

# **STANDARD TERMS AND CONDITIONS OF PURCHASE**

(hereinafter referred to as “Standard Terms and Conditions”)

## **UMSIMBITHI MINING (PTY) LTD**

Registration No. 2006/010911/07

## **MBOKODO MINING (PTY) LTD**

Registration No. 2004/019812/07

(hereinafter referred to as “the Principal” – entity as reflected in the individual issued Purchase Order)

**Physical Address:** 4th Floor, Building One, Illovo Edge, 11 Harries Road, Illovo, Johannesburg, 2015

**Postal Address:** PostNet Suite #11, Private Bag X11, Birnam Park, 2015

**Delivery Address:** As specified on the Principal’s issued Purchase Order

## **1. INTRODUCTION AND INTERPRETATION**

- 1.1. The documents forming the Contract between the Supplier and the Principal shall be made up of the following documents and in the event of any ambiguity or inconsistency between them shall be interpreted in accordance with the following order of precedence:
  - 1.1.1. Firstly, the terms and conditions of any separate signed agreement between the Parties in respect to which the Purchase Order is issued;
  - 1.1.2. secondly, any additional terms and conditions, if any, which have been inserted by the Principal in the Purchase Order referred to in clause 1.1.4 below;
  - 1.1.3. thirdly, these Standard Terms and Conditions; and
  - 1.1.4. fourthly, the duly issued Purchase Order (“Purchase Order”) provided by the Principal to the Supplier.
- 1.2. “Principal” means each of the entities individually as reflected on the cover page of these Standard Terms and Conditions as well as the issued Purchase Order. For avoidance of doubt, the entities making up the Principal each enters a Contract on its own behalf and not on behalf of any other entity, and
- 1.3. do not, despite collectively being referred to as the Principal, thereby indicate or assume any joint and several liability arising from whatsoever cause and relating to whatsoever cost/ damage/ expense/ penalty and similar.
- 1.4. “Supplier” is the person or persons, firm or company to whom the Purchase Order is issued, and includes the Supplier’s employees, personal representatives, successors and permitted assigns.

- 1.5. "Goods" means whatever is purchased, and includes physical goods, work, services and specialist consultancy or advisory services (if any) to be done, in terms of the Purchase Order.

## **2. OFFER AND ACCEPTANCE**

- 2.1. The Purchase Order shall constitute an offer by the Principal to purchase the "Goods" at the purchase price ("Purchase Price") at the date of delivery ("Specified Delivery Date") described in the Purchase Order on the terms and conditions set out herein.
- 2.2. The Supplier must acknowledge receipt and acceptance of the Purchase Order in writing to the Principal within 5 (five) working days of issue of the Purchase Order. Any Supplier qualification submitted with this acknowledgement could invalidate the order and is subject to written approval by the Principal. Should the Supplier fail to return the acknowledgement of the Purchase Order within the stipulated time, it shall be deemed that the Supplier has accepted the Contract in its entirety.
- 2.3. The documents referred to in clause 1.1 shall constitute the entire contract ("Contract") between the Principal and the Supplier and no alteration or amendment thereto shall be of any force or effect unless agreed to in writing by the Principal and the Supplier.
- 2.4. The Contract shall apply to the exclusion of any other documents, terms or conditions submitted by the Supplier and any standard terms and conditions of the Supplier, unless such have been agreed in writing by the Principal or his duly mandated representative and incorporated in the Purchase Order.
- 2.5. The Supplier shall not be entitled to provide or supply any fixed levels of the Goods to the Principal and all provision and supplies will be made on a case-by-case basis pursuant to Purchase Order(s) placed by the Principal and the Supplier will not be entitled to any exclusivity whatsoever in relation to the provision of the Goods.
- 2.6. No delivery of Goods will commence until a Purchase Order (i.e. printed from the Umsimbithi ERP system and faxed/emailed via the Umsimbithi approved workflow in the appropriate format) has been received by the Supplier from the Principal.
- 2.7. If the Supplier delivers any Goods in respect of which no Purchase Order has been placed by the Principal, then the Supplier shall not be entitled to any payment in respect thereof and waives any claims it might have on the basis that the Goods might be necessary or useful to or beneficial to the Principal and the risk in the Goods shall remain vested in the Supplier.
- 2.8. The Principal may reschedule a delivery date of the Goods or change a delivery address as long as it does so on reasonable notice in writing to the Supplier.
- 2.9. In the absence of any special agreement to the contrary, packing cases (inclusive of crates and containers) and packing materials shall be deemed to be included in the Purchase Price and shall remain the property of the Principal.
- 2.10. Goods will be accepted at the place of delivery only with regard to the number and condition of packages, and notwithstanding any receipt that may have been given, the Goods shall remain liable to rejection if not in accordance with clause 2.11 below. Rejected goods will be held at risk and expense of the Supplier, who, before such Goods are released, shall refund the Purchase Price and all charges incurred by the Principal in respect of such Goods.

