ANGLOGOLD ASHANTI LIMITED

GENERAL CONDITIONS OF CONTRACT

FOR

HIRE OF EQUIPMENT

GCC 500

Revision 0
August 1999
1.0 **DEFINITIONS**

In the Contract the following words and expressions shall have the meanings hereby assigned to them:

1.1 ‘AngloGold’ means AngloGold Limited.

1.2 ‘Call-off’ means an instruction to the Contractor by the Employer to provide Services in respect of hire of specific Contractor’s Equipment.

1.3 ‘Commercial Manager’ means the officer appointed as representative to act on behalf of the Employer as the administering officer for the purpose of the Contract and shall include his authorised representative.

1.4 ‘Completion Date’ means the date by which the Services are to be completed in terms of the Contract.

1.5 ‘Contract’ means the agreement between the Employer and the Contractor for provision of the Services.

1.6 ‘Contract Date’ means the date upon which the Contract is deemed to have commenced.

1.7 ‘Contract Price’ means the price to be paid by the Employer to the Contractor for the provision of the Services.

1.8 ‘Contractor’ means any corporate body, partnership or person to which or to whom a Contract has been awarded and shall include the Contractor’s legal personal representatives, successors in title and permitted assigns.

1.9 ‘Contractor’s Equipment’ means construction equipment, tools, tackle and other things of whatsoever nature provided by the Contractor for the execution and completion of the Services.

1.10 ‘Documentation’ means any drawings, diagrams, calculations, designs, specifications and other pertinent documents and any modifications thereto, which are to be provided to the Employer by the Contractor in terms of the Contract.

1.11 ‘Employer’ means the Company / Operating Unit / Business Unit of AngloGold named in the Contract for whom the Services are to be provided.

1.12 ‘Employer’s Property’ means machinery equipment, apparatus, material, article and any other thing of whatsoever nature belonging to or under the control of the Employer.

1.13 ‘Employer’s Representative’ means the person defined as such in the Contract and appointed by the Employer as its representative for the purpose of the Contract or his duly appointed nominee.

1.14 ‘Intellectual Property Rights’ means any patent right, registered design, registered trade mark, copyright or any other protected right.

1.15 ‘Nominated Sub contractor’ means any corporate body, partnership or person named in the Contract which or who is nominated by the Employer’s Representative to provide defined Services on behalf of the Contractor in terms of the Contract.
1.16 'Plant' means machinery, equipment, apparatus, materials, articles and any other things of whatsoever nature to be incorporated in the Services by the Contractor.

1.17 'Programme' means a schedule of planned objectives directly linked to measurable time scales, dates and/or events for the duration of the Contract.

1.18 'Responsible Person' means an employee of the Contractor who is trained and competent in all aspects of the Service.

1.19 'Services' means all activities to be carried out by the contractor in terms of the Contract.

1.20 'Site' means the lands and places as specifically designated in the Contract as forming part of the Site, places on, under, in or through which the Services are to be provided, together with any other lands or places, including ways of access, provided by the Employer for the purposes of the Contract.

1.21 'Specification' means the specification of the Services forming an integral part of the Contract.

1.22 'Sub contract' means any agreement made between any corporate body, partnership or person and the Contractor for the execution of any part of the Contract.

1.23 'Sub contractor' means any corporate body, partnership or person (other than the Contractor) to which or to whom any part of the Contract has been sub-let with the consent of the Commercial Manager.

1.24 'Tax Invoice' means a document provided in accordance with Section 20 of the Value Added Tax Act, Act 89 of 1991, as amended.

1.25 'Technical Information' means all drawings, diagrams, calculations, designs, specifications and other information provided in Writing by the Employer’s Representative to the Contractor in relation to the Services.

1.26 'Termination Date' means the date on which work on the Contract ceases.

1.27 'Value Added Tax' means the tax to be levied in terms of the Value Added Tax Act, Act 89 of 1991, as amended.

1.28 'Writing' means any manuscript, typewritten or printed statement signed by an authorised representative of either the Employer or the Contractor and any telex, e-mail or telefaxed message or telegram from one party to the other.
2.0 **INTERPRETATIONS**

2.1 **Persons**

Words importing persons or parties shall mean and include not only natural persons but any corporate body or partnership.

2.2 **Singular and plural**

Words importing the singular only shall also include the plural and vice versa where the context so requires.

2.3 **Clause headings**

Clause headings shall not be deemed part of the Contract and shall not be taken into consideration in the interpretation or construction of the Contract.

2.4 **Documents mutually explanatory**

The several documents forming the Contract shall be taken as mutually explanatory of one another. Any ambiguities or discrepancies shall be explained and adjusted by the Commercial Manager.

2.5 **Gender**

Words importing the male shall also include the female and vice versa where the context so requires.

2.6 **Language**

The Contract including all Documentation, Technical Information and correspondence shall be drawn up, construed and interpreted in English.

2.7 **Units of measurement**

The System International d'Unités (S.I.) system of quantities and units of measurement shall apply.

3.0 **ASSIGNMENT AND SUB-LETTING**

3.1 **Assignment**

The Contractor shall not cede, assign or transfer the Contract or any part thereof or any benefits or obligations thereof to any other person except with the consent in Writing of the Commercial Manager.

3.2 **Sub-letting**

The Contractor shall not sub-let the whole of the Contract.

Except where otherwise provided for in the Contract, the Contractor shall not sub-let any part of the Contract without the prior consent in Writing of the Commercial Manager (which consent shall not be unreasonably withheld).

The Contractor shall be responsible for the acts, errors, omissions and defaults of any Sub contractor, its agents, representatives or employees as fully as if they were the acts, errors, omissions or defaults of the Contractor, its agents, representatives or employees.
4.0 **CONTRACTOR TO INFORM ITSELF FULLY**

The Contractor shall satisfy itself as to all the conditions and circumstances of whatsoever nature and howsoever arising which affect or may affect the Contract. The Contractor shall not be entitled to claim any increase in the Contract Price caused by such conditions or circumstances not taken into account by it.

5.0 **TERMS OF PAYMENT**

5.1 The Employer shall pay to the Contractor the Contract Price, together with such additions or deductions as are provided for in the Contract.

5.2 Should there be no terms of payment detailed elsewhere in the Contract, payment shall then be made by the Employer against the Contractor's Tax Invoice as follows:-

100% of the gross amount of the value of Services progressively executed on Site since the date of previous payments, if any.

5.3 The Contractor shall, by not later than the date agreed with the Commercial Manager, or where no such date is agreed, by the 28th day of the month, submit Tax Invoices to the Employer in respect of Services executed on Site.

5.4 Tax Invoices shall indicate; the Contract number, the Call-off number, if any, the Contractor's Value Added Tax registration number, the number and categories of workman, the rate payable for the categories, amount payable and such Value Added Tax as may be payable.

5.5 Tax Invoices shall be accompanied by time sheets signed by the Employer's Representative for the relevant period of the Tax Invoices. Each time sheet shall detail the Personnel hired, their identity numbers, the number of their security badges issued by the Employer, the categories of workmen and the hours worked.

5.6 Tax Invoices shall further be accompanied by the relevant access control records as obtained from the Employer's asset protection (security) department.

5.7 Provided the Employer's Representative is satisfied with the Services executed that the Tax Invoices are correct, and are accompanied by the correct supporting documents as detailed herein, he shall certify such Tax Invoices for payment.

5.8 Subject to such additions or deductions as are provided for in the Contract and providing acceptable and correct Tax Invoices are received by the Employer by the date agreed, the Employer shall pay the amount certified before the end of the following month.

5.9 The accuracy and correctness of Tax Invoices and all supporting Documentation on which any payment is claimed shall be the joint responsibility of the Employer and Contractor. Should either party be aware of any error, omission or defect then such shall be brought to the attention of the other party for immediate rectification.

5.10 All payments due to the Contractor in terms of the Contract, unless otherwise agreed to in Writing by the Commercial Manager, shall at the Employer's discretion, be made by cheque or by means of electronic fund transfer.
6.0 PRICE ADJUSTMENT

6.1 Fixed and firm contract

In the absence of any stipulation to the contrary in the Contract the Contract rates and/or prices shall be fixed and firm and not subject to adjustment.

6.2 Price adjustment permitted

6.2.1 In the event that price adjustment is permitted in terms of the Contract, and unless stated otherwise, the following shall apply:

6.2.1.1 the rates and/or prices detailed in the Contract shall be fixed and firm and free of any adjustment for a period of not less than twelve (12) months from the effective date of the Contract;

6.2.1.2 thereafter any adjustment shall be subject to:

i) an application by the Contractor for such adjustment being received by the Commercial Manager not less than two (2) months prior to the effective date of such adjustment

ii) an amendment to the Contract being issued by the Commercial Manager.

6.2.1.3 Following any such adjustment the Contract rates and/or prices shall be fixed and firm and free of adjustment for a further period of not less than twelve (12) months.

6.2.1.4 Should an application for price adjustment be received by the Commercial Manager later than two (2) months prior to the anniversary date of adjustment, then any price adjustment resulting from such late application shall be effective two (2) months following the date of receipt by the Commercial Manager of such application.

6.2.1.5 Any application for price adjustment must be accompanied by proposed revised rates and/or prices, together with calculations and other substantiating documentary evidence as may be required by the Commercial Manager.

6.2.1.6 Any Services carried out by the Contractor prior to the effective date of the amendment shall be deemed to have been carried out at the Contract rates and prices.

6.2.1.7 In the event of the requested effective date having been exceeded before an amendment for price adjustment is issued by the Commercial Manager then any Services shall continue to be carried out at the Contract rates and/or prices until such times as the amendment is issued. Thereafter adjustment to the affected Tax Invoice shall be made by means of one composite debit note supported with details of the relevant Tax Invoices so affected.
6.2.1.8 In the event that no agreement is reached regarding price adjustment, then the Employer reserves the right to:

i) request the Employer's auditors to carry out an audit of the Contractor's actual cost; or

ii) terminate the Contract with immediate effect.

6.2.2 Any claim for an adjustment of the Contract Price pursuant to any adjustment forming part of the Contract shall be submitted as soon as possible to the Commercial Manager.

