ANGLOGOLD ASHANTI LIMITED

GENERAL CONDITIONS OF CONTRACT

FOR

PURCHASE

GCC 600

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 ‘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.

1.3 'Contract' means the agreement between the Employer and the Contractor for provision of the Goods.

1.4 'Contract Date' means the date upon which the Contract is deemed to have commenced.

1.5 'Contract Price' means the price to be paid by the Employer to the Contractor for the provision of the Goods.

1.6 '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.

1.7 ‘Delivery Date’ means the date by which the Goods are to be delivered in terms of the Contract.

1.8 '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.

1.9 'Employer' means the Company / Operating Unit / Business Unit of AngloGold named in the Contract for whom the Goods are to be provided.

1.10 ‘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.

1.11 '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 this duly appointed nominee.

1.12 ‘Goods’ means machinery, vehicles, equipment, apparatus, materials, articles and any other things of whatsoever nature supplied by the Contractor to the Employer in terms of the Contract.

1.13 'Intellectual Property Rights' means any patent right, registered design, registered trade mark, copyright or any other protected right.

1.14 ‘Nominated Sub contractor’ means any corporate body, partnership or person named in the Contract which or whom is nominated by the Employer’s Representative to provide defined Goods on behalf of the Contractor in terms of the Contract.

1.15 ‘Programme’ means a schedule of planned objectives directly linked to measurable time scales, date and/or events for the duration of the Contract.

1.16 'Specification' means the specification of the Goods forming an integral part of the Contract.
1.17 '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.

1.18 '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.

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

1.20 '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 Goods.

1.21 ‘Termination Date’ means the date on which work on the Contract ceases.

1.22 'Tests on Completion' means any tests to be carried out by the Contractor in respect of the Goods, prior to delivery of the Goods.

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

1.24 'Writing' means any manuscript, typewritten or printed statement signed by an authorised representative of either the Employer or the Contractor and any e-mail, telex 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'Units (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:-

- 5.2.1 90% of the gross amount of the value of Goods delivered to the Employer during the month;

- 5.2.2 10% of the gross value of Goods delivered (retention) on the expiry of 90 days from the date of actual delivery;

No interest will be payable by the Employer to the Contractor for any monies held as retention.

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 Goods delivered.

5.4 Tax Invoices shall indicate; the Contract number, the Contractor’s Value Added Tax registration number, the Goods delivered, total value claimed to date, value of previous claims, retention, amount payable and such Value Added Tax as may be payable.

5.5 Provided the Employer’s Representative is satisfied with the Goods delivered and that the Tax Invoices are correct, he shall certify such Tax Invoices for payment.

5.6 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.

5.7 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.

5.8 If at any time prior to which payment becomes due there shall be any defect in the Goods, the Employer may retain the whole of the said payment or such portion as the Employer’s Representative may deem fit to cover the cost of making good the said defect. Any sum so retained shall be paid upon the said defect being made good by the Contractor.

5.9 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 all calculations and other substantiating documentary evidence as may be required by the Commercial Manager.

6.2.1.6 Any Goods delivered by the Contractor prior to the effective date of the amendment shall be deemed to have been delivered at the Contract rates and for 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 the Goods shall continue to be delivered 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, but in any event not later than four (4) months from the Delivery Date, actual Delivery Date or adjustment date whichever is the earlier.

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 Goods 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 Goods;
7.1.1.2 the actual FOB value of the Goods (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 pay either 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 in:

7.1.3.1 the submission of foreign currency with its offer; or
7.1.3.2 in the timely provisioning of forwarded cover when requested to provide such; or
7.1.3.3 the timely submission of commercial invoices in the foreign currency; or
7.1.3.4 the delivery 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 Goods 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 Goods 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 Goods delivered as detailed in the Contractor. No payment will be made where variations to the Goods are carried unless such 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 Goods detailed shall be delivered 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 deliver or offer to deliver Goods of a similar nature to 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 Goods delivered on or after the date on which the Goods of a similar nature were delivered or offered to be delivered 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 Goods 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 at any time, 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 in connection with the Contract or be in breach of any of the provisions of the Contract, the Employer's Representative 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 action to the satisfaction of the Employer, then the Employer's Representative 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, 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 Contract 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 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-DISCLOSURE 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 work 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 deliver the Goods 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 29 of 1996, as amended and Regulations 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 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.

23.0 TIME FOR COMPLETION

23.1 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.

23.2 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.
23.3 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, the Employer’s Representative 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.

24.0 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 the Employer’s Representative’s opinion, is necessary to complete the Contract. 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.

