Contract Price.
- 6.3.2 The Company and Contractor hereby acknowledge and agree that the penalties are a reasonable estimation of the loss and damage that the Company will incur in the event of the Contractor's failure to complete the Works by the Completion Date or meet the Target/s set out in the Contract.
- 6.3.3 Having agreed that the amount of such penalties are reasonable in light of the anticipated harm caused by the breach related thereto, and in lieu of the Company electing to seek actual damages for delays associated with the failure to complete the Deliverables by the Completion Date or its failure to meet the Targets, the Parties hereby waive any right or entitlement to contest or challenge the validity or enforceability of such penalties, or the reasonableness of the penalties.
- 6.3.4 Where the Contractor seeks to challenge the penalties, and if a court determines that the rate will not apply, the Company is entitled to claim all damages associated with the Contractor's failure to meet the Completion Date and/or Targets.

## **7 Contract Price and Payments**

### **7.4 Price**

- 7.4.1 The Price will be inclusive of:
- (a) transport costs, handling and offloading charges;
  - (b) packaging;
  - (c) storage (as required);
  - (d) maintenance (as required);
  - (e) training;
  - (f) necessary consumables;
  - (g) operating manuals;
  - (h) VAT and any other taxes and levies;
  - (i) Import duty and documentation;
  - (j) Insurance



## Main Contract Option 4: Manufacture and Supply

### 1 General Provisions

#### 1.14 Technical Information

- 1.14.1 The Company will provide the Contractor at the appropriate times with the Technical Information necessary to enable the Contractor to manufacture and supply the Deliverables. All Technical Information will be and remain the property of the Company.
- 1.14.2 In the event that any ambiguity or discrepancy is discovered in the Technical Information, the matter will immediately be referred to the Company Representative for his decision.
- 1.14.3 The Contractor accepts responsibility for ensuring that he obtains and carries out the Deliverables in accordance with the latest revision of the Technical Information approved by the Company.
- 1.14.4 Any such approval by the Company will not relieve the Contractor of any obligations under the Contract, nor constitute the Company's assumption of responsibility for the accuracy or adequacy of any of the Contractor's information or Deliverables incorporated in such Technical Information.
- 1.14.5 The Technical Information may not be complete in every detail. The Contractor must notify the Company immediately when the Contractor become aware of any conflict, error, omission or discrepancy in the Technical Information, and the Company will issue written instructions to be followed. If the Contractor proceeds with any of the Deliverables prior to receiving such instructions, all necessary corrections will be at the Contractor's expense.
- 1.14.6 Any deviation by the Contractor from the Technical Information will be considered to be a change in the Scope of Work and will require written approval from the Company.

### 3 The Contractor

#### 3.1 General Obligations

- 3.1.2 The Contractor further warrant that the Deliverables will be fit for the purpose for which it is intended

#### 3.8 Supply

- 3.8.1 The Contractor agrees to manufacture and Supply such quantities of the Goods to the Company as the Company may require.
- 3.8.2 The Contractor warrants to the Company that the Goods will be supplied with the full benefit to the Company of any manufacturer's warranty.

#### 3.10 Packaging

- 3.10.1 The Contractor will package the Goods to ensure, the safe, adequate and lawful transport, loading, offloading, handling, and storage of the Goods, all in accordance with the accepted international standards. The Contractor will ensure that packing will be suitable for the methods of transport, delivery and offloading to be used. The Contractor will also issue proper instructions when transporting the Goods on ship or aircraft, if appropriate, to ensure proper protection and preservation of the Goods.
- 3.10.2 Each package will 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 Goods and appropriate warning labels.
- 3.10.3 The Contractor will specify in full detail on all packing cases and/or packaging materials and receptacles containing the Goods:

- (a) Goods identification;
- (b) immediate and long term potential hazards and dangers, including, but not limited to, whether the Goods is toxic, flammable, poisonous, harmful by inhalation or direct contact associated with the direct or indirect use thereof; and
- (c) the most appropriate safety precautions, including, without limiting the generality of the foregoing, the Goods name, its properties, full instructions on handling, storage, fire, disposal, spillage and first aid.

3.10.4 The Contractor will supply appropriate Material Safety Data Sheets with each delivery.

### 3.11 Delivery

3.11.1 Unless specified otherwise in the Contract, the Goods will be delivered to the Company by the Contractor at the Contractor's cost to the Site designated by the Company in the Purchase Order. The Contractor will ensure that it applies for an import licence for the Goods in the Company's name if necessary.

3.11.2 The Company will not be liable for any Goods not delivered to the Site specified in the Purchase Order.

3.11.3 Contractor will, in respect of each Purchase Order, furnish to the Company the following information in the waybill:

- (d) a clear description of the Goods;
- (e) name of the manufacturer of the Goods;
- (f) quantity of the Goods;
- (g) net and gross weight of the Goods;
- (h) number of containers in which the Goods are supplied;
- (i) consignee;
- (j) Purchase Order and the Contract Number;
- (k) Company's material code number;
- (l) date and point of dispatch;
- (m) delivery note number, and
- (n) further particulars and supporting documentation as may be required by the Company from time to time.