7.0 FOREIGN CURRENCY CONTROL

7.1 Foreign currency

7.1.1 Should any portion of the Contract Price contain amounts in respect of imported Plant which is subject to exchange rate variation then the Contractor shall declare such to the Commercial Manager at the time of submission of an offer. To this end the Contractor shall furnish the following information:

7.1.1.1 the country of origin of such Plant;

7.1.1.2 the actual FOB value of the Plant (not expressed as a percentage of the Contract Price);

7.1.1.3 the bank's selling rate of exchange on which the price is based.

7.1.2 The Employer reserves the right to either pay the Contractor's principal direct, bear the foreign currency risk on such amounts declared or request the Contractor to provide forward cover therefore.

7.1.3 It is an express condition, however, that should additional cost be incurred due to the Contractor defaulting either in:

7.1.3.1 the submission of foreign currency with its offer; or

7.1.3.2 the timely taking of forward cover when requested to do so; or

7.1.3.3 the timely submission of Commercial invoices in the foreign currency; or

7.1.3.4 the completion date;

then such additional cost shall be for the account of the Contractor.
7.2 **Control document**

7.2.1 Where the Employer has elected to bear the foreign currency risk itself and to pay the relevant amount in foreign currency then the Contractor shall within one (1) month of the date of receipt of the Plant at the port of entry into the Republic of South Africa provide the Commercial Manager with original:-

7.2.1.1 custom stamped commercial invoices;
7.2.1.2 custom stamped bill of lading;
7.2.1.3 custom stamped bill of entry.

7.2.2 In the event that the Contractor is unable to submit originals of the said documents to the Commercial Manager then the Contractor shall provide to the Commercial Manager, in a form approved by the Commercial Manager, an undertaking, signed by an official of the Contractor having authority to do so, guaranteeing that the Contractor will hold the original documents in its safe keeping and make them available for inspection by either the Employer or an official of the South African Reserve Bank when required to do so. The said documents shall be retained by the Contractor for a period of not less than two (2) years.

7.3 **CIF and SA port charges**

7.3.1 CIF and SA Port Charges shall be fixed and firm and free of adjustment except when affected by statutory or rate of exchange variations.

7.3.2 Any variation to CIF and SA Port Charges resulting from statutory or rate of exchange variations must be claimed separately by the Contractor and substantiated by documentary evidence to the satisfaction of the Commercial Manager.

7.3.3 Approval of claims for CIF and SA Port Charges variations will be confirmed by an amendment to the Contract issued by the Commercial Manager.

7.3.4 Any claim for variations to CIF and SA Port Charges shall be submitted as soon as possible to the Commercial Manager, but in any event not later than thirty (30) days from the date of receipt of the Plant at the port of entry into the Republic of South Africa.

8.0 **SURETY BOND**

In the event of terms other than the standard terms of payment being agreed (e.g. advance payments), the Commercial Manager may require the Contractor to provide a bond or bonds by way of surety and guarantee for the due and faithful performance of the Contract. The bond or bonds shall be in the form issued by the Commercial Manager and shall be completed by a South Africa banking or insurance institution approved by the Commercial Manager.

The cost of preparing, completing and maintaining the bond/s shall be for the account of the Contractor.
9.0 SET-OFF OF MONIES DUE FROM THE CONTRACTOR

Any costs, damages or expenses for which the Contractor is liable to the Employer, may be set-off, or deducted, by the Employer from any monies due or becoming due to the Contractor as result of its business dealings with AngloGold, or may be recovered by action at law from the Contractor.

10.0 WORK NOT COVERED BY THE CONTRACT

The Contractor will only be paid for services completed which are as detailed in the Contract. No payment will be made where additional services or variations to the Services are carried out unless such additional services or variations are carried out in terms of an instruction in Writing by the Employer’s Representative and an amendment to the Contract issued by the Commercial Manager.

The Services detailed in the Contract shall be carried out at the prices contained in the Contract. No variations to such prices shall be permitted unless contained in an amendment to the Contract issued by the Commercial Manager.

11.0 MOST FAVOURED PROVISION

If during the currency of the Contract, the Contractor or its agents should carry out or offer to carry out Services of a similar nature for a third party at rates and/or prices lower than those stated in the Contract then the Employer shall be entitled to a corresponding reduction in the Contract rates and/or prices. Any such reduction in the Contract rates and/or prices made in terms of this clause shall apply to all the Services carried out on or after the date on which the Services of a similar nature were carried out or offered to be carried out at rates and/or prices lower than those in the Contract.

12.0 SUSPENSION OF THE CONTRACT

The Contractor shall, on the instruction in Writing of the Employer’s Representative, suspend the progress of the Contract or any part thereof for such time or times and in such manner as the Employer may consider necessary. During such suspension the Contractor shall properly protect and secure the Services so far as is necessary in the opinion of the Employer’s Representative. Any additional cost incurred by the Contractor in giving effect to the Employer’s Representative’s instructions under this clause shall be borne and paid by the Employer unless the suspension is otherwise provided for in the Contract. The Contractor shall not, however, be entitled to recover any such additional cost unless it gives notice in Writing of its intention to claim to the Employer’s Representative within forty-eight (48) hours of the Employer’s Representative’s instruction. The Employer shall determine any additional payment to be made to the Contractor in respect of such claim.

13.0 PROHIBITION ON CESSION OF BOOK DEBTS

13.1 The Contractor shall not during the currency of the Contract cede or transfer to any person its right, title and interest in and to any existing or future book debts of its business, except with the consent, in Writing, of the Commercial Manager.

13.2 The Contractor shall notify the Commercial Manager at the time of tender of the existence of any cession of book debts and whether such cession is in respect of existing book debts or future book debts or both.

13.3 Should the Contractor fail to comply with the above provisions the Employer shall be at liberty to terminate the Contract.
14.0 CONTRACTOR’S DEFAULT

Should the Contractor fail or neglect to execute the Contract with due diligence and expedition, or refuse or neglect to comply with any reasonable instructions given to it, in Writing, by the Employer’s Representative in connection with the Contract or be in breach of any of the provisions of the Contract, the Employer may give notice in Writing to the Contractor to make good the failure, neglect, refusal or breach complained of. Should the Contractor fail to comply with the notice within seven (7) working days from the date of receipt of such notice or justify its actions to the satisfaction of the Employer’s Representative, then the Employer shall be at liberty to terminate the Contract or part thereof.

15.0 INSOLVENCY

Should the Contractor become insolvent or commit an act of insolvency or pass a resolution for winding up, (not being a member’s voluntary winding up for the purpose of reconstruction or amalgamation) or be subject to a winding up order of the Court (whether provisional or final), or be placed under provisional or final judicial management, the Employer shall be at liberty either:

15.1 to terminate the Contract, in Writing, to the Contractor or to the liquidator or judicial manager or to any person in whom the Contract may become vested;

or

15.2 to give such liquidator or judicial manager or other person the option of carrying out the Contract subject to the liquidator or judicial manager or other person providing a guarantee for the due and faithful performance of the Contract.

16.0 ETHICAL STANDARDS

16.1 In acceptance of the Contract the Contractor undertakes to act only on the basis of utmost good faith and trust in the execution thereof. Should the Contractor commit an act which may compromise the ethical relationships between the Contractor and Employer or which is contrary to the Employer’s ethics, with which the Contractor declares itself fully familiar, then the Employer shall have the power at its discretion to terminate the Contract forthwith.

16.2 The Employer’s power to terminate the Contract in terms of this clause shall not be limited to an act which compromises the ethical relationship of only this Contract but may be invoked in relation to acts which compromise the ethical relationship of other Contracts.

17.0 TERMINATION

17.1 Termination in terms of "prohibition on cession of book debts", “Contractor's default”, "insolvency" or “ethical standards”

17.1.1 In the event of termination of the Contract in terms of “prohibition on cession of book debts”, “Contractor's default”, "insolvency" or “ethical standards” the Employer shall have the power at its discretion to terminate the Contract forthwith, either altogether or in part.

17.1.2 In the event of termination in terms of this clause the Contractor shall immediately cease all activities relating to the Contract or the part thereof so terminated.
17.1.3 The Employer shall pay to the Contractor or such person in whom the Contractor’s right may become vested any sum of money that may be due and payable for all expenditure and liabilities properly incurred by the Contractor and the Contractor or such person in whom the Contractor’s rights may become vested shall not be entitled to any further payment of whatsoever nature.

17.1.4 The amount by which the costs and expenses reasonably incurred by the Employer in completing the Contract exceeds the amount which the Employer would have paid to the Contractor to complete the same had termination not occurred shall without prejudice to any other remedy available to the Employer be recoverable by the Employer in full from the Contractor.

17.2 Termination forthwith

17.2.1 The Employer shall have the power at its discretion to terminate the Contract forthwith, either altogether or in part.

17.2.2 In the event of termination in terms of this clause the Contractor shall immediately cease all activities relating to the Contract or part thereof so terminated.

17.2.3 Should such termination not be in terms of “prohibition on cession of book debts”, “Contractor’s default”, “insolvency” or ethical standards” then the Employer shall pay the Contractor any sum of money that may be due and payable for all expenditure and liabilities properly incurred by the Contractor together with a sum agreed between the parties as reasonable compensation for direct loss suffered by the Contractor solely as a result of such termination and the Contractor shall not be entitled to any further payment of whatsoever nature.

17.2.4 Claims for direct loss suffered by the Contractor will not be accepted where they include any claims for loss of business and/or profits and/or overhead recovery resulting from such termination.

17.3 Termination by giving a period of notice

17.3.1 The Employer shall have the power at its discretion to terminate the Contract, either altogether or in part, by giving a minimum period of notice in Writing to the Contractor.

17.3.2 Such minimum period of notice shall be as stated in the Contract or where no such period is stated then a minimum period of sixty (60) days shall apply.

17.3.3 During such period of notice the Contractor shall continue to perform in terms of the Contract but shall not incur any unauthorised cost.

17.3.4 In the event of termination of the Contract in terms of this clause and on completion of the aforesaid notice period the Employer shall pay to the Contractor any sum of money that may be due and payable for expenditure and liabilities properly incurred by the Contractor and the Contractor shall not be entitled to any further payment of whatsoever nature.
17.4 **Return and assignment on termination**

In the event of termination of the Contract the Contractor shall immediately upon receipt of the notice of termination:

17.4.1 return all Employer’s Property to the Employer;
17.4.2 deliver all Documentation prepared by the Contractor to the Employer;
17.4.3 return all Technical Information to the Employer;
17.4.4 on the request of the Employer assign all existing Sub contracts and Contractor’s Equipment to the Employer.