25.0 VARIATIONS

25.1 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 Goods and the Contractor shall carry out such variations as though the said variations were stated in the Contract.

25.2 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.

25.3 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 Delivery 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 Delivery 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.

25.4 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 Goods are 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.
25.5 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.

25.6 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.

26.0 DOCUMENTATION

26.1 Documentation for approval by the Employer’s Representative

Documentation which is stipulated in the Contract as requiring the approval of the Employer’s Representative shall be submitted by the Contractor to the Employer’s Representative at the times stated elsewhere in the Contract or in the absence of any such stipulation within fourteen (14) days of the Contract Date.

Within fourteen (14) days of the date of receipt of such Documentation, the Employer’s Representative shall signify his approval thereof or the modifications required thereto. Such modification shall be incorporated in the relevant Documentation by the Contractor and re-submitted to the Employer’s Representative without delay. Notwithstanding approval by the Employer’s Representative the Contractor shall be liable for the accuracy and adequacy of all Documentation.

26.2 Documentation to be supplied to the Employer’s Representative prior to delivery of the Goods

Prior to the Delivery Date of the Goods, the Contractor shall supply to the Employer’s Representative Documentation as required in terms of the Contract. Such Documentation shall comprise but may not be limited to operating and maintenance instructions, spares lists, drawings of the Goods as completed, in sufficient detail to enable the Employer to maintain, dismantle, reassemble and adjust all parts of the Goods.

26.3 Additional Documentation required by the Employer’s Representative

Documentation submitted to the Employer’s Representative by the Contractor in terms hereof shall not be limited to the Documentation stipulated in the Contract, and the Employer’s Representative may from time to time prior to the completion of the Contract, instruct the Contractor to submit for approval such additional Documentation as the Employer’s Representative may require.

26.4 Method of presentation of Documentation

The Documentation referred to above shall be presented to the Employer’s Representative by the Contractor in the form and manner as agreed with the Employer’s Representative.

26.5 Schedule of Documentation

The Contractor shall maintain an up-to-date schedule of all Documentation referred to above showing the state of all such Documentation. The schedule shall be supplied to the Employer’s Representative by the Contractor at intervals stipulated by the Employer’s Representative in consultation with the Contractor.
26.6 **Inspection of Documentation**

The Employer’s Representative shall have the right at all reasonable times to inspect the Documentation at the premises of the Contractor or any Sub-Contractor.

26.7 **Documentation to be the property of the Employer**

All Documentation shall, subject to any Intellectual Property Rights which the Contract may hold over them and subject to the condition of the clause headed “Non disclosure of information”, become and remain the property of the Employer.

26.8 **Mistakes in Documentation**

The Contractor shall be responsible for all discrepancies, errors or omissions including faulty design and/or detailing in any of the Documentation whether or not such Documentation has been approved by the Employer’s Representative, except insofar as the discrepancies, errors, omissions, faulty design and/or detailing are due to discrepancies, errors or omissions in the Technical Information.

27.0 **TECHNICAL INFORMATION**

27.1 **Provision and ownership of Technical Information**

The Employer shall provide the Contractor at the appropriate times with the Technical Information necessary to enable the Contractor to complete the Contract. All Technical Information shall be and remain the property of the Employer and shall be handed over to the Employer's Representative on demand. The provisions of the clause headed "Non disclosure of information" shall apply to the Technical Information.

27.2 **Errors or discrepancies in Technical Information**

In the event of any omission or discrepancy occurring in the Technical Information this shall be brought to the attention of the Employer’s Representative before or at the time of tendering. If, at any later stage, any ambiguity or discrepancy is discovered in the Technical Information the matter shall immediately be referred to the Employer’s Representative for his decision.

28.0 **QUALITY ASSURANCE, INSPECTION, TESTING AND REJECTION**

28.1 **Quality of materials and workmanship**

All Goods supplied in terms of the Contract shall be new and unused unless otherwise stated in the Contract. The workmanship is to be the best of its respective kind and carried out by tradesmen fully experienced in their particular trade or calling and shall at all times be subject to the approval and satisfaction of the Employer’s Representative.

28.2 **Employer’s quality assurance representative**

The Employer’s Representative may appoint an independent quality assurance specialist/organisation to act in a quality surveillance capacity on his behalf for all or any part of the Goods.

