



VEOLIA SERVICES SOUTHERN AFRICA (PTY) LTD

GENERAL TERMS AND CONDITIONS OF PURCHASE

**TABLE OF CONTENTS**

1.	DEFINITIONS	3
2.	ACCEPTANCE	5
3.	NON-ASSIGNMENT & SUBCONTRACTING	6
4.	CHANGES AND MODIFICATIONS	6
5.	NON-WAIVER	7
6.	SUPPLIER TO PROVIDE ASSISTANCE	7
7.	EXPEDITING	7
8.	PRICES AND PAYMENT	7
9.	BANK GUARANTEE	8
10.	INVOICING	8
11.	PROGRAMME, DELIVERY & DELAYS	8
12.	SPECIFICATIONS & DRAWINGS	9
13.	ERRORS IN DOCUMENTS	10
14.	PROTECTION OF THE GOODS	10
15.	SUSPENSION OF PERFORMANCE	10
16.	COMPLIANCE WITH LAW	10
17.	HEALTH, SAFETY AND ENVIRONMENT	11
18.	SITE WORK	11
19.	INSPECTION, TESTING AND COMMISSIONING	11
20.	GUARANTEES AND LIABILITIES	12
21.	LIABILITY	13
22.	INSURANCE	14
23.	INTELLECTUAL PROPERTY	15
24.	RIGHTS, TITLE AND RISK	15
25.	LIENS	16
26.	TERMINATION FOR DEFAULT	16
27.	TERMINATION FOR CONVENIENCE	17
28.	VIS MAJOR AND CASUS FORTUITUS	17
29.	CONFIDENTIALITY	18
30.	DATA PROTECTION	20
31.	ASSIGNMENT AND NOVATION	20
32.	RIGHT TO SET OFF	20
33.	DISPUTES	21
34.	APPLICABLE LAW	21
35.	LANGUAGE AND TRADE TERMS	21
36.	SPARE PARTS	22
37.	SUSTAINABLE DEVELOPMENT	22
38.	APPLICABLE LAWS AND ANTI-CORRUPTION	23
39.	BLACK ECONOMIC EMPOWERMENT	26
40.	DOMICILIUM	28
41.	NON-SOLICITATION OF EMPLOYEES	28
42.	GENERAL	28



1. DEFINITIONS

Unless the context indicates otherwise, the following terms shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely:

- 1.1 “ABC Laws” means the Bribery Act 2010 (United Kingdom), the Foreign Corrupt Practices Act, 1977 (United States of America), the Prevention and Combating of Corrupt Activities Act, 2004 (South Africa); the United Nations Convention Against Corruption; the Proceeds of Crime Act, 2002; the Public Finance Management Act, 1999; the Protected Disclosures Act, 2000; the Financial Intelligence Centre Act, 2001; Sapin II (France’s anti-corruption laws) and all other applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, each as amended from time to time;
- 1.2 “Agreement” means these General Terms and Conditions of Purchase;
- 1.3 “Applicable Law” means all statutes, ordinances, regulations, proclamations, rules by-law, order or any other enactment of legislative measure of government (including local and provincial government) statutory or regulatory body and other acts having the force of law of any authority having jurisdiction and includes the common law as applicable in South Africa; shall inter alia include:
 - 1.3.1 the ABC Laws; and
 - 1.3.2 the Applicable Sanctions.
- 1.4 “Applicable Sanctions” shall include all sanctions, embargoes and trade restrictions by the United Nations Security Council, the United States of America and the European United and all other Sanctions that are binding on Buyer and/or the Supplier;
- 1.5 “Appointment” means the appointment of the Supplier to supply the Goods to the Buyer, as set out in a Purchase Order and/or Quotation;
- 1.6 “Best Industry Practices” means the exercise of that degree of skill, diligence, professionalism and foresight which would reasonably and ordinarily be expected from a highly skilled and experienced supplier engaged in a similar supply, where time is of the essence and in full compliance with the Applicable Laws and the Policies;
- 1.7 “Buyer” means Veolia Services Southern Africa (Pty) Ltd (Registration Number 1964/007768/07), Veolia Water South Africa (Registration Number 2001/002237/07) or VWT Africa International (Registration Number 2017/312188/07) as set out in the Purchase Order and/or Quotation, and includes the legal representatives, successors or assignees of the Buyer, with address at 13 Pressburg Street, Golfview Office Park, Lethabong, Modderfontein, 1609;
- 1.8 “Buyer’s Supplier Charter” means the Veolia general principle for suppliers relationship (March 2019 edition) which is available on request;
- 1.9 “Client” means, if applicable, the individual / entity who has appointed the Buyer to provide certain goods and/or services in respect to the Site in terms of a Main Contract. The Client includes the legal representatives, successors or assignees of the Client;
- 1.10 “Confidential Information” means all confidential and proprietary information disclosed by the Buyer to the Supplier whether prior to or after acceptance of the Purchase Order and shall include, without limiting its ordinary meaning, and in respect of the Buyer’s business affairs and technologies, oral, written, printed, photographically and electronically recorded information of all types, documents, letters, agreements, undertakings, messages, codes, data, formulae, specifications, blueprints, plans, processes, marketing



methods, know-how, methodology, Intellectual Property, trade secrets, projects, projections, cash flow charts, software and copies, notes and extracts, and the strategic plans, financial plans and financial planning process, the direction, manner, timing and implementation of any projects to be undertaken, as well as any information, economic as well as financial, regarding the affairs of the Buyer which comes to the attention of the Supplier pursuant to a Purchase Order;

- 1.11 "Data Protection Laws" means any data protection legislation applicable to the Parties, including but not limited to the Protection of Personal Information Act, 4 of 2013;
- 1.12 "Data Subject" has the meaning ascribed to it in the Protection of Personal Information Act, 4 of 2013;
- 1.13 "Deliverable" means the Goods to be supplied by the Supplier;
- 1.14 "Force Majeure" means an exceptional event or circumstance (i) which is beyond a Party's control, (ii) which such Party could not reasonably have provided against before finalisation of the Purchase Order, (iii) which, having arisen, such Party could not reasonably have avoided or overcome and (iv) which is not substantially attributable to the other Party.;
- 1.15 "Goods" means items, services and/or work required to be supplied or performed by the Supplier in accordance with the Purchase Order including delivery, the provision of drawings, documents, manuals, testing, installation, operation and maintenance instructions, spare parts lists and the like relating thereto, whether expressly stated or reasonably inferred as required;
- 1.16 "Health, Safety and Environment or HSE" means HSE requirements of the Buyer and/or the Client, if applicable, which must be complied with by the Supplier;
- 1.17 "Intellectual Property" means all present and future rights in relation to any copyright, moral rights, marks of trade (whether registrable or not), designs (whether registered, registrable or not), inventions (including any patents), business or company or trading names, trade secrets, work methods and other tacit knowledge or technical know-how, rights in circuit layouts and other drawings (whether registered, registrable or not), and any application or right to apply for registration of any such right;
- 1.18 "Main Contract" means the contract concluded between the Buyer and the Client relating to the Site, if applicable;
- 1.19 "Party" means a party to the Purchase Order and "Parties" means all of them;
- 1.20 "Personal Information" has the meaning ascribed to it in the Protection of Personal Information Act, 4 of 2013.
- 1.21 "Policies" means all policies, procedures, rules and regulations and any Buyer code of conduct (including those related to ethics, compliance and corporate governance) as may be implemented from time to time and as may be amended and/or updated from time to time by the Buyer, in its sole discretion and election, which will be made available to the Supplier on request and where the Supply is to be rendered on a Client Site then also such policies, procedures, rules and regulations of the Client applicable to such Site or such other policies, procedures, rules and regulations as specifically referred to or incorporated;
- 1.22 "Price" means the agreed amount stated in the Purchase Order and shall include the supply of the Goods and all costs, charges and disbursements associated with the supply and delivery of same;
- 1.23 "Process" and "Processing" has the meaning ascribed to "processing" in the Protection of Personal Information Act, 4 of 2013;



- 1.24 “Purchase Order” means the official purchase order issued by the Buyer to the Supplier relating to the Goods;
- 1.25 “Quotation” means the Supplier’s written quotation, as provided to the Buyer;
- 1.26 “Site” means the place/s and/or plant/s where the works and/or services are to be executed and to where the Goods are to be delivered, and includes any other places specified in the Purchase Order as forming part of the Site;
- 1.27 “Supplier” means an existing or potential Supplier, contractor or service provider. A Supplier may be a natural person or a legal entity with whom a Purchase Order has been concluded, the details and address of which are contained within the Purchase Order;
- 1.28 “Sustainable Development” means the obligations set out in Veolia Group’s sustainable development policy (which can be made available on request), which aims to promote (i) respect for and adherence to ethics and labour law regulations (ii) the protection of the environment (iii) monitoring of Suppliers and their subcontractors to insure that they respect, the regulations applicable to these domains, as well as complying with the standards set by the Veolia Group, of developing, implementing and monitoring their actions, to ensure the continued compliance and development of such policies;
- 1.29 “Taking Over” means, in respect of each Site, the taking over by the Client of such Site upon successful completion of the engineering, procurement, construction, testing and commissioning in accordance with the provisions of the Main Contract;
- 1.30 “Taking Over Certificate” means, in respect of each Site, the certificate to be issued by the Client to the Buyer under the Main Contract upon achievement of Taking Over;
- 1.31 “Veolia Group” means Veolia Environnement S.A. and all its subsidiaries;
- 1.32 “Warranty Period” means the period during which the Supplier’s warranties on Goods and/or services remain in full force and effect in regard to any defect. Unless otherwise specified, the Warranty Period shall start on the date of delivery by the Supplier of the Goods (or completion of the works/services) until the expiry of a period of eighteen (18) months from the date of delivery, or twelve (12) months from the date of commissioning, whichever occurs soonest;
- 1.33 “Whispli” means the Buyers fraud, corruption and ethics tip off platform for all third parties which can be found at <https://veolia.whispli.com/tiers-ethique>; and
- 1.34 “Writing” means legible writing in English and excludes any form of electronic communication contemplated in the Electronic Communications and Transactions Act, 25 of 2002. Communications in traditional letter format may be transmitted as .pdf attachments by the Parties and other contractual role players one to the other by e-mail.