2.11. The Supplier will supply the Goods:

2.11.1. in accordance with the Purchase Order stipulations; and

2.11.2. to a quality acceptable to the Principal as advised by the Principal in writing from time to time (and no less than the comparative market norm for similar goods); and

2.11.3. in a manner consistent with the highest standards in the Supplier's industry; and

2.11.4. in compliance with all applicable laws and regulations.

### **3. DELIVERY AND DEFAULT**

3.1. Delivery is to be affected ex stock to the mine store unless otherwise stipulated in the Purchase Order. No part deliveries are permitted unless otherwise agreed in writing with the Principal.

3.2. Time shall be of the essence in the execution of a Purchase Order and should the Supplier fail to effect delivery of the Goods on or before the Specified Delivery Date, the Principal has the right, without prejudice to any other remedy for breach of contract, to cancel the Purchase Order immediately. The Principal may thereafter at his sole discretion, purchase the Goods from an alternative supplier and recover from the Supplier any excess costs including delivery costs. The liability imposed upon the Supplier under this clause shall be deemed to be in addition to and not in substitution of any other liability, which he may incur under these conditions.

3.3. Should the Principal accept late delivery, he may deduct from the Purchase Price an amount of 1% (one percent) per day for each day of delay beyond the Specified Delivery Date up to the date of actual date of Delivery.

### **4. OWNERSHIP AND RISK**

4.1. Ownership of the Goods shall pass to the Principal on receipt thereof by the Principal. However, the Principal reserves the right to reject the Goods if substandard as detailed in clause 2.11 herein.

4.2. Risk in and to the Goods shall remain with the Supplier until the Goods have been accepted by a duly authorised representative of the Principal in the manner normally employed by the Principal in this regard.

4.3. The Principal's acceptance of the Goods or the signing of any delivery note (proof of delivery note – POD) or acceptance note by the Principal's representative will be without prejudice to the Principal's rights to subsequently reject the Goods if they are found to be damaged, defective, failing to conform to the Purchase Order or do not meet the Principal's quality standards upon commissioning.

### **5. PROPRIETARY RIGHTS AND CONFIDENTIAL INFORMATION**

5.1. Proprietary Rights: The Supplier warrants that the Goods do not infringe any Patent, Copyright, Trade Mark, Design and Intellectual Property Rights and the Supplier will hold the Principal harmless against any loss or damage the Principal may suffer as a result of any infringement of such Patent, Copyright, Trade Mask, Design or Intellectual Property Rights.

- 5.2. Confidential Information: The Supplier shall keep secret and shall not divulge to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the extent necessary for the performance of the sub-contract) all information (including this Contract itself) given by the Principal in connection with the Contract or which becomes known to the Supplier through the supply of Goods under the Purchase Order. No photographs of any of the Principal's equipment, installations or property shall be taken without the Principal's prior consent in writing.