17.5 **Termination in Writing**

Termination in terms of this clause shall be in Writing and shall be signed by the Commercial Manager.

17.6 **Cost incurred subsequent to Termination Date**

Notwithstanding anything stated or implied to the contrary, it shall be an express condition of the Contract, that where notice of termination has been properly served in Writing, the Employer will not be liable for any cost of whatsoever nature incurred by the Contractor subsequent to the Termination Date.

18.0 **NON-DISCOLOSURE OF INFORMATION**

18.1 “Restricted Information” means all Technical Information and other information whether in Writing or oral, which is communicated to the Contractor together with that part of the Documentation which at the time of submission by the Contractor, is notified in Writing to the Employer as not being for publication. Restricted Information shall exclude that which is already known to the recipient thereof and in respect of which the recipient has a free right of disposal at the date of receipt, or which is already public knowledge at the date of receipt by the recipient, or which becomes public knowledge thereafter otherwise than through default on the part of the recipient, his directors, agents or employees, or which the recipient obtains from any third party with good legal title thereto and free right of disposal thereof.

18.2 The Contractor shall not, without the previous consent in Writing of the Employer, use, publish, or disclose to any person, nor cause nor permit any of its agents or employees to use, publish, or disclose any Restricted Information received by the Contractor otherwise than for the performance of its duty under the Contract. If so required the Contractor shall ensure that its agents, representatives or employees undertake to the Employer in Writing to comply with the provisions of this clause.

18.3 The Employer shall not, without the previous consent in Writing of the Contractor, cause or permit any of its agents, representatives or employees to use any Restricted Information received by the Employer otherwise than for the design, construction, operation, maintenance or replacement of a process or other associated facilities.
18.4 The Contractor shall not, without the prior approval in Writing of the Commercial Manager:

18.4.1 take or permit to be taken any photograph;

18.4.2 publish, cause or permit to be published any article, story or other material having any reference whatsoever to the Contract;

18.4.3 display any advertisements in connection with the Contract.

18.5 The rights and obligations contained in this clause shall continue in full force and effect for a period of ten (10) years from the date of completion or termination of the Contract.

19.0 INTELLECTUAL PROPERTY RIGHTS

19.1 Infringement of Intellectual Property Rights

19.1.1 The Contractor indemnifies and shall keep indemnified the Employer against all losses and costs of whatsoever nature that may be incurred as a result of any action, proceeding or claim arising from the acquisition, use, reproduction or adaptation of a design or process provided by the Contractor that constitutes an infringement of any Intellectual Property Rights.

The indemnity shall not apply to any infringement of Intellectual Property Rights which is due entirely to the following of a design or process stipulated by the Employer provided that such infringement was not at the time known to be an infringement by the Contractor.

19.1.2 It is a condition of this indemnity that the Employer shall give the Contractor prompt notice of any action, proceeding, claim or threat instituted or made against it. The Employer shall consult with the Contractor and the Employer may at its option either:

19.1.2.1 permit the Contractor at its expense to conduct all negotiations or any litigation that may ensue with the proviso that the Employer is informed of all actions taken and the results thereof;

or

19.1.2.2 conduct any negotiations or litigation that may ensue with the proviso that the Contractor shall be consulted and shall not be liable for costs incurred outside the normal course of litigation of which the Contractor does not approve.

19.1.3 The Contractor hereby authorises the Employer to reproduce or publish any Documentation other than Restricted Information, as defined in the clause headed "Non-disclosure of information", which is made available in connection with the Contract for whatsoever reason that the Employer sees fit.

19.1.4 The Contractor shall keep the Employer informed of any action, proceeding or claim made against it in respect of any infringement of Intellectual Property Rights.
19.1.5 The rights and obligations contained in this clause shall continue in full force and effect for a period of ten (10) years from the date of completion or termination of the Contract.

19.2 Creation of Intellectual Property Rights

19.2.1 It is recognised that the Contractor, in carrying out the Contract, may be engaged in research and development work and any proprietary rights arising therefrom will be deemed to have been created in the course and scope of the Contract unless the Contractor establishes the contrary.

19.2.2 Consequentially the Technical Information as well as all information, whether of a technical or commercial nature or otherwise, and know-how, expertise and Intellectual Property Rights of whatever nature including inventions, designs, trade marks and copyrights, originated or acquired by the Contractor while carrying out the Contract, all of which is referred to hereinafter as “the Intellectual Property Information”, will vest in and be the exclusive property of the Employer and the Employer will be entitled to protect the Intellectual Property Information in whatever way it deems fit including the registration of patents, designs, trade marks, copyrights or any other form of intellectual property.

19.2.3 The Contractor undertakes at the Employer's cost to lend to the Employer such assistance and to sign or procure the signature to all such documentation as may be reasonably necessary or required by the Employer in order to perfect the Employer's title to the Intellectual Property Information and to enable the Employer to protect the Intellectual Property Information.

19.2.4 The Contractor further undertakes at the Employer's cost, when required by the Employer to render to the Employer all reasonable assistance that may be necessary at any stage to prove, establish, protect, defend or enforce the Employer's title in and to the Intellectual Property Information.

19.2.5 The Contractor undertakes to exercise the utmost good faith to the Employer in respect of the Intellectual Property Information and that upon originating or acquiring any of the Intellectual Property Information fully to disclose such Intellectual Property Information to the Employer and, upon the Employer's reasonable request, forthwith to supplement such disclosure with such further Intellectual Property Information and details as it can.

19.2.6 The Employer will acquire the Intellectual Property Information from the Contractor in terms of this clause without payment of any kind to the Contractor.

20.0 EMPLOYER’S REPRESENTATIVE’S DECISIONS

The Contractor shall proceed with the services in accordance with the decisions made and instructions or orders given in Writing by the Employer's Representative.

The Contractor shall replace, repair, carry out or make good at its sole cost and to the satisfaction of the Employer’s Representative any replacement, repair, or any work which, in the opinion of the Employer’s Representative, is necessary to complete the Services in accordance with the Contract provided always that all decisions, instructions and orders shall be given to the Contractor solely by the Employer’s Representative.
21.0 CONTRACTOR'S DUTY FOR HEALTH AND SAFETY

21.1 In terms of the Mine Health and Safety Act, Act No. 29 of 1996 as amended and Regulation framed thereunder, a Contractor who:

21.1.1 designs, manufactures, repairs, imports or supplies any article for use by the Employer must ensure, as far as reasonably practicable:

i) that the article is safe and without risk to health and safety when used properly; and

ii) that it complies with all the requirements of the Act;

21.1.2 erects or installs any article for use by the Employer, must ensure, as far as reasonably practicable, that nothing about the manner in which it is erected or installed makes it unsafe or creates a risk to health and safety when used properly; or

21.1.3 designs, manufactures, erects or installs any article for use by the Employer must ensure, as far as reasonably practicable, that ergonomic principles are considered and implemented during design, manufacture, erection or installation.

21.2 Any Contractor who designs or constructs a building or structure, including a temporary structure, for use by the Employer must ensure, as far as reasonably practicable, that the design or construction is safe and without risk to health and safety when used properly.

21.3 Every Contractor who manufactures, imports or supplies any hazardous substance for use by the Employer must:

21.3.1 ensure as far as reasonably practicable that the substance is safe and without risk to health and safety when used, handled, processed, stored or transported at the property of the Employer in accordance with the information provided below;

21.3.2 provide adequate information about:

i) the use of the substance;

ii) the risks to health and safety associated with the substance;

iii) any restriction or control on the use, transport and storage of the substance, including but not limited to exposure limits;

iv) the safety precautions to ensure that the substance is without risk to health or safety;

v) the procedure to be followed in the case of an accident involving excessive exposure to the substance, or any other emergency involving the substance;
vi) the disposal of used containers in which the substance has been stored and any waste involving the substance; and

21.3.3 ensure that the information provided above complies with the provisions of the Hazardous Substances Act, Act 15 of 1973.

22.0 HEALTH AND SAFETY OBLIGATIONS OF THE CONTRACTOR

22.1 The Contractor shall at all times and at its cost comply with all rules and regulations, statutory or domestic, regarding the safety of its employees including the provision of all protective clothing and/or safety equipment called for in such rules and regulations. The Contractor shall at all times conform to any reasonable instruction given by a safety officer having jurisdiction in or about the Site.

22.2 The Contractor shall:

22.2.1 supply all necessary health and safety facilities and equipment to each of its employees;
22.2.2 to the extent that it is reasonably practicable, maintain those facilities and that equipment in a serviceable and hygienic condition;
22.2.3 ensure that sufficient quantities of all necessary personal protective equipment are available so that every one of its employees who is required to use that equipment is able to do so;
22.2.4 ensure that all its employees who are required to use personal protective equipment are instructed in the proper use, the limitations and the appropriate maintenance of that equipment.

22.3 To the extent that it is reasonable practicable, every Contractor must:

22.3.1 ensure that all its employees comply with the provisions of the Mine Health and Safety Act, Act No. 29 of 1996, as amended and Regulations frame thereunder;
22.3.2 consider its employees’ training and capabilities in respect of health and safety before assigning a task to them; and
22.3.3 ensure that work is performed under the general supervision of a person trained to understand the hazards associated with the work and to have the authority to ensure that the precautionary measures laid down by the manager are implemented.

22.4 Unless otherwise agreed between the Contractor and the Employer, the Contractor must, as far as reasonably practicable:

22.4.1 provide its employees with any information, instruction, training or supervision that is necessary to enable them to perform their work safely and without risk to health;
22.4.2 ensure that every employee employed by the Contractor becomes familiar with work-related hazards and risks and the measures that must be taken to eliminate, control and minimise those hazards and risks.
22.4.3 Ensure that every employee employed by it is properly trained;

22.4.3.1 to deal with every risk to such employee’s health and safety that is associated with any work that the employee has to perform and which has been recorded as a significant risk in terms of Section 11 of the Mine Health and Safety Act; Act 29 of 1996 as amended and the Regulations framed thereunder;

22.4.3.2 in the measures necessary to eliminate, control and minimise those risks to health and safety;

22.4.3.3 in the procedures to be followed to perform that employee’s work; and

22.4.3.4 in relevant emergency procedures.

22.5 In respect of every one of its employees, the provisions of Clause 22.4 herein must be complied with:

22.5.1 before that employee first starts work;

22.5.2 at intervals determined by the Employer’s Representative;

22.5.3 before significant changes are made to the nature of that employee’s occupation of work.

