



PetraDiamonds

**PETRA DIAMONDS SOUTHERN AFRICA
PROPRIETARY LIMITED
GENERAL TERMS AND CONDITIONS
OF CONTRACT**

REV06

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SECTION A: PETRA DIAMONDS GENERAL TERMS & CONDITIONS OF CONTRACT

1. GENERAL TERMS & CONDITIONS

1.1. General Provisions

These Petra Diamonds General Terms and Conditions of Contract (“**these Conditions**”), shall be applicable for all agreements relating to the purchase of the Goods and the provision of the Services by the Contractor to **Cullinan Diamond Mine Proprietary Limited, Finsch Diamond Mine Proprietary Limited and Blue Diamond Mines Proprietary Limited t/a Koffiefontein Diamond Mine.**

1.2. Definitions

In these Conditions, unless the context indicates a contrary intention, the following words and expressions bear the meanings assigned to them and cognate expressions shall bear corresponding meanings:

- 1.2.1. “**AFSA**” means the Arbitration Foundation of Southern Africa;
- 1.2.2. “**Applicable Laws**” means, without limitation, all applicable laws, ordinances, charters, codes of conduct and/or practice, rules and regulations, as amended from time to time, including judgments and orders of any competent court or authority having the force of law in the Republic of South Africa and/or other competent jurisdictions;
- 1.2.3. “**Base Date**” shall be the date at which the Contract pricing was calculated;
- 1.2.4. “**Base Rate**” shall be the initial tendered price/rate provided by the Contractor, in respect of the supply of Goods and/or Services;
- 1.2.5. “**BBBEE Act**” means the Broad-Based Black Economic Empowerment Act 53 of 2003 including as amended by Act No. 46 of 2013: Broad-Based Black Economic Empowerment Amendment Act 2013;
- 1.2.6. “**Black People**” is a generic term which, subject to the provisions of the BBBEE Act and any further qualifications imposed by the Codes, means Africans, Coloureds and Indians:
 - 1.2.6.1. who are citizens of the Republic of South Africa by birth or descent; or
 - 1.2.6.2. who became citizens of the Republic of South Africa by naturalisation:
 - 1.2.6.2.1. before 27 April 1994; or

- 1.2.6.2.2. on or after 27 April 1994 and who would have been entitled to acquire citizenship by naturalisation prior to that date;
- 1.2.7. **“Broad-based Black Economic Empowerment”** or **“BBBEE”** means the viable economic empowerment of all Black People, in particular women, workers, youth, people with disabilities and people living in rural areas, through diverse but integrated socio-economic strategies that include, but are not limited to:
- 1.2.7.1. increasing the number of Black People that manage, own and control enterprises and/or productive assets;
 - 1.2.7.2. facilitating ownership and management of enterprises and productive assets by communities, workers, cooperatives and other collective enterprises;
 - 1.2.7.3. human resources and skills development;
 - 1.2.7.4. achieving equitable representation in all occupational categories and levels in the workforce;
 - 1.2.7.5. preferential procurement from enterprises that are owned or managed by Black People; and
 - 1.2.7.6. investment in enterprises that are owned or managed by Black People;
- 1.2.8. **“Business Day”** shall mean any day other than a Saturday, Sunday or any public holiday recognised in the Republic of South Africa, in terms of the Public Holidays Act 36 of 1994;
- 1.2.9. **“Codes”** means the Codes of Good Practice issued in terms of section 9 of the BBBEE Act, including as amended by Act No. 46 of 2013: Broad-Based Black Economic Empowerment Amendment Act 2013;
- 1.2.10. **“Commencement Date”** shall be the commencement date of the Contract as agreed between the Parties;
- 1.2.11. **“Company”** shall mean the contracting Party who appoints the Contractor, namely Petra Diamonds Southern Africa Proprietary Limited;
- 1.2.12. **“Conditions”** means these General Terms and Conditions of Contract, as well as schedules, annexures and any other documents forming part hereof;
- 1.2.13. **“Confidential Information”** shall mean all information of a commercial, proprietary or sensitive nature (whether recorded or not), including, in particular, any information relating to the know-how, trade secrets, products or business of either of the Parties;

- 1.2.14. “**Contract**” shall mean these Conditions, the Purchase Order generated in respect of the Work, as well as schedules, annexures and any other documents forming part hereof;
- 1.2.15. “**Contract Administrator**” shall mean the person elected to administer this Contract on behalf of the Company;
- 1.2.16. “**Contractor**” shall mean the supplier of the Work to the Company;
- 1.2.17. “**Contract Value**” shall mean the total value of the Contract over the complete duration of the Contract, taking into consideration the Contract pricing, applicable quantities, amendments and subsequent escalations, as well as the costs associated with Site Instructions;
- 1.2.18. “**Cost Breakdown**” shall mean the escalation formula used to calculate price increases or decreases. The Cost Breakdown indicates the cost elements (different components which make up the price of the Goods and/or Service), the weighting-, indices, index dates and index values applicable to each type of Goods or Service provided to the Company;
- 1.2.19. “**Credit Note**” shall mean a document issued by the Contractor in respect of an invoice submitted in order to correct an amount invoiced;
- 1.2.20. “**Delivery**” shall mean the delivery of Goods by the Contractor to a designated Store of the Company as specified in the Purchase Order;
- 1.2.21. “**Direct Losses**” shall mean any actual loss incurred as a direct result of an act on the part of the Contractor, whereby the Company’s goods, property and/or equipment is damaged. The costs determined shall exclude any profit or mark up and shall be calculated on a Proven Cost basis;
- 1.2.22. “**Employees’ Tax**” means the tax required to be deducted or withheld by an employer from remuneration paid or payable to an employee, as defined in the fourth schedule to the Income Tax Act 58 of 1962;
- 1.2.23. “**Event of Default**” shall mean any one or more of the events or circumstances set forth in clause 14.1;
- 1.2.24. “**Force Majeure Event**” shall mean any exceptional event or circumstance, beyond the control of either Party, which prevents a Party from performing its duties in respect of the Contract, as set forth in clause 11 (*Force Majeure*);
- 1.2.25. “**Goods**” shall mean, without limitation, the goods, equipment, products, spares, consumables, computer software and materials to be supplied and delivered by the Contractor to the Company as set out in the Purchase Order issued by the Company;

- 1.2.26. **“HDP”** shall mean historically disadvantaged person, which includes:
- 1.2.26.1. any person, category of persons or community, disadvantaged by unfair discrimination before the Constitution took effect;
 - 1.2.26.2. any association, a majority of whose members are persons contemplated in clause 1.2.26.1;
 - 1.2.26.3. any juristic person other than an association, in which persons contemplated in clause 1.2.26.1 own and control a majority of the issued capital or members’ interest and are able to control a majority of the members’ votes;
- 1.2.27. **“Index”** shall be the market measurement tool for example Seifsa, Statssa or rate of exchange and so forth, to which individual components are linked and which governs and influences fluctuations;
- 1.2.28. **“Index Base Date”** shall be the date at which initial pricing provided by the Contractor, in respect of the supply of Goods and/or Services was calculated, at the time of tender;
- 1.2.29. **“Index Base Value”** shall be the latest published Index value available, at the time of tender;
- 1.2.30. **“Indirect and Consequential Loss or Damage”** shall mean any special, consequential, incidental, indirect punitive or pure economic cost, loss or damage whatsoever, and any loss of use, loss of production, increased cost of production, loss of sales, loss of contract, loss of goodwill, loss of opportunity, loss of revenue, loss of profit or anticipated profit, or any other like costs, losses or damage, but shall exclude indirect damage to an item caused by direct damage to such item;
- 1.2.31. **“Intellectual Property Rights”** means: (i) copyright, patents, trademarks, image rights, database rights and rights in trade names, designs, know-how and/or confidential information (whether registered or unregistered); (ii) applications for registration, and the right to apply for registration, for any of these rights; and (iii) all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world;
- 1.2.32. **“IRP30(A) Labour Broker Exemption Certificate”** according to the 4th (fourth) schedule to the Income Tax Act No 58. of 1962, is a certificate issued by the South African Revenue Service to qualifying Labour Brokers which absolves the Company from having to deduct Employees’ Tax from any payments made to such a Labour Broker. Any payments made by the Company to a Labour Broker who is not in possession of the exemption certificate (IRP30(A)), is subject to Employees’ Tax;

- 1.2.33. **“Labour Broker”** means any natural person or company that provides Personnel to the Company to perform Work on a temporary basis, which Personnel work at the Company but are employees of and are remunerated by the Labour Broker.;
- 1.2.34. **“Manager”** shall mean the Company’s Supply Chain Manager or his/her lawful duly authorised designee;
- 1.2.35. **“Month”** shall mean a period starting on one day in a calendar month and ending on the day preceding the numerically corresponding day in the next succeeding calendar month, provided that where any such period would otherwise end on a day which is not a Business Day, it shall end on the next succeeding Business Day, unless that Business Day falls in the calendar month succeeding that in which it would otherwise have ended, in which case, it shall end on the immediately preceding Business Day, provided that if a period starts on the last Business Day in a calendar month or if there is no numerically corresponding day in the month in which that period ends, that period shall end on the last Business Day in that later month (and all references to months shall be construed accordingly);
- 1.2.36. **“Party”** shall mean either the Company or the Contractor, as the context may indicate, and **“Parties”** shall mean both the Company and the Contractor;
- 1.2.37. **“Personal Service Provider”** means a Contractor that is regarded as an employee of the Company provided that the Work is performed personally for the benefit of the Company by a person connected to the Contractor, and:
- 1.2.37.1. The person performing the Work would be regarded as an employee had such person rendered the services directly to the Company (i.e. not through the Contractor); or
- 1.2.37.2. The Work is performed mainly at the premises of the Company and such Contractor is subject to the control or supervision of the Company as to the manner in which the Work is performed; and
- 1.2.37.3. Where more than 80% (eighty percent) of the income of the Contractor during a financial year consists of or is likely to consist of amounts received directly or indirectly from the Company.
- Where, however, the Contractor throughout the financial year, employs 3 (three) or more full-time employees who are on a full-time basis engaged in the business of the Contractor to render any service, other than any employee who is a shareholder or member of the Contractor or is a connected person in relation to such person, the Contractor is not regarded as a Personal Service Provider.
- 1.2.38. **“Personnel”** shall mean all persons employed or contracted by the Contractor who shall be engaged in the execution of the Work and shall include all persons employed by the sub-contractors of the Contractor;

- 1.2.39. **“Proven Cost”** shall mean the quantification of a financial impact or actual monetary value;
- 1.2.40. **“Purchase Order”** shall mean a written official purchase order, issued to the Contractor by the Company’s supply chain (procurement) department, ordering the Work, on these Conditions and the details set out in such purchase order and includes any schedule and/or annexures;
- 1.2.41. **“Purchase Price”** shall mean the fixed amount that appears on the Purchase Order which excludes VAT, payable to the Contractor for the successful delivery of the Work or may be the price / rate as agreed upon in the Contract;
- 1.2.42. **“Scope of Work”** shall mean the Work which is to be undertaken by the Contractor and shall include the roles and responsibilities of both Parties and any other requirements or constraints relating to the manner in which the Work is to be executed, as set out in these Conditions and in the Purchase Order;
- 1.2.43. **“Service”** shall mean the service to be provided by the Contractor to the Company as set out in the Purchase Order issued by the Company;
- 1.2.44. **“Signature Date”** means the date of the signature of this Contract by the Party signing last in time, provided that all the Parties have signed this Contract;
- 1.2.45. **“Site”** shall mean the lands and other places on, under or through which the Work is to be executed or carried out and any other lands or places provided by the Company for the purposes of the Contract, together with such other places as may be specifically designated in the Contract as forming part of the Site;
- 1.2.46. **“Specifications”** shall mean the detailed description providing information pertaining to the Work, as set out in this Contract, including any annexures thereto, including but not limited to general arrangement drawings, diagrams, calculations, designs and other pertinent documents and/or information, as may be furnished, in writing, by the Company to the Contractor or by the Contractor to the Company in connection with the Work;
- 1.2.47. **“Steercom”** means the team of representatives from both Parties, who operationally manage the Contract. For the purposes of this Contract, the representatives shall be the commercial and technical contact persons as indicated in the Contract Data Summary Sheet;
- 1.2.48. **“Store”** shall mean the store(s) and warehouse(s), as identified in this Contract, where Delivery is to take place;
- 1.2.49. **“VAT”** shall mean value-added tax charged and levied in terms of the Value Added Tax Act 89 of 1991;

1.2.50. “**Work**” shall mean the supply of Goods and/or the provision of the Services, as the case may be, as specified in this Contract and in the Purchase Order.

1.3. Interpretations

1.3.1. In this Contract, except where the context requires otherwise:

1.3.1.1. words indicating one gender include both genders;

1.3.1.2. words indicating the singular also include the plural and vice versa;

1.3.1.3. a person includes any individual, company, corporation, unincorporated association or body (including a partnership, trust, fund, joint venture or consortium), government, state, agency, organisation or other entity whether or not having separate legal personality;

1.3.1.4. a regulation includes any regulation, rule, official directive or guideline (whether or not having the force of law) of any governmental body or organisation;

1.3.1.5. a Party or any other person includes its successors in title, permitted assigns and permitted transferees;

1.3.1.6. provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing;

1.3.1.7. “written” or “in writing” means hand-written, typewritten, printed or electronically made, and resulting in a permanent record; and

1.3.1.8. any Act or regulations shall refer to such Act or regulation, as amended from time to time and shall include any subordinate legislation promulgated thereunder, as amended from time to time.

1.3.2. In these Conditions, the title page, the page numbers, the index and all headings to the clauses are for convenience only and shall not, in any way, affect the interpretation of these Conditions.