2. ACCEPTANCE

- 2.1 Signing of the Purchase Order or commencement of performance of the Purchase Order shall constitute acceptance of the Purchase Order by the Supplier. Acceptance of the Purchase Order is unqualified, unconditional and subject to and expressly limited to the terms and conditions hereof.
- 2.2 The Supplier expressly acknowledges that he/she/it has read and accepts the Purchase Order and in particular the provisions of this Agreement and renounces any Supplier terms and conditions, if any.



- 2.3 The Buyer shall not be bound by any provisions, additional to or at variance with the terms and conditions hereof, that may appear in the Supplier's Quotation, acknowledgement, confirmation, invoice or in any other communication from the Supplier to the Buyer' unless such provision is expressly agreed to in Writing and signed by an authorized representative of the Buyer.
- 2.4 The Buyer's acceptance of or agreement for shipped material shall constitute acceptance of such material subject to the provisions hereof only, and shall not constitute acceptance of any counter proposal submitted by the Supplier not otherwise accepted in Writing and signed by an authorized representative of the Buyer.
- 2.5 Upon acceptance and unless otherwise agreed between the Parties, the Purchase Order shall constitute the entire agreement between the Buyer and the Supplier, and shall supersede all prior negotiations, discussions and dealings and may not be modified or rescinded except in Writing and signed by an authorised representative of both the Supplier and the Buyer.
- 2.6 Purchase Orders will be sent to the Supplier's email address as set out in the Quotation and/or Purchase Order.
- 2.7 An acknowledgement of the Purchase Order confirming receipt, price and delivery shall be returned to the Buyer within Seven (7) days from the date the Purchase Order was sent to the Supplier in accordance with clause 2.6.
- 2.8 Should the Supplier not sign and return the Purchase Order to the Buyer within seven (7) days from the date of receipt of the Purchase Order and fail to advise the Buyer in Writing that it rejects the Purchase Order, then the Supplier will be deemed to have accepted the Purchase Order.
- 2.9 The Supplier and the Supplier's subcontractors and/or sub-suppliers agree to accept, comply and abide with all aspects of the Buyer's Supplier Charter.
- 2.10 Nothing in this Purchase Order shall constitute an obligation on the Buyer to appoint the Supplier on any future orders. The appointment of the Supplier is on a non-exclusive and ad hoc basis.

3. NON-ASSIGNMENT & SUBCONTRACTING

The Supplier shall not assign, wholly or in part, any item in the Purchase Order and/or any interest therein and/or any payment due and/or any payment which becomes due, and shall not subcontract, wholly or in part, the performance of any work to be done or Goods to be supplied by the Supplier under this Purchase Order without the Buyer's prior written consent.

4. CHANGES AND MODIFICATIONS

- 4.1 The Supplier shall not make any variation to the Deliverables whether by the alteration, amendment, addition to or omission from any of the Deliverables without the prior written consent of the Buyer.
- 4.2 The Buyer shall be entitled to alter the quantities and/or specifications given in the Purchase Order at any time. If such Buyer-initiated changes affect the Price and/or delivery time, the Supplier shall give the Buyer written notice to that effect, including a reasonable, good faith assessment of such changes, within 7 (seven) calendar days from the date of receipt of the Buyer's notice of change. The Supplier's failure to respond within the 7 (seven) calendar days shall be construed as its unconditional and unqualified acceptance of the Buyer's changes, and in such circumstances, the Supplier shall be deemed to have undertaken to deliver the Goods at



the delivery time initially specified in the original Purchase Order or in accordance with the terms and conditions specified in the Buyer's notice of change, if any.

- 4.3 Any changes in the Price and/or delivery time shall be agreed to in Writing by authorized representatives of the Parties.

5. NON-WAIVER

No provision of the Purchase Order shall be considered to be waived by the Buyer unless the Buyer gives such notice of waiver in Writing. Even if such notice has been given, such waiver shall not be construed as being a waiver of any other past or future right of the Buyer under the provisions of the Purchase Order, unless otherwise expressly stipulated therein.

6. SUPPLIER TO PROVIDE ASSISTANCE

The Supplier hereby agrees, upon request from the Buyer, to promptly provide such information/support concerning the Goods and/or the Supplier as may be reasonably requested by the Buyer in order to secure third party approvals, if any.

7. EXPEDITING

- 7.1 The Supplier shall be responsible for expediting delivery of the Goods and any related work of any of its sub-suppliers or subcontractors and shall provide the Buyer with an itemized schedule for any engineering, procurement, fabrication, assembly, inspection, testing, shipping and commissioning, which shall be followed by expediting reports, if so requested by the Buyer, including status of deliveries of materials and/or equipment purchased from any sub-supplier or subcontractor, if any, each month (or at such other interval requested by the Buyer) after acceptance of the Purchase Order.
- 7.2 If the Supplier encounters any delay in obtaining materials from its sub-suppliers or subcontractors or foresees any delay in its own supply or works, the Supplier shall immediately inform the Buyer of such delay, and take all necessary and adequate measures to mitigate such delay.
- 7.3 The Buyer or its representatives shall be entitled to access the premises of the Supplier or any sub-supplier/subcontractor during normal business hours or otherwise by agreement of the Supplier or sub-supplier/subcontractor in order to discuss with the Supplier any means by which delivery of the Goods may be expedited. Whether or not the Buyer chooses to exercise such access or discuss expedition of the Goods with the Supplier in no way relieves the Supplier of any of his/her/its obligations to deliver the Goods in accordance with the terms of this Agreement and the Purchase Order.
- 7.4 The Supplier warrants and represents that each Deliverable shall be delivered timeously, it being agreed that time is of the essence.

8. PRICES AND PAYMENT

- 8.1 Unless otherwise agreed in Writing, the Price is fixed and firm and shall include the supply of the Goods and all costs, disbursements and applicable charges associated with delivery of the Goods as per the agreed INCOTERMS (International Rules for the Interpretation of Trade Terms, including but not limited to transport, charges, insurance charges, import and custom duties).



- 8.2 The Buyer may withhold payment from the Supplier when payment is otherwise due, until the Supplier returns a signed copy of the Purchase Order to the Buyer.
- 8.3 No charges of any kind, including without limitation, charges for boxing, packing, loading, bracing, cartage or additional insurance will be allowed unless specifically agreed to by an authorized representative of the Buyer in Writing. Similarly, no changes and/or modifications of the Price or the delivery time are allowed without the prior written consent of the Buyer.
- 8.4 Notwithstanding the rest of the provisions contained herein and/or any of the Supplier's terms appearing on a Quotation, Quotations will remain valid for a period of 90 (ninety) days, or as otherwise agreed in Writing by the Parties, from the date of the Quotation. Quotations shall remain open for acceptance by the Buyer for the full duration thereof.
- 8.5 Unless otherwise specified, the Price shall be inclusive of VAT.

9. BANK GUARANTEE

- 9.1 The Buyer may require the Supplier to provide a bank guarantee (this may include a performance guarantee, advance payment guarantee and/or retention money guarantee) covering all of the Supplier's obligations, warranties and liabilities under the Purchase Order.
- 9.2 The wording of such bank guarantee shall be provided by the Buyer and the guarantee shall be issued by a first class bank or insurance company acceptable to the Buyer.

10. INVOICING

- 10.1 All invoices must include the Buyer's company details, the Purchase Order number, the description of the Goods provided as stated in the Purchase Order and, when applicable, the VAT amount.
- 10.2 Unless otherwise specified and subject to the rest of the provisions contained herein, the Buyer shall make payment to the Supplier within 30 (thirty) days from receipt of statement following receipt by the Buyer of the Supplier's invoice accompanied by all the documents to be provided by the Supplier as mentioned in the Purchase Order or legitimately requested by the Buyer in connection with the Purchase Order.

11. PROGRAMME, DELIVERY & DELAYS

- 11.1 The Supplier shall comply with the delivery times specified in the Purchase Order. If no delivery time is specified in the Purchase Order, the Supplier shall deliver the Goods as soon as reasonably practicable.
- 11.2 If the Supplier fails to complete delivery of the Goods in accordance with the delivery schedule or by the delivery date(s) specified in the Purchase Order, the Buyer shall give to the Supplier written notice to that effect and the Buyer shall be entitled to recover from the Supplier the liquidated damages specified in the Purchase Order and any loss or damage incurred or suffered by the Buyer. Unless otherwise agreed, the liquidated damages shall be fixed at 1% (one percent) of the Price for each week, or part thereof, of delay. The total amount of liquidated damages for delay shall not exceed 10% (ten percent) of the Price.