22.6 Should the Contractor, its agents, representative or employees fail to comply with any of the said health and safety requirements then the Contractor shall pay to the Employer a sum to be determined by the Employer for each and every incident of such non compliance.

23.0 ENVIRONMENTAL MANAGEMENT

23.1 The Contractor shall at all times and at its cost comply with all rules and regulations, both statutory and domestic, regarding environmental management.

23.2 The Contractor shall at all times confirm to any reasonable instruction given by an environmental officer having jurisdiction in or about the Site.

23.3 To the extent that it is reasonably practical the Contractor must:-

23.3.1 ensure that its employees comply with the requirements of the National Environmental Management Act, Act 107 of 1998, as amended;

23.3.2 ensure that all its employees are trained and capable with respect to their duty for care and remediation of environmental damage;

23.3.3 ensure that all its employees are properly trained to deal with the control of emergency incidents.
24.0 MEDICAL REQUIREMENTS

24.1 General

The Contractor shall at all times and all its cost comply with all rules and regulations, statutory or domestic, regarding the health of its employees.

All personnel employed by the Contractor on the Site shall be under the control of the Employer’s medical officer who shall have the right to submit such personnel for medical examination.

24.2 Medical assistance, certification and X-ray examinations

24.2.1 Contractor’s employee’s examination and certification

24.2.1.1 The Contractor shall ensure that all its employees are in good health, fit to carry out the work for which they have been employed, and shall, prior to them being employed for work on the property of the Employer, present them for medical examination as detailed hereunder.

24.2.1.2 The Contractor shall, in conjunction with the relevant Employer’s Environmental Safety and Health Department, complete an “Initial Medical/Pre-placement Medical Hazard Assessment” (Hazard Assessment) form for each of his employees.

24.2.1.3 The Contractor shall then present its employees, together with their Hazard Assessment forms, to the Occupational Health Centre for examination. The costs of such examination shall be as determined by the Occupational Health Centre, and shall be for the Contractor’s account.

24.2.1.4 Should the “hazards expected” as indicated in the Hazard Assessment form change in any way during the time that any of the Contractor’s employees are working on the property of the Employer, then the Contractor shall advise the Occupational Health Centre accordingly.

24.2.1.5 The Contractor shall ensure that Medical examinations are carried out on its employees as follows:-

a) an initial examination prior to the commencement of work on the Contract;

b) follow-up examinations at intervals not exceeding 12 months;

or

re-examinations when the Contractor’s employees return from annual leave
c) re-examination when the Contractor’s employees return from an absence from work due to sick leave which exceeds seven (7) calendar days;

d) re-examinations in cases where the “hazards expected”, as indicated in the Hazard Assessment, change;

e) re-examination in cases where the Contractor’s employees will be employed in a different job e.g. team member to loco driver;

f) exit medical examinations on withdrawal of the Contractor’s employee’s services for whatsoever reason from the Contract.

24.2.2 Outbreak of epidemic

In the event of any outbreak of illness of an epidemic nature the Contractor shall comply with and carry out such regulations, orders and requirements as may be made by the Government, the Employer or local medical or sanitary authority for the purposes of dealing with and overcoming the same.

Should such an event occur it will be the Employer’s medical staff’s sole choice as to what treatment shall be given and what facilities shall be utilised for that treatment.

24.2.3 Acute illness

In the event that any of the Contractor’s employees develop a sudden illness requiring emergency care, then any such treatment as may be required will be rendered by the Employer’s medical services until the condition is stabilised and the employee may be safely transferred to any other medical service acceptable to the Manager, AngloGold Health Services, or his representative.

24.2.4 Non-mine related accidents

In the event of a non-mine related accident occurring to any of the Contractor’s employees, that employee shall report to the nearest appropriate medical facility. In the event that the Contractor’s employee reports to any of the Employer’s medical facilities, with or without the knowledge of the Contractor, then any necessary treatment will be given by the Employer’s medical service until the condition is stabilised and the employee may be safely transferred to any other medical service acceptable to the Manager, AngloGold Health Services, or his representative.

24.2.5 Notification of admission to the Employer’s provider hospital

The staff of the Employer’s medical provider hospital will notify the Contractor, within two (2) working days, of the admission of the Contractor’s employee to the Employer’s hospital.
24.2.6 Exit certificate

As required by the Mine Health and Safety Act, Act No. 29 of 1996, as amended and the Regulations framed thereunder, the Contractor shall present all of its employees whose employment on the property of the Employer is being terminated, for whatsoever reason, to the Employer’s Occupational Health Centre for the purpose of undergoing an exit medical examination. Such medical examination must be conducted prior to that employee’s actual withdrawal from Site.

24.2.7 Occupational injuries or diseases

24.2.7.1 The Contractor shall familiarise itself fully with and at its cost comply with the all rules and regulations, statutory and domestic, regarding occupational diseases.

24.2.7.2 In the event of any of the Contractor’s employees becoming ill or showing any symptoms of or be suspected of suffering from any occupational injury or diseases as defined in the Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993, as amended, or the Occupational Diseases in Mines and Works Act, Act 78 of 1973, as amended, then the Contractor shall immediately present those employees to the Employer’s Medical Officer for medical examination. Following such medical examination the Employer’s medical Officer shall have the right to provide such medical or surgical treatment as may be necessary and to detain those Contractor’s employees, he deems necessary at the Employers hospital until they are considered sufficiently recovered.

24.2.8 First aid

The Contractor shall provide and maintain in an easily accessible position on Site adequate first aid facilities and equipment.

The Contractor shall in terms of the Minerals Act, Act 50 of 1991, as amended and Regulations framed thereunder, the Mine Health and Safety Act, Act 29 of 1996, as amended, and Regulations framed thereunder and the Occupational Health and Safety Act, Act 181 of 1993, as amended, employ at all times on Site a suitable number of, but at least one, persons suitably qualified in the administration of first aid.

The Employer’s medical staff shall have the right to inspect all such facilities and equipment and the Contractor shall be bound to carry out any instruction given in writing by that medical staff.

In the event that the Contractor uses any equipment which is the property of the employer then all costs so incurred by the Employer will be for the Contractor’s account.
24.2.9 Medical history cards

24.2.9.1 Medical history cards of all Contractor's employees must be kept at the relevant Medical Stations where the employee is working. No cards may be kept at the Contractor's office.

24.2.9.2 Prior to the Contractor's employee proceeding on leave, the Contractor must notify the medical station who will ensure the Contractor's employee is fit to proceed on leave. The medical station will then transfer the medical history card to the Occupational Health Centre.

24.2.9.3 If Contractor's employees are transferred to work at another shaft or metallurgical plant on the Employer's property, the Contractor is responsible for seeing that the medical history card from the medical station where the employee was working, is transferred to the medical station of the new workplace and that a new Hazard Assessment form is completed.

24.2.9.4 If the Contractor's employee is transferred to another Operation within AngloGold, it is the Contractor's responsibility to inform the medical station, and to collect the medical history card.

24.2.9.5 If the Contractor's employee is separated from employment with the Contractor for whatever reason, the Contractor has the responsibility to inform the medical station and to collect the medical history card and transport the Contractor's employee to the Occupational Health Centre for an exit medical examination.

24.2.10 Reports

In addition to the requirements of the Mine Health and Safety Act, Act No. 29 of 1996, as amended, and Regulations framed thereunder and the Occupational Health and Safety Act, Act 181 of 1993, as amended, with respect to health and safety, the following shall be complied with by the Contractor:

24.2.10.1 the Contractor shall keep a record of all work related accidents, no matter how small. All such recorded accidents shall be reported to the Employer's Representative within 24 hours. In case of serious injury as defined in the Mine Health and Safety Act, Act No. 29, as amended, and Regulations framed thereunder, the Employer's Representative shall be informed immediately, regardless of time of day or night;

24.2.10.2 all cases of illness that may be considered to be occupational in origin (as defined by the Occupational Diseases in Mines and Works Act, Act 78 of 1973, as amended, and the Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993 as amended), shall immediately be reported to the Employer's medical services;
24.2.10.3 all cases sent to the Employer's medical services for treatment shall be accompanied by an initial accident report, a copy thereof being sent to the Employer's Representative as soon thereafter as possible.

24.2.11 **Heat tolerance testing**

In the event that the Contractor’s employees are required to work in an underground environment where the temperature is in excess of 27.5 °C (wet bulb), then such Contractor’s employees shall undergo heat tolerance tests at the Employer’s acclimatisation facility.

Where such heat tolerance testing has been deemed necessary, should any Contractor’s employee be absent from the underground environment for a period of seven (7) successive days or more, then that Contractor’s employee shall again be tested at the Employer’s facility for heat tolerance.

24.2.12 **Cost of medical examination, certification, treatment or testing**

All costs incurred by the Employer in the examination, certification, treatment or testing of the Contractor’s employees in terms of this clause shall be for the account of the Contractor.

The Employer shall submit to the Contractor an account for medical assistance rendered. The Contractor shall within thirty (30) days from the date of issue of the account pay the amount debited in full or show just cause why the account should not be paid.

In the event that the Contractor fails to pay the account in full and fails to show just cause why the account should not be paid then the Employer shall either set off the account against amounts due to the Contractor under the Contract or recover the amount due from the Contractor at law.

25.0 **SECURITY REQUIREMENTS**

25.1 **Screening of Contractor’s employees**

The Contractor shall present all its employees engaged in the Contract to the Employer's asset protection (security) department for security screening. To this end the Contractor’s employees’ identification document and medical certification must be available at the time of screening.

25.2 **Access control**

Access to the Employer’s property shall be restricted to approved Contractor’s personnel and vehicles and only be by permission of the relevant Employer’s Representative. The Contractor’s attention is hereby drawn in particular to the following:-

25.2.1 **Control cards**

The Contractor shall ensure that all its employees engaged in the Contract shall, prior to the commencement of any Works, obtain from the relevant asset protection department, access control/ identification cards permitting access to the Site.
Employees being withdrawn from Site shall immediately return such access control/identification cards to the Employer. Cards lost or damaged by the Contractor’s employees will be charged to and payable by the Contractor.

25.2.2 Security checks

The Employer shall have the right at all time without prior notice or, warning to search, inspect or examine any of the Contractor’s property, agents, representatives employees or Contractor’s Equipment whilst such is on Employer’s property.

25.2.3 Gate permits

A gate permit must be obtain by the Contractor and prominently affixed to each and every vehicle the Contractor operates on Site.