### 3.12 Transport

3.12.1 Unless specified otherwise in the Contract, the Contractor will, at its own cost, obtain and maintain all necessary permits under any legislation, and other authorisations necessary for the transport and delivery of the Goods to the Company and where applicable the transport of empty containers from the Company's Site.

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

3.12.3 The Contractor will 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.

## 6 Commencement, Delays and Suspension

### 6.2 Commencement of Work

6.2.4 The Contractor will:

- (a) upon receiving a Purchase Order, commence with the manufacturing of the Goods in terms of the Contract and Purchase Order. The Contractor will not deliver substitute or alternative Goods to the Goods ordered and specified in the delivery documents;
- (b) deliver the Goods within the time for delivery as specified in the Contract or the Purchase Order ("Delivery Date"). Should there be any discrepancy between the date specified in the Contract and the Purchase Order, the date specified in the Purchase Order will prevail. If a date is not specified in the Purchase Order, the date specified in the Contract will apply.

6.2.5 Each Purchase Order issued by the Company to the Contractor will state:

- (a) quantity of Goods ordered; and
- (b) the Site at which Goods must be delivered.

6.2.6 Notwithstanding the provisions of the Contract, should the Company request early delivery of the Goods, the Contractor will make every reasonable endeavour to deliver the Goods within such earlier delivery time requested.

### 6.3 Low Performance Penalty

6.3.1 Should the Contractor fail to deliver, in whole or in part, any Goods by the Delivery Date, then, without prejudice to any other rights which the Company may have in terms of the Contract or in law, the Contractor will be liable to pay a penalty to the Company for this default. The penalty shall be the sum of 0,5% for every business day that elapse between the Delivery Date and the date the Goods were delivered up to a maximum of 10% of the Contract Price.

6.6.2 The Company and Contractor hereby acknowledge and agree that the penalties are a reasonable estimation of the loss and damage that the Company will incur in the event of the Contractor's failure to complete the Works by the Completion Date or meet the Target/s set out in the Contract.

6.6.3 Having agreed that the amount of such penalties are reasonable in light of the anticipated harm caused by the breach related thereto, and in lieu of the Company electing to seek actual damages for delays associated with the failure to complete the Deliverables by the Completion Date or its failure to meet the Targets, the Parties hereby waive any right or entitlement to contest or challenge the validity or enforceability of such penalties, or the reasonableness of the penalties.

6.6.4 Where the Contractor seeks to challenge the penalties, and if a court determines that the rate will not apply, the Company is entitled to claim all damages associated with the Contractor's failure to meet the Completion Date and/or Targets.

## 7 Contract Price and Payments

### 7.4 Price

7.4.1 The Price will be inclusive of:

- (a) transport costs, handling and offloading charges;
- (b) packaging;
- (c) storage (as required);
- (d) maintenance (as required);

- (e) training;
- (f) necessary consumables;
- (g) operating manuals;
- (h) VAT and any other taxes and levies
- (i) Import duty and documentation;
- (j) Insurance.

## Main Contract Option 5: Offsite Repairs

### 1 General Provisions

#### 1.1 Definitions

- 1.1.39 **Equipment** means (if applicable) the Company's equipment in respect of which the contractor must perform the Services;
- 1.1.40 **Mine Manager** means the manager of the Mine appointed in terms of section 3(1) of the MSHA from time to time, or any person appointed by such manager to fulfil any of his functions in terms of the Conditions;
- 1.1.41 **External Waybills** means the External Waybills to be issued by the Company to the Contractor;

#### 1.14 Technical Information

- 1.14.1 The Company will provide the Contractor at the appropriate times with the Technical Information necessary to enable the Contractor to complete the Deliverables. All Technical Information will be and remain the property of the Company.
- 1.14.2 In the event that any ambiguity or discrepancy is discovered in the Technical Information, the matter will immediately be referred to the Company Representative for his decision.
- 1.14.3 The Contractor accepts responsibility for ensuring that he obtains and carries out the Deliverables in accordance with the latest revision of the Technical Information approved by the Company.
- 1.14.4 Any such approval by the Company will not relieve the Contractor of any obligations under the Contract, nor constitute the Company's assumption of responsibility for the accuracy or adequacy of any of the Contractor's information or Deliverables incorporated in such Technical Information.
- 1.14.5 The Technical Information may not be complete in every detail. The Contractor must notify the Company immediately when the Contractor become aware of any conflict, error, omission or discrepancy in the Technical Information, and the Company will issue written instructions to be followed. If the Contractor proceeds with any of the Deliverables prior to receiving such instructions, all necessary corrections will be at the Contractor's expense.
- 1.14.6 Any deviation by the Contractor from the Technical Information will be considered to be a change in the Scope of Work and will require written approval from the Company.