1.3.3. If any provision in a definition is a substantive provision, conferring rights or imposing obligations on any Party, notwithstanding that such provisions are only contained in the relevant definition, effect shall be given thereto as if such provisions were substantive provision in the body of these Conditions.

1.3.4. Unless specifically otherwise provided, any number of days prescribed shall be determined by excluding the first and including the last day or where the last day falls on a day that is not a Business Day, the next succeeding Business Day.

- 1.3.5. Where figures are referred to in numerals and in words, and there is any conflict between the two, the words shall prevail, unless the content indicates the contrary intention.
- 1.3.6. The rule of construction that an agreement shall be interpreted against the Party responsible for the drafting or preparation thereof, must not apply in the interpretation of this Contract.
- 1.3.7. The use of the word “including” followed by specific examples will not be construed as limiting the meaning of the general wording preceding it, and the *eiusdem generis* rule must not be applied in the interpretation of such general wording or such specific examples.
- 1.3.8. Unless the contrary intention appears a reference to any amount of money to be paid by either Party in terms of this Contract shall be exclusive of VAT.
- 1.3.9. The expiration or termination of this Contract shall not affect the provisions of this Contract as expressly provided that they will operate after such expiration or termination or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 1.3.10. Where a Party is required to provide any consent or approval or agree to the actions of another Party, the request for same must be in writing and the resulting consent or approval or agreement must also be in writing and shall not be unreasonably withheld or delayed.
- 1.3.11. The Contractor acknowledges and agrees that:
 - 1.3.11.1. it has been free to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all the provisions of these Conditions and that it has either taken such independent advice or has dispensed with the necessity of doing so; and
 - 1.3.11.2. all the provisions of these Conditions and the restrictions herein contained, are fair and reasonable as between the Parties in all the circumstances and are in accordance with the Contractor’s intentions.

1.4. Communications

- 1.4.1. The Parties shall nominate in writing to each other their *domicilia citandi et executandi* for all purposes under the Contract, whether in respect of court process, notices or other documents or communications of whatsoever nature (including the exercise of any option) by no later than the Commencement Date.

- 1.4.2. Any notice to be given by either Party in connection with this Contract shall be in writing.
- 1.4.3. Any legal notice or communication the purpose of which is to commence litigation or lodge a formal dispute, required or permitted to be given in terms of this Contract, shall be valid and effective only if in writing, where service has been effected at the relevant domicile address as set out in this Contract, in accordance with the Applicable Law. All other notices and communications, including letters, notices, drawings, orders, instructions, decisions, findings, claims, determinations, certifications or minutes of meetings, are to be delivered by the Company to the Contractor, or by the Contractor to the Company and shall be deemed to have been duly delivered if:
- 1.4.3.1. hand delivered: 1 (one) Business Day after delivery upon delivery receipt;
- 1.4.3.2. sent by electronic mail: 1 (one) Business Day after transmission.
- 1.4.4. Any Party hereto shall be entitled to change their physical, registered address or domicilium as required, provided that any new domicilium selected shall be situated in the Republic of South Africa. Any such change shall be effected upon notice in writing to the other Party of such change, provided that such notice must be delivered to the other Party by means of both methods of delivery described in clause 1.4.3 and shall accordingly be deemed to have been received by the other Party as per the provisions of clause 1.4.3.
- 1.4.5. All electronic communications received by the Company from the Contractor or vice versa shall be deemed legally binding and enforceable by law as provided in Chapter 3, section 11(1) – 11(3) of the Electronic Communications and Transactions Act 25 of 2002, provided that the electronic communication have been sent by a person duly authorised to commit the Party in accordance with the provisions of this Contract.
- 1.4.6. The information contained in any electronic communication shall be deemed as confidential, legally privileged and protected by law. Any electronic communication shall be deemed solely for the use of the intended recipient to whom it is addressed. The unauthorised use of any such electronic communication or any attachments thereto, by any person other than the intended recipient is strictly prohibited.

1.5. Governing Law and Jurisdiction

The law which is to apply to the Contract, and according to which the Contract is to be interpreted, shall be the law of the Republic of South Africa.

1.6. Priority of Documentation

- 1.6.1. Should any inconsistency be found in any documentation, including but not limited to the Purchase Order, Contractor's bid, quotation (if any), and/or conditions of sale, then these Conditions shall prevail over, inter alia, the foregoing bid, quotation and any terms and conditions of sale of the Contractor.

1.7. Cession or Assignment

- 1.7.1. Neither Party shall be entitled to cede, assign or delegate any of its rights and/or obligations without having obtained the prior written consent of the other Party, which consent may not be unreasonably withheld nor unreasonably delayed.

1.8. Concession not to Constitute Waivers

No grant by either Party to the other of any concession, waiver, condonation or allowance shall, in respect of any specific event or circumstance other than that in respect of which the grant was made, constitute a waiver of the rights of the grantor in terms of the Contract or estoppel of the grantor's right to enforce the provisions of the Contract.

1.9. Entire Contract

- 1.9.1. This Contract embodies the entire agreement between the Parties and supersedes any discussions, agreements and/or understandings relating to the subject matter hereof.
- 1.9.2. The Parties shall not be bound by or be liable for any statement, representation, promise, inducement or understanding of any kind or nature not set forth herein.
- 1.9.3. Changes, amendments or modifications of any of these Conditions, including this clause, shall not be valid unless reduced to writing in a physical written document and signed by representatives formally authorised by the respective Parties. Such signatures may only be physical, inked signatures, alternatively electronic signatures by making use of computer software to insert a pre-determined signature. Email signatures shall not be regarded as validly signed.

1.10. Execution in counterparts

This Contract may be executed by the Parties in separate counterparts, each of which, when executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument. All signatures need not be contained in the same counterpart. Electronic signatures, created by means of computer software, contained within written documents shall have the same force and effect as original, inked signatures where such written documents were received by electronic mail.

2. NATURE OF RELATIONSHIP

2.1 Independent Contractor

- 2.1.1 The Company appoints the Contractor as an independent contractor. Nothing in these Conditions shall be regarded as appointing the Contractor or its Personnel, consultants, representatives or agents as employees, agents, partners or joint venturers of the Company.
- 2.1.2 The Contractor has no authority to incur and must not incur any obligation on behalf of the Company except with the express prior written instruction of the Company.
- 2.1.3 The Contractor is responsible for, *inter alia*, all costs and expenses, howsoever incurred, in order to fulfil its obligations in terms of this Contract.
- 2.1.4 The Contractor assumes full responsibility for the execution of the Work, in terms of this Contract (and specifically these Conditions) and undertakes at all times to execute the Work in a proper and skilled manner.

2.2 Conflict of Interest

- 2.2.1 The remuneration of the Contractor under this Contract shall constitute the Contractor's sole remuneration in connection with the Contract, for the supply of Goods and/or Services, as the case may be.
- 2.2.2 The Contractor shall not accept, for its own benefit, any trade commission, discount, or similar payment in connection with activities pursuant to the Contract, or in the discharge of its obligations under the Contract and shall use its best efforts to ensure that its Personnel, any sub-contractors, and agents of either of them shall, similarly, not receive any additional remuneration.
- 2.2.3 The Company reserves the right to terminate the Contract as a result of any actual or apparent conflict of interest(s) on the part of the Contractor. The Company shall not be liable to the Contractor for compensation, reimbursements or damages, of any kind whatsoever (whether in contract, warranty, delict or otherwise), for any loss or harm suffered by the Contractor pursuant to such termination by the Company. Notwithstanding the aforesaid, the Company shall remain liable to the Contractor for payment in respect of all Work performed by the Contractor prior to the date of termination of the Contract.
- 2.2.4 The Contractor shall be required to declare any matter which can be considered to be a conflict, as per this clause 2.2 (*Conflict of Interest*), to the Manager as soon as possible after becoming aware of said conflict.

2.3 Ethical Conduct

- 2.3.1 The Company is committed to operating its businesses in such a way that neither engages in, nor encourages in any manner, the following practices, all of which are regarded as unacceptable, against the public interest and that of the diamond industry:
- 2.3.1.1 buying and trading rough diamonds from areas where this would encourage or support conflict and human suffering;
 - 2.3.1.2 the use of child labour;
 - 2.3.1.3 practices which intentionally or recklessly endanger or harm the health or welfare of individuals;
 - 2.3.1.4 bribery or corruption;
 - 2.3.1.5 tax evasion; and
 - 2.3.1.6 any conduct which will bring the diamond industry into serious disrepute.
- 2.3.2 The Contractor is therefore also required, to the extent applicable, to adhere to the aforesaid requirements as set out in clause 2.3.1 above.
- 2.3.3 The Contractor, its Personnel, any sub-contractors and agents of either of them shall be required to adhere to the Company's Code of Ethical Conduct as published on the Company's website (<https://www.petradiamonds.com/about-us/corporate-governance/business-ethics>).
- 2.3.4 All unlawful conduct, including corruption, extortion, tax evasion and embezzlement is prohibited. The Contractor shall not pay or accept bribes or participate in other illegal inducements in business or government relationships. The Contractor shall conduct its business consistent with fair and vigorous competition and in compliance with all applicable competition-, tax- and anti-corruption laws. The Contractor shall employ fair business practices, including accurate and truthful advertising.
- 2.3.5 The Contractor shall neither use forced, bonded, indentured or voluntary prison labour nor child labour in order to execute the Work. In addition, the Contractor must respect those human rights that are within its sphere of influence and must abide with all Applicable Laws regarding labour.
- 2.3.6 Should any person, become aware of any fraud, corruption, diamond theft, extortion or embezzlement or any other workplace crime, it shall be such individual's responsibility to report the misconduct to the Tip-Off's Anonymous Hotline immediately:

2.3.6.1 Landline: (+27) 31 571 5573
Fax: (+27) 31 560 7395
Email: tothehotline@tip-offs.com.

2.3.7 The Contractor shall be required to formally communicate such obligation to all its Personnel.

2.4 Anti-Corruption Undertaking

For the purposes of this clause 2.4:

2.4.1 "**Anti-Corruption Laws**" means all Applicable ABC Laws in connection with bribery and corruption, including but not limited to (i) the Prevention and Combating of Corrupt Activities Act, No. 12 of 2004 (as amended), (ii) the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997, (iii) the Foreign Corrupt Practices Act of 1977 of the United States of America, as amended by the Foreign Corrupt Practices Act Amendments of 1988 and 1998, and as may be further amended and supplemented from time to time ("**FCPA**"); and (iv) the Bribery Act, 2010 of the United Kingdom (as amended) ("**Bribery Act**");

2.4.2 "**Applicable ABC Laws**" means all applicable laws, regulations, directives, statutes, subordinate legislation and common law (including but not limited to those of the Republic of South Africa and/or the United Kingdom), all applicable judgments, orders, notices, instructions, decisions and awards of any court or competent authority or tribunal and all applicable codes of practice having force of law, statutory guidance and policy notes (including but not limited to those in the Republic of South Africa and/or the United Kingdom);

2.4.3 "**Authority**" means any government or governmental, administrative, fiscal or judicial authority, body, court, department, commission, tribunal, registry or any state owned, controlled or legislatively constituted authority which principally performs public, governmental or regulatory functions, including any competition authorities and any securities exchange having (or proposed pursuant to a listing to have) jurisdiction over any of the Parties; and

2.4.4 a person commits a "**Corrupt Act**" where such person:

2.4.4.1 undertakes any act or omission which is a breach of Anti-Corruption Laws; or

2.4.4.2 whether or not a breach of Applicable ABC Laws, such person has directly or indirectly given, offered or received or has agreed (either themselves or in agreement or by acquiescence with others) to give, offer or receive any payment, gift or other gratification or advantage to any other person which:

- 2.4.4.2.1. was intended to, or did, influence any person to act or reward any person for acting in breach of an expectation of good faith, impartiality or trust, or for which it would otherwise be improper for the recipient to accept; or
 - 2.4.4.2.2. which a reasonable person would otherwise consider to be unethical, illegal or improper.
 - 2.4.5 The Contractor warrants and represents to the Company that, in respect of or in connection with this Contract (including in respect of any contact with any Authority in connection with this Contract), neither it nor any of its authorised Personnel, authorised agents and/or authorised representatives has prior to the Signature Date committed a Corrupt Act;
 - 2.4.6 The Contractor undertakes to the Company that, at all times after the Signature Date, it shall not, directly or indirectly, and it shall procure (insofar as it lawfully can) that none of its authorised Personnel, authorised agents and/or authorised representatives, directly or indirectly, commit or permit any Corrupt Act and acknowledges that it shall be responsible and liable for any and all such Corrupt Acts committed; and
 - 2.4.7 The Contractor undertakes that it shall maintain in place, and shall procure that it and each member of its group of companies (including its holding company, its subsidiaries (direct or indirect) and subsidiaries of its holding company) maintain in place, adequate procedures to prevent bribery within the meaning of section 7(3) of the Bribery Act by any authorised person or representative of the Contractor.
 - 2.4.8 In the event that the Contractor breaches or is reasonably likely to breach the undertakings set out in clauses 2.4.5, 2.4.6 and/or 2.4.7, or if it becomes aware of any fact or circumstance which may constitute, or result in, a breach of any Anti-Corruption Laws in respect of or in connection with the Contract, it shall notify the Company as soon as reasonably practicable.
 - 2.4.9 The provisions of this clause 2.4 constitute a stipulation for the benefit of the Company and each member of the Company, and any of such aforementioned parties may accept such benefits at any time without notice being required to be given to the Contractor.
- 2.5 Compliance with Applicable Laws
 - 2.5.1 The Contractor shall at all times act in full compliance with all Applicable Laws and regulations and principles of best practice relating to the avoidance of money laundering, bribery, tax evasion, modern slavery and corruption in all jurisdictions to which it is subject and any related rules and regulations and shall not do or fail

to do any act or thing which shall cause it to be in breach of any such law, regulation or principle.