28.3 **Employer’s inspection and/or testing**

The Employer’s Representative shall be entitled at all reasonable times during and after manufacture and before delivery, to inspect, examine and test the materials and workmanship on the Contractor’s premises. If any part of the Goods is being manufactured on other premises, the Contractor shall obtain permission for the Employer’s Representative to inspect, examine and test such Goods.
Such inspection, examination or testing, if made, shall be in addition to any inspection, examination or testing to be carried out by the Contractor and shall not release the Contractor from any obligation under the Contract nor be construed as an admission that such Goods are free of any patent or latent defects.

28.4 Notice of inspections or testing

If the Employer's Representative notifies the Contractor that he intends witnessing certain inspections and/or tests, the Contractor shall provide the Employer's Representative with at least five (5) days prior notice in writing of time, date and place at which such Goods will be ready for the said inspections and/or tests. Special arrangements shall be agreed in respect of Goods being manufactured overseas.

28.5 Inspections and/or testing; no reason for delays

Inspections and testing shall be conducted so that progress of the Contract is not delayed and the witnessing of such inspections and/or tests shall not be reason for the Contractor to delay manufacture or delivery of any Goods.

Inspections and/or tests shall not be delayed by the absence of the Employer's Representative. Provided notice has been given by the Contractor in accordance with the above, the Contractor may proceed with the inspections and/or tests on the date and at the place indicated in the notice. The Contractor shall forward to the Employer's Representative duly certified copies of the results of the inspections and/or tests carried out.

Should the Employer's Representative not be present to witness inspections and/or tests on any Goods where he had indicated his intention to be present and provided notice had been given by the Contractor in accordance with the above, the Contractor shall dismantle/disassemble, open or uncover such part of the Goods if the Employer's Representative so directs and again perform the specified inspections and/or tests to the satisfaction of the Employer's Representative. The cost of such dismantling/disassembly, opening or uncovering and inspection and/or testing shall then be for the account of the Employer.

28.6 Rectification of defects revealed by re-inspection

Should Goods inspected and/or tested in accordance with the provisions of the above, be defective or not in accordance with the Contract, the Contractor shall at its own expense and with all speed rectify or replace the defective items. In the event that such Goods so inspected and/or tested meet the requirements of the Contract or are not defective, then all such costs shall be for the Employer's account.

28.7 Cost of attendance at inspection or testing

The costs of attendance by the Employer's Representative or quality assurance Representative at any inspections and/or tests which fail to take place through the fault of the Contractor or repeated attendance subsequent to rejection of defective Goods shall be for the Contractor's account, such costs including but not being limited to: inspection fees as determined by and obtainable from the Employer, and transportation costs at the applicable Automobile Association (AA) rates.

28.8 Additional testing before assembly or closing-up

The Employer's Representative may direct the Contractor to perform additional or alternative inspections and/or tests for specific Goods. Costs of such inspections and/or tests shall be for the Employer's account.
28.9 **Tests on Completion**

28.9.1 The Contractor shall give to the Employer’s Representative reasonable notice in Writing of the date on which the Contractor will be ready to commence the Tests on Completion. The tests shall commence on the said date or such alternative date as may be mutually agreed between the Employer’s Representative and the Contractor.

28.9.2 If the Employer’s Representative fails to attend at any time and place agreed for conducting the said tests, the Contractor shall be entitled to proceed in the Employer’s Representative’s absence and, provided the Contractor furnishes the Employer’s Representative with full and accurate test results, the said tests shall be deemed made in the presence of the Employer’s Representative. Should the Employer’s Representative require the said tests to be repeated, the costs of such repeated tests shall be for the account of the Employer, except that in the event that the test results furnished to the Employer’s Representative indicate that the Goods failed to pass the Tests on Completion the provisions hereunder shall apply.

28.9.3 If in the opinion of the Employer’s Representative the Tests on Completion are being unduly delayed he may, by notice in Writing, call upon the Contractor to conduct the said tests within ten (10) days from receipt of the said notice. The Contractor shall conduct the said tests on such day within the said ten (10) days as the Contractor may fix and of which it shall give notice to the Employer’s Representative. If the Contractor fails to make such tests within the time aforesaid the Employer’s Representative may himself proceed to conduct the tests. All Tests on Completion so conducted by the Employer’s Representative shall be at the risk and expense of the Contractor unless the Contractor can satisfy the Employer’s Representative that the said tests were not being unduly delayed, in which case tests so conducted shall be at the risk and expense of the Employer.

28.9.4 Should the Goods or any portion thereof fail to pass the Tests on Completion the Contractor shall, within such period as the Employer’s Representative shall stipulate and at the Contractor’s own cost, make such modifications to the Goods or the relevant portion thereof as may be necessary and carry out further Tests on Completion until such time as the work has passed the Tests on Completion.