#### 1.15 Contractors Documents

- 1.15.1 Any of the Contractor Documents that requires the approval of the Company Representative will be submitted to the Company Representative prior to executing any Work reliant upon such approval.
- 1.15.2 The Company Representative may respond with approval or disapproval thereof, with comments or recommended modifications required thereto. Such modifications will be incorporated into the relevant Contractors Documents by the Contractor and re-submitted to the Company Representative without delay. Notwithstanding approval by the Company Representative, the Contractor will be liable for the accuracy and adequacy of all Contractor Documents.
- 1.15.3 The Contractor will maintain an up-to-date schedule of all Contractor Documents. The Contractor will supply the schedule to the Company Representative at intervals stipulated by the Company Representative in consultation with the Contractor.
- 1.15.4 The Company Representative will have the right at all reasonable times to inspect the Contractor Documents at the premises of the Contractor or any Subcontractor.
- 1.15.5 All Contractor Documents will become and remain the property of the Company.

### **1.16 Mistakes in Documentation**

- 1.16.1 The Contractor will be responsible for all discrepancies, errors or omissions, including faulty design and/or detailing in any of the Contractor Documents, whether or not such documentation has been approved by the Company Representative, except insofar as the discrepancies, errors, omissions, faulty design and/or detailing are due to discrepancies, errors or omissions in the Technical Information.

## **3 The Contractor**

### **3.1 General Obligations**

- 3.1.3 The Contractor warrants the Services carried out and all spare parts supplied by it in terms of the Contract for a period of 1 (one) year from the date on which the Company commences use of the Equipment subsequent to the delivery and/or repair and maintenance of the Equipment;

### **3.8 Specifications and Quality**

- 3.8.1 Notwithstanding in-house quality control carried out by the Contractor, the Company reserves the right to appoint a quality assurance consultants to cover the inspection of materials / workmanship, including the provision of certificates of material quality.
- 3.8.2 The Contractor's quality control obligations shall extend to its Sub-Contractors, such services to be subject to the approval of the Company.
- 3.8.3 Should the Company deem it necessary to supplement the Contractor's quality control responsibilities, all costs so incurred shall be for the Contractor's account.

### **3.9 The Deliverables**

- 3.9.1 The Contractor will carry out the off-site repair Service as indicated and requested on the External Waybill as and when required;
- 3.9.2 Each External Waybill issued by the Company to the Contractor shall state:
- (a) the Services to be performed;
  - (b) the Equipment in respect of which such Services are to be performed;
  - (c) the number of items comprising the Equipment;
  - (d) the date on which such Services are to be performed, or the date on which any Services to be performed in connection with the Equipment is to be completed; and
  - (e) the address at which such Services are to be performed, alternatively, from which the Contractor is required to collect the Equipment in respect of which the Services are to be performed and the address at which such Equipment is to be delivered.
- 3.9.3 The Contractor will:
- (a) ensure that it has sufficient stocks of components and/or staff available to fulfil any order for Services placed at any time;
  - (b) collect such Equipment from the Company's premises;
  - (c) perform any Services required to restore the Equipment to its optimal operating condition; and
  - (d) ensure that the Equipment is returned to the Mine within the time specified by the Company in the Purchase Order
- 3.9.4 Notwithstanding sub-clause 3.9.3(d), should the Company request the performance of any Services within a time period which is less than the period specified in the External Waybill, the Contractor shall nonetheless endeavour, by the employment of such means as may in the circumstances be reasonably

practicable, to effect performance of such Services within the time requested or as soon as possible thereafter.

- 3.9.5 The Contractor will on a daily basis supply a list of all repairs in progress to the Company's Representative indicating the following:
- (a) The Purchase Requisition No's
  - (b) The External Waybill Number
  - (c) The material code
  - (d) The quantity.
- 3.9.6 Should the Contractor be unable to perform the Services in accordance with the instructions as set out in any the External Waybill, the Contractor may request from the Company Representative a variation to the instructions stipulated in such External Waybill on the following terms and conditions:
- (a) Such request shall be in writing and shall fully record the variation to be affected together with the reasons necessitating the variation.
  - (b) The granting of such request shall be entirely at the discretion of the Company Representative.
  - (c) Should any variation as contemplated in this clause 3.9.6(a) be granted by the Company Representative, the Company shall issue a revised External Waybill and the Contractor shall perform such Services accordingly.
- 3.9.7 Should any Equipment be in a state rendering it beyond economical repair, it shall be returned to the Company, together with a certificate issued by the Contractor stating that the Equipment is in its opinion beyond economical repair, and setting out the reasons therefore. Any dispute as to whether any Equipment is beyond economical repair shall be resolved by consensus between the Company Representative and the Contractor. If consensus cannot be reached, the matter shall be referred to the Mine Manager, whose decision shall be final and binding.
- 3.9.8 The Contractor shall under no circumstances replace entire items of Equipment unless the Company Representative gives specific written instructions authorising the replacement of such entire items to the Contractor.
- 3.9.9 The Contractor shall not -
- (a) affect any Engineering modification to the Equipment which would affect its performance adversely; or
  - (b) replace a defective part of the Equipment with a part that is not identical to the original part or that does not comply with the Specifications,
  - (c) unless the Engineering Manager or QAQC Representative has approved otherwise in writing.