2.5.2 The Company shall be entitled to terminate the Contract with immediate effect as a result of a breach by the Contractor of this clause 2.5 (*Compliance with Applicable Laws*) without any liability whatsoever.

2.5.3 The Contractor shall, and shall procure that each member of its respective groups in the performance of their obligations under this Contract, comply at all times and act in a manner consistent with all Applicable Laws, regulations and/or principles.

2.5.3.1 Should the Company have a reasonable suspicion of any breach (actual or potential) and/or any conduct which may give rise to any breach of this clause 2.5 (*Compliance with Applicable Laws*), the Contractor shall promptly provide the Company any further information requested in connection with such suspicion.

2.5.3.2 The Company may, upon receipt of any notice under this clause 2.5 (*Compliance with Applicable Laws*), and/or should the Contractor fail to comply with this clause and/or should the Company otherwise become aware of any breach and/or conduct which may give rise to any breach of this clause (the “**Misconduct**”), at its option:

2.5.3.2.1. request the Contractor to provide any further information which it is reasonable to request in relation to the Misconduct; and/or

2.5.3.2.2. require the Contractor to forthwith implement such remedial measures as may be necessary to address and/or mitigate the risk and/or damage or potential damage arising from the Misconduct and to confirm to the Company in writing that such measures have been implemented.

2.5.3.3 The Contractor must notify the Company of any foreign public official it has as an officer or employee and further it shall immediately notify Petra if a foreign public official becomes an officer or employee of its group.

2.6 Compliant Supplier

2.6.1 It shall be a requirement that the Contractor be registered as a compliant supplier on the Company’s vendor compliance management system hosted on the Company’s website (www.petradiamonds.com) before any Work may commence.

2.6.2 It shall be the Contractor’s responsibility to comply with any regulations or requirements, and to provide updated information and documentation, as may be

required from time to time, by the Company as per its vendor compliance management system.

2.6.3 The Contractor shall be obliged to be a compliant supplier on the Company's e-Procure Portal (vendor compliance management system). Should the Contractor execute any Work before such time as the Contractor has been approved as a compliant supplier on the Company's e-Procure Portal, the Company shall be permitted to withhold payment for the Work executed (or part thereof), until such time as the supplier vetting process has been finalised and the Contractor has been found to be compliant..

2.7 Polygraph Examinations: To be read with PDSA-INTEL-02 SECURITY VETTING POLICY

2.7.1 The Company may require the Contractor to avail its Personnel to undergo polygraph integrity examinations by an accredited institution as appointed by the Company, which polygraph integrity examination testing the Personnel are legally permitted to decline. Such polygraph integrity examinations may be required prior to the Personnel being granted access to the Site for the first time and, in addition, such further testing as may be reasonably required by the Company, such as where the Company conducts an investigation into criminal-related incidents or acts of dishonesty which implicate the Contractor's Personnel either directly or indirectly. Should the Personnel decline to undergo such polygraph integrity examinations, the Company may require the Contractor to replace such Personnel with alternative equally competent and qualified Personnel who are willing to undergo such polygraph integrity examinations.

2.7.2 The cost of the polygraph integrity examinations will be for the account of the Company.

2.7.3 The Contractor agrees that should any of its Personnel fail such polygraph integrity examination, the Contractor shall be liable for reimbursing the Company for the costs incurred in respect of such Personnel's polygraph integrity examination. In addition, should any of the Personnel fail to attend a scheduled session for a polygraph integrity examination, without furnishing, in the reasonable opinion of the Company, satisfactory reasons for his/her failure to attend, the Contractor shall be liable to reimburse the Company for the costs incurred in respect of such Personnel's polygraph integrity examination.

2.7.4 Should the results of a polygraph examination indicate deception, and/or such Personnel makes an admission of wrongdoing during the polygraph examination, the Company reserves the right to investigate the matter and immediately remove such Personnel from its site pending the outcome of the investigation.

2.7.5 Furthermore, where the findings of the investigation positively confirm the allegations in question, the Company shall have the right forthwith to remove such Personnel from Site and the Contractor shall replace such Personnel with suitable alternate Personnel, to the reasonable satisfaction of the Company.

- 2.7.6 The onus rests on the Contractor to obtain a copy of the Company's PDSA-INTEL-02 SECURITY VETTING POLICY and to avail itself of the contents thereof. The Company's PDSA-INTEL-02 SECURITY VETTING POLICY will be made available to the Contractor upon request.

3. QUALITY MANAGEMENT

3.1 Competent Employees

- 3.1.1 The Contractor shall use, on the Site for the execution of the Work, only such Personnel whom are careful, competent and efficient, with the correct and appropriate qualifications and experience relevant to the specific position and tasks to be performed. The Contractor may be requested to submit proof of the qualifications of tradesmen or any other Personnel, as and when required by the Company.
- 3.1.2 Should the Company be made aware of any misconduct, incompetence or negligence (in performing his/her proper duties) on the part of any of the Contractor's Personnel, then the Company shall be entitled to require the Contractor to undertake a *bona fide* investigation in respect of such alleged misconduct, incompetence or negligence, the findings of which the Contractor shall communicate to the Company. Should the findings of the investigation positively confirm the allegations in question, the Company shall have the right forthwith to remove such Personnel from Site and the Contractor shall replace such Personnel with suitable alternate Personnel, to the reasonable satisfaction of the Company.

3.2 Contractor's use of Site

The Site and area allocated to the Contractor by the Company are to be used exclusively for the execution of the Work. The Contractor will not be permitted to conduct any business other than that which is in connection with the execution of the Work or this Contract, on the Site or on the Company's property.

3.3 Specifications

In providing the Work, the Contractor shall be required to comply with all specifications and requirements set out in the Applicable Laws. In the absence of specific standards or regulations, the Contractor shall comply, at the very least, with the generally accepted South African National Standards (SANS) specifications (if any) being applicable to the provision of the Work. It shall be the Contractor's responsibility to familiarise itself with the relevant Applicable Laws and SANS specifications.

4. SUB-CONTRACTING

- 4.1 The Contractor shall not sub-contract to, nor engage, a sub-contractor to perform any part of the Work without having obtained the prior written authorisation from the Company. In this regard, the Contractor shall be required to send written notification to the Company, requesting such authorisation and, included in the notification must be information regarding the Work to be sub-contracted, the name and registered address of the sub-contractor as well as detailed motivation as to the reason why the Work is to be sub-contracted.
- 4.2 The Company shall within 14 (fourteen) days of receipt of the notification, inform the Contractor whether the proposed sub-contracting is accepted or not, failing which the Contractor remains responsible for the follow up on proposed sub-contracting request.
- 4.3 Should the Contractor enter into a sub-contract with a sub-contractor without prior approval, the Company may forthwith terminate the Contract with immediate effect. Should the Company terminate the Contract in such an instance, the Company shall not be liable to the Contractor or the sub-contractor in question, for any damages, of any kind whatsoever (whether in contract, warranty, delict or otherwise), for any loss or harm suffered by the Contractor or the sub-contractor in question, pursuant to such termination by the Company.
- 4.4 The Company shall have no contractual relationship with the sub-contractors.
- 4.5 If the Company is of the reasonable opinion that a sub-contractor is incompetent, the Company may request that the Contractor provide, as a replacement, a sub-contractor having the requisite qualifications and experience, as well as a safety record and infrastructure acceptable to the Company, alternatively, the Contractor may elect to resume the performance of the relevant part of the Work itself.
- 4.6 The Contractor shall advise the Company without delay of the variation or termination of any sub-contract for performance of all or part of the Work.
- 4.7 The Contractor must ensure that the Work performed by the sub-contractor or any representatives of the sub-contractor meets the requirements of these Conditions.
- 4.8 The Contractor shall be responsible for the acts, omissions and negligence of the sub-contractor(s) appointed by the Contractor. Notwithstanding the appointment by the Contractor of any sub-contractor, delegate, or agent in accordance with this Contract, the Contractor remains fully liable under this Contract and will obtain no relief for any failure, on the part of any such delegate or agent, to perform under this Contract.
- 4.9 Where any provision of this Contract requires the Contractor to procure that its sub-contractors comply with a particular obligation, such requirement shall be construed as an obligation to use all reasonable endeavours to procure such compliance.

- 4.10 Notwithstanding anything to the contrary contained in the Contract, any sub-contractor appointed by the Contractor in accordance with this clause 4 (*Sub-Contracting*) shall be required to maintain, alternatively improve its HDP ownership percentage as applicable on the date on which the Company approves the appointment of such sub-contractor.

5. PURCHASE ORDER

- 5.1 The Contractor shall perform the Work in accordance with the Contractor's Scope of Work, as well as such further Scope of Work and Specifications, as may be reasonably required by the Company, as summarised in an official Purchase Order.
- 5.2 The Company will not entertain or accept any liability (including the obligation to compensate for or reimburse the Contractor) for Work for which no Purchase Order exists or where the value of the Purchase Order has been exhausted. The acceptance of such aforementioned Work by the Company shall not create any such liability. In the case of Goods, the Goods may be rejected by the Company and in such event the Contractor shall be obliged to collect such Goods from the Company at no cost to the Company.
- 5.3 The Contractor shall confirm the receipt of the Purchase Order, in writing, within 48 (forty-eight) working hours of receiving same, whether it accepts or rejects such Purchase Order. Should the Contractor fail to reject the Purchase Order, as contemplated in this clause, acceptance is deemed to be given and shall be final and binding on the Contractor. The Company shall be entitled to enforce the terms and conditions contained therein.

6. INVOICE AND REMUNERATION

- 6.1 Once the Work has been completed, or any portion thereof, in terms of the relevant provision of these Conditions and Purchase Order, an invoice bearing the Purchase Order number and the Company's VAT registration number shall be delivered by the Contractor to the Company to the value of the delivered and/or completed Work. Such invoice must amount to a valid VAT invoice in accordance with the provisions of the Value Added Tax Act 89 of 1991.
- 6.2 The invoice must, where applicable be signed off by the applicable Company nominated representative and must furthermore be submitted with substantiating information to the extent required by the Company. Such substantiating information may include, but is not limited to, the following:
- 6.2.1 Job cards;
 - 6.2.2 Time sheets;
 - 6.2.3 Service reports; and/or
 - 6.2.4 Delivery notes.

- 6.3 The Company shall remunerate the Contractor for the Work executed as stated in the Purchase Order.
- 6.4 The Contractor shall be required to submit a statement which lists all the invoices generated within the month. Such statement may only be submitted by the Contractor at the end of the relevant calendar month. Any price payable in terms of the invoice delivered by the Contractor to the Company will thus be payable within 30 (thirty) days after the statement date.
- 6.5 If any item or part of an item on an invoice submitted by the Contractor is disputed by the Company, the Company shall notify the Contractor promptly thereof whereupon the Contractor shall issue and submit a Credit Note to the Company in respect of the disputed amount.
- 6.6 The amount so disputed shall be excluded from the provisions of clause 6.3 and shall be processed upon the dispute being resolved and shall be subject to clause 6.1. Such disputes shall be resolved by no later than the 22nd (twenty second) day of the following month in order that the resolved amount shall be included in the following month's invoice.
- 6.7 The Company shall not be permitted to withhold payment for the entire amount, should only part of the invoice be in dispute.
- 6.8 If the Company disputes payment of the invoice in totality, then the period referred to at clause 6.4 shall be deemed not to have commenced. Should the disputed payment of the invoice not have been resolved by the 22nd (twenty-second) day of the following month, the dispute resolution process as set out in clause 17 (*Resolution of Disputes*) shall apply.
- 6.9 Where any Party is liable to the other for any amounts payable in terms of the provisions of this Contract, and such Party fails to make timeous payment of such an amount which is due and payable, then the Party to whom such amount is due and payable shall be entitled to levy interest in respect of all overdue payments at the prime lending rate plus 2% (two percent).
- 6.10 The Contractor acknowledges that the Contract Value does not commit the Company to such expenditure but is purely indicative for budgeting purposes of the Contract.

7. PRICE ADJUSTMENT

- 7.1 Any application for an adjustment of the pricing/rate shall remain firm for a period of at least 12 (twelve) months calculated from the Commencement Date, as well as after each successive price adjustment.
- 7.2 Any price adjustment shall be calculated by applying the Cost Breakdown, in the following format (refer clause 1.2 for the applicable definitions):

COMPONENT	PERCENTAGE CONTRIBUTION	INDEX	INDEX BASE DATE	INDEX BASE VALUE
TOTAL:	100%			

7.3 Any application for an adjustment of the prices and / or rates:

7.3.1 shall be required to be submitted via email to the applicable Commercial Contact Person as indicated in the Contract Data Summary, on the Contractor's letterhead, whereby the following is indicated:

7.3.1.1 Effective date of the adjustment, in accordance with the *Notice Period* provisions (clause 7.4– 7.6).

7.3.1.2 Proposed new prices and/or rates per line item;

7.3.1.3 Overall percentage increase or decrease being applied for;

7.3.1.4 Reason for the adjustment.

7.3.2 The application must furthermore be supported by such documentary evidence as may be required by the Company and/or the Contract Administrator to evaluate the requested price adjustment, for example, supplier letters stating the percentage increase ("**Supporting Documentation**").

7.4 Notice Periods

The following notice period shall apply:

7.4.1 All price adjustments: 60 (sixty) days' notice.

7.5 It should be noted that if a request is not submitted timeously or should the Contractor not provide all the information as stipulated herein, the existing rates applicable shall remain in force and effect. In such an instance, the applicable notice period shall only commence upon receipt of all required information and/or Supporting Documentation.

7.6 The prices/ rates shall only be adjusted if the weighted change is equal to or greater than 4% (four percent) (either upwards or downwards).

7.7 The Contractor will be required to monitor changes in market indices and promptly apply for decreases and not only increases.

