

General Terms and Conditions
of Contract



FOURTH EDITION 2024

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1 General Provisions

1.1 Preamble

- 1.1.1 These general terms and conditions of Contract ("Conditions of Contract") shall apply to all requests made by Sibanye-Stillwater Limited or its subsidiaries (the "Company") for quotations, proposals or offers and are an integral part of any written official purchase order ("Purchase Order") placed by the Company on suppliers ("Contractor"), for the procurement of works and services, ("Services") and/or the procurement of products, equipment, materials, consumables and plant for consumption and/or use by the Company ("Products") (together "Deliverables") at its prospecting, mining, retention, exploration, production, processing facilities or other service departments (the "Site").
- 1.1.2 Any general terms and conditions of the Contractor including those referred to in the Contractors' proposal, quotation or confirmation of receipt of a Purchase Order are acknowledged merely for the administrative needs of the Parties, without them being accepted or considered to be included in the Contract unless the Parties have agreed in writing to incorporate all or part of such terms and conditions in the Contract.
- 1.1.3 Where a Purchase Order is placed by the Company on the Contractor for the provision of Deliverables, these Conditions of Contract read with the Purchase Order will govern the Parties contracting obligations (the "Contract"). The documents which set out the agreement between the Parties are, in decreasing order of priority: (i) the Purchase Order (ii) these Conditions of Contract (iii) any documents specifying the Deliverables ("Specifications").
- 1.1.4 Where any Services are provided by the Contractor on Site, Annexure "A" will apply.

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;
- 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 the 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 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.
- 1.2.5 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.
- 1.2.6 The Contract, including all documents forming part of this Contract, correspondence as well as all calculation notes, computer programmes, models, drawing notes, designs, manuals, and all other documents of a technical nature or related to the Deliverable supplied by the Contractor under the Contract will be drawn up, construed and interpreted in English.
- 1.2.7 The rule of construction that the Contract will be interpreted against the Party responsible for the drafting of the Contract, will not apply.
- 1.2.8 Any reference in this Contract to:

- (a) 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
- (b) 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).

1.3 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 Clause 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 Clause 1.4.1.

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, other than financial records

that specifically relate to the Contract. Such records shall include all records relating the health and safety, quality, company structures and composition, testing, measurements, invoices, delivery notes and personnel.

- 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 and Regulatory bodies.

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 exclusions from the Contract will be of any force or effect unless reduced to writing as an amendment to the Contract and signed by authorised representatives on behalf of the Parties.

1.9 Conflict of Interest

- 1.9.1 The Contractor undertakes and warrants that it, or its employees, members, shareholders or affiliates do 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. The Contractor undertakes to continually monitor the existence of any conflict of interest and if the Contractor is or become aware of, or suspects, a conflict of interest, the Contractor will immediately report such conflict of interest to the Company suppliers@sibanyestillwater.com, 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.
- 1.11.2 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.
- 1.11.3 The Company may assign any rights or obligations under the Contract to any legal entity that accepts the Company's rights and assumes the Company's obligations by giving 14 (fourteen) days' notice thereof to the Contractor.

1.12 Ownership and Risk

- 1.12.1 The Products will become the property of the Company at whichever is the earlier of the following:
- (a) when it is delivered; or
 - (b) when the Contractor receives payment.
- 1.12.2 The Contractor warrants that such Products is free of any liens and other encumbrances.
- 1.12.3 Risk in the Products will pass to the Company from the Contractor upon physical receipt thereof by the Company.

2 Laws, Regulations, Policies and Compliance

2.1 Laws, Regulations and Company Standards

- 2.1.1 The Contractor must at all times comply in all respects with the provisions of all national and provincial legislation, regulations, codes, rules, judgments, decrees, permits, directives, guidelines and policies of any legally constituted public authority applicable to the Deliverables and/or to the performance of this Contract ("Laws").
- 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 Laws after the date of the Purchase Order, either Party may apply for an adjustment to the Price so that such increase or reduction may be added to or deducted from the 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 Company as a result of a breach by the Contractor of any Laws.
- 2.1.4 The Contractor, its personnel and its subcontractors will strictly comply with all standards, rules, codes of practice, procedures, and managerial instruction of whatever nature applicable to the Site.
- 2.1.5 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 codes of practice, procedures and standards of the Mine Health and Safety Act, Act 29 of 1996 and/or the Occupation Health and Safety Act, No.85 of 1993;
 - (c) all Company policies, which are available on the Company's website, including but not limited to:
 - (i) the Company's Ethics and Corporate Governance Policy and Code of Ethics;
 - (ii) the Company's Environmental, Social and Governance Policy;
 - (iii) the Company's Human Rights Policy;

- (iv) the Company's Responsible Sourcing Policies
- (v) the Company's Labour policy;
- (vi) Sexual harassment policy and guideline;
- (vii) the Company's Privacy Policy;
- (viii) the Company's Compliance management Policy;
- (ix) the Company's Material stewardship Policy;
- (x) the Company's Responsible business Policy;
- (xi) the Company's Risk management Policy;

(collectively referred to as "**Company Standards**")

- 2.1.6 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.
- 2.1.7 If, after the conclusion of an investigation there exist reasonable evidence that the Contractor and/or any of the Contractor's Personnel have:
 - (a) materially contravened any Laws, or any of the Company Standards, then the Contractor will pay the sum of R40 000.00 (Forty Thousand Rand) per incident, without prejudice to the Company's right to terminate the Contract or to claim for any damages arising from such contravention; or
 - (b) have in any manner participated or assisted in illegal mining activities, then the Contractor will pay a sum of R50 000.00 (Fifty Thousand Rand) multiplied by the number of Contractor's Personnel involved in such illegal mining activities, without prejudice to the Company's right to terminate the Contract or to claim for any damages arising from such contravention.