## **6. CESSION OF RIGHTS**

- 6.1. The Supplier shall not in whole or in part sell, cede, assign or transfer his rights and/or obligations under the Contract without the prior written consent of the Principal.
- 6.2. The Principal shall be entitled on written notice to the Supplier at any time prior to the Specified Delivery Date to cede and assign its rights and delegate its obligations under this Contract to any affiliate.

## **7. WARRANTY**

The Supplier warrants that the Goods:

- 7.1. will be free of Latent and Patent defects;
- 7.2. will comply with the specification laid down by the Principal in the Purchase Order;
- 7.3. be suitable for the ordinary use and/or intended application;
- 7.4. be free of defects in workmanship and material; and
- 7.5. any other standards prescribed by the Principal, e.g. SABS standards.

## **8. GUARANTEE**

- 8.1. The Supplier guarantees all Goods against defects due to defective materials, faulty design and bad workmanship for a period of 12 (twelve) months from the date of acceptance of the Goods by the Principal or for an extended supplier guarantee period, whichever is the longer period.

## **9. QUALITY**

- 9.1. Notwithstanding any terms to the contrary contained in the Contract, the Supplier shall, if requested by the Principal, provide the Principal with test results indicating: (i) that the Goods comply with the requirements set out in the Contract; and (ii) the latest future date up to which the Goods are able to operate effectively.
- 9.2. If the Supplier is unable to provide the Principal with proof that the Goods are compliant, or if at any time it becomes apparent that the Goods are not compliant, the Principal may, in addition to any rights available to it in law, return the Goods to the Supplier and receive a full refund of the complete Purchase Price paid for such Goods, together with interest thereon at the prime rate quoted by the Principal's bank, calculated from date of payment by the Principal, until the date of repayment by the Supplier, both days inclusive. These remedies shall be available, notwithstanding the fact that the date on which it became apparent that the Goods are not compliant, may be after the guarantee period agreed to by the Principal.

## **10. MARKING OF DOCUMENTS AND PACKAGES**

- 10.1. All cases, crates, packages, containers etc. must be clearly marked or labelled with the Purchase Order number, equipment description and gross/ nett mass.
- 10.2. The Purchase Order number shall be shown on all invoices, communications, packing lists and bills of lading.

## **11. PRICE BASIS**

- 11.1. All prices are fixed and firm, excluding VAT, in the currency as stated on the Purchase Order and not subject to fluctuation, unless otherwise stated in the Purchase Order.
- 11.2. Any invoice received in excess of the Purchase Order value shall be rejected and returned to the Supplier for cancellation and credit.
- 11.3. Unless otherwise stated in the Purchase Order all charges such as weighing, loading, storage and demurrage shall be for the Supplier's account.
- 11.4. Any liability on the part of the Principal for variation in exchange rates is excluded. This risk is for the Supplier's account and must be carried or covered by a forward exchange contract unless otherwise stated in the Purchase Order.
- 11.5. Unless otherwise stated in the Purchase Order, any variations in import and customs duties or sea freights and any alterations in railway and road transport rates and charges between the date of the Supplier's quotation and the time of shipment, or clearance, or delivery, as the case may be, shall be for the account of the Supplier.
- 11.6. If the Supplier should supply or offer to supply goods substantially equivalent to the Goods to any other party at rates lower than the relevant prices payable from time to time by the Principal to the Supplier, the Principal shall be entitled to a corresponding reduction in the relevant prices payable by the Principal unless the lower rates have been given because of the large volume of the goods to be acquired by such other party or because of any other legitimate factor particularly applicable to that supply to such other party.