- 11.3 In addition to payment of liquidated damages, the Buyer reserves the right, at its sole option, to purchase the Goods elsewhere at the Supplier's risk and cost, to negotiate a revised delivery schedule, or to cancel the Purchase Order without any payment to the Supplier of any compensation whatsoever. These rights are additional to any other remedy the Buyer may have under the Applicable Law.
- 11.4 The Supplier shall notify the Buyer immediately in Writing if any delay is foreseen and shall take all necessary measures, at its own cost, to maintain the agreed delivery schedule. The Buyer shall be entitled to require that the Supplier implement and the Supplier shall duly and promptly implement at its own cost, such measures that the Buyer reasonably considers necessary to maintain the agreed delivery schedule.
- 11.5 Unless otherwise agreed or expressly stated otherwise in the Purchase Order, the Goods shall be delivered duty and freight-paid (DDP – INCOTERMS 2020) at the destination designated by the Buyer. Partial deliveries shall only be permitted to the extent explicitly stated in the Purchase Order. Customs duties and/or any other taxes that may be subject to refund or reimbursement for whatever reason shall be solely for the benefit of the Buyer.
- 11.6 If, the Supplier is not responsible for the payment of the customs duties, or any part thereof, imposed in connection with the Goods to be provided and works to be performed under a Purchase Order, then the Supplier shall, and shall procure that any person or company acting on its behalf shall, provide all information and documentation necessary for the Buyer to make proper and timeous application for any exemptions that are available to the Buyer in relation to the imposition of such customs duties.
- 11.7 In case the Supplier (i) does not provide the information and/or documentation necessary on time and/or (ii) provides incorrect and/or incomplete information and/or documentation, all consequences thereof including financial consequences (e.g. fines, fees, increased taxes or any other costs) will be borne by the Supplier.

12. SPECIFICATIONS & DRAWINGS

- 12.1 The Supplier expressly warrants that all Goods covered by a Purchase Order will conform to the specifications, drawings, samples or other description(s) furnished or adopted by the Buyer and will be of good quality, material and workmanship and free from defects. Any items furnished from the Buyer to the Supplier as patterns, specifications, drawings or fabricated with these tools shall not be furnished or quoted to any other person or concern and shall not be used except for a purpose in connection with the Purchase Order. The Parties expressly agree that this clause 12 does not imply any transfer of any kind of Intellectual Property rights by the Buyer to the Supplier.
- 12.2 The Supplier shall at all times comply with Best Industry Practice as well as with any Policies.
- 12.3 The Supplier warrants that it possesses specialised knowledge, skill, attributes and expertise generally and in respect of the Deliverables in particular, and warrants and undertakes to carry out its obligations in a responsible, professional and expert manner, and to exercise the utmost caution, care and diligence in the provision of the Deliverables. The provisions of this clause 12 shall not detract in any way from any statutory or common law duty of care that may be imposed on the Supplier in the provision of the Deliverables.
- 12.4 The Buyer's review and approval of drawings submitted by the Supplier will cover only general conformity to the specifications. Such acceptance will not constitute approval of any dimensions, quantities or details of the material shown on such drawings, and shall not relieve the Supplier of its obligation to comply with all specifications of the Purchase Order. The Buyer retains rights of final approval for all finished products.



13. ERRORS IN DOCUMENTS

The Buyer may reject any of the Supplier's documents and data containing errors or omissions and in such event; the Supplier shall immediately correct or replace the items in question at its own cost.

14. PROTECTION OF THE GOODS

- 14.1 The Supplier shall provide the packaging specified in the Purchase Order in order to protect the Goods during transportation to the Site. If no packaging is specified in the Purchase Order or by the Buyer, the Supplier shall provide the packaging usually required for Goods of such nature to ensure a high level of protection during the transportation to the Site in line with Best Industry Practices.
- 14.2 The packaging shall be suitably designed so as to protect the Goods against all possible damage during the transport, loading and offloading, storage (up to 6 (six) months), positioning, installation and fixing phase.
- 14.3 The Supplier shall be solely responsible for any damage to the Goods and costs related thereto resulting from any failure of the Supplier to provide safe and suitable packaging.
- 14.4 If, in the reasonable opinion of the Buyer, the Goods have not been properly protected, the Buyer shall notify the Supplier accordingly. Following such notice the Buyer shall be entitled, at its sole and unfettered discretion, (i) to require that the Supplier immediately provides the required level of protection of the Goods, and/or (ii) make alternative arrangements to provide the level of protection of the Goods that it considers reasonable and to recover as a debt (including deducting from any payment which becomes due to the Supplier) all costs related to and incurred in making such arrangements. The Supplier's responsibility for protection of the Goods under this Purchase Order shall not be reduced or relieved in any way.

15. SUSPENSION OF PERFORMANCE

- 15.1 The Buyer may at any time, and without affecting the Purchase Order, by written notice to the Supplier, suspend further performance by the Supplier of any part or all of the Purchase Order. Upon receipt of such notice, the Supplier shall promptly suspend further performance and shall, during the duration of such suspension, take proper care of and protect all work associated with the Goods in progress and any materials, supplies and equipment on hand. The Buyer may at any time withdraw, by written notice, the suspension and the Supplier shall promptly resume and diligently continue performance under the Purchase Order.
- 15.2 If suspension under clause 15.1 reasonably affects the Price and/or delivery schedule, the Supplier shall notify the Buyer in Writing and suggest the necessary changes within 7 (seven) calendar days from the notice of suspension. The Parties will discuss, in good faith, the proposed changes in accordance with the provisions of clause 15.1. In the event that the Supplier fails to notify the Buyer of such changes resulting from the suspension within the 7 (seven) days aforementioned, the Supplier shall be prevented from requesting any change to the Price and/or of the delivery schedule resulting from the suspension. The provisions of this clause 15.2 shall apply only if and to the extent that any suspension under clause 15.1 is not the result of any default, act or omission of the Supplier.

16. COMPLIANCE WITH LAW

The Supplier warrants that it shall comply with all Applicable Laws, codes, rules, regulations and directives of any governmental and/or any local authorities having jurisdiction over the performance by the Supplier of the



Purchase Order, and agrees to indemnify and hold harmless the Buyer and the Client from and against any and all liabilities, liens, claims, costs, expenses, losses, damages, penalties and judgments arising from or based on any actual or asserted violation of such laws, codes, rules, regulations and directives.

17. HEALTH, SAFETY AND ENVIRONMENT

- 17.1 The Supplier shall at all times comply with the HSE requirements of the Buyer and of the Client, which requirements are incorporated herein by reference.
- 17.2 For the avoidance of doubt the Supplier shall at all times comply with the Occupational Health and Safety Act (Act 85 of 1993) and the Mine Health and Safety Act (Act 29 of 1996) where applicable.

18. SITE WORK

If the Supplier is required under the Purchase Order to carry out any work on Site, including unloading, positioning, installation, alignment, levelling, erection, fixing, testing and commissioning or any other work, including assistance or supervision, of whatever nature, the Supplier will be bound to comply with all laws, permits and regulations in force, relevant and applicable to the Site and all Site regulations and directives as they may affect employment of persons, use of machines and equipment, and all HSE regulations that apply to the works carried out on Site.

19. INSPECTION, TESTING AND COMMISSIONING

- 19.1 Within 4 (four) weeks from the acceptance of the Purchase Order, or at any other time as agreed in Writing between the Parties, the Supplier shall submit to the Buyer a full Inspection and Testing Plan (“ITP”) to cover the scheduled inspection, testing, pre-commissioning and commissioning of the Goods both in the factory and/or on the Site. The ITP shall set out all testing and commissioning required in accordance with the Purchase Order stating the date and place at which the Goods or any part thereof shall be ready for testing or inspection and the nature of the tests to be carried out. The ITP shall be subject to the written approval of the Buyer. The Buyer reserves the right to require modifications to the ITP. The Supplier acknowledges that any modifications reasonably requested to the ITP by the Buyer, including the carrying out of or repeating of any tests, will be carried out by the Supplier without additional cost to the Buyer. The Supplier shall give the Buyer at least five (5) working days for local Goods and ten (10) working days for imported Goods, written notice prior to commencement of any test and/or inspection.
- 19.2 The Supplier shall, at its own expense, carry out at the place of manufacture and/or on Site all such tests and/or inspections of the Goods or any part thereof as are specified in the Purchase Order. The Buyer and the Client shall be entitled to attend such tests and/or inspections by their own duly authorised and designated inspector(s) and third party engineers, and such attendance, or failure to do so, shall not release the Supplier from any obligation or guarantee under the Purchase Order.
- 19.3 The Buyer and/or the Client shall either attend the testing and/or inspection or waive the right to attend the testing and/or inspection. Unless instructed in Writing by the Buyer to the contrary, the Supplier shall carry out the inspection and/or tests in accordance with the ITP pursuant to clause 19.1 and submit to the Buyer, within 5 (five) days, the corresponding test and inspection report.
- 19.4 If the Buyer either during attendance of testing and/or inspection or reviewing the corresponding testing and/or inspection report, reasonably determines that the Goods are not in conformity with the Purchase Order, the



Supplier shall, solely at the Buyer's option either (i) immediately correct any defects to the reasonable satisfaction of the Buyer or (ii) deliver the Goods and either correct the defect on Site or replace the equipment if the deficiency cannot be corrected. The Supplier shall be responsible for all costs arising in connection with corrective work and/or replacement pursuant to this clause 19.4.