7.7.1 Should the Contractor fail to inform the Company of a decrease which is due and should the decrease be equal to or greater than 4% (four percent):

7.7.1.1 the Company then reserves the right to apply the relevant decreases to the prices / rates as may be applicable by providing 60 (sixty) days' notice to the Contractor;

7.8 A price adjustment shall not be effective unless approved by the Manager in writing, which approval may not be unreasonably withheld. Any Work executed by the Contractor prior to the date stated in the said written approval by the Manager, shall be deemed to have been supplied at the pricing/rate applicable prior to the adjustment date.

7.9 Save as provided for in clause 7.7.1, the Parties agree that no backdating of any agreed increases shall be permitted, under any circumstances whatsoever.

8. COMPLIANCE WITH LEGAL OBLIGATIONS AND STANDARDS

8.1 Legislation

8.1.1 The Contractor warrants that it is familiar with the relevant and applicable requirements of all Applicable Laws (including the Broad-Based Black Economic Empowerment Act 46 of 2013 and the Mining Charter III), as far as same pertains to the Work. The Contractor further undertakes to stay abreast of changes to and abide by and comply with such Applicable Laws at all times during the duration of this Contract.

8.1.2 The Company shall be entitled to terminate this Contract with immediate effect should the Contractor:

8.1.2.1 be prevented, by any Applicable Law, from performing any of its obligations in terms of this Contract; or

8.1.2.2 at any time be found, by a court of competent jurisdiction, to have contravened any Applicable Law.

8.1.3 Should the Company terminate the Contract in an instance contemplated in clause 8.1.2, the Company shall not be liable to the Contractor for any damages, of any kind whatsoever (whether in contract, warranty, delict or otherwise), for any loss or harm suffered by the Contractor pursuant to such termination by the Company.

8.2 Broad-based Black Economic Empowerment Status - General

8.2.1 The Contractor shall be required to advise the Company, in writing, of any change, irrespective of the nature thereof, in the HDP status or B-BBEE classification status of the Contractor, within 5 (five) days of becoming aware of such a change in status.

- 8.2.2 The Contractor shall be required to advise the Company, in writing, of any change in the turnover classification of the Contractor, namely form an Exempted Micro Enterprise (EME), Qualifying Small Enterprise (QSE), Small and medium-sized enterprise (SME) and generic company, in the within 5 (five) days of becoming aware of such a change in status.
- 8.2.3 The Contractor accepts that any loss of or reduction in HDP/B-BBEE status level on the part of the Contractor, shall entitle the Company to terminate the Contract, regardless of the performance of the Contractor, save if the Contractor can sufficiently demonstrate to the Company its plan to attain the same or better HDP status within a reasonable time frame as specified in the BBEE Act and Codes.
- 8.2.4 Where the Contractor fails to submit sufficient proof and the Company terminates the Contract, the Company shall not be liable to the Contractor for any damages, of any kind whatsoever (whether in contract, warranty, delict or otherwise), for any loss or harm suffered by the Contractor pursuant to such termination by the Company. Despite the aforementioned, the Parties are bound to perform all of their respective duties and obligations which commenced prior to the termination date of the Contract.

8.3 Risk Assessment

To the extent deemed necessary by the Company, the Contractor must submit, prior to commencing with the Work, all necessary risk assessments highlighting the hazards, dangers and risks in general to all the Company's employees, the Contractor's Personnel and any other third parties involved in the execution of the Work.

8.4 Specific Health and Safety Requirements

- 8.4.1 In addition to any other legislated requirements, all Work executed by the Contractor, shall be carried out in accordance with the Health, Safety, Environmental and Quality Policy Statement ("**HSEQ Policy**") of the Company.
- 8.4.2 All Specifications shall be used in conjunction with, and not in place of, all Applicable Laws in force at the time of this Contract. Where unique site safety specifications are in force, those safety Specifications shall take precedence.
- 8.4.3 All injuries must be reported to the relevant supervisor, as soon as the injury occurs, but no later than 1 (one) hour thereafter, who in turn must report such injury to the Company's safety official before the end of the shift during which the relevant supervisor was made aware of the injury. At all times, an attitude of zero harm is to be enforced by the Contractor with regard to safety, health and environmental matters.

8.5 Environmental Compliance

- 8.5.1 In addition to any other legislated requirements, the Contractor undertakes that it shall at all times comply with the Company's HSEQ Policy as may be applicable to the Contractor, in the execution of its Work.
- 8.5.2 The Company's HSEQ Policy will be made available to the Contractor upon request.
- 8.5.3 In the event of pollution and/or degradation ("**the incident**") of the environment by the Contractor, the Contractor shall advise the Company immediately, but by no later than 1 (one) hour after the incident occurred. The Parties shall, in consultation, determine appropriate measures to be implemented.
- 8.5.4 The Contractor shall be liable for all costs resulting from the remediation of any pollution caused by the Contractor or any of its subcontractors, agents, representatives and the like.
- 8.5.5 The Company may at its sole discretion conduct an environmental audit to ensure compliance by the Contractor with all the Company's environmental standards and undertakes to convey the outcome of the report to the Contractor.
- 8.5.6 Should the audit identify any flaws and/or non-compliance by the Contractor, the Contractor shall as soon as may be reasonably possible, implement remedial, preventative and/or other measures necessary to ensure legal compliance, failure to do so shall constitute a material breach of these Conditions.

8.6 Reportable Incidents

- 8.6.1 Reportable incidents are certain types of incidents, occurring at the Site, or arising out of or in connection with the performance of the Work by the Personnel, or in connection with the use of equipment required in order to perform the Work. Such incidents must be reported immediately without delay by the Contractor to the Company.
- 8.6.2 Reportable incidents include the following:
 - 8.6.2.1 the death of any employee or Personnel;
 - 8.6.2.2 an injury, to any employee or Personnel, likely to be fatal;
 - 8.6.2.3 unconsciousness, incapacitation from heat stroke or heat exhaustion, oxygen deficiency, the inhalation of fumes or poisonous gas, or electric shock or electric burn accidents of or by any employee or Personnel and which is not reportable in terms of clause 8.6.2.4;

- 8.6.2.4 an injury which either incapacitates the injured employee or Personnel from performing that employee's or Personnel's normal or a similar occupation for a period totalling 14 (fourteen) days or more, or which causes the injured employee or Personnel to suffer the loss of a joint, or a part of a joint, or sustain a permanent disability;
- 8.6.2.5 an injury, other than injuries referred to in clause 8.6.2.4, which incapacitates the injured employee or Personnel from performing that employee's or Personnel's normal or a similar occupation on the next calendar day.
- 8.6.3 Incidents endangering the health and safety of any person must also be reported to the Company immediately without delay. Such incidents include:
 - 8.6.3.1 where a dangerous or hazardous substance was spilled;
 - 8.6.3.2 where the uncontrolled release of any substance under pressure takes place;
 - 8.6.3.3 where machinery or any part thereof fractures or fails resulting in flying, falling or uncontrolled moving objects;
 - 8.6.3.4 where machinery runs out of control and could cause or has caused injury; and
 - 8.6.3.5 where the fracture or failure of any part of machinery in which gas is under pressure results in the sudden release of gas.
- 8.7 All Work executed by the Contractor shall be carried out in accordance with the Company's Contractor Management Policy, as well as all other Company policies and procedures applicable to the Work.

9. INSURANCE

- 9.1 Insurance to be arranged by the Contractor
 - 9.1.1 The Contractor shall, at its own expense, for the duration of the Contract as well as for a period of 3 (three) years after the termination of the Contract, provide and maintain, as a minimum, the following insurance cover in a form and substance satisfactory to the Company. The Contractor shall ensure that such insurance policies are in place no later than 30 (thirty) days after the Commencement Date.
 - 9.1.1.1 Insurance in terms of the provisions of the Compensation for Occupational Injuries and Diseases Act 130 of 1993 ("COIDA"), as may be amended, or in terms of any similar workers' compensation and unemployment insurance enactments.

- 9.1.1.2 Third party liability insurance, including product liability insurance as well as product guarantee insurance where applicable, in form and substance satisfactory to the Company in an amount not less than ZAR 10 million (ten million Rand) in respect of each and every occurrence.
 - 9.1.1.3 Where Services are rendered, professional indemnity insurance in form and substance satisfactory to the Company, on such levels and terms as are adequate to honour the Contractor's obligations in terms of this Contract.
 - 9.1.1.4 Where applicable, provide and maintain motor vehicle insurance third party cover, including passenger liability, for an amount of no less than ZAR 5 million (five million Rand) per occurrence and unlimited in the aggregate.
 - 9.1.1.5 Should the Contractor be required to make use of its own equipment or assets, in order to complete the Work required in terms of this Contract, or should the Contractor bring onto the Site any of its own equipment or assets, for any other reason whatsoever, then the Contractor will be required to hold adequate asset insurance in order to fully cover the value of such equipment or assets.
 - 9.1.1.6 SASRIA Special Risks Insurance, which will, in accordance with and subject to the terms, limits, exceptions and conditions of the policy, provide cover in respect of riots, strikes and associated risks for damage caused by such events.
- 9.1.2 The insurance to be provided by the Contractor shall be effected with the Contractor's insurers on terms as stated above. The Contractor shall, upon the Company's request, produce proof and confirmation that its insurance is valid and in line with the insurance provisions of this Contract. Such proof should stipulate that the insurance provided by the Contractor is in force and that the waiver of subrogation described in clause 9.1.4, is in force.
- 9.1.3 The Contractor shall furthermore inform the Company, in writing, within [insert] ([insert number in words]) Business Days in the event of any material change to any of the Contractor's applicable insurance policies, or in the event of the termination of any of the Contractor's applicable insurance policies.
- 9.1.4 The Contractor hereby waives subrogation against the Company and releases the Company and its directors, officers, employees and representatives from all liability covered by the Contractor's insurance, for loss or claims arising out of the Company's performance, in terms of this Contract.
- 9.1.5 Furthermore, the Contractor shall ensure that all potential and appointed sub-contractors are aware of the whole contents of this clause 9 (*Insurance*), and shall

enforce the compliance by such sub-contractors with this clause 9 (*Insurance*), where applicable.

9.2 Failure to Insure

9.2.1 Should the Contractor fail to effect and keep in force any insurance required under these Conditions or act contrary to the conditions of any insurance policy, the Company may then effect and keep in force such insurance and pay such a premium or premiums, as deemed necessary, for the purpose of sufficient insurance cover.

9.2.2 The Company may claim any such premium or premiums from the Contractor and recover same as a debt from the Contractor.

10. INDEMNITY

10.1 To the extent that the performance or non-performance by the Contractor (or any person on its behalf) of this Contract, or any act, omission, breach or neglect on the part of the Contractor or any sub-contractor or any member of their respective groups, or any of their respective employees, agents or representatives acting in such capacity, directly causes any damage or loss to the items listed below, the Contractor hereby indemnifies the Company against and undertakes to compensate the Company for all losses and damage suffered in connection therewith:

10.1.1 any damage to the Site, the Goods or any property;

10.1.2 death or personal injury to any person or loss or damage to any person (other than the Company) or any property or rights of such person;

10.1.3 a breach by the Contractor of any Applicable Law in connection with the performance of the Work;

10.1.4 any actual infringement of any Intellectual Property Rights, caused by the supply of the Goods or use of any process, work, material, matter, thing or method used or supplied by the Contractor as well as privacy and/or data breaches; and

10.1.5 the breach by the Contractor of an obligation or a warranty contained in the Contract,

10.1.6 any claims by the Contractor employees or personnel against the Company.

provided that if the losses are caused in part by any act, error or omission of the Company or any third party then the Contractor's liability to indemnify the Company, or any other third party, under this clause 10 (*Indemnity*) shall be reduced proportionally to the extent that the losses are caused by any act, error or omission of the Company or such third party.

10.2 Where costs are incurred as a result of the Contractor's non-compliance with the Applicable Laws, Specifications or these Conditions, including but not limited to fines issued by government departments, such costs shall be for the account of the Contractor.

10.3 Limitation of Liability

10.3.1 Neither Party shall be liable towards the other Party for any Indirect or Consequential Losses or Damages, excluding direct damages and losses. Where, however, a Party causes direct damage to any item, and such direct damage leads to further damage (indirect damage) to the same item, such indirect damage shall be claimable by the Party who suffers the loss or damage.

10.3.2 The Contractor's total liability to the Company, for all matters arising under or in connection with this Contract, including but not limited to damage to the Company's property, other than liability as set out in clauses 10.1.2, 10.1.4 and 10.1.6 shall be limited to all Direct Losses or damages capped at the amount as set out in the applicable insurance policy provided that such damages are limited to proven damages only.

10.3.3 The Contractor shall be held liable for neglectful wastage of material where such material is provided by the Company. The process to be followed shall be as follows:

10.3.3.1 The Company's nominated representative shall conduct random inspections. The Company must be given unfettered access to any premises or the Site where the Work or any portion thereof is carried out.

10.3.3.2 Should any wastage be identified (outside of the agreed permitted wastage parameters), it shall be recorded by means of a recording form, to be provided by the Company, and shall be officially documented and signed off by the Parties' nominated representatives.

10.3.3.3 The signed recording form will be submitted to the Company's cost estimator or other nominated representative, whereupon the cost will be calculated and agreed by both Parties. The cost estimator will then request the subsequent credit notes from the Contractor for the damage or wastage as was recorded and agreed between the Parties.

10.3.3.4 The Contractor shall be required to compensate the Company for the cost as determined by the Company's cost estimator or other nominated representative within the same month.

11. FORCE MAJEURE

11.1 Neither Party shall be responsible for or be held liable due to any failure to observe its obligations in terms of this Contract where such failure is due to any Force Majeure Event.