## **12. INVOICING AND PAYMENT**

- 12.1. Tax invoices must be submitted by the 25th of the month in which the supply has taken place or within 2 working days after the month end should the supply be made between the 25<sup>th</sup> and the end of the month.
- 12.2. Statements recording all transactions for the month are to be submitted by the 10th day of the following month.
- 12.3. Payment for all qualifying invoices will be made 30 (thirty) days after date of receipt of the statement as referred to in clause 12.2.
- 12.4. To effect payment timeously, original hard copy tax invoices for the supply of Goods must be delivered to the address as follows:

12.4.1. Postal Address:

Umsimbithi Mining (Pty) Ltd  
Postnet Suite #11  
Private Bag X11  
Birnam Park  
2015

12.4.2. By hand:

Umsimbithi Mining (Pty) Ltd  
4th Floor  
Building One,  
Illovo Edge,  
11 Harries Road,  
Illovo

12.4.3. Email:

Electronic versions of invoices which are SARS compliant and meet the requirements of the Electronic Communications and Transactions Act ("ECT Act") may be sent to the following address:

[accounts@umsmining.co.za](mailto:accounts@umsmining.co.za)

12.5. The original tax invoice must clearly state the content including the Purchase Order number and must be supported by delivery notes (POD) endorsed by the mine stores and/or other relevant documentation.

12.6. The Principal's VAT details are as follows:

| DIVISION   | VAT VENDOR                  | VAT NUMBER |
|------------|-----------------------------|------------|
| Umsimbithi | Umsimbithi Mining (Pty) Ltd | 4590243640 |
| Mbokodo    | Mbokodo Mining (Pty) Ltd    | 4910243452 |

### 13. VARIATIONS

13.1. The Supplier shall not deviate from drawings, descriptions or specifications in documents forming part of the Contract except as directed by the Principal, but the Principal shall have the right from time to time during the execution of the Contract, by notice in writing, to direct the Supplier to add to or omit or otherwise vary the scope of work and/or specification of the Goods to be supplied and the Supplier shall carry out such variations and be bound by the same conditions, as far as applicable, as though the said variations were stated in the Contract.

13.2. Where the Supplier receives any such direction from the Principal, or where any event occurred, which would or could delay the delivery date or which would or could increase the Purchase Order price, the Supplier shall without delay, but in any event within 5 (five) days from receipt of such instruction or from the occurrence of the event, give notice thereof in writing to the Principal. The Supplier shall then within a further period of 5 (five) days provide the Principal with the full particulars and substantiation of the required additional time or costs. Such particulars shall state the relevant clause of the Purchase Order relied on by the Supplier in support

of its claim. The Supplier shall not be entitled to any such extension to the Specified Delivery Date or additional compensation unless the Supplier has complied with the foregoing provisions.

13.3. If, in the opinion of the Supplier, any such direction is likely to prevent the Supplier from fulfilling any of its obligations under the Purchase Order it shall promptly notify the Principal and the Principal shall decide with all possible speed whether or not the Goods shall be carried out and shall confirm its instructions in writing and modify the said obligations to such an extent as may be justified. Until the Principal so confirms its instructions in writing they shall be deemed not to have been given.

13.4. Failing agreement on any amended price or obligation under the Purchase Order, the matter shall be determined in accordance with the provisions of clause 19

#### **14. MINE HEALTH AND SAFETY ACT AND OTHER LEGISLATION**

14.1. All Goods supplied in terms of the Contract are to comply fully with the requirements of the Mine Health and Safety Act (Act 29 of 1996) as amended and the Supplier shall conform with all other relevant legislation in force and with all regulations promulgated thereunder from time to time in South Africa.

14.2. 14.2 The Supplier will provide all information requested in terms of the Mine Health and Safety Act, the Regulations and Hazardous Substances Act (Act 15 of 1973), and other legislation as may be applicable, on delivery of the Goods.

14.3. 14.3 Any attempt by the Supplier to delegate, transfer or avoid its obligations under Section 21 of the Mine Health and Safety Act, shall be of no force or effect unless agreed to in writing by the General Manager of the Principal.