2.2 Assessing risks and hazards

- 2.2.1 Before any Products and other items required to execute the Deliverables are delivered, the Contractor will assess the hazards of the Products or any plant and equipment to be used by the Contractor to execute the Deliverables in accordance with any recognized 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 Mine Health and Safety Act, Act 29 of 1996.

2.3 Black Economic Empowerment

- 2.3.1 The Contractor warrants that:
 - (a) it has read and familiarised itself fully acquainted with, fully understands the implications of, and, where appropriate, follows and will continue to follow the Broad-Based Black Economic Empowerment Act, No. 53 of 2003 ("BBBEE Act") as amended and the Codes of Good Practice on Black Economic Empowerment; and
 - (b) it has fully acquainted itself with and fully understands the implications of Fronting.
- 2.3.2 The Contractor acknowledges that the Company is required to meet particular black economic empowerment procurement spend targets, as set out in the BBBEE Act and to report on all such expenditure incurred and spent with its Contractors.
- 2.3.3 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 communities neighbouring the Company's operations ("Local Communities").

- (b) The Contractor will 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 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).

2.3.4 Local procurement

- (a) The Contractor undertakes to contribute to local economic development through implementation of local procurement by purchasing certain goods and services from small, medium and micro-enterprises within Local Communities ("SMMEs").
- (b) The Contractor shall procure from 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.
- (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 SMMEs, evidence of supplier development activity and the number of tenders issued to SMMEs.

2.3.5 Where there is a negative change in the black economic empowerment 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.

2.3.6 In the event that the Company, in its sole and absolute discretion, at any time determines that the Contractor's black economic empowerment 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. Where no such resolution is reached within 30 (thirty) 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.

2.4 Fronting

2.4.1 Where the Company receives a notification of possible transaction, arrangement or other act or conduct by the Contractor that directly or indirectly undermines or frustrates the achievement of the objectives of the Broad-Based Black Economic Empowerment Act ("Fronting") and/or suspects that the Contractor is participating in Fronting practices, the Company may suspend any Contract while the Fronting allegations are being investigated.

2.4.2 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 with all requests for information and promptly assist the Company in its investigations.

2.4.3 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 later found by an independent auditor not to have been participating in Fronting practices.

2.5 International Compliances and Benefits

- 2.5.1 The Company reports on its carbon footprint, which includes the emissions associated with upstream services and procurement activities. The Contractor will support this process by supplying information on its greenhouse gas emissions as requested by the Company through submission of their annual carbon footprint or other detailed information. to determine carbon intensities of products/services where no carbon footprint monitoring is in place as yet.
- 2.5.2 The Company reports on its water footprint. The Contractor will support this process by supplying its freshwater abstraction and consumption information, as and when requested to do so by the Company, in regard to the products/services supplied to the Company.
- 2.5.3 The Company subscribes to international and industry standards which are the International Council on Mining and Metals (ICMM), the World Gold Council (WGC), the United Nations Global Compact (UNGC) and the Initiative for Responsible Mining Assurance (IRMA). The Contractor will support the ICMM, WGC, UNGC principles as well as the sustainable development goals and the requirements as contained within IRMA.

2.6 Anti-Bribery and Sanctions Laws and Policies

- 2.6.1 The Contractor undertakes, on behalf of itself, its personnel and its subcontractors:
 - (a) to 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-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 Sanctions Laws and/or any Sanctions Legislation to which the Company is subject, including those of any jurisdiction where it conducts business ("Sanctions Laws");
 - (c) to implement and enforce an Anti-Corruption Programme;
 - (d) not to engage in any corrupt activities;
 - (e) not to directly or indirectly pay through intermediaries and or third parties, offer, promise, or provide money 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.
- 2.6.2 The Contractor its personnel and its subcontractors will not offer, promise or provide money or anything of value whether by way of a commission, gratuity or otherwise, or lend, offer promise or provide money or any asset, or give, offer, promise or provide any other valuable consideration to any person in the employ of the Company.
- 2.6.3 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.

- 2.6.4 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.

2.7 Ethics, Human Rights and Harassment-Free Working Environment

- 2.7.1 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.
- 2.7.2 The Contractor will not unlawfully discriminate against its employees within the meaning of any appropriate law.
- 2.7.3 The Contractor will prohibit slavery, servitude, forced labour, child 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.
- 2.7.4 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.
- 2.7.5 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 Laws relevant to labour including but not limited to those laws prohibiting the use of forced labour and child labour.
- 2.7.6 The Contractor will prohibit gross human right violations and shall immediately notify the Company upon becoming aware of any form of human right violations by its employees.

2.8 Non-Dealing Agreement

- 2.8.1 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 the Contractor 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.

2.9 Protection of Personal Information

- 2.9.1 The Party receiving personal data information or acquire or gain access to personal data when executing of the Contract ("Receiving Party") from the other Party ("Disclosing Party") will:
- (a) comply with any applicable legislation governing the collection, use and processing of the personal information;
 - (b) only process personal information which is reasonably required in the execution of the Contract;
 - (c) ensure that the processing of any personal information will not place the Disclosing Party in breach of any applicable privacy and data protection laws or statutes;
 - (d) only disclose personal information to persons, to whom disclosure is necessary for the execution of the Contract. The Receiving Party 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;
 - (e) immediately inform the Disclosing Party of any request for access to the personal information, and comply with the Disclosing Party's instructions in relation to complying with that request;

- (f) immediately inform the Disclosing Party of possible infringements of the applicable privacy protection legislation by the Receiving Party, its employees or any other party/ies acting on its behalf; and
- (g) 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.