- 11.2 For the purposes of this clause, a Force Majeure Event shall include acts beyond the control of a Party, such as acts of God, war (whether declared or not), civil insurrection, rebellion, revolution, any acts of foreign enemies, hostilities, lightning, earthquake, storm, flood, sabotage, embargoes, fire, explosions and any event which the Party claiming force majeure could not reasonably be expected to prevent or control (including any labour unrest, lock outs, illegal strike, work stoppages pursuant to a notice in terms of section 54 of the Mine Health and Safety Act 29 of 1996 (“**Mine Health and Safety Act**”) and action/s by employees or Personnel of any Party to this Contract); but shall exclude any event caused by negligence of the Party claiming force majeure or any of its employees, agents or representatives or by any failure to observe the standard of care, diligence and skill of an a contractor providing comparable Work.
- 11.3 The burden of proof of the existence of a Force Majeure Event shall rest with the Party claiming force majeure.
- 11.4 A Party claiming force majeure hereunder shall notify the other Party within 2 (two) Business Days of the circumstances of such Force Majeure Event, and shall advise the other Party, if and when known, of the likely duration of the Force Majeure Event, and shall use all reasonable diligence to remedy the Force Majeure Event, or to avoid or minimise the consequences of suspending performance of the obligation/s affected by the Force Majeure Event, provided that nothing herein shall require such Party to settle strikes or other labour disputes contrary to its interests, and shall continue with the Work as soon as reasonably possible after the Force Majeure Event has ceased to exist. Except as otherwise provided in this clause 11 (*Force Majeure*), the execution of the Work affected by the Force Majeure Event shall be deemed suspended so long as such Force Majeure Event continues to prevent or delay the execution of the Work.
- 11.5 If any Force Majeure Event continues and prevents a Party from performing in terms of this Contract for a continuous period in excess of 30 (thirty) days, the Party not claiming force majeure may elect, at its sole discretion, to terminate this Contract by giving the other Party 15 (fifteen) days’ written notice.

12. SUSPENSION

- 12.1 The Company may temporarily suspend all or parts of the Work due to, *inter alia*, a safety concern, whether related to the Contractor or not, or any perceived breach of any terms of this Contract, by written notice to the Contractor who shall immediately make arrangements to stop the performance of the Work and prevent or minimise further expenditure.
- 12.2 An investigation shall be conducted to determine the level of severity of the incident and to identify the defaulting party.
- 12.3 Should the reasons for the suspension no longer exist, the Company shall direct the Contractor to recommence the whole or the relevant part of the Work. The Contractor shall do so promptly or, if any delay is expected to arise, shall notify the Company of when it reasonably expects to be able to recommence the Work.

- 12.4 Should the suspension arise directly or indirectly as a result of an intentional or negligent act or omission on the part of the Contractor, the Company reserves the right to claim from the Contractor direct damages of any kind whatsoever (whether in contract, warranty, delict or otherwise) arising from such suspension. In the event that the Company directs suspension for any other reason, the Company and Contractor shall determine the reasonable cost incurred by the Contractor directly as a result of such suspension and reimburse the Contractor therefor.
- 12.5 When the Work is suspended, the Company and Contractor shall meet at regular intervals to determine an acceptable course of action.
- 12.6 Upon suspension, where costs are payable to the Contractor, which arise due to the Company's fault:
- 12.6.1 the Contractor shall be remunerated for Work already completed up to the point of suspension and this remuneration shall make provision for all Contract-related penalties or any other costs on a Proven Cost basis incurred during this period prior to suspension;
- 12.6.2 the Contractor will be remunerated for any delays suffered and or direct damages incurred by the Contractor due to the Company's decision to suspend, should the outcome of the investigation conducted be found to be in favour of the Contractor;
- 12.6.3 such costs shall include any costs incurred by the Contractor to resume Work.
- 12.7 Upon suspension, where the Contractor is at fault, the Company shall have the right to claim from the Contractor direct damages of any kind whatsoever (whether in contract, warranty, delict or otherwise) arising from such suspension, irrespective of the fact that the decision to suspend was made by the Company. Such damages shall include but not be limited to the costs incurred by the Company in relation to a fine issued by a government department and the related legal costs incurred resulting from the Contractor's non-compliance with any of the Applicable Laws, Specifications or these Conditions.

13. BREACH

In the event that any of the Parties ("**Defaulting Party**") commits a breach of any of the terms of this Contract and fails to remedy such breach within a period of 7 (seven) days or such longer period as is provided in any other provision of this Contract in relation to a breach contemplated in that clause after receipt of a written notice from another Party ("**Aggrieved Party**") calling upon the Defaulting Party so to remedy, then the Aggrieved Party shall be entitled at its sole discretion and without prejudice to any of its other rights in law, either to claim specific performance of this Contract or to suspend or cancel this Contract forthwith and with further notice, and in either case to claim and recover damages from the Defaulting Party.

14. EVENTS OF DEFAULT

- 14.1 Specific conditions constituting breach of contract include but are not limited to:
- 14.1.1 Any representation, warranty and undertaking confirmed or made by either Party in terms of this Contract or in connection with the execution and implementation of the Work is found to have been incorrect in any material respect.
 - 14.1.2 Should either Party commit fraud or gross misconduct.
 - 14.1.3 Should either Party commence winding up or business rescue proceedings, is dissolved or is declared bankrupt or insolvent (whether by a court order or decree entered against the Party or by any form of corporate action or otherwise).
 - 14.1.4 Should any authorisation, necessary for either Party to comply with its obligations in terms of this Contract or to carry out the Work, cease to be in full force and effect and is not restored or reinstated within 7 (seven) days of written notice to the Party.
 - 14.1.5 At any time, with respect to the negotiation, execution or the implementation of the Work, including in respect of the procurement or execution of any Contract to be finalised in full or in part, either Party determines that the other Party has engaged in a corrupt practice, a coercive practice, a collusive practice or a fraudulent practice, without having taken timely and appropriate action satisfactory to the other Party to remedy the situation or to address such practices when they occur.
 - 14.1.6 The Contractor fails to commence the Work on the agreed date for commencement in accordance with the terms of this Contract or such extended date as agreed between the Parties, in writing.
- 14.2 Upon the occurrence of an Event of Default and at any time thereafter, the Party in default fails to remedy such breach within 7 (seven) days of receipt of written notice from the Aggrieved Party, the Aggrieved Party shall be entitled to without notice, in addition to any other remedy available to it at law or in terms of this Contract to:
- 14.2.1 claim immediate and specific performance of all the obligations owed to it;
 - 14.2.2 acquire the Work from a third Party, in which event the Aggrieved Party shall be entitled to recover from the Defaulting Party any amount by which the price so paid exceeds the Purchase Price and any cost and expenses associated with acquiring the Work from such third party;
 - 14.2.3 execute the Work itself and, provided that the default is not attributable to any of the circumstances set out in clause 11 (*Force Majeure*), to recover from the Defaulting Party any amount by which the price so paid exceeds the Purchase Price plus any direct damages; or

14.2.4 terminate this Contract and/or the Purchase Order without prejudice to the Aggrieved Party's right to claim damages arising from such Event of Default, with immediate effect by written notice to the other Party.

14.2.4.1 Further to clause 14.2.4, upon such termination the Company will pay to the Contractor all amounts due and not previously paid to the Contractor for the Work completed in accordance with the Purchase Order(s) issued prior to such notice.

15. OPTIONAL TERMINATION

- 15.1 The Parties may at their discretion, terminate this Contract in whole or from time to time in part, at any given time upon 60 (sixty) days' written notice thereof to the other Party, without incurring any liabilities arising from the early termination of the Contract.
- 15.2 If the Contract is terminated by the Company, the Company may itself complete the remaining portion of the Work or have it completed by others.
- 15.3 Upon such termination, the Company will pay to the Contractor all amounts due and not previously paid to the Contractor for the Work completed in accordance with the Purchase Order(s) issued prior to such notice, and for Work thereafter completed in accordance with the Scope of Work as more specifically specified in such notice.

16. CONFIDENTIAL INFORMATION

16.1 Confidential Information

- 16.1.1 For the purpose of this clause 16 (*Confidential Information*), Disclosing Party means the Party making disclosure of the Confidential Information and Receiving Party means the Party receiving the Confidential Information.
- 16.1.2 During the term of this Contract and after its termination or expiration for any reason whatsoever, the Receiving Party shall:
 - 16.1.2.1 maintain the confidentiality of the Confidential Information of the Disclosing Party;
 - 16.1.2.2 not disclose the Confidential Information of the Disclosing Party to any person other than with the prior written consent of the Disclosing Party or in accordance with the provisions of this Contract; and
 - 16.1.2.3 not use the Confidential Information of the Disclosing Party for any purpose other than the performance of its obligations under this Contract.
- 16.1.3 During the term of this Contract, the Receiving Party may disclose the Confidential Information of the Disclosing Party to the Receiving Party's employees, professional advisers and sub-contractors, only to the extent that it is reasonably necessary for the purposes of the implementation of this Contract.
- 16.1.4 The Receiving Party shall make sure that each recipient of the Confidential Information of the Disclosing Party complies with all the Receiving Party's obligations of confidentiality under this Contract as if the recipient were the Receiving Party under the terms of this Contract.

- 16.1.5 The obligations of the Parties under this clause 16 (*Confidential Information*), shall survive the expiry or termination of this Contract for a period of 5 (five) years after termination of this Contract.
- 16.1.6 The Parties agree that the Disclosing Party shall be entitled to the remedies of interdict and specific performance for any threatened or actual breach of this clause 16 (*Confidential Information*), by the Receiving Party.

16.2 Copies for execution of the Work

- 16.2.1 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 on a computer or electronic retrieval system so that it is incapable of retrieval with 7 (seven) days of the first to occur of the following:

- 16.2.1.1 a receipt of a request from the Disclosing Party to do so; or

- 16.2.1.2 the termination of the engagement of this Contract.

- 16.2.2 The Contractor shall consider all aspects of the Work to be secret and confidential and shall not make any announcement, take any photograph or release any information concerning the Contract or the Work or any part thereof to any member of the public, press or any official body or incorporate in or make available to any other publication unless prior written consent is obtained from the Company.

16.3 Limitations on Confidentiality

- 16.3.1 The obligation to keep Confidential Information secret does not extend to:

- 16.3.1.1 any information which is or becomes part of the public knowledge;

- 16.3.1.2 any information that, at the time of disclosure, was in the Receiving Party's lawful possession;

- 16.3.1.3 any information which will be made lawfully available to the Receiving Party by a third party; or

- 16.3.1.4 any information which is required to be disclosed by Applicable Laws, provided that the Receiving Party shall inform the Disclosing Party in writing of such a requirement prior to disclosure, to allow the Disclosing Party to take whatever measures it deems necessary to protect its Confidential Information.

17. RESOLUTION OF DISPUTES

- 17.1 Any dispute or difference arising between the Parties relating to, or arising out of the Contract, shall in the first instance be referred to the Steercom for resolution. In the event of the dispute not having been resolved within 15 (fifteen) Business Days of such referral, or such longer period as the Parties' respective Chief Executive Officers (or their designated nominees) may agree in writing, the dispute or difference will be referred for arbitration, as per clause 18 (Arbitration).
- 17.2 Nothing in these Conditions shall preclude either Party from seeking urgent interim relief or the enforcement of any liquidated sum, not otherwise provided for herein, from a Court of competent jurisdiction and to this end the Parties hereby consent to the jurisdiction of the High Court having jurisdiction.

18. ARBITRATION

- 18.1 The arbitration shall be held at Johannesburg, informally, in the English language and otherwise in accordance with the rules of the AFSA, it being the intention that if possible it shall be held and concluded within 30 (thirty) Business Days after it has been demanded.
- 18.2 The Parties agree that the type of arbitrator to be appointed shall be based on the relevant matter as follows:
- 18.2.1 primarily an accounting matter, an independent accountant mutually agreed upon between the Parties;
 - 18.2.2 primarily a legal matter, a practicing attorney or Senior Counsel with no less than 10 (ten) years standing or retired High Court judge mutually agreed upon between the Parties;
 - 18.2.3 any other matter, an independent expert mutually agreed upon between the Parties.
- 18.3 If the Parties cannot agree upon a particular arbitrator, within 7 (seven) Business Days after the arbitration has been demanded, the nomination shall be made by the AFSA at the request of any Party to such dispute.
- 18.4 Each of the Parties hereby irrevocably agrees that a decision of the arbitrator in the arbitration proceedings:
- 18.4.1 shall be final and binding on each of them;
 - 18.4.2 will be carried into effect;
 - 18.4.3 be made an order of any court to whose jurisdiction the Parties are subject.

18.5 Notwithstanding the foregoing, nothing in this clause 18 (*Arbitration*), shall be construed as precluding either Party from applying to court for a temporary interdict or other relief of an urgent nature, pending the decision or the award of the arbitrator in terms of this clause 18 (*Arbitration*).

19. QUANTITIES

For the purpose of this Contract, no volumes or frequencies stated by the Company are guaranteed. Quantities, distances, masses and such other information furnished by the Company shall serve as a general guide only.

20. NON-EXCLUSIVITY

Nothing in this Contract is intended nor shall it be construed as creating any exclusive arrangement with the Contractor in respect of the provision of the Work. As such, the Company shall not be restricted from procuring similar or comparable Work, from any other entity or source, during the duration of this Contract. In addition, the Company reserves the right to test the market as regard to the provision of the Work and may, during the duration of this Contract, seek to test the Contractor's rates and pricing against the Contractor's competitors' rates and pricing as regard to the provision of the Work.

21. OBJECTS, MATERIALS AND DISCOVERIES ON SITE

21.1 The Contractor shall have no claim to any objects or materials of value within the Site, which do not belong to the Contractor. The Contractor is obligated to inform the Company should such an object or materials be discovered.

21.2 The Contractor shall not be permitted to move or remove any such object or materials from the Site unless expressly instructed to do so by the Company.