- 19.5 The Supplier shall provide for tests on Site and/or in factory such assistance, labour, materials, apparatus and instruments as may be reasonably required by the Buyer for the carrying out of the tests.
- 19.6 The Buyer, the Client and their respective duly authorized and designated inspector(s) and third party engineers shall be entitled at all reasonable times to inspect the material, workmanship and performance of any of the Goods under the Purchase Order, provided that such inspection shall not interfere with the Supplier's performance of the Purchase Order. Such inspection or failure to do so, shall not relieve the Supplier of its obligations and liabilities under the Purchase Order, nor constitute approval or acceptance of the Goods.

20. GUARANTEES AND LIABILITIES

- 20.1 In addition to guarantees that may be provided under the Purchase Order or further agreed by both Parties, the Supplier guarantees that the Goods will: (i) be new and free from any defect, including but not limited to defect in the design, materials and workmanship; and (ii) comply with the requirements of the Purchase Order and conform to any specifications, drawings and other descriptions provided by the Buyer; and (iii) be fit and sufficient for the purpose expressly specified or manifestly implied by the Purchase Order.
- 20.2 The Supplier shall, to the extent possible and/or permissible, cede to the Buyer the benefit of warranties and indemnities received from third party manufacturers, lessors or licensors of Goods supplied to the Buyer under any agreements between the Supplier and such manufacturers, lessors or licensors. In order to give due and proper effect to the terms of this clause 20, the Supplier undertakes, as and when requested by the Buyer in Writing, to execute all such instruments and to do all such things as may be necessary (and to the extent that the Supplier is permitted) to effect the cession and in the event of the Supplier failing to comply promptly with any such request, the Supplier hereby irrevocably nominates, constitutes and appoints the Buyer to be its agent, with power to sign all such documents and do all such acts, matters and things as may be necessary to effect the cession. If the cession contemplated in this clause 20.2 is not affected as contemplated, then in such circumstances the Supplier shall enforce such warranties and indemnities as reasonably directed by the Buyer and at the cost of the Buyer. The Supplier shall comply with all terms and conditions of the agreements with such manufacturers, lessors and licensors. Notwithstanding the foregoing, the Supplier acknowledges that, in all its negotiations and the agreements with such manufacturers, lessors and licensors, it is obliged to apply its best endeavours to ensuring that all such warranties and indemnities are capable of cession. To the extent that this is not possible, the Parties shall cooperate to achieve an alternative arrangement acceptable to both Parties.
- 20.3 If any failure of the Goods to meet the above guarantees is discovered prior to expiry of the Warranty Period, then the Supplier will be notified thereof by the Buyer to repair, alter or replace the Goods, within a reasonable period fixed by the Buyer, in order to make the Goods meet the requirements of the Purchase Order. Upon receipt of this notice, the Supplier shall immediately, at its own cost and risk, make such alterations, repairs and replacements as may be necessary for the Goods to meet such guarantees and/or any other requirements under the Purchase Order.
- 20.4 If any deficiency or defect in the Goods cannot be corrected, the defective Goods shall be dismantled and removed by the Buyer or promptly by the Supplier at the cost and risk of the Supplier (at Buyer's option), and the Supplier shall, solely at the Buyer's option, either (i) re-supply proper and compliant materials and/or equipment and reinstall them if necessary, or (ii) refund to the Buyer the full purchase price of the defective



Goods, without any prejudice to the rights and/or the remedies that the Buyer may have under the Purchase Order or the laws of the Republic of South Africa.

- 20.5 If the Supplier does not fulfil his/her/its obligations under clauses 20.2 and 20.3 above, the Buyer shall, without prejudice to other remedies available to the Buyer, be entitled to have all required alterations, repairs and replacements carried out by any alternative means, including direct arrangements with the Supplier's subcontractors and the Supplier shall be wholly liable for all costs, risks and expenses related thereto.
- 20.6 The Supplier shall be responsible for all costs and expenses, including those incurred by the Buyer and/or the Client, in relation to alterations, repairs and replacements pursuant to this clause 20, including, without limitation, all dismantling, removal, transport, insurance, re-installation, clearing, cleaning, testing and re-testing required following such alterations, repairs and replacements.
- 20.7 The standard Warranty Period for the equipment/material purchased shall generally be 18 (eighteen) months from delivery or 12 (twelve) months from commissioning on Site, whichever comes first, unless otherwise agreed.
- 20.8 The Supplier shall not be released from its guarantee obligations under the Purchase Order as a result of any review of, comment upon or approval of the Supplier's engineering designs, specifications, drawings and calculations; or any inspection and acceptance of the Goods by the Buyer and/or the Client pursuant to this Purchase Order.
- 20.9 All guarantees and warranties provided by the Supplier in connection with the Goods and/or the performance of the Purchase Order shall extend to the benefit of the Client. The Client shall have the same rights as the Buyer to enforce warranties and guarantees provided by the Supplier under this Purchase Order. The Supplier hereby irrevocably accepts that the Buyer shall have the right to transfer the benefit of such guarantees and warranties to the Client at any time on or after the date of issue of the Taking Over Certificate under the Main Contract.
- 20.10 The Supplier shall not be liable for default under guarantees and warranties herein to the extent that the Supplier can prove to the Buyer's reasonable satisfaction that the Goods have either (i) been operated under conditions that are materially different from those specified, described or implied in the Purchase Order or (ii) have been improperly operated or maintained by or on behalf of the Client. Such conditions of normal operation and maintenance shall have been clearly stated by the Supplier (and accepted in Writing by the Buyer) in documentation submitted to the Buyer under the Purchase Order.
- 20.11 The Supplier shall be responsible for, shall remedy and shall make good at its own cost and risk any defect which arises prior to the expiry of the Warranty Period.

21. LIABILITY

- 21.1 The Supplier hereby agrees to assume the risk of and to release, defend, indemnify and hold harmless the Buyer and the Client and their employees, subcontractors and agents (hereinafter collectively called 'Indemnatee') without limitation from and against all losses, damages, liability, claims and suits, costs and expenses of whatsoever nature arising out of any injury (including death) to any person or damage to any property resulting from or connected with the performance by the Supplier of the Purchase Order or the Goods supplied hereunder.
- 21.2 Without prejudice to the generality of clause 21.1 above, the Supplier agrees to indemnify and hold harmless the Indemnatee without limitation against all costs, expenses, liability, damages or penalties resulting from: (i) pollution (including pollution of soil) or other environmental impairment at the project relating to the Site



caused by Supplier or the Goods; (ii) cases of fraud, deliberate default or reckless misconduct; (iii) breach by the Supplier of any Intellectual Property rights; (iv) failure by the Supplier to take out and maintain insurance required under the Purchase Order; (v) third party liability and (vi) breach by the Supplier of any laws applicable to the Supplier's performance of the Purchase Order.

- 21.3 The Supplier assumes sole responsibility for making deductions and payments of payroll taxes, social premiums and other charges he/she/it is statutorily obligated to make under applicable laws and regulations and agrees to indemnify and hold harmless the Indemnitee from and against all claims, damages, costs and expenses arising from default, delay or error by the Supplier in this regard.
- 21.4 Notwithstanding anything to the contrary set forth in the Agreement, the Supplier shall be liable to the Buyer for any losses.
- 21.5 Notwithstanding any other provision of this Agreement, and to the extent permitted by the Applicable Law, neither party (nor any of such party's affiliates) shall be liable to the other party (or any of the other party's affiliates) in contract (including under any indemnity), tort (including in negligence), under a statute (to the extent it is possible to limit such liability) or any other basis in law or equity for any special, indirect, incidental and/or consequential damages arising from the Losses.
- 21.6 Neither clause 21.4 nor 21.5 shall in any way whatsoever limit the Supplier's liability in any case of:
- 21.6.1 fraud;
 - 21.6.2 deliberate default;
 - 21.6.3 fraudulent misrepresentation;
 - 21.6.4 bodily injury or death of any person;
 - 21.6.5 commits a breach in terms of this Agreement or under a Purchase Order; and
 - 21.6.6 any warranty claim or the correction of a defect.

22. INSURANCE

- 22.1 The Supplier shall for the continued duration of the Purchase Order have and maintain in force sufficient insurance to cover both its obligations and liabilities under the Purchase Order and indemnify the Buyer from and against any insurance claims or name the Buyer as co-insured under the insurance policies. The Supplier shall provide on request a copy of such insurance policy to the Buyer. In this regard the Supplier shall be responsible for providing its own insurance, inter alia, (i) public liability insurance; (ii) goods in transit insurance; (iii) contractor's all risk/work insurance to the value of the works; (iv) professional indemnity insurance to the value of two times the design fee where the Supplier is providing design services; (v) third party liability insurance covering third party property damage and bodily injury and expressly covering the indemnification obligations assumed by the Supplier to the value of ZAR 10,000,000 (ten million rand) per occurrence; (vi) professional liability insurance of ZAR 10,000,000 (ten million rand) per occurrence; (vii) automobile liability insurance and insurance for mechanically propelled vehicles, if used in connection with the Purchase Order; (viii) comprehensive insurance for all its own plant, material and equipment on an all-risk basis and (ix) workmen's compensation insurance as required in terms of the provision of the Compensation for Occupational Injuries and Diseases Act, No. 130 of 1993 as amended, or any similar enactment which may replace this Act;



- 22.2 The Supplier shall provide to the Buyer, at the Buyer's request, certificates of insurance or other documents as evidence of insurance cover to the satisfaction of the Buyer. The Supplier shall notify its insurer(s) of any change in the nature, extent or programme of its performance under this Purchase Order. The Supplier shall not make any alteration to the terms of insurance without giving prior written notice to the Buyer.
- 22.3 The Supplier shall obtain from all underwriters providing insurance policies specifically applicable to the performance of the Purchase Order a complete waiver of rights of subrogation by such underwriters against the Buyer and the Client and their respective employees and agents.
- 22.4 The Supplier shall use, in respect of any insurance policies specifically obtained pursuant to the Purchase Order, brokers and agents registered in South Africa.
- 22.5 If the Supplier fails to provide or maintain in effect, or to furnish adequate certificate of any of the insurance cover required under the Purchase Order, the Buyer shall be entitled to take out and maintain such cover and to recover from the Supplier all costs and expenses related thereto.