2.9.2 The personal information:

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

2.9.3 On reasonable notice from the Disclosing Party, the Receiving Party will permit any authorised officers of the Disclosing Party to investigate the steps taken by the Receiving Party to comply with any applicable privacy and data protection laws.

2.9.4 The Receiving Party will indemnify and keep indemnified the Disclosing Party 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 Receiving Party's non-compliance with the provisions of this clause and any relevant privacy protection legislation which may be brought against the Disclosing Party.

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

2.10 Environmental Compliance

2.10.1 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.

2.10.2 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) inform and educate its personnel and its subcontractors 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;

2.10.3 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.

- 2.10.4 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.
- 2.10.5 The Contractor will ensure that the Site complies with the Companies ISO 14001 environmental management system and will conduct its affairs in such a manner so as not to compromise the Company's ISO14001 registration.

2.11 Health and Safety

- 2.11.1 The Contractor must, and must ensure that all its employees, at all times take all reasonable precautions and must comply with all health and safety legislation including, but not limited to the Mine Health and Safety Act, Act 29 of 1996, the Occupation Health and Safety Act, No.85 of 1993, the Mines and Works Act, No. 78 of 1973, and the Hazardous Substances Act, No. 15 of 1973 for the duration of the Contract.
- 2.11.2 The Contractor will provide a first-aid facility containing an adequate quantity of medical supplies to deal with accidents of a minor nature. The first-aid facility will be kept in close proximity of where the Service is to be performed and is to be available for use by all persons.
- 2.11.3 Should any of the Contractor's personnel contract any occupational illness, infectious disease or injury during the course of the Service, the Contractor is required to notify the Company immediately. The Company will have the right to hospitalise and treat such personnel at the Contractor's expense.

3.1 Noise Level of Machinery and Equipment

- 2.11.1 The noise levels of all Products supplied, and equipment utilised on the Site, will be below 105 dB(A). If the Parties agree that no alternative equipment operating below 105 dB(A) is available, the Contractor will initiate a noise reduction process.
- 2.11.2 The Contractor will provide a 3rd party equipment noise verification certificate for all Products supplied and equipment utilised on the site emitting noise.
- 2.11.3 It will be regarded as a material breach of this Contract if the equipment does not comply with the above requirements.

2.12 Labour Laws

- 2.12.1 The Contractor will comply with all 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.

2.13 Jurisdiction and Governing Law

- 2.13.1 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.

3 The Contractor

3.1 General Obligations

- 3.1.1 The Contractor will execute and complete the Services and/or supply and deliver such quantities of the Product to the Company as is detailed in the Purchase Order, subject to the terms, and conditions set out in the Contract.
- 3.1.2 The Contractor declares that:

- (a) it has obtained and maintains all consents, licences, permissions and approvals whether of a public or a private nature, which are necessary for the execution and completion of the Deliverables 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 the power, authority and legal right to execute the Contract and 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.

3.1.3 The Contractor will execute the Deliverables:

- (i) in a professional, competent, sound and workmanlike manner, 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;
- (ii) using internationally accepted methods and practices having due regard to the nature of the Deliverables and its intended purpose;
- (iii) with due expedition and without unnecessary or unreasonable delays;
- (iv) in a manner which is safe and efficient;

3.1.4 The Contractor will provide (a) all superintendence, labour and materials, (b) all apparatus, machinery and vehicles ("Contractors Equipment"), and (c) all other things, whether of a temporary or permanent nature, required for the execution of the Contract and Delivery of the Deliverables and for the remedying of any defects in terms of the Contract.

3.1.5 The Deliverables will include any work that, although not specifically detailed in the Contract, is deemed necessary for the execution, Delivery or safe and proper and environmentally sound operation of the Deliverables, or for stability.

3.2 Quality Assurance

3.2.1 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.

3.2.2 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.

3.3 Packaging and Transport

3.3.1 The Contractor will package the Products and all material and equipment to be transported to ensure the safe, adequate and lawful transport, loading, offloading, handling, and storage thereof, 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 Products on ship or aircraft, if appropriate, to ensure proper protection and preservation of the Products.

- 3.3.2 The Contractor will specify in full detail on all packing cases and/or packaging materials and receptacles containing the Products:
- (a) Product identification;
 - (b) immediate and long-term potential hazards and dangers, including, but not limited to, whether the Products 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 Product name, its properties, full instructions on handling, storage, fire, disposal, spillage and first aid.
- 3.3.3 The Contractor will supply appropriate Material Safety Data Sheets with each delivery.
- 3.3.4 Unless specified otherwise in the Contract, the Products will be delivered to the Company by the Contractor at the Contractor's cost to the Site. The Contractor will ensure that it applies for an import licence for the Products in the Company's name if necessary.
- 3.3.5 The Company will not be liable for any Products not delivered to the Site as required in terms of the Contract.
- 3.3.6 Contractor will, in respect of each Purchase Order, furnish to the Company the following information in the waybill:
- (a) a clear description of the Products;
 - (b) name of the manufacturer of the Products;
 - (c) quantity of the Products;
 - (d) net and gross weight of the Products;
 - (e) number of containers in which the Products 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.
- 3.3.7 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 Products to the Site and where applicable the transport of empty containers from the Site.
- 3.3.8 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.
- 3.3.9 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.

3.4 Cranes

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

3.5 Contractor's Representative

- 3.5.1 The Contractor will employ a competent representative to manage the execution of the Deliverables on the Site and will give such representative all the authority to act on the Contractor's behalf under the Contract.
- 3.5.2 Any instruction or notice that the Company Representative gives to the Contractor's Representative will be deemed to have been given to the Contractor.
- 3.5.3 The Contractor's Representative will be present on the Site during working hours. If the Contractor's Representative must be absent from the Site for a period more than 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.
- 3.5.4 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.