28.10 **Test facilities**

Where the Contract provides for inspections and/or tests of part or all of the work to be carried out on the premises of the Contractor or of any Sub contractor, the Contractor or such Sub contractor shall provide, free of charge, such assistance, materials, electricity, fuel, stores, apparatus and instruments as may be necessary to carry out such tests efficiently.

Where the Contract provides for inspections and/or tests of part or all of the Goods to be carried out on the Employer’s property, the Employer, except where otherwise stated, shall provide free of charge such raw materials, electricity and fuel as may be necessary to carry out such inspections and/or tests efficiently.

28.11 **Contractor’s representation**

Inspections and/or tests witnessed by the Employer’s Representative shall be performed in the presence of an authorised representative of the Contractor.
28.12 **Rejection**

28.12.1 If at any time, whether prior or subsequent to delivery of the Goods, the Employer's Representative considers that the Goods or any portion thereof are defective or does not fulfil the requirements of the Contract (all such matters being hereafter called "defects"), the Employer's Representative shall, as soon as reasonably practicable, give the Contractor notice in Writing specifying particulars of the alleged defects. The onus shall then be on the Contractor to demonstrate that the Goods or such portion hereof fulfils the requirements of the Contract, failing which, the Contractor shall at its own expense and with all speed make good the defects so specified.

28.12.2 Should the Contractor fail to rectify an agreed defect within a reasonable time the Employer's Representative may take, at the cost of the Contractor and without relieving the Contractor of any of the Contractor's obligations under the Contract, such steps as may in all the circumstances be reasonable to make good such defect.

All Goods provided by the Employer's Representative to replace defective Goods shall comply with the Contract and shall, where practicable, be obtained under competitive conditions. The Contractor shall be entitled to remove and retain all Goods that the Employer’s Representative may have replaced at the Contractor's cost subject to the Contractor having paid such cost to the Employer.

29.0 **TRANSPORTATION**

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

29.1.1 it shall be the responsibility of the Contractor, its agents or Sub contractor to obtain all necessary permits in terms of the Motor (Road) Transportation Act, Act 74 of 1997, as amended, and where applicable all necessary permission and authorisation in order to effect the transportation of the Goods.

29.1.2 the Contractor shall ensure, as far as reasonably practical that:-

29.1.2.1 the vehicle utilised for such transportation is in a roadworthy and safe condition and is suitable for the transportation of the Goods;

29.1.2.2 the personnel engaged in the transportation and delivery of Goods to the Employer are trained and authorised to operate the relevant vehicle as well as trained in the risks to health and safety in handling the Goods;

29.1.2.3 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 and delivery of the Goods to the Employer irrespective of where such damage to the property and/or injury or death to persons occurred.

30.0 **OWNERSHIP AND RISK**

30.1 Notwithstanding the date on which any payment is made to the Contractor or whether the price basis of the Contract is inclusive or not of delivery, all risks in the Goods shall remain with the Contractor and the Contractor shall bear any and all costs whatsoever arising from or in respect of all losses, damages and/or destruction to the Goods until such time as the Goods have been received and signed.
for by the Employer. Goods so signed for shall signify only the number and outward condition of the packages, containers, bundles, bags, cartons or articles and shall not be construed as acceptance of the Goods which shall remain liable to subsequent rejection.

30.2 In the event that the Employer provides the Contractor with free issue equipment for incorporating in the Goods, then ownership of such equipment shall vest in the Employer. The risk therein, however, shall remain with the Contractor and the Contractor shall bear any and all costs whatsoever arising from or in respect of all losses, damages and/or destruction to the equipment until such time as the Goods have been received and signed for by the Employer.

31.0 PERFORMANCE BOND

31.1 The Commercial Manager may require the Contractor to provide, within ten (10) days of the Contract Date the Commercial Manager 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 form issued by the Commercial Manager, valued at 10% (ten percent) 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.

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

31.3 Should the Contractor fail to submit such performance bond in accordance with the above provision, the Employer's Representative shall, at the Employer's Representative's 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 Goods delivered.

31.4 The performance bond shall remain in full force and effect until the Goods are delivered. The performance bond shall thereupon, at the request of the Contractor, be returned to the Contractor. Should delivery in respect of the whole of the Goods be delayed due to reasons attributable to the Employer, the Employer shall be responsible for the cost of maintaining the performance bond beyond the time when such performance bond should have been returned.