The Contractor shall make application for each gate permit to the relevant Employer’s asset protection department who will, on approval, issue Contractor with the said permit.

No access to the Employer’s property will be permitted for any Contractor’s vehicle unless that vehicle displays a correctly authorised gate permit.

25.3 Contractor’s vehicles

The Contractor’s vehicles shall be restricted to the areas in which the Contractor is employed and routes for which access to the Site is necessary. The Contractor shall not be permitted to drive freely throughout the Employer’s property. The Contractor shall obtain the correct routes of access to the Site from the relevant Employer’s asset protection department.

25.4 Contractor employees sleeping on Site

No Contractor’s employees shall be permitted to sleep or lodge on the Employer’s property with the exception of a night watchman placed there for the purposes of Site security.

25.5 Cost of security requirements

All costs incurred by the Employer in screening of Contractor’s employees and the issuing of control cards and gate permits shall be for the Contractor’s account.

26.0 ORIENTATION, INDUCTION AND TRAINING OF CONTRACTOR’S EMPLOYEES

26.1 The Contractor shall prior to the commencement of work on Site ensure that all its agents, representatives and employees engaged on the Contract are fully orientated to all the health hazards, dangers and risks associated with the Contract and the Site.

26.2 The Contractor shall in addition ensure that all of its employees engaged on the contract undergo the Employer’s mandatory induction programme which shall comprise of but not be limited to orientation, induction and training.
All costs incurred by the Employer in orientation, induction and training of the Contractor’s employees in terms of this clause shall be for the Contractor’s account.

26.3 Should the Contractor fail to comply with the conditions of this clause, then it shall pay to the Employer a sum to be determined by the Employer for each month and for each employee that is engaged on the Contract whom the Contractor fails to present for such induction programme.

26.4 The Contractor shall not without prior notification in Writing to the Employer’s Representative withdraw any of its employees who remains in the Contractor’s employ and, who has undergone a mandatory induction programme, from the Contract. In the event that the Contractor does so withdraw an employee then the Contractor shall pay to the Employer a sum being three (3) times the cost to the Employer for such mandatory induction programme.

27.0 INSURANCE

27.1 Contract Works, Public Liability and Riot Insurance

AngloGold has effected insurance as follows in the joint names of itself, the Employer, the Contractor and its Sub contractors:-

27.1.1 "Public Liability" cover, effective for the duration of the Contract including the period of maintenance, which provides cover against accidental death of or injury to persons and accidental loss of or damage to property (other than property forming part of the Services) caused by or arising out of the execution of the Services.

27.1.2 "Riot" cover through the South African Special Risks Insurance Association (SASRIA).

The existence of the insurance cover detailed herein shall not derogate from any obligation or liability of the Contractor under the Contract and the Contractor is deemed fully aware of all the terms and conditions of the said insurance cover including, but not limited to insurers’ limits of liability and excesses and shall indemnify AngloGold and/or the Employer against such limits of liability and excesses.

27.2 Underground insurance

The Contractor shall ensure that adequate insurance cover is provided for the Contractor's Equipment and personnel working underground. The Contractor shall provide proof of the existence of such cover by providing the Commercial Manager with a copy of the insurance policy and a certified copy of the premium receipt, if so requested.

27.3 Insurance of Contractor’s employees and Contractor’s Equipment

27.3.1 Contractor’s employees

The Contractor shall insure against any liability to pay damages or compensation to its employees with an insurer approved by the Commercial Manager (which approval shall not be unreasonably withheld) and shall continue such insurance during the whole of the time that any persons are employed by the Contractor on the Contract. The Contractor shall ensure that all Sub-Contractors insure against the aforesaid liability with regard to their own employees.
27.3.2 **Contractor’s Equipment**

The Contractor shall be solely responsible for and shall effect insurance on all Contractor's Equipment owned, hired or operated by it. Such insurance shall provide cover to the full value of the said Contractor's Equipment, shall be arranged in the joint names of the Contractor and the Employer and shall be effected with an insurer approved by Commercial Manager (which approval shall not be unreasonably withheld). The Contractor shall continue such insurance during the whole of the time that any Contractor's Equipment is employed by it on the Contract. The Contractor shall ensure that all Sub contractors insure with regard to their Contractor's Equipment.

27.3.3 **Compensation in terms of the Compensation for Occupational Injuries and Diseases Act, Act No. 130 of 1993**

Contingent upon the provisions of the Compensation for Occupational Injuries and Diseases Act, Act 130 of 1993, as amended, the Contractor shall, not less than two (2) weeks prior to the date on which any of its qualifying employees are to carry out any duties on the property of the Employer, provide the Commercial Manager with proof that the Contractor has been assessed as an Employer in terms of the Act and that payments in respect of all assessments are up to date. Further, the Contractor shall, during the course of the Contract, provide to the Commercial Manager a certificate of good standing to confirm that the Contractor is still holding his employees covered.

27.4 **Confirmation of Insurance**

27.4.1 The Contractor shall, if so requested, within fourteen (14) days of the Contract Date submit to the Commercial Manager details in respect of:

(a) the names and registered addresses of the insurers referred to above;

(b) the numbers and descriptions of the relevant policies;

(c) statements by the relevant insurers that the said policies are current.

27.4.2 The Contractor shall, if so requested by the Commercial Manager, submit copies of the aforementioned policies of insurance and copies of premium receipts or other evidence that the policies are current within seven (7) days of such request.

27.5 **Remedy for failure to insure**

If the Contractor fails to provide the insurance required of the Contractor in terms of the Contract, the Employer reserves the right to either:

27.5.1 effect and keep in force any such insurance and pay such premium or premiums as may be necessary for that purpose and deduct the amount so paid by the Employer from any monies due or which may
become due to the Contractor or recover the same as a debt from the Contractor;

or

27.5.2 forbid the Contractor access to the Site and suspend the payment of all sums of money already due or which may become due to him in the future in terms of the Contract until such time as the said insurance's have been effected and copies thereof furnished to the Commercial Manager. The costs of any delay occasioned by the Contractor's failure to effect the said insurance's shall be for the Contractor's account and no extension of time for the completion of the Contract will be granted in respect of any delay so occasioned.

27.6 Contractor's indemnity

The Contractor hereby indemnifies the Employer, its agents, representatives or employees against all claims of whatsoever nature arising out of any loss, damage, death or injury to persons or property resulting from the carrying out of the Contract by the Contractor or any of its Sub contractors, agents, representatives or employees except where such loss, damage, death or injury is caused by any act or omission of the Employer, its agents, representatives or employees.

28.0 HOURS OF WORK

Hours of work on the Site shall be, with regards to the Basic Conditions of Employment Act, Act 75 of 1997 as amended, those normal to the Site and the district in which the Site is situated and the Employer shall provide the Contractor with facilities to carry out work during such hours. Should it be found necessary and practicable for additional hours to be worked, the Employer's Representative may, following consultation with the Contractor, direct or agree that additional hours (which shall be defined) shall be worked. The extra cost of such additional hours shall be for the account of the Contractor, unless the necessity for such is due to reasons attributable to the Employer.

29.0 ACCOMMODATION AND MESSING

Unless otherwise stated in the Contract the Employer will not provide any accommodation or messing facilities for the Contractor's employees and such shall be arranged and provided by the Contractor at its cost.

30.0 RIGHT TO AUDIT

The Employer shall have the right to appoint an Auditing Authority, being either an independent auditing firm or the Employer's Internal Auditing Department, to audit the Contractor's records specifically relating to the Contract.

The Auditing Authority shall give the Contractor notice of its intention to conduct an audit, and the Contractor shall afford the Auditing Authority every opportunity and assistance.

The Auditing Authority shall be entitled, during the audit, to inspect the Contractor's accounts and records and to make copies of any documents it so desires and to remove such copies from the Contractor’s premises.

The cost of any such audit shall be for the Employer's account.
31.0 MANNER OF EXECUTION

The Contractor shall execute the Contract in accordance with good practice applicable to the industry appropriate to the Contract. The execution shall be in accordance with the Contractor's obligations in terms of the Contract and to the satisfaction of the Employer's Representative. If anything should be omitted from the Contract and/or the Technical Information which is necessary thereto, or may reasonably be inferred therefrom, the Contractor shall execute the same as if it had been fully described therein and shall undertake whatever may be necessary to complete the Contract.

32.0 TIME FOR COMPLETION

32.1 Within fourteen (14) days of the Contract Date or any other date that may be mutually agreed between the Contractor and the Employer's Representative, the Contractor shall submit a Programme to the Employer's Representative for his approval. The Programme shall be in a form acceptable to the Employer's Representative incorporating agreed key dates and showing the order in which the Contractor proposes to carry out the work. In addition, the Contractor shall allow for normal climatic conditions in formulating its Programme. Approval by the Employer's Representative of the Programme shall not relieve the Contractor of any of its duties or responsibilities under the Contract.

32.2 After the Programme has been submitted to and approved by the Employer's Representative, the Contractor shall adhere to the order of procedure and method stated therein unless the Contractor obtains the permission in Writing of the Employer's Representative to vary such order or method. The Employer's Representative may, however, at his discretion and during the progress of the work, direct that the Contractor vary the order in which work is to be carried out and the Contractor shall update the Programme accordingly.

32.3 Should it at any time during the progress of the Contract become evident to the Employer's Representative that the execution of the Contract is not in accordance with the Programme approved or as varied in terms of the above, he may direct the Contractor to take such measures, including the employment of additional labour and/or extension of working hours, to ensure that the Programme is adhered to. Any additional costs incurred by the Contractor as a result of a direction by the Employer's Representative in terms of this clause shall, unless it can be shown that the delay was caused by reasons attributable to the Employer, be for the Contractor's account.

33.0 EXTENSION OF TIME FOR COMPLETION

If by reason of any cause attributable to the Employer the Contractor shall have been delayed in the completion of the Contract the Contractor may, within a reasonable period, submit a request for an extension of time to the Employer's Representative for the Employer's Representative’s consideration. The Employer's Representative shall grant to the Contractor such extension of time as, in his opinion, is necessary to complete the work. The terms and conditions of any extension of time granted shall be confirmed by means of an amendment to the Contract issued by the Commercial Manager.