### **3.10 Collection and Delivery of the Equipment**

- 3.10.1 The Equipment shall be collected by the Contractor from the Company's premises. Upon completion of the Services, the Contractor shall deliver the Equipment to areas designated by the Company. The Contractor shall, at its own cost, take out and maintain all necessary permits (including Radioactive Licenses) and any other official authorisations necessary for the transport and delivery of the Equipment to the Company and, if applicable, the transportation of empty containers from the Company's premises. If the Contractor is unable to obtain or maintain any such permits and other official authorisations necessary to transport the Equipment or empty containers in the agreed manner then the parties shall meet and endeavour in good faith to agree upon an alternative method of transportation.
- 3.10.6 All costs relating to or associated with the collection and delivery of any Equipment to be maintained and/or repaired in terms of the Agreement shall be borne by the Contractor.



- 3.10.7 Any distributor or carrier of any Equipment (if not the Contractor) shall be deemed to be an agent and mandatory of the Contractor.
- 3.10.8 The Company shall, in respect of each collection of Equipment, furnish the Contractor with a External Waybill and the Contract Number. The Contractor shall verify the information contained in such External Waybill and shall sign acceptance of such Equipment upon which the risk in and to such Equipment shall pass to the Contractor.
- 3.10.9 Upon completion of the Services, the Contractor shall, in respect of each delivery, furnish to the Company the following information -
- (a) a clear description of each item of Equipment;
  - (b) the number of items of the Equipment;
  - (c) a detailed job card;
  - (d) such further particulars and supporting documentation as may be required by the Company.
- 3.10.10 In instances where the premises of the Contractor, at which the Equipment will be held for execution of the Services, is the subject of a rental agreement, the Contractor shall ensure that the owner / landlord of such property is informed, in writing and at all times of the ownership of the Equipment being that of the Company. The Contractor hereby indemnifies the Company from any third party claims, including a court order in terms of section 32 of the Magistrate's Court Act.3.24.
- 3.10.11 The Company shall verify the above information and shall sign an acceptance form relating to such Equipment.

### **3.11 Progress Reports**

- 3.11.1 The Contractor shall keep updated written summary reports and records of its progress on any Services as reasonably required by the Company Representative and shall submit such reports at such intervals as may reasonably be required.
- 3.11.2 In addition to the foregoing, the Contractor shall furnish the Company with such other reports, information, returns and documentation with regard to the performance of its obligations in terms of the Contract as the Company may reasonably require from time to time.

## **5 Personnel and Labour**

### **5.1 Engagement and Labour laws**

- 5.1.3 The Contractor's Personnel will obey all applicable laws, including - but not limited to - those concerning safety at work. In the event that the Contractor and/or any of the Contractor's Personnel do not comply with any of the Company's policies or procedures or any applicable legislation regarding health, safety and labour requirements, then the Contractor will pay the sum of R25 000.00 (Twenty-Five Thousand Rand) per incident of such non-compliance.

### **5.2 Conduct of Contractor's Personnel**

- 5.2.1 The Contractor will prevent any unlawful, riotous or disorderly conduct by or among the Contractor's Personnel, and will preserve the peace and protection of persons, property and the environment on and near the Site. The Contractor will be liable for all damage or loss resulting from any unlawful, riotous or disorderly conduct or any act contrary to any regulations of the Company by or among the Contractor's Personnel.

- 5.2.2 The Contractor must, on the Company Representative's written instruction, remove (or cause to be removed) and replace any person employed on the Site or Deliverables, including the Contractor's Representative, if necessary, who:
- (a) persists in any misconduct or lack of care;
  - (b) carries out duties incompetently or negligently;
  - (c) fails to comply with any provisions of the Contract; or
  - (d) persists in any conduct that is prejudicial to safety, health, or the protection of the environment.

## 6 Commencement, Delays and Suspension

### 6.2 Commencement of Work

- 6.2.4 The Contractor shall commence with the Deliverables with due expedition and without delay after receipt of the External Waybill ("Commencement Date").

### 6.5 Completion

- 6.5.1 The Deliverables shall be completed by the Contractor within the times specified in the Contract or the External Waybill ("Completion Date"). Should there be any discrepancy between the date specified in the Contract and the External Waybill, the date specified in the External Waybill will prevail. If a date is not specified in the External Waybill, the date specified in the Contract will apply.

### 6.3 Low Performance Penalty

- 6.3.1 Should the delivery not be completed within the time limits stipulated in the External Waybill and should the Contractor not request an extension of time for delivery or should the Mine Manager reject such a request for an extension of time for delivery then, without prejudice to any other rights the Company may have in terms of the Agreement or in law, the Company shall have the right to deduct from the Consideration a turnaround discount of 0.5% (one percent) of the total value of the invoice for each business day that elapses between the delivery date stipulated in the External Waybill and the actual delivery date.
- 6.5.3 The deduction of the turnaround discount shall not relieve the Contractor of its remaining obligations under the Agreement.
- 6.5.4 Notwithstanding the foregoing, in the event of the Company suffering damages as a result of late delivery and should such damages, in the opinion of the Company, exceed the aforesaid turnaround discount, the Company may claim the amount of damages actually sustained instead of the aforesaid turnaround discount.