21.3 The Contractor shall immediately suspend the Work, to an appropriate extent, where undocumented services, natural features, articles of value or relics are uncovered on Site, and give notice to the Company who shall issue a directive detailing how to proceed with the Work.

21.4 Any relics or other articles found on the Site shall remain the property of the Company. Clause 16 (*Confidential Information*) shall have the same force and effect on the entirety of this clause 21 and such relics or articles shall remain the sole discovery and property of the Company.

22. NON-SOLICITATION

During the term of this Contract and for a period of 12 (twelve) months thereafter, neither Party shall, without the prior written consent of the other Party, either directly or indirectly, on the Party's own behalf or in the service or on behalf of others, solicit or attempt to solicit, divert or hire away any person employed by the other Party.

23. SEVERABILITY

Each phrase, sentence, paragraph and clause in this Contract is severable the one from the other, notwithstanding the manner in which they may be linked together or grouped grammatically and if in terms of any judgment or order any phrase, sentence, paragraph or clause is found to be defective or unenforceable for any reason, the remaining phrases, sentences, paragraphs and clauses, as the case may be, shall nevertheless be and continue to be of full force and effect.

24. SUPPORT AND GOOD FAITH

24.1 The Parties undertake at all times to do all such things, perform all such actions and take all such steps and to procure the doing of all such things, the performance of all such actions and the taking of all such steps as may be open to them and necessary for or incidental to the putting into effect or maintenance of the terms, conditions and/or import of this Contract.

24.2 The Parties shall at all times during the continuance of this Contract observe the principles of good faith towards one another in the performance of their obligations in terms of this Contract. This implies, without limiting the generality of the foregoing, that they shall:

24.2.1 at all times during the term of this Contract act reasonably, honestly and in good faith;

24.2.2 perform their obligations arising from this Contract diligently and with due skill and reasonable care; and

24.2.3 shall endeavour to amicably resolve any disputes or misaligned matters, including pricing concerns.

25. COSTS

Each Party shall bear its own costs in relation to the preparation and/or negotiation of these Conditions.

SECTION B: TERMS & CONDITIONS OF CONTRACT FOR THE PROVISION OF SERVICES

26. DETAIL OF WORK

The Contractor shall render the Service as stipulated in this Contract, the Scope of Work and Specifications.

27. VARIATION TO THE SCOPE OF WORK

27.1 Any person requesting a Variation to the Work, on behalf of the Company, must be a duly authorised representative of the Company.

27.2 A Site Instruction will be issued to the Contractor when a need arises for additional Work or a change to the existing Scope of Work. Site Instructions that have been approved by the relevant individual within the Company are considered binding and allow the Contractor to continue with the Work as detailed in such Site Instructions. The Contractor will, however, only be able to render an invoice for Work executed in terms of a Site Instruction once such Work has been confirmed by way of an official Purchase Order. All Site Instructions shall be concluded in a formal Contract amendment, on a monthly basis, to ensure that proper financial provision is made for the additional Work..

27.3 Should the Contractor carry out any additional Work without having received a formal Purchase Order, the risk and liability related to such additional Work, shall fall to the Contractor. For the avoidance of doubt, in such an instance, the Company shall in no manner be held liable for any remuneration related to additional Work having been carried out by the Contractor and the Contractor shall be held solely liable for the remuneration and costs associated with the additional Work concluded in the absence of a formal Purchase Order.

27.4 Unless otherwise agreed to in writing by the Parties, the Contractor must commence actioning the Purchase Order as soon as is reasonably and practically possible, but no later than [insert] ([insert words]) Business Days after the date of the Purchase Order. Should the Contractor fail to act timeously in accordance with the provisions of this clause, the Company may impose a Penalty. The Penalty shall be reckoned as follows:

27.4.1 [insert proposed penalty mechanism, if any].

27.5 The Purchase Order must accompany applicable invoices.

27.6 Verbal instructions shall be of no force or effect.

28. MEASUREMENT AND EVALUATION

28.1 The Works shall be measured and valued for payment in accordance with this clause.

28.2 Whenever the Company requires any part of the Works to be measured, reasonable notice shall be given to the Contractor's representative, who shall:

- 28.2.1 Promptly either attend or send another qualified representative to assist the Company's representative in making the measurement, and
- 28.2.2 Supply any particulars requested by the Company.
- 28.3 If the Contractor fails to attend or send a representative, the measurement made by (or on behalf of) the Company shall be accepted as accurate.
- 28.4 Except as otherwise stated in the Contract, whenever Works are to be measured from records, these shall be prepared by the Company representative. The Contractor shall as and when requested, attend to examine and agree with the records of the Company's engineer and shall sign same when agreed. If the Contractor does not attend, the records shall be accepted as accurate.
- 28.5 If the Contractor examines and disagrees with the records, and/or does not sign them as agreed, then the Contractor shall give notice to the Company's representative of the respects in which the records are asserted to be inaccurate. After receiving this notice, the Company representative shall review the records and either confirm or vary same. If the Contractor does not give notice to the Company's representative within 14 (fourteen) days after being requested to examine the record, they shall be accepted as accurate.
- 28.6 Method of Measurement
 - 28.6.1 Except as otherwise in the Contract and notwithstanding local practice:
 - 28.6.1.1 measurement shall be made of the net actual quantity of each item of the Works; and
 - 28.6.1.2 the method of measurement shall be in accordance with the Bill of Quantities or other applicable schedules.
- 28.7 Evaluation
 - 28.7.1 Except as otherwise stated in the Contract, the Company representative shall proceed to agree or determine the Contract Value by evaluating each item of Work, applying the measurement agreed or determined in accordance with this clause and the appropriate rate for each item.
 - 28.7.2 For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the Contract or, if there is no such item, specified for similar work. However, a new rate or price shall be appropriate for an item of Work if:
 - 28.7.2.1 the measured quantity of the item is changed by more than 10% (ten percent) from the quantity of this item in the Bill of Quantities or Schedule of Rates.

- 28.7.2.2 this change in quantity multiplied by such specified rate for this item exceed 0.01% (zero point zero one percent) of the accepted Contract Value;
- 28.7.2.3 this change in quantity directly changes the cost per unit quantity of this item by more than 1% (one percent); and
- 28.7.2.4 this item is not specified in the Contract as a “fixed rate item”;

OR

- 28.7.2.5 the Work is instructed under Clause 27 (Variations of the Scope of Work);
 - 28.7.2.6 no rate or price is specified in the Contract for this item; and
 - 28.7.2.7 no specified rate or price is appropriate because the item of work is not of similar character, or is not executed under similar conditions, as any item in the Contract.
- 28.7.3 Each new rate or price shall be derived from any relevant rates or prices in the Contract, with reasonable adjustments to take account of the matters described in clauses 28.7.2.1 – 28.7.2.7 above, as applicable. If no rates or process are relevant for the derivation of a new rate or price, it shall be derived from the reasonable cost of executing the Work, together with reasonable profit, taking into account other relevant matters.

28.8 Omissions

- 28.8.1 Whenever the omission of any Work forms part (or all) of a variation, the value of which has not been agreed, if:
 - 28.8.1.1 the Contractor will incur (or has incurred) cost which, if the Work had not been omitted, would have been deemed to be covered by a sum forming part of the accepted Contract Value.
 - 28.8.1.2 the omission of the Work will result (or has resulted) the this sum not forming part of the Contract Value; and
 - 28.8.1.3 this cost is not deemed to be included in the evaluation of any substituted work;

then the Contractor shall give notice to the Company representative accordingly, with supporting particulars. Upon receiving this notice, the Company representative shall proceed to determine the cost, which shall be included in the Contract Value.

28.9 Service Measurements

- 28.9.1 A quality check in respect of the Service may be undertaken by the Company. Any Work found not to be in accordance with this Contract (including the Scope

of Work, Specifications, standards, these Conditions and/or the Purchase Order(s)), will not be paid for by the Company.

- 28.9.2 Progress and quality of Work spot checks may be carried out by the Company, in the sole discretion of the Company, in order to determine if the Contractor has been adhering to the provisions of this Contract. In this regard the Contractor agrees to comply with all reasonable requests of the Company to enable the Company to effectively conduct such spot checks.
- 28.9.3 The Contractor shall maintain all formal documentation, certificates and registers for the Service rendered to the Company in accordance with the Applicable Laws. The Contractor shall also keep complete records of the Service rendered by the Contractor as prescribed by the Company's standards.
- 28.9.4 The Contractor shall accept full responsibility for the due and proper discharge of the Service in accordance with the provisions of this Contract (including the Scope of Work, Specifications, standards, these Conditions and/or the Purchase Order), without compromising the security of its Personnel, and all or any of its operations, nor that of any other person who may be affected by the Contractor's undertakings in terms of this Contract.
- 28.9.5 The Contractor shall render the Service in a reasonably economical manner without compromising the suitability, quality and security thereof.
- 28.9.6 The Contractor shall provide and maintain all equipment, material and transport necessary to perform its obligations in terms of this Contract.
- 28.9.7 Where the Company provides the Contractor with any equipment and/or infrastructure necessary to render the Services, then the Contractor shall be responsible to exercise all reasonable diligence and care in using such equipment and/or infrastructure, at all times. Any damage sustained to the equipment and/or infrastructure shall be reckoned in terms of clause 10 (*Indemnity*).
- 28.9.8 The Contractor shall be responsible for maintaining its working place in a neat, tidy and safe condition.
- 28.9.9 The Contractor shall immediately inform the Company's relevant personnel of any defects, incidents and damage to property; in particular, but not limited to, those arising out of and in connection with the provisions of the Service in terms of this Contract.

29. COVENANTS

29.1 The Contractor hereby undertakes to:

- 29.1.1 have all required resources, authorities, licences, permissions, capabilities and expertise to render the Service, as contemplated in this Contract (including the

Scope of Work, Specifications, standards and/or these Conditions) and the Purchase Order;

- 29.1.2 have the expertise and skill to render the Service and will meet the operational requirements of the Company;
- 29.1.3 have suitable contingency plans in place to attend to emergency situations, directly affecting the Contractor's ability to perform in terms of this Contract, without hindering the execution of the Service; and
- 29.1.4 have the power, authority and legal right to conclude and perform under this Contract.

30. SPECIFIC OBLIGATIONS OF THE CONTRACTOR

- 30.1 The specific obligations of the Contractor shall include the following in relation to the Service:
 - 30.1.1 ensure that all material and data requested by the Company pursuant to this Contract is prepared:
 - 30.1.1.1 in a commercial, prudent and reasonable manner;
 - 30.1.1.2 in accordance with suitable and appropriate methods and practices;
 - 30.1.1.3 with a high degree of professional skill, care and diligence that may reasonably be expected of a skilled, professional person, suitably qualified and experienced, in the supply of the Goods and/or Service similar to the Work; and
 - 30.1.1.4 in a manner that could reasonably be expected to protect the interest of the Company in discharging its responsibilities under any law, regulatory requirement or any industry or other code of conduct applicable to the Work,
 - 30.1.2 to the extent reasonably possible, keep accurate records for the purposes of demonstrating compliance with the requirements stipulated in this Contract;
 - 30.1.3 execute the Service without compromising the security, safety or integrity of any individuals (including the Personnel) as well as the Company or any of its operations;
 - 30.1.4 furnish the Manager with such information, returns and documentation with regard to the Service, as he may reasonably require;

- 30.1.5 furnish the Company with updated social and labour plan information in accordance with the requirements of the Mineral and Petroleum Resources Development Act 28 of 2002 (“**MPRDA**”) and the guidelines issued by the National Department of Mineral Resources (“**DMR**”);
- 30.1.6 furnish the Company with an IRP30 Tax Exemption Certificate, where the Contractor is a Personal Service Provider or Labour Broker.

31. GENERAL HEALTH AND SAFETY

31.1 Safety, Health and Security Management

- 31.1.1 The Contractor shall provide a dedicated safety officer, for the duration of the Service, for every 50 (fifty) Personnel on Site, and where deemed necessary and in the sole discretion of the Company.
- 31.1.2 To the extent that the files are not legally privileged, the Contractor shall furnish the Company with all mine health and safety management and security management files at a predetermined hand-over meeting which can be upon termination or expiry of the Contract or otherwise. These files shall address the following activities:
 - 31.1.2.1 legal appointment of responsible persons, including the dedicated safety officer;
 - 31.1.2.2 all compliance with relevant Applicable Laws (including the Mine Health and Safety Act 29 of 1996 and the Occupational Health and Safety Act 85 of 1993);
 - 31.1.2.3 clear Scope of Work, including a method statement;
 - 31.1.2.4 list of equipment or an equipment schedule with a relevant checklist;
 - 31.1.2.5 quality control plan;
 - 31.1.2.6 organogram (names and appointments);
 - 31.1.2.7 proof of competency of the Personnel to, *inter alia*, perform the Work.
- 31.1.3 In addition, the Contractor shall furnish the Company with the following:
 - 31.1.3.1 proof of medical fitness certificates and attendance of induction courses of all Personnel;
 - 31.1.3.2 necessary procedures prior to establishing Site;

31.1.3.3 a letter of good standing, in terms of the COIDA;

31.1.3.4 health and safety plan;

31.1.3.5 the current health and safety records including provision of all safety statistics for the preceding 3 (three) years on a 12 (twelve) month rolling average period; and

31.1.3.6 the necessary baseline risk assessment.

31.1.4 The mine health and safety management and security management files will be maintained on Site and updated at Site progress meetings to record and document activities and incidents.

31.2 Safety, Risk Assessment and Induction Training

The Contractor shall adhere to all of the Company's safety procedures and shall execute all Work on Site according to the Company's safety procedures and safety programmes. The Contractor shall attend all safety training and risk assessment courses arranged by the Company. Should the Contractor fail to attend any such courses, the Contractor shall be liable to the Company for any reasonable costs incurred by the Company in arranging such a training and risk assessment course.