3.6 Relationship between the Parties

- 3.6.1 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.
- 3.6.2 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.

3.7 Subcontracting

- 3.7.1 Unless otherwise directed or approved by the Company the Contractor shall not subcontract the primary or material components of the 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.
- 3.7.2 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.
- 3.7.3 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.
- 3.7.4 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.

- 3.7.5 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 3.7.4.

3.8 Non-exclusive relationship

- 3.8.1 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.

3.9 Liens on Company's Property

- 3.9.1 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.
- 3.9.2 The Contractor will at its own expense, keep the Site and all Products acquired by the Company free and clear of third-party liens.

3.10 Contractor Designs

- 3.10.1 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.
- 3.10.2 The Company Representative shall be provided with copies 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 design, drawing or document supplied by it and for any loss or damage arising out of such error or deficiency.

3.11 Contractors Documents

- 3.11.1 Any calculations, computer programmes, models, drawings, designs, manuals, drafts, operating and maintenance instructions, spares lists and all other documents of a technical nature or related to the Deliverable supplied by the Contractor under the Contract ("Contractor Documents") that requires the approval of the Company Representative will be submitted to the Company Representative prior to executing any Deliverables reliant upon such approval.
- 3.11.2 The Company Representative may respond with approval or disapproval thereof, with comments or recommended modifications required thereto.
- 3.11.3 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.

- 3.11.4 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.
- 3.11.5 The Company Representative will have the right at all reasonable times to inspect the Contractor Documents at the premises of the Contractor or any of its subcontractor.
- 3.11.6 All Contractor Documents forming part of the Deliverables in terms of the Contract will become and remain the property of the Company.

3.12 Existing Works and Other Contractors

- 3.12.1 The Contractor will at all times ensure minimal disruption of the normal operations at the Site. The Contractor will, prior to commencement of the Services, obtain from the Company Representative either a layout of the existing Site or a certificate of clearance that the Contractor may proceed with the Services in a specific area. The Contractor will be liable for any damages incurred by the Company due to the Contractor's interference with normal operations at the Site. Where applicable, the Contractor will familiarise itself with the operation times, rules and regulations at the Site.
- 3.12.2 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.
- 3.12.3 Other work may be performed by others concurrently with the execution of this Contract. The Contractor recognises that the Site hereunder may be executed under joint occupancy conditions and agrees to co-operate with the Company and other contractors appointed by the Company on the Site so that the project as a whole will progress smoothly with minimum delays due to obstructive activities between various Contractors on the Site.

3.13 Sufficiency of Contract Price

- 3.13.1 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.
- 3.13.2 The Contractor will be deemed to have satisfied itself of and taken account of:
 - (a) the Specifications of the Deliverables as described in the Contract and all things incidental thereto to enable the Contractor to complete the Deliverables;
 - (b) the cost of conducting any environmental management in accordance with the environmental management plan, the clean-up of any environmental incident caused by the Contractor and the remediation and rehabilitation of the Site and the surrounding areas caused by the Contractor in executing the Contract, and
 - (c) to the extent applicable, the general labour position on Site.
- 3.13.3 All quantities contained in the Contractors written quotation or in the Price schedule to the Contract are estimated quantities only. Such estimated quantities are not guaranteed or warranted by the Company.
- 3.13.4 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 caused by the Contractor.
- 3.13.5 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.

3.14 Physical Obstructions and Conditions

- 3.14.1 If during the execution of the Contract, 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, subject to Clause 16.1 to claim for the additional costs reasonably incurred in consequence, including the extension of time for completing the Services, from the Company.

3.15 Security of the Site

- 3.15.1 No unauthorised persons will be allowed on the Site. The Company will notify the Contractor of any authorised employees entitled to be on the Site, including other contractors.
- 3.15.2 The Company will have the right to open and inspect any containers, toolboxes, vehicles and other items on Site at any time.

3.16 Warranty

- 3.16.1 The warranty period for the Deliverables will start upon achievement of provisional completion in accordance with Clause 6.6 and continue until 12 months have passed from the date of provisional completion (the "**Warranty Period**").
- 3.16.2 The Contractor warrants that the Deliverables will:
- (a) comply with the specification, the Company's Standards and the 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;
 - (b) be free from both patent and latent defects and be of good quality and workmanship;
 - (c) unless otherwise specified include or comprise new materials of merchantable quality;
 - (d) be fit and suitable for its intended purpose; and
 - (e) be supplied with the full benefit to the Company of any manufacturer's warranty.
- 3.16.3 If the Contractor fails to carry out any obligation under the Contract, the Company may, without prejudice to claim any damages it may suffer as a result, by notice require the Contractor to remedy the failure within a specified reasonable time.
- 3.16.4 The Contractor will carry out its obligations in relation to the Warranty Period at the times and in a manner that do not interfere, or, to the extent that this is not reasonably possible, at the times and in a manner that least interfere, with the Company's operations.
- 3.16.5 The Company will be entitled to an extension of the Warranty Period for any part of the Deliverables that is repaired or replaced under this Clause 3.14 during the Warranty Period, in which case such part of the Deliverables shall receive a new Warranty Period of no less than 12 months.
- 3.16.6 If the Contractor fails to remedy a defect within a reasonable time specified by the Company, the Company will be entitled (at its option) to:
- (a) have the relevant work performed at the Contractor's cost and risk, and the Contractor shall pay to the Company the costs reasonably incurred by the Company in remedying the defect or damage;
 - (b) a reasonable reduction in the Price; or
 - (c) if the defect or damage deprives the Company of substantially the whole benefit of the Deliverables or any major part of the Deliverables, terminate the Contract as a whole, or in respect of such major part (at the Company's discretion), and without prejudice to any other rights, under the Contract or otherwise, the Company shall then be entitled to recover all sums paid for the

Deliverable or for such part (as the case may be), plus the costs of dismantling the Deliverable and returning the Deliverable and materials to the Contractor (as applicable).