23. INTELLECTUAL PROPERTY

- 23.1 The Supplier shall grant to the Buyer and the Client a non-exclusive, royalty-free, transferable, irrevocable license for all Intellectual Property, including relevant patents, trademarks, copyright and know-how owned by the Supplier for the use, operation and sale of the Goods.
- 23.2 The Supplier shall indemnify and hold harmless the Buyer from and against all costs, expenses (including attorney's fees), suit or proceeding brought against the Buyer and/or the Client based on a claim that the sale or use of the Goods constitutes infringement, whether statutory or contractual, of any patent, copyright, trademark, proprietary information or the Intellectual Property rights of others.
- 23.3 The Supplier shall be notified in writing by the Buyer and/or the Client on receipt of such suit or infringement claim and the Supplier shall take over at its cost the defence of such claim, suit or proceeding. In the event it is determined in the suit that the use or sale of Goods constitutes infringement as aforesaid, the Supplier shall at its cost either secure for the Buyer and the Client the right to sell or use the Goods or replace the same with other Goods which have similar specifications but which do not infringe any patent, copyright, trademark, proprietary information or Intellectual Property of others.
- 23.4 The Supplier shall not be liable under this clause 23 if the suit or claim arises from the use of design or specification provided in writing to the Supplier by the Buyer and where such design or specification constitutes infringement of a patent, copyright, trademark, proprietary information or Intellectual Property of others.

24. RIGHTS, TITLE AND RISK

- 24.1 Ownership of, title to and copyright in all specifications, drawings, and other documents prepared by the Supplier under the Purchase Order shall vest in the Buyer and/or the Client, and the Buyer and/or the Client shall have the right to use such specifications, drawings and other documents for any purpose whatsoever without any obligation of any kind to the Supplier. The Supplier shall procure that any of such rights and titles (together with the obligations relating thereto), which the Supplier may have acquired directly or through its subcontractors from third parties, if required by the Buyer and/or the Client, are assigned to the Buyer or the Client.



- 24.2 Title to and risk of loss of the Goods or part thereof shall pass to the Buyer or the Client upon the signature of the Buyer's representative (or other person authorized by the Buyer for this purpose) confirming delivery of the Goods or such part thereof in the way and at the point specified in the Purchase Order. The Buyer's confirmation of delivery of the Goods, or part thereof, pursuant to this clause 24.2 shall not constitute final acceptance of the Goods by the Buyer and shall not release the Supplier from any guarantees or obligations under this Purchase Order.
- 24.3 In the event prepayment or where partial payments have been made by the Buyer to the Supplier before transfer of title pursuant to clause 24.2, and the Buyer reasonably determines or believes that the Supplier has, or will have financial or other problems which may lead to material default by the Supplier, full title to the Goods shall pass to the Buyer, without any further requirement, deed or legal act to be met or performed, and without transfer from the Supplier to the Buyer of any risk whatsoever in the Goods, on the date of issue of a written notice by the Buyer to the Supplier stating that title to Goods shall pass. Nothing in this clause 24.3 shall diminish or cancel the entitlement of the Supplier to receive payment for Goods in accordance with the provisions of the Purchase Order.

25. LIENS

The Supplier warrants that the Goods shall be free from all liens, claims, charges or encumbrances and agrees to indemnify and hold harmless the Buyer and the Client from and against costs, expenses and claims arising there from. The Supplier waives all rights of lien against any property and premises of the Buyer and the Client. The Buyer may require the Supplier to submit a signed release of liens before making final payment to the Supplier.

26. TERMINATION FOR DEFAULT

- 26.1 In the event that the Supplier is in default or breach of any provision, condition or requirement of the Purchase Order, including failure to deliver the Goods on or before the dates for delivery set out in the Purchase Order, the Buyer may, by written notice to the Supplier, and without prejudice to any other rights which the Buyer may have, including the application of liquidated damages, terminate the Purchase Order in whole or in part.
- 26.2 If the Supplier is declared bankrupt or becomes insolvent, or makes any arrangement with its creditors, or has a receiver appointed, or commences any action to wind up its business, the Buyer may, without prejudice to its other rights, terminate the Purchase Order forthwith by written notice to the Supplier or to any person in whom the Purchase Order may have become vested. In such an event, the Buyer and/or the Client are entitled to forthwith take possession of the Goods.
- 26.3 Upon receipt of a notice of termination, the Supplier shall promptly stop performance under part or all of the Purchase Order as directed by the Buyer, place no further orders or subcontracts, cancel existing orders and subcontracts on terms approved by the Buyer, protect and safeguard work completed and, if directed by the Buyer, shall either (i) deliver the Goods or part thereof completed as of the date of termination, (ii) provide unencumbered access to the Supplier's premises to enable the Buyer to take possession of such completed Goods or part thereof, or (iii) continue performance on such part of the Purchase Order and on such terms as the Buyer may reasonably direct.
- 26.4 In the event the Supplier is in default as mentioned under clause 26.1 and/or in the event of termination pursuant to this clause 26, the Buyer has the unconditional right to have the Purchase Order performed and completed by such means as the Buyer may decide (such as performance by another supplier or by a subcontractor of the Supplier). The Supplier shall be liable for, and agrees that the Buyer may set-off against any amount due to the Supplier, all additional costs which the Buyer may reasonably incur by doing so and



other damages suffered by the Buyer due to the Supplier's failure. The Supplier hereby grants the Buyer the right to make direct payments to, and arrangements with subcontractors of the Supplier if the Buyer considers such payments and arrangements necessary for the uninterrupted completion of the Purchase Order.

27. TERMINATION FOR CONVENIENCE

- 27.1 The Buyer shall be entitled, at any time, to terminate the Purchase Order in part or in whole by written notice to the Supplier. Upon receipt of such notice, the Supplier shall promptly stop further performance of the Purchase Order, place no further orders or subcontracts with subcontractors, protect the Goods or part thereof which has been completed both at the Supplier's premises and/or the Site and/or any premises of the Supplier's subcontractors and shall await further instructions from the Buyer.
- 27.2 In the event of termination pursuant to clause 27: (i) the Supplier shall deliver or assign to the Buyer all Goods completed at the date of such termination with all applicable warranties or dispose of Goods, as directed by the Buyer. In no event shall the Buyer and/or the Client be liable to the Supplier for any special, indirect or consequential damages of any kind whatsoever including but not limited to loss of production, loss of business, income or profit and damages arising from claims against the Supplier by its subcontractors or its other customers; and (ii) the Supplier shall be entitled to payment of an amount equal to the value of the Goods satisfactorily completed or delivered in accordance with the Purchase Order at the date of such termination, less any payments owed by the Supplier to the Buyer and/or previously made to the Supplier under the Purchase Order.

28. VIS MAJOR AND CASUS FORTUITUS

- 28.1 Failure on the part of a Party (the "Affected Party") to perform in terms of or comply with the provisions of the Purchase Order shall not be deemed to be a breach by the Affected Party, insofar as such failure is due to an event or circumstances of *vis major* (i.e. any superior force, power or agency which cannot be resisted or controlled by an ordinary individual – including acts of nature and acts of man) or is due to *casus fortuitus* (i.e. an inevitable event that is something exceptional, extraordinary or unforeseen and which human foresight cannot be expected to anticipate or to reasonably foresee, of if it can be foreseen, it cannot be avoided by the exercise of reasonable care or caution).
- 28.2 Without limiting the generality and intention of clause 28.1 in any way, the event or circumstances may include (without being limited thereto):
- 28.2.1 acts of God, war, hostilities, riots, civil or military insurrection and like political disturbances, natural disasters such as earthquakes, fires, floods and storms, acts or omissions by Governments (central, federal, regional, provincial, local, municipal) and state organs/public authorities; terrorism or sabotage, denial of the use of railway or other means of public transport;
- 28.2.2 provided that inconvenience, hardship, discomfort, strikes, lock-outs and the mere shortage of labour, materials or utilities shall not constitute *vis major* or *casus fortuitus*, unless caused by events or circumstances which themselves are *vis major* or *casus fortuitus*. Strikes by the Supplier's employees shall not constitute *vis major* or *casus fortuitus*.
- 28.3 If the Affected Party is by reason of *vis major* or *casus fortuitus* prevented from fulfilling its obligations under the Purchase Order, the Affected Party shall immediately notify the other Party in Writing thereof. Such notice shall stipulate (i) the cause, nature and extent of the event or circumstances; (ii) the expected duration of the circumstances or event; and (iii) the extent to which the performance of the Affected Party will be affected.