31.3 Medical Fitness

31.3.1 All of the Contractor's Personnel shall attend an entry, periodic and exit medical examination by the Company's approved occupational medical practitioner at the Company's occupational health centre, prior to commencing Work on Site, during the term of the Work and upon completion of the Work. All medical surveillance examinations shall be conducted by competent medical practitioners at the Company's occupational health centre. All medical surveillance examinations not conducted by approved medical practitioners at the Company's occupational health centre will not be accepted unless approved by the Company's occupational health practitioner.

31.3.2 Should any of the Contractor's Personnel fail to pass or undergo the medical examination, such person shall be removed from the Site and the pre-employment medical cost charges will be for the Contractor's own account.

31.3.3 The Company shall bear the costs in connection with such medical examinations for the Contractor's Personnel (whom have been specified in the Contractor's initial tender or quote) as well as annual medical check-ups and exit medicals. Should the Contractor replace any of its Personnel, the Contractor shall bear the cost in connection with any requisite medical examination(s) in respect of such replacement Personnel.

- 31.3.4 Should any of the Contractor's Personnel acquire any occupational illness, infectious disease or injury, including but not limited to assault and pulmonary tuberculosis during the course of the Service, the Contractor is required to notify the Company's medical officer immediately.
- 31.3.5 Once an occupational disease has been diagnosed at the Company's occupational health centre, it will be the responsibility of the Contractor to submit such claims to the relevant compensation authority, or provide the Company's occupational medical practitioner with the required documents for submission.
- 31.3.6 Should any of the Contractor's Personnel become ill or injured on Site, during the duration of this Contract, the Company will arrange emergency medical assistance and/or hospital services, as may be deemed necessary in the sole discretion of the Company, including transportation by ambulance. The Contractor shall bear all costs related to any expenses so incurred, whether same relates to the medical treatment, emergency transportation or hospitalisation of its Personnel, or otherwise.

31.4 Access Permits

The Company shall issue the Contractor's Personnel with access permits, as per the numbers submitted by the Contractor in its initial tender or quote. The Company shall bear the costs of the initial issue of access permits where after the Contractor shall bear the cost in relation to any additional or replacement permits. Should the Contractor replace any of its Personnel, the Contractor shall bear the cost in connection with the issuing of any access permits in respect of such replacement Personnel.

31.5 Personal Protective Equipment

- 31.5.1 The Company shall provide to the Personnel the following personal protective equipment ("**PPE**"): overalls, protective hard hats, fall arrest as well as other protective safety clothing and equipment including but not limited to safety boots, gloves, glasses/goggles, masks and hearing protection. The PPE shall be manufactured to the Company's current safety standards and in accordance with legislation. The Contractor shall ensure that its Personnel wear the necessary PPE in, on and around the Site where the Service is provided.
- 31.5.2 The Company shall bear the costs of the initial supply and issue of PPE as well as the annual replacement thereof. The Contractor shall bear the cost in relation to any additional or replacement as well as damaged or lost PPE, which may be required by the Personnel, notwithstanding the fact that such PPE may be issued by the Company for standardisation purposes.
- 31.5.3 Where PPE has been worn down as a result of normal wear and tear prior to the annual replacement thereof, the Company will bear the costs of the replacement of such PPE, provided that the Contractor hands in such worn down PPE to the Company as proof of its deterioration.

31.5.4 Any extras or specific requirements outside the Company's Code of Practice for Personal Protective Equipment shall be provided by the Contractor and shall be for the Contractor's account.

31.6 Site Offices

31.6.1 The establishment of any Site office by the Contractor on the Site must be approved by the Manager or representative of the Manager in consultation with the responsible safety, health and environmental managers prior to its establishment.

31.6.2 The Site office must be established, maintained and vacated according to the Company's requirements and in accordance with a plan provided to the Contractor.

31.6.3 Should the Contractor receive notice to vacate the Site office on the expiry or termination of this Contract, or any portion thereof, the Site office must be vacated and closed-out in accordance with the requirements and the plan provided to the Contractor.

31.6.4 The Company shall conduct a Site closeout inspection prior to the Contractor vacating the Site office. A close-out document shall be signed off by the Company's safety, health and environmental official. Should the Contractor fail to sign the close-out document, the Contractor will be held liable for any costs incurred by the Company to return the Site to its original condition.

31.7 Zero Harm

31.7.1 The Contractor acknowledges and agrees that the Company has implemented a policy of "zero harm" in the workplace, namely the HSEQ Policy, and further undertakes to adhere fully to the provisions of this policy. Consequently, the Contractor acknowledges that it is responsible for ensuring that the undertakings made by the Contractor in this Contract regarding safety, health and the environment, are adhered to by each person entering the Site as a result of such person's association with the Contractor ("**Individual**").

31.7.2 Specifically, the Contractor undertakes that the Contractor as well as each Individual shall:

31.7.2.1 at all times strictly adhere to all Applicable Laws, all guidelines, policies, procedures and codes of practice of the Company, the provisions of this Contract (where applicable) and the reasonable directions of any supervisor or safety officer and the protection of the environment;

31.7.2.2 demonstrate and implement a personal awareness of and commitment to safety, health and the environment and the Company's policy of "zero harm" in all his/her/its activities on the Site;

31.7.2.3 exercise reasonable care to protect and promote as well as co-operate at all times in building a culture of uncompromising dedication to preserving (i) the safety, health and wellbeing of anyone who may from time to time be on the Site and (ii) the environment on the Site; and

31.7.2.4 where applicable, personally promote and pursue safe, healthy and environmentally sound working practices on the Site.

31.7.3 The Contractor acknowledges that the Contractor shall, at its own cost, be responsible for the disposal of any waste generated by its activities on the Site and shall leave the Site in a safe, clean and tidy condition.

32. TRAINING OF PERSONNEL

32.1 The Contractor shall ensure that prior to the commencement of the Services which are to be performed on the Company's Site, its Personnel shall undergo induction training at the Company's training centre and the induction training shall include underground induction (if applicable), surface induction (required by all) and Site-specific induction.

The Company shall bear the costs in connection with such induction for the Contractor's Personnel (whom have been specified in the Contractor's initial tender or quote) as well as annual induction. Should the Contractor replace any of its Personnel, the Contractor shall bear the cost in connection with any requisite induction in respect of such replacement Personnel.

32.2 Certificate of Skills

32.2.1 All Personnel must have a valid certificate of skills and qualifications relevant to the Service to be performed (from an accredited training provider).

32.2.2 Should the Contractor fail to produce the relevant proof of training documentation, a competency assessment shall be done by the Company and depending on the results, the Personnel applicable shall then be expected to be trained/retrained. A daily/unit standard cost will be charged to the Contractor as determined by the Company. Where any of the Contractor's Personnel are reasonably expected to operate a machine in performing the Work, assessments will be completed by such Personnel as per the Company's standard.

33. VETTING BY THE COMPANY'S SECURITY

33.1 All of the Contractor's Personnel shall be vetted by the Company's security department prior to them being appointed to the Site. Should a person fail the vetting in any regard, the cost incurred in respect of the vetting process will be for the account of the Contractor. For the avoidance of doubt, such vetting process shall require the disclosure by all of the Contractor's Personnel of their personal information, which information shall be kept strictly confidential.

- 33.2 The Company undertakes to process the personal information of the Contractor's Personnel in accordance with the provisions of the Protection of Personal Information Act 4 of 2013 and only to the extent necessary to discharge the Company's obligations and the performance of its functions within the prescripts of the law.
- 33.3 The Contractor acknowledges that the collection of personal information is both necessary and requisite as a legal obligation, which falls within the scope of execution of the legal functions of the Company.
- 33.4 The Contractor therefore irrevocably and unconditionally agrees that:
- 33.4.1 it has obtained consent from its Personnel for the disseminating of their respective personal information to the Company;
 - 33.4.2 it has notified its Personnel of the purpose and reasons for the collection and processing of their personal information in so far as it relates to the discharge of the Company's obligations and the performance of the Company's functions as required by law; and
 - 33.4.3 it consents and authorises the Company to undertake the collection and processing of the Contractor's Personnel's personal information, for the purpose of securing and facilitating the Contractor's agreement with the Company.

34. INDUSTRIAL RELATIONS

- 34.1 The Contractor shall comply with all applicable labour-related and industrial relations legislation.
- 34.2 The Contractor shall take all reasonable precautions to prevent any unlawful, riotous, and/or disorderly conduct by its Personnel. The Contractor shall be liable for the payment of all damage or loss resulting from a failure to take such reasonable precautions.

35. LABOUR COMPLEMENT

- 35.1 The Contractor shall be required to provide a breakdown of the details of all Personnel required in order to render the Services, as contemplated in this Contract.
- 35.2 Should the Contractor be required, for any reason whatsoever, to revise the labour complement list provided, then the Contractor shall first be required to submit a formal request to the Company's duly authorised representative upon which the duly authorised representative will obtain the required approval from the Company's human resources department for review and consideration.
- 35.3 The request must include the names of all Personnel to be removed or included from the labour complement list, their respective designations and a short motivation as to the reason for their removal or appointment.

- 35.4 No changes to the labour complement list shall be permitted, unless prior written approval has been obtained jointly from the Company's duly authorised representative as well as the Company's human resources department. Once such request has been approved, all relevant documentation must be submitted to the relative procurement department to issue an amendment to the Contract.

36. LOCAL LABOUR

- 36.1 To the extent required by the Company, the Contractor is required to employ no less than 70% (seventy percent) of its labour workforce from the local community, which shall be construed as the labour sending area in terms of the MPRDA read in conjunction with the Mining Charter.
- 36.2 Should the Contractor be unable to reach the 70% (seventy percent) threshold as set out above in clause 36.1, the Contractor is required to provide a written motivation to the Company, stating why the Contractor cannot reach this percentage. Reasons for the inability to reach the required percentage may include, but are not limited to, the following:
- 36.2.1 Lack of relevant skills;
 - 36.2.2 Shortage of qualified labour;
 - 36.2.3 Lack of requisite experience for the implementation of the Contract.
- 36.3 The Contractor must submit a local labour plan in terms of the requirements described in this clause, prior to the Commencement Date, for approval by the Company. Failure to submit a local labour plan may result in penalties or forthwith termination of the Contract.
- 36.4 The objectives of enforcing the employment of a local labour force are as follows:
- 36.4.1 the promotion of employment and advancement of the social and economic welfare of all South Africans (see section 2(f) of the MPRDA);
 - 36.4.2 to ensure that holders of mining or production rights contribute towards the socio-economic development of areas in which they are operating as well as the areas in which the majority of the workforce is sourced (see section 2(i) of the MPRDA);
 - 36.4.3 to utilise and expand the existing skills base for the empowerment of HDP and to serve the community.
- 36.5 The requirements for a labourer to be construed as local labour in terms of this clause are as follows:
- 36.5.1 the labourer must be a South African citizen;
 - 36.5.2 the labourer must be an HDP, as defined by the DMR; and

- 36.5.3 the labourer must have lived in the community, as per the definitions above, for the minimum period prescribed by the DMR.
- 36.6 The various local labour sending areas for each Site shall be determined between the DMR and the Company and shall be communicated to the Contractor.
- 36.7 The Contractor shall comply with the Skills Development Initiative and any other legal obligations and/or standards as required by law. Should any cost arise on these actions and requirements, it will be for the account of the Contractor.

SECTION C: TERMS & CONDITIONS OF CONTRACT FOR THE SUPPLY OF GOODS

37. THE SUPPLY

Whenever appropriate the Company shall generate a Purchase Order in respect of the Goods required. The Purchase Order will provide for each item or items of Goods that the Company requires, and shall specify the requested quantity and delivery dates of the Goods, which the Contractor must endeavor to adhere to at all times.

37.1 Specifications and Standards of Goods

- 37.1.1 The Goods supplied by the Contractor as well as, where applicable, the packaging thereof, shall strictly comply in all respects with Applicable Laws, the provisions of this Contract, including the Scope of Work, Specifications and/or applicable standards.
 - 37.1.1.1 The Contractor shall be required to indicate, in writing, the extent of its adherence to the Company's policy titled 'Group Standard and Guideline on the Phasing out of single use of plastic' ("**Plastics Policy**") as annexed hereto, in respect of its packaging.
 - 37.1.1.2 Where the Company is of the view that the Contractor's adherence to the Plastics Policy is not sufficient, the Contractor will be obliged to provide the Company with a written document detailing the changes it will implement in order to reach the requirements set out in the Plastics Policy.
- 37.1.2 Where the Specifications and standards include the brand name of the Goods, such brand name shall be indelibly and legibly stamped or embossed on the Goods and/or the containers in which the Goods are packed by the manufacturer of the Goods.
- 37.1.3 The Contractor warrants that none of the Goods to be supplied to the Company shall be defective, prone to failure, unsafe or constitute a hazard.
- 37.1.4 The Contractor shall, where applicable, with delivery of the Goods in terms of the Purchase Order, provide Material Safety Data Sheets (MSDS) covering all hazardous materials and hazardous chemicals to be furnished, used, applied or stored by the Contractor or any of its subcontractors at the Site.
- 37.1.5 To the extent required by the DMR, the Contractor shall be obliged to, at the request of the Company, provide the Company with proof of the local content of the Goods. Such proof shall include certification from the South African Bureau of Standards ("**SABS**") or any other entity designated by the Minister of Mineral Resources. In this regard, "local content" shall mean the value added during assembly or manufacturing of the Goods that are produced in South Africa, in accordance with the Mining Charter.