4 The Company

4.1 Specifications

- 4.1.1 The Company will provide the Contractor at the appropriate times with the Specifications necessary to enable the Contractor to execute and complete the Deliverables. All Specifications will be and remain the property of the Company.
- 4.1.2 In the event that any ambiguity or discrepancy is discovered in the Specifications, the matter will immediately be referred to the Company Representative for his decision.
- 4.1.3 The Contractor accepts responsibility for ensuring that it obtains and carries out the Deliverables in accordance with the latest revision of the Specifications approved by the Company.
- 4.1.4 The Specifications 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 Specifications, 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.

4.2 The Company Representative

- 4.2.1 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.
- 4.2.2 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 it 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 personnel, local or otherwise, and for their payment, housing, meals and transport. The Company will not provide any accommodation, change-house, ablution, messing or welfare facilities for the Contractor's or its subcontractor's personnel. The Contractor will not permit the Contractor's or its subcontractor's employees to maintain any temporary or permanent living quarters on the Site or within the structures forming part of the Deliverables.

- 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 or personnel of its subcontractors 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 its subcontractors.
- 5.1.3 The Contractor agrees and undertakes that it informed itself of all matters relevant to the employment of labour at the Site.
- 5.1.4 The Contractor will be responsible for all labour relation matters and will establish and maintain sound labour management practices and good industrial relations and will 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 Working Hours

- 5.2.1 No work will be carried out on the Site outside normal working hours, Sunday's or on South African public holidays unless agreed to in writing between the Parties.

6 Commencement, Delays and Completion

6.1 Purchase Order

- 6.1.1 The Company may at any time make a request to the Contractor to provide a written quotation for the supply of Products or the provision of Services. The quotation shall include (i) the quantity and type of requested Products and/or Services and any minimum purchase requirements, if any; (ii) the specification(s); (iii) delivery terms and estimated delivery or completion date(s); (iv) the place for delivery; (v) the price; and (vi) if requested by the Company, details of special packaging.
- 6.1.2 Should the Company accept the quotation, the Company may, at its sole discretion place upon the Contractor a Purchase Order.
- 6.1.3 Unless otherwise specified in a formal Contract concluded between the Parties, quantities contained in the Contract are estimated quantities only. Such estimated quantities are not guaranteed or warranted by the Company. The Contract, in its entirety or in part, will not be enforceable until such time as a Purchase Order is generated by the Company and delivered to the Contractor.
- 6.1.4 If the Contractor performs any Services or deliver any Products without a Purchase Order, the Company will not be liable for payment for such Services or Products.

6.2 Acceptance

- 6.2.1 A Purchase Order is considered as accepted by the Contractor and a Contract concluded upon the transmission of its acknowledgement of acceptance to the Company.
- 6.2.2 If the Contractor failed within 2 (two) working days of the date of transmission of the Purchase Order to acknowledge receipt thereof, then the Purchase Order will be deemed accepted and a Contract concluded.

6.3 Commencement

- 6.3.1 The Contractor shall commence with due expedition and without delay after acceptance in terms of Clause 6.2 ("Commencement Date").

6.4 Suspension

- 6.4.1 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.
- 6.4.2 If the Contractor suffers delay or incurs additional costs from complying with the Company Representatives' instruction under this clause and the suspension did not arise as a result of the Contractor's default, the Contractor will give notice to the Company's Representative of a claim pursuant to clause 16.1.
- 6.4.3 The Contractor shall not proceed with the work without the written permission of the Company's Representative to proceed.
- 6.4.4 After permission to proceed is given, the Contractor and the Company's Representative will jointly examine the Deliverables 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.
- 6.4.5 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 positively within 28 (twenty-eight) days after receipt of the Contractor's request, the Contractor may, submit a notice in terms of 8.2.3 to exclude the affected part of the Deliverable. If the suspension affects the whole of the Deliverable, the Contractor may give notice of termination to the Company's Representative.

6.5 Delivery

- 6.5.1 The Contractor will complete the Services or deliver the Products within the times specified in the Purchase Order (Delivery Date).

6.6 Provisional Completion

- 6.6.1 Provisional completion is achieved when any inspection, test or examination of the Deliverables by the Company confirm overall compliance with quantity, quality and the specifications and upon receipt by the Company of all the documents specified in the Contract, including technical drawings and spare parts lists.
- 6.6.2 Provisional completion confirms the absence of apparent or patent defects but does not release the Contractor from all or part of the warranties and responsibilities by which it is bound under the Contract.
- 6.6.3 Provisional completion may be conditionally declared where there are minor defects to the Deliverables. These minor defects must be remedied by the Contractor during the prescribed Warranty Period.
- 6.6.4 Provisional completion of Deliverables shall be deemed if no defects have been notified by the Company within 10 days from the Delivery Date.
- 6.6.5 Provisional completion marks the start of the Warranty Period.

6.7 Final Completion

- 6.7.1 Final completion is achieved when:
 - (a) the Deliverables are compliant with the Contract specifications and the Contractor has fulfilled all its contractual undertakings and has remedied all defects in the Deliverables; and
 - (b) all documentation applicable to the Deliverables has been supplied; and
 - (c) Warranty Period have expired.

6.8 Performance Security

- 6.8.1 If an amount as security for the proper performance of the Contractor's obligations under the Contract is stated in the Contract, the Contractor will, at its cost, furnish to the Company security in the form of a demand guarantee from a third party approved by the Company, in the amount stated in the Contract, and deliver it to the Company within a period of 21 (twenty-one) days from the date of signature of the Contract.
- 6.8.2 The demand guarantee will be valid and enforceable until the expiry of the Warranty Period.