#### **15. FORCE MAJEURE**

15.1. If either party is absolutely prevented or hindered from carrying out its obligations by circumstances not reasonably foreseeable at the time of entering into the Purchase Order and beyond its reasonable control and exceeding 7 (seven) days continuous duration, the performance of such obligations shall be suspended for such time as the circumstances aforesaid continue, but only for as long as these circumstances influence the timely performance of the Purchase Order as a whole or any part thereof that have to be performed after the commencement of these circumstances. The party affected shall then not be liable for any delay occasioned thereby. Provided that if such delays shall extend for an unreasonable time the party not affected by the circumstances aforesaid may cancel the Purchase Order and no liability shall by reason of such cancellation attach to either party. The Principal shall pay the Supplier such sum as may be equitable in respect to Goods delivered prior to cancellation. Instances that shall not be accepted as Force Majeure include the following: conditions caused by normal weather conditions as well as industrial related disputes, strikes, lock-outs, industrial and labour difficulties, work bans, blockades or picketing that are not of a national or province wide application.

15.2. The party affected by Force Majeure circumstances shall notify the other party by courier, registered mail, fax or email of the occurrence and termination of Force Majeure events hindering the performance of the Purchase Order as a whole or any part thereof, at the latest within 7 (seven) calendar days from the commencement of the circumstances giving rise to the delay. The party giving the notice shall use all possible diligence to remove such Force Majeure as quickly as possible.

- 15.3. For as long as the Force Majeure circumstances exist, the penalty provisions of the Purchase Order shall not apply. Similarly, the Supplier shall not be entitled to additional compensation and the Purchase Price shall not be subject to change.

## **16. BREACH AND CANCELLATION**

- 16.1. Should the Supplier:

16.1.1. breach any term or condition of the Contract;

16.1.2. be placed under judicial management or Business Rescue;

16.1.3. be placed in liquidation or become insolvent;

16.1.4. pay or offer to pay or lend any money or property of any nature to any person employed or connected to the Principal in connection with the Contract or any other unethical behaviour; or

16.1.5. act in any way in conflict with the provisions of this Contract,

the Principal shall be entitled to cancel the Contract, and inter alia be entitled to the remedies provided in clauses 3.2 and 3.3 herein. The Supplier shall further be liable to pay the Principal all damages which the Principal may suffer due to the Purchase Order not being carried out and any amount that may have been set aside by way of retention against eventual delivery shall be retained by the Principal and set off against any such damages when determined.

- 16.2. Notwithstanding any other provision herein, the Principal shall at its sole discretion have the right to terminate the Contract for its convenience, on 14 (fourteen) days written notice to the Supplier, in which event the Supplier may submit a statement for work rendered up to the time of termination and the Supplier shall have no further claim for damages whatsoever. The statement should show the value of the Goods supplied and/or executed by the Supplier, the reasonable demobilization costs incurred by the Supplier and the cost of materials ordered for the supply of the Goods to the extent that the Supplier cannot cancel such orders and provided that upon payment by the Principal, the unencumbered title to the materials passes to the Principal and the materials have not been prematurely ordered. The Supplier is not entitled to any other compensation, including any consequential costs, losses or damages.

## **17. LAW TO APPLY**

- 17.1. The Contract shall in all respects be construed in accordance with the Law of South Africa, and any difference that may arise between the Principal and the Supplier in regard to the Contract shall be settled in South Africa.

## **18. INSURANCE & COMPLIANCE TO PRINCIPAL'S RULES AND REGULATIONS**

- 18.1. Where applicable, the Supplier shall comply with the Principal's Code of Practice, the terms and conditions of the Contractor's Pack and all Safety, Security Rules and Regulations issued by the Principal including the Principal's Health, Safety, Environmental and Community (HSEC) standard system.
- 18.2. The Supplier shall, at its own expense, effect and maintain adequate insurance cover for all loss or damage which may be suffered by the Supplier and/or the



Principal, as a result of any incident arising out of, or in connection with the Delivery Process and whilst the risk for the supply of Goods remains with the Supplier.