## 7 Contract Price and Payments

### 7.4 Price

- 7.4.1 The Price shall be inclusive of -
- (a) transportation costs;
  - (b) packaging and crating; and
  - (c) storage and containers;

## Main Contract Option 6: Transport Services

### 1 General Provisions

#### 1.1 Definitions

- 1.1.38 "**Dangerous Goods**" means the Substances classified and listed in the South African National Standards codes as dangerous goods or substances;
- 1.1.39 "**Driver**" means the Contractor's Qualified Person, who is responsible for the conveyance of the Goods;
- 1.1.40 "**Legislation**" means all statutes, regulations, rulings, directives, judgements, by-laws and the like (including authorisations, permits, licences and certificates) having the force of law as well as accepted SANS codes of practice and industry codes of practice/standards, pertaining to, but not limited to:
- (a) the Transport and the handling of the Goods;
  - (a) the protection of health, safety and the environment;
  - (b) any substance capable of causing harm to the public or contamination of or pollution or degradation of the environment;
  - (c) Incident management;
- including but not limited to the following Acts and Regulations promulgated there under (as amended or substituted from time to time), as well as all relevant codes of practice, compulsory specifications and standards issued by the South African Bureau of Standards, that the Contractor shall comply with when executing the Deliverables:
- (a) National Road Safety Act, no 9 of 1972;
  - (b) Road Transportation Act, no 74 of 1977;
  - (c) Road Traffic Act, no 29 of 1989;
  - (d) National Road Traffic Act, no 93 of 1996;
  - (e) Hazardous Substances Act, no 15 of 1973;
  - (f) Explosives Act, no 26 of 1956 / no 15 of 2003;
- 1.1.41 "**Qualified Person**" shall have the same meaning as defined in Chapter VIII of the National Road Traffic Act 93/1996 and Regulations incorporated SANS Codes of Practice
- 1.1.42 "**Transport**" means the conveyance, including the handling and storage of goods by means of the Vehicles i.e. the collecting and loading of the Goods at the collection point, the transport and conveyance of the Goods from the collection point to the delivery point, the off-loading of the Goods at the delivery point;
- 1.1.43 "**Vehicle**" means a vehicle which is suitable and complies with the Legislation to enable the Contractor to safely Transport the Goods, without any risk of contamination, spillage or damage/loss by road in terms of the Contract;

### 2 Laws, Regulations and Policies

#### 2.1 Laws and Regulations

- 2.1.1 The Parties must at all times comply in all respects with the provisions of the Legislation as well as all other applicable statutes, ordinances, proclamations, by-laws and regulations, both local and national.

## 3 The Contractor

### 3.8 Contractor's Representative

- 3.8.1 The Contractor will employ a competent representative to superintend the carrying out of the Deliverables on the Site and will give him all the authority to act on the Contractor's behalf under the Contract.
- 3.8.2 Any instruction or notice that the Company Representative gives to the Contractor's Representative will be deemed to have been given to the Contractor.
- 3.8.3 The Contractor's Representative will be appointed as a 'Subordinate Manager' for the purposes of the MPRDA and MHSA and will be present on the Site during working hours. If the Contractor's Representative has to be absent from the Site for a period in excess of 24 (twenty-four) hours, an alternative representative must be appointed by the Contractor for the duration of that period. The Contractor may not revoke the appointment of its Representative or appoint a replacement without the prior written consent of the Company.
- 3.8.4 The Contractor will comply with and adhere strictly to the Company Representative's instructions on any matter, whether mentioned in the Contract or not, concerning the Deliverables. The Contractor will take instructions only from the Company Representative or his nominated, duly appointed and delegated assistant.

### 3.9 Site Data

- 3.9.1 Except as otherwise provided for in the Contract:
- (g) The Contractor will be deemed to have obtained all necessary information as to risks, remediation work, defects, contingencies and other circumstances that may influence or affect the Deliverables.
  - (h) By signing the Contract, the Contractor accepts responsibility for having foreseen all reasonable difficulties and costs of successfully executing the Contract, including any rehabilitation or cleaning up of environmental pollution.
  - (i) The Contract Price will not be adjusted to take account of any unforeseen difficulties or costs. The Contract Price will be deemed to include all items necessary to execute the Contract in accordance with the requirements of the Company Representative and the specifications, and the Contract Price will be deemed to include all the Contractor's activities, costs and profits.

### 3.10 Physical Obstructions and Conditions

- 3.10.1 If during the execution of the Contract on Site the Contractor encounters physical obstructions or conditions that could not have been reasonably foreseen by the Contractor in its capacity as a reasonable expert, the Contractor will be entitled at the Company's approval, which will not be unreasonably withheld to reimbursement of the additional costs reasonably incurred in consequence, including the extension of Time for Completion, from the Company.
- 3.10.2 The Contractor's Representative and the Company Representative will certify such additional costs and the additional costs so incurred will be added to the Contract Price by means of a Variation to the Deliverables, as detailed in Clause 14 (Variations and Amendments).