- 28.4 The Parties shall then promptly confer within 5 (five) days with a view to dealing with the matter in a cost-effective basis.
- 28.5 To the extent that the Affected Party is prevented to perform its obligations in terms of a Purchase Order due to *vis major* or *casus fortuitus*, the Affected Party shall for the duration of *vis major* or *casus fortuitus* be temporarily excused from its liability to perform such obligations – provided always that the Affected party shall not be so excused or discharged from its obligations if its non-performance is due to the fault, negligence or wilful act or omission of the Affected Party.
- 28.6 The Affected Party shall within 5 (five) days of its notice to the other Party in terms of clause 28.2, having regard to all the relevant factors, submit in good faith alternative proposals to the other Party as to how the event or circumstances can be overcome. Such proposals shall be in sufficient detail to enable the other Party to technically and financially assess the alternatives and to decide whether any of the alternatives are acceptable to the other Party. Should the other Party, in its sole discretion, not accept any of the alternative proposals, the other Party may terminate an Agreement by giving the Affected Party written notice without this termination giving rise to any claim for damages, compensation or loss of any nature against the Affected Party or the other Party.
- 28.7 Until the other Party has made its decision referred to in clause 28.4 above, and if the other Party has decided not to cancel the Purchase Order, as aforesaid, the following provisions shall apply (i) the Affected Party shall make every effort to mitigate the effect on the other Party of its failure or omission to perform fully; and (ii) the Affected Party shall keep the other Party fully informed about the situation.
- 28.8 To the extent that the Affected Party is prevented by *vis major* or *casus fortuitus* from complying fully with its obligations in terms of the Purchase Order, the other Party shall not have any claim for damages, compensation or loss of any nature against the Affected Party – provided always that the other Party shall have a claim for damages or other lawful remedy against the Affected Party in the event that the non-performance by the Affected Party is due to the fault, negligence or wilful act or omission of the Affected Party.
- 28.9 In the event that the period of *vis major* or *casus fortuitus* exceeds an uninterrupted period of 30 (thirty) days, either Party may cancel the Purchase Order, in which case clause 28.2 shall apply.
- 28.10 The Affected Party accepts that by failing to give notice to the other Party in terms of clause 28.4 or to provide a proposal setting out how the Affected Party will overcome the circumstances or to mitigate the effects, the Affected Party waives its defence to a rely on *vis maior* or *casus fortuitus*.

29. CONFIDENTIALITY

- 29.1 The Parties acknowledge the significant importance of Confidential Information to each other and, where applicable, third party proprietors of such information, and recognise that either Party and/or third party proprietors may suffer irreparable harm or loss in the event of such information being disclosed or used otherwise than in accordance with a Purchase Order.
- 29.2 The Parties agree and undertake:
- 29.2.1 except as permitted, not to disclose or publish any Confidential Information in any manner, for any reason or purpose whatsoever without the prior written consent of each other and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the Parties to obtain the consent of such third party;



- 29.2.2 except as permitted, not to utilise, employ, exploit or in any other manner whatsoever without the prior written consent of each other and provided that in the event of the Confidential Information being proprietary to a third party, it shall also be incumbent on the Parties to obtain the consent of such third party;
 - 29.2.3 to restrict the dissemination of the Confidential Information to only those of the staff who are actively involved in activities for which use of Confidential Information is authorised and then only on a “need to know” basis, and the Parties shall initiate, maintain and monitor internal security procedures reasonably acceptable to the Parties to prevent unauthorised disclosure by the staff;
 - 29.2.4 to take all practical steps, both before and after disclosure, to impress upon the staff who are given access to Confidential Information the secret and confidential nature thereof; and
 - 29.2.5 to ensure that none of its suppliers or subcontractors, employees, agents or representatives (without limitation) take any photographs and or video recordings (in the broadest possible sense) of either Party or either Party’s Clients (without limitation) premises or the Site..
- 29.3 All Confidential Information disclosed by one Party to the other or which otherwise comes to the knowledge of either Party, is acknowledged by the other Party:
- 29.3.1 to be proprietary to either Party or where applicable, the relevant third party proprietor; and
 - 29.3.2 not to confer any rights of whatsoever nature in such Confidential Information on either Party.
- 29.4 The Parties shall protect the Confidential Information in the manner, and with the endeavour, of a reasonable person protecting their own Confidential Information. In no event shall either Party use less than reasonable efforts to protect the confidentiality of the Confidential Information.
- 29.5 The Parties may at any time on written request to each other, require that the one Party immediately returns to the other Party any Confidential Information and may, in addition, require that the other Party furnish a written statement to the effect that upon such return, it has not retained in its possession or under its control, either directly or indirectly, any such Confidential Information or material.
- 29.6 Alternatively, the Parties shall, as and when required by each other on written request to each other, destroy all such Confidential Information and material and furnish each other with a written statement to the effect that the same has been destroyed. The Parties shall comply with any request in terms of this clause 29.6 within 7 (seven) days of receipt of such request.
- 29.7 The one Party may retain Confidential Information to the extent required by, and for the duration of, any Purchase Order, provided that the other Party has not waived performance of such Purchase Order and subject to the right of the other Party to recover the Confidential Information at any time in terms of this clause 29.
- 29.8 The Parties record that this clause 29 shall not be applicable where the Parties disclose Confidential Information to attorneys or auditors, provided that such disclosure is reasonably required by the Parties for the purposes of conducting its business activities.
- 29.9 Nothing contained in a Purchase Order will restrict either Party from the use of any generic ideas, concepts, know-how, or techniques developed or learned by such Party in the course of performing any Deliverables under a Purchase Order, provided that in doing so such Party does not disclose the other Party’s Confidential Information to third parties or infringe the Intellectual Property rights of the other Party or third parties who have licensed or provided materials to the other Party.



- 29.10 The Parties shall comply with any confidentiality, copyright, patents and indemnity agreements of the other Party. Each employee of the Parties is required to sign any confidentiality, copyright, patents and indemnity agreements as may be required by the other Party.
- 29.11 The Parties shall keep each other indemnified against all losses and costs including legal costs as between attorney and client and all other expenses that the one Party may incur as a result of any action, proceeding or claim made against that Party resulting from any Intellectual Property infringement.

30. DATA PROTECTION

- 30.1 It is recorded that each Party may Process the Personal Information of the other Party and related Data Subjects in connection with and for the purposes of the provision and receipt of the Goods pursuant to the terms of this Agreement. For the avoidance of doubt, it is further recorded that each Party shall:
- 30.1.1 only Process the Personal Information provided by the other Party for the purpose(s) connected with the provision and receipt of the Goods and to the extent strictly necessary to perform its obligations under this Agreement, except to the extent specifically requested or authorised to do otherwise by the other Party in Writing, or as required by Applicable Law;
 - 30.1.2 comply with all directions and instructions which may be given by the other Party regarding the Processing of its Personal Information; and
 - 30.1.3 only Process Personal Information in strict compliance with the Data Protection Laws.
- 30.2 Where the Supplier provides the Buyer with Personal Information relating to third party Data Subjects (including but not limited to the Supplier's employees, suppliers, customers, directors and shareholders), the Supplier warrants that it does so lawfully and that it has obtained the necessary consent from the relevant third party to the extent required by Applicable Law.
- 30.3 Each Party warrants that it shall secure the integrity of the Personal Information provided to it by the other Party by taking appropriate, reasonable technical and organisational measures to prevent the loss of, damage to, unauthorised destruction of, unlawful access to or unlawful Processing of the said Personal Information.
- 30.4 Transfers of Personal Information to third parties outside the borders of the Republic of South Africa for any reason whatsoever shall at all times comply with the requirements set out in section 72 of the Protection of Personal Information Act 4 of 2013.
- 30.5 Each Party shall notify the other Party in Writing and as soon as reasonably possible after becoming aware of any non-compliance with or actual or suspected breach of any applicable Data Protection Laws or the provisions of this clause 30.

31. ASSIGNMENT AND NOVATION

The Supplier acknowledges and agrees that the rights and obligations of the Buyer may be novated to the Client, its successors and assigns upon the Client's written request following termination of the Main Contract; and the Buyer may assign the Purchase Order and any rights under it (or any part of it) to the Client.



32. RIGHT TO SET OFF

All costs, damages or expenses for which the Supplier is liable to the Buyer under a Purchase Order and/or the law, may be deducted by the Buyer from any payment due or becoming due to the Supplier under a Purchase Order, or may be recovered by action at law.

33. DISPUTES

- 33.1 The Parties agree to attempt to resolve any dispute, controversy, difference or claim arising out of the terms of the Purchase Order (the "Dispute") by using their best efforts to negotiate and settle such Dispute amicably. If, after 14 (fourteen) days of either Party notifying a Dispute in Writing, any such Dispute cannot be settled amicably through ordinary negotiations by senior representatives of the Buyer and the Supplier, the Dispute shall be referred to a mediator agreed upon by the Parties.
- 33.2 If the Parties are unable either to agree on a mediator within 7 (seven) days or to resolve the Dispute by way of mediation, within 28 (twenty eight) days of the Dispute being referred to mediation, then the Dispute shall be submitted to and decided by arbitration. Save as set out herein, the arbitration shall be conducted in Johannesburg in accordance with the rules and regulations in force from time to time of the Association of Arbitrators (Southern Africa).
- 33.3 The place of arbitration shall be Sandton, Gauteng. The language to be used in the arbitral proceedings shall be English. The award shall be binding from the date it is made, and the Parties hereby waive any right of appeal on the merits and/or any point of law. The commencement of formal Dispute resolution proceedings shall not prevent further initiatives by either Party to settle the Dispute.
- 33.4 Performance of the Purchase Order shall continue during the period of resolution of any Dispute and such performance shall include the execution of any part of the works or the Goods which is subject to disputed instructions of the Buyer, unless the Buyer shall order the suspension of the Supplier's performance of the Purchase Order, or any part thereof.
- 33.5 The rights and remedies available to the Buyer herein are cumulative and additional to other or further remedies available under equity and law. No relaxation, forbearance, delay or indulgence by the Buyer in enforcing any of the terms and conditions of this Purchase Order or the granting of time by the Buyer to the Supplier shall prejudice, affect or restrict the rights of the Buyer under this Purchase Order, nor shall any waiver by the Buyer of any breach of this Purchase Order operate as a waiver of any subsequent or continuing breach of the Purchase Order.