32.0 PACKING AND MARKING

32.1 The Contractor shall ensure that all packing and containers are adequate for the safe transportation, handling and storage of the Goods.

32.2 Unless otherwise stated in the Contract, all packing, cases and packing materials shall become the property of the Employer and the cost thereof shall be deemed to be included in the Contract Price.

32.3 The Contractor shall ensure that all packages, containers, bundles or articles are marked in accordance with the requirements of the relevant transport authority and shall be endorsed with:

32.3.1 the Contract number;
32.3.2 the Call-off number (if any);
32.3.3 a description of the Goods;
32.3.4 the relevant Employer’s Representative’s name;
32.3.5 the Contractor’s name.

32.4 Failure by the Contractor to mark the Goods as detailed in this clause may result in the non-acceptance of the Goods. All costs incurred in such non-acceptance shall be for the Contractor’s account.

33.0 DELIVERY OF THE GOODS

33.1 Unless otherwise stated in the Contract delivery of the Goods shall be effected by means of road transport.

33.2 Where delivery of the Goods are being effected by road transport:

33.2.1 Delivery of Goods to the Employer shall be made to the point specified in the Contract at times agreed with the relevant head of stores.

33.2.2 Should deliveries be made at times other than those agreed with the relevant head of stores then that delivery may not be accepted. Any additional costs of demurrage, re-delivery, wasted time or other related costs resultant on such non-acceptance shall be for the Contractor’s account.

33.2.3 In the event that any special arrangements are required when effecting delivery to the Employer (carriage, deliveries outside normal working hours etc.) then the Contractor shall agree such arrangement with the relevant head of stores a minimum of seven (7) days prior to the actual delivery being made. All costs of whatsoever nature arising from such special arrangement shall be for the Contractor’s account.

33.2.4 All Goods delivered to the Employer in terms of the Contract shall in the first instance be delivered directly to the nominated delivery point. The driver may, however, be re-directed to the actual point of delivery.

33.3 The Employer will not be responsible for the payment of Tax Invoices where the Contractor has bypassed the nominated delivery point.

34.0 WAYBILLS/DELIVERY NOTES

34.1 Waybills/delivery notes shall accompany each delivery and shall be endorsed with:-

34.1.1 the Contract number;
34.1.2 the Call-off number (if any);
34.1.3 a description of the Goods;
34.1.4 the relevant Employer’s Representative’s name;
34.1.5 the quantity of Goods delivered.

34.2 No changes to delivery documents will be accepted unless that change is endorsed with:-

34.2.1 a signature of an official of the Contractor;
34.2.2 the printed name of that official;
34.2.3 the Contractor’s company stamp.
35.0 GUARANTEE OF THE GOODS

35.1 The Contractor shall make good, at its cost, and within such period as the Employer may stipulate, any defects in the Goods arising from defective design, materials or workmanship, or from any act or omission of the Contractor that may develop under proper use and in conditions for which the Goods are supplied during the period of twelve (12) months from the actual date of delivery.

35.2 If the Contractor repairs or replaces any part of the Goods, the terms of the above clause shall apply to such repairs or replacements from the date so repaired or replaced.

35.3 If any defects are not remedied by the Contractor within the time stipulated, the Employer may proceed to do the work or cause the work to be done. The work shall be executed at the Contractor’s risk and expense and without prejudice to any other rights which the Employer may have against the Contractor in respect of the Contractor’s failure to remedy such defects.

35.4 Nothing in this clause shall derogate from the Contractor’s liability at common law for patent or latent defects.

36.0 RESOLUTION OF DISPUTES

36.1 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.

36.2 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.

36.3 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.

37.0 LAWS AND REGULATIONS


The Contractor shall hold the Employer harmless against all penalties and liabilities incurred by the Contractor in breach thereof.
37.2 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.

38.0 TAXES, DUTIES AND PERMITS

38.1 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.

38.2 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.

38.3 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.

38.4 The Employer will, at its cost, obtain from the relevant authorities the necessary permission to supply the said Goods.

39.0 FORCE MAJEURE

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

39.1.1 war, revolution, riot, mob violence, sabotage, epidemic, accident, breakdown of machinery or facilities where such are under the Contractor's control;

39.1.2 industrial action by workers or employees;

39.1.3 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.

39.2 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.

39.3 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.
39.4 If the Contract shall be terminated in terms hereof:-

39.4.1 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;

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

40.0 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.

41.0 GOVERNING LAW

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

42.0 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.

43.0 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:

43.1 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;

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

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

43.2.2 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.

44.0 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.

45.0 PREPARATION OF CONTRACT

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