### 3.11 Sufficiency of Contract Price

- 3.11.1 The Contractor will be deemed to have satisfied itself of and taken account of:

- (j) all the conditions and circumstances affecting the Contract;
- (k) the provision of the Deliverables as described in the Contract;
- (l) the general conditions and circumstances at the Site;
- (m) the cost of conducting any environmental management in accordance with the environmental management plan, any environmental clean-up at any time any environmental incident, any remediation and rehabilitation of the Site and the surrounding areas resulting from the execution of the Contract, and
- (n) the general labour position on Site.

### **3.12 Quality Assurance**

1.12.1 The Contractor shall:

- (o) plan, establish and maintain a Quality Assurance Plan which conforms to the Company's quality assurance requirements, the EMS and the Company's safety management system; and
- (p) provide the Company's Representative with access to the Contractor's Quality Assurance Plan to enable monitoring and quality auditing.

1.12.2 Any such quality system shall be used only as an aid to achieving compliance with the Contract and to document such compliance. Such system shall not relieve the Contractor of the responsibility to comply with the Contract.

### **3.13 Site Meetings**

3.13.1 Site meetings will be held at times and dates to be agreed to between the Parties. The Contractor will ensure that one or more representatives of the Contractor are present at such meetings, having the necessary authority to make decisions on the Contractor's behalf. In addition, the Contractor must ensure that it represents all its Sub-contractors. Minutes of any Site meeting will not be deemed to serve as notice for or an instruction to commence any additional work and/or notice of claims.

### **3.14 Telephones & Electronic Devices**

- 3.14.1 The Company will not supply telephones on Site to the Contractor. The Contractor will make its own arrangements for this service at its own cost.
- 3.14.2 The Contractor will not carry a cellular phone, or have a cellular phone in a vehicle, in the vicinity of an explosive magazine or a bank area at a shaft.
- 3.14.3 The Contractor and its Employees will not carry a cellular phone or any other electronic device or camera into a metallurgical plant, or any other area prohibiting such devices, without written consent by the relevant Mine Manager.

### **3.15 Transport**

3.15.1 The Contractor will provide all necessary surface transport for its employees, materials and Contractor's Equipment. The Contractor will comply with all the relevant laws, including environmental laws, as well as the Company's Standards relating to the transportation of employees, materials and Contractor's Equipment.

### **3.16 Existing Works and/or Co-ordination of Other Works**

3.16.1 The Contractor will at all times ensure minimal disruption of the normal operations of the Mine and its service providers. The Contractor will, prior to commencement of work, obtain from the Company Representative either a layout of the existing Works or a certificate of clearance that the Contractor

may proceed with work in a specific area. The Contractor will be liable for any damages incurred by the Company due to the Contractor's interference with the normal operations of the Mine or its service providers. Where applicable, the Contractor will familiarise itself with shaft times, rules and regulations.

- 3.16.2 All work entailing interruption of activities of operating installations will only be carried out following agreement with the Company Representative on the sequence and timing of such work.
- 3.16.3 Joint Occupancy: Other work may be performed by others concurrently with the execution of this Contract. The Contractor recognises that the Works hereunder may be executed under joint occupancy conditions and agrees to co-operate with the Company and other contractors on the Site so that the project as a whole will progress smoothly with a minimum of delays due to obstructive activities between various Contractors on the Site.

### **3.17 Contractor's Equipment, Temporary Works and Materials**

- 3.17.1 Unless otherwise provided in the Contract, the Contractor will:
  - (a) provide all Contractor's Equipment necessary to ensure execution of the Contract;
  - (b) ensure that all the Contractor's Equipment will, when brought on to the Site, be exclusively intended for the execution of the Contract.
- 3.17.2 The Contractor will not remove from the Site any Contractor Equipment except:
  - (a) when it is no longer required for the fulfilment of its obligations as agreed to in the Contract; or
  - (b) when the Company Representative has given its written consent to remove the Contractor Equipment; or
  - (c) when the Company Representative instructs in writing that the Contractor's Equipment be removed.
- 3.17.3 Clause 3.17.2 will not apply to vehicles engaged in transporting any of the Contractors employees, Contractor's Equipment or Goods to or from the Site.
- 3.17.4 All Contractor's Equipment will be in good operating condition, safe, fit for the use for which intended, and suitable for the safe and efficient execution of the Contract. The Contractor's Equipment will be subject to inspection and approval from time to time by the Company. Any Contractor's Equipment that is rejected by the Company as not conforming to the foregoing, will be promptly removed by the Contractor and replaced with equipment acceptable to the Company, without additional cost to the Company.
- 3.17.5 All Contractor's Equipment and materials provided by the Contractor which are not intended to permanently form part of the Works will, when brought onto the Site, be deemed to be exclusively intended for the execution of the Contract and the Contractor will not remove same or any parts thereof, except for the purpose of moving it from one part of the Site to another, without the prior written consent of the Company Representative, as stipulated.
- 3.17.6 Notwithstanding the above, the risk of loss of or damage to the Contractor's Equipment, will remain with the Contractor at all time.