34. APPLICABLE LAW

The Purchase Order shall be governed by and construed in accordance with the Laws of the Republic of South Africa, excluding the application of the Vienna Convention on the International Sale of Goods of 1980. All disputes, actions and other matters relating thereto will be determined in accordance with the Applicable Law.

35. LANGUAGE AND TRADE TERMS

Any and all correspondence documents and execution of services hereunder, unless otherwise specifically designated, shall be in the English language. The interpretation of any trade terms in the Purchase Order shall



be in accordance with the latest INCOTERMS published by the International Chamber of Commerce and any supplement thereto in existence on the date of issuance of the Purchase Order.

36. SPARE PARTS

- 36.1 Spares will generally be ordered in a separate order.
- 36.2 In the event that the Supplier intends to cease manufacture of any spare parts at any time and where these are not readily available on the open market, the Supplier shall give not less than sixty (60) days prior written notice to the Buyer to that effect and the Supplier agrees that following such notice, the Buyer and/or the Client can then either (i) purchase from the Supplier at reasonable cost such quantity as the Buyer and/or the Client consider necessary or (ii) purchase from the Supplier at a reasonable cost all drawings, moulds, licences and all necessary material, rights and information to enable the Buyer and/or the Client to procure the manufacture and import by others such spare parts as the Buyer and/or the Client considers necessary for the operation of the Site.

37. SUSTAINABLE DEVELOPMENT

- 37.1 The Buyer applies a Sustainable Development policy which aims to promote human rights, to facilitate social welfare and to preserve the environment.
- 37.2 In this context, the Supplier undertakes to respect the regulations applicable in these domains as well as the standards fixed by the Buyer, in particular in the Buyer's commitment to Sustainable Development, in the declaration of commitment to diversity and in the declaration of commitment to accident prevention and health & safety. The Supplier acknowledges and agrees that compliance with this clause constitutes an essential obligation of any Purchase Order entered into with the Buyer or any of its affiliates.
- 37.3 Compliance with this clause 37 constitutes one of the essential obligations of this Agreement.
- 37.4 **Respecting ethics and labour law regulations**
 - 37.4.1 The Supplier undertakes to respect the Universal Declaration of Human Rights and the United Nations Convention on the Rights of the Child, as well as International Labour Organization conventions.
 - 37.4.2 The Supplier undertakes to respect all the imperative regulations applicable by virtue of labour laws, in particular regulations governing undeclared work, child labour, forced labour and trade union rights.
 - 37.4.3 The Supplier undertakes to comply with the principles of the Buyer's Supplier Charter implemented by the Buyer, which is based on the principle that promoting pluralism and the search for diversity via recruitment and career management is a progress factor for the company. The Supplier undertakes to:
 - (i) comply with all applicable legislation concerning non-discrimination, whether direct or indirect (within the framework of its internal management, and in particular in terms of Human Resources, at each stage of the assignments entrusted to it by the Buyer); and
 - (ii) ensure that its personnel are familiar with and promote the principles of non-discrimination and of fighting against prejudice.
 - 37.4.4 The Supplier also undertakes to ensure that its own suppliers and subcontractors respect the same obligations.



37.5 **Protection of the environment**

37.5.1 The Supplier undertakes to respect regulations relating to the protection of the environment and to implement all actions necessary to reduce its impact on the environment, in particular via the reduction of its consumption of energy and primary resources; the reduction of waste introduced into water, the air or the ground; the elimination of accidental pollution; the reduction of waste generated by its activity and the traceability of its elimination; controlling the impact and emission of substances that are dangerous for the environment and for health.

37.5.2 The Supplier also undertakes not to use any subcontractors who do not respect these obligations.

37.6 **Monitoring by the Buyer of the action taken by the Supplier**

37.6.1 The Supplier undertakes to inform the Buyer regarding the current state of progress of its actions in terms of Sustainable Development and to update this data on a yearly basis.

37.6.2 Within the framework of the steps taken by the Buyer to evaluate Sustainable Development actions implemented by its suppliers, the Supplier agrees to be evaluated and undertakes to place at the disposal of the Buyer all the information and resources which may be required in this regard.

37.6.3 The Supplier also undertakes to take into account recommendations made following such evaluations, and to take the action necessary to ensure compliance and/or improvement.

38. **APPLICABLE LAWS AND ANTI-CORRUPTION**

38.1 **Corruption and Conduct of the Supplier**

38.1.1 the Supplier acknowledges that the Applicable Laws apply to it and its subsidiaries and any director, officer, agent, employee, affiliate or other person associated with or acting on behalf of the Supplier or any of its subsidiaries and/or performing services or providing Goods or otherwise rendering the Deliverables (in the widest sense possible) in connection with this Agreement, for the purposes of the subject matter of this Agreement.

38.1.2 the Supplier shall not, and shall procure that its subsidiaries and any director, officer, agent, employee, affiliate or other person associated with or acting on behalf of the Supplier or any of its subsidiaries performing services or providing Goods in connection with this Agreement shall not,:

38.1.2.1 use any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity or to influence official action;

38.1.2.2 make any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds;

38.1.2.3 under any circumstances offer, promise or make any gift, payment, loan, reward, inducement, benefit or other advantage, which may be construed as being made to solicit any favour, to any of Buyer's directors, officers, agents, employees and/or affiliates;

38.1.2.4 request, act, agree, receive, accept, offer, promise, give, induce or promote the acceptance or offering of a bribe, rebate, payoff, influence payment, kickback or other unlawful payment; (directly or indirectly, passively or actively), in any form whatsoever including but not limited to the gratuity, enticement, incentive, facilitation fee or gift;



38.1.2.5 act in any manner in a way which would be reasonably regarded as:

- 38.1.2.5.1 providing an unfair or undue or illegal advantage to the Supplier and/or its subsidiaries in order to retain or win business; or
- 38.1.2.5.2 providing an unfair or undue or illegal advantage to the Supplier and/or its subsidiaries in conducting its business; and
- 38.1.2.5.3 violate any provision of the Applicable Laws.

38.1.3 the Supplier shall:

- 38.1.3.1 conduct its businesses in compliance with the Applicable Laws and shall maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, compliance therewith;
- 38.1.3.2 comply with any and all of the Buyer's Policies;
- 38.1.3.3 at all times act in good faith and in an ethical manner towards the Buyer and any other person or entity with which the Supplier may come into contact while providing the Goods and shall, to the maximum extent possible, advise such persons that the Buyer has a zero tolerance policy against fraud and corruption and advise them of Whispli; and
- 38.1.3.4 immediately report to the Buyer (directly or on Whispli) any unethical, fraudulent or unlawful conduct which it becomes aware of as well as to the relevant authorities for the duration of this Agreement.

38.1.4 the Supplier further acknowledges that any information that is brought to the Buyer's attention and which information the Buyer is, in terms of applicable legislation, obliged to disclose will be disclosed by the Buyer to the appropriate authorities forthwith.

38.2 **Representation on Compliance with Applicable Laws**

The Supplier hereby represents and warrants that:

38.2.1 neither the Supplier nor any of its subsidiaries nor, to the Supplier's knowledge, any director, officer, agent, employee, affiliate or other person associated with or acting on behalf of the Supplier or any of its subsidiaries has :

- 38.2.1.1 used any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity or to influence official action;
- 38.2.1.2 made any direct or indirect unlawful payment to any foreign or domestic government official or employee from corporate funds;
- 38.2.1.3 made any bribe, rebate, payoff, influence payment, kickback or other unlawful payment;
- 38.2.1.4 violated or is in violation of any provision of the ABC Laws;
- 38.2.1.5 been convicted of any offence involving bribery, corruption, fraud or dishonesty;



38.2.1.6 been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Applicable Laws;

38.2.2 been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts; and the Supplier and any officer, agent, employee, affiliate or other person associated or acting on behalf of the Supplier has conducted its businesses in compliance with the Applicable Laws and have instituted and maintain policies and procedures designed to ensure, and which are reasonably expected to continue to ensure, compliance therewith;

38.2.3 none of the directors, officers, agents, employees, affiliates or other persons providing the Deliverables is a foreign public official. If the Supplier becomes reasonably aware that a foreign public official may be involved, as previously mentioned, i.e. in the provision of the Goods/items in connection with this Agreement, the Supplier shall immediately inform the Buyer thereof so as to allow the Buyer to assess the situation fully. If the Buyer is reasonably of the opinion that any such relationship could be in breach of the Applicable Laws or be seen as being unethical, the Buyer shall be entitled to instruct the Supplier to terminate such business relationship forthwith; and

38.2.4 no foreign public official owns a direct or indirect interest in the Supplier, or any person associated with it and no public official has any legal or beneficial interest in any payments made by Buyer under this Agreement.