34.0 VARIATIONS

34.1 The Contractor shall not alter the Contract except as directed in Writing by the Employer's Representative. The Employer's Representative shall have full power, by notice, in Writing, to direct the Contractor to alter, amend, omit, add to or otherwise vary any of the Services and the Contractor shall carry out such variations as though the said variations were stated in the Contract.
34.2 If, in the opinion of the Contractor, any such variation is likely to prevent or prejudice the Contractor from fulfilling any of its obligations under the Contract, the Contractor shall immediately give notification in Writing thereof to the Employer’s Representative and the Employer’s Representative shall decide whether or not the variations shall be carried out. If the Employer’s Representative confirms his instructions in Writing the said obligations shall be modified to the extent necessitated by the variations directed. Until the Employer’s Representative so confirms his instructions they shall be deemed not to have been given.

34.3 In any instance in which the Contractor has received any such direction from the Employer’s Representative which either then or later will, in the opinion of the Contractor, involve an increase or decrease in the Contract Price and/or affect the Completion Date, the Contractor shall, within forty eight (48) hours and before proceeding, advise the Employer’s Representative in Writing to that effect. The difference in cost or change in the Completion Date, if any, occasioned by any such direction shall, if accepted by the Employer’s Representative, be incorporated in the Contract by means of an amendment issued by the Commercial Manager. The amount of any difference in the Contract Price shall be ascertained and determined in accordance with rates and prices prevailing in the Contract, so far as such may be applicable, and where the said rates and prices are not applicable such amount shall be agreed in Writing between the Employer’s Representative and the Contractor and incorporated in the said amendment.

34.4 If the Employer’s Representative shall make any such variation to any part of the Contract, reasonable notice, in Writing, shall be given to the Contractor to enable the Contractor to make its arrangements accordingly, and in cases where Plant is already manufactured or in the course of manufacture, or any matter done or drawings made that require to be altered, a reasonable sum in respect thereof shall be allowed by the Employer’s Representative.

34.5 Subject to the provisions contained in this clause, on receipt of the Employer’s Representative’s confirmation in Writing of instructions in respect of any variation, the said obligation shall be modified to the extent necessitated by the variations directed and the Contractor shall immediately proceed to carry out such instructions.

34.6 The Contractor shall submit to the Employer’s Representative full particulars of all claims for additional payment to which the Contractor may consider itself entitled in respect of the preceding month and arising out of the provisions of this clause. Claims for additional payment will not be considered if the Contractor fails to submit particulars of its claim in Writing within a period not exceeding thirty (30) days. Any variations agreed will be confirmed by means of an amendment to the Contract issued by the Commercial Manager.

35.0 STANDING TIME

35.1 Standing time will not be allowed unless included in terms of the Contract or expressly agreed and authorised, in Writing, by the Employer’s Representative.

35.2 In the event of delays occurring in the performance of the Contract for reasons attributable to the Employer, such delays shall be reported immediately verbally to the Employer’s Representative by the Contractor and thereafter confirmed in Writing within twenty four (24) hours.
35.3 Should standing time be awarded to the Contractor, claims for standing time shall be based upon the rates specified in the Contract or rates to be agreed by the Commercial Manager and the Contractor shall, when claiming for standing time, ensure that time sheets reflecting the name of each employee and the number of hours lost by each such employee are submitted each working day in respect of the previous working day to the Employer's Representative for signature. Failure to comply with this requirement will invalidate each such time sheet. Signed time sheets shall be submitted with the relevant Tax Invoices for payment.

35.4 Delays arising from the following shall not qualify for claims:

35.4.1 The first sixty (60) minutes of any single event.

35.4.2 Delays arising from statutory examinations.

35.4.3 Delays arising from planned maintenance.

35.4.4 Delays attributable to any form of neglect or failure on the part of the Contractor, the Contractor's agents, representatives, Sub contractors or the employees thereof.

35.4.5 Delays caused by inadequate assessment of the capacity of any Contractor's Equipment or similar items provided by the Employer and used by the Contractor for the performance of the Contract.

35.4.6 Delays which could have been avoided by reporting to the Employer’s Representative when the possibility thereof became apparent.

During the period or periods covered by claims for standing time the Contractor's labour shall, at the request of the Employer’s Representative, be made available to the Employer for use on any work on the Site where such labour can be suitably employed. In instances of protracted delays the Employer’s Representative shall have the right to call upon the Contractor to reduce the labour force subject to a period of notice, to be agreed in Writing, being given for the resumption of the Contract work.

The Contract Completion Date shall be extended for a period equal to the total extent of delays reported by the Contractor in Writing and accepted by the Employer’s Representative provided that such delays are caused by factors attributable to the Employer.

36.0 DAILY RECORD BOOK

The Contractor is required to keep a Daily Record Book in which a record of events are to be entered on a daily basis. A duplicate of the Daily Record Book is to be submitted to the Employer’s Representative for signature every twenty four (24) hours.

The Employer will not entertain any claims for additional payment or extension of time where such Daily Record Book has not been kept up to date.

The Employer’s Representative signature on the Daily Record Book shall, however, indicate acknowledgement only of such daily record and shall not be construed as acceptance of the contents of such record.
37.0 SITE MEETINGS

Regular Site meetings may be held during the period of Contract at times and dates to be advised. It shall be incumbent upon the Contractor to ensure that one or more senior representatives of the Contractor are present at such meetings, and such representatives shall have the authority to make decisions on the Contractor’s behalf.

Minutes of any Site meeting will not be deemed to serve as notice for or an instruction to commence any additional work.

In the event that meetings are held between the Contractor and any of its Sub contractors regarding matters arising from the Contract then the Employer shall be given the opportunity to attend. To this end the Contractor shall give to the Employer a minimum of twenty four (24) hours prior notice of such meetings.

38.0 EMPLOYER’S STANDARDS

All Services shall be strictly in accordance with the relevant Employer's Standards and the onus shall rest with the Contractor to familiarise itself fully with the aforementioned standards.

The Contractor shall be held liable for any errors and omissions due to its failure to adhere to the aforementioned standards.

39.0 USE OF MACHINE TOOLS

The Contractor shall familiarise itself with the Employer's rules and regulations relating to the use of hand held machines and welding machines.

The Contractor shall be held liable for any errors or omissions due to its failure to adhere to such rules.

40.0 METHANE SAFETY REQUIREMENTS

The Contractor shall at all times and at its cost ensure its artisans working underground are trained in and comply with all rules and regulations, statutory and domestic regarding Methane Safety and be in possession of a valid "Competence Certificate" and a valid "Methane Certificate". Only artisans in possession of the said certificate/s will be granted burning permission.

The necessary training facilities, will be provided by the Employer to the Contractor, the cost of such being for the Contractors account.

41.0 STORAGE AND HANDLING OF INFLAMMABLE MATERIALS

The Contractor shall provide an enclosed area for the storage of all compressed gas cylinders and other inflammable materials, which shall be kept secure.

Compressed gas cylinders shall only be handled by means of cradles or containers approved by the Employer’s Representative. Rope or cable slings shall not be permitted.

The Contractor shall have available and maintain during the period of the Contract suitable and adequate fire-fighting equipment in all areas where his work creates a fire hazard.
42.0 CONTRACTOR'S REPRESENTATIVE AND LABOUR

42.1 The Contractor shall make its own arrangements for the engagement and employment of all labour required for the execution of the Contract. All such arrangements shall be at the Contractor’s cost and shall, unless otherwise stated in the Contract, include all transport, housing, feeding and other costs relative to the employment of such labour.

42.2 Should the Contractor, in terms of a separate agreement, have any employees housed in accommodation of the Employer, the Contractor shall ensure that the provisions of the Aliens Control Act, Act 96 of 1991, as amended, are adhered to. The Contractor hereby acknowledges that it is fully acquainted with the provisions relating to the employment, housing and harbouring of aliens.

42.3 The Contractor indemnifies the Employer against any loss or damage it may suffer in the event of the Employer being prosecuted as a result of a contravention of the Aliens Control Act, Act 96 of 1991, as amended, by the Contractor or any of its employees.

42.4 The Contractor shall provide to the Employer’s Representative, in such form and at such intervals as the Employer’s Representative may prescribe, a detailed return showing the supervisory staff and the numbers of the several classes of labour from time to time employed by the Contractor and its Sub contractors on the Site, together with their identity documents and/or proof in Writing of their compliance with the Aliens Control Act, Act 96 of 1991, as amended.

42.5 Whilst on the Site the Contractor’s and all Sub contractor’s employees shall, unless it is necessary for the execution of the Works, be restricted to the Site. They shall at all times comply with the Employer’s security regulations and any other rules and regulations of the Employer in force from time to time and shall not enter any other part of the Site without the permission in Writing of the Employer’s Representative.

42.6 The Contractor shall be liable for all damage or loss resulting from any unlawful, riotous or disorderly conduct or any act contrary to any Regulations of the Employer by or amongst the Contractor’s employees. The Contractor shall take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct or any act contrary to any regulations of the Employer by or amongst the Contractor’s employees and for the preservation of peace and protection of persons and property on or about the Site and in or about any accommodation or area of accommodation which may be allocated to the Contractor by the Employer for the purposes of the Contract.

42.7 The Employer’s Representative may, by notice in Writing to the Contractor, object to any representative or person employed by the Contractor in the execution of the Works who, in the opinion of the Employer’s Representative, misconducts itself or is incompetent or negligent and the Contractor shall remove such person from the Site. Further, should an inspection of the documents as required by this clause, reveal that any of the Contractor’s employees are aliens as defined by the Aliens Control Act, Act 96 of 1991, as amended, then the Employer’s Representative shall be entitled to instruct the Contractor in Writing to remove such employee/s immediately from the Site. The Contractor shall at its cost provide a replacement for any person removed from the Site in terms of this clause if so required by the Employer’s Representative.
42.8 Neither the Contractor nor the Employer shall employ, or seek to employ, personnel one from the other from the Contract Date until six (6) months after the completion of the Contract.

42.9 The Contractor shall prior to the commencement of work on Site provide the Employer's Representative with documentary evidence of the qualifications and past experience of all representatives or persons the Contractor wishes to employ on the Contract. The Employer's Representative may by notice in Writing to the Contractor object to any of these representatives or persons and the Contractor shall not permit such representatives or persons to enter the Site.

42.10 Prior to the commencement of work on Site the Contractor's Responsible Person, shall report to the Employer’s Representative. On the completion of the work and prior to leaving Site the Contractor shall obtain a clearance certificate from the Employer’s Representative, stating the work is complete and satisfactory and the Site has been satisfactory cleaned.