### **3.18 Control of Contractor's Equipment**

- 3.18.1 All Contractor's Equipment brought onto the Site for the purposes of fulfilling its obligations as set out in the Contract, will be under the control of the Company Representative.
- 3.18.2 The Contractor's Equipment will remain on Site and be used by the Contractor or, should the Contract or any part of it be terminated for reasons other than default on the part of the Company, by the Company or such other contractors or persons as may be engaged by the Company to complete the work to execute the obligations of the Contract.

- 3.18.3 The Contractor's Equipment will be used solely for such purpose and will not, without the prior consent in writing of the Company Representative, be taken from the Site while it is required for the purpose of completing the work required to execute the Contract.
- 3.18.4 The following provisions will apply to any Contractor's Equipment that is hired, leased or the subject of a hire purchase agreement:
- (d) Details of all Contractor's Equipment that is brought on to the Site by or on behalf of the Contractor for the purpose of execution of the Contract and that is hired, leased or the subject of hire purchase agreements, together with the names of the hirers, lessors or owners thereof, will be supplied to the Company Representative by the Contractor.
  - (e) The Company may, in order to avoid seizure by the hirer, owner or lessor, at the Company's option, pay to such hirer, owner or lessor the amount of any overdue instalment or other sum payable under the agreement for hire, lease or hire purchase and, in the event of the Company doing so, any amount so paid will be a debt due from the Contractor to the Company and may be deducted by the Company from any monies due or that may become due to the Contractor in terms of the Contract or may be recovered by the Company from the Contractor at law.
  - (f) The Contractor will, when entering into any Subcontract for the execution of any part of the Contract, incorporate in such Subcontract the abovementioned provisions in relation to the Contractor's Equipment brought onto the Site by the Sub-contractor.

### **3.19 Security of the Site**

- 3.19.1 The Contractor will be responsible for keeping unauthorised persons off the Site; the authorised Employees will be limited to the Contractor's Personnel and the Company's Employees. The Company will notify the Contractor of any other authorised employees entitled to be on the Site, including the Company's other contractors on Site.
- 3.19.2 The Company will have the right to open and inspect any containers, tool boxes, vehicles and other items on Site at any time.

### **3.20 Contractor's Operations on Site**

- 3.20.1 The Contractor will confine its operations to the Site. The Contractor will keep the Contractor's Equipment and the Contractor's Personnel on the Site and any approved additional working areas, and will keep Contractor's Equipment and Employees off any adjacent land. Approved additional working areas will be considered part of the Site for purposes of this Contract.
- 3.20.2 During the execution of the Contract, the Contractor will keep the Site free from all unnecessary obstruction, and will lawfully store or dispose of any Contractor's Equipment or surplus materials. The Contractor will clear away and remove from the Site any wreckage, rubbish and Temporary Works that are no longer required.

### **3.21 Contractor Supplied Equipment and Materials**

- 3.21.1 The Contractor will be responsible for arranging all shipments of Materials and Equipment/Plant to the site and will consign all such shipments to itself as consignee at the project shipping address, freight fully prepaid. The Contractor will be responsible for making demurrage agreements and settlements with the carriers of its shipments.
- 3.21.2 The Contractor will advise the Company in advance of all major shipments of the Contractor's Equipment and Materials and will co-ordinate with the Company the arrival, unloading and release of



the carrier's equipment. The Contractor will promptly unload its shipments and promptly release the carriers' equipment.

### **3.22 Protection and Control of Materials, Equipment and Works**

3.22.1 The Contractor will at all times, in accordance with the best practices and at no additional cost to the Company, provide storage facilities, and protection for all Goods and the Company's equipment used by the Contractor in the execution of the Deliverables from damage or loss due to weather, fire, theft, unexplained disappearance or other similar casualty.

### **3.23 Noise Level of Machinery and Equipment**

- 3.26.1 No equipment, whether new, repaired or modified, will have a noise level higher than the legislated 85dBA, or as amended from time to time.
- 3.26.2 It will be regarded as a material breach of this Contract if the equipment does not comply with the above noise level requirements, and if the stipulations of the Policy and Procedure for Contractors Working on Site and the relevant legislation are not complied with.

### **3.24 Appointment of Qualified Persons**

- 3.24.1 In terms of Regulation 277 (2) of Chapter VIII of the Road Traffic Act 93/1996 and Regulations, the parties agree to the appointment of the Qualified Persons with the responsibility to:
  - (a) ensure that the Vehicles are at all times available to provide the Deliverables. The Contractor warrants to the Company that the Vehicles shall at all times be sufficient for it to comply with its obligations under this Contract;
  - (b) ensure that its Vehicles are properly serviced and are at all times maintained in a safe and roadworthy condition and that the Vehicles comply in all respect with the Legislation
  - (c) to comply with any other statutes, rules and regulations which may be applicable to the Site and the execution of the Deliverables, including any rules that the Company may issue from time to time and which are conveyed to the Contractor in writing by the Company Representative;

## **4 The Company**

### **4.2 Site Data**

- 4.2.1 The Company will make available to the Contractor all relevant information in its possession applicable to the Site,. The Contractor will be responsible for verifying the accuracy, sufficiency and completeness of such data.
- 4.2.2 The Company will not be held responsible for any delays or costs incurred by the Contractor due to any incorrect alignment and/or measurement of the Deliverables.