## **19. RESOLUTION OF DISPUTES**

- 19.1. All disputes or differences in respect of this Contract and/or the supply of Goods must be resolved in terms of this clause 19.
- 19.2. Written notice of any dispute or difference must be given to the other party. The notice must:
  - 19.2.1. set out the legal basis of the claim;
  - 19.2.2. set out the facts upon which the claim is based;
  - 19.2.3. have annexed copies of correspondence and any relevant background material;
  - 19.2.4. contain details regarding the quantification of the claim; and
  - 19.2.5. if the claim is made by the Supplier, be signed by its chief executive officer.
- 19.3. If the parties' representatives are unable to resolve the dispute or difference as detailed in clause 19.2 herein within 10 (ten) business days after the giving of that notice, either party may refer the dispute or difference to the general managers of the parties for resolution. If the general managers (or equivalent position) of the parties are unable to resolve the aforementioned dispute or difference within 10 (ten) business days of its referral, either party may refer the dispute or difference to the chief executive officers of the parties for resolution. If the chief executive officers of the Parties are unable to resolve the dispute or difference within 10 (ten) business days of its referral, either Party may, after giving written notice to the other party of its intention to do so, commence litigation in respect of such dispute or difference.
- 19.4. To assist the parties in resolving a dispute or difference, nothing in the preceding paragraphs prevents the parties from agreeing to resolve a dispute or difference by any of the following means:
  - 19.4.1. referring the dispute or difference to arbitration in accordance with the Arbitration Act, 42 of 1965 as amended, and the rules of the Arbitration Foundation of South Africa;
  - 19.4.2. referring the dispute or difference to an expert to make an expert determination;
  - 19.4.3. referring the dispute or difference to a panel of experts whose majority decision is to be binding upon the parties;
  - 19.4.4. referring the dispute or difference to an independent party; or
  - 19.4.5. agreeing upon any other method which the parties consider to be appropriate for resolving the dispute or difference between them.
- 19.5. Notwithstanding the other provisions of this clause 19, the Supplier must:
  - 19.5.1. proceed without delay to continue to execute the delivery;
  - 19.5.2. perform its other obligations under the Contract; and

19.5.3. comply with all reasonable directions of the Principal, including any direction in respect of a dispute or difference being dealt with in accordance with clause 19, with the exception of matters that may materially alter the scope of the Contract.

19.6. Further, the Principal must continue to perform its other obligations under the Contract, unless an obligation of the Principal is the subject matter of the dispute.

## **20. COMPLIANCE WITH LAW AND CODE**

20.1. The Supplier shall comply with all applicable laws, including rules, regulations and orders of government authorities. The Supplier shall further not act in a way that would result in a violation by the Supplier or the Principal of any applicable law, including laws relating to the export, resale and distribution of the Goods that are the subject of the Contract between the Parties.

20.2. The Supplier shall not seek, accept, offer, give or permit any payment, service, gift or other value from or to any person or firm as a condition or result of doing business with the Supplier or the Principal, if doing so would be in violation of applicable law, including any law relating to bribery or corruption. The Supplier will take particular care to ensure the propriety of all interactions with government officials and other persons who might have authority or influence, directly or indirectly, over customers or any matters relating to Goods, including the sale, marketing, promotion, importation, licensing or distribution thereof.

## **21. REPRESENTATION, WARRANTIES, COVENANTS AND ACKNOWLEDGEMENT**

21.1. The Supplier represents, warrants, covenants that:

21.1.1. all compensation paid by the Supplier or to the Supplier in connection with the Goods will be for legitimate, bona fide goods or services;

21.1.2. it will not provide value to another person or entity if any violation of applicable law could be expected to result therefrom;

21.1.3. it has fully disclosed to the Principal all information pertaining to former or current relationships between the Supplier's directors, employees, sub-distributors, sub-representatives, dealers or agents (collectively the "Representatives") and any government officials and/or candidates for government office;

21.1.4. it has fully disclosed to the Principal whether any of its Representatives are or are likely to hold the status of an official of a government agency or a candidate for government office. If at any time there are changes to the information provided to the Principal, including but not limited to the development of a new relationship between any of the Supplier's representatives and a government official, the Supplier agrees to immediately notify the Principal of those changes. The Principal reserves the right to alter the terms of the Contract, or terminate the Contract, to the extent necessary to ensure that such relationship(s) will not result in a violation of the Principal's business principles, business ethics or Code of Conduct or other applicable codes or laws;