43.0 CONTRACTOR’S EQUIPMENT, SITE FACILITIES AND OWNERSHIP

Unless otherwise stated in the Contract, the following provisions shall apply to the supply of all Contractor's Equipment, temporary buildings and facilities required by the Contractor on the Site to enable it to carry out its obligations in terms of the Contract. The cost of Contractor's Equipment, temporary buildings and facilities which are to be supplied by the Contractor are deemed included in the Contract Price, and all facilities which are to be supplied by the Employer shall be supplied to the Contractor free of charge.

All Contractor’s Equipment shall be erected, operated and maintained by the Contractor in a manner which the Employer's Representative, having regard to any expert advice which he may deem necessary, considers safe and satisfactory, and the Employer’s Representative shall have the right to reject any Contractor's Equipment which he considers to be in any way unsafe or unsatisfactory.

43.1 Contractor’s Equipment

The Contractor shall supply all Contractor's Equipment and transport necessary to complete the Services. The Contractor shall also supply Contractor's Equipment for and be responsible for the off-loading and loading at and handling on Site of all that is to be supplied and/or removed by the Contractor in terms of the Contract. The risk in all Contractor's Equipment shall remain with the Contractor.

43.2 Temporary buildings

The Contractor shall, in an area on the Site designated by the Employer's Representative erect ample and suitable temporary workshops, stores, offices and other accommodation necessary for the efficient performance of the Contract. The Contractor shall also provide suitable latrine and washing facilities on Site for its employees. The Contractor shall be responsible for keeping the Site and all such buildings and facilities in a clean, sanitary and orderly condition during the progress of the Contract. On completion of the Contractor's activities on Site it shall remove all such temporary buildings and shall properly disinfect that portion of the Site on which the latrine facilities were situated.
43.3 **Fencing, lighting and guarding**

The Contractor shall provide all necessary fencing, guarding, lighting and security, all temporary gangways and walkways, as may be necessary for the protection of the Works and employees and any other persons who are authorised to be on the Site.

43.4 **Electricity, water and compressed air**

The Contractor, by arrangement with the Employer’s Representative, shall be allowed to use, for the purposes of the Works, such supplies of electricity, water and compressed air as may be ordinarily available on the Site. The Contractor shall ensure that the quantities so used do not interfere with the running or maintenance of other installations belonging to the Employer or others upon or adjacent to or in proximity to the Site. The Employer shall be responsible for providing a point of supply to the Contractor and the Contractor shall not make any direct connection to the Employer’s reticulation. The Contractor shall be responsible for the provision of all necessary materials and labour to connect to and distribute from the point of supply provided by the Employer to the point of usage. No guarantee of uninterrupted or fluctuating supply shall be given by the Employer and neither the Employer nor the Employer’s Representative shall be held liable for any consequences, costs or delays incurred by the Contractor as a result of such interruption or fluctuations to the services detailed herein.

43.5 **Telephones**

Telephones will not be supplied on Site by the Employer and the Contractor shall make its own arrangements for this service at its sole cost.

43.6 **Cranes**

Unless otherwise stated in the Contract use of the Employer’s cranes by the Contractor will not be permitted.

43.7 **Transport**

Unless otherwise stated in the Contract:

43.7.1 **Surface transport**

The Contractor shall provide all necessary surface transport for its employees, materials, Plant and Contractor’s Equipment.

43.7.2 **Underground transport**

The Employer shall provide transport from a designated point adjacent to or in the shaft bank area to the appropriate underground station. Such transport shall be requested by the Contractor a minimum of seven (7) days prior to being required by the Contractor. If agreed to the Employer’s Representative shall confirm the arrangements not less than two (2) days prior to being required. The Contractor shall be responsible for the receiving of all items being transported at the underground station, and the underground transport from the station to the place of work.
The Contractor shall, further, provide all labour necessary for the loading of materials, Plant and Contractor’s Equipment into the transport device and subsequent unloading thereof.

43.8 **Control of Contractor’s Equipment**

All Contractor’s Equipment, including temporary buildings as referred to herein, brought onto the Site for the purposes of the Services shall be under the control of the Employer’s Representative and shall be subject to the following provisions:

43.8.1 Should the Contract or any part thereof be terminated for reasons other than default on the part of the Employer, then all Contractor’s Equipment shall remain on Site and be used by the Employer or such other Contractors or persons as may be engaged by the Employer to complete the Services. Such Contractor’s Equipment shall be used solely for the purpose of the Services and shall not, without the consent in Writing of the Employer’s Representative, be taken from the Site whilst it is required for the purpose of the Services.

43.8.2 The following provisions shall apply to any Contractor’s Equipment which is hired, leased or the subject of a hire purchase agreement:

   (i) Details of all Contractor’s Equipment which is brought on to the Site by or on behalf of the Contractor for the purpose of the Services and which is hired, leased or the subject of hire purchase agreements together with the names of the hirers, lessors or owners thereof shall be supplied to the Commercial Manager by the Contractor.

   (ii) The Employer may, in order to avoid seizure by the hirer, owner or lessor, at the Employer's option, pay to such hirer, owner or lessor the amount of any overdue instalment or other sum payable under the agreement for hire, lease or hire purchase and, in the event of doing so, any amount so paid by the Employer shall be a debt due from the Contractor to the Employer and may be deducted by the Employer from any monies due or that may become due to the Contractor in terms of the Contract or may be recovered by the Employer from the Contractor at law.

43.8.3 The Contractor shall, when entering into any Sub contract for the execution of any part of the Services, incorporate in such Sub contract the abovementioned provisions in relation to the Contractor’s Equipment brought onto the Site by the Sub contractor.

43.9 **Ownership**

Everything of whatsoever nature delivered to Site shall remain in the possession of the Employer and nothing shall be removed from the Site without the consent in Writing of the Employer’s Representative. Notwithstanding the above, the risk of loss of or damage to such Contractor’s Equipment shall remain with the Contractor until the Services are taken over by the Employer.
**43.10 Articles of value or antiquity**

All fossils, coins, articles of value or antiquity and structures or remains of historical or archaeological interest discovered on the Site, shall be the absolute property of the Employer and the Contractor shall prevent its workmen or any other person from removing or damaging any such articles or things and shall immediately upon discovery thereof notify the Employer’s Representative and carry out his instructions as to the action to be taken.

**44.0 DELIVERY OF PLANT AND CONTRACTOR’S EQUIPMENT**

44.1 The Contractor shall furnish to the Employer’s Representative prior notice, in Writing, in reasonable time of the Contractor's intention to deliver any Plant or Contractor’s Equipment to Site, and the Employer shall not be responsible for any delays resulting from failure on the part of the Contractor to give such notice or, once given, for the Contractor’s failure to adhere with reasonable accuracy to the delivery date given in such notice.

44.2 The Contractor shall be responsible for the payment of all costs incurred in the delivery to Site of all Plant and Contractor’s Equipment and for any demurrage arising in connection therewith except as provided hereunder. The Employer shall be responsible for taking timeous delivery of all Contractor’s Equipment. All packaging costs are deemed included in the Contract Price. All materials used in such packaging shall become and remain the property of the Employer unless as otherwise provided for in the Contract.

44.3 If, for any reason attributable to the Employer, the Contractor, having given the notice referred to above, is prevented or delayed in delivering the Contractor’s Equipment to Site on delivery date(s) given in such notice, then the Employer shall, on the presentation by the Contractor of substantiation of such, be responsible for any additional costs incurred by the Contractor as a result of such prevention or delay.

44.4 Without limiting the responsibilities of the Contractor under the Contract, the Contractor shall, in respect of any Plant to be imported by him, appoint a recognised import agent as Sub-Contractor to undertake the shipping, transportation, landing, clearing and forwarding to Site of such Contractor’s Equipment and the management services necessary in connection with such activities. At the request of the Commercial Manager, the Contractor shall ensure that copies of all correspondence, shipping documents, air waybills, etc., relating to the activities of the said import agent are forwarded to the Commercial Manager by the import agent.

**45.0 TRANSPORTATION**

Where transportation in terms of the Contract is being effected by road transport:-

45.1 It shall be the responsibility of the Contractor, its agents or Sub contractor to obtain all necessary permits in terms of the Motor (Road) Transport Act, Act 74 of 1977, as amended, and where applicable all necessary permission and authority in order to effect the transportation of the Contractor’s Equipment.
45.2 the Contractor shall ensure, as far as reasonably practical that:-

45.2.1 the vehicle utilised for such transportation is roadworthy and suitable for the transportation of the Plant;

45.2.2 the personnel engaged in the transportation and delivery of Plant are trained and authorised to operate the relevant vehicle as well as the risk to health and safety in handling the Plant;

45.2.3 the Contractor shall indemnify the Employer against any claim arising out of damage to property and/or injury or death to persons caused by the personnel and/or transport vehicle engaged in the transport of Contractor’s Equipment irrespective of where such damage to property and/or injury or death to persons occurred.

46.0 EXECUTION OF THE SERVICES

If during the carrying out of the Services certain of the Contractor's Equipment becomes inoperative or unserviceable, then the Contractor shall be responsible, at its cost, for the removal and/or replacement of such. No additional payment during such an occurrence will be made unless the Contractor can provide proof that the situation had arisen due to incorrect Technical Information provided by the Employer.

47.0 OWNERSHIP OF HIRED EQUIPMENT

Ownership of all hired Contractor's Equipment shall vest with the Contractor and the Contractor warrants that the Contractor has full right of disposition of all equipment hired to the Employer by it and that all such Contractor's Equipment is free of all liens and encumbrances. The Contractor hereby indemnifies the Employer against all costs which may arise due to the Contractor's Equipment being seized.

48.0 PERFORMANCE BOND

48.1 The Commercial Manager may require the Contractor to, provide within ten (10) days of the Contract Date a guarantee (hereinafter referred to as a performance bond) issued by a banking or insurance institution registered in the Republic of South Africa and approved by the Commercial Manager.

The said performance bond shall be in the format issued by the Commercial Manager, valued at 10% (ten percentage) of the Contract Price and shall, notwithstanding any variations or extensions of time made, given or conceded under the Contract, bind the guarantor jointly and severally with the Contractor for the due fulfilment of the Contract by the Contractor.

48.2 The costs of preparing, completing and maintaining the said performance bond shall, except as provided hereunder, be for the account of the Contractor.