37.2 Tests and/or Analyses of the Goods

- 37.2.1 The Company shall have the right to arrange for tests and/or analyses of the Goods delivered as the Company may deem necessary from time to time. Such tests and/or analyses shall be undertaken by a recognised public authority or independent laboratory.
- 37.2.2 The costs of such tests and/or analyses shall initially be borne by the Company. In the event of the tests and/or analyses prove that the Goods do not comply with the Specifications, the Company shall, without prejudice to any of its other rights and irrespective of any other remedy which might be available to the Company under any of the provisions contained in this Contract or in law, be entitled to recover such costs from the Contractor.

37.3 Recall of Goods

- 37.3.1 The Company may at any time, at its sole discretion, initiate a recall of Goods, supplied and delivered by the Contractor, should the Goods not conform to safety standards applicable or if it may otherwise cause safety or health issues. Such a recall of Goods may be initiated if the Company has actually become aware that the Goods do not conform with requirements or as a result of any complaints or reporting of failures, defects or hazards or personal injury, illness or damage to property.
- 37.3.2 The Contractor is under the obligation to inform the Company and to initiate a recall of Goods should the Contractor become aware of the circumstances referred to in clause 37.3.1.
- 37.3.3 In the event of a recall of Goods under the abovementioned circumstances the Company shall be entitled to:
- 37.3.3.1 return all the Goods to the Contractor, which shall be collected by the Contractor at its own cost from the Company's Site and forthwith issue a Credit Note to the Company in respect thereof; and/or
 - 37.3.3.2 require the Contractor to replace, and the Contractor shall replace the Goods so recalled, with Goods complying with the Specifications and Standards, at the Contractor's own cost;
 - 37.3.3.3 purchase from third party sources, Goods complying with the Specifications to replace the Goods so recalled, in which event the Company shall be entitled to recover from the Contractor any amount by which the price so paid exceeds the Purchase Price. Delivery costs shall be taken into account in assessing such excess. The Contractor shall in addition refund the Company the difference between price paid, and the Purchase Price and all other costs incurred by the Company, in respect of the Goods so recalled.

37.3.4 Any acceptance by the Company of any Goods delivered by the Contractor not complying with the Specifications and standards shall not prejudice or affect the Company's rights to recall any Goods or claim damages once the non-compliance is discovered by the Company or should the Company discover subsequent deliveries of Goods not complying with the Specifications and standards.

37.4 Replacement of Defective Goods

37.4.1 The Contractor warrants that all Goods supplied are fit for their intended purpose, and are of merchantable quality. If there are any defects to the Goods, the Contractor shall repair or, where the Goods are found by the Company to be irreparable, replace such defective Goods at its own expense.

37.4.2 In the event that the Goods are not manufactured by the Contractor, the Company shall have the same rights against the Contractor as the Contractor has against the manufacturer in regard to defects therein or unsuitability thereof, the intention being that the Contractor and the manufacturer be jointly and severally liable to the Company. The Contractor agrees to work with the Company to protect the Company's interest when the Contractor does not manufacture the Goods.

37.4.3 The Contractor shall be liable for and shall pay all costs, expenses of, and incidental to such replacement.

37.5 Transport, Delivery and Packaging of Goods

37.5.1 Transport

37.5.1.1 The Contractor shall transport and deliver the Goods ordered in terms of the provisions of this Contract to the Company's Site and on the dates as specified in the Purchase Order.

37.5.1.2 The Contractor shall ensure that all Goods are properly secured and covered to prevent damage or danger of whatsoever nature.

37.5.1.3 Any risk involved in the transport of the Goods to the Company's Site shall be incurred by the Contractor.

37.5.2 Deliveries

37.5.2.1 Deliveries of Goods shall be made on Business Days between 07:30 and 15:00 to the Stores unless directed otherwise by the Company on reasonable notice.

37.5.2.2 Special arrangements for after hours, re-routes and breakdown Deliveries should be confirmed with and agreed upon between the Company and the Contractor.

- 37.5.2.3 Where the Contractor utilised the Company's transport for the supply of Consignment Stock, the Company shall recover the actual cost of such transport from the Contractor by means of raising a Credit Note against the Contractor, unless the transport costs are excluded from the price of the Goods.
- 37.5.2.4 The Company reserves the right not to pay for Goods delivered outside of the abovementioned arrangements. All risk in respect of the Goods will remain with the Contractor.
- 37.5.2.5 Where Goods are Delivered to the Company, and/or empty containers are collected from the Company, by means of road Delivery the Contractor shall comply with all Applicable Laws, in effect at the time the Work is performed.
- 37.5.2.6 The Contractor shall indemnify and hold the Company harmless against all damages, losses and expenses resulting from the transportation of the Goods and/or empty containers, irrespective of whether such damages, losses and expenses are caused within the boundaries of the areas owned, leased or occupied by the Company or outside of such boundaries. The Contractor hereby indemnifies the Company against any claims which might be made against the Company in respect of such damages, losses and expenses.

37.5.3 Packaging

The Contractor shall identify each and every package, container, bundle or article, by means of either suitable labels securely attached thereto or indelible marking thereon, with all information required by Applicable Laws and the following information:

- 37.5.3.1 description of Goods;
- 37.5.3.2 name of the Contractor;
- 37.5.3.3 the Purchase Order number;
- 37.5.3.4 if purchased by weight, the net weight of the contents.

37.6 Loss and/or Damage to Goods

Irrespective of whether the Purchase Price is inclusive or exclusive of Delivery to the Stores, all Goods shall nevertheless be and remain at the sole risk of the Contractor and the Contractor shall bear any and all costs whatsoever arising from or in respect of all losses, damages and/or destruction of the Goods until such time as the Goods have been physically received by the Company at the Stores and the waybill has been signed for by the Store's official, on behalf of the Company.

37.7 Risk and Ownership

Risk shall pass from the Contractor to the Company upon physical receipt of the Goods at the Store and signature of the invoice and/or delivery note on behalf of the Company by a Store's official. Ownership of the Goods shall pass from the Contractor to the Company upon full payment made to the Contractor for the Goods.

37.8 Valid Invoice/Delivery Notes

37.8.1 A valid delivery note shall accompany every Delivery and shall include the following information:

37.8.1.1 description of the Goods;

37.8.1.2 Purchase Order number;

37.8.1.3 item line number, where specified in the Purchase Order;

37.8.1.4 nett and gross weights; and

37.8.1.5 quantities and unit of measure.

37.9 Non-Stock Availability

37.9.1 Where the Company orders any item of the Goods from the Contractor, which item forms part of the Goods in terms of this Contract, and the Contractor does not have such item in stock, the Company may buy such item from another supplier and the Contractor shall be liable to the Company for any difference between the pricing stipulated in the Contract for such item and the actual price paid by the Company.

C1: TERMS AND CONDITIONS OF CONTRACT FOR THE SUPPLY OF CONSIGNMENT STOCK

38. CONSIGNMENT STOCK

- 38.1 The Contractor will ensure a ready supply of the Goods at the Site, on a Consignment Stock basis.
- 38.2 The Contractor agrees to provide the Goods on a Consignment Stock basis in accordance with the procedure described herein, and such Goods, shall be available to ensure the uninterrupted and continuous service, repair and maintenance of the Company's equipment in its areas of operation.
- 38.3 Such Goods shall be delivered to the Site where they shall remain as the property of the Contractor until disposed of in terms of the provision of this Contract.
- 38.4 The stock levels of Consignment Stock shall be determined jointly between the Company and the Contractor utilising the Company's records of the usages of the various items of Goods during the preceding quarter (3 (three) months) unless agreed to otherwise between the Parties. The required stock levels can be amended from time to time in accordance with the requirements or circumstances of demand.
- 38.4.1 The Company and the Contractor's representative will perform a reconciliation of the quantity of stock issued in comparison to the stock still in consignment, on a monthly basis;
- 38.4.2 The Contractor will be required to replenish the stock that has already been issued to the Company, on a monthly basis, in order to return the stock to its maximum levels, except if the minimum stock level thresholds have been reached or will be reached in the near future.
- 38.4.3 The Contractor will be responsible to evaluate the weekly liability usage report and will be required to pre-empt whether the minimum stock level thresholds will be reached before month end.
- 38.4.4 If the minimum stock level thresholds will be reached before month end the Contractor undertakes to promptly maintain the agreed predetermined minimum levels of Consignment Stock at the Site and to replenish all Consignment Stock items to ensure that the minimum stock level is maintained at all times.
- 38.5 Should the Contractor at any time fail to maintain the minimum stock levels as agreed, the Company shall have the right to instruct the Contractor to make such alternative Delivery arrangements as may be necessary and/or procure the Goods from a third party. All additional costs incurred by the Company or the Contractor in implementing such instructions shall be for the Contractor's account.

- 38.6 The Company undertakes to provide due care in the handling and storage of Consignment Stock, should the Company be tasked with the responsibility for the management thereof, in accordance with generally accepted practices and standards.
- 38.7 All Goods supplied in terms of this Contract shall be new unless otherwise stated and accepted by the Company.

39. ADDITIONS AND DELETIONS OF GOODS

- 39.1 The Company and Contractor have agreed on a mutually generated schedule of goods to be held in the Company's store and said schedule shall form part of the Contract, as annexed hereto ("**Schedule of Stock**"). This schedule is subject to revision by both Parties and additions and deletions may be made by either Party after mutual agreement for such additions/deletions has been reached between the Supply Chain Manager or appointed delegate and a representative of the Contractor.
- 39.2 All additions to Consignment Stock must be authorised by the Supply Chain Manager prior to any Consignment Stock being transported to the Site.
- 39.3 The Contractor hereby agrees and acknowledges the Company's right to inspect Consignment Stock being placed in consignment at any time and agrees that if said stock is not detailed on the Schedule of Stock to be held or in any of the amendments thereof, the Contractor shall at its own cost, withdraw said stock.

40. LOCATION

- 40.1 The Consignment Stock shall be located at the Site where it can be easily identified and kept separate from other items of merchandise not forming part of this Contract and shall be under the control of the Materials Controller.
- 40.2 The Company undertakes that Consignment Stock will not be moved, other than pursuant to a requisition in accordance with this Contract, to any other location without the prior written consent of the Contractor having been obtained.

41. STOCK RECORDS

- 41.1 The Company undertakes to maintain an efficient control system relative to the identification of Goods received and Requisition Dates.
- 41.2 The Company shall ensure that the Contractor receives the weekly liability usage report and such report will serve as an official replenishment advice.

42. GOODS RETURNED TO STOCK

- 42.1 The Contractor hereby agrees that the Consignment Stock may be returned to the Contractor for credit, subject to the following:

42.1.1 such stock shall be in usable condition free of rust or damage and in its original packaging.

42.2 All returned stock shall be kept separate from Consignment Stock until inspected by the Contractor's representative and accepted for return.

42.3 The value of returned stock shall be at the prevailing price list as at date of Delivery.

43. STOCKTAKING

43.1 The Company agrees to permit the Contractor's authorised representative access to the Consignment Stock for purposes of conducting spot checks to examine the quantities and condition of Consignment Stock.

43.2 The Company agrees to conduct a complete stock count in conjunction with the Contractor's representatives on mutually convenient dates, at least once a month.

44. CONSEQUENCES OF TERMINATION

44.1 In the event of termination of this Contract for any reason, Consignment Stock will be counted and the Company will have the option to purchase the stock at the ruling price or shall be withdrawn and removed by the Contractor.

44.2 The Company shall remain liable for payment of such stock requisitioned prior to the date of termination.

C2: TERMS AND CONDITIONS OF CONTRACT FOR THE SUPPLY OF VENDOR MANAGED STOCK

45. VENDOR MANAGED STOCK

45.1 The Contractor will ensure a ready supply of the Goods at the Site, on a Vendor Managed Stock basis.

45.2 The Contractor agrees to provide the Goods on a Vendor Managed Stock basis in accordance with the procedure described herein, and such Goods, shall be available to ensure the uninterrupted and continuous service, repair and maintenance of the Company's equipment in its areas of operation.

45.3 Such Goods shall be delivered to the Site where it shall remain the property of and be managed by the Contractor, until disposed of in terms of the provision of this Contract.

45.4 The stock levels of the Vendor Managed Stock shall be determined by the Contractor in accordance with the usage of the various items of Goods by the Company.

45.5 The Contractor shall maintain a minimum service level in accordance with the Availability Schedule as detailed in **Annexure D (Key Performance Indicators)**

45.5.1 the Company shall have the right to instruct the Contractor to make such alternative Delivery arrangements as may be reasonably necessary and/or to procure the Goods from a third party. All additional costs incurred by the Company or the Contractor in implementing such instructions shall be for the Contractor's account.

45.6 All Goods supplied in terms of this Contract shall be new unless otherwise stated and accepted by the Company.

46. ADDITIONS AND DELETIONS OF GOODS

46.1 The Company and Contractor have agreed on a mutually generated schedule of goods to be held in the Company's store and said schedule shall form part of the Contract, as annexed hereto ("**Schedule of Stock**"). This schedule is subject to revision by both Parties and additions and deletions may be made by either Party after mutual agreement for such additions/deletions has been reached.

46.2 The Contractor hereby agrees and acknowledges the Company's right to inspect Vendor Managed Stock facility at any time

47. LOCATION

47.1 The Company will provide the Contractor with a facility/storage area which shall be deemed suitable in the Company's discretion and in accordance with the Company's facility availability.

48. DELIVERY OF THE GOODS TO THE FACILITY

48.1 The Company will provide the necessary access and permits to the Contractor for the delivery of the Vendor Managed Stock to the facility.

49. STOCK RECORDS

49.1 The Contractor undertakes to maintain an efficient control system relative to the identification of Goods issued.

49.2 The Contractor shall ensure that the Company receives the stock usage report as per the agreed frequency.

50. GOODS RETURNED TO STOCK

50.1 The Contractor hereby agrees that the Vendor Managed Stock may be returned to the Contractor for credit, subject to the following:

50.1.1 such stock shall be in usable condition free of rust or damage and in its original packaging.

50.2 The value of returned stock shall be at the prevailing price list as at date of issue.