21.1.5. The Supplier agrees that no part of the monies or other consideration paid hereunder shall accrue for the benefit of any government official or candidate, regardless of the existence or non-existence of a relationship between the

Supplier's Representative (as defined in terms of this subclause) and such government official or candidate; and

- 21.1.6. it shall conduct its business involving the Goods (being the products that are the subject of the Contract between the Parties) in an ethical manner and in accordance with the Principal's business principles, business ethics and Code of Conduct.
- 21.2. The Supplier shall further ensure that its Representatives (for purposes of this subclause defined as the Supplier's directors, employees, sub-distributors, sub-representatives, dealers or agents) comply with the Principal's business principles, business ethics and Code of Conduct and applicable procedures and standards as well as other applicable anti-bribery/ corruption laws and codes of conduct in conducting business relating to the Goods.
- 21.3. Upon written request by the Principal, the Supplier will provide to the Principal full details, including names and addresses, of all its Representatives (as defined in this clause) used in connection with such business.
- 21.4. The Supplier will not use any Representative in connection with such business if the Principal objects to the use thereof.
- 21.5. If the Supplier uses any Representative in connection with such business, the Supplier shall be solely responsible for their performance and ensure that they comply in full with the requirements of this Contract in the same manner as that the Supplier is required to comply.
- 21.6. The Supplier will comply with any other requirements relating to export or trade regulation or other matters of which the Principal gives notice to the Supplier, to ensure that both Parties remain in compliance with applicable law.
- 21.7. The Supplier will ensure that all of its Representatives engaged in business involving the Goods (as defined in this clause) receive thorough training to promote understanding and compliance with the matters set forth in this Contract, with reasonable supporting information, upon the Principal's written request.
- 21.8. The Supplier shall notify the Principal in writing without delay of any allegation received by the Supplier of breach of any law that may relate to or affect the sale of the Goods, or any breach of the Principal's business principle's, Business ethics and Code of Conduct, anti-bribery/ corruption legislation (national and international) and applicable procedures and standards.
- 21.9. Any material breach of law or of the Principal's business Principles, Business ethics, Code of Conduct, anti-bribery/ anti-corruption legislation (national and international) or applicable procedures and standards by the Supplier will entitle the Principal to terminate the Supplier's authority or any of the Supplier's Representatives to do business involving the Goods, in addition to any other remedies that may be available to the Principal in contract or law.

## **22. INFORMATION AND DATA PROCESSING**

- 22.1. The Supplier authorises the Principal and its agents to make enquiries and obtain information about the Supplier and its Representatives from references that the Supplier supply and any other source to verify the information that the Supplier

provides, to determine reputation and credit standing, and for other customary due diligence purposes.

- 22.2. The Supplier agrees to use its reasonable efforts to obtain similar authorizations from their Representatives if so required by the Principal.
- 22.3. The Principal shall comply with applicable laws, regulation and codes relating to data privacy, personal information, cross-border data flow and data protection (collectively the "Privacy Laws") involved in handling any personal data and information related to the Supplier and its Representatives.
- 22.4. The Principal agrees to use any of the Supplier's personal information ~~and data~~ acquired by it during this Contract, in order to onboard the Supplier as a vendor; for administering the contractual relationship; for the intended purposes of use in customary due diligence and or other compliance purposes only.
- 22.5. The Principal shall retain the Supplier's personal information for the duration of the Supplier's appointment. On termination of the Supplier's appointment, the Principal shall, after the retention period stipulated in clause 23.1 below, delete all of the Supplier's personal information.
- 22.6. The Principal shall take all reasonable technical and organizational measures necessary to ensure an adequate level of protection of the Supplier's personal information against unauthorized access or theft as well as accidental loss, tampering or destruction.
- 22.7. A breach under this clause shall not be a material breach and both Parties will discuss in good faith and take all reasonable steps to remedy such breach.