38.3 **Notification and Cooperation**

38.3.1 the Supplier shall immediately notify the Buyer in Writing if at any time during the term of this Agreement, its circumstances, knowledge or awareness changes such that it would not be able to repeat the representation set out in clause 38.2 at the relevant time, or has reason to believe that it has or any director, officer, agent, employee, affiliate or other person associated with or acting on behalf of the Supplier or any of its subsidiaries providing the Deliverables in connection with this Agreement has:

38.3.1.1 been subject to an investigation or prosecution which relates to an alleged breach of the Applicable Laws;

38.3.1.2 been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment; and/or

38.3.1.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Agreement or otherwise suspects that any person directly or indirectly connected with this Agreement has committed or attempted to commit a breach of the Applicable Laws or Policies.

38.3.2 If the Supplier makes a notification to the Buyer pursuant to clause 38.3.1, or if the Buyer otherwise becomes aware of any of the matters described in such clause and notifies the Supplier thereof, the Supplier shall respond promptly to the Buyer's enquiries, co-operate with any investigation, and allow the Buyer to audit any emails, books, records, bank account information and/or any other relevant documentation related to this Agreement.

38.4 **Anti-Money Laundering and Combating the Financing of Terrorism**

38.4.1 The Buyer is committed to compliance with all relevant legislation in the jurisdictions in which it operates, including legislation and guidelines related to the prevention of money laundering and the



combating of the financing of terrorism. Accordingly, the Buyer will cooperate with all the relevant authorities and bodies, and the Supplier shall do the same.

38.4.2 It is a policy of the Buyer to rely on the diligence and compliance of financial institutions together with the relevant financial intelligence legislation as regards to the traceability of funds and the Supplier shall apply the same caution. The Buyer reserves the right in this regard to do whatever is necessary to perform a due diligence, including verification of banking details, sources of funds, etc.

38.4.3 The Supplier shall not launder money or finance any terrorism and should the Supplier have cause to suspect that the Buyer might be or has been exposed to funds, the source of which may in some way be related to money laundering or terrorism,, the Buyer's Procurement Manager must immediately be informed and the Supplier undertakes to provide the Buyer with all necessary information in such circumstances.

38.4.4 The Buyer further reserves the right to investigate and/or report any doubtful/suspicious transactions to whichever authorities that may need to be so advised.

38.4.5 If there is a suspicion that an Agreement was entered into under dubious circumstances, the Purchase Order can be placed on hold at the risk of the Supplier, pending an investigation to the Buyer's satisfaction.

38.5 **Indemnification**

The Supplier shall indemnify and keep indemnified on an after-tax basis the Buyer in full and on demand from and against all and any liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect, special or consequential losses, loss of profit, loss of reputation and all interest and legal and other professional costs and expenses) suffered or reasonably incurred by the Buyer arising out of, or in connection with, any breach or alleged breach of the Applicable Laws and the provisions of this clause 38 by the Supplier or any breach of equivalent provisions in any subcontract by any subcontractor.

38.6 **Material Breach**

Breach of any provision of this clause 38 shall be deemed a material breach and the Buyer shall have the right to terminate any and/or all of the Agreements or Purchase Orders on written notice to the Supplier, in which event such termination shall be without any liability and without prejudice to any claims which the Buyer may have for damages against the Supplier. If the Buyer terminates this Agreement for breach of a provision of this clause 38 the Supplier shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third parties entered into before termination.

39. **BLACK ECONOMIC EMPOWERMENT**

39.1 **BEE Status and Compliance**

39.1.1 The Supplier warrants that it complies and will continue to comply with:

39.1.1.1 the Broad-Based Socio-Economic Empowerment Charter, as amended, for the South African Mining and Minerals Industry issued under section 100(2)(b) Minerals and Petroleum Resources Development Act, 28 of 2002 ("Mining Charter") (where applicable);

39.1.1.2 the Broad-Based Black Economic Empowerment Act, 2003 ("B-BBEE Act"); and



39.1.1.3 the Broad-Based Black Economic Empowerment Codes of Good Practice issued by the Department of Trade Industry ("DTI Code").

39.1.2 The Supplier shall, within 21 days after receipt of a written request from the Buyer, provide the Buyer with:

39.1.2.1 a current and valid broad based black economic ("BBBEE") verification certificate issued by auditors authorised by the Independent Regulatory Board for Auditors or a rating agency accredited by the South African National Accreditation Service, reflecting the Supplier's current black ownership level and BBBEE rating; and

39.1.2.2 any additional verification of historically disadvantaged South African ownership levels (if required) to demonstrate compliance with the Mining Charter requirements and its BBBEE ownership level of at least 51% ("BBBEE Ownership Threshold").

39.1.3 The Supplier shall, for the duration, of this Agreement:

39.1.3.1 maintain or improve the BBBEE Ownership Threshold;

39.1.3.2 maintain (as a minimum) a level 4 or better BBBEE rating in accordance with the DTI Code or the minimum prescribed level set out in the Mining Charter;

39.1.3.3 notify the Buyer in Writing within 14 days of any occurrence which affects, will affect, or would be reasonably likely to affect its compliance with respect to the BBBEE Ownership Threshold and/or its BBBEE rating; and

39.1.3.4 notify the Buyer in Writing, within 30 days of the occurrence, as to what steps have been and/or will be taken to restore its compliance with respect to the BBBEE Ownership Threshold and/or its BBBEE rating.

39.1.4 In the event that the Supplier fails to comply with this clause 39.1 [BEE Status and Compliance], the Parties may negotiate and agree on a future date within which the Supplier shall become compliant. If the Parties are unable to agree a date by which the Supplier shall be compliant or if the Supplier is non-compliant by the agreed date, then notwithstanding any other provision in this Agreement, the Buyer shall be entitled, without limiting any other right it may have under this Agreement or in law, to:

39.1.4.1 terminate the Agreement with immediate effect and without payment of any compensation to the Supplier (other than amounts due and payable under the Agreement at the date of termination); and

39.1.4.2 claim any and all damages it may have suffered or will suffer as a result of the Supplier's non-compliance with this clause 39.1 [BEE Status and Compliance].

39.2 **Socio Economic Development Contributions**

The Supplier shall comply with the socio-economic development contribution requirements of the Buyer which shall include, inter alia, the following:

39.2.1 the recruitment of semi-skilled and unskilled local residents from the local municipal area;

39.2.2 the subcontracting and development of skills transfer to identified BBBEE entities;



39.2.3 procuring commodities from identified BBBEE suppliers within the local municipal area; and

39.2.4 making measurable and meaningful contributions through its corporate social investment programme for the local municipal area.

40. DOMICILIUM

40.1 The Supplier selects as its *domicilium citandi et executandi* for the purpose of legal proceedings and for the purposes of giving or sending any notice provided for or necessary in terms of this Agreement the addresses as stipulated in the Purchase Order, or such other address as may be substituted by notice given as required. The Supplier will be entitled from time to time to vary its domicilium to any other address (preferably within the Republic of South Africa) which is not a post office box or *poste restante*, by way of written notice to the Buyer.

40.2 Any notice addressed to the Supplier at its physical or postal address will be sent by prepaid registered post, or delivered by hand, or sent by e-mail.

40.3 A notice will be presumed, unless the contrary is proved, to have been received:

40.3.1 if posted by prepaid registered post, 5 (five) days after the date of posting thereof;

40.3.2 if hand delivered during business hours on a business day, on the day of delivery;

40.3.3 if sent by e-mail, on the first business day following the date of sending such e-mail.

41. NON-SOLICITATION OF EMPLOYEES

41.1 The Parties agree that, whilst any Appointment is in force, and for a period of 6 (six) months after all Appointments have terminated or expired, no Party shall entice an employee of the other to resign from its employment in order to join the workforce of such Party. This clause 41 shall not apply where –

41.1.1 the Parties have agreed in writing to the change of employment; and/or

41.1.2 where the relevant person becomes the employee of a Party by virtue of an advertisement issued generally for which the person applied at his/her own initiative and without any active and specific solicitation from the other Party.

42. GENERAL

42.1 The terms of this Agreement supersede and replace any and all other agreements between the Parties (and other persons, as may be applicable) and any undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.

42.2 No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of the Agreement will be of any force or effect unless in Writing and signed by the Parties.

42.3 No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Parties in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from an Agreement, and no single or partial exercise of any right



by any Party under an Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from an Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof.

- 42.4 All provisions and the various clauses of the agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of the Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as pro non scripto and the remaining provisions and clauses of the Agreement shall remain of full force and effect. The Parties declare that it is their intention that the Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 42.5 The expiration or termination of an Agreement shall not affect the provisions of the Agreement which expressly provide that they will operate after any such expiration or termination or which out of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.
- 42.6 Neither the Agreement nor any part, share or interest herein nor any rights or obligations hereunder may be ceded, delegated or assigned by either Party without the prior written consent of the other Party, except that the Buyer may assign its rights and obligations under any or all Agreements without the approval of the Supplier to an entity which acquires all or substantially all of the assets of the Buyer; provided that in no event shall such assignment relieve the Buyer of its obligations under the Agreement.
- 42.7 The Buyer shall further be entitled to cede and delegate its rights and obligations to any company within the Buyer's group.
- 42.8 The Supplier shall not, during the currency of an Agreement, cede or transfer to any person the Supplier's right, title and interest in and to any existing or future book debts of its business at any time, except with the consent, in Writing, of the Buyer.