6.9 Low Performance Penalties

- 6.9.1 Without derogating from any other rights the Company has under this Contract or in law, if the Contractor fails to complete the Services or deliver the Products by the Delivery Date, then the Contractor will be liable to pay penalties. The penalty shall be the sum of 0,5% for every business day that elapses between the Delivery Date and the date the Contractor delivers the Products or completes the Services, up to a maximum of 10% of the Contract Price.
- 6.9.2 The Company and Contractor hereby acknowledge and agree that the penalties described in clause 6.9.1 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 Deliverables by the Delivery Date.
- 6.9.3 Having agreed that the amount of such penalties is 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, 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.
- 6.9.4 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.

7 Contract Price and Payment

7.1 Prices

- 7.1.1 Unless otherwise agreed in writing, the prices specified in the Contract for the successful execution and completion of the Deliverables by the Contractor will be fixed and firm and will include all taxes (excluding VAT), contributions and insurance costs.
- 7.1.2 The Contractor will be deemed to have taken into account when fixing its prices:
 - (a) all supplies;
 - (b) all studies;
 - (c) the delivery of all required documentation;
 - (d) cost of labour, subcontractors, and the tools and equipment required for the fulfilment of the Services;
 - (e) mobilisation and demobilisation costs;
 - (f) all the conditions and circumstances affecting the Contract;
 - (g) cost of insurance required in terms of clause 11;
 - (h) the general conditions and circumstances at the Site; and

- (i) the cost to clean-up any environmental incident and the remediation and rehabilitation of the Site and the surrounding areas caused by the Contractor in executing the Contract.

7.1.3 It is expressly agreed that if certain details or accessories that, according to good practice, are required for the Services may not be specified in the Contract and it shall fall upon the Contractor to include them in the Prices.

7.2 Payments and Invoices

7.2.1 The Contractor will submit invoices, once the Company Representative certifies payment, by replicating the invoices with supporting documentation in the Company's supplier portal or by submitting a system generated invoices to invoice@sibanyestillwater.com. All such invoices, as well as overdue invoices, payment allocations and debit and credit notes will be detailed on monthly statements, which will be sent by the Contractor on or before the 10th of each month to the Company's Accounts Payable department at statements@sibanyestillwater.com with a copy to the relevant account holder nominated by the Company Representative. The Company will only make payment against statements received and ratified by it by the 30th of that month in which the Statement is received. 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.

7.2.2 The Contractor warrants the accuracy of the invoices and supporting documents.

7.2.3 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;

7.2.4 The Company will not be liable for payment of any interest on the outstanding balance of any statement or for any related charges.

7.2.5 Payment or ratification of invoices will not affect the Company's rights relating to quality or warranty under the Contract.

7.2.6 Late submission of payment documentation and submission of incomplete or incorrect documentation will result in delayed certification or payment.

7.2.7 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.

7.3 Taxes, Duties, Fees, Levies and Permits

7.3.1 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 its 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.

- 7.3.2 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.
- 7.3.3 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.
- 7.3.4 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.
- 7.3.5 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.
- 7.3.6 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.

7.4 Withholding Payment

- 7.4.1 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 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 the 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.

7.5 Rate of Exchange

- 7.5.1 Should the Price comprise foreign and local content it will be specifically detailed in the Contract.
- 7.5.2 The Contractor will, at the request of the Company, obtain the rate of purchasing forward cover for the foreign currency portion of the Price on behalf of the Company. Upon receipt of a written request from the Company, the Contractor will purchase such forward cover, and the cost thereof will be for the account of the Company. The Contractor will not purchase forward cover without the express written instruction from the Company. The Company will not be liable to accept any forward cover agreement in the event where the Contractor purchased forward cover without the Company's written instruction.
- 7.5.3 If the Company elects not to purchase forward cover for the foreign currency portion of the Price, the rate of exchange will be determined as follows:
 - (a) the rate of exchange which was applied to the payment made by the Contractor to its suppliers for the imported Products, will apply to an amount payable by the Company in terms of the Contract, and the Contractor shall furnish documentary proof of such rate of exchange; or
 - (b) at the rate stated in the Contract.

8 Variations and Price Adjustment

8.1 Price Adjustment

- 8.1.1 If agreed in writing between the Parties that the Price may be adjusted for rises and falls in the cost of labour, material and other inputs to the Deliverables, application may be made annually by the Contractor for the adjustment of the Price.
- 8.1.2 Any application for 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.com, 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 application for a Price Adjustment:
 - (a) a breakdown of the 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 by giving 60 (sixty) days written notice thereof to the Contractor.
- 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 authorised representatives of 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 reasonable efforts to come to an agreement. Should the Parties fail to reach an agreement, either Party will have the right to terminate the Contract by giving 60 (sixty) days' notice of termination to the other Party. 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 and subject to the provisions of clause 8.1.6, 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, signed by both Parties.
- 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 and subsequent removal of the Contractor from the Company's vendor list.

9 Inspections, Testing and Examinations.

9.1 Contractors Obligations

- 9.1.1 The Deliverables shall be subjected from time to time to such inspections, tests or examinations 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.
- 9.1.2 The Contractor shall provide such assistance as is normally required for examining, measuring and testing any Services performed or the quality, weight or quantity of any Products delivered and shall supply samples of Products as may be selected and required by the Company for testing.
- 9.1.3 The Contractor shall provide all necessary assistance, labour, materials, testing equipment and instruments for the purpose of such tests to be performed by it or, if so instructed by the Company, for the purposes of tests to be performed by the Company or others.
- 9.1.4 The Contractor shall be deemed to have allowed in his Prices for all such tests as are required to be performed.

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. Alternative arrangements will be agreed on in respect of Products 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.