## **5 Personnel and Labour**

### **5.1 Engagement and Labour laws**

- 5.1.3 The Contractor's Personnel will obey all applicable laws, including - but not limited to - those concerning safety at work. In the event that the Contractor and/or any of the Contractor's Personnel do not comply with any of the Company's policies or procedures or any applicable legislation regarding health, safety

and labour requirements, then the Contractor will pay the sum of R25 000.00 (Twenty-Five Thousand Rand) per incident of such non-compliance.

## **5.2 Working Hours**

- 5.2.1 The Contractor will observe the normal working hours prescribed by the Applicable Laws, unless otherwise agreed between the Parties.
- 5.2.2 No work will be carried out on the Site outside normal working hours or on South African public holidays unless agreed to in writing between the Parties.

## **5.4 Contractor's Superintendence**

- 5.4.1 For the duration of the Contract, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor will provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Deliverables. Superintendence will be given by a sufficient number of persons having adequate knowledge of the language used for communications and of the operations to be carried out for the satisfactory and safe execution of the Contract.

## **5.5 Conduct of Contractor's Personnel**

- 5.5.1 The Contractor will prevent any unlawful, riotous or disorderly conduct by or among the Contractor's Personnel, and will preserve the peace and protection of persons, property and the environment on and near the Site. The Contractor will be liable for all damage or loss resulting from any unlawful, riotous or disorderly conduct or any act contrary to any regulations of the Company by or among the Contractor's Personnel.
- 5.5.2 The Contractor must, on the Company Representative's written instruction, remove (or cause to be removed) and replace any person employed on the Site or Deliverables, including the Contractor's Representative, if necessary, who:
  - (d) persists in any misconduct or lack of care;
  - (e) carries out duties incompetently or negligently;
  - (f) fails to comply with any provisions of the Contract; or
  - (g) persists in any conduct that is prejudicial to safety, health, or the protection of the environment.

# **6 Commencement, Delays and Suspension**

## **6.2 Commencement of Work**

- 6.2.4 The Contractor shall commence with the Service with due expedition and without delay after receipt of the Purchase Order ("Commencement Date").

## **6.4 Work programme**

- 6.4.1 The Contractor shall be obliged to:
  - (a) execute and complete the Services within the times specified in the Contract or the Purchase Order (Completion Date). Should there be any discrepancy between the date specified in the Contract and the Purchase Order, the date specified in the Purchase Order will prevail. If a date is not specified in the Purchase Order, the date specified in the Contract will apply; and/or
  - (b) achieve the agreed production targets specified in the Contract ("Target").

- 6.4.2 The Company's Representative may direct in what order and at what time the various stages the Service shall be performed. If the Contractor cannot reasonably comply, the Contractor shall notify the Company's Representative in writing, giving reasons.
- 6.4.3 If the Company or Company's Representative forms the view that the Contractor has not complied with the obligations in relation to progress or resources, the Company may direct the Contractor to increase its labour force, Equipment, hours of work and/or shifts, or to make other special arrangements so as to comply with its obligations in relation to progress and resources.
- 6.4.4 All quantities contained in the Contract are estimated quantities only. Such estimated quantities are not guaranteed or warranted by the Company.

## 6.5 Completion

- 6.5.2 For the purpose of the Contract, the Deliverables or any section thereof is completed when:
  - (a) the Contractor has completed the whole of the Deliverables;
  - (b) the Contractor has passed all of the tests the Contractor is required to perform in terms of the Contract; and
  - (c) the Company's Representative has certified the Service as being completed.

## 6.6 Low Performance Penalties

- 6.6.1 Without derogating from any other rights of the Company have under this Contract or on law, if the Contractor fails to
  - (a) complete the Service or section of the Service as stated in the Contract by the Completion Date, then the Contractor will be liable to pay penalties. The penalty shall be the sum of 0,5% for every business day that elapse between the Completion Date and the date the Contractor achieves completion up to a maximum of 10% of the Contract Price; and/or
  - (b) meet the Target/s set out in the Contract then the Contractor will be liable to pay penalties. The penalty shall be the sum the sum of 0,1% of the Contract Price for every 10% the Contractor's Service was below the Target, up to a maximum of 10% of the Contract Price per annum.
- 6.6.2 The Company and Contractor hereby acknowledge and agree that the penalties are a reasonable estimation of the loss and damage that the Company will incur in the event of the Contractor's failure to complete the Works by the Completion Date or meet the Target/s set out in the Contract.
- 6.6.3 Having agreed that the amount of such penalties are reasonable in light of the anticipated harm caused by the breach related thereto, and in lieu of the Company electing to seek actual damages for delays associated with the failure to complete the Deliverables by the Completion Date or its failure to meet the Targets, the Parties hereby waive any right or entitlement to contest or challenge the validity or enforceability of such penalties, or the reasonableness of the penalties.
- 6.6.4 Where the Contractor seeks to challenge the penalties, and if a court determines that the rate will not apply, the Company is entitled to claim all damages associated with the Contractor's failure to meet the Completion Date and/or Targets.