48.3 Should the Contractor fail to submit such performance bond in accordance with the above provisions, the Employer’s Representative shall, at his sole discretion, be entitled to withhold payment from the Contractor up to the equivalent value of the bond and hold such money until such time as the said bond has been provided to the Commercial Manager or the Contract is terminated.

48.4 The performance bond shall remain in full force and effect until the Contract has been terminated in respect of the Services. The performance bond shall thereupon, at the request of the Contractor, be returned to the Contractor.
49.0 WARRANTY AND SERVICING OF HIRED CONTRACTOR'S EQUIPMENT

49.1 The Contractor warrants that the Contractor's Equipment hired in terms of the Contract is in proper working order, is safe to operate and suitable for the Services intended.

49.2 Unless stated to the contrary elsewhere in the Contract, the Contractor shall be responsible for all servicing, maintenance and repairs to the Contractor's Equipment. The Employer shall during the Contract period and whilst the Contractor's Equipment is in the Employer's possession and to the extent agreed with the Contractor be responsible for minor routine checks only, such as oil levels and tyre pressures.

50.0 DEFECTIVE CONTRACTOR'S EQUIPMENT

50.1 The Employer's Representative shall notify the Contractor of any defects or deficiencies in the Contractor's equipment which render such Equipment unsuitable for the purpose for which it was hired.

50.2 In the event that a defect or deficiency in the Contractor's Equipment is not remedied by the Contractor within a period of twenty-four (24) hours from the time of notification, the Contractor shall, at its cost, provide replacement of Contractor's Equipment acceptable to the Employer's Representative.

51.0 LOSS AND/OR DAMAGE TO HIRED CONTRACTOR'S EQUIPMENT

51.1 The Contractor shall be liable for all cost arising from losses, damage and/or destruction of whatsoever nature which may occur during the transportation of Contractor's Equipment to and from the Employer.

51.2 The Employer shall not be held liable for any losses, including, but not limited to loss of profit, indirect or consequential loss, which the Contractor may suffer for whatsoever reason including but not limited to the loss, damage and/or destruction of Contractor's Equipment hired in terms of the Contract.

52.0 EQUIPMENT OPERATORS

Where in terms of the Contract, the Contractor is to provide operators to operate the Contractor's Equipment supplied then:

52.1 the Contractor shall insure as far as reasonably practical that the operators are trained and authorised to operate the relevant Contractor's Equipment for which they have been provided as well as the risk to health and safety in operating such Contractor's Equipment.

52.2 the operators shall fall under the control of the Employer's Representative who will provide clear and specific instruction regarding the work to be carried out.

52.3 should the Employer's Representative in terms of the Contract request the removal of any operator, the Contractor shall, if required to do so, immediately provide a replacement operator skilled in the operation of the relevant Contractor's Equipment.
53.0 LIABILITY FOR HIRE AND STANDING TIME CHARGES

The Employer shall not be liable for any hire or standing time charges for any period that it is not possible to operate the Contractor’s Equipment due to:

53.1 the absence or unsuitability of the Contractor's operators; or
53.2 the Contractor's Equipment being inoperable for reasons of:
   53.2.1 loss, damage or destruction; or
   53.2.2 the lack of maintenance or repairs on the part of the Contractor; or
   53.2.3 being defective.

54.0 QUANTITY OF WORK

It is an express condition of the Contract that the Employer does not guarantee any quantity of work to be performed against the Contract. The Contractor shall, however, be bound to perform any quantity of work in terms of the Contract that the Employer may require during the currency of the Contract.

55.0 CALL-OFF ORDERS

55.1 When it is required that specific work should be carried out in terms of the Contract the Employer shall notify the Contractor of such in Writing by means of a Call-off order.

55.2 The Call-off order shall reflect:-
   55.2.1 the Contract number;
   55.2.2 the Call-off number;
   55.2.3 description of the work required;
   55.2.4 the number of items or an estimated quantity of work;
   55.2.5 the rates or prices for the work;
   55.2.6 the total value of the Call-off order;
   55.2.7 the signature of the Employer’s Representative authorising the work.

55.3 Any work carried out by the Contractor which is not contained in the Contract or not reflected in the Call-off order and which has not been authorised by the Employer's Representative will not be paid for by the Employer.

56.0 QUARTERLY WORK SUMMARY

56.1 The Contract shall at periods agreed with the Commercial Manager or where no such agreements has been made at three (3) months intervals forwarded to the Commercial Manager, in a form acceptable to the Commercial Manager, a summary of the services carried out against the Contract during the previous three (3) months.
56.2 The summary shall reflect all services carried out during the period together with the tax invoice value thereof. Should no work be carried out during particular period the Contract shall nevertheless submit a nil return.

57.0 LAWS AND REGULATIONS


The Contractor shall hold the Employer harmless against all penalties and liabilities incurred by the Contractor in breach thereof.

57.2 If the cost to the Contractor for the performance of the Contract is increased or reduced by reason of the passing or amendment of any applicable legislation after the date of the Contractor's tender, such increase or reduction shall be added to or deducted from the Contract Price as the case may be.

58.0 RESOLUTION OF DISPUTES

58.1 Should any disputes or differences whatsoever arise at any time between the Employer and the Contractor concerning the Contract or its construction, interpretation or effect or as to the rights, duties or liabilities of the parties under or by virtue of the Contract or otherwise or as to any other matter in any way arising out of the subject matter of the Contract, and should the parties fail to resolve such dispute amicably then either party may declare a dispute by giving to the other party notice thereof in Writing, specifying the nature of the dispute, its details, and the point at issue.

58.2 The Employer, on the receipt of a notice of dispute by the party to whom it is addressed, may elect to resolve the dispute by way of litigation. Should the Employer fail to so elect, then the dispute shall be resolved in accordance with the rules of the Arbitration Foundation of Southern Africa by an arbitrator or arbitrators appointed by the Foundation.

58.3 Any award made by the arbitrator or arbitrators shall be subject to appeal in terms of the rules of the Arbitration Foundation of Southern Africa.

59.0 TAXES, DUTIES AND PERMITS

59.1 The Employer will not be responsible for any income tax or other taxes levied on the Contractor and/or its employees and/or agents in respect of the Contractor's obligations in terms of the Contract.
59.2 The Contractor shall be responsible for complying with all importation regulations and the payment of all customs and excise duties, levies or any other costs incurred by the Contractor in respect of any imports into the Republic of South Africa. In the event that the Contractor is to be reimbursed by the Employer, such costs shall be shown separately in the Contract. The Employer will not be responsible for any costs incurred by the Contractor due to its failure to comply with import control regulations.

Any import permit obtained by the Contractor in terms of the foregoing is to be in the joint names of the Contractor and the Employer, if so stated in the Contract.

59.3 The Contractor shall, at its cost, obtain from the relevant authorities and administer all necessary permits and licences and fulfil all immigration formalities to enable the Contractor to fulfil its obligations in terms of the Contract.

Copies of all authorised Documentation is to be provided to the Commercial Manager, if so stated in the Contract.

59.4 The Employer will, at its cost, obtain from the relevant authorities the necessary permission to carry out the said Services.

60.0 **FORCE MAJEURE**

60.1 "Force Majeure" shall mean any circumstances beyond the reasonable control of the party concerned and shall include but not be limited to:

60.1.1 war, revolution, riot, mob violence, sabotage, epidemic, accident, breakdown of machinery or facilities where such are not part of the Contractor's Equipment or under the Contractor's control;

60.1.2 industrial action by workers or employees;

60.1.3 earthquake, flood, fire or other natural physical disaster.

The mere shortage of labour, materials or utilities shall not constitute Force Majeure unless caused by circumstances which are themselves Force Majeure.

60.2 If either party is prevented from performing any of its obligations under the Contract by Force Majeure, then it shall immediately notify the other party of the circumstances causing Force Majeure and the obligations so affected. The party giving such notification shall thereupon be excused the performance for so long as the circumstances of prevention may continue.

60.3 If by virtue of the provisions hereof either party shall be excused performance for a continuous period of four (4) months, then either party may, at any time thereafter and provided such performance is still excused, terminate the Contract by notice in Writing one to the other.

60.4 If the Contract shall be terminated in terms hereof:

60.4.1 the Contractor shall with all reasonable despatch remove from the Site all Contractor's Equipment and shall ensure that its Sub contractors similarly do so;
60.4.2 the Contractor shall be paid by the Employer all reasonable costs incurred by the Contractor where the Contractor has, solely for the purpose of the Contract, entered into any agreement for the supply of material in anticipation of off-take and is unable to dispose of such;

60.4.3 the Contractor shall recompense the Employer for all outstanding amounts owed by the Contractor to the Employer from whatsoever source that debt was incurred.

61.0 **NO WAIVER**

No act of relaxation, indulgence or grace on the part of the Employer shall in any way operate as or be deemed to be a waiver by the Employer of any of its rights in terms of the Contract or a novation thereof.

62.0 **GOVERNING LAW**

The Contract shall be governed, construed and interpreted in accordance with the law of the Republic of South Africa.

63.0 **DOMICILIUM**

Each party chooses domicilium citandi et executandi at its respective registered office or at such alternative address in the Republic of South Africa which it may notify to the other in Writing from time to time; provided that, if the registered address of the Contractor is outside the Republic of South Africa, the Contractor shall choose domicilium citandi et executandi at an address in the Republic of South Africa.

64.0 **NOTICES**

Any communication or notice required to be given or made under the Contract between the parties shall be in Writing and shall be deemed:

64.1 to have been duly made or given if either sent by prepaid registered post or telegram or hand delivered to the addresses of the parties given in the Contract or by telex, e-mail or facsimile to the appropriate numbers of the parties or such other address as notified in terms hereof;

64.2 to have been received by the intended addressee for all purposes thereunder:

64.2.1 if delivered by hand or transmitted by facsimile, e-mail, telex or telegram, on the day of normal business following the date of despatch of such communication or notice; and

64.2.2 if made by prepaid registered post, on the tenth day following the date of despatch of such communication or notice unless such tenth day is not a normal business day, then on the next normal business day immediately thereafter.

65.0 **ENTIRE AGREEMENT**

The Contract constitutes the entire agreement between the parties thereto. Any variation of the Contract and of this clause shall be in Writing by means of an amendment to the Contract issued by the Commercial Manager.

66.0 **PREPARATION OF CONTRACT**

The expenses of preparing the Contract document shall be for the account of the Employer.
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