10 Risk and Indemnity

10.1 Indemnification by the Contractor

- 10.1.1 The Contractor indemnifies and holds 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 wrongful, negligent act or omission of the Contractor, its subcontractor's or any of its personnel;
- (b) 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;
- (c) damages arising out of acts of corruption by Contractor or any of its subcontractors;
- (d) 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 its subcontractor in connection with the Services;
- (e) third party claims for damages for breach by the Contractor or its subcontractor of the obligations to secure and maintain Contractor permits;
- (f) any and all claims by any employee of the Contractor or any of its subcontractors or personnel employed by any of them;
- (g) the vitiation of any insurance policies due to the Contractor's or any of its subcontractor's breach of any representation, declarations or conditions contained in any insurance policy, including the provision of false or misleading information;
- (h) 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
- (i) 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 indemnifies and holds 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, its personnel or its subcontractor's or any negligent act, omission or wilful misconduct of the Contractor, its personnel or its subcontractor's; 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, its personnel or its subcontractor's or any negligent act, omission or wilful misconduct of the Contractor, its Personnel or its subcontractors.

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) which is 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 reasonably 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 Deliverables or this Contract will not exceed twice the value of the total of the Price of the Contract.
- 10.4.2 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.
- 10.4.3 The limitations of liability stated under clause 10.4.1 and 10.4.2, will not apply to any liability in respect of:
 - (a) a Third-Party Claim covered in this Contract;
 - (b) fraud, gross negligence, deliberate or reckless default, reckless misconduct, fraudulent misrepresentation by the defaulting Party;
 - (c) any untrue representation or warranty by the liable Party or any of its subcontractors;
 - (d) illegal or unlawful acts or omissions, by the defaulting Party, its employees, agents, and subcontractors; and
 - (e) matters which cannot be excluded by law.
- 10.4.4 Each Party will 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.

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 Contract;
 - (b) insurance against any liability to pay damages or compensation to its personnel. The Contractor will ensure that all its subcontractors insure against this liability with regard to their own employees; and
 - (c) insurance on all apparatus, machinery, vehicles, facilities and other things of whatsoever nature owned or hired by the Contractor and used by the Contractor for the execution of the Contract. Such insurance will provide cover to the full value of such equipment. The Contractor must ensure that all its 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;
- (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 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 "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.
- 12.1.2 "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.
- 12.1.3 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.

12.1.4 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.

12.1.5 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.

12.1.6 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

- 13.2.1 In relation to the Services, the Company will, with the exception of intellectual property, methods and expertise owned by the Contractor, become owner as they are produced of any document, Deliverable, dossier, report, drawing and elements created by the Contractor under the terms of the Contract, as well as any information, inventions with or without patents, any procedures, and any equipment, prototypes, test equipment, models, software (whether it be in the form of object code, source code or any other form), obtained, created or developed by the Contractor under the Contract.
- 13.2.2 The Contractor undertakes to transfer to the Company, in an exclusive manner, all the rights of use, representation, reproduction and adaptation for all the Deliverables and the Contractor Documents, as well as all the intellectual property rights created under the terms of the Contract.
- 13.2.3 The Contractor may in its sole discretion include intellectual property, methods and expertise owned by the Contractor in the Deliverables and the Contractor Documents solely to enable the Company to understand and interpret the Deliverables and the Contractor Documents. The inclusion of intellectual property, methods and expertise owned by the Contractor in the Deliverables and the Contractor Documents:
 - (a) will be clearly marked as Contractors' intellectual property; and
 - (b) will be subject to the confidentiality provisions applicable to the Contract.
- 13.2.4 The Contractor is and shall remain the owner of all rights, titles and benefits relating to all intellectual property in the Products, including, but not limited to, know-how, patentable and non-patentable inventions, patents, models, designs, plans, samples, technical specifications, trademarks and copyrights. The Contractor grants the Company a license over such non-exclusive, non-transferable, and revocable intellectual property rights over the Goods that cannot be sublicensed (except to end customers) solely for the purpose of using and operating the Products or integrating the Products into the Site, Company's operations or the Company's equipment.

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 a material term of the Company Standards;
 - (f) the Contractor commits or permits an action which may bring the Company into public disrepute or which may negatively impact the Company's reputation;
 - (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, or its Personnel materially contravened any Laws, or any of the Company Standards;
 - (l) the Contractor or its Personnel have in any manner participated or assisted in illegal mining activities.
 - (m) the Contractor fails to take out and maintain a licence or permission to carry out the Deliverables;
 - (n) 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 relevant to the Deliverables, is left in a safe condition and is 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 mitigate 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 its personnel, and equipment and other things brought on to the Site by or on behalf of the Contractor, its personnel or its subcontractors, 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 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 its subcontractor debts and its 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 or processing activities, as the case may be, at its operations where the Site is located.
- 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.
- 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 is not substantially attributable to the Party claiming Force Majeure,
- (d) 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, or that of its subcontractors;
 - (v) laws, rules and regulations enacted or made after the Purchase Order date that cause the performance of the Services to cease;
 - (vi) any failure to act by any legally constituted public authority, which requires such 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 Company's operations which prevents the Company from operating and does not result in the Company terminating the Contract pursuant to 14.4 or a major or material disruption to the operations which prevents the Contractor from performing the Deliverables or a part thereof. Such major disruptions may include safety related stoppages ("Major Operation 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, 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 reasonably 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 a legally constituted public 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 Party.