## **23. BOOKS AND RECORDS**

- 23.1. The Supplier shall maintain for at least four (4) years following the termination of the Contract, and make available to the Principal for inspection at any time during normal business hours, books, records and accounts prepared in accordance with accepted accounting principles which adequately and completely reflect the nature of every transaction related to the Goods and the Supplier's compliance with the terms of this Contract. The Principal's inspection under this clause will be to verify compliance, and the Principal will upon request adopt reasonable safeguards to prevent use for other purposes.

## **24. INTERNATIONAL SANCTIONS**

- 24.1. The Supplier acknowledges that the Parties may be subject to regulation by various government agencies and under various laws which prohibits the sale, export or diversion of products and technology to certain countries, which currently include Iran, Sudan, Syria and Cuba. The Supplier shall not sell or transfer, directly or indirectly, any Goods or related technology to any prohibited country or to any person or firm which the Supplier know or reasonably should know will resell or transfer the Goods or technology to a prohibited country.

## **25. BEE COMPLIANCE**

- 25.1. The Supplier acknowledges that the Principal, being a member of the South African Mining and Minerals Industry has to comply with the Mining Charter, more specifically the Amendment of the Broad Based Socio-Economic Empowerment

Charter for the South African Mining and Minerals Industry (published in GN 1002, GG41934 dated 27 September 2018), which details the procurement requirements from BEE entities.

25.2. For purposes of being BEE compliant in terms of this clause, it is recorded that a BEE entity is defined as being an entity with a minimum of 30% + 1 vote of share capital directly owned by historically disadvantaged South Africans (HDSA).

25.3. In line with the aforementioned requirements, the Supplier agrees to:

25.3.1. Disclose and/or certify its BEE status or accreditation to the Principal as may be requested during the term of the Agreement within 14 (fourteen) days from receipt of such request; and/or

25.3.2. In the event that the Supplier is not BEE compliant, submit such transformation plan(s) to the Principal for its review and approval, with sufficient information detailing the Supplier's plan to ensure BEE compliance. The Principal reserves the right to review from time to time actual progress versus targeted progress by the Supplier in accordance with the transformation plan as submitted.

25.4. In the event that the Supplier fails to comply with the provisions of:

25.4.1. subclause 25.3.1, the Principal may withhold payment due to the Supplier under the Agreement until receipt of the required documentation; and

25.4.2. subclause 25.3.2, the Principal may terminate the Agreement at any time during the term of the Agreement, with 28 (twenty-eight) days written notice to the Supplier and without attracting any liability whatsoever.

## **26. GENERAL**

26.1. No relaxation or indulgence which the Principal may grant to the Supplier shall constitute a waiver of the rights of the Principal and shall not preclude the Principal from exercising any rights which may have arisen in the past or which might arise in future.

26.2. An approval or consent given by the Principal under the Contract shall only be valid if in writing and shall not relieve the Supplier from any responsibility for complying with the requirements of the Contract.

26.3. The Supplier is obliged to ensure that the Principal's Vendor Management Department is in possession of its up to date and correct vendor data including an up to date BEE status.

26.4. The Supplier is further obliged to ensure that the Principal is in possession of current Compensation Commissioner Certificates, Tax Clearance certificates, BEE Certificates as well as Insurance Certificates.

26.5. All remedies, either under this Contract or under any law or otherwise afforded, shall be cumulative and not alternative.

26.6. The headings to the clauses and subclauses in the Contract are for the purpose of convenience and reference only, and shall not be used in the interpretation, modification or amplification of any clause or subclause hereof.

- 26.7. The rule of construction that this contract shall be interpreted against the party responsible for the drafting or preparation hereof, shall not apply.
- 26.8. No addition to, variation, novation or agreed cancellation of any provision of the Contract shall be binding upon the parties unless reduced to writing and signed by or on behalf of the parties.