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 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. If the Company Representative determines that an additional payment and/or an extension of time is required the additional payment or extension of time will be reflected in an amendment, signed by authorised representatives of the Parties.
- 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 Clause 16.1.1. The Contractor agrees to continue performance of the Contract during the time that any claim of the Contractor is pending.
- 16.1.4 The Contractor's claim for the extension of the agreed date for completing or delivering a Deliverable will only be considered if:
- (a) the completion of the Deliverable is, has or will be delayed and the delay is, has or will impact the critical path as determined from the programme; and
 - (b) such claim or request directly affects the Contractor's ability to perform the Deliverables; and
 - (c) the delay;
 - (i) was caused as a result of force majeure; or
 - (ii) was caused by or attributable to the Company or its personnel; and
 - (d) the Contractor has not contributed to the delay.
- 16.1.5 The Contractor's claim for additional payment or costs as a result of standing time, will only be considered where:
- (a) the Contractor was prevented from executing the Deliverables for more than a full and consecutive 24 hours;
 - (b) the Contractor's personnel or rental equipment could not have been utilised in any other area of the Company's operations or Site;
 - (c) the event was caused by or attributable to the Company or its personnel;
 - (d) the Contractor has not contributed to the delay; and
 - (e) the delay was not caused as a result of force majeure.

16.2 Good Faith Negotiations

- 16.2.1 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, or the designated representative, 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 (Twenty) days from a Party notifying a dispute.

16.3 Dispute Resolution

- 16.3.1 If the Parties fail to settle a dispute informally in terms of Clause 16.2, 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.
- 16.3.2 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.
- 16.3.3 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 16.3.1, 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.
- 16.3.4 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.

Annexure A

17 Site Works

17.1 Setting Out

- 17.1.1 The Contractor will set out the works in relation to the benchmarks, reference marks, signals, level marks or any other marks for the purpose of setting out provided in the Contract or notified by the Company Representative.
- 17.1.2 The Company will be responsible for any errors in the specified or notified marks however the Contractor will use all reasonable effort to verify the accuracy when setting out the work.
- 17.1.3 If the Contractor discovers an error in the position, level, dimensions or alignment of any work, the Contractor shall immediately notify the Company's Representative.
- 17.1.4 The Contractor shall keep in their true positions all marks once set out.
- 17.1.5 If a 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 Contractor shall reinstate the mark at its own cost.

17.2 Site Meetings

- 17.2.1 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.
- 17.2.2 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.

17.3 Transport

- 17.3.1 The Contractor will provide all necessary surface transport for its employees, the Products and all apparatus, machinery, vehicles, facilities and other things of whatsoever nature required by the Contractor in or for the execution, maintenance and/or defects correction of the Deliverables, ("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, Products and Contractor's Equipment.
- 17.3.2 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.

17.4 Contractor's Equipment

- 17.4.1 Unless otherwise provided in the Contract, the Contractor will:
 - (a) provide all Contractor's Equipment necessary for the 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.

17.4.2 The Contractor will give reasonable advance notice to the Company when Contractor's Equipment will be delivered to the Site.

17.4.3 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 to complete the Services.

17.4.4 Clause 17.4.3 will not apply to vehicles engaged in transporting any of the Contractors employees, Contractor's Equipment or Products to or from the Site.

17.4.5 The Contractor's Equipment will not be taken from the Site while it is required for the purpose of completing the Deliverables except:

(a) when the Company Representative has given its written consent to remove the Contractor Equipment; or

(b) when the Company Representative instructs in writing that the Contractor's Equipment be removed.

17.4.6 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.

17.4.7 Notwithstanding the above, the risk of loss of or damage to the Contractor's Equipment, will remain with the Contractor at all time.

17.5 Rental Equipment

17.5.1 Details of all Contractor's Equipment brought onto 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.

17.5.2 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.

17.6 Contractor's Operations

17.6.1 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.

17.6.2 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.

17.7 Contractor Supplied Equipment and Materials

- 17.7.1 The Contractor will be responsible for arranging all shipments of Products and all materials and Contractor's Equipment to the site and will consign all such shipments to itself as consignee at the project shipping address, freight fully prepaid. The Contractor will bear the risk and loss for any damage during the transportation of any Products and equipment on and off Site and will be responsible for making demurrage agreements and settlements with the carriers of its shipments.
- 17.7.2 The Contractor will advise the Company in advance of all major shipments of the Contractor's Equipment, material and Products 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.

17.8 Protection and Control of Products and Company's Equipment

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

17.9 Articles of Value or Antiquity

- 17.9.1 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 be the absolute property of the Company and must immediately be placed under the care and authority of the Company.
- 17.9.2 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.
- 17.9.3 The Contractor will carry out the Company Representative's instructions as to the actions to be taken.
- 17.9.4 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, subject to Clause 16.1 to any reasonable costs and extension of time so incurred, as approved by the Company Representative in writing.

17.10 Site Data

- 17.10.1 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.
- 17.10.2 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.

17.11 Contractor's Superintendence

- 17.11.1 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.

17.12 Key Personnel

- 17.12.1 All Contractor's labour and personnel, including personnel performing the roles specifically identified in the Contract ("Key Personnel"), will be appropriately skilled and qualified for the role for which they are engaged.
- 17.12.2 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.
- 17.12.3 Upon the Company's request, the Contractor will provide the Company with the curricula vitae of, and arrange for the interview by the Company of, all Key Personnel.
- 17.12.4 The Contractor will 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 will 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.

17.13 Conduct of Contractor's Personnel

- 17.13.1 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.
- 17.13.2 The Contractor must, on the Company Representative's written instruction, remove (or cause to be removed) and replace any person employed on the Site, 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.

17.14 Work program

- 17.14.1 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.
- 17.14.2 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, at the Contractor's costs, increase its labour force, Contractor 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.

17.15 Examination of Work Before Covering Up

- 17.15.1 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.
- 17.15.2 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.

17.15.3 The Contractor must uncover any part of the Deliverables or make any openings in or through 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 Clause 18.2 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.